

ASX ANNOUNCEMENT

29 April 2024

Pacific Smiles Group enters into a Scheme Implementation Deed with National Dental Care

Pacific Smiles Group Limited (ASX:PSQ) (**Pacific Smiles**) has entered into a Scheme Implementation Deed (**SID**) with NDC BidCo Pty Ltd, a wholly owned subsidiary of NDC HoldCo Pty Ltd (which operates the National Dental Care centres) (**NDC**). Under the terms of the SID, NDC agrees to acquire 100% of the shares in Pacific Smiles by way of scheme of arrangement (**Scheme**) for cash consideration of \$1.90 cash per share, subject to all applicable conditions being satisfied or waived (as applicable). NDC is a portfolio company managed by Crescent Capital Partners Management Pty Ltd (**Crescent Capital**).

Pacific Smiles will have the discretion to pay shareholders a fully franked dividend of up to a maximum of 12 cents per share (**Permitted Dividend**), with the cash consideration of \$1.90 per share under the Scheme to be reduced by the amount of any such Permitted Dividend. It remains at the discretion of the Pacific Smiles Board whether any Permitted Dividend is ultimately declared and paid. Any such Permitted Dividend will be considered by the Pacific Smiles Board prior to implementation of the Scheme.

Pacific Smiles Board unanimously recommends the Scheme

The Board of Pacific Smiles unanimously recommends shareholders vote in favour of the Scheme at the Scheme meeting, and the Directors will vote all Pacific Smiles shares in which they have a relevant interest or which they control in favour of the Scheme at the Scheme meeting, in each case subject only to no superior proposal emerging and subject to the Independent Expert concluding that the Scheme is in the best interests of Pacific Smiles shareholders, and not withdrawing or adversely changing that conclusion.

The Pacific Smiles Board considers that NDC's offer pursuant to the SID provides an attractive premium for Pacific Smiles shareholders, with the cash consideration of \$1.90 per share under the proposed Scheme representing a premium of:

- 59.0% to the undisturbed closing price of \$1.20 per share on 15 December 2023, being the last trading day prior to the announcement that Pacific Smiles

received an indicative and non-binding proposal from Genesis Capital Manager I Pty Ltd (**Genesis Capital**);

- 98.1% to the 1-month undisturbed volume weighted average price to 15 December 2023 (**Undisturbed VWAP**) of \$0.96 per share and 91.5% to the 3-month Undisturbed VWAP of \$0.99 per share; and
- 35.7% to Genesis Capital's initial non-binding proposal of \$1.40 per share and 8.6% to their revised non-binding proposal announced on 19 March 2024 of \$1.75 per share.

The offer under the Scheme represents an enterprise value multiple on the mid-point of FY24 EBITDA guidance of ~11x¹ and an equity value of \$303m based on ordinary shares outstanding.

Scheme superior to Genesis Capital Revised Indicative Proposal

As announced on 19 March 2024, Genesis Capital made a revised, non-binding indicative proposal for the acquisition of all of the shares in Pacific Smiles at an offer price of \$1.75 in cash per share by way of a scheme of arrangement (**Genesis Capital Revised Indicative Proposal**), following its initial indicative proposal of \$1.40 in cash per share announced on 18 December 2023. Genesis Capital also indicated Pacific Smiles shareholders may have the opportunity to roll their shares into unlisted equity.

Pacific Smiles also announced on 19 March 2024 that it agreed to provide non-exclusive due diligence to Genesis Capital, and that, subject to the parties negotiating and entering into a binding scheme implementation agreement for consideration of at least \$1.75 per share, the intention of the Pacific Smiles Board was to recommend that shareholders vote in favour of any resolution to implement the Genesis Capital Revised Indicative Proposal and to vote or procure shares they control in favour of such resolution, in each case, in the absence of a superior proposal and subject to an independent expert concluding, and continuing to conclude, that the transaction was in the best interests of Pacific Smiles shareholders.

The Board of Pacific Smiles is focused on maximising shareholder outcomes. After careful consideration and having received advice from its legal and financial advisers, the Board of Pacific Smiles has determined NDC's binding proposal, reflected in the SID is a superior proposal to the Genesis Capital Revised Indicative Proposal.

Details of the Scheme Implementation Deed

The Scheme is conditional upon the satisfaction of certain conditions, including:

- Pacific Smiles shareholder approval in accordance with the requirements of the *Corporations Act 2001* (Cth);
- Court and Foreign Investment Review Board (**FIRB**) approval;
- An Independent Expert concluding in its Independent Expert's Report that the Scheme is in the best interests of Pacific Smiles shareholders (and not withdrawing or adversely changing that conclusion); and
- Other customary conditions, including that no material adverse change or any prescribed occurrence occurs prior to the second Court hearing.

The SID contains customary exclusivity obligations, including 'no shop', 'no talk', 'no due diligence', notification obligations and a matching right regime in respect of any potentially superior proposal received by Pacific Smiles. It also details the circumstances under which Pacific Smiles may be required to pay a break fee to NDC.

The Scheme, if approved by Pacific Smiles shareholders, is expected to be implemented in August 2024. In the event that FIRB approval is delayed beyond 27 September 2024, a ticking fee of one cent per share per month will accrue after each full calendar month until FIRB approval is obtained.

Pacific Smiles will appoint an Independent Expert to prepare an Independent Expert's Report opining on whether the Scheme is in the best interests of Pacific Smiles shareholders. The Independent Expert's Report will be included in a Scheme Booklet, which is expected to be distributed to shareholders in June 2024 (subject to the regulatory approval process).

Full details of the terms and conditions of the Scheme are set out in the SID, a copy of which is attached to this announcement.

Scheme timetable and next steps

Pacific Smiles shareholders do not need to take any action at the current time.

A Scheme Booklet containing information relating to the Scheme, an Independent Expert's report opining on whether the Scheme is in the best interests of Pacific Smiles' shareholders, reasons for the Directors' recommendations, and details of the Scheme meeting are expected to be distributed to Pacific Smiles shareholders in June 2024. It is expected that Pacific Smiles shareholders will be given the opportunity to vote on the Scheme at a Scheme Meeting expected to be held in late July 2024. Subject to the

conditions of the Scheme being satisfied, the Scheme is expected to be implemented by the end of August 2024. These dates are indicative and subject to change.

Greenhill & Co. is acting as financial adviser to Pacific Smiles. Gilbert + Tobin is acting as legal adviser to Pacific Smiles.

This announcement was authorised by the Pacific Smiles Board.

ENDS

For further information, please contact:

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About Pacific Smiles Group

Pacific Smiles is a leading Australian branded dental group, currently operating 120+ dental centres. Pacific Smiles provides dentists with fully serviced and equipped facilities including support staff, materials, marketing and administrative services. Over 800 dentists, assisted by more than 1600 support staff, attend over 1 million patient appointments at Pacific Smiles centres each year. Pacific Smiles owns and operates the Pacific Smiles Dental and nib Dental Care centres across the East Coast of Australia and exclusively manages the operation of HBF Dental Centres in Western Australia.

Additional information on Pacific Smiles Group can be found at <https://pacificsmilesgroup.com.au/>

About National Dental Care

NDC is an Australia-wide network of 88 dental practices. Since being founded in 2013, NDC has focused on providing clinicians with the right equipment, training and support to allow them to provide outstanding patient care. The business has a strong Clinical Advisory Committee which oversees clinical decisions, and its Clinical Advisory Committee Chairperson also sits on the Board of Directors. NDC shareholders include seven industry superfunds and it is managed by Crescent Capital Partners Management.

Additional information on National Dental Care can be found at <https://www.nationaldentalcare.com.au/>

Scheme implementation deed

Pacific Smiles Group Limited

NDC BidCo Pty Ltd

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Parties

- 1 **Pacific Smiles Group Limited ACN 103 087 449** of Level 1, 6 Molly Morgan Dr, Green Hills, NSW 2323 (**PSQ**)
 - 2 **NDC BidCo Pty Ltd ACN 676 877 802** of Governor Phillip Tower, Level 29, 1 Farrer Place, Sydney NSW 2000 (**Bidder**)
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Background

- A The parties have agreed that Bidder will acquire PSQ by means of a scheme of arrangement under Part 5.1 of the Corporations Act between PSQ and Scheme Shareholders.
- B PSQ 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 PSQ to propose Scheme

- (a) PSQ agrees to propose and implement the Scheme on and subject to the terms and conditions of this deed.
- (b) PSQ 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 (such consent not to be unreasonably withheld or delayed).
- (c) Bidder agrees to assist PSQ in proposing and implementing the Scheme on and subject to the terms and conditions of this deed.

2.2 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 the Scheme and this deed.

- (b) Subject to the Scheme becoming Effective, Bidder undertakes and warrants to PSQ (in PSQ's own right and separately as trustee for each of the Scheme Shareholders) that, in consideration of the transfer to Bidder of all Scheme Shares pursuant to the terms of the Scheme, Bidder will:

- (i) accept that transfer on the Implementation Date; and
- (ii) depositing (or procuring the deposit) in cleared funds an amount equal to the Aggregate Scheme Consideration into a trust account operated by or on behalf of PSQ as trustee for the Scheme Shareholders before 12 noon on the Business Day immediately before the Implementation Date,

in each case, on and subject to the terms of the Scheme.

2.3 PSQ Board recommendation

- (a) PSQ represents and warrants to Bidder that, as at the date of this deed, each PSQ Director has confirmed that:

- (i) his or her recommendation in respect of the Scheme is that PSQ Shareholders vote, at the Scheme Meeting, in favour of the resolution to approve the Scheme; and
- (ii) he or she intends to vote, or cause to be voted, at the Scheme Meeting, all PSQ Shares in which he or she has a Relevant Interest or which he or she controls in favour of the resolution to approve the Scheme,

in each case subject only to:

- (iii) no Superior Proposal emerging; and
- (iv) the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of PSQ Shareholders, and not withdrawing or adversely changing that conclusion.

- (b) PSQ must use its best endeavours to procure that, subject to any PSQ Director withdrawing or adversely changing his or her Recommendation in accordance with clause 2.3(c), each PSQ Director recommends (unanimously with all the other PSQ Directors) that, subject only to:

- (i) no Superior Proposal emerging; and
- (ii) the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of PSQ Shareholders, and not withdrawing or adversely changing that conclusion,

PSQ Shareholders vote, at the Scheme Meeting, in favour of the resolution to approve the Scheme (a **Recommendation**).

- (c) PSQ must use its best endeavours to procure that no PSQ Director withdraws or adversely changes (including, without limitation, by making any statement supporting, endorsing or recommending any Competing Proposal and/or to the effect that he or she no longer supports the Scheme) his or her Recommendation unless:

- (i) PSQ has received, other than as a result of a breach of clause 7, a Competing Proposal and the PSQ Board has determined (after all of

Bidder's rights under clause 7.8(a) have been exhausted and the procedure in clause 7.8(a) has been complied with) that such Competing Proposal constitutes a Superior Proposal; or

- (ii) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of PSQ Shareholders or, having previously concluded that the Scheme is in the best interests of PSQ Shareholders, withdraws or adversely changes that conclusion.
- (d) Without limiting clause 7, if PSQ becomes aware that a PSQ Director proposes to withdraw or change his or her Recommendation, PSQ must notify Bidder in writing as soon as practicable.

3 Conditions precedent

3.1 Conditions

Subject to this clause 3, the Scheme will not become Effective, and the obligations of Bidder under clauses 2.2, 4.3(l) and 4.3(m) (and 2.1(c) to the extent it requires any actions required by clauses 2.2, 4.3(l) and 4.3(m)) are not binding, until and unless each of the following Conditions is satisfied or waived in accordance with clause 3.4:

- (a) **FIRB Approval:** Before 8:00am on the Second Court Date, any of the following has occurred:
 - (i) Bidder has received a written notice under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (the **FATA**), by or on behalf of the Treasurer of the Commonwealth of Australia (the **Treasurer**), advising that the Commonwealth Government has no objections to the Transaction, either unconditionally or subject only to:
 - (A) any condition which is in the form of any of the "standard" tax conditions set out in items 1 to 6 in section D of the FIRB Guidance Note 12 "Tax Conditions" (in the form last updated on 10 August 2023); and
 - (B) such other conditions acceptable to the Bidder acting reasonably;
 - (ii) the Treasurer becomes precluded by the passage of time from making an order or decision under Part 3 of the FATA in respect of the Transaction and the Transaction is not prohibited by section 82 of the FATA; or
 - (iii) where an interim order is made under section 68 of the FATA in respect of the Transaction, the subsequent period for making an order or decision under Part 3 of the FATA in respect of the Transaction elapses without the Treasurer making such an order or decision.
- (b) **Independent Expert:** The Independent Expert concludes in the Independent Expert's Report that the Scheme is in the best interests of PSQ Shareholders (and does not withdraw or adversely change that conclusion before 8:00am on the Second Court Date).
- (c) **Court approval:** The Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.

- (d) **ASIC and ASX:** Before 8.00am on the Second Court Date, ASIC and ASX issue or provide all consents, waivers, relief or approvals, or have done any other acts, which are necessary, or which PSQ and Bidder agree (each acting reasonably) in writing are desirable, to implement the Scheme, and those consents, waivers, relief, approvals or other acts have not been withdrawn or revoked.
- (e) **PSQ Shareholder approval:** PSQ Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act.
- (f) **No restraints:** As at 8:00am on the Second Court Date, there is not in effect any:
 - (i) permanent or temporary restraining order, permanent or temporary injunction or other final or preliminary decision, order, decree or ruling issued by any court of competent jurisdiction or Government Agency in Australia;
 - (ii) law, rule or regulation; or
 - (iii) other legal restraint or prohibition,that restraints or prohibits the implementation of the Scheme (each a **Restraint**).
- (g) **No Prescribed Occurrence:** No Prescribed Occurrence occurs between the date of this deed and 8:00am on the Second Court Date.
- (h) **No Material Adverse Change:** No Material Adverse Change occurs, is announced, or is disclosed to, discovered by, or otherwise becomes known to, Bidder, between the time of execution of this deed and 8:00am on the Second Court Date.
- (i) **PSQ Warranties:** Each PSQ Warranty is and will be true and correct in all material respects as at the times it is given or made.
- (j) **Bidder Warranties:** Each Bidder Warranty is and will be true and correct in all material respects as at the times it is given or made.

3.2 Reasonable endeavours

- (a) Bidder must, to the extent within its power to do so, use reasonable endeavours to procure that each of the Conditions in clauses 3.1(a) and 3.1(j):
 - (i) is satisfied; and
 - (ii) continues to be satisfied at all times until the last time that the relevant clause provides that such Condition is to be satisfied.
- (b) PSQ must, to the extent within its power to do so, use reasonable endeavours to procure that each of the Conditions in clauses 3.1(c), 3.1(e), 3.1(g), 3.1(h) and 3.1(i):
 - (i) is satisfied; and
 - (ii) continues to be satisfied at all times until the last time that the relevant clause provides that such Condition is to be satisfied.

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- (c) Each of PSQ and Bidder 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(c) and 3.1(d):
 - (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 such Condition is to be satisfied;
 - (ii) there is not in effect any Restraint as at 8:00am on the Second Court Date; and
 - (iii) there is no occurrence within its control or the control of any of its Related Bodies Corporate that would prevent or would be reasonably likely to prevent:
 - (A) any of the Conditions in clause 3.1 (other than the Condition in clause 3.1(f)) from being satisfied or remaining to be satisfied at all times until the last time that the relevant clause provides that such Condition is to be satisfied; or
 - (B) there being not in effect any Restraint as at 8:00am on the Second Court Date.
 - (d) Each of PSQ and Bidder, in respect of matters within its knowledge, must keep the other reasonably informed of the progress towards satisfying any of the Conditions.
 - (e) PSQ will not be in breach of its obligations under clause 3.2(b) or 3.2(c) to the extent that it takes any action expressly permitted to be done, or omits to take any action expressly permitted not to be done, by clause 6.2(a).

3.3 Regulatory Approvals

- (a) Without limiting clause 3.2, but subject to clause 3.3(d), a party responsible for making an application for a Regulatory Approval must:
 - (i) give the other party a copy of an advanced draft of each application for a Regulatory Approval at least 5 Business Days prior to the date on which it is intended to be lodged, and must consider in good faith any reasonable comments provided by or on behalf of the other party at least 2 Business Days prior to the date on which it is intended to be lodged;
 - (ii) unless otherwise agreed by the parties in writing, apply for each Regulatory Approval as soon as practicable (and, in any event, within 10 Business Days) after the date of this deed and give the other party a final copy of each such application;
 - (iii) take all steps reasonably required to obtain each Regulatory Approval as soon as practicable, including responding to requests for information at the earliest reasonably practicable time;
 - (iv) keep the other party reasonably informed of the progress towards obtaining each Regulatory Approval;

- (v) not, and must ensure that its Related Bodies Corporate and Representatives do not, do any of the following:
 - (A) apply to any Government Agency for any approval, consent, clearance, waiver, concession or similar in connection with the Transaction; or
 - (B) send any submission, notification or communication to, or otherwise contact, any Government Agency in connection with the Transaction, in each case other than:
 - (C) in respect of a Regulatory Approval and in accordance with this clause 3.3(a); or
 - (D) having first consulted with the other party;
 - (vi) give the other party a reasonable opportunity to review an advanced draft of each material submission or communication proposed to be sent to a Government Agency in connection with the Transaction, and consider in good faith any reasonable comments provided by or on behalf of the other party; and
 - (vii) promptly notify the other party and provide the other party with reasonable details (including, where applicable, copies) of all material communications received by it (or any of its Related Bodies Corporate or Representatives) from any Government Agency in connection with the Transaction.
- (b) The other party must cooperate with, and provide any assistance or information reasonably requested by, the relevant party or its Representatives in connection with an application for a Regulatory Approval, and must use its best endeavours to assist the relevant party to obtain such Regulatory Approvals as soon as practicable after the date of this deed.
 - (c) For the avoidance of doubt and notwithstanding any other provision of this deed, the parties' obligations in this clause 3.3 only apply in respect of communications relating to the satisfaction of the Condition in clause 3.1(a), 3.1(c), 3.1(d) or 3.1(f) and any other engagement with a Government Agency from which an approval may be required in connection with this Transaction (except as contemplated in clause 4).
 - (d) Before a party provides the other party with any document or other information under this clause 3.3, such party may redact or exclude any part of such document or other information, or withhold any part of such document or other information, which such party reasonably considers:
 - (i) contains or constitutes information which is confidential, commercially sensitive, competitively sensitive and/or privileged to such party or any of its Related Bodies Corporate; or
 - (ii) would be unlawful to disclose; or
 - (iii) would be damaging to any commercial or legal interests of such party or any of its Related Bodies Corporate to disclose.

3.4 Waiver of Conditions

- (a) The Conditions in clauses 3.1(a), 3.1(c) and 3.1(e) cannot be waived.
- (b) The Conditions in clauses 3.1(d) and 3.1(f) are for the benefit of PSQ and Bidder and may only be waived by written agreement between PSQ and Bidder.
- (c) The Condition in clause 3.1(j) are for the sole benefit of PSQ and may only be waived by PSQ in writing.
- (d) The Conditions in clauses 3.1(g), 3.1(h) and 3.1(i) are for the sole benefit of Bidder and may only be waived by Bidder in writing.
- (e) A party entitled to waive the breach or non-fulfilment of a Condition under this clause 3.4 may do so in its absolute discretion.
- (f) If either PSQ or Bidder waives the breach or non-fulfilment of a Condition in accordance with this clause 3.4, then:
 - (i) subject to clause 3.4(f)(ii), that waiver precludes that party from suing the other party for any breach of this deed arising as a result of the breach or non-fulfilment of that Condition or arising from the same event which gave rise to the breach or non-fulfilment of that Condition; but
 - (ii) if the waiver of the Condition is itself conditional and the other party:
 - (A) accepts the condition on the waiver, the terms of that condition on waiver apply notwithstanding any inconsistency with clause 3.4(f)(i); or
 - (B) does not accept the condition on the waiver, the Condition has not been waived.
- (g) 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, or cannot be, waived in accordance with clause 3.4 by the earlier of the time or date specified in this deed for the satisfaction of that Condition and 11:59pm on the End Date;
 - (ii) there is an act, failure to act, event or occurrence which would, does or will prevent a Condition from being satisfied, or a Condition becomes incapable of being satisfied, and the breach or non-fulfilment of that Condition that has occurred, or would otherwise occur, has not been, or cannot be, waived in accordance with clause 3.4 by the earlier of the time or date specified in this deed for the satisfaction of that Condition and 11:59pm on the End Date; or
 - (iii) the Scheme has not become Effective by 11:59pm on the End Date,

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

- (iv) an extension of the time for satisfaction of the relevant Condition and/or an extension of the End Date (as applicable);
 - (v) changing the date on which an application is made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application to a date agreed in writing between PSQ and Bidder (as applicable);
 - (vi) the Transaction proceeding by way of alternative means or methods; or
 - (vii) any combination of the matters listed in clauses 3.5(a)(iv) to 3.5(a)(vi).
- (b) If PSQ and Bidder have not reached agreement under clause 3.5(a) within 10 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, subject to clauses 3.5(b)(i) and 3.5(b)(ii), either of PSQ or Bidder (**Terminating Party**) may terminate this deed by giving written notice to the other party, provided that the Terminating Party may only exercise such termination right if:
- (i) the breach or non-fulfilment of that Condition, the relevant act, failure to act, event or occurrence, or the failure of the Scheme to become Effective, did not arise due to a breach of this deed by the Terminating Party; and
 - (ii) except where the basis upon which the Terminating Party is seeking to terminate this deed is the failure of the Scheme to become Effective by 11:59pm on the End Date referred to in clause 3.5(a)(iii), that Condition is stated in clause 3.4 to be for the sole benefit of, and may only be waived by, the Terminating Party.
- (c) If the Condition in clause 3.1(e) 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 PSQ or Bidder may by written notice to the other party 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) of the Corporations Act, provided PSQ or Bidder (as the case may be) has, in good faith, formed the view that the prospect of the Court exercising its discretion in that way is reasonable (including because PSQ or Bidder (as the case may be) considers (acting reasonably) that the splitting by one or more PSQ Shareholders of a holding of PSQ Shares into two or more parcels of PSQ Shares (whether or not it results in any change in beneficial ownership of PSQ Shares) or some other abusive or improper conduct may have caused or contributed to the majority required by section 411(4)(a)(ii)(A) of the Corporations Act not having been obtained).

If such a notice is given:

- (i) PSQ must make such submissions to the Court and file such evidence as counsel engaged by PSQ to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act; and
- (ii) Bidder must support PSQ's submissions made in accordance with this clause 3.5(c), including by making such submissions to the Court and filing such evidence as counsel engaged by PSQ and Bidder (respectively) to

represent it in Court proceedings related to the Scheme considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act.

If such approval by the Court is given, the Condition in 3.1(e) is deemed to be satisfied for all purposes.

3.6 Certain notices

- (a) Each of PSQ and Bidder must promptly notify the other party in writing if it becomes aware:
 - (i) that any Condition has been satisfied; or
 - (ii) of any fact, matter or circumstance that has resulted or is reasonably likely to result in:
 - (A) a Condition becoming incapable of satisfaction or otherwise not being satisfied in accordance with its terms;
 - (B) a breach of a Warranty provided by that party under this deed or such a Warranty ceasing to be true and correct; or
 - (C) a material breach of this deed by that party,
- and provide such evidence or details as may be reasonably requested by the other party.
- (b) Each party must keep the other party informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition.

4 Implementation steps and Scheme Booklet

4.1 Timetable

- (a) Subject to clause 4.1(b), without limiting the parties' respective obligations under this clause 4, each party must use all reasonable endeavours to commit necessary resources (including management and the resources of external Advisers, as reasonably required) and ensure that its directors, officers, employees and Advisers work in good faith and in a timely and cooperative fashion with the other party (including by attending meetings virtually (including meetings of the Transition Committee) and by providing information reasonably requested and subject to clause 6.3) to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable and in accordance with the Timetable, subject to the terms and conditions of this deed.
- (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 the party used all reasonable endeavours as required by clause 4.1(a).
- (c) Each party must keep the other party reasonably informed about its progress against the Timetable and promptly notify the other party if it believes that any of the dates in the Timetable are not, or are unlikely to be, achievable.

- (d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable or become unlikely to be achievable, the parties will consult in good faith to agree any necessary extension to ensure such matters are completed within the shortest timeframe that is reasonably possible.

4.2 PSQ obligations

PSQ must take all reasonably necessary steps to propose, promote and 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, PSQ must:

- (a) **PSQ Board recommendation:** include in the Scheme Booklet (including any supplementary disclosure to PSQ Shareholders) and any material public statement or announcement relating to the Transaction on or before the date of the Scheme Meeting (including, without limitation, the public announcement contemplated by clause 12.1) a statement to the effect that:
- (i) the PSQ Board unanimously recommends that, subject only to no Superior Proposal emerging and the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of PSQ Shareholders and not withdrawing or adversely changing that conclusion, PSQ Shareholders vote, at the Scheme Meeting, in favour of the resolution to approve the Scheme; and
 - (ii) each PSQ Director will, subject only to no Superior Proposal emerging and the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of PSQ Shareholders and not withdrawing or adversely changing that conclusion, vote, or cause to be voted, at the Scheme Meeting, all PSQ Shares in which he or she has a Relevant Interest or which he or she controls in favour of the resolution to approve the Scheme;
- (b) **Promotion:** participate in efforts reasonably requested by Bidder to promote the merits of the Transaction and encourage PSQ Shareholders to vote at the Scheme Meeting on the resolution to approve the Scheme in accordance with the Recommendation, including meeting with key PSQ Shareholders at the reasonable request of Bidder;
- (c) **Proxy solicitation:** develop and implement a program for PSQ Shareholders engagement and proxy solicitation in support of the Transaction (including, engage a proxy solicitation firm to assist in soliciting proxy votes if PSQ wishes to do so, or at the Bidder's request), and consult with and consider in good faith any reasonable feedback and input received from Bidder in relation to such program, and provide Bidder with regular updates regarding such program (including a summary of feedback received from PSQ Shareholders through such program);
- (d) **Share Register:** provide Bidder with a complete copy of the Share Register:
- (i) as at the date of this deed (which must include the name, registered address and registered holding of each PSQ Shareholder as at the date of this deed), within 2 Business Days after the date of this deed;
 - (ii) within 2 Business Days of written request by the Bidder (which must include the name, registered address and registered holding of each PSQ Shareholder as at a date no earlier than the date of the request), which

requests must not exceed one per week for the period between the date of this deed and the Scheme Meeting; and

- (iii) as at the Record Date (which must include the name, registered address and registered holding of each PSQ Shareholder as at the Record Date), within one Business Day after the Record Date;
- (e) **Proxy forms:** keep Bidder reasonably informed on the status of proxy forms received for the Scheme Meeting, including over the period commencing 10 Business Days before the Scheme Meeting and ending on the deadline for receipt of proxy forms;
- (f) **Adjournment or postponement:** not adjourn or postpone the Scheme Meeting or request the Court to adjourn or postpone the Scheme Meeting, First Court Date or Second Court Date, in each case without the prior written consent of Bidder (not to be unreasonably withheld or delayed);
- (g) **Suspension:** subject to clause 4.2(aa), not do anything to cause PSQ Shares to cease being quoted on ASX or to become permanently suspended from quotation or to remove PSQ from the Official List of the ASX prior to implementation of the Transaction;
- (h) **Data Room:** keep open and permit the Bidder to access the Data Room until the Implementation Date;
- (i) **Compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations (including the Corporations Act and Corporations Regulations, ASIC Regulatory Guide 60, Takeovers Panel guidance notes and the ASX Listing Rules);
- (j) **Verification:** undertake appropriate due diligence and verification processes in relation to the PSQ Information;
- (k) **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 (including any update of, or revision, amendment or supplement to, the Independent Expert's Report) as soon as practicable following such requests;
- (l) **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 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, and with a reasonable opportunity to review and make comments on, drafts of the Scheme Booklet prepared by PSQ in accordance with clause 4.2(l)(i), 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 in a timely manner;
 - (iii) provide Bidder with, and with a reasonable opportunity to review and make comments on, drafts of the Independent Expert's Report promptly after receiving such drafts from the Independent Expert, promptly give to the

Independent Expert any reasonable comments provided by or on behalf of Bidder, and consider in good faith any reasonable comments provided by or on behalf of Bidder in a timely manner, provided that those comments must be limited to matters of factual accuracy. PSQ makes no representation, and gives no assurance, as to the extent to which such comments will be considered or incorporated by the Independent Expert;

- (iv) obtain Bidder's consent in writing 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 PSQ must not lodge the Scheme Booklet with ASIC until such approval is obtained from Bidder; and
 - (v) 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 PSQ Shareholders;
- (m) **Lodgement of Scheme Booklet:**
- (i) 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 and subject to clause 4.2(m)(ii):
 - (A) procure that a meeting of the PSQ Board, or of a committee of the PSQ Board appointed for the purpose, is held to consider approving an advanced draft of the Scheme Booklet as being in a form appropriate for provision to ASIC for its review for the purposes of section 411(2) of the Corporations Act; and
 - (B) provide such approved draft to ASIC for such review and provide a copy of such approved draft to Bidder as soon as practicable thereafter;
 - (ii) provide Bidder with, and with a reasonable opportunity to review and make comments on, an advanced draft of the Scheme Booklet within a reasonable time before it is approved by the PSQ Board and its submission with ASIC pursuant to clause 4.2(m)(i)(B), and consider in good faith any reasonable comments provided by or on behalf of Bidder in a timely manner;
 - (iii) keep Bidder informed of any material issues raised by ASIC in relation to the Scheme Booklet, consult with Bidder in good faith prior to taking any steps or actions to address any such issues and use reasonable endeavours to take into consideration Bidder's reasonable comments regarding any such issues (provided that, where those issues relate to the Bidder Information, PSQ must not take any steps or actions to address them without Bidder's prior written consent); and
 - (iv) if ASIC has provided any comment requiring any amendment to the Scheme Booklet which is sufficiently material to fall outside any delegation by the PSQ Board, as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet (or otherwise at any time prior to conclusion of ASIC's review), procure that a meeting of the PSQ Board, or of a committee of the PSQ Board appointed for the purpose, is held to consider approving the Scheme Booklet for despatch to PSQ Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;

- (n) **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;
- (o) **First Court Hearing:** lodge all documents with the Court and take all other reasonable steps to ensure that an application for an order under section 411(1) of the Corporations Act directing PSQ to convene the Scheme Meeting is heard by the Court as soon as reasonable practicable after the date of this deed, and apply to the Court for an order under section 411(1) of the Corporations Act directing PSQ to convene the Scheme Meeting;
- (p) **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;
- (q) **Approval and registration of Scheme Booklet:** as soon as practicable after the Court orders PSQ to convene the Scheme Meeting, but subject to receipt from Bidder of the consent referred to in clause 4.2(l)(iv), request that ASIC registers the explanatory statement in relation to the Scheme contained in the Scheme Booklet in accordance with section 412(6) of the Corporations Act;
- (r) **Despatch:** as soon as reasonably practicable following registration of the Scheme Booklet by ASIC, despatch the Scheme Booklet to PSQ Shareholders in accordance with applicable laws, including the Corporations Act and Corporations Regulations, ASIC Regulatory Guide 60, Takeovers Panel guidance notes and the ASX Listing Rules;
- (s) **Supplementary disclosure:** if, after despatch of the Scheme Booklet, PSQ becomes aware:
 - (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
 - (ii) of information that is required to be disclosed to PSQ Shareholders under any applicable law or regulation (including the Corporations Act and Corporations Regulations, ASIC Regulatory Guide 60, Takeovers Panel guidance notes and the ASX Listing Rules) which was not included in the Scheme Booklet,

promptly:
 - (iii) consult with Bidder, in good faith, as to the need for, and form and content of, any supplementary disclosure to PSQ Shareholders (whether by update or supplement to the Scheme Booklet or by market announcement) in the manner contemplated by clause 4.2(l) (so far as it is applicable, *mutatis mutandis*);
 - (iv) make any such supplementary disclosure that PSQ considers reasonably necessary in the circumstances to ensure that the information is no longer misleading or deceptive in any material respect or containing any material omission, having regard to applicable laws and regulations (including the

Corporations Act and Corporations Regulations, ASIC Regulatory Guide 60, Takeovers Panel guidance notes and the ASX Listing Rules); and

- (v) if applicable, seek the Court's approval for the despatch of any update or supplement to the Scheme Booklet;
- (t) **Director's voting:** use its reasonable endeavours to procure that each PSQ Director votes any PSQ Shares in which they have a Relevant Interest or which they control in favour of the resolution to approve the Scheme, in each case subject only to:
 - (i) no Superior Proposal emerging; and
 - (ii) the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of PSQ Shareholders, and not withdrawing or adversely changing that conclusion;
- (u) **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;
- (v) **Conditions certificate:** at the Second Court Hearing, provide to the Court (through its counsel):
 - (i) a certificate (signed for and on behalf of PSQ), in the form of a deed, confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(c)) have been satisfied or waived in accordance with clause 3.4, a draft of which certificate must be provided to Bidder by 5:00pm on the Business Day prior to the Second Court Date; and
 - (ii) any certificate provided to it by Bidder pursuant to clause 4.3(j);
- (w) **Second Court Hearing:** subject to the Conditions (other than the Condition in clause 3.1(c)) 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;
- (x) **Court Documents:**
 - (i) prepare the Court Documents;
 - (ii) consult with Bidder as to the content and presentation of the documents required for the purposes of the Court Hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, material affidavits, submissions and draft minutes of Court orders); and
 - (iii) provide drafts of the documents required for the purposes of the Court Hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, material affidavits, submissions and draft minutes of Court orders) to Bidder and consider in good faith any reasonable comments provided by or on behalf of Bidder in a timely manner prior to filing those documents with the Court;
- (y) **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;

- For personal use only
- (z) **Lodgement of Court order:** if the Court approves the Scheme under section 411(4)(b) of the Corporations Act, for the purposes of section 411(10) of the Corporations Act, lodge with ASIC an office copy of the order made by the Court under section 411(4)(b) of the Corporations Act approving the Scheme as soon as possible and in any event no later than 12:00 noon on the Business Day immediately following the day on which it receives such office copy (or any later date agreed in writing by Bidder);
 - (aa) **Quotation of PSQ Shares and ASX listing:** apply to ASX to have:
 - (i) trading in PSQ Shares suspended from the close of trading on the Effective Date; and
 - (ii) PSQ removed from the official list of ASX, and quotation of PSQ Shares on ASX terminated, by the close of trading on the trading day immediately following (but not on or before) the Implementation Date;
 - (bb) **Information:** provide to Bidder all necessary information, and procure that the Registry provides to Bidder all necessary information, in each case in a form reasonably requested by Bidder, about the Scheme and PSQ Shareholders which Bidder reasonably requires in order to:
 - (i) understand the legal and beneficial ownership of PSQ Shares (to the extent such information is readily available to PSQ or the Registry, including, at the reasonable request of Bidder if it suspects there is any unusual holding or activity, through the issuance of directions under section 672A of the Corporations Act); and/or
 - (ii) 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 and the Deed Poll;
 - (cc) **Instruments of transfer:** subject to Bidder satisfying its obligations under clause 4.3:
 - (i) on the Implementation Date, execute, on behalf of PSQ Shareholders, proper instruments of transfer and effect the transfer of PSQ Shares to Bidder in accordance with the Scheme; and
 - (ii) on the Implementation Date, register all transfers of PSQ Shares held by Scheme Shareholders to Bidder; and
 - (dd) **Effecting Transaction:** subject to the Conditions being satisfied, do everything reasonably within its power to ensure that the Transaction is effected in accordance with the terms of this deed and applicable laws.

4.3 Bidder obligations

Bidder must take all reasonably necessary steps to promote and 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, Bidder must:

- (a) **Compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations (including the Corporations Act and Corporations Regulations, ASIC Regulatory Guide 60, Takeovers Panel guidance notes and the ASX Listing Rules);

- (b) **Prepare Bidder Information:** as soon as practicable after the date of this deed:
 - (i) prepare the Bidder Information for inclusion in the Scheme Booklet 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 PSQ with, and with a reasonable opportunity to review and make comments on, drafts of the Bidder Information and consider in good faith any reasonable comments provided by or on behalf of PSQ in a timely manner; and
 - (iii) provide PSQ the final form of the Bidder Information for inclusion in the Scheme Booklet;
- (c) **Assistance with Scheme Booklet and Court Documents:** promptly provide any assistance or information reasonably requested by PSQ or its Representatives in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to PSQ Shareholders) or any Court Documents, including reviewing drafts of the Scheme Booklet and Court Documents provided by or on behalf of PSQ and promptly providing comments in good faith;
- (d) **Independent Expert's Report:** promptly provide any assistance or information reasonably requested by PSQ or its Representatives, or by the Independent Expert, in connection with the preparation of the Independent Expert's Report (including any update of, or revision, amendment or supplement to, the Independent Expert's Report);
- (e) **Verification:** undertake appropriate due diligence and verification processes in relation to the Bidder Information;
- (f) **Confirmation of Bidder Information:** promptly after PSQ 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 PSQ 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 in the Scheme Booklet; and
 - (ii) the Bidder Information, in that form and context, is not false or misleading 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;
- (g) **Provide comments promptly:** promptly (having regard to the Timetable) provide any comments on documents on which PSQ and Bidder are required to consult in accordance with clause 4.2(l) (including the Scheme Booklet and all Court Documents);
- (h) **Update Bidder Information:** promptly notify PSQ in writing if it becomes aware:
 - (i) of information which should have been but was not included in the Bidder Information previously provided to PSQ, and promptly provide PSQ with all such information; or

- (ii) that any Bidder Information previously provided to PSQ is or has become false or misleading 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 PSQ 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);
- (i) **Deed Poll:** before 5:00pm on the date that is 2 Business Days before the First Court Date, execute the Deed Poll, and deliver the fully executed Deed Poll to PSQ and, if the Scheme becomes Effective, fully comply with the Deed Poll;
- (j) **Conditions certificate:** before 8:00am on the Second Court Date, provide to PSQ, for provision to the Court at the Second Court Hearing, a certificate (signed for and on behalf of Bidder), in the form of a deed, confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(c)) have been satisfied or waived in accordance with clause 3.4, a draft of which certificate must be provided to PSQ by 5:00pm on the date that is 2 Business Days before the Second Court Date;
- (k) **Representation at Court:** ensure that it is represented by counsel at each Court Hearing for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (l) **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 2.2(b)(ii), the terms of the Scheme and the Deed Poll;
- (m) **Share transfer:** if the Scheme becomes Effective, accept a transfer of the Scheme Shares as contemplated by clause 2.2(b)(i) and execute instruments of transfer in respect of the Scheme Shares; and
- (n) **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 applicable laws.

4.4 Scheme Booklet

- (a) If PSQ and Bidder are unable to agree (acting in good faith) on the form or content of a particular part of the Scheme Booklet, then:
 - (i) if the relevant part of the Scheme Booklet is Bidder Information, PSQ will make such amendments to that part of the Scheme Booklet as required by Bidder (acting reasonably and in good faith) (unless the information relates to Bidder in the Independent Expert's Report, in which case PSQ will communicate the request for amendment to the Independent Expert); and
 - (ii) in any other case, PSQ (acting reasonably and in good faith) will decide the form and content of that part of the Scheme Booklet.
- (b) PSQ and Bidder agree that the Scheme Booklet will contain a responsibility statement to the effect that:
 - (i) PSQ has prepared and is responsible for the PSQ 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 PSQ Information;

- (ii) Bidder has prepared and is responsible for the Bidder Information contained in the Scheme Booklet, and none of PSQ 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 PSQ 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

PSQ and Bidder are entitled to separate representation at all Court proceedings relating to the Scheme. This deed does not give PSQ or Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent. PSQ 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.

4.7 Appeal process

If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, PSQ must consult with Bidder in good faith as to whether to appeal the Court's decision and PSQ and Bidder must appeal the Court's decision to the fullest extent possible except to the extent that:

- (a) following consultation, the parties agree otherwise; or
- (b) an independent senior counsel of the New South Wales bar (agreed by the parties) advises that, in their opinion, an appeal would have no reasonable prospect of success before the End Date,

in which case either party may terminate this deed in accordance with clause 11.1(c).

5 Permitted Dividend

5.1 Permitted Dividend

- (a) Notwithstanding any other provision of this deed but subject to the requirements of this clause 5, PSQ may (in its absolute discretion) declare and pay to PSQ Shareholders one or more dividends (each a **Permitted Dividend**), provided that:
- (i) the maximum aggregate amount of all Permitted Dividends must not be more than \$0.12 per PSQ Share;
- (ii) the payment of each Permitted Dividend must comply with the Corporations Act, be made in cash on or prior to the Implementation Date;

- (iii) each Permitted Dividend made within a particular franking period must be franked to the same extent in accordance with Division 203 of the Tax Act and must not be in breach of the “benchmark rule” as defined in section 203-25 of the Tax Act;
- (iv) the franking account of PSQ will not be in deficit at any time after the payment of any Permitted Dividend due to the payment of such Permitted Dividend and/or tax refunds received by PSQ, nor prior to the declaration of, or resolution to pay, such Permitted Dividend;
- (v) PSQ must provide a copy of the PSQ franking account to Bidder for information purposes only on the following dates:
 - (A) 15 Business Days before the declaration or resolution to pay any Permitted Dividend is passed; and
 - (B) 5 Business Days prior to the Implementation Date,which must evidence that the franking account of PSQ shall not be in deficit after the payment of any Permitted Dividend.
- (vi) the record date for each Permitted Dividend must be at least 2 Business Days before the Record Date.
- (b) If PSQ announces, declares and pays a Permitted Dividend in accordance with clause 5.1(a), the Permitted Dividend is to be paid from accumulated profits, retained earnings or distributable reserves (or a combination of all or some of them) of PSQ existing immediately prior to the payment of the Permitted Dividend.
- (c) PSQ may seek a class ruling from the ATO which seeks to confirm whether PSQ Shareholders are prima facie entitled to the franking credits and associated tax offsets attached to a Permitted Dividend in customary form.
- (d) In respect of the class ruling contemplated by clause 5.1(c), Bidder must provide PSQ with such assistance and information as may reasonably be requested for the purposes of obtaining the ruling, provided that the seeking and/or receipt of such a ruling does not result in any delay to the implementation of the Scheme, unless Bidder has given its prior written consent to such delay (such consent not to be unreasonably withheld, conditioned or delayed).
- (e) For the avoidance of doubt, neither the payment of a Permitted Dividend nor the franking of a Permitted Dividend is contingent on PSQ seeking the ruling or receiving draft or final rulings from the ATO.
- (f) The Scheme Consideration will be reduced by, if any, the aggregate amount of all Permitted Dividends (but will not be reduced by the amount of the franking credits attached to any Permitted Dividend).
- (g) If the Condition in clause 3.1(a) has not been satisfied on the date that is 5 calendar months after the date of this deed, the Scheme Consideration will be increased by 1 cent (**First Increase Date**) and will increase by an additional 1 cent on the same date of each calendar month after the First Increase Date (**Subsequent Increase Date**) if on the Subsequent Increase Date the Condition in clause 3.1(a) has not been satisfied. For the avoidance of doubt, the Scheme Consideration will not increase under this clause on any day on or after the day that the Condition Precedent in clause 3.1(a) is satisfied.

6 Conduct of business and transitional matters

6.1 Conduct of business

- (a) Subject to clause 6.2 and applicable competition laws, from the date of this deed until the Implementation Date, PSQ must:
- (i) conduct, and cause each member of the PSQ Group to conduct, its business and operations:
 - (A) in the ordinary and usual course;
 - (B) in a manner substantially consistent with the manner in which such business and operations have been conducted during the period beginning on the date that is 24 months prior to the date of this deed and ending on the date of this deed;
 - (C) in accordance with all applicable laws; and
 - (D) in accordance with all material regulatory permits, licences and authorisations that are binding on any member of the PSQ Group;
 - (ii) promptly notify Bidder in writing of any events, facts, matters or circumstances which would or would be reasonably be expected to constitute a Material Adverse Change, Prescribed Occurrence or breach of any PSQ Warranty;
 - (iii) use all reasonable endeavours, and procure that each other member of the PSQ Group use all reasonable endeavours, to:
 - (A) preserve and maintain the value of the businesses and assets of the PSQ Group;
 - (B) maintain and preserve their relationships with Government Agencies, landlords, practitioners, customers, suppliers and others having material business dealings with any member of the PSQ Group other than in respect of actions arising out of the enforcement or termination of such arrangements in the ordinary course;
 - (C) ensure the PSQ Group operates in accordance with its procedures, policies and processes regarding patient safety, client welfare and clinical governance standards, and safety or sterilisation procedures, substantially consistent with the manner in which they have been conducted in the 12 months prior to the date of this deed;
 - (D) enforce any Material Contract and not waive any breach by any counterparty to any such Material Contract;
 - (E) comply in all material respects with all applicable laws and regulations (including requirements of any Government Agency) and all material permits, authorisations and licences applicable to any member of the PSQ Group, and not do or omit to do anything which might prejudice or otherwise adversely affect its standing or relationship or entitlements to funding from any person (including any Government Agency or any insurer in respect of any private health insurance or workers' compensation);

- (F) keep the Bidder informed of any current, pending or threatened Tax audits, reviews or investigations relating to any PSQ Group Member, and procure that no member of the PSQ Group settles, compromises or otherwise deals with such audits, reviews or investigations without the prior written consent of the Bidder (which must not be unreasonably withheld or delayed);
 - (G) comply in all material respects with all Material Contracts to which any member of the PSQ Group is a party; and
 - (H) ensure that there is no occurrence within its control that would constitute or be likely to constitute a Material Adverse Change, Prescribed Occurrence or breach of any PSQ Warranty; and
- (iv) maintain (and, where necessary, renew) the Insurance Policies that are in force as at the date of this deed.
- (b) Subject to clause 6.2, PSQ must not, and must ensure that each member of the PSQ Group does not, from the date of this deed until the Implementation Date:
- (i) enter into any lease, sub-lease, licence of real estate or other similar agreement or document in respect of any premises at which the PSQ Group is not operating or managing a dental centre (other than any dental centre under the HBF Agreement) as at the date of this deed which is not capable of being terminated by a member of the PSQ Group at any time with one month or less notice after the Implementation Date without compensation;
 - (ii) close, relocate, or make any change to the ownership, ownership structure, or ownership model of, any dental centre operated or managed (other than any dental centre under the HBF Agreement) by any PSQ Group Member;
 - (iii) renew (or enter into any replacement lease with the effect of renewing), extend, exercise any option in respect of, or amend any lease, sub-lease, licence of real estate or other similar agreement or document in respect of any dental centre operated or managed by any PSQ Group Member where that centre has generated a negative EBITDA in the 12-month period ending on 31 March 2024, unless:
 - (A) the lease for that centre which is in place as at the date of this deed will expire on or before the End Date; and
 - (B) the lease is renewed or extended for a period not exceeding six months following expiry of the lease;
 - (iv) allow any of its insurances to lapse without renewal or replacement or increase the amount of cover under any of its insurances by any material amount;
 - (v) enter into or amend any agreement with, or incur any commitment to, a related party;
 - (vi) enter into or amend any agreement, or incur any commitment, involving any expenditure which is not in the ordinary course of more than \$250,000 in aggregate in respect of any single item or any series of related items;

- (vii) enter into, terminate or amend any contract, joint venture, partnership or commitment (or any series of related contracts, joint ventures, partnerships or commitments) involving total expenditure greater than \$250,000;
- (viii) acquire, invest or dispose of any business, asset or other undertaking (whether by way of a single transaction or series of related transactions) the value of which exceeds \$250,000;
- (ix) enter into, terminate or amend any Material Contract;
- (x) enter into any new agreement with any private health insurer;
- (xi) take or fail to take any action that constitutes a Prescribed Occurrence, Material Adverse Change or breach of any PSQ Warranty;
- (xii) dispose of any shares in PSQ Group companies held in any other member of the PSQ Group;
- (xiii) cease, or threaten to cease, to carry on a material part of its business;
- (xiv) subject to anything which is Fairly Disclosed in the Disclosure Materials, do any of the following:
 - (A) increase the remuneration, compensation of or benefits provided to any of its directors, officers or employees;
 - (B) pay any bonus or incentives (whether cash or equity based) or issue any securities, rights or options to any of its directors, officers or employees (other than as required by law or in accordance with an existing contract which is in place as at the date of this deed and which is Fairly Disclosed in the Data Room);
 - (C) vary the agreements with, or policies applicable to, any of its directors, officers or employees;
 - (D) enter into, renew or extend any employment or services facilities agreement which is not capable of being terminated by a PSQ Group Member at any time with three months or less notice without compensation;
 - (E) enter into any employment or service agreement to fill a role which has become vacant after the date of this deed in any PSQ Group Member otherwise than on terms which are substantially equivalent to the terms set out in the most recent employment or service agreement entered into by the person who last occupied such role;
 - (F) subject to paragraphs (A) to (E) above, enter into, renew or extend any employment or services agreement with any person whose total annual remuneration or compensation payable by any PSQ Group Member exceeds or would exceed \$200,000, without first having provided Bidder with a reasonable opportunity to consider or without first having considered in good faith any reasonable comments provided by or on behalf of Bidder;
 - (G) terminate the employment arrangements for any member of the PSQ Group's leadership team (other than for cause); or

(H) pay any of its directors, officers or employees a termination or retention payment (otherwise than in accordance with an existing agreement which is in place as at the date of this deed and which is Fairly Disclosed in the Data Room) or any other payment not required by any existing agreement as at the date of this deed or required by any legal entitlement,

in any manner other than as permitted under clauses 6.6 to 6.8 (inclusive) of this deed;

- (xv) terminate (other than for cause) or vary (other than in the ordinary course) any existing services and facilities agreements with practitioners (including locums);
- (xvi) announce, declare or pay any dividends, other than a Permitted Dividend;
- (xvii) incur any Financial Indebtedness in excess of \$250,000 in aggregate, other than intragroup loans, trade creditors, employee liabilities and items of a similar nature incurred in the usual and ordinary course of business and consistent with past practice and other than drawing or re-drawing down on any existing debt facilities;
- (xviii) make any material Tax elections or change any material Tax methodologies applied by it;
- (xix) enter into any financing arrangement, agreement or otherwise provide financial accommodation or amend the terms of any existing financing arrangement, agreement or instrument, in each case in excess of \$250,000;
- (xx) guarantee or indemnify the obligations of any other person other than its Advisers in accordance with and on terms reflecting usual industry practice;
- (xxi) create, or agree to create, any Encumbrance (other than a Permitted Encumbrance) over or declare itself the trustee of any material part of its business or assets;
- (xxii) amend or take any action that:
 - (A) seeks or causes any financier (or person acting on its behalf) to consent to or waive (whether or not such consent or waiver is conditional) any provision under; or
 - (B) would be reasonably likely to give rise to any financier (or person acting on its behalf) being capable of exercising a right that would pose a risk to the continuing of,

any Financial Indebtedness in excess of \$250,000 to which any member of the PSQ Group is a party;
- (xxiii) settle or compromise any dispute, audit, investigation or material inquiry relating to Tax or materially amend any Tax return;
- (xxiv) commence (other than by cross-claim or counterclaim), compromise, settle or offer to settle any legal proceeding, claim, investigation, arbitration or similar proceeding where the claimed or settled amount exceeds \$250,000; or

(xxv) agree, authorise, resolve, commit or otherwise bind itself to do any of the matters set out above.

6.2 Exceptions

- (a) Nothing in clause 6.1(a) or 6.1(b) restricts any member of the PSQ Group from doing or not doing (or agreeing to do or not do) anything which:
- (i) is required or expressly permitted by this deed or the Scheme or is required by the Transaction, including, for the avoidance of doubt, the vesting of the Cash Rights in accordance with the Vesting Plan and the Incentives Schedule;
 - (ii) is necessary or desirable in connection with opening centres or exercising rights/complying with obligations pursuant to the HBF Agreement (including, without limitation, entering into any new lease agreements);
 - (iii) is entering into a new employment agreement with the proposed new Head of Marketing, provided that such agreement is capable of being terminated by a PSQ Group Member at any time with a notice period not exceeding three months and compensation not exceeding three months' pay in lieu of such three months' notice;
 - (iv) is entering into services and facility agreements with new practitioners in the ordinary and usual course of business and substantially consistent with past practice;
 - (v) is Fairly Disclosed in the Disclosure Letter;
 - (vi) is engaging consultants with fees (excluding GST) up to \$100,000 (in aggregate);
 - (vii) is required by any applicable law, regulation, generally accepted accounting standards, contract (but only to the extent that such contract was entered into before the date of this deed, and a copy of which was Fairly Disclosed in the Disclosure Materials, or consented to in writing by Bidder pursuant to this clause 6.2(a)(vii)) or by an order, rules, injunction or undertaking of a court or Government Agency (including any applicable Awards);
 - (viii) is required to pay any Tax when due (or consistent with ordinary prior practice), including for the avoidance of doubt, in relation to any payroll tax determination or assessment;
 - (ix) in the reasonable opinion of a member of the PSQ Group, is a necessary and prudent response to any emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property) and it is impractical to seek the approval of Bidder prior to giving effect to the response;
 - (x) is payment of any Transaction Costs (including any GST payable even if an input tax credit is available) to the extent that such amounts (excluding any GST payable) do not exceed the Transaction Costs Cap;
 - (xi) is the repayment of any Financial Indebtedness;
 - (xii) has been consented to in writing by Bidder (such consent not to be unreasonably withheld or delayed); or

- (xiii) in the case of clause 6.1(a)(i) in connection with an actual, proposed or potential Competing Proposal to the extent permitted by clause 7.
- (b) If PSQ requests Bidder's consent for the purposes of clause 6.2(a)(xii) and Bidder does not notify PSQ within:
- (i) 5 Business Days of the request being made; or
 - (ii) such reasonable shorter period (if any) as specified in the request where a shorter period is reasonably required to avoid prejudice to the interests of the PSQ Group,

then Bidder will be deemed to have consented to the relevant matters the subject of the request.

6.3 Access

- (a) Subject to clauses 6.3(b) and 6.3(c) and applicable competition laws, on and from the date of this deed until the Implementation Date, PSQ must:
- (i) at the meetings of the Transition Committee, procure that at least two members of PSQ's senior management team meet with representatives of Bidder to assist with, among other things:
 - (A) keeping Bidder reasonably informed of the matters contemplated by clauses 6.3(a)(iii) and 6.4; and
 - (B) organising for the Bidder to have reasonable access to the individuals it has requested under clause 6.3(a)(iii);
 - (ii) provide Bidder with copies of the following documents:
 - (A) the minutes of any meeting of the PSQ Board (or a committee of the PSQ Board) held between the date of this deed and the Implementation Date, within 15 Business Days after such meeting; and
 - (B) any written report or other written material submitted by the Chief Executive Officer or the Chief Financial Officer of PSQ to the PSQ Board (or a committee of the PSQ Board) between the date of this deed and the Implementation Date, within 10 Business Days after such report or material is considered by the PSQ Board (or a committee of the PSQ Board),

provided that PSQ has no obligation under this clause 6.3(a)(ii) to provide Bidder with, and may redact or withhold in its entirety, any information about, or otherwise in connection with, the Transaction, any advice provided to PSQ Board in connection with the Transaction, information or advice in connection with any actual or potential Competing Proposal and any information in breach of an obligation of confidentiality to any person or applicable laws (including privacy laws);

- (iii) provide to Bidder reasonable access to information, premises and such senior executives of any member of PSQ Group during normal business

hours as reasonably requested by Bidder, and afford Bidder reasonable co-operation, for the purpose of:

- (A) implementation of the Scheme;
- (B) Bidder developing and implementing plans for transition of PSQ's operations and businesses to Bidder following implementation of the Scheme;
- (C) keeping Bidder informed of any material changes or developments relating to PSQ Group, including the PSQ Group's financial position or trading performance (including but not limited to cash flow and working capital position) when compared to PSQ Group's financial position or trading performance (including but not limited to cash flow and working capital position) as Fairly Disclosed in the Disclosure Materials; and
- (D) any other purpose agreed between Bidder and PSQ (each acting reasonably) in writing,

provided that:

- (E) access to the Disclosure Materials must continue to be made available from the date of this deed;
 - (F) Bidder must provide PSQ with reasonable notice of any request for information or access; and
 - (G) Bidder must comply with the reasonable requirements of PSQ in relation to any access granted.
- (b) PSQ will not be required to provide access, information or documents under clause 6.3(a) to the extent that doing so would, in the reasonable opinion of PSQ:
- (i) cause unreasonable disruption to the PSQ Group's business;
 - (ii) require PSQ to provide information concerning PSQ Group's business which is commercially or competitively sensitive (including any specific pricing and margin information);
 - (iii) result in any member of the PSQ Group breaching any applicable law or requirement of any Government Agency, or any obligation of confidentiality owed to a Third Party; or
 - (iv) result in a waiver or loss of legal professional privilege.
- (c) Nothing in clause 6.3 requires PSQ to provide any information concerning:
- (i) its directors' or management's consideration of the Scheme; or
 - (ii) any potential or actual Competing Proposal.

6.4 Business update

From the date of this deed up to and including the Implementation Date, PSQ must notify Bidder in writing of any of the following matters of which PSQ becomes aware:

- (a) events, facts, matters or circumstances which have had, or are reasonably likely to have, a material adverse effect on:
 - (i) the financial or operational performance, or the reputation of, PSQ Group (taken as a whole); or
 - (ii) PSQ Group's relationships with Government Agencies, HBF Health Limited (or any of its Related Bodies Corporate), nib Health Funds Ltd (or any of its Related Bodies Corporate) or the counterparties to Material Contracts; and
- (b) (without limiting clause 6.4(a)), events, facts, matters or circumstances which have had, or are reasonably likely to have, a material effect on any plan to open any new dental centre pursuant to the HBF Agreement.

6.5 Change of control provisions

- (a) As soon as practicable after the date of this deed, PSQ and Bidder must seek to identify any change of control, unilateral termination or other similar rights or provisions in the contracts or authorisations to which PSQ or another member of the PSQ Group is party or has the benefit of which PSQ or Bidder considers, acting reasonably, are material (including, without limitation, all leases and insurance policies) and may be triggered by or exercised in response to the implementation of the Scheme (**Change of Control Rights**).
- (b) In respect of contracts containing Change of Control Rights:
 - (i) the parties will, each acting reasonably, agree a proposed course of action (which, among other things, will have due regard to applicable legal restrictions) for notification to be made to, or consent or waiver to be sought from, all counterparties to contracts with Change of Control Rights, which may include joint discussions if requested by PSQ or Bidder; and
 - (ii) Bidder and PSQ must work together cooperatively to take all reasonable actions necessary to obtain such consents or confirmations promptly, including by promptly providing any information reasonably required by counterparties.
- (c) Bidder must not, and must procure that its Related Bodies Corporate and Representatives do not, contact or hold discussions in relation to Change of Control Rights or the underlying contracts with a member of the PSQ Group, or authorisations which a member of the PSQ Group has the benefit of with any party from whom consent or confirmation is required without the prior written consent of PSQ (which consent shall not be unreasonably withheld or delayed).
- (d) Bidder must cooperate with, and provide reasonable assistance to, PSQ to obtain such consents or confirmations in respect of the Change of Control Rights as soon as practicable after the proposed course of action is agreed in accordance with clause 6.5(b).
- (e) PSQ must cooperate with, and provide reasonable assistance to, Bidder to obtain such consents or confirmations in respect of the Change of Control Rights as soon as practicable after the proposed course of action is agreed in accordance with

clause 6.5(b), including, by promptly providing any information reasonably required by any party from whom such consent or confirmation is required and making officers and employees available whenever necessary to meet with any such party to deal with any issues arising in relation to any such consent or confirmation.

- (f) Notwithstanding any other provision of this deed, the failure to obtain any consent pursuant to a Change of Control Right will not constitute or contribute to a breach of this deed by PSQ nor a breach of any Condition, provided that PSQ has acted in good faith in seeking to obtain the relevant consents under the Change of Control Rights. Any such failure, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.
- (g) Bidder must take, and must procure that its Related Bodies Corporate take, all reasonable actions necessary to comply with any requirements of any party from whom a consent is required under a Change of Control Right to the extent reasonably necessary to obtain such consent, including providing any information, as may be reasonably required by such party.

6.6 Treatment of Performance Rights

- (a) PSQ must take such action (including the exercise of any relevant discretion by the PSQ Board and, if required, entering into any agreement with the holder of Performance Rights, but excluding paying any consideration) as is necessary to ensure that, subject to the Scheme becoming Effective, all of the Performance Rights:
 - (i) other than with respect to the Cash Rights, vest and convert into PSQ Shares prior to the Record Date; or
 - (ii) will lapse prior to the Implementation Date,in each case in accordance with the Incentives Schedule and otherwise ensure that, as at the Implementation Date, there are no outstanding Performance Rights.
- (b) Without limiting clause 6.6(a), PSQ agrees to:
 - (i) provide Bidder with all reasonably requested information in relation to Performance Rights;
 - (ii) facilitate discussions and negotiations between Bidder and holders of Performance Rights, where reasonably requested by Bidder; and
 - (iii) seek any waivers or confirmations from ASX and take such other steps that Bidder considers are reasonably necessary (excluding paying any consideration) in order to ensure an outcome whereby, upon the implementation of the Transaction, the only issued securities of PSQ are the Scheme Shares and there will not be any outstanding Performance Rights.
- (b) For the avoidance of doubt, Bidder acknowledges and agrees that, notwithstanding any other provision of this deed:
 - (i) the PSQ Board can exercise such discretions and authorise such actions under the terms of the Incentive Plans (or otherwise) as it considers necessary or desirable to give effect to the arrangements contemplated by clause 6.6(a) or 6.7(a); and

- (ii) no action or matter undertaken in accordance with this clause 6.6 will give rise to, or in any way contribute to, any breach of a Condition or any breach of the conduct of business provisions in clause 6.1 or any other provision of this deed,

provided that the exercise of any such discretion, the authorisation of any such action and all actions and matters undertaken in accordance with this clause 6.6 are consistent with the Incentives Schedule.

6.7 Employee incentive

- (a) At least 5 Business Days before the Record Date, PSQ may pay or issue (in the absolute discretion of the PSQ Board or any other person(s) delegated such authority by the PSQ Board) FY25 long term incentives in the form of PSQ Shares and/or Performance Rights and short term incentives in cash, PSQ Shares and/or Performance Rights to:
- (i) employees of the PSQ Group:
- (A) as at the date of this deed in accordance with the Incentives Schedule; or
- (B) where required pursuant to a change of an Award after the date of this deed; or
- (ii) any person who has been hired or engaged to fill a vacant position on substantially equivalent terms as the current employee in the relevant position, provided that:
- (A) subject to any change in Awards, the amount of salary and superannuation to be paid or issued to such person are substantially the same as the amount of salary and superannuation which would have been paid to such current employee; and
- (B) the total amount of cash, the total number of PSQ Shares and the total number of Performance Rights to be paid or issued in excess of salary and superannuation pursuant to this clause 6.7(a)(ii) are, subject to any minor rounding differences, the same as the total amount of cash, the total number of PSQ Shares and the total number of Performance Rights which would have been paid or issued in accordance with the Incentives Schedule,
- in each case if such current employee were occupying such relevant position as at the date of such payment or issuance.
- (b) For the avoidance of doubt, Bidder acknowledges and agrees that, notwithstanding any other provision of this deed:
- (i) the PSQ Board can exercise such discretions and authorise such actions under the terms of the Incentive Plans (or otherwise) as it considers necessary or desirable to give effect to the arrangements and payments contemplated by clause 6.7(a); and
- (ii) no action or matter consistent with this clause 6.7 will give rise to, or in any way contribute to, any breach of a Condition or any breach of the conduct of business provisions in clause 6.1 or any other provision of this deed,

provided that the exercise of any such discretion, the authorisation of any such and all actions and matters undertaken in accordance with this clause 6.6 are consistent with the Incentives Schedule.

6.8 Employee benefits

(a) On or before the Implementation Date, PSQ must not increase the remuneration of any employee or non-executive director other than:

(i) (in the absolute discretion of the PSQ Board or any other person(s) delegated such authority by the PSQ Board) increasing:

(A) the total remuneration payable to employees of the PSQ Group who are not employed in a role with a title of "Centre Leader" and to whom an Award does not apply;

(B) subject to clause 6.8(a)(iii), the total remuneration payable to employees of the PSQ Group who are not employed in a role with a title of "Centre Leader" and to whom an Award applies, who as at the date of this deed receive remuneration above the Award minimum pay; and

(C) the total fees payable to non-executive directors of PSQ,

subject to the aggregate increase to all such employees and non-executive directors (on a per annum basis) not exceeding a 3.5% increase (before the impact of the 0.5% increase in the statutory superannuation guarantee rate that takes effect on 1 July 2024) of the aggregate total fixed annual remuneration of such employees and fees of non-executive directors as at the date of this deed; and

(ii) (in the absolute discretion of the PSQ Board or any other person(s) delegated such authority by the PSQ Board) increasing:

(A) the total remuneration payable to employees of the PSQ Group who are employed in a role with a title of "Centre Leader" and to whom an Award does not apply; and

(B) subject to clause 6.8(a)(iii), the total remuneration payable to employees of the PSQ Group who are employed in a role with a title of "Centre Leader" and to whom an Award applies, who as at the date of this deed receive remuneration above the Award minimum pay;

subject to the aggregate increase to all such employees (on a per annum basis) not exceeding a 5% increase (before the impact of the 0.5% increase in the statutory superannuation guarantee rate that takes effect on 1 July 2024) of the aggregate total fixed annual remuneration of such employees as at the date of this deed; and

(iii) increasing the total remuneration payable to employees of the PSQ Group to whom an Award does apply to the minimum amount required to comply with such Award.

- (b) For the avoidance of doubt, Bidder acknowledges and agrees that, notwithstanding any other provision of this deed:
- (i) the PSQ Board can exercise such discretions and authorise such actions under the relevant employment agreements or other agreements as it considers necessary or desirable to give effect to the arrangements and payments contemplated by clause 6.8(a); and
 - (ii) no action or matter contemplated in (and permitted by) clause 6.8 will give rise to, or in any way contribute to, any breach of a Condition or any breach of the conduct of business provisions in clause 6.1 or any other provision of this deed.

6.9 Resignation and appointment of officers

- (a) Bidder will:
- (i) nominate in writing persons to be appointed as new directors of PSQ and each member of the PSQ Group;
 - (ii) obtain Director Identification Numbers and consents to act signed by such persons before the Record Date; and
 - (iii) nominate in writing persons to resign as directors of PSQ and each member of the PSQ Group; and

upon receipt of such, PSQ undertakes, subject to implementation of the Scheme in accordance with its terms, including Bidder having paid the Scheme Consideration, to procure that, with effect on and from (and as soon as practicable on) the Implementation Date:

- (iv) those persons nominated by Bidder are appointed to the PSQ Board and the boards of other members of the PSQ Group; and
- (v) those persons nominated by Bidder resign as directors of PSQ and other members of the PSQ Group and provide in writing an unconditional and irrevocable release of any claim they may have for loss of office, remuneration or otherwise against PSQ (other than in their capacity as an employee of, or consultant to, a member of the PSQ Group, if applicable),

in each case, in accordance with applicable requirements of PSQ's constitution, the Corporations Act and the ASX Listing Rules.

- (b) Bidder will:
- (i) nominate in writing persons to be appointed as company secretary and public officer of PSQ and each member of the PSQ Group; and
 - (ii) obtain consents to act signed by such persons, and

upon receipt of such, PSQ undertakes, subject to implementation of the Scheme in accordance with its terms including Bidder having paid the Scheme Consideration,

to procure that, with effect on and from (and as soon as practicable on) the Implementation Date:

- (iii) those persons nominated by Bidder are appointed as company secretary and/or public officer (as applicable) of the relevant members of the PSQ Group; and
- (iv) the persons acting as company secretary and/or public officer (as applicable) of each member of the PSQ Group prior to the Implementation Date resign as company secretary and/or public officer (as applicable) of the relevant member of the PSQ Group and provide in writing an unconditional and irrevocable release of any claim they may have for loss of office, remuneration or otherwise against PSQ (other than in their capacity as an employee of, or consultant to, a member of the PSQ Group, if applicable),

in each case, in accordance with applicable requirements of PSQ's constitution, the Corporations Act and the ASX Listing Rules.

- (c) Any nomination by Bidder under clauses 6.9(a)(i), 6.9(a)(iii) or 6.9(b)(i) must be made by written notice to PSQ, and such notice must be given before the Effective Date.
- (d) Nothing in clause 6.9(a) or 6.9(b) requires any director of a member of the PSQ Group to forego any rights he or she may have under any deed of access and indemnity or policy of directors and officers insurance.

6.10 Deeds of indemnity and insurance

- (a) Subject to the Scheme becoming Effective and to clause 6.10(b), Bidder undertakes in favour of PSQ and each other person who is a PSQ Indemnified Party that it will:
 - (i) procure that PSQ and each of its subsidiaries complies with any deeds of indemnity, access and insurance (or equivalent) entered into by them in favour of their respective directors and officers from time to time, including to ensure that directors' and officers' run-off insurance or equivalent cover for such directors and officers obtained in accordance with clause 6.11 is established or maintained for the period required by clause 6.10; and
 - (ii) for a period of 7 years from the Implementation Date, ensure that the constitutions of PSQ and each of its subsidiaries 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 current and previous 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 PSQ Group.
- (b) The undertakings contained in clause 6.10(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (c) PSQ receives and holds the benefit of clause 6.10(a) to the extent it relates to the other PSQ Indemnified Parties as trustee for them.
- (d) The undertakings contained in clause 6.10(a) are given until the earlier of the end of the relevant period specified in clause 6.10(a) or the relevant subsidiary of PSQ ceases to be a subsidiary of PSQ.

6.11 D&O insurance

Each party acknowledges that, notwithstanding any other provision of this deed, PSQ may, prior to the Implementation Date, enter into arrangements to secure and place a directors' and officers' run-off insurance policy in respect of any current or former director or officer of any member of the PSQ Group that applies for no less than a 7 year period following the Implementation Date, provided that the total cost of placing such policy does not exceed the amount set out in the Transaction Costs Cap.

6.12 Transaction financing

Subject to confidentiality arrangements acceptable to PSQ (acting reasonably), PSQ must provide, and must procure that each PSQ Group Member provides, reasonable assistance and cooperation in connection with:

- (a) the arrangement and/or syndication of any Debt Financing or equity financing incurred, or intended to be incurred, by or on behalf of Bidder, Crescent, NDC and/or any of their respective Related Bodies Corporate; and
- (b) the repayment of any Financial Indebtedness in the PSQ Group (including closing out any hedging arrangements) other than Permitted Financial Indebtedness (which shall be repaid on or before the Implementation Date);
- (c) anything as may be reasonably requested by Bidder in writing, including using reasonable endeavours to:
 - (i) provide any information and access to information to the reasonably extent available to the PSQ Group and reasonably requested by Bidder;
 - (ii) provide any documentation and other information with respect to the PSQ Group required by financiers, bank regulatory authorities or prospective Debt Financing sources (including any agent acting on their behalf) including under applicable "know your customer" or "client vetting" procedures and anti-money laundering rules and regulations (and sanctions regulations/requirements), as required or is otherwise necessary to satisfy the conditions of the relevant Debt Financing;
 - (iii) on reasonable notice, make appropriate officers and employees available during normal business hours for participation in a reasonable number of meetings, due diligence sessions, presentations and sessions with ratings agencies and/or prospective financing sources;
 - (iv) provide Bidder, Crescent, NDC and/or any of their respective Related Bodies Corporate, and/or any of their respective financing sources, with such financial and operating data and other information with respect to the PSQ Group as is reasonably requested by Bidder and/or such financing sources:
 - (A) in respect of the Debt Financing; or
 - (B) for inclusion in any offering memoranda, lender and investor presentation, confidential information memorandum, private placement memoranda, and/or other similar documents prepared for the purposes of any Debt Financing,

provided that the recipients of such information are subject to confidentiality arrangements acceptable to PSQ (acting reasonably); and/or

- For personal use only
- (v) procure deeds of release, discharges of any real property mortgages or such other evidence of release of Encumbrance from secured parties in relation to any Encumbrance granted by a PSQ Group Member (other than any Permitted Encumbrance);
 - (vi) assist Bidder, Crescent, NDC and/or any of their respective Related Bodies Corporate in connection with the orderly transition of any existing bank guarantee, letter of credit, performance bond or similar instrument (**Instrument**) issued to any person at the request or direction of any PSQ Group Member, including:
 - (A) providing details of existing Instruments to Bidder; and
 - (B) communicating with and providing information to the issuers and beneficiaries of the Instruments to facilitate the replacement, cash banking or other arrangement for the transition of those Instruments in connection with the Transaction; and/or
 - (vii) assist Bidder, Crescent, NDC and/or any of their respective Related Bodies Corporate to satisfy any conditions and/or obligations of any Debt Financing or equity financing to the extent it is within its reasonable control,

provided that nothing in this clause requires any member of the PSQ Group to take any action to the extent that doing so would, in the reasonable opinion of PSQ:

- (viii) cause unreasonable disruption to the PSQ Group's business;
- (ix) require PSQ to provide information concerning PSQ Group's business which is commercially or competitively sensitive (including any specific pricing and margin information);
- (x) result in any member of the PSQ Group breaching any applicable law or requirement of any Government Agency, or any obligation of confidentiality owed to a Third Party; or
- (xi) result in a waiver or loss of legal professional privilege.

6.13 Transition Committee

- (a) On and from the date of this deed, Bidder and PSQ agree to establish a committee (the **Transition Committee**) initially comprising the following individuals:
 - (i) as representatives of Bidder, Craig Stevens and Nathaniel Thomson; and
 - (ii) as representatives of PSQ, Andrew Vidler and Matthew Cordingley.
- (b) The role of the Transition Committee will be to act as a forum of discussion and planning in respect of:
 - (i) the implementation of the Scheme;
 - (ii) matters in relation to the transition of the operations and businesses of the PSQ Group to Bidder following the implementation of the Scheme, including, but not limited to, employees retention and incentivisation, stakeholder engagement and communication, consolidation of operation, function and processes; and

- For personal use only
- (iii) the process for obtaining consents and confirmations in respect of the Change of Control Rights.
 - (c) The Transition Committee will meet at least weekly or on such shorter timeframes as Bidder and PSQ may agree in writing.
 - (d) Meetings of the Transition Committee may be held via telephone, video conference or other forms of technology that provide representatives of the Transition Committee with a reasonable opportunity to participate.
 - (e) Members of the Transition Committee may agree to invite other persons to attend meetings of the Transition Committee from time to time.
 - (f) Each of Bidder and PSQ acknowledges and agrees that:
 - (i) the Transition Committee is only a discussion and planning forum but not decision-making, and a representative of a party to the Transition Committee has no power to bind the other party or to give any consent, approval or waiver on behalf of such other party;
 - (ii) nothing in this deed (including this clause 6.13) is intended to create a relationship of partnership, joint venture or similar relationship between the parties or requires a party to act at the direction of the other party or to take any action that would reasonably be expected to conflict with or violate any applicable law or regulation or the constitution document of such party;
 - (iii) the respective businesses of the Bidder Group and the PSQ Group are to continue to operate independently until (and subject to) the implementation of the Scheme;
 - (iv) no matters may be discussed at the Transition Committee which could give rise to potential breach of any applicable law or regulation by any member of the Bidder Group or any member of the PSQ Group (including antitrust or competition law) and any member of the Transition Committee may decline to discuss any matter on the basis of any such concern; and
 - (v) without limiting clauses 6.13(f)(i) to 6.13(f)(iv), nothing in this clause 6.13 will require PSQ to provide, or procure the provision of, any information which would constitute a breach, or would be reasonably likely to result in a breach, of any applicable antitrust or competition law.
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7 Exclusivity

7.1 Genesis Process Deed

- (a) Nothing in this clause 7 prevents PSQ or any of its Representatives from:
 - (i) taking any action expressly required to be done; or
 - (ii) omitting to take any action expressly required not to be done,

to the extent strictly necessary (but only to such extent) in order to comply with any of its non-discretionary obligations set out in the Genesis Process Deed.

- (b) Nothing in this clause 7 requires PSQ or any of its Representatives to:
- (i) take any action; or
 - (ii) omit to take any action,

to the extent that taking such action or omitting to take such action, as the case may be, constitutes a breach of any provision of the Genesis Process Deed.

7.2 Existing discussions

- (a) PSQ represents and warrants to Bidder that, as at the time of execution of this deed:
- (i) other than:
 - (A) the Genesis Process Deed; and
 - (B) confidentiality agreements with any Third Party that do not impose any obligations on PSQ or any of its Representatives to do any of the things contemplated by paragraphs (b)(i) or (b)(ii) in the definition of Permitted NDA;
 - (ii) neither PSQ nor any of PSQ's Representatives is a party to any agreement, arrangement or understanding with any person in each case in connection with, with a view to obtaining, or which could reasonably be expected to encourage or lead to, an actual, proposed or potential Competing Proposal; and
 - (iii) other than as strictly necessary (but only to such extent) to comply with any non-discretionary obligation set out in the Genesis Process Deed, neither PSQ nor any of PSQ's Representatives is participating in any negotiations, discussions or other communication with, and PSQ and PSQ's Representatives have ceased any existing negotiations, discussions or other communications with, have ceased to provide or make available any Non-public Information to, and have terminated all due diligence access granted to, any person in connection with, with a view to obtaining, or which could reasonably be expected to encourage or lead to, an actual, proposed or potential Competing Proposal or any other proposal which may otherwise lead to the Transaction not being completed.
- (b) PSQ will, within 2 Business Days after the date of this deed, request each person to whom any Non-public Information has been provided (other than Genesis, its Related Bodies Corporate or their respective Representatives) in connection with, with a view to obtaining, or which could reasonably be expected to encourage or 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) or any other proposal which may otherwise lead to the Transaction not being completed (or otherwise take steps necessary to otherwise cause the triggering of any obligations to return or destroy), to return or destroy all such information (with such return or destruction to be effected in accordance with the terms of the relevant confidentiality agreement).
- (c) PSQ will, within 2 Business Days after the 'End Date' (as defined in the Genesis Process Deed) (**Genesis Process End Date**), request Genesis, its Related Bodies Corporate and their respective Representatives to return or destroy (or otherwise take steps necessary to otherwise cause the triggering of any obligations to return

or destroy) all Non-public Information (with such return or destruction to be effected in accordance with the terms of the Genesis Process Deed). If, after the date of this deed, Genesis has, not as a result of a breach of the clause 7 and in respect of which clauses 7.6 and 7.8 have been (or will within the periods required therein be) complied with, submitted a Competing Proposal in respect of which on or before the Genesis Process End Date the PSQ Board has made a determination in accordance with clause 7.7 and the PSQ Board continues to hold that determination in good faith, the obligations of PSQ under this clause shall be deferred until the PSQ Board ceases to hold in good faith in relation to a then current Competing Proposal made by Genesis the determination referred to in clause 7.7.

- (d) Unless otherwise agreed in writing by Bidder:
 - (i) PSQ must, and must procure its Related Bodies Corporate to, promptly enforce
 - (A) the terms of any confidentiality or non-disclosure agreement, deed or undertaking (or similar document) entered into with any person (other than Bidder) in connection with, with a view to obtaining, or which could reasonably be expected to encourage or lead to, an actual, proposed or potential Competing Proposal or any other proposal which may otherwise lead to the Transaction not being completed; and
 - (B) the terms of any standstill (or similar) obligation of any such person; and
 - (ii) PSQ must not, and must procure its Representatives not to, terminate, waive, amend or modify any provision of any existing confidentiality or non-disclosure agreement, deed or undertaking (or similar document) entered into with any Third Party (including the Genesis Process Deed) in connection with, with a view to obtaining, or which could reasonably be expected to encourage or lead to, an actual proposed or potential Competing Proposal, or any standstill (or similar) obligation.

7.3 No shop

During the Exclusivity Period, PSQ must not, and must ensure that each of its Representatives and any other person on its behalf do not, directly or indirectly:

- (a) solicit, encourage, facilitate, initiate or invite (including by the provision of any Non-public Information) any approaches, enquiries, expressions of interest, offers, proposals, discussions, negotiations or other communications in connection with, with a view to obtaining, or which may reasonably be expected to encourage or lead to, any actual, proposed or potential Competing Proposal or any other proposal which may otherwise lead to the Transaction not being completed;
- (b) announce or communicate to any person any intention, willingness or decision to do or otherwise become obliged to do any of the things referred to in clause 7.3(a).

7.4 No talk

- (a) Subject to clause 7.7, during the Exclusivity Period, PSQ must not, and must ensure that each of its Representatives and any other person on its behalf do not, indirectly or directly:
- (i) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding; or
 - (ii) facilitate, participate in or continue any negotiations or discussions with any person regarding, any actual, proposed or potential Competing Proposal, or any approach, enquiry, expression of interest, offer, proposal, discussion, negotiation or other communication in connection with, with a view to obtaining, or which may reasonably be expected to encourage or lead to, any actual, proposed or potential Competing Proposal, in each case even if such Competing Proposal was not directly or indirectly solicited, invited, encouraged, facilitated or initiated by PSQ, any other member of PSQ Group or any of their respective Representatives or such Competing Proposal has been publicly announced or any other approach, enquiry, expression of interest, offer, proposal, discussion, negotiation or other communication which may otherwise lead to the Transaction not being completed; or
 - (iii) announce or communicate to any person any intention, willingness or decision to do or otherwise become obliged to do any of the things referred to in clause 7.4(a)(i) or 7.4(a)(ii).
- (b) For the avoidance of doubt, nothing in this clause 7.4 prohibits PSQ or its Representatives from communicating with another person for the sole purpose of informing that person that PSQ and its Representatives will not enter into any discussions or negotiations in relation to a Competing Proposal to the extent prohibited by this deed.

7.5 Due diligence

- (a) Without limiting clause 7.1, 7.3 or 7.4, but subject to clause 7.7, during the Exclusivity Period, PSQ must not, and must ensure that none of its Representatives, directly or indirectly:
- (i) solicit, encourage, facilitate, initiate, invite or permit any person (other than Bidder or any of its Representatives) to undertake or continue any due diligence investigation in respect of PSQ, PSQ Group or any member of PSQ Group, or any business, asset or affairs of PSQ, PSQ Group or any member of PSQ Group;
 - (ii) disclose, provide or make available to any person (other than Bidder or any of its Representatives), or permit any such person to receive, any Non-public Information or any access to any director, officer or employee of any member of PSQ Group, in connection with, with a view to obtaining, or which may reasonably be expected to encourage or lead to any person formulating, developing, finalising, submitting or announcing, or assisting in the formulation, development, finalisation, submission or announcement of, any actual, proposed or potential Competing Proposal or proposal which may otherwise lead to the Transaction not being completed; or
 - (iii) announce or communicate to any person any intention, willingness or decision to do or otherwise become obliged to do any of the things referred to in clause 7.5(a)(i) or 7.5(a)(ii).

- (b) This clause 7.5 does not prevent PSQ from providing information to ASX or PSQ's auditors and advisers in the ordinary course of business or to otherwise effect the negotiation and entry into this deed, provided it does so without the intent or effect of circumventing the purpose or effect of this clause 7.5.
- (c) If PSQ or any of its Representatives intends to provide any Non-public Information to any person (other than Bidder or any of its Representatives) in reliance on clause 7.7:
- (i) before PSQ or any of its Representatives does so, such person must enter into a confidentiality agreement which contains obligations on such person and any other recipient of any Non-public Information which are no less onerous than the obligations initially imposed on Bidder under the Bidder Confidentiality Deed or the obligations initially imposed on Crescent under the Crescent Confidentiality Deed; and
 - (ii) in the event that such Non-public Information has not been provided to Bidder, PSQ must, or must procure such Representative to, as the case may be, provide Bidder with a copy of such Non-public Information at the same time such Non-public Information is provided to such person.

7.6 Notification of approaches

- (a) During the Exclusivity Period, PSQ must as soon as reasonably practicable (but in any event within 24 hours) notify Bidder in writing if PSQ or any of its Representatives becomes aware of:
- (i) any discussion, negotiation, communication or other contact with PSQ or any of its Representatives in connection with, or which may reasonably be expected to lead to, any actual, proposed or potential Competing Proposal or any other proposal which may otherwise lead to the Transaction not being completed;
 - (ii) any approach, enquiry, expression of interest, offer or proposal made to, or received by, PSQ or any of its Representatives in connection with, or which may reasonably be expected to lead to, any actual, proposed or potential Competing Proposal or any other proposal which may otherwise lead to the Transaction not being completed;
 - (iii) any request made by any person to, or received by, PSQ or any of its Representatives for any Non-public Information which PSQ or any of its Representatives has reasonable grounds to suspect may be in connection with, or which may reasonably be expected to lead to, any actual, proposed or potential Competing Proposal or any other proposal which may otherwise lead to the Transaction not being completed; or
 - (iv) the provision by PSQ or any of its Representatives of any Non-public Information to any person in connection with, or which may reasonably be expected to lead to, any actual, proposed or potential Competing Proposal or any other proposal which may otherwise lead to the Transaction not being completed,

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

- (b) A notification given under clause 7.6(a) must include all material details of such actual, proposed or potential Competing Proposal or other proposal which may otherwise lead to the Transaction not being completed (as the case may be)

(including the price and form of consideration, proposed timing, any condition precedent, details of any break fee, cost recovery or cost sharing arrangement, and the identity of the persons who were involved in such discussion, negotiation, communication or other contact, who made such approach, enquiry, expression of interest, offer or proposal and/or who made such request for, and/or who received, such Non-public Information (as applicable) the extent known to PSQ or any of its Representatives.

- (c) During the Exclusivity Period, PSQ must as soon as reasonably practicable (but in any event within 24 hours) notify Bidder in writing if PSQ or any of its Representatives becomes aware of any material development in relation to:
 - (i) any actual, proposed or potential Competing Proposal or any other proposal which may otherwise lead to the Transaction not being completed; and/or
 - (ii) any information which was previously notified to Bidder under clause 7.6(a).

7.7 Fiduciary exception

Clauses 7.4 and 7.5 do not apply to the extent that they restrict PSQ or the PSQ Board (or PSQ's Representatives) from taking or refusing to take any action with respect to an actual, proposed or potential Competing Proposal (which was not solicited, encouraged, facilitated, initiated or invited by PSQ or any of its Representatives in breach of this clause 7), provided that the PSQ Board has determined, in good faith:

- (a) after consultation with its financial Advisers, that such Competing Proposal is, or would reasonably be expected to lead to, a Superior Proposal; and
- (b) after receiving written legal advice from its legal Advisers, that compliance with clauses 7.4 and/or 7.5 (as applicable) would (or would be reasonably likely to) constitute a breach of any of the fiduciary or statutory duties of any member of PSQ Board.

7.8 Matching right

- (a) Without limiting clauses 7.1 to 7.6, during the Exclusivity Period, PSQ:
 - (i) must procure that no PSQ Director:
 - (A) withdraws or adversely changes his or her Recommendation that PSQ Shareholders vote, at the Scheme Meeting, in favour of the resolution to approve the Scheme (other than any such statement which is made confidentially as part of internal PSQ discussions or to PSQ's Advisers or the PSQ Director's Advisers and only for so long as it remains confidential);
 - (B) publicly recommends, or otherwise publicly supports, any actual, proposed or potential Competing Proposal or any other proposal which may otherwise lead to the Transaction not being completed (other than any such statement which is made confidentially as part of internal PSQ discussions or to PSQ's Advisers or the PSQ Director's Advisers and only for so long as it remains confidential); or
 - (C) publicly recommend or comment against the Transaction; and
 - (ii) must not, and must ensure that each of its Representatives do not, indirectly or directly, enter into any agreement, arrangement or understanding

(whether or not in writing) or otherwise become obliged to give effect to, or for the implementation of, any actual, proposed or potential Competing Proposal or any other proposal which may otherwise lead to the Transaction not being completed, or any break fee, cost reimbursement or cost sharing agreement or similar,

unless:

- (iii) PSQ Board has, in good faith and acting reasonably, made the determinations set out in clauses 7.7(a) and 7.7(b);
 - (iv) PSQ has provided Bidder with a notice stating that it is given for the purposes of this clause 7.8 and setting out all material terms and conditions of such Competing Proposal (including all information which would be required by clause 7.6(b));
 - (v) PSQ has given Bidder at least until 11:59pm on the Business Day after the information referred to in clause 7.8(a)(iv) was provided to the Bidder (the **Matching Period**) to announce or formally provide to PSQ a matching or superior proposal or other counter-proposal to the terms of such Competing Proposal (**Counterproposal**); and
 - (vi) either:
 - (A) Bidder has not announced or formally provided PSQ with a Counterproposal before the expiry of the Matching Period; or
 - (B) (1) Bidder has announced or formally provided PSQ with a Counterproposal before the expiry of the Matching Period; and (2) PSQ Board has determined, in good faith and acting reasonably, that such Counterproposal would not produce an equivalent or superior outcome for PSQ Shareholders (as a whole) as compared to the outcome that would be produced by such Competing Proposal, taking into account all respective terms and conditions and other aspects of such Counterproposal and such Competing Proposal.
- (b) If PSQ provides Bidder with a notice under clause 7.8(a)(iv) and Bidder has announced or formally provided PSQ with a Counterproposal before the expiry of the Matching Period, PSQ must procure that PSQ Board:
- (i) promptly considers and determines, in good faith and acting reasonably, whether such Counterproposal would produce an equivalent or superior outcome for PSQ Shareholders (as a whole) as compared to the outcome that would be produced by such Competing Proposal, taking into account all respective terms and conditions and other aspects of such Counterproposal and such Competing Proposal; and
 - (ii) promptly, and in any event within 3 Business Days after Bidder has announced or formally provided PSQ with such Counterproposal, sends Bidder a notice in writing setting out such determination and the reasons for such determination.
- (c) In the event that PSQ has made a determination in accordance with clause 7.7(b) that such Counterproposal would produce an equivalent or superior outcome for PSQ Shareholders (as a whole) as compared to the outcome that would be produced by such Competing Proposal, taking into account all respective terms

and conditions and other aspects of such Counterproposal and such Competing Proposal, PSQ must use its best endeavours to:

- (i) agree all amendments to this deed (and, if applicable, the Scheme and the Deed Poll) which are reasonably necessary to reflect such Counterproposal, in each case as soon as reasonably practicable; and
 - (ii) procure each PSQ Director recommends (unanimously with all the other PSQ Directors) such Counterproposal to PSQ Shareholders and not recommend such Competing Proposal to PSQ Shareholders.
- (d) PSQ acknowledges and agrees that:
- (i) each new Competing Proposal or successive material variation or modification of a Competing Proposal will constitute a new Competing Proposal for the purposes of this clause 7.8; and
 - (ii) the process set out in this clause 7.8 must again be followed in respect of each new Competing Proposal or successive material variation or modification of a Competing Proposal prior to:
 - (A) any PSQ Director taking any of the actions referred to in clauses 7.8(a)(i)(A) and 7.8(a)(i)(B); or
 - (B) PSQ or any of its Representatives entering into any agreement, arrangement or understanding or otherwise becoming obliged referred to in clause 7.8(a)(ii).

7.9 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 7 or any part of it:
- (i) constituted, constitutes or would constitute a breach of the fiduciary or statutory duty of any member of the PSQ Board;
 - (ii) constituted, constitutes or would constitute “unacceptable circumstances” within the meaning of the Corporations Act; or
 - (iii) was, is or would be unlawful for any other reason,
- then, to that extent (and only to that extent) PSQ will not be obliged to comply with that provision or that relevant part of that provision (as applicable) of this clause 7.
- (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 or declaration referred to in clause 7.9(a) regarding any provision of this clause 7; and
 - (ii) agree that if any person makes an application to a court or the Takeovers Panel for, or in relation to, a determination or declaration referred to in clause 7.9(a) regarding any provision of this clause 7, each party must make submissions in the course of the relevant proceedings supporting (to the fullest extent reasonably practicable) that no such determination or declaration should be made.

7.10 Normal provision of information

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

- (a) with respect to PSQ, providing information to its Representatives;
- (b) providing information to any Government Agency that the Government Agency has requested in writing or is otherwise required to be provided by law (including to satisfy its obligations under the rules of any stock exchange);
- (c) providing information to its auditors, customers, financiers, practitioners and suppliers acting in that capacity in the ordinary course of business;
- (d) engaging with PSQ Shareholders (in their capacity as a shareholder) (i) in the ordinary course of business and consistent with past practice or (ii) as required or expressly permitted by this deed, including (without limitation) pursuant to clause 4.2(b), but excluding any PSQ Shareholder which has, or whose Associates have:
 - (i) made a Competing Proposal (including Genesis); or
 - (ii) done anything that requires notification under clause 7.6;
- (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 normal presentations or providing information to brokers, portfolio investors, 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.

8 Break fee

8.1 Background

This clause 8 has been agreed to in circumstances where:

- (a) PSQ believes it and its shareholders will derive significant benefits from the implementation of the Scheme;
- (b) Bidder 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) Bidder has required that provision be made for the payment outlined in clause 8.2, and would not have entered into this deed or otherwise have agreed to implement the Scheme had such provision not been made;
- (d) the PSQ 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; and

- (e) PSQ has received separate legal advice in relation to this deed and the operation of this clause 8 and believes it is reasonable that PSQ agrees to the Break Fee in accordance with this clause 8 in order to secure Bidder's participation in the Transaction.

8.2 Payment of Break Fee

Subject to clauses 8.4, 8.5 and 8.6, PSQ must pay Bidder the Break Fee, without set-off or withholding and within 5 Business Days after receipt of a written demand from Bidder (or earlier if required by clause 11.3(a)(iv)), if any of the following events occurs:

- (a) during the Exclusivity Period, any PSQ Director:
- (i) fails to make his or her Recommendation as contemplated by clause 2.3(b);
 - (ii) withdraws or adversely changes (including, without limitation, by making any statement supporting, endorsing or recommending any Competing Proposal and/or to the effect that he or she no longer support the Scheme) his or her Recommendation (other than any such statement which is made confidentially as part of internal PSQ discussions or to PSQ's Advisers or the PSQ Director's Advisers and only for so long as it remains confidential); or
 - (iii) recommends, supports or endorses a Competing Proposal (other than any such statement which is made confidentially as part of internal PSQ discussions or to PSQ's Advisers or the PSQ Director's Advisers and only for so long as it remains confidential),

in each case provided that Bidder has terminated this deed in accordance with clause 11, other than in circumstances where:

- (iv) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of PSQ Shareholders or, having previously concluded that the Scheme is in the best interests of PSQ Shareholders withdraws or adversely changes that conclusion (except in each case where such conclusion, withdrawal or change is not wholly or partly as a result of the existence, announcement or publication of a Competing Proposal (including, but not limited to, a Superior Proposal)),
- (v) PSQ is entitled to terminate this deed pursuant to clause 11.1(b) and has given the appropriate termination notice to Bidder,

provided that, for the avoidance of doubt, a statement made by PSQ or the PSQ Board to the effect that no action should be taken by PSQ Shareholders pending the assessment of a Competing Proposal by the PSQ Board will not, by itself, require PSQ to pay Bidder the Break Fee;

- (b) at any time before the End Date (or, if earlier, the date this deed is terminated under clause 11), a Competing Proposal of any kind is announced (whether or not such proposal is stated to be subject to any pre-condition) and, within 9 months after the date of such announcement, a person (either alone or together with any of its Associates):
- (i) completes, implements or consummates a Competing Proposal of the kind referred to in paragraph (b), (c) or (d) of the definition of Competing Proposal; or

- For personal use only
- (ii) otherwise acquires a Relevant Interest in, becomes the holder of, or otherwise acquires, directly or indirectly, or acquires an economic interest in or voting power in respect of, 50% or more of the PSQ Shares;
 - (c) Bidder validly terminates this deed in accordance with clause 11.1(b); or
 - (d) at any time before termination of this deed:
 - (i) PSQ or any of its Related Bodies Corporate enters into an implementation agreement (or similar document) with a Third Party in respect of a Competing Proposal (other than a confidentiality agreement) under which that Third Party and PSQ or any of its Related Bodies Corporate agree (conditionally or otherwise) to undertake or give effect to such Competing Proposal; or
 - (ii) PSQ or any of its Related Bodies Corporate becomes obliged (conditionally or otherwise) to undertake or give effect to a Competing Proposal.

8.3 Nature of payment

PSQ acknowledges and agrees that the amount of the Break Fee has been calculated to reimburse and compensate Bidder for costs and expenses including:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
- (b) costs of management and directors' time in planning and implementing the Transaction;
- (c) out-of-pocket expenses incurred by Bidder and Bidder's employees, advisers and agents in planning and implementing the Transaction;
- (d) costs associated with the financing arrangements in respect of the Transaction;
- (e) any damage to Crescent's reputation associated with a failed transaction and the implications of that damage to Crescent's business; and
- (f) reasonable opportunity costs incurred in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives which otherwise could have been pursued,

in each case incurred by Bidder directly or indirectly as a result of having entered into this deed and pursuing the Transaction, and PSQ agrees that:

- (g) the costs actually incurred by Bidder will be of such a nature that they cannot all be accurately ascertained; and
- (h) the Break Fee is a genuine and reasonable pre-estimate of those costs, which would equal or exceed the Break Fee.

8.4 Qualifications to Break Fee

- (a) No amount is payable by PSQ under this clause 8 if the Scheme becomes Effective.
- (b) This clause 8 does not impose an obligation on PSQ to pay the Break Fee to the extent (and only to the extent) that the obligations to pay the Break Fee:

- For personal use only
- (i) is declared by the Takeovers Panel to constitute “unacceptable circumstances”; or
 - (ii) is determined by a court to be unlawful or unenforceable (including as a result of a breach of any PSQ Director’s fiduciary or statutory duties),

provided that:

- (iii) all lawful avenues of appeal and review have been exhausted;
- (iv) the period for lodging an appeal or commencing review proceedings has expired without an appeal having been lodged or review proceedings commenced; or
- (v) Bidder and PSQ agree in writing not to appeal or seek review of the decision to impose that requirement,

and Bidder will refund to PSQ within 10 Business Days any amount in excess of its obligations under this clause that PSQ has already paid Bidder when that such declaration or determination is made (unless otherwise required by the Takeovers Panel or a court).

- (c) For the avoidance of doubt, any part of the Break Fee that would not constitute “unacceptable circumstances” or that is not unenforceable or unlawful (as applicable) must be paid by PSQ.
- (d) The parties must not make, or cause to be made, any application to the Takeovers Panel or a court for, or in relation to, a declaration or determination referred to in clause 8.4(b).

8.5 Modifications following regulatory intervention

- (a) If any of the following occurs:
 - (i) a court of competent jurisdiction finds that all or any part of the payments required to be made under this clause 8 or an exclusivity arrangement under clause 7 is unacceptable or unenforceable; or
 - (ii) as a result of an application to the Takeovers Panel, the Takeovers Panel indicates that, in the absence of a written undertaking under section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) to modify the amount of the Break Fee or the circumstances in which it is to be paid or the circumstances in relation to an exclusivity arrangement under clause 7, it will make a declaration of unacceptable circumstances,

then, provided that there has been no breach of clauses 7.9(b), 8.4(d) or 8.5(b):

- (iii) the parties must amend clause 8 and/or clause 7 (as relevant) to the extent required to give effect to the requirements of the court or the Takeovers Panel (as the case may be) and (in circumstances referred to in clause 8.5(a)(ii) must give the required undertaking(s)); and
- (iv) neither the occurrence of any of the events referred to in clause 8.5(a)(i) or 8.5(a)(ii) nor the amendment of clause 8 and/or clause 7 will be taken to be a breach of, or permit any party to terminate, this deed.

- (b) The parties must not make or cause or permit to be made any application to a court or the Takeovers Panel for or in relation to a determination referred to in clause 8.5(a).
- (c) The parties are only required to take steps under clause 8.5(a)(iii) in relation to any requirement of a court of competent jurisdiction or the Takeovers Panel if:
- (i) no appeal or review proceeding is available from the decision to impose that requirement or the period for lodging an appeal or commencing review proceedings has expired without an appeal having been lodged or review proceedings commenced; or
 - (ii) Bidder and PSQ agree in writing not to appeal or seek review of the decision to impose that requirement.

8.6 Other claims

- (a) Subject to clause 8.6(c) but notwithstanding any other provision of this deed:
- (i) the maximum aggregate liability of PSQ for any Claims under this deed for any breach of this deed by PSQ (including any breach of the PSQ Warranties) that caused the Break Fee to be payable is the Break Fee, and in no event will the aggregate liability of PSQ for such Claims exceed the Break Fee, other than, for the avoidance of doubt, in the case of fraud or wilful default (including any act that is a deliberate breach of this agreement); and
 - (ii) where the Break Fee is paid to Bidder in accordance with clause 8.2, that amount is received by Bidder in complete settlement of any and all Claims under this deed that Bidder may have against PSQ in respect of any breach of this deed by PSQ that caused the Break Fee to be payable and neither Bidder nor any of its Related Bodies Corporate may make any Claim for damages, loss, liability, compensation, payments, fees, expenses or reimbursements against PSQ or any other PSQ Indemnified Party under this deed in respect of such breaches, other than, for the avoidance of doubt, in the case of fraud or wilful default (including any act that is a deliberate breach of this agreement).
- (b) Nothing in this clause 8.6 limits the liability of Bidder in connection with the Deed Poll or the obligations under clause 2.2(b)(ii).
- (c) The parties acknowledge that specific performance and injunctive relief are available as a remedy for a breach or threatened breach of this deed by any party, notwithstanding the ability of the parties to demand payment of the Break Fee. Nothing in this clause 8.6 prevents any party from seeking any such remedy.

9 Warranties

9.1 PSQ Warranties

PSQ represents and warrants to Bidder (in its own right and separately as trustee or nominee for each Bidder Indemnified Party) that each of the PSQ Warranties is true and correct.

9.2 PSQ's indemnity

PSQ agrees with Bidder (in its own right and separately as trustee or nominee for each Bidder Indemnified Party) to indemnify Bidder and each Bidder Indemnified Party against any Claim, action, damage, loss, liability, cost, expenses or payment of whatever nature and however arising that Bidder or any of the other Bidder Indemnified Parties suffers, incurs or is liable for as a result of any breach of any of the PSQ Warranties.

9.3 Bidder Warranties

Bidder represents and warrants to PSQ (in its own right and separately as trustee or nominee for each PSQ Indemnified Party) that each of the Bidder Warranties is true and correct.

9.4 Bidder's indemnity

Bidder agrees with PSQ (in its own right and separately as trustee or nominee for each PSQ Indemnified Party) to indemnify PSQ and each PSQ Indemnified Party against any Claim, action, damage, loss, liability, cost, expenses or payment of whatever nature and however arising that PSQ or any of the other PSQ Indemnified Parties suffers, incurs or is liable for as a result of any breach of any of the Bidder Warranties.

9.5 Qualifications on PSQ Warranties

- (a) The PSQ Warranties and the indemnity in clause 9.2 are each subject to matters that:
 - (i) are required or expressly permitted by this deed or the Scheme the Transaction;
 - (ii) have been Fairly Disclosed in the Disclosure Materials;
 - (iii) have been Fairly Disclosed in:
 - (A) an announcement made by PSQ to the ASX in the five years prior to the date of this deed; or
 - (B) the Relevant Searches; or
 - (iv) are within the actual knowledge of Bidder, NDC or Crescent or their respective Related Bodies Corporate before the date of this deed.
- (b) Any matters in this deed that are subject to the awareness, knowledge or belief of PSQ are given solely by reference to the actual awareness, knowledge or belief of the following individuals as at the date of this deed having made reasonable enquiries of each other and of their direct reports:
 - (i) Andrew Vidler;
 - (ii) Matthew Cordingley; and
 - (iii) Luke Russell.

9.6 Qualifications on Bidder Warranties

The Bidder Warranties and the indemnity in clause 9.4 are each subject to matters that are required or expressly permitted by this deed or the Scheme or the Transaction or within the actual knowledge of PSQ as at the date of this deed.

9.7 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.

9.8 Survival of indemnities

Each indemnity in this deed (including those in clauses 9.2 and 9.4):

- (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.

9.9 Timing of Warranties

Each Warranty is given:

- (a) at the date of this deed;
- (b) at the date the Scheme Booklet is despatched to PSQ 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.

9.10 No representations made on economic or future matters

Each party acknowledges and agrees that:

- (a) the other party makes no representation or warranty other than as given or made in this deed, the Scheme and the Deed Poll; and
- (b) at no time has the other party given or made any representation or warranty in relation to the achievability of:
 - (i) any economic, fiscal or other interpretations or evaluations by it; or
 - (ii) future or forecast costs, prices, revenues or profits.

9.11 Bidder knowledge

Any matters in this deed that are subject to the awareness, knowledge or belief of Bidder are given solely by reference to the actual knowledge of the following individuals as at the date of this deed:

- (a) Michael Alscher;
- (b) Patrick Schmidt; and
- (c) Nathaniel Thomson.

10 Releases

10.1 Release of PSQ Indemnified Parties

- (a) Subject to clause 10.1(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 PSQ that it will not make any Claim, against any PSQ Indemnified Party (other than PSQ and its Related Bodies Corporate) as at the date of this deed in connection with:
 - (i) any breach of any covenant, representation or warranty given by PSQ under this deed;
 - (ii) 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
 - (iii) any failure to provide information in connection with this deed or the Scheme,except where such PSQ Indemnified Party has engaged in fraud or wilful misconduct.
- (b) The releases in clause 10.1(a) are subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) PSQ receives and holds the benefit of clause 10.1(a) on behalf of, and as trustee for, each other PSQ Indemnified Parties.
- (d) Nothing in this clause 10.1 limits Bidder's rights to terminate this deed under clause 11 or demand payment of the Break Fee under clause 8.

10.2 Release of Bidder Indemnified Parties

- (a) Subject to clause 10.2(a), PSQ 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, against any Bidder Indemnified Party (other than Bidder and its Related Bodies Corporate) as at the date of this deed in connection with:
 - (i) any breach of any covenant, representation or warranty given by Bidder under this deed;

- (ii) 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
- (iii) any failure to provide information in connection with this deed or Scheme, except where such Bidder Indemnified Party has engaged in fraud or wilful misconduct.
- (b) The releases in clause 10.2(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 10.2(a) on behalf of, and as trustee for, each other Bidder Indemnified Parties.
- (d) Nothing in this clause 10.2 limits PSQ's rights to terminate this deed under clause 11.

11 Termination

11.1 Termination by PSQ or Bidder

- (a) PSQ or Bidder may terminate this deed in accordance with clause 3.5.
- (b) PSQ or Bidder may terminate this deed any time before 8:00am on the Second Court Date where the other party commits a breach of this deed (including the Warranties), provided that:
- (i) the breach is material in the context of this deed and 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) unless the notice under clause 11.1(b)(ii) was not reasonably able to be given before 5:00pm on the Business Day immediately before the Second Court Date, the relevant circumstances, if capable of remedy, have not been remedied to the reasonable satisfaction of the terminating party within 5 Business Days from the date such notice is given (or any shorter period ending at 5:00pm on the Business Day immediately before the Second Court Date).
- (c) PSQ or Bidder may terminate this deed in accordance with and pursuant to clause 4.7, provided that the party purporting to terminate this deed has complied in all material respects with its obligations under that clause.

11.2 Termination by Bidder

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

- (a) any PSQ Director (whether or not permitted to do so under this deed):
- (i) fails to make his or her Recommendation;

- (ii) withdraws or adversely changes (including, without limitation, by making any statement supporting, endorsing or recommending any Competing Proposal and/or to the effect that he or she no longer support the Scheme (other than any such statement which is made confidentially as part of internal PSQ discussion or to PSQ's Advisers or the PSQ Director's Advisers and only for so long as it remains confidential)) his or her Recommendation; or
- (iii) recommends, supports or endorses a Competing Proposal (other than any support or endorsement which is made confidentially as part of internal PSQ discussion or to PSQ's Advisers or the PSQ Director's Advisers and only for so long as it remains confidential),

in each case, provided that a statement made by PSQ or the PSQ Board to the effect that no action should be taken by PSQ Shareholders pending the assessment of a Competing Proposal by the PSQ Board will not of itself give rise to a termination right under this clause; or

- (b) the PSQ Board determines that a Competing Proposal is a Superior Proposal, or in any circumstances, a member of the PSQ Group enters into an agreement in relation to a Competing Proposal or pursuant to which PSQ becomes obliged to implement a Competing Proposal (excluding a Permitted NDA if the entering into of such Permitted NDA by such member of the PSQ Group does not constitute a breach of any provision of clause 7 by any member of the PSQ Group).

11.3 Termination by PSQ

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

- (a) a majority of PSQ Directors publicly:
 - (i) withdraw or adversely change their recommendation as set out in clause 2.3(a); or
 - (ii) recommend a Competing Proposal,in each case, provided that:
 - (iii) one of the following has occurred:
 - (A) PSQ has received a Competing Proposal, the PSQ Board has determined that the Competing Proposal constitutes a Superior Proposal and clause 7 has been complied with and all of Bidder's rights under clause 7 have been fully exhausted; or
 - (B) the Independent Expert concludes that the Scheme is not in the best interests of PSQ Shareholders or, having previously concluded that the Scheme is in the best interests of PSQ Shareholders, withdraws or adversely changes that conclusion (provided in each case that it does not do so wholly or partly as a result of a Competing Proposal); and
 - (iv) if the Break Fee will become payable, PSQ has first paid the Break Fee.

11.4 Effect of termination

If this deed is terminated in accordance with this clause 11, 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 11, clauses 8 through 10 and clauses 13 through 17 (inclusive) (other than clause 17.8) 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.

12 Public announcements

12.1 Public announcement of Scheme

Immediately after execution of this deed (or as otherwise agreed between PSQ and Bidder), PSQ must issue a public announcement substantially in the form contained in Attachment D.

12.2 Other disclosure

- (a) Subject to clause 12.2(b), 12.2(c) and 12.3, before making any material public announcement in relation to the Transaction or the Scheme (whether through the ASX or otherwise) (**Proposed Announcement**):
 - (i) a party must:
 - (A) provide the other party with a draft copy of the Proposed Announcement as soon as reasonably practicable before it is proposed that such Proposed Announcement is made;
 - (B) give the other party a reasonable opportunity to comment on the form and content of such draft copy; and
 - (C) consider all reasonable comments from the other party and its Representatives (that are provided in a timely manner) on such draft copy; and
 - (ii) before making the Proposed Announcement, obtain the other party's prior written consent to the final form and content of the Proposed Announcement.
- (b) A party must:
 - (i) use reasonable endeavours to provide its consent to the making of a Proposed Announcement contemplated by clause 12.2(a) as soon as practicable (and in any event within, 24 hours); and
 - (ii) not unreasonably withhold or delay such consent.
- (c) Clause 12.2(a) does not apply to any announcement or disclosure in connection with the termination of this deed, a breach of this deed by the other party or an actual, proposed or potential Competing Proposal.

12.3 Required disclosure

- (a) Subject to clause 12.3(b), where a party is required by applicable law, regulation or the ASX Listing Rules to make any announcement or to make any disclosure in connection with the Transaction or the Scheme, such party is not required to comply with clause 12.2(a) in respect of any such announcement or disclosure.

- (b) Before any announcement or disclosure is made by any party in reliance on clause 12.3(a), to the extent reasonably practicable and permitted by the relevant law, regulation or the ASX Listing Rules, such party must use:
- (i) best endeavours to notify the other party as soon as reasonably practicable after such party becomes aware that such announcement or disclosure is required; and
 - (ii) reasonable endeavours to give the other party an opportunity to comment on the proposed form and content of such announcement or disclosure and amend any factual inaccuracy, and consider in good faith any other comments of the other party on the form and content of such announcement or disclosure,

other than where such announcement or disclosure relates to, or is in connection with, an actual, proposed or potential Competing Proposal, termination of this deed or a breach of this deed by the other party.

13 Confidentiality Deed

13.1 Confidentiality obligations

- (a) The Recipient:
 - (i) agrees to keep confidential the Confidential Information and to use it solely for the Approved Purpose; and
 - (ii) must not use any Confidential Information for its own commercial purposes or to the competitive disadvantage of the Discloser or its Related Bodies Corporate, except to the extent necessary for the Approved Purpose.
- (b) Subject to clause 13.1(c), the Recipient may disclose Confidential Information to its Representatives to the extent that the relevant person needs that information for the Approved Purpose.
- (c) The Recipient must:
 - (i) use its reasonable endeavours to ensure that such Representative complies with the terms of this clause 13 as if it were the Recipient; and
 - (ii) on request by the Discloser, provide written notice to the Discloser of the identity of any Representative of the Recipient that has received, or is to receive, the Confidential Information.
- (d) With respect to each subclause of this clause 13 that relates to a Representative of the Recipient, the Recipient is responsible to the Discloser for any act or omission of that Representative of the Recipient which would have breached that subclause if the act or omission had been by the Recipient.
- (e) The Recipient must take reasonable steps to protect the Confidential Information and keep it secure from unauthorised persons.
- (f) The Recipient must inform the Discloser as soon as reasonably practicable if the Recipient becomes aware of, or suspects that there has been a breach of this clause 13. The Recipient must promptly do anything which the Discloser

reasonably requires to prevent or restrain a suspected or actual breach of this clause 13.

- (g) This clause 13 does not give the Recipient or any other person any right, title or interest in the Confidential Information.
- (h) Nothing in this clause 13 prevents the use or disclosure by the Recipient or any of its Representatives of Confidential Information to the extent that it is required by law, regulation, legal process, order of any government agency or the rules of a recognised stock exchange, including any law or regulation concerning the contents of a bidder's statement or any other disclosure document, and provided that, in all cases, the Recipient or its relevant Representative or Associate must only disclose the minimum amount of information necessary to comply with the requirement and, to the extent permitted by law and reasonable in the circumstances, the Recipient must:
 - (i) promptly notify the Discloser of the requirement to disclose the Confidential Information and provide details of the circumstances of the proposed disclosure; and
 - (ii) consult with the Discloser as to the form of disclosure to be made and take account of any reasonable comments of the Discloser which are provided to it.
- (i) The Recipient acknowledges that its obligations under this clause 13.1 are in addition to, and nothing in this clause 13 limits, any common law or equitable obligations of confidence owed to the Discloser or its Related Bodies Corporate by the Recipient or its Representatives.

13.2 Return of Confidential Information

- (a) Subject to clause 13.2(b), the Recipient must on the written request of the Discloser promptly either (at the election of the Recipient):
 - (i) return to the Discloser all copies and extracts of the Confidential Information and, if in electronic form, erase such Confidential Information; or
 - (ii) destroy all copies and extracts of the Confidential Information and, if in electronic form, erase such Confidential Information,and in either case, an authorised signatory of the Recipient must confirm in writing to the Discloser that the Recipient and its Representatives have complied with the requirements of this clause 13.2(a).
- (b) Clause 13.2(a) does not apply to:
 - (i) any records of, or documents prepared for, a meeting of the board of the Recipient or its Related Bodies Corporate, or a committee of the board or an investment or advisory committee, to the extent that such records or documents contain the level of detail consistent with the normal practices of the relevant board or committee;
 - (ii) documents stored on a back-up server for bona fide back-up, security and data recovery purposes, which is not readily accessible; or
 - (iii) the Recipient or any Representative of the Recipient holding Confidential Information is required by law or the rules of any government agency or any

mandatory rule of professional standards or bona fide internal compliance or audit policy or procedure applying to the Recipient or the relevant Representative to retain a copy of the Confidential Information,

provided that such information that is retained remains subject to the confidentiality obligations set out in this clause 13 and, if in the possession or control of an adviser, financier or proposed financier, is not accessed by the Recipient or its Related Bodies Corporate.

14 Duty, costs and expenses

14.1 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 PSQ against any liability arising from or in connection with any failure by Bidder to comply with clause 14.1(a).

14.2 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.

15 GST

- (a) In this clause 15, 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) Subject to clauses 15(c) and 15(e), 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 15(b) (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- (c) Clause 15(b) does not apply to any consideration that is expressed in this deed to be inclusive of GST.
- (d) 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 any representative member of a 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 15(b).
- (e) A party need not make a payment for a taxable supply made under or in connection with this deed until it receives a tax invoice for the supply to which the payment relates.

16 Foreign resident CGT withholding

- (a) For the avoidance of doubt, if the Bidder has regard to the processes set out in the subsequent paragraphs of this clause and the Bidder still forms the view, acting reasonably, that it is required by Subdivision 14-D of Schedule 1 to the Tax Act (**Subdivision 14-D**) to pay amounts to the ATO in respect of the acquisition of the Scheme Shares from certain Scheme Shareholders (**Withholding Amounts**), the Bidder shall be entitled to deduct such Withholding Amounts pursuant to clause 16(b).
- (b) If Bidder is required by Subdivision 14-D to pay Withholding Amounts to the ATO in respect of the acquisition of the Scheme Shares from certain Scheme Shareholders, Bidder is entitled to deduct the Withholding Amounts from the payment of the Scheme Consideration to those Scheme Shareholders (and the relevant payment into the trust account pursuant to clause 2.2(b) above) and remit those amounts to the ATO. Bidder will not be obliged to increase the Scheme Consideration otherwise payable to the relevant Scheme Shareholders by the amount of the deduction and the Scheme Consideration paid to the relevant Scheme Shareholders reduced by the corresponding Withholding Amount should be taken to be in full and final satisfaction of the amounts owing to those Scheme Shareholders. Bidder must pay any amount to the ATO in the time permitted by law.
- (c) The Bidder (acting reasonably) must confirm, based on the information available to it at that time, whether it proposes to withhold a Withholding Amount from the Scheme Consideration payable to any Scheme Shareholder by 5 Business Days before the Second Court Hearing and, if so, the identity of the Scheme Shareholder and the corresponding Withholding Amount.
- (d) For the purposes of clause 16(b), the parties agree to consult in good faith as to the application of Subdivision 14-D to the Transaction. The parties agree to take all actions that they agree (each acting reasonably and in good faith) are necessary or desirable following that consultation, which may include, without limitation:
- (i) making amendments to this deed, the Scheme and the Deed Poll to ensure that relevant representations are obtained from Scheme Shareholders;
 - (ii) the Bidder, acting reasonably, assessing whether PSQ satisfies the principal asset test in section 855-30 of the Tax Act;
 - (iii) if PSQ satisfies the principal asset test in the Bidder's reasonable assessment, the Bidder, acting reasonably, assessing which Scheme Shareholders may be relevant foreign persons for the purposes of Subdivision 14-D; and/or
 - (iv) requiring that those Scheme Shareholders reasonably assessed as being relevant foreign persons provide the Bidder with an Entity Declaration (including any New Entity Declaration) to satisfy the Bidder that it is not required to pay any Withholding Amounts in respect of such Scheme Shareholders.
- (e) Subject to clause 16(g), Bidder acknowledges and agrees that Bidder shall not pay any amounts to the ATO under Subdivision 14-D with respect to a Scheme

Shareholder where it receives an entity declaration from the Scheme Shareholder prior to the Implementation Date where:

- (i) the entity declaration is made in accordance with the requirements of section 14-225 of Subdivision 14-D and covers, at least, the period between (and including) the date of this deed and the Implementation Date (**Entity Declaration**); and
 - (ii) Bidder does not know the Entity Declaration to be false.
- (f) For the avoidance of doubt, if the period between (and including) the date of this deed and the Implementation Date is more than 6 months, then Bidder acknowledges and agrees that Bidder shall not pay any amounts to the ATO under Subdivision 14-D with respect to a Scheme Shareholder where it receives a new entity declaration from the Scheme Shareholder prior to the Implementation Date where:
- (i) the new entity declaration is made in accordance with the requirements of section 14-225 of Subdivision 14-D and covers, at least, the period between (and including) the last day of the period mentioned in clause 16(b)(i) and the Implementation Date (**New Entity Declaration**); and
 - (ii) Bidder does not know the New Entity Declaration to be false.
- (g) The Bidder acknowledges and agrees that it will not require any Scheme Shareholder to provide an Entity Declaration (including a New Entity Declaration) unless it reasonably determines that, absent the receipt of such declaration, it is required to pay an amount to the ATO under Subdivision 14-D in respect of such Scheme Shareholder. Where such a determination is made, or the Bidder otherwise determines that it is required to pay an amount to the ATO under Subdivision 14-D:
- (i) Bidder must, as soon as reasonably practicable (and, in any event, no later than 10 Business Days before the Second Court Hearing), give PSQ information which identifies (in reasonable detail and based on the information available to it at that time) the reasons as to why a liability arises under Subdivision 14-D in respect of the relevant Scheme Shareholder(s) and the basis of the calculation of the Withholding Amount;
 - (ii) PSQ may, as soon as reasonably practicable (and, in any event, no later than 5 Business Days prior to the Second Court Hearing), give information to Bidder which, in PSQ's reasonable opinion, demonstrates that there should not be a liability under Subdivision 14-D in respect of the relevant Scheme Shareholder(s) (irrespective of whether an Entity Declaration or New Entity Declaration is provided);
 - (iii) Bidder must have reasonable regard to, and consider in good faith, the information provided by PSQ under Clause 16(e)(ii) above before making its final decision on:
 - (A) whether an amount is required to be paid to the ATO under Subdivision 14-D in respect of the relevant Scheme Shareholder; and/or
 - (B) whether an Entity Declaration (including a New Entity Declaration) is required in respect of such Scheme Shareholder; and

- (iv) Where the decision is made that an Entity Declaration (including a New Entity Declaration) is required in respect of any Scheme Shareholder, the parties must consult in good faith as to the form and process by which the relevant Scheme Shareholder shall be requested to provide an Entity Declaration (or New Entity Declaration) for the purposes of this clause prior to the Implementation Date.

17 General

17.1 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 address set out below.

PSQ

Attention: Matthew Cordingley
Address: Level 1, 6 Molly Morgan Dr, Green Hills, NSW 2323 Australia
Email: [REDACTED]
with a copy (for information purposes only) to sturner@gtlaw.com.au

Bidder

Attention: Peter Lyon Mercardo
Address: Governor Phillip Tower, Level 29, 1 Farrer Place, Sydney NSW 2000
Email: [REDACTED]
with a copy (for information purposes only) to Aaron.Kenavan@AllenOvery.com and Jamie.Palmer@AllenOvery.com

- (b) Subject to clause 17.1(c), a Notice is taken to be received:
- (i) if sent by delivery, when it is delivered;
 - (ii) if sent by email:
 - (A) when the sender receives an automated message confirming delivery; or

- (B) one hour 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 17.1(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.

17.2 Governing law and jurisdiction

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

17.3 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.

17.4 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.

17.5 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.

17.6 Variation

- (a) Subject to clause 17.6(b), this deed may only be varied by a document signed by or on behalf of PSQ 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 PSQ Indemnified Party (other than PSQ) or a Bidder Indemnified Party (as the case may be) under this deed without the prior written consent of the majority of directors of PSQ at the date of this deed or the Bidder Indemnified Party (as the case may be).

17.7 Assignment

- (a) Subject to clause 17.7(c):
- (i) a party may not assign, novate, declare a trust over or otherwise transfer or deal with any of its rights or obligations under this deed without the prior written consent of the other party or as expressly provided in this deed; and
- (ii) a breach of clause 17.7(a)(i) by a party shall be deemed to be material in the context of this deed and the Scheme taken as a whole.
- (b) Clause 17.7(a)(ii) does not affect the construction of any other part of this deed.
- (c) Bidder may grant an Encumbrance over some or all of its rights under this deed in favour of:
- (i) any bank or other financial institution that provides financial accommodation to any Bidder Group Member and/or any PSQ Group Member; and/or
- (ii) a security trustee, facility agent or security agent, acting on behalf of any bank or other financial institution that provides financial accommodation to any Bidder Group Member and/or any PSQ Group Member, as security for the indebtedness of any Bidder Group Member and/or any PSQ Group Member.

17.8 Further action

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

17.9 Entire agreement

This deed supersedes all previous agreements, understandings, negotiations or deeds in respect of its subject matter, including the NDC Confidentiality Deed and Crescent Confidentiality Deed (which the parties agree to procure are terminated in full within 2 Business Days are hereby terminated), and embodies the entire agreement between the parties.

17.10 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 17.10 does not apply to any severance that alters the basic nature of this deed or is contrary to public policy.

17.11 Counterparts

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

For personal use only

1 Dictionary

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), management consultant or other adviser, consultant or expert engaged by a party (or a Related Body Corporate) in connection with the Transaction.

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

Applicable Anti-Bribery and Corruption Laws means the *Criminal Code Act 1995* (Cth), the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) or any other applicable legislation or regulation relating to anti-bribery, anti-corruption (governmental or commercial) or money laundering (as applicable) of any jurisdiction in which any PSQ Group Member conducts any business or otherwise applicable to any PSQ Group Member, in each case insofar as it relates to anti-bribery, anti-corruption or money laundering (as applicable).

Approved Purpose means the purpose of:

- (a) evaluating, negotiating, financing and implementing the Transaction; and/or
- (b) in the case of Bidder, developing and implementing plans for the transition of the businesses and operations of PSQ Group to Bidder, and/or, the conduct of such businesses and operations, following the implementation of the Scheme.

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.

Award means a modern award made under the *Fair Work Act 2009* (Cth), and includes (without double counting) any superannuation payable as required (but not more than required) by law to a person covered by that modern award.

Bidder Group means Bidder and each of its Related Bodies Corporate, and a reference to a '**Bidder Group Member**' or a '**member of the Bidder Group**' is to Bidder or any of its Related Bodies Corporate.

Bidder Indemnified Parties means:

- (a) Bidder, Crescent, NDC and their respective Related Bodies Corporate; and
- (b) the respective directors, officers and employees of Bidder, Crescent, NDC and their respective Related Bodies Corporate.

Bidder Information means information relating to Bidder and its Related Bodies Corporate provided by or on behalf of Bidder to PSQ 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 \$3,098,631.76 being approximately 1% of the Aggregate Scheme Consideration (excluding GST).

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

Capital Structure Schedule means the document so titled from PSQ's Advisers provided to Bidder on 28 April 2024.

Cash Rights means the long term incentives granted to Andrew Vidler as announced to ASX on 19 December 2023.

Change of Control Rights has the meaning given in clause 6.5(a).

Claim means any allegation, cause of action, claim or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Competing Proposal means any offer, proposal, expression of interest, transaction, agreement or arrangement (whether existing before, on or after the date of this deed) which, if entered into or completed substantially in accordance with its terms, would:

- (a) require the Transaction not being implemented substantially in accordance with the terms of this deed or requiring Bidder or PSQ to abandon, or otherwise fail to proceed with, the Transaction; or
- (b) result in a person either alone or together with any of its Associates (other than NDC, Crescent or their respective Associates or Related Bodies Corporate):
 - (i) directly or indirectly acquiring, receiving, becoming the holder of, having the right to acquire, or otherwise obtain:
 - (A) a Relevant Interest in;
 - (B) a legal, beneficial or economic interest (including by way of any equity swap, contract for difference or other derivative, or similar transaction or arrangement) in; or
 - (C) control of,

20% or more of the issued shares of PSQ;
 - (ii) directly or indirectly acquiring, receiving, becoming the holder of, having the right to acquire, or otherwise obtain, a legal, beneficial or economic interest

(including by way of any equity swap, contract for difference or other derivative, or similar transaction or arrangement) in, control of:

- (A) 20% or more of the issued shares of PSQ; or
- (B) all or a material part of the business or assets of PSQ and its subsidiaries (taken as a whole); or
- (iii) directly or indirectly acquiring Control of PSQ or any material Related Body Corporate of PSQ; or
- (iv) otherwise directly or indirectly acquiring or merging with PSQ or any material Related Body Corporate of PSQ,

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 any proposal, offer, expression of interest, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

Condition means a condition set out in clause 3.1.

Confidential Information in relation to the Discloser, means:

- (a) all information (whether written or oral and regardless of form) relating to the Discloser and its Related Bodies Corporate disclosed or made available (whether before or after the date of this deed) by the Discloser or its Representatives to the Recipient or its Representatives in connection with this deed; and
- (b) all information (regardless of form) prepared by or on behalf of the Recipient or its Representatives which is based on or derived from, or which includes, incorporates or refers to, any of the foregoing information,

but excludes:

- (c) information which is or becomes part of the public domain (other than as a result of a breach of this deed, the Bidder Confidentiality Deed or the Crescent Confidentiality Deed);
- (d) information which was in the Recipient's possession before the Discloser disclosed it to the Recipient, and which the Recipient did not acquire directly or indirectly from the Discloser or from any person who the Recipient know owed an obligation of confidence to the Discloser;
- (e) information which is received in good faith by the Recipient from a third party entitled to disclose it; or
- (f) information which is independently developed by the Recipient or any of its Representatives without use of or reference to the Confidential Information.

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 Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act agreed to in writing by PSQ 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.

Crescent means Crescent Capital Pty Limited (ACN 109 446 657).

Crescent Confidentiality Deed means the confidentiality deed between PSQ and Crescent dated 1 March 2024 (as amended).

Cybersecurity Incident means any unauthorised access to any part of PSQ Information System that may have a material adverse effect on the confidentiality, integrity, security, control or availability of: (a) any material part of PSQ Information System; or (b) any Personal Data or other material information or data in any part of PSQ Information System (each, an **Unauthorised Event**), provided that such Unauthorised Event, or such series of related Unauthorised Events, shall not constitute a Cybersecurity Incident if, within 30 Business Days (or such shorter period ending at 5:00pm on the Business Day before the Second Court Date) after PSQ becomes aware of such Unauthorised Event, or such series of related Unauthorised Events, PSQ has received, and provided Bidder with, written advice from an external cybersecurity consultant who is:

- (a) well experienced in advising on cybersecurity incidents, which are substantially similar to such Unauthorised Event, or such series of related Unauthorised Events; and
- (b) acceptable to Bidder (acting reasonably),

that such Unauthorised Event, or such series of Unauthorised Events, has had no, and is not likely to have any, material adverse effect on the confidentiality, integrity, security, control or availability of any Personal Data such that it is not reasonably likely that any former or existing patient of any dental centre operated or managed by any member of the PSQ Group before, on, or after, the date of this deed will suffer serious harm.

For the avoidance of doubt, PSQ is not obliged to seek written advice from an external cybersecurity consultant with respect to any Unauthorised Event if that Unauthorised Event has not resulted in, or is not likely to result in, any loss of confidentiality, integrity, security, control or availability of any Personal Data of any former or existing patient of any dental centre operated or managed by any member of the PSQ Group before, on, or after, the date of this deed.

Data Room means the online electronic data room entitled 'Project Steel' administered by Ansarada in connection with the Transaction established and maintained by or on behalf of PSQ as at 11:59pm on 26 April 2024 and the contents of which are set out in an electronic index sent by Gilbert + Tobin to Allen & Overy on or before the date of this deed.

Debt Commitment Letter means the binding, credit-approved, executed commitment letter and accompanying term sheet(s) from one or more:

- (a) financial institutions whose creditworthiness is approved in writing by PSQ (acting reasonably) or banks; or

- (b) trusts, funds or other entities which are regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities and/or other financial assets (including derivatives) as approved in writing by PSQ in its absolute discretion,

in each case, addressed to Bidder, Crescent, NDC and/or any of their respective Related Bodies Corporate and dated on or before the date of this deed.

Debt Financing means the financing commitments set out in the Debt Commitment Letter.

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

Discloser means the party disclosing Confidential Information.

Disclosure Letter means the letter so titled from PSQ provided to Bidder on 27 April 2024.

Disclosure Materials means:

- (a) the Disclosure Letter;
- (b) the written information, documents and responses disclosed or made available to Bidder or its Representatives by or on behalf of PSQ in the Data Room (including written responses to questions in the Data Room) no later than 5:00pm on 26 April 2024 (an index of which has been provided by PSQ's Representatives to Bidder's Representatives before execution of this deed for the purposes of identification);
- (c) the Incentives Schedule provided to Bidder by PSQ's Advisers on 26 April 2024;
- (d) the document setting out the Transaction Costs Cap agreed between Bidder and PSQ before the date of this deed; and
- (e) the minutes of PSQ Board meetings provided to Bidder by PSQ's Advisers on 26 April 2024.

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 or having similar effect, including a mortgage, charge, lien, assignment, pledge, power or title retention or flawed deposit arrangement, or any other agreement, trust or arrangement entered into for the purpose of conferring a priority, and including any "security interest" as defined in sections 12(1) or 12(2) of the PPSA.

End Date means 31 December 2024 or such later date as PSQ and Bidder may agree in writing.

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

- (a) the termination of this deed in accordance with clause 11; and
- (b) the End Date.

Fairly Disclosed means, in relation to any fact, matter, circumstance or event, disclosed to Bidder to a sufficient extent, and in sufficient detail, so as to enable a reasonable and sophisticated bidder who is experienced in transactions similar to the Scheme to identify or otherwise determine the nature and scope of the relevant fact, matter, circumstance or event and in relation to any fact, matter, circumstance or event in connection with payroll tax or nib Health Funds Ltd (or any of its Related Bodies Corporate), the nature, scope and impact of the relevant fact, matter, circumstance or event.

FATA has the meaning given in clause 3.1(a)(i).

Financial Indebtedness means any debt or other monetary liability (whether actual or contingent) for or in respect of:

- (a) monies borrowed and any debit balance at any financial institution;
- (b) the issue of any bill, bond, debenture, notes, loan stock or other similar instrument or any note purchase facility;
- (c) any acceptance, endorsement or discounting arrangement;
- (d) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (e) any financial or capital lease or hire purchase contract which would, in accordance with accounting standards, be treated as a balance sheet liability (other than any liability in respect of a lease or hire purchase contract which would, in accordance with accounting standards in force prior to 1 January 2019, have been treated as an operating lease);
- (f) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (g) any redeemable shares where the holder has the right, or the right in certain conditions, to require redemption;
- (h) swap, hedge arrangement, option, futures contract, derivative or analogous transaction;
- (i) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or business;
- (j) agreement for the deferral of a purchase price or other payment in relation to the provision of services payable more than 90 days after the provision of those services;
- (k) obligation to deliver goods or provides services paid for in advance by any financier;
- (l) any amount raised under any other transaction of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (m) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (l) above.

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 PSQ 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**.

First Increase Date has the meaning given in clause 5.1(g).

Genesis means Genesis Capital Manager I Pty Ltd (ACN 634 339 576) of Level 9, 309 Kent Street, Sydney, NSW 2000.

Genesis Process Deed means the process deed dated 19 March 2024 entered into between Genesis and PSQ in the form attached to the announcement made by PSQ to the ASX on 19 March 2024.

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 OAIC, ASX, ASIC and the Takeovers Panel).

GST exclusive consideration has the meaning given in clause 15(b).

HBF Agreement means the Management Services Agreement between PSQ, HBF Dental Services Pty Ltd (ACN 641 836 740), HBF Wellness Holdings Pty Ltd (ACN 162 625 390) and HBF Health Limited (ACN 126 884 786) dated 6 July 2020.

Implementation Date means the fifth Business Day after the Record Date or such other day as PSQ and Bidder agree in writing or is ordered by the Court.

Incentive Plans means the PSQ long-term incentive plan rules.

Incentives Schedule means the document titled 'Incentives Schedule and Vesting Plan' provided to Bidder by PSQ's Advisers on 24 April 2024.

Independent Expert means the independent expert to be appointed by PSQ 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 PSQ Shareholders (and reasons for holding that opinion), and includes an update or supplement to that report.

Insolvency Event means, in relation to any entity:

- (a) any "default" or "review" event (in each case howsoever described) under any existing debt financing arrangement of the entity;
- (b) the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity;
- (c) 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 business, property or assets;
- (d) the entity executing a deed of company arrangement;

- For personal use only
- (e) the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;
 - (f) 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);
 - (g) the entity is, or is under legislation is presumed or taken to be, insolvent; or
 - (h) the entity being deregistered as a company or otherwise dissolved,

or any other like event, matter or circumstance occurring in relation to the entity under the law of any jurisdiction.

Insurance Policy means each of the insurance policies of the PSQ Group noted in the insurance program contained in document 02.07.08.01 in the Data Room.

Key Employee means the persons holding the following titles in PSQ from time to time:

- (a) Chief Executive Officer;
- (b) Chief Operating Officer;
- (c) Chief Commercial Officer;
- (d) Chief Financial Officer;
- (e) Head of Technology;
- (f) Executive General Manager – Clinical Excellence; and
- (g) Executive General Manager – People and Culture.

Material Adverse Change means an event, change, condition, circumstance, thing, occurrence or matter:

- (a) that occurs after the date of this deed; or
- (b) that occurs on, or occurred before, the date of this deed but that only becomes known to Bidder, or is only announced or publicly disclosed, after the date of this deed,

(each a **Specified Event**), whether individually or when aggregated with all the other Specified Events, has had or is reasonably likely to have, the effect of:

- (c) diminishing the net assets of the PSQ Group by \$10,500,000 or more, as compared to what the net assets of the PSQ Group could reasonably be expected to have been but for such Specified Event; or
- (d) diminishing the consolidated EBITDA of the PSQ Group (in any financial year) by at least \$4,050,000 as compared to what the consolidated EBITDA of the PSQ Group (in that financial year) could reasonably be expected to have been but for such Specified Event,

in each case other than an event, change, condition, circumstance, thing, occurrence or matter (excluding, for the purposes of paragraphs (e) to (l) (inclusive) below any event,

change, condition, circumstance, thing, occurrence or matter in connection with: (i) payroll Tax; and (ii) nib Health Funds Ltd):

- (e) which is required or expressly permitted by this deed or the Scheme or is required by the Transaction;
- (f) which is Fairly Disclosed in the Disclosure Materials;
- (g) to the extent it was Fairly Disclosed in an announcement made by PSQ to the ASX in the five years prior to the date of this deed or the Relevant Searches;
- (h) to the extent it was actually known to Bidder, NDC or Crescent or their respective Related Bodies Corporate prior to the date of this deed (which does not include knowledge of the risk of an event, change, condition, thing, occurrence, matter or circumstance occurring and does not include any knowledge of any matter in connection with any payroll Tax);
- (i) which Bidder, NDC or Crescent has previously approved, consented to or requested in writing;
- (j) relating to the payment of the Transaction Costs to the extent that such amounts do not exceed the Transaction Costs Cap;
- (k) relating to the payment of costs and expenses incurred by any member of the PSQ Group in connection with PSQ ceasing to progress planned centre openings;
- (l) which result or arise from or in connection with:
 - (i) changes in exchange rates or interest rates;
 - (ii) general economic, political, trading or business conditions, or changes to them, including changes or disruptions to, or fluctuations in, domestic or international financial markets or consumer demand, or changes in interest rates, foreign currency exchange rates or commodity prices, other than where such matters have a materially disproportionate effect on the PSQ Group as compared to other businesses operating in the same market segments in the dental services sector as the PSQ Group;
 - (iii) acts of terrorism, war (whether or not declared and including without limitation the current conflict in Ukraine), natural disaster or adverse weather conditions;
 - (iv) general outbreaks of illness which is a pandemic (including COVID-19 or any mutation, variation or derivative), or from any law, order, rule or direction of any Government Agency in relation thereto; or
 - (v) any actual or proposed change in any law, regulation or policy, or in any accounting principle or standard, or in the interpretation or application of any of the foregoing;
- (m) in respect of payroll tax, to the extent its impact does not exceed the amount set out in the financial statements of the PSQ Group included in its half year report for the half year ended 31 December 2023 (and for the avoidance of doubt, any

amount above the amount set out in those financial statements will be included in determining whether there is a Material Adverse Change); or

- (n) in respect of nib Health Funds Ltd, to the extent its impact does not exceed the amount set out in Item 2 of Annexure A of the Disclosure Letter (and for the avoidance of doubt, any amount above that amount will be included in determining whether there is a Material Adverse Change); or

Material Contract means:

- (a) the HBF Agreement; and
- (b) Dental Relationship and Marketing Agreement between nib Health Funds Ltd (ACN 000 124 381) and PSQ dated 12 May 2012 (as amended).

NDC means NDC Holdco Pty Ltd (ACN 654 148 188).

NDC Confidentiality Deed means the confidentiality deed between PSQ and NDC dated 6 February 2024 (as amended).

Non-public Information means any non-public information in relation to PSQ, PSQ Group or any member of PSQ Group or any business, asset or affairs of PSQ, PSQ Group or any member of PSQ Group.

Notice has the meaning given in clause 17.1(a).

OAIC means the Office of the Australian Information Commissioner;

Performance Rights means the PSQ performance rights issued under the Incentive Plans and the Cash Rights.

Permitted Dividend has the meaning given in clause 5.1(a).

Permitted Encumbrance means:

- (a) the registrations with Stockland Trust Management Limited, Quadiant Finance Australia Pty Ltd and De Lage Landen Pty Ltd existing at the date of this deed (which PSQ agrees to use all reasonable endeavours to remove before the Implementation Date);
- (b) any bankers' liens (where the relevant financial institution has not provided any financial accommodation) or netting or set off arrangement entered into by a member of the PSQ Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (c) any interest which would be an 'Encumbrance' solely by virtue of the operation of section 12(3) of the PPSA which does not, in substance, secure payment or performance of an obligation;
- (d) any lien arising by operation of law in the ordinary course of ordinary business so long as the debt it secures is paid when due or contested in good faith and appropriately provisioned; and
- (e) any title retention arrangement in the ordinary course of trading on the supplier's usual terms of sale (or on terms more favourable to the PSQ Group) so long as the debt it secures is paid when due or contested in good faith and sufficient reserves of liquid assets have been set aside to pay the debt if the contest is unsuccessful.

Permitted Financial Indebtedness means:

- (a) any credit card facilities of any member of the PSQ Group up to an aggregate limit of \$250,000;
- (b) existing bank guarantees as at the date of this deed to the extent Fairly Disclosed in the Disclosure Materials (including any replacements of those bank guarantees on substantially equivalent terms); and
- (c) additional Financial Indebtedness up to \$2,000,000.

Permitted NDA means a new, or an amendment to an existing, confidentiality or non-disclosure deed or agreement (however described):

- (a) to be entered into between a member of the PSQ Group and any person in connection with, with a view to obtaining, or which could reasonably be expected to encourage or lead to, an actual, proposed or potential Competing Proposal; and
- (b) which does not impose any obligation on PSQ or any of its Representatives to:
 - (i) pay (or continue to pay) any break fee, reimburse (or continue to reimburse) any person for any cost, expense or liability, or to share (or continue to share) the cost, expense or liability of any person;
 - (ii) continue to make available any Non-public Information or diligence access to, or to continue any communication with, any person at any time that the PSQ Board has not determined (or, having so determined, has ceased to hold such view) that such Competing Proposal is, or would reasonably be expected to lead to, a Superior Proposal; or
 - (iii) otherwise take any action, or not take any action, which constitutes a breach of any provision in clause 7.

Personal Data means information relating to an identified or identifiable individual.

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

PPSR means the Personal Property Securities register established under section 147 of the PPSA.

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

PSQ Board means the board of directors of PSQ.

PSQ Director means a director of PSQ.

PSQ Group means PSQ and each of its Related Bodies Corporate, and a reference to a '**PSQ Group Member**' or a '**member of the PSQ Group**' is to PSQ or any of its Related Bodies Corporate.

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

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

PSQ Information System means computers, computer systems, workstations, tablets, mobile devices, phones, blades, servers, peripheral devices, software, applications, programs, hardware, databases, circuits, networks, routers, hubs, switches, interfaces, websites, platforms, automated networks and control systems, and all other information technology systems, which are owned, leased or used (including through cloud-based or other third party service providers) by any member of PSQ Group.

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

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

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

Recipient means the party receiving Confidential Information.

Recommendation has the meaning given in clause 2.3(b).

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

Registry means Automic Group Share Registry.

Regulatory Approvals means an approval, consent or notification required to satisfy the Condition Precedent in clause 3.1(a), 3.1(c), 3.1(d) or 3.1(f).

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.

Relevant Searches means public searches:

- (a) of the ASIC companies register, in respect of PSQ, Dentist Smiles Group Pty Limited, Dental Assistant Training Solutions Pty Limited, Pacific Eyes Pty Limited and Everything Dentures Pty Limited 26 April 2024; and
- (b) of the PPSR, in respect of PSQ, Dentist Smiles Group Pty Limited, Dental Assistant Training Solutions Pty Limited, Pacific Eyes Pty Limited and Everything Dentures Pty Limited 26 April 2024.

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

Restraint has the meaning given in clause 3.1(f).

Scheme means the scheme of arrangement between PSQ and the 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, in the form of Attachment B or such other form as agreed in writing between PSQ and Bidder subject to any alterations or conditions that are:

- (a) agreed to in writing by PSQ 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 PSQ and Bidder.

Scheme Booklet means the scheme booklet prepared in respect of the Scheme pursuant to section 412 of the Corporations Act and in accordance with the terms of this deed (including clause 4.2(l)(i)) to be dispatched to the PSQ Shareholders and which must include or be accompanied by:

- (a) a copy of the Scheme;
- (b) an explanatory statement complying with the requirements of the Corporations Act, the Corporations Regulations and ASIC Regulatory Guide 60;
- (c) the Independent Expert's Report;
- (d) a copy or summary of this deed;
- (e) a copy of the executed Deed Poll;
- (f) a notice of the Scheme Meeting; and
- (g) a proxy form(s).

Scheme Consideration means, in respect of each Scheme Share, \$1.90 subject to, and as adjusted in accordance with, clauses 5.1(f) and 5.1(g).

Scheme Meeting means the meeting of PSQ Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider the Scheme, and including any adjournment thereof.

Scheme Share means a PSQ Share held by a Scheme Shareholder as at the Record Date.

Scheme Shareholder means a PSQ 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**.

Security Interest means any mortgage, charge, pledge, lien, assignment or other security interest or any other arrangement (including a right of set off or combination) entered into for the purpose of conferring a priority, including any security interest as defined in section 51A of the Corporations Act or in the PPSA.

Share Register means the register of members maintained by PSQ in accordance with the Corporations Act.

Subsequent Increase Date has the meaning given in clause 5.1(g).

Superior Proposal means a bona fide Competing Proposal which at least a majority of the PSQ Board, acting in good faith and in order to satisfy what at least a majority of the PSQ Board considers to be its fiduciary or statutory duties, and after having obtained advice from its legal and financial Advisers, determines:

- (a) is reasonably capable of being completed in accordance with its terms in a reasonable time; and

- (b) would be reasonably likely to be more favourable to PSQ Shareholders than the Scheme (as may be amended or varied following the application of the matching rights set out in clause 7.8(a)),

taking into account all aspects of the Competing Proposal, including its conditions, the identity and the financial condition of the person making such proposal and all relevant legal, regulatory and financial matters.

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

Tax means any tax, levy, charge, impost, fee, deduction, goods and services tax, 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.

Tax Act means the *Income Tax Assessment Act 1997* (Cth), the *Income Tax Assessment 1936* (Cth) and/or the *Taxation Administration Act 1953* (Cth).

Terminating Party has the meaning given in clause 3.5(b).

Third Party means a person other than Bidder, NDC, Crescent and their respective Associates.

Timetable means the indicative timetable for the implementation of the Transaction set out in Attachment A (as may be amended by agreement in writing between Bidder and PSQ).

Transaction means the acquisition of PSQ Shares by Bidder by means of the Scheme.

Transaction Costs means all third party adviser costs, fees and expenses (exclusive of GST to the extent input tax credits are available) that are incurred or paid, have been agreed to incur or pay, or are payable, in connection with the transactions contemplated by the Transaction Documents (or any Competing Proposal) and all bonuses, incentives and other payments to directors, officers, employees of PSQ Group (inclusive of superannuation) that are incurred or paid, have been agreed to incur or pay, or are payable, by any member of PSQ Group (other than those listed in the Incentives Schedule) in connection with the transactions contemplated by the Transaction Documents (or any Competing Proposal) or as a result of the implementation of the Scheme, and also includes any costs, fees and expenses associated with:

- (a) any directors' and officers' run-off insurance policy taken out in accordance with clause 6.11; and
- (b) any break fee, cost reimbursement or cost sharing agreement with any person in connection with a Competing Proposal.

Transaction Costs Cap means the amount as set out in a document agreed between Bidder and PSQ before the date of this deed.

Transaction Documents means this deed, the Scheme and the Deed Poll.

Transition Committee has the meaning given in clause 6.13(a).

Treasurer has the meaning given in clause 3.1(a)(i).

Voting Power has the meaning given in section 610 of the Corporations Act.

Warranty means a PSQ Warranty or Bidder Warranty (as applicable).

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 (other than the Genesis Process Deed and the FIRB Guidance Note 12 "Tax Conditions" (in the form last updated on 10 August 2023)) 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) A reference to any time in this deed is a reference to such time in Sydney, NSW, Australia.
- (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.

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Schedule 2 PSQ Warranties

- (a) **Validly existing:** PSQ and each other PSQ Group Member is a validly existing corporation registered under the laws of its place of incorporation.
- (b) **Power:** PSQ has full corporate power and lawful authority to execute, deliver and perform this deed and the Scheme.
- (c) **Corporate action:** PSQ has taken the necessary corporate action to authorise the entry into and delivery of this deed and has taken or will take all necessary corporate action to authorise the performance of this deed and the Scheme.
- (d) **Authorisations:** PSQ has in full force and effect each authorisation necessary for it to enter into and deliver 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 legal, valid and binding obligation on PSQ, enforceable in accordance with its terms.
- (f) **Performance:** The execution and performance by PSQ of this deed does not and will not violate or breach any provision of:
- (i) any writ, order or injunction, judgment, law, decree, rule or regulation to which PSQ or any other PSQ Group Member is party or by which PSQ or any other PSQ Group Member is bound or otherwise subject; or
 - (ii) PSQ or any other PSQ Group Member's constitution,
- and PSQ or any other PSQ Group Member is not otherwise bound by any agreement or deed that would prevent or restrict PSQ from entering into and/or performing this deed.
- (g) **Capital structure:** As at the date of this deed, there are on issue:
- (i) 159,581,938 PSQ Shares; and
 - (ii) 3,503,944 Performance Rights (which includes 225,600 Cash Rights),
- and:
- (iii) on the Implementation Date there will be no more than the maximum number of PSQ Shares on issue as set out for that date in the Capital Structure Schedule and there will no longer be any Performance Rights (including any Cash Rights) on issue;
 - (iv) save for the 3,503,944 Performance Rights (which includes 225,600 Cash Rights) and the proposed issues contemplated by the Incentives Schedule:
 - (A) PSQ has not issued or agreed to issue or grant any other securities, shares, warrants, options, performance rights, convertible notes, instruments or rights (or obligations, offers or agreements or issue any of the foregoing) which are still outstanding and may convert into PSQ Shares;
 - (B) PSQ is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any other such securities, shares, options, warrants, performance rights, convertible notes, instruments or rights in PSQ;

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- (v) all the issued securities of each PSQ Group Member (other than PSQ) are held by PSQ; and
 - (vi) other than the proposed issues contemplated by the Incentives Schedule, no PSQ Group Member has issued or granted (or agreed to issue or grant) any other securities, shares, options, warrants, performance rights, convertible notes, instruments or rights which are still outstanding and may convert into shares and no PSQ Group Member (other than PSQ, but only in respect of the up to 3,278,344 PSQ Shares to be issued on the vesting and conversion of 3,278,344 Performance Rights (which excludes the Cash Rights)) is under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any securities, shares, options, warrants, performance rights, convertible notes, instruments or rights in a PSQ Group Member.
 - (h) **PSQ Information:** The PSQ Information included in the Scheme Booklet and any supplementary disclosure made to PSQ Shareholders pursuant to clause 4.2(s) (excluding any information provided by Bidder) has been prepared in good faith and, as at the date of the Scheme Booklet or supplementary disclosure (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).
 - (i) **Reliance:** the PSQ Information contained in the Scheme Booklet will be included on the understanding that Bidder and its directors and the Bidder Indemnified Parties will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme.
 - (j) **Information provided to Independent Expert:** The information provided to the Independent Expert by or on behalf of PSQ 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.
 - (k) **Insolvency event or regulatory action:** No member of the PSQ Group is the subject of an Insolvency Event, nor has any regulatory action of any nature of which PSQ is aware been taken or threatened that would prevent or in any way restrict its ability to fulfil its obligations under this deed.
 - (l) **Disclosure:** As at the date of this deed, PSQ is in compliance and has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and PSQ is not withholding from disclosure to ASX any material information in reliance on Listing Rule 3.1A other than in relation to the Transaction or any potential or actual Competing Proposal.
 - (m) **Disclosure Materials:**
 - (i) The Disclosure Materials:
 - (A) were compiled and made available to Bidder and its Representatives in good faith and with reasonable diligence, care and skill (having regard to the purpose for which they were compiled); and
 - (B) are not, to the best of its knowledge, after due enquiry, misleading or deceptive, or likely to mislead or deceive (including by omission), in any material respect as at the date of this deed.

(ii) PSQ has not, prior to the date of this deed, intentionally omitted or withheld material information:

(A) that a reasonable financial sponsor in the Australian market would require to undertake legal, financial, accounting, commercial and tax due diligence investigations on a listed target company; or

(B) in response to requests for information by Bidder and its Representatives, that have been communicated by Bidder to PSQ via the 'Question and Answer' facility in the Data Room from the Disclosure Materials,

for the purpose of securing the agreement of Bidder to proceed with the Transaction on the terms of this deed and the Scheme.

(n) **Accounts:** The financial statements of the PSQ Group included in its half year report for the half year ended 31 December 2023 and the full year report for the full year ended 30 June 2023:

(i) have been prepared in accordance with the requirements of the Corporations Act and any other applicable laws and in accordance with the Accounting Standards; and

(ii) give a true and fair view in all material respects of the consolidated financial position of the PSQ Group as of each of those respective dates and of the performance of the PSQ Group for the periods to which those financial statements relate.

(o) **Compliance with laws:** Each PSQ Group Member has complied in all material respects with all applicable laws and regulations (including the Applicable Anti-Bribery and Corruption Laws) and orders of applicable Government Agencies.

(p) **Material Contracts:**

(i) Each member of the PSQ Group that is a party to a Material Contract is materially in compliance with, and has not materially breached the terms of, that Material Contract.

(ii) Copies of all Material Contracts included in the Disclosure Materials are in all material respects current, accurate and complete (when considered with any and all amendments, variations, supplements, addendums, annexures, appendices, extensions and/or renewals in respect of such Material Contracts that are also included in the Disclosure Materials).

(q) **No knowledge of Material Adverse Change:** As at the date of this deed, PSQ is not aware of any information relating to the PSQ Group or its respective businesses or operations 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 to Bidder.

(r) **No material litigation or enforcement:** Other than as Fairly Disclosed in the Disclosure Materials:

(i) no member of the PSQ Group is party to a claim which could reasonably be expected to give rise to a material liability for, or have a material adverse effect on, the PSQ Group; or

(ii) so far as PSQ is aware, as at the date of this deed, there is no pending or threatened claim, dispute, demand, action, litigation, prosecution, arbitration, investigation,

mediation or other proceeding, nor any facts, matters or circumstances that will or are reasonably likely to give rise to the foregoing, against any member of the PSQ Group:

- (A) which could reasonably be expected to result in an award, settlement, fine, penalty, order, loss or other liability to the PSQ Group that will or is likely to give rise to a material liability for, or have a material adverse effect on the operational or financial performance, or the reputation, of the PSQ Group; or
 - (B) involving an actual or alleged breach of Applicable Anti-Bribery and Corruption Laws; and
- (iii) so far as PSQ is aware, no enforcement action or investigation has been announced or commenced by any Regulatory Authority against or involving a member of the PSQ Group which could reasonably be expected to give rise to a material liability for, or have a material adverse effect on, the PSQ Group;
 - (iv) as at the date of this deed, there are no unsatisfied or outstanding judgements, awards, orders, decrees claims or written demands against any PSQ Group Member.
- (s) **No Encumbrances:** Other than the Permitted Encumbrances or otherwise as Fairly Disclosed in the Disclosure Materials or the Relevant Searches, there are no Encumbrances over any of the assets or revenues of any PSQ Group Member.
 - (t) **Material licences:** As at the date of this deed:
 - (i) the PSQ Group has all material licences, authorisations and permits necessary for it to conduct the business of the PSQ Group as it is being conducted as at the date of this deed; and
 - (ii) no member of the PSQ Group is in material breach of, or material default under, any such licence, authorisation or permit or has received any notice in respect of the termination, revocation, variation or non-renewal of any such licence, authorisation or permit and so far as PSQ is aware there are no facts, matters or circumstances that will or are reasonably likely to give rise to the foregoing.

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 other constituent documents.
- (f) **No interest:** neither Bidder nor its Related Bodies Corporate has:
- (i) Any Voting Power in PSQ; 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 PSQ Shares (including cash- settled derivatives, contracts for difference and other derivatives).
- (g) **Not a registered private health insurer:** Neither the Bidder nor its Related Bodies Corporate is a registered private health insurer pursuant to the *Private Health Insurance Act 2007* (Cth).
- (h) **Bidder Information:** The Bidder Information included in the Scheme Booklet, and any other information provided by Bidder pursuant to clause 4.3(h), has been 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).
- (i) **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.
- (j) **Insolvency Event or regulatory action:** Bidder is not 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.

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- (k) **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.
 - (l) **No dealings with PSQ Shareholders:** Neither Bidder nor any of its Associates has any agreement, arrangement or understanding with any PSQ Shareholder under which:
 - (i) that PSQ Shareholder (or an Associate of that PSQ Shareholder) would or may be or become entitled to receive:
 - (A) consideration for their PSQ Shares that is different from the Scheme Consideration; or
 - (B) any benefit that is not also offered to all other PSQ Shareholders on the same terms; or
 - (ii) that PSQ Shareholder agrees to vote in favour of the Scheme or against any Competing Proposal.
 - (m) **No dealings with PSQ Directors or employees:** Neither Bidder nor any of its Associates has any agreement, arrangement or understanding with any director, officer or employee of PSQ or any other member of the PSQ Group relating in any way to the Transaction or the business or operations of the PSQ Group after the Effective Date.
 - (n) **Reasonable basis:** As at the date of this deed, 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) to satisfy its obligations to pay the Aggregate Scheme Consideration in accordance with this deed and the Deed Poll.
 - (o) **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 conditions within the control of Bidder or Bidder Group Member or documentary requirements which, by their terms or nature, can only be satisfied or performed after the Second Court Date) 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.
 - (p) **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.
 - (q) **No shareholder approvals:** No approvals are required from Bidder's shareholders (or any class of them), co-investors or investment committee in connection with the execution or performance of this deed.

Schedule 4 Prescribed Occurrences

The occurrence of any of the following:

- (a) any Cybersecurity Incident;
- (b) the entering into of any lease, sub-lease, licence of real estate or other similar agreement or document in respect of any premises at which the PSQ Group is not operating or managing a dental centre as at the date of this deed which is not capable of being terminated by a member of the PSQ Group at any time with one month or less notice after the Implementation Date without compensation (other than where necessary or desirable in connection with opening new centres or exercising rights/complying with obligations pursuant to the HBF Agreement);
- (c) the renewal (or entry into any replacement lease with the effect of renewing), extension, exercise of any option in respect of, or amendment of, any lease, sub-lease, licence of real estate or other similar agreement or document in respect of any dental centre operated or managed by any PSQ Group Member (other than where necessary or desirable in connection with opening centres or exercising rights/complying with obligations pursuant to the HBF Agreement) where that centre has generated a negative EBITDA in the 12-month period ending on 31 March 2024, unless:
 - (i) the lease for that centre which is in place as at the date of this deed will expire on or before the End Date; and
 - (ii) the lease is renewed or extended for a period not exceeding six months following expiry of the lease;
- (d) the settlement or compromise of any dispute, audit, investigation or material inquiry relating to Tax or material amendment to any Tax return;
- (e) without the prior written consent of Bidder, the vesting or exercise of any Performance Rights or similar rights or the conversion of any Performance Rights into PSQ Shares or cash in a manner other than in accordance with their terms as at the date of this deed and substantially consistent with the Incentives Schedule provided it does not cause the warranty in paragraph (g)(iii) of Schedule 2 to be untrue or incorrect;
- (f) PSQ converting all or any of its securities or performance rights (including the PSQ Shares and the Performance Rights other than the Cash Rights) into a larger or smaller number of securities or performance rights;
- (g) any member of the PSQ Group resolving to reduce its share capital in any way or reclassifying, combining, splitting, redeeming or repurchasing, directly or indirectly, any of its securities or performance rights (including the PSQ Shares and the Performance Rights other than the Cash Rights);
- (h) any member of the PSQ Group:
 - (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;

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- (i) any member of the PSQ Group issuing securities or preferred rights, or granting any performance or incentive rights or any option over any of its securities or preferred rights, or agreeing to make any such issue or grant, other than:
 - (i) in a manner which is substantially consistent with the Incentives Schedule, including on vesting or exercise of, or in respect of, a Performance Right existing as at the date of this deed or issued after the date of this deed in accordance with the Incentives Schedule provided it does not cause the warranty in paragraph (g)(iii) of Schedule 2 to be untrue or incorrect; or
 - (ii) to a member of the PSQ Group;
 - (j) any member of the PSQ Group issuing, or agreeing to issue, securities convertible into shares (including any issue or agreement to issue performance rights, options, debt securities or other instruments or rights convertible or exercisable into shares), other than in a manner which is substantially consistent with the Incentives Schedule;
 - (k) any member of the PSQ Group declaring, paying or distributing, agreeing to declare, pay or distribute, or announcing an intention to declare, pay or distribute, any distribution, bonus share or other share of its profits or assets, whether by way of dividend, capital reduction or otherwise and whether in cash or in specie, other than the Permitted Dividend;
 - (l) any member of the PSQ Group reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
 - (m) any member of the PSQ Group disposing of any part of the PSQ Group's business, assets, property or interest having in aggregate value of \$1,000,000 or more (whether by way of a single transaction or series of related transactions);
 - (n) any member of the PSQ Group acquiring or investing in any business, assets or property or an interest in a partnership or joint venture, entity or undertaking, having in aggregate value of \$1,000,000 or more (whether by way of a single transaction or series of related transactions);
 - (o) any member of the PSQ Group granting, or agreeing to grant, a security interest over a material part of its assets, business or property or the PSQ Group's assets, business or property;
 - (p) any member of the PSQ Group entering into, or resolving to enter into, a transaction with any related party of PSQ (other than a related party which is a member of the PSQ Group), as defined in section 228 of the Corporations Act;
 - (q) any member of the PSQ Group making any change to, or replacing, its constitution or adopting a new constitution;
 - (r) any member of the PSQ Group resolving that it be wound up;
 - (s) any member of the PSQ Group permanently ceasing, or threatening to permanently cease, the whole or a material part of its business;
 - (t) PSQ Shares ceasing to be officially quoted on the ASX before the Implementation Date;
 - (u) an Insolvency Event occurs in relation to any member of the PSQ Group other than any dormant entity; or
 - (v) any member of the PSQ Group authorising, resolving, committing or otherwise being bound to do any of the matters set out above, whether conditionally or otherwise,

but does not include any occurrence:

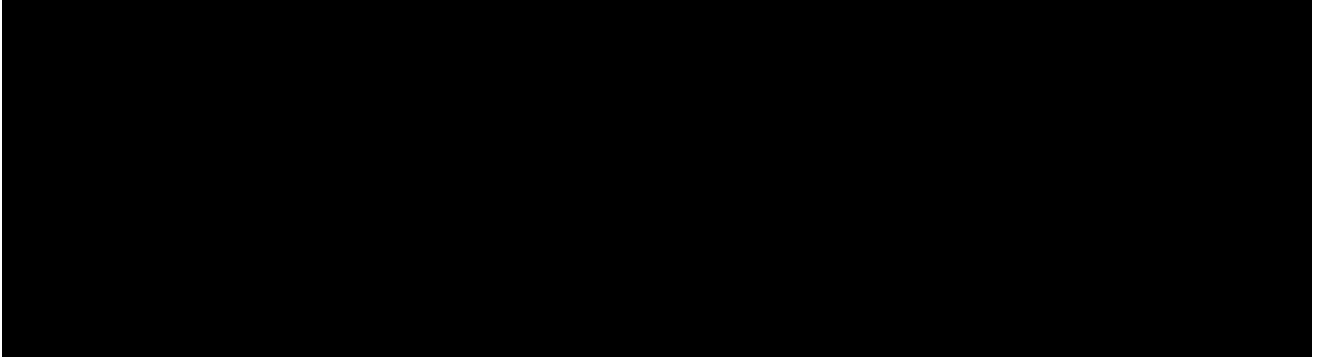
- (w) required or expressly permitted by this deed or the Scheme;
- (x) Fairly Disclosed in the Disclosure Letter; or
- (y) approved, consented to or requested by Bidder, NDC or Crescent in writing.

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Execution page

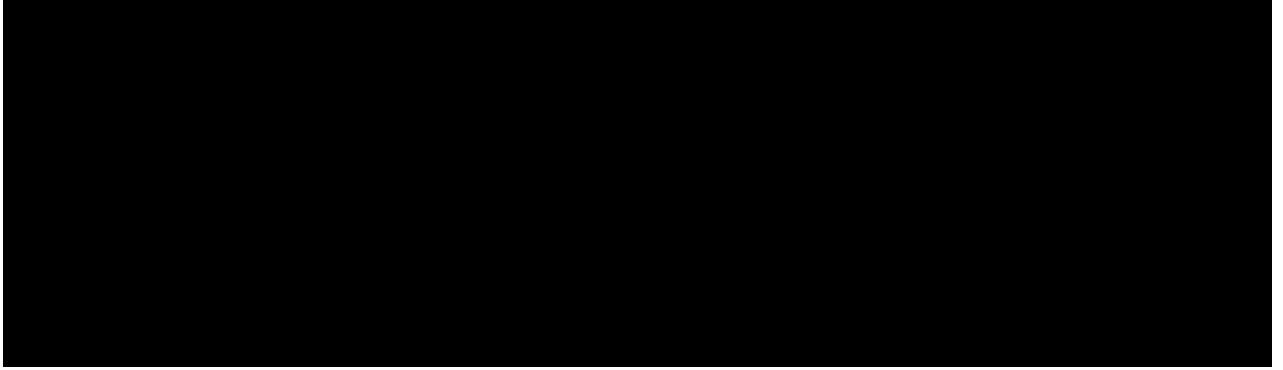
Executed as a deed.

Signed sealed and delivered by **Pacific Smiles
Group Limited** by:



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Signed sealed and delivered by **NDC BidCo Pty
Ltd ACN 676 877 802** by:



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Attachment A Indicative Timetable

Event	Date
Draft Scheme Booklet provided to ASIC	25 Business Days from date of this document
First Court Hearing	10 Business Days after draft Scheme Booklet provided to ASIC
Scheme Meeting	25 Business Days after First Court Hearing
If the Scheme is approved by PSQ Shareholders at the Scheme Meeting	
Second Court Hearing	Following Business Day after Scheme Meeting
Effective Date	No more than one Business Day after Second Court Date
If the Scheme is approved by the Court and becomes Effective	
Record Date	Five Business Days after Effective Date
Implementation Date	Five Business Days after Record Date

Attachment B Scheme

See following page.

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Scheme of arrangement

Pacific Smiles Group Limited

Each person registered on the Share Register as a holder of PSQ Shares as at the Record Date

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Date: [*] 2024

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

Parties

- 1 **Pacific Smiles Group Limited** (ACN 103 087 449) of Level 1, 6 Molly Morgan Dr, Green Hills, NSW 2323 (**PSQ**)
- 2 Each person registered on the Share Register as a holder of PSQ 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 PSQ

- (a) PSQ is an Australian public company limited by shares and PSQ has been admitted to the official list of ASX.
- (b) As at the date of the Implementation Deed, there were on issue:
 - (i) 159,581,938 PSQ Shares were on issue which are officially quoted for trading on ASX; and
 - (ii) 3,503,944 Performance Rights some of which can convert into PSQ Shares as permitted by the Implementation Deed.

2.2 Bidder

Bidder is an Australian proprietary company limited by shares.

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 pay, or procure the payment of, the Scheme Consideration to the Scheme Shareholders in accordance with the terms of this Scheme and the Deed Poll;

- (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) the transfer of Scheme Shares will be taken to be effective on the Implementation Date and PSQ will enter the name of Bidder in the Share Register in respect of all the Scheme Shares in accordance with the terms of this Scheme on the Implementation Date.
- (b) PSQ 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 undertaken in favour of each Scheme Shareholder to:
- (i) pay, or procure the payment of, the Scheme Consideration in accordance with the terms of this Scheme; and
 - (ii) undertake, or procure the undertaking of, all other actions attributed to it under this Scheme, as if named as a party to the Scheme,
- in each case subject to and in accordance with 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(c) of the Implementation Deed relating to Court approval of this Scheme) having been satisfied or waived in accordance with the terms of the Implementation Deed;
- (b) neither the Implementation Deed nor the Deed Poll having been terminated in accordance with their respective terms before 8:00am on the Second Court Date;
- (c) the Court having approved this Scheme in accordance with section 411(4)(b) of the Corporations Act, including with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by PSQ and Bidder; and
- (d) the orders of the Court under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving this Scheme having come into effect, pursuant to section 411(10) of the Corporations Act, on or before the End Date.

3.2 Certificates

- (a) Each of PSQ and Bidder will provide a certificate signed for and on behalf of the relevant party in the form of a deed (or such other evidence as the Court may require) to the Court at the Second Court Hearing confirming (in respect of matters

within their knowledge) whether or not the conditions precedent in clauses 3.1(a) and 3.1(b) of this Scheme have been satisfied or waived.

- (b) The certificates given by PSQ 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.

3.3 End Date

- (a) Without limiting any rights under the Implementation Deed, this Scheme will lapse and be of no further force or effect if:
 - (i) the Effective Date does not occur on or before the End Date; or
 - (ii) the Implementation Deed or the Deed Poll is terminated in accordance with their respective terms,

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

- (b) Without limiting any rights under the Implementation Deed, in the event that the Implementation Deed is terminated in accordance with its terms before 8:00am on the Second Court Date, PSQ and Bidder are each released from:
 - (i) any further obligation to take steps to implement this Scheme; and
 - (ii) any liability with respect to this Scheme.

3.4 Conditions precedent and operation of clauses 4 and 5

The satisfaction or waiver of each condition set out in clause 3.1 of the Scheme is a condition precedent to the operation of clauses 4 and 5 of this Scheme.

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(d)) are satisfied, PSQ 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 no later than 12:00 noon on the Business Day immediately following the day on which PSQ receives an office copy of the court order (or any later date agreed in writing by Bidder).

4.2 Transfer of Scheme Shares

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

- (a) subject to the payment of the Scheme Consideration in the manner contemplated by clauses 5.1 and 5.2(a), all of the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date (other than any right to a Permitted Dividend), will be transferred to Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by PSQ (or any directors, officers, or secretaries of PSQ) as attorney and agent for Scheme Shareholders under clause 8.5), by:

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- (i) PSQ, 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 PSQ for registration; and

immediately following receipt of the duly executed Scheme Transfer in accordance with clause 4.2(a), but subject to the stamping of the Scheme Transfer (if required), PSQ 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, in accordance with and subject to the terms of this Scheme.

5.2 Payment of Scheme Consideration

- (a) Bidder's obligation to pay the Scheme Consideration will be satisfied by Bidder depositing (or procuring the deposit), in cleared funds an amount equal to the Aggregate Scheme Consideration into the Trust Account before 12 noon 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 PSQ on trust for the Scheme Shareholders (in their respective proportions) for the purposes of paying the Scheme Consideration to Scheme Shareholders in accordance with clause 5.2(b). Bidder must promptly provide PSQ with written confirmation of its payment into the Trust Account in accordance with this clause 5.2(a).
- (b) Subject to Bidder paying the Aggregate Scheme Consideration in accordance with clause 5.2(a), PSQ must, on the Implementation Date and from the Trust Account, pay (or procure the payment) to each Scheme Shareholder the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder as at the Record Date, which obligation will be satisfied by PSQ doing any of the following (in its absolute discretion):
 - (i) if a Scheme Shareholder has, before the Record Date, made a valid election in accordance with the requirements of the Registry to receive dividend payments from PSQ by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
 - (ii) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Shareholder by an appropriate authority from the Scheme Shareholder to PSQ; or
 - (iii) dispatching, or procuring the dispatch of, a cheque drawn on an Australian bank in Australian currency for the relevant amount to the Scheme

Shareholder by prepaid ordinary post to their 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:
- (i) either:
 - (A) a Scheme Shareholder does not have a Registered Address; or
 - (B) PSQ 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 (ii) 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),

PSQ as the trustee for the Scheme Shareholder may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of PSQ (**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 1995* (NSW). To avoid doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 1995* (NSW).

- (d) Until such time as the amount is dealt with in accordance with the *Unclaimed Money Act 1995* (NSW), PSQ 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). PSQ 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 PSQ as the trustee for the Scheme Shareholders in the Trust Account, that surplus may be paid by PSQ as the trustee for the Scheme Shareholders to Bidder following the satisfaction of PSQ's obligations as the trustee for the Scheme Shareholders under this clause 5.2.
- (f) PSQ must pay any Accrued Interest to any account nominated by Bidder following satisfaction of PSQ's obligations under clause 5.2(b).

5.3 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to the holder whose name appears first in the Share Register as at the Record Date; and
- (b) 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.

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) PSQ may cancel a cheque issued under this clause 5 if the cheque:
 - (i) is returned to PSQ; 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 PSQ (or the Registry) (which request may not be made until the date which is 5 Business Days after the Implementation Date), a cheque that was previously cancelled under clause 5.5(a) must be reissued by PSQ, unless it has already been reissued or the funds have been dealt with in accordance with the *Unclaimed Money Act 1995* (NSW).

5.6 Unclaimed monies

- (a) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of the *Unclaimed Money Act 1995* (NSW)).
- (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 PSQ (or the Registry) or Bidder 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 PSQ in accordance with this clause 5, then PSQ will be entitled to make that payment (or procure that it is made) in accordance with that order or direction; or
- (b) prevents PSQ 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, PSQ will be entitled to retain an amount, in Australian dollars, equal to the relevant amount 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 or retention by PSQ will constitute full discharge of PSQ'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.

For the avoidance of doubt, if the relevant order or direction prevents the payment of only part of the Scheme Consideration which would otherwise be payable to a Scheme Shareholder, PSQ and Bidder will pay to the Scheme Shareholder (or procure payment of) the maximum possible portion of the Scheme Consideration to which that Scheme Shareholder (as determined by PSQ acting reasonably) is entitled without giving rise to a

breach of that order or direction and this clause 5.7 will only apply in respect of the remaining portion.

6 Dealings in PSQ Shares

6.1 Determination of Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in PSQ 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 CHES, the transferee is registered in the Share Register as the holder of the relevant PSQ Shares at 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 PSQ must not accept for registration, nor recognise (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

PSQ 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 or as soon as practicable thereafter, provided that nothing in this clause 6.2 requires PSQ to register a transfer that would result in a PSQ Shareholder holding a parcel of PSQ Shares that is less than a 'marketable parcel' (as defined in the ASX Settlement Rules).

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 PSQ 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, PSQ must maintain the Share Register in accordance with clause 6.1 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 payment 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 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 will cease to have effect except as evidence of

entitlement to the Scheme Consideration in respect of the PSQ 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, PSQ will ensure that the details of the names, Registered Addresses and registered holdings of Scheme Shares for each Scheme Shareholder as shown in the Share Register as at the Record Date are provided to Bidder.

7 Quotation of PSQ Shares

- (a) PSQ must apply to ASX to suspend trading in PSQ Shares with effect from the close of trading on the Effective Date.
- (b) PSQ must apply:
 - (i) for termination of the official quotation of PSQ 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 trading day immediately following (but not on or before) the Implementation Date, or such later date as may be:
 - (iii) requested by Bidder; 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) PSQ may, by its counsel, consent on behalf of all persons concerned to those alterations or conditions to which Bidder has consented; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions to which counsel for PSQ 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 (other than a right to a Permitted Dividend) 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 that after the transfer of their Scheme Shares to Bidder in accordance with this Scheme, any holding statement or share certificate relating to the Scheme Shares will not constitute evidence of title to those

Scheme Shares and to, on the direction of Bidder, destroy any statements of holding or share certificates relating to their Scheme Shares;

- (iv) who holds its Scheme Shares in a CHESS Holding agrees to the conversion of those Scheme Shares to an Issuer Sponsored Holding and irrevocably authorises PSQ to do anything necessary, expedient or incidental (whether required by the ASX Settlement Rules or otherwise) to effect or facilitate such conversion;
- (v) agrees that payment of the Scheme Consideration in accordance with clauses 5.1 and 5.2(a) shall constitute full satisfaction of that Scheme Shareholder's entitlements under the Scheme; and
- (vi) acknowledges and agrees that this Scheme binds PSQ and all Scheme Shareholders (including those who did not attend the Scheme Meeting or those who did not vote or voted against the resolution to approve 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 the Scheme Shareholder) to have warranted to PSQ and Bidder on the Implementation Date, and appointed, authorised and directed PSQ as its attorney and agent to warrant to Bidder on the Implementation Date, 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 free from all:
 - (A) Encumbrances and third party rights or interests of any kind; and/or
 - (B) restrictions on transfer of any kind;
 - (ii) they have full power and capacity to sell and to transfer their Scheme Shares to Bidder under this Scheme together with any rights and entitlements attaching to those Scheme Shares;
 - (iii) all of their Scheme Shares which are transferred to Bidder under this Scheme will, on the date on which they are transferred to Bidder, be fully paid; and
 - (iv) they have no existing right to be issued any other Scheme Shares, any other form of PSQ Shares, options or performance rights exercisable into PSQ Shares, convertible notes convertible into PSQ Shares or any other PSQ securities,

and PSQ undertakes that it will provide such warranties to Bidder as agent and attorney of each Scheme Shareholder.

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 to Bidder under this Scheme will, at the time of transfer of them to Bidder, vest in Bidder free from all:

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- (i) Encumbrances and interests of third parties of any kind, whether legal or otherwise; and
 - (ii) restrictions on transfer of any kind.
- (b) Immediately on the payment of the Scheme Consideration in the manner contemplated by clauses 5.1, 5.2(a) and 5.2(b), Bidder will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending registration by PSQ 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

- (a) Immediately on the payment of the Scheme Consideration in the manner contemplated by clause 5.2(b), and until PSQ registers Bidder as the holder of all Scheme Shares in the Share Register, each Scheme Shareholder (by operation of this Scheme and without the need for any further act by the Scheme Shareholder):
 - (i) is deemed to have irrevocably appointed Bidder as attorney and agent (and directed 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 PSQ shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any PSQ shareholders' resolution whether in person, by proxy or by corporate representative;
 - (ii) must not attend or vote at any PSQ shareholders' meetings, exercise the votes attaching to Scheme Shares registered in their names or sign or vote in respect of any PSQ shareholders' resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.4(a)(i));
 - (iii) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and
 - (iv) acknowledges and agrees that in exercising the powers conferred by clause 8.4(a)(i) or giving any directions under clause 8.4(a)(iii), 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.
- (b) PSQ undertakes in favour of each Scheme Shareholder that in accordance with clause 8.4(a), it will appoint the Bidder and any director or officer of the Bidder (acting jointly or individually) as that Scheme Shareholder's proxy or, where applicable, corporate representative

8.5 Authority given to PSQ

On and from the Effective Date, each Scheme Shareholder, without the need for any further act by the Scheme Shareholder, irrevocably appoints PSQ 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 (without limitation) executing the Scheme Transfer,

and PSQ accepts such appointment. PSQ, 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 PSQ and all of the Scheme Shareholders (including those who did not attend the Scheme Meeting or those who did not vote or voted against the resolution to approve this Scheme at the Scheme Meeting) and, to the extent of any inconsistency, overrides PSQ's constituent documents.

9 General

9.1 Stamp duty

Bidder:

- (a) must pay all stamp duties and any related fines and penalties in respect of this Scheme and the Deed Poll or any transaction effected by or steps taken under this Scheme and the Deed Poll; and
- (b) indemnifies PSQ and each Scheme Shareholder against any liability arising from or in connection with any failure by Bidder to comply with clause 9.1(a).

9.2 Consent

Each Scheme Shareholder (by operation of this Scheme and without the need for any further act by the Scheme Shareholder) consents to PSQ doing all things necessary or incidental to give full effect to the implementation of this Scheme and the transactions contemplated by it, whether on behalf of the Scheme Shareholders, PSQ 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 PSQ, 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 PSQ'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 PSQ 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 New South Wales, Australia.
- (b) Each party irrevocably:

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- (i) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time arising out of or in connection with 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 Further action

PSQ must, at its own expense, do all things (on its own behalf and on behalf of each Scheme Shareholder) and execute and deliver all further documents required by law or necessary to give full effect to this Scheme and the transactions contemplated by it.

9.6 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 none of PSQ's or Bidder's respective directors, officers or employees, will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll when the relevant person has acted in good faith.

Schedule 1 Dictionary

1 Dictionary

Accrued Interest has the meaning given in clause 5.2(a).

Aggregate Scheme Consideration means the aggregate Scheme Consideration payable by the Bidder under this Scheme (and in accordance with the terms of this Scheme).

ASIC means the Australian Securities and Investments Commission.

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

ASX Settlement Rules means operating rules of the settlement facility provided by ASX Settlement Pty Ltd (ACN 008 504 532).

Bidder means NDC BidCo Pty Ltd ACN 676 877 802.

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

CHESS means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Limited and ASX Clear Pty Limited.

CHESS Holding has the meaning given in the ASX Settlement Rules.

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

Court means the Supreme Court of New South Wales (sitting in Sydney) or such other court of competent jurisdiction under the Corporations Act agreed in writing by PSQ and Bidder.

Deed Poll means the deed poll to be entered into by Bidder in the form of Attachment A to this Scheme (or such other form as agreed in writing between Bidder and PSQ) under which, among other things, Bidder covenants in favour of Scheme Shareholders to pay the Scheme Consideration in accordance with the Scheme.

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 this Scheme.

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

Encumbrance means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

End Date means 31 December 2024, or such later date as PSQ and Bidder agree in writing.

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 OAIC, ASX, ASIC and the Takeovers Panel).

Implementation Date means the fifth Business Day after the Record Date or such other day as:

- (a) PSQ and Bidder agree in writing;
- (b) ordered by the Court; or
- (c) may be required by ASX.

Implementation Deed means the scheme implementation deed dated 28 April 2024 between PSQ and Bidder relating to (among other things) the implementation of the Scheme.

Issuer Sponsored Holding has the meaning given in the ASX Settlement Rules.

Notice has the meaning given in the Implementation Deed.

Permitted Dividend has the meaning given in the Implementation Deed.

PSQ means Pacific Smiles Group Limited (ACN 103 087 449).

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

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

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

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

Registry means Automic Group Share Registry.

Scheme means this scheme of arrangement between PSQ 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 PSQ 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 PSQ and Bidder.

Scheme Consideration means, in respect of each Scheme Share, \$1.90, subject to, and as adjusted in accordance with, clauses 5.1(f) and 5.1(g) of the Implementation Deed (if applicable).

Scheme Meeting means the meeting of PSQ Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider this Scheme, and includes any adjournment thereof.

Scheme Share means a PSQ Share held by a Scheme Shareholder as at the Record Date.

Scheme Shareholder means a PSQ 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 in favour of Bidder as transferee, 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**.

Security Interest has the meaning given in section 12 of the *Personal Property Securities Act 2009* (Cth).

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

Share Register means the register of members maintained by PSQ in accordance with the Corporations Act.

Trust Account means an Australian dollar denominated trust account with an Authorised Deposit-taking Institution (as defined in the *Banking Act 1959* (Cth)) which attracts interest at a commercial rate and which is operated by or on behalf of PSQ as trustee for the Scheme Shareholders, details of which PSQ must notify Bidder no later than 5 Business Days before the Implementation Date.

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 a 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.
 - (b) A reference to any time in this document is a reference to such time in Sydney, NSW, Australia.
 - (i) 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.

Attachment C Deed Poll

See following page.

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Deed poll

NDC Bidco Pty Ltd

In favour of each person registered on the Share Register as a holder of PSQ Shares as at the Record Date

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Parties

NDC Bidco Pty Ltd ACN 676 877 802 of Governor Phillip Tower, Level 29, 1 Farrer Place, Sydney NSW 2000 (**Bidder**)

In favour of each person registered on the Share Register as a holder of PSQ Shares as at the Record Date (**Scheme Shareholders**)

Background

- A PSQ and Bidder have entered into the Implementation Deed, under which (among other things):
- (i) PSQ and Bidder have agreed to implement the Scheme on and subject to the terms of the Implementation Deed;
 - (ii) if the Scheme becomes Effective, 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 payment of, the Scheme Consideration in accordance with the terms and conditions of 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

In this deed poll:

- (a) **Implementation Deed** means the scheme implementation deed dated 28 April 2024 between PSQ and Bidder relating to (among other things) the implementation of the Scheme; and
- (b) unless the context otherwise requires, terms defined in the Scheme (but not in this deed poll) have the same meaning when used in this deed poll.

1.2 Interpretation

Clause 2 of Schedule 1 of the Scheme applies to the interpretation of this deed poll, except that references to “this Scheme” in clause 2 of Schedule 1 of the Scheme 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 it; and
- (b) under the Scheme, each Scheme Shareholder, without the need for any further act by the Scheme Shareholder, irrevocably appoints PSQ 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.

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 has not become Effective on or before the End Date or any later date as the Court, with the written consent of Bidder and PSQ, may order,

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

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 it was terminated.

3 Bidder undertakings

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

- (a) pay, or procure the payment of, the Scheme Consideration in accordance with the terms of the Scheme; and
- (b) undertake, or procure the undertaking of, all other actions attributed to it 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 validly existing corporation registered under the laws of its place of incorporation;
- (b) it has full corporate power and lawful authority to execute, deliver 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 execution of 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 not the subject of an Insolvency Event (as defined in the Implementation Deed), 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 poll;
- (e) this deed poll is a valid and binding obligation on it and enforceable in accordance with the terms of this deed poll; and
- (f) the execution and performance by Bidder of this deed poll did not and will not violate or breach any provision of:
 - (i) any writ, order or injunction, judgment, law, rule or regulation to which it is a party by which it is bound; or
 - (ii) Bidder' constitution or other constituent documents.

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:

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

6.2 Notices

(a) Any notice, consent, approval, waiver or other communication to Bidder in connection with this deed poll 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 address set out below.

Attention: Peter Lyon Mercardo

Address: Governor Phillip Tower, Level 29, 1 Farrer Place, Sydney NSW
2000

Email: PLM@crescentcap.com.au

with a copy (for information purposes only) to Aaron.Kenavan@AllenOvery.com
and Jamie.Palmer@AllenOvery.com

(b) Subject to clause 6.2(c), any notice, consent, approval, waiver or other communication given in accordance with clause 6.2(a) is taken to be received as follows:

- (i) If sent by delivery, when it is delivered; and
- (ii) if sent by email:
 - (A) when the sender receives an automated message confirming delivery;
or
 - (B) one hour 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, consent, approval, waiver or other communication is taken to be received under clause 6.2(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.

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 independently of this deed poll.

6.4 Waiver

- (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 poll 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 poll.
- (b) Any waiver given by a party under this deed poll 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 poll operates as a waiver of another breach of that term or of a breach of any other term of 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 PSQ in writing; or
- (b) if on or after the First Court Date, the variation is agreed to by PSQ in writing and the Court has indicated 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 of New South Wales, Australia.
- (b) Bidder irrevocably:
- (i) submits to the non-exclusive jurisdiction of the courts of New South Wales, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings arising out of or in connection with this deed poll; and
- (ii) waives any objection it may now or in the future have to the venue of any legal proceedings, and any claim it may now or in the future have that any legal proceedings have been brought in an inconvenient forum, if that venue falls within clause 6.6(b)(i).

6.7 Assignment

- (a) The rights of each Scheme Shareholder created by this deed poll are personal to such Scheme Shareholder and must not be assigned, encumbered or otherwise dealt with at law or in equity without the prior written consent of Bidder.

- (b) Any purported assignment, encumbrance or dealing in contravention of clause 6.7(a) is invalid.

6.8 Further action

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

For personal use only

Execution page

Executed as a deed.

Signed sealed and delivered by **NDC Bidco Pty Ltd**
ACN 676 877 802 in accordance with section 127 of
the *Corporations Act 2001 (Cth)* by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

For personal use only

Attachment D Public announcement

See following page.

For personal use only



Pacific Smiles Group Limited (ASX: **PSQ**)
Level 1, 6 Molly Morgan Drive, Green Hills NSW 2323
PO Box 2246 Green Hills NSW 2323
P: 02 4930 2000 • F: 02 4930 2099
E: investor.relations@pacificsmiles.com.au
www.pacificsmilesgroup.com.au
ABN 42 103 087 449 / ACN 103 087 449

ASX ANNOUNCEMENT

Pacific Smiles Group Limited (ASX:PSQ)

29 April 2024

Pacific Smiles Group Enters into a Scheme Implementation Deed with National Dental Care

Pacific Smiles Group Limited (ASX:PSQ) (**Pacific Smiles**) has entered into a Scheme Implementation Deed (**SID**) with NDC BidCo Pty Ltd, a wholly owned subsidiary of NDC HoldCo Pty Ltd (which operates the National Dental Care centres) (**NDC**). Under the terms of the SID, NDC agrees to acquire 100% of the shares in Pacific Smiles by way of scheme of arrangement (**Scheme**) for cash consideration of \$1.90 cash per share, subject to all applicable conditions being satisfied or waived (as applicable). NDC is a portfolio company managed by Crescent Capital Partners Management Pty Ltd (**Crescent Capital**).

In addition, Pacific Smiles will have the discretion to pay shareholders a fully franked dividend of up to a maximum of 12 cents per share (**Permitted Dividend**), with the cash consideration of \$1.90 per share under the Scheme to be reduced by the amount of any such Permitted Dividend. It remains at the discretion of the Pacific Smiles Board whether any Permitted Dividend is ultimately declared and paid. Any such Permitted Dividend will be considered by the Pacific Smiles Board prior to implementation of the Scheme.

Pacific Smiles Board unanimously recommends the Scheme

The Board of Pacific Smiles unanimously recommends shareholders vote in favour of the Scheme at the Scheme meeting, and the Directors will vote all Pacific Smiles shares in which they have a relevant interest or which they control in favour of the Scheme at the Scheme meeting, in each case subject only to no superior proposal emerging and subject to the Independent Expert concluding that the Scheme is in the best interests of Pacific Smiles shareholders, and not withdrawing or adversely changing that conclusion.

The Pacific Smiles Board considers that NDC's offer pursuant to the SID provides an attractive premium for Pacific Smiles shareholders, with the cash consideration of \$1.90 per share under the proposed Scheme representing a premium of:

- 59.0% to the undisturbed closing price of \$1.20 per share on 15 December 2023, being the last trading day prior to the announcement that Pacific Smiles received an indicative and non-binding proposal from Genesis Capital Manager I Pty Ltd (**Genesis Capital**);
- 98.1% to the 1-month volume weighted average price (VWAP) of \$0.96 per share and 91.5% to the 3-month VWAP of \$0.99 per share on 15 December 2023; and
- 35.7% to the Genesis Capital initial non-binding proposal announced on 18 December 2023 of \$1.40 per share and 8.6% to the Genesis Capital revised non-binding proposal announced on 19 March 2024 of \$1.75 per share.

The offer under the Scheme represents an enterprise value multiple on the mid-point of FY24 EBITDA guidance of ~11x¹ and an equity value of \$303.2m based on ordinary shares outstanding.

1. Based on 159,581,938 Pacific Smiles Group shares on issue and net cash as at 31 December 2023 of \$13.3m.



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Scheme superior to Genesis Capital Revised Indicative Proposal

As announced on 19 March 2024, Genesis Capital made a revised, non-binding indicative proposal for the acquisition of all of the shares in Pacific Smiles at an offer price of \$1.75 per share by way of a scheme of arrangement (**Genesis Capital Revised Indicative Proposal**), following its initial indicative proposal of \$1.40 per share announced on 18 December 2023. Genesis Capital also indicated Pacific Smiles shareholders may have the opportunity to roll their shares into unlisted equity.

Pacific Smiles also announced on 19 March 2024 that it agreed to provide non-exclusive due diligence to Genesis Capital, and that, subject to the parties negotiating and entering into a binding scheme implementation agreement for consideration of at least \$1.75 per share, the intention of the Pacific Smiles Board was to recommend that shareholders vote in favour of any resolution to implement the Genesis Capital Revised Indicative Proposal and to vote or procure shares they control in favour of such resolution, in each case, in the absence of a superior proposal and subject to an independent expert concluding, and continuing to conclude, that the transaction was in the best interests of Pacific Smiles shareholders.

The Board of Pacific Smiles is focused on maximising shareholder outcomes. After careful consideration and having received advice from its legal and financial advisers, the Board of Pacific Smiles has determined NDC's binding proposal, reflected in the SID is a superior proposal to the Genesis Capital Revised Indicative Proposal.

Details of the Scheme Implementation Deed

The Scheme is conditional upon the satisfaction of certain conditions, including:

- Pacific Smiles shareholder approval in accordance with the requirements of the *Corporations Act 2001* (Cth);
- Court and Foreign Investment Review Board (**FIRB**) approval;
- The Independent Expert concluding in its Independent Expert's Report that the Scheme is in the best interests of Pacific Smiles shareholders (and not withdrawing or adversely changing that conclusion); and
- other customary conditions, including that no material adverse change or any prescribed occurrence occurs prior to the second Court hearing.

The SID contains customary exclusivity obligations, including 'no shop', 'no talk', 'no due diligence', notification obligations and a matching right regime in respect of any potentially superior proposal received by Pacific Smiles. It also details the circumstances under which Pacific Smiles may be required to pay a break fee to NDC.

The Scheme, if approved by Pacific Smiles shareholders, is expected to be implemented in August 2024. In the event that FIRB approval is delayed beyond 28 September 2024, a ticking fee of one cent per share per month will accrue after each full calendar month until FIRB approval is obtained.

Pacific Smiles will appoint an Independent Expert to prepare an Independent Expert's Report opining on whether the Scheme is in the best interests of Pacific Smiles shareholders. The Independent Expert's Report will be included in a Scheme Booklet, which is expected to be distributed to shareholders in June 2024 (subject to the regulatory approval process).

Full details of the terms and conditions of the Scheme are set out in the SID, a copy of which is attached to this announcement.



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Scheme timetable and next steps

Pacific Smiles shareholders do not need to take any action at the current time.

A Scheme Booklet containing information relating to the Scheme, the Independent Expert's report opining on whether the Scheme is in the best interests of Pacific Smiles' shareholders, reasons for the Directors' recommendations, and details of the Scheme meeting are expected to be distributed to Pacific Smiles shareholders in June 2024. It is expected that Pacific Smiles shareholders will be given the opportunity to vote on the Scheme at a Scheme Meeting expected to be held in late July 2024. Subject to the conditions of the Scheme being satisfied, the Scheme is expected to be implemented by the end of August 2024. These dates are indicative and subject to change.

Greenhill & Co. is acting as financial adviser to Pacific Smiles. Gilbert + Tobin is acting as legal adviser to Pacific Smiles.

This announcement was authorised by the Pacific Smiles Board.

For further information, please contact:

Peter Brookes

Citadel-Magnus

0407 911 389

pbrookes@citadelmagnus.com

About Pacific Smiles Group (PSG)

PSG is a leading Australian branded dental group, currently operating 120+ dental centres. PSG provides dentists with fully serviced and equipped facilities including support staff, materials, marketing and administrative services. Over 800 dentists, assisted by more than 1600 support staff, attend over 1 million patient appointments at PSG centres each year. PSG owns and operates the Pacific Smiles Dental and Nib Dental Care centres across the East Coast of Australia and exclusively manages the operation of HBF Dental Centres in Western Australia.

Additional information on Pacific Smiles Group can be found at <https://pacificsmilesgroup.com.au/>

About National Dental Care (NDC)

NDC is an Australia-wide network of 88 dental practices. Since being founded in 2013, NDC has focused on providing clinicians with the right equipment, training and support to allow them to provide outstanding patient care. The business has a strong Clinical Advisory Committee which oversees clinical decisions, and its Clinical Advisory Committee Chairperson also sits on the Board of Directors. NDC shareholders include seven industry superfunds and it is managed by Crescent Capital Partners Management.

Additional information on National Dental Care can be found at <https://www.nationaldentalcare.com.au/>