

Board recommended acquisition of Grays by Eclipx

4 May 2017 (Sydney): Grays eCommerce Group Limited (“Grays”, ASX:GEG) is pleased to announce a recommended transaction under which it is proposed that Eclipx Group Limited (“Eclipx”, ASX:ECX) will acquire 100% of the ordinary shares in Grays by way of a Scheme of Arrangement (“Scheme”).

Grays also refers to the announcement made on 2 May 2017 in respect of “Variation of lease – Sydney premises”. Grays currently intends to apply the proceeds received under the aforementioned lease variation to the payment of a dividend. Based on information available to Grays at the date of this announcement, it is estimated the fully franked dividend (should it be declared and paid) would equate to 5.6 cents per share. Should the dividend be paid, the Scheme consideration would not be adjusted.

Transaction summary

Under the proposed transaction, Grays shareholders (other than certain foreign ineligible shareholders) will receive 0.3656 (rounded) Eclipx ordinary shares per Grays ordinary share, equivalent to a price per Grays share of \$1.39 based on Eclipx’s closing share price of \$3.80 on ASX on 3 May 2017. The proposed transaction values Grays’ equity at approximately \$179 million¹.

Based on the respective volume weighted average prices (VWAPs²) of each of Eclipx and Grays, the implied value per Grays share represents a significant implied premium of:

- 32.3% based on each company’s last closing price on 3 May 2017
- 31.7% based on the 1 month VWAPs to 3 May 2017
- 35.7% based on the 3 month VWAPs to 3 May 2017

Commenting on the recommended transaction, Grays Chairman Jonathan Pinshaw said: “The Grays Board believes that Eclipx’s offer recognises the strategic value of our business, our success in becoming a leading online auction site, and the investment we have made to position our B2B Division for sustainable growth. Grays shareholders will be able to maintain their exposure to a larger group, or alternatively may be able to more readily monetise their investment given Eclipx’s greater trading liquidity.”

Grays Directors unanimously recommend the Scheme

The Directors of Grays unanimously recommend that Grays shareholders vote in favour of the Scheme, in the absence of a Superior Proposal³ and subject to the independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of Grays shareholders.

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

¹ Based on 128.8m ordinary shares on issue in Grays on a fully diluted basis (which assumes vesting and exercise of 1.3m performance rights) and Eclipx’s closing share price of \$3.80 on ASX on 3 May 2017.

² Grays 1 month VWAP of \$1.055 and 3 month VWAP of \$1.036. Eclipx 1 month VWAP of \$3.799 and 3 month VWAP of \$3.845. VWAP calculated based on cumulative value traded on ASX and CHI-X divided by cumulative volume traded on ASX and CHI-X.

³ The term Superior Proposal when used in this announcement has the same meaning as defined in the attached Scheme Implementation Deed.

Grays major shareholder, Caledonia (Private) Investments Pty Limited, intends to support the Scheme

Caledonia (Private) Investments Pty Limited, which, with its associates, has a relevant interest at the date of this announcement in 18,399,533 Grays shares (14.43%), intends to vote the shares in favour of the proposed Scheme, in the absence of a superior proposal and subject to the independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of Grays shareholders.

Transaction rationale

The Grays Board has evaluated the offer from Eclix and believes the Scheme:

- implies an attractive value for Grays shares;
- provides Grays shareholders with the opportunity to participate in the longer-term performance of a larger group through the continued ownership of Eclix shares; and
- provides Grays shareholders with the opportunity to more readily monetise their investment if they choose to do so given the higher trading liquidity of Eclix.

Key terms and Scheme Implementation Deed (SID)

The Scheme will be subject to various conditions precedent including:

- Grays shareholder and court approval for the Scheme;
- the independent expert appointed by Grays concluding that the Scheme is in the best interests of Grays shareholders;
- no Material Adverse Change occurring in respect of either Grays or Eclix;
- no Prescribed Occurrences in respect of either Grays or Eclix; and
- ASX, ASIC and other regulatory approvals, if required.

The SID contains customary exclusivity provisions in favour of Eclix including “no shop”, “no talk”, and “notification” obligations as well as a “matching right”. A break fee of \$1.79 million will be payable by Grays in certain circumstances.

The SID is attached.

Indicative timetable and next steps

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

A Scheme booklet containing information relating to the proposed acquisition, reasons for the Directors’ recommendation, an Independent Expert’s Report and details of the Scheme meeting is expected to be sent to Grays shareholders in June 2017, with a Grays shareholder meeting to vote on the proposed Scheme expected to be held in July 2017.

Subject to shareholder approval and the other conditions of the Scheme being satisfied or waived, the Scheme is expected to be implemented in August 2017.

Grays is being advised by Moelis Australia as financial adviser, MinterEllison as legal counsel, and Market Eye as investor and media relations adviser.

- **ENDS** -

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About Grays

Grays eCommerce Group Limited (ASX: GEG) is one of Australia's leading eCommerce groups. By leveraging existing operations, sourcing capabilities, and eCommerce experience, Grays eCommerce Group is well positioned to be the leading online international auctioneer by unlocking real value for our business partners, vendors and customers.

The Company's B2B business comprises the business-facing components of the graysonline brand, the graysasset and graysmining brands, as well as DMS Davlan and Bryan Andrews Auctions. Collectively, these brands are the largest B2B online auction marketplace in the Asia Pacific region for used plant and equipment. The B2B business provides a full range of valuation and project-management functions for a range of clients including major corporations, insolvency practitioners, financiers and banks.

The Company also provides an auction based site for wine and other consumer product categories.

For further information go to www.graysecommercegroup.com.au or www.graysonline.com.au.

About Eclix

Eclix Group Limited (ECX) is a leading provider of fleet and equipment leasing and management, and vehicle rental to corporate, SME and consumers in Australia and corporate and SME customers in New Zealand.

As at 31 March 2017, Eclix managed or financed 104,260 vehicles with AUD2.1bn in assets under management across Australia and New Zealand under six primary brand names, "FleetPartners", "FleetPlus", "CarLoans.com.au", "FleetChoice" and "AutoSelect" and "Right2Drive".

For further information go to www.eclix.com.



Scheme Implementation Deed

Grays eCommerce Group Limited (**Target**)
Eclipx Group Limited (**Bidder**)

Scheme Implementation Deed

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Details

Date

4 May 2017

Parties

Name	Grays eCommerce Group Limited
ABN	94 125 736 914
Short form name	Target
Notice details	Homebush Corporate Park, 29 – 33 Carter Street, Lidcombe, New South Wales, 2141 Facsimile: +61 2 9741 9680 Email: mark.bayliss@grays.com.au Attention: Mr Mark Bayliss

Name	Eclipx Group Limited
ABN	85 131 557 901
Short form name	Bidder
Notice details	Level 32, 1 O'Connell Street, Sydney, New South Wales, 2000 Facsimile: +61 2 8973 7171 Email: Matt.Sinnamon@eclipx.com Attention: Group General Counsel

Background

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

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

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

Adviser means any person who is engaged to provide professional advice of any type (including legal, accounting, consulting or financial advice) to the Target or the Bidder in connection with the Proposed Transaction.

Agreed Announcement has the meaning given to that expression in clause 14.2.

ASIC means the Australian Securities and Investments Commission.

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

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

Authorised Persons means, in relation to a person, each:

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

and **Authorised Person** means any one of them.

Bidder Break Fee has the meaning given to that term in clause 12.3(a).

Bidder Disclosure Letter means the letter so entitled provided by the Bidder to the Target prior to the date of this deed.

Bidder Excluded Obligation means each obligation of the Bidder under each of clauses 2(b), 3.3, 3.5, 4.1, 4.2, 4.3, 5.2, 5.7, 7.8 and 12.

Bidder Group means the Bidder and each Subsidiary of the Bidder (excluding, at any time, each Target Group Member to the extent that such Target Group Member is a subsidiary of the Bidder at that time) and **Bidder Group Member** means any one of them.

Bidder Indemnified Parties means each Bidder Group Member (other than the Bidder) and each Authorised Person of each Bidder Group Member.

Bidder Information means the information regarding the Bidder Group, the merged Bidder-Target entity following implementation of the Scheme, the Scheme Consideration and the Bidder's intentions relating to the Target Group's business, assets and employees that is provided by or on behalf of the Bidder or any of its Advisers to the Target in writing for inclusion in the Scheme Booklet (excluding any information provided by the Target to the Bidder, or obtained by the Bidder from an announcement made by the Target to ASX or from a publicly available document lodged by the Target with ASIC, contained in, or used in the preparation of, the information regarding the merged Bidder-Target entity following implementation of the Scheme). For the avoidance of doubt, the Bidder Information excludes the Target Information, the Independent Expert's Report, any investigating accountant's report and any description of the taxation effect of the Proposed Transaction on Scheme Shareholders.

Bidder Knowledge Persons means each director of the Bidder.

Bidder Material Adverse Change means any event, change, condition, occurrence, circumstance, thing or matter (or the announcement, disclosure or discovery of any event, change, condition, occurrence, circumstance, thing or matter) occurring before, on or after the date of this deed that individually or when aggregated with all such events, changes, conditions,

occurrences, circumstances, things or matters that have occurred or are reasonably likely to occur, has, has had or would be reasonably likely to have:

- (a) the effect of diminishing the consolidated net profit after tax and tax adjusted add back of intangibles of the Bidder Group, taken as a whole, by at least \$5.5 million against what it would reasonably be expected to have been but for that event, change, condition, occurrence, circumstance thing or matter;
- (b) the effect of diminishing the consolidated net operating income of the Bidder Group, taken as a whole, by at least \$19.6 million against what it would reasonably be expected to have been but for that event, change, condition, occurrence, circumstance, thing or matter; or
- (c) the effect of diminishing the consolidated net assets of the Bidder Group, taken as a whole, by at least \$65.88 million against what it would reasonably be expected to have been but for that event, change, condition, occurrence, circumstance, thing or matter,

other than those events, changes, conditions, occurrences, circumstances, things or matters:

- (a) required to be done or procured by a Bidder Group Member under, or pursuant to, this deed, the Deed Poll or the Scheme;
- (b) to the extent it is Fairly Disclosed in the Bidder Disclosure Letter;
- (c) Fairly Disclosed in the six months prior to the date of this deed in filings of the Bidder on ASX;
- (d) relating to costs and expenses incurred by the Bidder Group in connection with the Proposed Transaction, including all fees payable to any Adviser of a Bidder Group Member; or
- (e) that:
 - (i) result from changes in generally accepted accounting principles or the interpretation of them;
 - (ii) arise as a result of any generally applicable change in law or governmental policy; or
 - (iii) arise from changes in economic or business conditions or securities markets in general,

but, in each case, excluding any event, change, condition, occurrence, circumstance, thing or matter which has a disproportionate adverse effect on the Bidder Group, taken as a whole, as compared to other participants in the principal business segments in which the Bidder Group operates.

Bidder Parties means each Bidder Group Member and each Authorised Person relating to each Bidder Group Member.

Bidder Prescribed Occurrence means the occurrence of any of the following on or after the date of this deed and before the Delivery Time:

- (a) the Bidder converts all or any of its shares into a larger or smaller number of shares (as contemplated under section 254H of the Corporations Act or otherwise);
- (b) the Bidder resolves to reduce its share capital in any way or to reclassify, combine, split or redeem any of the shares in the Bidder;
- (c) the Bidder:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) any Bidder Group Member issues securities (including, without limitation, shares and convertible notes or securities convertible into shares), or grants a right (including a performance right) or an option over securities (including, without limitation, shares) in the Bidder Group Member, or agrees to make such an issue or grant such a right or option other than:

- (i) pursuant to an exercise or vesting of an option or right where that option or right was on issue as at the time immediately prior to the entry into this deed;
- (ii) any issue of rights or options pursuant to the Eclipx Group Limited Long-Term Incentive Plan;
- (iii) any issue of shares pursuant to the Bidder's dividend reinvestment plan;
- (iv) any issue of shares to the vendor or vendors of a company or business purchased by a Bidder Group Member; or
- (v) any issue of securities to another Bidder Group Member;
- (e) any material Bidder Group Member disposes, or agrees to dispose, of the whole, or a substantial part, of the business or property of the Bidder Group Member;
- (f) any Bidder Group Member creates or agrees to create any Encumbrance over the whole, or a substantial part, of the business or property of the Bidder Group Member, other than to a bona fide Third Party financier or in the usual and ordinary course of business of the Bidder Group Member;
- (g) any Bidder Group Member becomes Insolvent;
- (h) the Bidder makes any change to its constitution or convenes a meeting to consider a resolution to change the constitution of the Bidder, which change adversely affects, or would reasonably be expected to adversely affect, any Target Shareholder disproportionately to Bidder Shareholders (on the basis that in considering whether the change adversely affects, or would reasonably be expected to adversely affect, any Target Shareholder disproportionately to Bidder Shareholder, such Target Shareholder will be deemed to be a registered holder of Bidder Shares);
- (i) any Bidder Group Member ceases, or threatens to cease, to carry on any material business of the Bidder Group Member conducted as at the date of this deed;
- (j) any Bidder Group Member (other than a dormant, non-operating member of the Bidder Group) is deregistered as a company or is otherwise dissolved;
- (k) any Bidder Group Member disposes of shares or securities in any material Bidder Group Member other than to another Bidder Group Member; or
- (l) any Bidder Group Member directly or indirectly authorises, commits or agrees to take or publicly announces any of the actions referred to in paragraphs (a) to (k) (inclusive) of this definition,

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

- (m) required or permitted to be done or procured by a Bidder Group Member under, or pursuant to, this deed or the Scheme;
- (n) Fairly Disclosed in the six months prior to the date of this deed in filings of the Bidder on ASX;
- (o) required by law or by an order of a court or other Governmental Agency;
- (p) to the extent it is Fairly Disclosed in the Bidder Disclosure Letter; or
- (q) the undertaking of which the Target has approved in writing.

Bidder Registry means Link Market Services Limited or any replacement provider of share registry services to the Bidder and to Bidder Sub from time to time.

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

Bidder Sub means Leasing Finance (Australia) Pty Limited (ACN 121 167 824), being a wholly owned Subsidiary of Bidder.

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

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

Change of Control Contract has the meaning given to that expression in clause 7.6(a).

Claim means a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgement, award, damage, loss, costs, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute.

Competing Proposal means any offer, expression of interest, proposal, transaction or arrangement by a Third Party that, if entered into or completed, would mean a person or two or more persons who are Associates:

- (a) would acquire a Relevant Interest or voting power in 15% or more of the aggregate number of Target Shares or of securities of any other Target Group Member;
- (b) would enter into, buy, dispose of, terminate or otherwise deal with any cash settled equity swap or other synthetic, economic or derivative transaction connected with or relating to 15% or more of the aggregate number of Target Shares or of the securities of any other Target Group Member;
- (c) would directly or indirectly acquire or become the holder of, or otherwise acquire or have the right to acquire, any legal, beneficial or economic interest in, or control of, all or a substantial part or material part of the business conducted by, or assets or property of, the Target Group;
- (d) would acquire Control of the Target or any other material Target Group Member;
- (e) may otherwise acquire, or merge with, the Target or any other material Target Group Member; or
- (f) require Target to abandon, or otherwise fail to proceed with, the Proposed Transaction, whether by way of takeover bid, scheme of arrangement, capital reduction, buy-back or sale of assets, sale of securities, strategic alliance, dual listed company structure (or other synthetic merger), joint venture, partnership, any proposal by the Target to implement any reorganisation of capital or any other transaction or arrangement, and on the basis that each successive material modification or variation of any proposal, offer, arrangement, expression of interest or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

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

Confidentiality Agreement means the exclusivity and confidentiality deed dated 24 March 2017 between the Target and the Bidder.

Consultation Notice has the meaning given to that expression in clause 3.6(a).

Control has the meaning given under section 50AA of the Corporations Act and **Controlled** has a corresponding meaning.

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

Counterparty Consent has the meaning given to that expression in clause 7.6(b)(i).

Court means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act as the Target and the Bidder may agree in writing.

Deed Poll means the deed poll to be executed by the Bidder and Bidder Sub in favour of the Scheme Shareholders prior to the First Court Date in the form set out in Schedule 2 or such other form acceptable to the Target (acting reasonably).

Delivery Time means the time being 2 hours before the commencement of the hearing of the Court on the Second Court Date.

Due Diligence Material means:

- (a) the documents and information (including all written responses provided by or on behalf of the Target Group in response to written requests for information) that were at any time prior to 5.00pm on 3 May 2017 contained in the online data room established by or on behalf of the Target Group and made available to the Bidder and the Bidder's Authorised Persons prior to the date of this deed, the index of which has been initialled as at the date of this deed by, or on behalf of, the Target and the Bidder for identification; and

- (b) to the extent not contained in the Due Diligence Material, all written information disclosed by or on behalf of the Target Group in management presentations made to the Bidder and the Bidder's Authorised Persons prior to the date of this deed, provided copies of which are attached to the Target Disclosure Letter.

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

Effective Date means, in relation to the Scheme, the date on which the Scheme becomes Effective.

Encumbrance means a mortgage, charge, pledge, lien, encumbrance, security interest (including a security interest as defined in section 12 of the *Personal Property Securities Act 2009* (Cth)), 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.

End Date means 31 December 2017 or such other date agreed in writing between the Target and the Bidder.

Excluded Shareholder means any Target Shareholder who is a Bidder Group Member or any other Target Shareholder to the extent it holds Target Shares on behalf of, or for the benefit of, any Bidder Group Member.

Excluded Warranties means the representations and warranties of the Target set out in clauses 9.3(b)(xix) and 9.3(b)(xx).

Exclusivity Period means the period commencing on the date of this deed and ending on the earlier of:

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

Fairly Disclosed means, in relation to information disclosed in respect of a matter, event or circumstance to the Bidder or any of the Bidder's Authorised Persons, disclosed to a sufficient extent, and in sufficient detail, so as to enable a reasonable and sophisticated recipient of the relevant information who is experienced in transactions similar to the Proposed Transaction to identify or ascertain the nature and scope of the relevant matter, event or circumstance from the information disclosed.

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 that the Scheme Meeting be convened is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

Governmental Agency means any Australian or foreign government or representative of a government or any Australian or foreign governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity, and includes any minister, ASIC, ASX or any other stock exchange and any regulatory organisation established under statute.

Headcount Test means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of Target Shareholders (other than Excluded Shareholders) present and voting, either in person or by proxy.

Implementation Date means, in relation to the Scheme, the date being 5 Business Days after the Record Date or such other Business Day agreed in writing by the Target and the Bidder.

Impugned Amount has the meaning given to that expression in clause 13.1.

Incoming Officer has the meaning given to that expression in clause 8.1.

Independent Expert means an expert, independent of the parties, appointed by the Target in good faith to opine on whether the Scheme is in the best interest of Target Shareholders.

Independent Expert's Report means the report issued by the Independent Expert in connection with the Scheme for inclusion in the Scheme Booklet, which includes a statement by the Independent Expert on whether, in the Independent Expert's opinion, the Scheme is in the best interest of Target Shareholders, but does not include any supplement, addendum or update of that report unless expressly stated otherwise in this deed.

Ineligible Foreign Scheme Shareholder means a Scheme Shareholder whose address as shown in the Target Register as at the Record Date is a place located outside of Australia and its external territories, New Zealand and any other jurisdiction as the Target and the Bidder may agree in writing (unless the Bidder is satisfied, acting reasonably, that the Bidder is permitted to allot and issue New Bidder Shares to that Scheme Shareholder pursuant to the Scheme under the laws of that place either unconditionally or after compliance with conditions that the Bidder reasonably regards as acceptable and not unduly onerous or impracticable).

Insolvency Event means, in relation to a person:

- (a) **insolvency official:** the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 14 days;
- (b) **arrangements:** the entry by the person into a compromise or arrangement with its creditors generally;
- (c) **winding up:** the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;
- (d) **suspends payments:** the person suspends or threatens to suspend payment of its debts as and when they become due;
- (e) **insolvency:** the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (f) **deregistration:** the person is deregistered as a company or otherwise dissolved;
- (g) **deed of company arrangement:** the person executing a deed of company arrangement; or
- (h) **analogous events:** anything analogous to those set out in any of paragraphs (a) to (g) (inclusive) of this definition occurs in relation to the person under the laws of a foreign jurisdiction,

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

Interest Rate means, in relation to an amount due for payment, the 30 day Bank Bill Swap Reference Rate as published as at the relevant due date for payment in the 'Money & Bond Markets' section of The Australian Financial Review.

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

New Bidder Shares means the Bidder Shares to be issued under the terms of the Scheme as Scheme Consideration and **New Bidder Share** means any one of them.

Outgoing Officer has the meaning given to that expression in clause 8.2.

Proposed Transaction means:

- (a) the proposed acquisition by Bidder Sub in accordance with the terms and conditions of this deed of all of the Target Shares (other than the Target Shares owned or held by an Excluded Shareholder) through the implementation of the Scheme; and
- (b) all transactions and steps contemplated by this deed.

Receiving Party has the meaning given to that expression in clause 18.3.

Record Date means 7.00pm on the date being 5 Business Days after the Effective Date or such other Business Day agreed in writing between the Target and the Bidder.

Regulatory Approvals means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, license, direction, declaration, authority, waiver, modification, or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Governmental Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without such intervention or action.

Related Body Corporate means, in relation to a person, a related body corporate of that person under section 50 of the Corporations Act.

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

Relevant Notice has the meaning given to that expression in clause 10.6(a)(iv).

Respective Proportion means, in relation to an Ineligible Foreign Scheme Shareholder, the proportion (expressed as a percentage) that the number of Scheme Shares held by that Ineligible Foreign Scheme Shareholder as at the Record Date bears to the total number of Scheme Shares held by all Ineligible Foreign Scheme Shareholders as at the Record Date.

Rival Acquirer has the meaning given to that term in clause 10.6(a)(v).

RG 60 means ASIC Regulatory Guide 60 issued by ASIC.

Scheme means a members' scheme of arrangement under Part 5.1 of the Corporations Act between the Target and Scheme Shareholders under which Bidder Sub proposes to acquire all of the Target Shares (other than any Target Shares held by an Excluded Shareholder), substantially in the form set out in Schedule 3, subject to any alterations or conditions:

- (a) agreed to in writing by the Target and the Bidder; or
- (b) made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Target and the Bidder.

Scheme Booklet means the explanatory booklet to be prepared by the Target in respect of the Proposed Transaction in accordance with the terms of this deed and to be despatched to Target Shareholders.

Scheme Consideration means, in respect of each Scheme Share held by a Scheme Shareholder, subject to the terms of the Scheme, the number of New Bidder Shares for that Scheme Share determined in accordance with the Scheme Consideration Ratio as at the Record Date.

Scheme Consideration Ratio means 0.365588962370616 New Bidder Shares per Scheme Share.

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

Scheme Share means a Target Share on issue as at the Record Date other than any Target Share held at that time by an Excluded Shareholder (but includes any Target Share held at that time by an Excluded Shareholder on behalf of one or more Third Parties who are not Excluded Shareholders or otherwise in a fiduciary capacity on behalf of persons who are not Excluded Shareholders).

Scheme Shareholder means a Target Shareholder that holds Scheme Shares as at the Record Date.

Second Court Date means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

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

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

Superior Proposal means a bona fide Competing Proposal:

- (a) of the kind referred to in any of paragraphs (c), (d) or (e) of the definition of 'Competing Proposal'; and
- (b) not resulting from a breach by the Target of any of its obligations under clause 10 of this deed (it being understood that any actions by the other Target Group Members or the Authorised Persons of any Target Group Member not permitted by clause 10 shall be deemed to be a breach by the Target for the purposes hereof),

which in the determination of the Target Board acting in good faith in order to satisfy what the Target Board reasonably considers to be its fiduciary or statutory obligations (after having taken written advice from their external legal counsel and financial advisers in relation to the financial aspects of the Competing Proposal):

- (c) is reasonably capable of being valued and reasonably likely to be completed in accordance with its terms in a timely fashion, taking into account all financial, regulatory and other aspects of such proposal, including the ability of the proposing party to consummate the transactions contemplated by the Competing Proposal; and
- (d) would, if completed substantially in accordance with its terms, be reasonably likely to result in a transaction more favourable to Target Shareholders as a whole than the terms of the Proposed Transaction (as completed) as notified at that time by the Bidder (or any Authorised Person of the Bidder) to the Target (including, for the avoidance of doubt, following the application of the matching right in clause 10.6), taking into account all of the terms and conditions of the Competing Proposal, including consideration, conditionality, funding, certainty, timing, the identity of the proponent and any other matters affecting the probability of the Competing Proposal being completed.

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

Target Break Fee has the meaning given to that term in clause 11.3(a).

Target Director means a director of the Target from time to time.

Target Director Shares means, in relation to a Target Director, all Target Shares:

- (a) held by or on behalf of the Target Director; or
- (b) listed as an indirect interest in an Appendix 3X or Appendix 3Y lodged by the Target with ASX in respect of the Target Director.

Target Disclosure Letter means the letter so entitled provided by the Target to the Bidder on or prior to the date of this deed (including any schedules or annexures to that letter).

Target Excluded Obligation means each obligation of the Target under each of clauses 2(a), 3.3, 3.5, 4.6, 5.1, 5.6, 5.7, 6, 7.1, 7.2 (except in respect of an event, change, circumstance, occurrence, matter or thing to which clause 7.3(d) applies), 10 and 11.

Target Group means the Target and its Subsidiaries and **Target Group Member** means any one of them.

Target Indemnified Parties means each Target Group Member (other than the Target) and each Authorised Person of each Target Group Member.

Target Information means:

- (a) the entirety of the information to be included in the Scheme Booklet (excluding the Bidder Information, the Independent Expert's Report, any investigating accountant's report and any description of the taxation effect of the Proposed Transaction on Scheme Shareholders prepared by an external adviser to the Target); and

- (b) any information provided by the Target to the Bidder, or obtained by the Bidder from an announcement made by the Target to ASX or from a publicly available document lodged by the Target with ASIC, contained in, or used in the preparation of, the information regarding the merged Bidder-Target entity following implementation of the Scheme.

Target Knowledge Persons means each director of the Target and David Grbin

Target Material Adverse Change means any event, change, condition, occurrence, circumstance, thing or matter (or the announcement, disclosure or discovery of any event, change, condition, occurrence, circumstance, thing or matter) occurring before, on or after the date of this deed that individually or when aggregated with all such events, changes, conditions, occurrences, circumstances, things or matters that have occurred or are reasonably likely to occur, has, has had or would be reasonably likely to have:

- (a) a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Target Group taken as a whole; or
- (b) without limiting the generality of paragraph (a) of this definition:
 - (i) the effect of diminishing the consolidated EBITDA of the Target Group, taken as a whole, by at least \$1,500,000 against what it would reasonably be expected to have been but for that event, change, condition, occurrence, circumstance thing or matter;
 - (ii) the effect of diminishing the consolidated revenue of the Target Group, taken as a whole, by at least \$12,500,000 against what it would reasonably be expected to have been but for that event, change, condition, occurrence, circumstance, thing or matter; or
 - (iii) the effect of diminishing the consolidated net assets of the Target Group, taken as a whole, by at least \$2,460,000 against what it would reasonably be expected to have been but for that event, change, condition, occurrence, circumstance, thing or matter;

other than those events, changes, conditions, occurrences, circumstances, things or matters:

- (a) required to be done or procured by a Target Group Member under, or pursuant to, this deed or the Scheme;
- (b) to the extent it is Fairly Disclosed in the Due Diligence Materials and/or the Target Disclosure Letter;
- (c) Fairly Disclosed in the six months prior to the date of this deed in filings of the Target on ASX;
- (d) relating to costs and expenses incurred by the Target Group in connection with the Proposed Transaction, including all fees payable to any Adviser of a Target Group Member, to the extent such amounts or a reasonable estimate of such amounts are Fairly Disclosed in the Due Diligence Material or the Target Disclosure Letter;
- (e) relating to the payment by the Target of the Target Permitted Special Dividend;
- (f) that:
 - (i) result from changes in generally accepted accounting principles or the interpretation of them;
 - (ii) arise as a result of any generally applicable change in law or governmental policy; or
 - (iii) arise from changes in economic or business conditions or securities markets in general,

but, in each case, excluding any event, change, condition, occurrence, circumstance, thing or matter which has a disproportionate adverse effect on the Target Group, taken as a whole, as compared to other participants in the principal business segments in which the Target Group operates.

Target Parties means:

- (a) the Target Group Members; and
- (b) each Authorised Person of each Target Group Member,

and **Target Party** means any one of them.

Target Performance Right means a right granted under the Target Performance Rights Plan to acquire a Target Share, subject to the terms and conditions of the Target Performance Rights Plan.

Target Performance Rights Plan means the Grays eCommerce Group Limited Performance Rights Plan dated 17 January 2014.

Target Permitted Special Dividend has the meaning given to that expression in clause 7.7(a).

Target Prescribed Occurrence means the occurrence of any of the following on or after the date of this deed and before the Delivery Time:

- (a) the Target converts all or any of its shares into a larger or smaller number of shares (as contemplated under section 254H of the Corporations Act or otherwise);
- (b) the Target resolves to reduce its share capital in any way or to reclassify, combine, split or redeem any of the shares in the Target;
- (c) the Target:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) any Target Group Member issues securities (including, without limitation, shares), or grants a performance right or an option over securities (including, without limitation, shares) in the Target Group Member, or agrees to make such an issue or grant such a performance right or option other than pursuant to an exercise or vesting prior to the Record Date of a Target Performance Right on issue as at the time immediately prior to the entry into this deed provided that such exercise or vesting is agreed by the Target and the Bidder in writing;
- (e) any Target Group Member issues, or agrees to issue, securities convertible into shares in the Target Group Member;
- (f) any Target Group Member issues, or agrees to issue, convertible notes;
- (g) any Target Group Member disposes, or agrees to dispose, of the whole, or a substantial part, of the business or property of the Target Group Member;
- (h) any Target Group Member creates or agrees to create any Encumbrance over the whole, or a substantial part, of the business or property of the Target Group Member;
- (i) any Target Group Member becomes Insolvent;
- (j) any Target Group Member makes any change to its constitution or convenes a meeting to consider a resolution to change the constitution of any other Target Group Member;
- (k) any Target Group Member ceases, or threatens to cease, to carry on the business of the Target Group Member conducted as at the date of this deed;
- (l) any Target Group Member (other than a dormant, non-operating member of the Target Group) is deregistered as a company or is otherwise dissolved;
- (m) any Target Group Member disposes of shares or securities in any Target Group Member other than to another Target Group Member; or
- (n) any Target Group Member directly or indirectly authorises, commits or agrees to take or publicly announces any of the actions referred to in paragraphs (a) to (m) (inclusive) of this definition,

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

- (o) required or permitted to be done or procured by a Target Group Member under, or pursuant to, this deed or the Scheme;
- (p) Fairly Disclosed in the six months prior to the date of this deed in filings of the Target on ASX;
- (q) required by law or by an order of a court or other Governmental Agency;
- (r) to the extent it is Fairly Disclosed in the Due Diligence Materials or the Target Disclosure Letter; or
- (s) the undertaking of which the Bidder has approved in writing.

Target Register means the register of members of the Target maintained by, or on behalf of, the Target in accordance with section 168(1) of the Corporations Act.

Target Registry means Computershare Investor Services Pty Limited or any replacement provider of share registry services to the Target from time to time.

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

Target Shareholder means each person who is registered in the Target Register as a holder of Target Shares.

Target Warranties means the representations and warranties of the Target set out in clause 9.3.

Termination Notice has the meaning given to that expression in clause 3.6(c).

Third Party means any person or entity (including a Governmental Agency) other than a Target Group Member or a Bidder Group Member.

Timetable means the indicative timetable in relation to the Proposed Transaction set out in Schedule 1 as may be amended from time to time by written agreement of the Target and the Bidder.

1.2 Interpretation

In this deed, except where the context otherwise requires:

- (a) the singular includes the plural, and the converse also applies;
- (b) gender includes other genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (g) a reference to time is to Sydney, Australia time;
- (h) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) a reference to legislation or to a provision of legislation (including a listing rule or operating rule of a financial market or of a clearing and settlement facility) includes a modification or re enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (k) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (l) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;

- (m) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

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

1.4 Listing requirements included as law

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

1.5 Statements on the basis of knowledge

- (a) Any statement made in this deed by the Target on the basis of the Target's knowledge or awareness is made on the basis that the Target's knowledge or awareness is limited to the knowledge that any of the Target Knowledge Persons has or would have if the Target Knowledge Persons had made all reasonable inquiries of the officers, managers, employees and other persons with responsibility for the matters to which the statement relates.
- (b) Any statement made by the Bidder on the basis of the Bidder's knowledge or awareness is made on the basis that the Bidder's knowledge is limited to the knowledge or awareness that any of Bidder Knowledge Persons has or would have if the Bidder Knowledge Persons had made all reasonable inquiries of the officers, managers, employees and other persons with responsibility for the matters to which the statement relates.

1.6 Reasonable endeavours

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

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

2. Agreement to propose Scheme

- (a) The Target agrees to propose and implement the Scheme on, and subject to, the terms and conditions of this deed, and substantially in accordance with the Timetable.
- (b) The Bidder agrees to:
 - (i) assist the Target in proposing and implementing the Scheme; and
 - (ii) procure Bidder Sub to assist the Target in proposing and implementing the Scheme,

on, and subject to, the terms and conditions of this deed, and substantially in accordance with the Timetable.

3. Conditions precedent and pre-implementation steps

3.1 Conditions to Scheme

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the Target and the Bidder in relation to the implementation of the Scheme will not be binding, until each of the following conditions precedent is satisfied or waived to the extent and in the manner set out in this clause 3:

- (a) **(Shareholder approval):** the Scheme is approved by Target Shareholders (other than Excluded Shareholders) at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
- (b) **(Court approval):** the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act;
- (c) **(Regulatory Approvals):** any Regulatory Approvals that are required by law, or by any Governmental Agency, to implement the Scheme are granted, given, made or obtained on an unconditional basis (or conditional only the Scheme becoming Effective) and remain in full force and effect in all respects, and have not been withdrawn, revoked, suspended, restricted or amended (or become subject to any notice, intimation or indication of intention to do any such thing) before the Delivery Time;
- (d) **(Restraints):** between (and including) the date of this deed and the Delivery Time:
 - (i) there is not in effect any temporary, preliminary or permanent injunction, decision or other order issued by any court of competent jurisdiction or other Governmental Agency or other material legal restraint or prohibition;
 - (ii) no action or investigations is announced, commenced or threatened by an Governmental Agency; and
 - (iii) no application is made to any Governmental Agency, in consequence of, or in connection with, the Scheme which:
 - (iv) restrains, prohibits or prevents (or could reasonably be expected restrain, prohibit or prevent) the Scheme, the implementation of the Proposed Transaction or the rights of the Bidder or the Bidder Sub in respect of the Target Shares to be acquired under the Scheme; or
 - (v) requires the divestiture by the Bidder or Bidder Sub of any Target Shares or the divestiture of any assets of the Bidder Group or the Target Group, unless such injunction decision, order, action, investigation or application has been disposed of to the satisfaction of the Bidder acting reasonably, or is otherwise no longer effective or enforceable, by the Delivery Time;
- (e) **(ASIC and ASX):** before the Delivery Time, ASIC and ASX issue or provide such consents, waivers, exemptions, declarations or approvals as are necessary or which the Target and the Bidder agree are necessary or desirable to implement the Scheme and no such consent, waiver, exemption, declaration or approval has been withdrawn or revoked before the Delivery Time;
- (f) **(New Bidder Shares):** the New Bidder Shares to be issued pursuant to the Scheme are approved for official quotation by ASX by the Delivery Time (provided that any such approval may be subject to customary conditions);
- (g) **(No Target Prescribed Occurrence):** no Target Prescribed Occurrence occurs between the date of this deed and the Delivery Time;
- (h) **(No Target Material Adverse Change):** no Target Material Adverse Change occurs between the date of this deed and the Delivery Time;
- (i) **(Target Warranties):** each Target Warranty (other than an Excluded Warranty) is true and correct in all material respects as at the relevant time or times (as the case may be) set out in clause 9.3(a) in relation to that Target Warranty;

- (j) **(No Bidder Prescribed Occurrence)**: no Bidder Prescribed Occurrence occurs between the date of this deed and the Delivery Time;
- (k) **(No Bidder Material Adverse Change)**: no Bidder Material Adverse Change occurs between the date of this deed and the Delivery Time;
- (l) **(Bidder Warranties)**: each Bidder Warranty is true and correct in all material respects as at the relevant time or times (as the case may be) set out in clause 9.1(a) in relation to that Bidder Warranty; and
- (m) **(Independent Expert)**: the Independent Expert concludes in the Independent Expert's Report that the Scheme is in the best interest of Scheme Shareholders before the time when the Scheme Booklet is registered by ASIC.

3.2 Benefit and waiver of conditions precedent

- (a) The Conditions in clauses 3.1(a) (*Shareholder approval*) and 3.1(b) (*Court approval*) cannot be waived.
- (b) The Conditions in clauses 3.1(c) (*Regulatory Approvals*), 3.1(d) (*Restraints*), 3.1(e) (*ASIC*) and 3.1(f) (*New Bidder Shares*) and are for the benefit of both the Target and the Bidder and any breach or non-satisfaction of them may only be waived (if capable of waiver) with the written consent of both the Target and the Bidder.
- (c) The Conditions in clauses 3.1(g) (*No Target Prescribed Occurrences*), 3.1(h) (*No Target Material Adverse Change*) and 3.1(i) (*Target Warranties*) are for the sole benefit of the Bidder and any breach or non-satisfaction of them may only be waived by the Bidder by notice in writing to the Target.
- (d) The Conditions in clauses 3.1(j) (*No Bidder Prescribed Occurrences*), clauses 3.1(k) (*No Bidder Material Adverse Change*), 3.1(l) (*Bidder Warranties*) and 3.1(m) (*Independent Expert*) are for the sole benefit of the Target and any breach or non-satisfaction of them may only be waived by the Target by notice in writing to the Bidder.
- (e) A party entitled to waive the breach or non-satisfaction of a Condition pursuant to this clause 3.2 (either individually or jointly) may do so in its absolute discretion. Any waiver of a Condition by a party for whose benefit the Condition applies must take place on or prior to the Delivery Time.
- (f) If a party waives the breach or non-satisfaction of any Condition, that waiver will not preclude it from suing the other party for any breach of this deed including, without limitation, a breach that resulted in the non-fulfilment of the Condition that was waived.

3.3 Procuring satisfaction of the Conditions

The Target and the Bidder will, to the extent that it is within their respective power to do so, use their respective reasonable endeavours to procure that each of the Conditions is satisfied as soon as reasonably practicable after the date of this deed or continues to be satisfied at all times until the last time they are to be satisfied (as the case may require).

3.4 Notifications

The Target and the Bidder must each:

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

3.5 Scheme voted down

If the Condition in clause 3.1(a) is not satisfied by reason only of the non-satisfaction of the Headcount Test and the Target or the Bidder considers (acting reasonably) that Share Splitting or some other abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied, then the Target must:

- (a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as counsel engaged by the Target to represent the Target 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 by making an order to disregard the Headcount Test.

3.6 Conditions not capable of being fulfilled

- (a) If any Condition:
 - (i) is not satisfied;
 - (ii) becomes incapable of being satisfied; or
 - (iii) where the Condition is capable of waiver, is not waived in accordance with clause 3.2,in each case by the date specified in this deed for the satisfaction of the Condition, then, subject to clause 3.6(d), either of the Target or the Bidder may give written notice (**Consultation Notice**) to the other within 5 Business Days after the date that the relevant notice relating to the Condition is given under clause 3.4(c).
- (b) Upon delivery of the Consultation Notice, the Target and the Bidder must consult in good faith with a view to determining whether the Target and the Bidder can reach agreement with respect to:
 - (i) the terms (if any) on which the party with the benefit of the relevant Condition the subject of the Consultation Notice will waive that Condition;
 - (ii) an extension of the time for satisfaction of the relevant Condition the subject of the Consultation Notice or an extension of the End Date (as the case may be); or
 - (iii) the Proposed Transaction proceeding by way of alternative means or methods.
- (c) If:
 - (i) the Target and the Bidder are unable to reach agreement in the manner contemplated under clause 3.6(b) within 5 Business Days after a Consultation Notice is given;
 - (ii) a Consultation Notice is not given within the timeframe specified in clause 3.6(a); or
 - (iii) the Scheme has not become Effective by the End Date,then, subject to clause 3.2 and clause 3.6(d), either the Target or the Bidder may terminate this deed by notice in writing prior to the Delivery Time (**Termination Notice**) to the other without any liability to any party by reason of that termination alone.
- (d) A party will not be entitled to give a Consultation Notice or a Termination Notice if the relevant Condition has not been satisfied or has become incapable of being satisfied or the Scheme has not become Effective by the End Date (as the case may be) as a result of:
 - (i) a breach of this deed by that party; or
 - (ii) a deliberate act or omission of that party which directly or materially contributed to that Condition not being satisfied or the Scheme not becoming Effective by the End Date (as the case may be).

3.7 Interpretation

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

- (a) in the case of a Condition relating a Regulatory Approval, the relevant Governmental Agency makes or has made a final adverse determination in writing to the effect that it will not provide the Regulatory Approval; and
- (b) in all other cases, there is an act, failure to act or occurrence that will prevent the Condition being satisfied by the date specified in this deed for the satisfaction of the Condition (and the breach or non-satisfaction that would otherwise have occurred has not already been waived in accordance with this deed).

4. Scheme structure

4.1 Scheme

The parties acknowledge and agree that, subject to the Scheme becoming Effective, the general effect of the Scheme will be that:

- (a) each Scheme Shareholder will be entitled to receive the Scheme Consideration for each Scheme Share held by the Scheme Shareholder at the Record Date; and
- (b) all of the Scheme Shares will be transferred to Bidder Sub (as provided for in the Scheme),

in each case on the Implementation Date and otherwise in accordance with the terms of the Scheme.

4.2 Scheme Consideration

- (a) The Bidder covenants in favour of the Target (in the Target's own right and separately as trustee for each Scheme Shareholder) that, subject to the Scheme becoming Effective and in consideration for the transfer to Bidder Sub (as provided for in the Scheme) of each Scheme Share under the terms of the Scheme, the Bidder will:
 - (i) procure that Bidder Sub will accept that transfer; and
 - (ii) provide or procure the provision of the Scheme Consideration for each Scheme Share held by each Scheme Shareholder on the Implementation Date and otherwise in accordance with the terms of the Scheme.
- (b) In order to facilitate the provision of the Scheme Consideration, the Target must provide, or procure the provision of, a complete copy of the Target Register as at the Record Date (which must include the name, registered address and registered holding of each Scheme Shareholder as at the Record Date) within 1 Business Day after the Record Date. The details and information to be provided under this clause 4.2(b) must be provided in such form as the Bidder or the Bidder Registry may reasonably require, as notified to the Target prior to the Record Date.

4.3 Allotment and issue of New Bidder Shares

The Bidder must issue the New Bidder Shares to Scheme Shareholders in accordance with the terms of the Scheme.

4.4 Ineligible Foreign Scheme Shareholders

The provision to an Ineligible Foreign Scheme Shareholder of the Scheme Consideration for each Scheme Share held by the Ineligible Foreign Scheme Shareholder will be dealt with in the manner set out in the Scheme.

4.5 Fractional entitlements

Fractional entitlements of a Scheme Shareholder to a part of a New Bidder Share will be dealt with in the manner set out in the Scheme.

4.6 Performance rights

The Target must as soon as possible after the date of this deed (and, in any event, before the date of the Scheme Meeting) take all action necessary to ensure that all Target Performance Rights (whether unvested or vested and not exercised) are dealt with in the manner that the Target and the Bidder agree in writing.

5. Scheme – parties' respective implementation obligations

5.1 Target's obligations

The Target must take all steps reasonably necessary to propose and (subject to all of the Conditions being satisfied or waived in accordance with their terms) implement the Scheme as soon as reasonably practicable after the date of this deed and substantially in accordance with the Timetable, including without limitation taking each of the following steps:

- (a) **(Scheme Booklet):** prepare the Scheme Booklet in compliance with all applicable laws, RG 60 and in accordance with clause 5.3;
- (b) **(Target Information):** ensure that the Target Information is not misleading or deceptive in any material respect (whether by omission or otherwise) including in the form and context in which it appears in the Scheme Booklet;
- (c) **(consultation with the Bidder in relation to Scheme Booklet):** consult with the Bidder as to the content and presentation of the Scheme Booklet including:
 - (i) making available to the Bidder drafts of the Scheme Booklet and the Independent Expert's Report for the purpose of enabling the Bidder to review and comment on those draft documents. In relation to the Independent Expert's Report, the Bidder's review is to be limited to a factual accuracy review;
 - (ii) consulting with the Bidder in relation to the content of those drafts (other than the Bidder Information), and consider in good faith, for the purposes of amending those drafts, comments from the Bidder on those drafts; and
 - (iii) providing to the Bidder a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet referred to in clause 5.1(h)(i) is finalised and to enable the Bidder to review that draft of the Scheme Booklet before its submission to ASIC in the manner contemplated under clause 5.1(h)(i);
- (d) **(directors' recommendation):** include in the Scheme Booklet:
 - (i) the statement by the Target Board contemplated under clause 6(a)(ii); and
 - (ii) a statement that each Target Director will (in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (or in any update of, or revision, amendment or addendum to, that report) that the Scheme is in the best interest of Scheme Shareholders) vote, or procure the voting of, any Target Director Shares relating to that Target Director as at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting, unless there has been a change of recommendation contemplated by clause 6(b);
- (e) **(Independent Expert):** promptly appoint the Independent Expert to prepare and provide the Independent Expert's Report, and provide any assistance and information to enable the Independent Expert to prepare the Independent Expert's Report;
- (f) **(approval of the Bidder Information):** subject to clause 5.3(c), seek written approval from the Bidder for the form and context in which the Bidder Information appears in the Scheme Booklet (which approval the Bidder must not unreasonably withhold or delay) and not lodge the Scheme Booklet with ASIC until such approval is obtained from the Bidder;
- (g) **(approval of draft for ASIC):** as soon as reasonably practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a meeting of the Target Board, or of a committee of the Target Board appointed for the purpose, is held to consider approving that draft as being in a form appropriate for

provision to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act;

- (h) **(liaison with ASIC and ASX):** as soon as reasonably practicable after the date of this deed:
 - (i) provide an advanced draft of the Scheme Booklet approved in accordance with clauses 5.1(g) and 5.2(g) to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
 - (ii) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet and keep the Bidder reasonably informed of any matters raised by ASIC or ASX in relation to the Scheme Booklet or the Proposed Transaction and use reasonable endeavours, in consultation with the Bidder, to resolve any such matters;
- (i) **(information):** provide all necessary information, and procure that the Target Registry provides all necessary information, in each case in a form reasonably requested by the Bidder, about the Scheme, the Scheme Shareholders and Target Shareholders to the Bidder and its Authorised Persons, which the Bidder reasonably requires in order to canvass agreement to the Scheme by Target Shareholders (including the results of directions by the Target to Target Shareholders under Part 6C.2 of the Corporations Act), and the Target must comply with any reasonable request of the Bidder for the Target to give directions to Target Shareholders pursuant to Part 6C.2 of the Corporations Act from time to time for one of these purposes;
- (j) **(approval of Scheme Booklet):** as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Target Board, or of a committee of the Target Board appointed for the purpose, is held to consider approving the Scheme Booklet for despatch to Target Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (k) **(listing):** subject to clause 5.1(x), not do anything to cause Target Shares to cease being quoted on ASX or to become permanently suspended from quotation prior to implementation of the Proposed Transaction unless the Bidder has agreed in writing;
- (l) **(update Scheme Booklet):** without limiting the Target's obligations under clause 5.4(a), until the date of the Scheme Meeting, promptly update or supplement the Scheme Booklet with, or where appropriate otherwise inform the market by way of announcement of, any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement, and seek the Court's approval for the despatch of any updated or supplementary Scheme Booklet. The Target must consult with the Bidder as to the content and presentation of the updated or supplementary Scheme Booklet, or the market announcement, in the manner contemplated by clause 5.1(c).
- (m) **(section 411(17)(b) statements):** apply to ASIC for the production of:
 - (i) an indication of intent letter stating that ASIC does not intend to appear before the Court on the First Court Date; and
 - (ii) a statement in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (n) **(first Court hearing):** lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that, the approval in clause 5.1(i) and the written statements in clause 5.1(k) have been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meeting;
- (o) **(representation):** procure that the Target is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act and at which, through its counsel or solicitors, the Target will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in

order to ensure the fulfilment of its obligations under this deed, the Scheme and/or in connection with the Proposed Transaction;

- (p) **(registration of Scheme Booklet)**: if the Court directs Target to convene the Scheme Meeting, as soon as possible after such orders are made, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (q) **(convening Scheme Meeting)**: take all reasonable steps necessary to comply with the orders of the Court given on the First Court Date including, as required, despatching the Scheme Booklet to Target Shareholders and convening and holding the Scheme Meeting, provided that if this deed is terminated under clause 15 Target will take all steps reasonably required to ensure the Scheme Meeting is not held;
- (r) **(certificate)**: at the Court hearing on the Second Court Date, provide to the Court:
 - (i) a certificate, in the form of a deed, (substantially in the form attached in Schedule 4) confirming (in respect of matters within the Target's knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b)) have been satisfied or waived in accordance with this deed. A draft of such certificate shall be provided by the Target to the Bidder by 5.00pm on the date that is 2 Business Days prior to the Second Court Date; and
 - (ii) any certificate provided to it by the Bidder pursuant to clause 5.2(m);
- (s) **(Court approval application)**: if:
 - (i) the resolution submitted to the Scheme Meeting is passed by the majorities required under the Corporations Act or, where clause 3.5 applies, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act; and
 - (ii) where necessary, the Target and the Bidder agree on the Business Day immediately following the Scheme Meeting that it can be reasonably expected that all of the Conditions (other than the Condition in clause 3.1(b)) will be satisfied or waived prior to the Delivery Time,apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme;
- (t) **(appeal process)**: if the Court refuses to make any orders directing the Target to convene the Scheme Meeting or approving the Scheme, the Target and the Bidder must:
 - (i) consult with each other in good faith as to whether to appeal the Court's decision; and
 - (ii) appeal the court decision unless the parties agree otherwise or an independent senior counsel opines that, in his or her view, an appeal would have no reasonable prospect of success;
- (u) **(implementation of Scheme)**: if the Scheme is approved by the Court:
 - (i) subject to the Listing Rules, lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act by no later than the Business Day after the date on which the Court orders were made (or such later date as agreed in writing between the Target and the Bidder);
 - (ii) determine entitlements to the Scheme Consideration as at the Record Date in accordance with the Scheme;
 - (iii) execute proper instruments of transfer of and effect and register the transfer of the Scheme Shares to Bidder Sub on the Implementation Date; and
 - (iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (v) **(Bidder Information)**: without the prior written consent of the Bidder, not use the Bidder Information for any purposes inconsistent with the Confidentiality Agreement;
- (w) **(documents)**: consult with the Bidder in relation to the content of the documents required for the purpose of the Scheme (including originating process, affidavits, submissions and

draft minutes of Court orders) and consider in good faith, for the purpose of amending drafts of those documents, comments from the Bidder and its Authorised Persons on those documents;

- (x) **(suspension from trading)**: apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date; and
- (y) **(compliance with laws)**: do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

5.2 The Bidder's obligations

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

- (a) **(Bidder Information)**: provide to the Target, in a form appropriate for inclusion in the Scheme Booklet, the Bidder Information, which information must (without limiting the foregoing):
 - (i) contain all information necessary to enable Target to ensure that the Scheme Booklet complies with the requirements of RG 60; and
 - (ii) not be misleading or deceptive in any material respect (whether by omission or otherwise) including in the form and context in which it appears in the Scheme Booklet;
- (b) **(confirmation of Bidder Information)**: subject to clause 5.3(c), promptly after the Target requests that it does so, confirm in writing to the Target that the Bidder consents to the inclusion of the Bidder Information in the Scheme Booklet, in the form and context in which the Bidder Information appears (such consent not to be unreasonably withheld or delayed provided that the Target has complied with clause 5.3(c));
- (c) **(New Bidder Shares)**: do everything reasonably necessary to ensure that the New Bidder Shares are approved for official quotation on ASX and that trading in the New Bidder is able to commence as soon as practicable after the Implementation Date;
- (d) **(Independent Expert)**: promptly 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;
- (e) **(assistance with Scheme Booklet and Court documents)**: promptly provide any assistance or information reasonably requested by the Target or its Advisers in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to Target Shareholders) and any documents required to be filed with the Court in respect of the Scheme;
- (f) **(review of Scheme Booklet)**: as soon as reasonably practicable after receipt, review the drafts of the Scheme Booklet prepared by the Target and provide comments on those drafts in good faith;
- (g) **(approval of draft for ASIC)**: as soon as reasonably practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a meeting of the board of directors of the Bidder, or of a committee of the board of directors of the Bidder appointed for the purpose, is held to consider approving those sections of that draft that relate to the Bidder as being in a form appropriate for provision to ASIC for review;
- (h) **(approval of Scheme Booklet)**: as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the board of directors of the Bidder, or of a committee of the board of directors of the Bidder appointed for the purpose, is held to consider approving those sections of the Scheme Booklet that relate to the Bidder as being in a form appropriate for despatch to Target Shareholders, subject to approval of the Court;

- (i) **(update of Bidder Information):** without limiting the Bidder's obligations under clause 5.2(a), until the date of the Scheme Meeting:
 - (i) promptly update or supplement the Bidder Information with all information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Bidder Information does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement; and
 - (ii) promptly provide to the Target any such information contemplated under clause 5.2(i)(i), in a form appropriate for inclusion in any update of the Scheme Booklet, in order to ensure that the Target is able to comply with the Target's obligations under clause 5.1(l);
- (j) **(representation):** procure that the Bidder is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act and at which, through its counsel or solicitors, The Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed, the Scheme, the Deed Poll and/or in connection with the Proposed Transaction;
- (k) **(Deed Poll):** prior to the First Court Date, execute, and procure that Bidder Sub executes, the Deed Poll;
- (l) **(Target Information):** without the prior written consent of the Target, not use the Target Information for any purposes inconsistent with the Confidentiality Agreement;
- (m) **(certificate):** as soon as reasonably practicable after the Delivery Time and, in any event, before the commencement of the Court hearing on the Second Court Date, provide to the Target for provision to the Court at that hearing a certificate, in the form of a deed, (substantially in the form attached in Schedule 4) confirming (in respect of matters within the Bidder's knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b)) have been satisfied or waived in accordance with this deed.; and
- (n) **(compliance with laws):** do everything reasonably within the Bidder's power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

5.3 Scheme Booklet - preparation principles

- (a) As soon as reasonably practicable after the date of this deed and substantially in accordance with the Timetable, the Target must prepare the Scheme Booklet in compliance with:
 - (i) all applicable laws, in particular with the Corporations Act, RG 60 and the Listing Rules; and
 - (ii) this clause 5.3.
- (b) The Scheme Booklet will include:
 - (i) the terms of the Scheme;
 - (ii) the notice of Scheme Meeting;
 - (iii) the Target Information (other than the Target Information referred to in clauses 5.3(b)(i) and 5.3(b)(ii));
 - (iv) the Bidder Information;
 - (v) a copy of this deed (without the schedules or annexures);
 - (vi) a copy of the Deed Poll executed by the Bidder and the Bidder Sub; and
 - (vii) a copy of the Independent's Expert Report.

- (c) If the Target and the Bidder disagree on the form or content of the Scheme Booklet, the Target and the Bidder must consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:
 - (i) if the disagreement relates to the form or content of any information appearing in the Scheme Booklet other than the Bidder Information, the Target Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet; and
 - (ii) if the disagreement relates to the form or content of the Bidder Information, the Target will make such amendments to the form or content of the disputed part of the Bidder Information as the Bidder, acting in good faith, requires.
- (d) The Target must take all reasonable steps to ensure that the Scheme Booklet (other than the Bidder Information) is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date it is despatched to Target Shareholders.
- (e) The Bidder must take all reasonable steps to ensure that the Bidder Information is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Scheme Booklet is despatched to Target Shareholders.
- (f) The Target and the Bidder each agree that the efficient preparation of the Scheme Booklet and the implementation of the Scheme are in the interests of Target Shareholders and the Bidder and that they will use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external advisers) to comply with their respective obligations under this clause 5.3 and to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable.

5.4 New information

- (a) The Target must provide to the Bidder all such further or new information of which the Target becomes aware that arises after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is, or may be, necessary to ensure that the Scheme Booklet continues to comply with the Corporations Act, RG 60 and the Listing Rules.
- (b) The Bidder must provide to Target all such further or new information of which the Bidder becomes aware that arises after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is, or may be, necessary to ensure that the Scheme Booklet continues to comply with the Corporations Act, RG 60 and the Listing Rules.

5.5 Verification

- (a) The Target must undertake reasonable verification processes in relation to the information included in the Scheme Booklet (other than the Bidder Information) so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and, once those processes have been completed, provide written confirmation to the Bidder of the completion of such processes and provide to the Court with any such evidence as the Target's counsel considers necessary or desirable concerning those verification processes.
- (b) The Bidder must undertake reasonable verification processes in relation to the Bidder Information included in the Scheme Booklet so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and, once those processes have been completed, provide written confirmation to the Target of the completion of such processes and provide to the Court with any such evidence as the Target's counsel considers necessary or desirable concerning those verification processes.

5.6 Responsibility statements

The Scheme Booklet will include a responsibility statement, that will contain words to the following effect:

- (a) the Target is responsible for the Target Information and that, to the maximum extent permitted by law, the Target will not be responsible for any Bidder Information and will disclaim any liability for the Bidder Information appearing in the Scheme Booklet; and
- (b) the Bidder is responsible for the Bidder Information and that, to the maximum extent permitted by law, the Bidder will not be responsible for any information appearing in the Scheme Booklet other than the Bidder Information and will disclaim any liability for any information appearing in the Scheme Booklet other than the Bidder Information.

5.7 Good faith cooperation

The Target and the Bidder must each use all reasonable endeavours to procure that its Authorised Persons work (including by attending meetings and by providing information) in good faith and in a timely and co-operative manner with the other parties to implement the Scheme, to prepare all documents required relating to the Scheme, and to agree and execute the strategy described in clause 7.6.

6. Board recommendation

- (a) The Target must use its best endeavours to procure that, subject to clause 6(b):
 - (i) the Target Board unanimously recommends that Target Shareholders vote in favour of the Scheme at the Scheme Meeting in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (or in any update of, or revision, amendment or addendum to, that report) that the Scheme is in the best interest of Scheme Shareholders; and
 - (ii) the Scheme Booklet includes a statement by the Target Board to the effect set out in clause 6(a)(i).
- (b) The Target must use its best endeavours to procure that the Target Board collectively, and the members of the Target Board individually, do not change, withdraw or modify its, his or her recommendation to vote in favour of the Scheme unless:
 - (i) the Independent Expert concludes in the Independent Expert's Report (or any update of, or revision, amendment or addendum to, that report) that the Scheme is not in the best interest of Scheme Shareholders; or
 - (ii) the Target has received, other than as a result of a breach by the Target of clause 10, a Superior Proposal,
 and the Target has complied with its obligations under clause 10.
- (c) For the purposes of this clause 6, customary qualifications and explanations contained in the Scheme Booklet in relation to a recommendation to vote in favour of the Scheme to the effect that the recommendation is made in the absence of a Superior Proposal and/or subject to the Independent Expert concluding in the Independent Expert's Report (or in any update of, or revision, amendment or addendum to, that report) that the Scheme is in the best interest of Scheme Shareholders will not be regarded as a failure to make, or a withdrawal of the making of, a recommendation in favour of the Scheme.

7. Conduct of business before the Implementation Date

7.1 Conduct of Target business

- (a) Subject to clauses 7.2 and 7.3, from the date of this deed up to and including the Implementation Date, and without limiting any other obligations of the Target under this deed, the Target must ensure that the business of the Target Group is conducted in the ordinary and usual course of business and must:
 - (i) operate the business of the Target Group consistent with past practice, in substantially the same manner as previously conducted in the 12 months before the date of this deed;

- (ii) use reasonable endeavours to preserve its relationships, and the relationships of the other Target Group Members, with customers, suppliers, landlords, licensors, licensees, Governmental Agencies and others having material business dealings with a Target Group Member, and to retain the services of all key employees of the Target Group;
 - (iii) use reasonable endeavours to ensure that all assets of each Target Group Member are maintained in the normal course consistent with past practice; and
 - (iv) use reasonable endeavours to ensure compliance in all material respects by each Target Group Member with all material contracts to which a Target Group Member is a party, and with all laws, authorisations and licenses applicable to each Target Group Member.
- (b) From the date of this deed up to and including the Implementation Date, and without limiting any other obligations of the Target under this deed, the Target must:
 - (i) not take or fail to take (and procure that each other Target Group Member does not take or fail to take) any action that constitutes a Target Prescribed Occurrence or that could reasonably be expected to result in a Target Prescribed Occurrence;
 - (ii) not take or fail to take (and procure that each other Target Group Member does not take or fail to take) any action that would, or would be likely to, prevent a Condition being satisfied or result in a Condition not being satisfied; and
 - (iii) without limiting the generality of clause 7.2, procure that any financial accommodation that is provided by any Target Group Member to any person as part of, or in connection with, the 'Grays Capital' business (or any similar asset-backed finance business) is provided on the terms stipulated by, and subject to the approval of, and any conditions required by, the Bidder in writing.

7.2 Prohibited actions

Subject to clause 7.3 and without limiting the generality of clause 7.1, from the date of this deed up to and including the Implementation Date, the Target must not, and must procure that each other Target Group Member does not:

- (a) other than the Target Permitted Special Dividend, declare, pay or distribute any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members;
- (b) do any of the following:
 - (i) amend the terms of the Target Performance Rights Plan or of any Target Performance Rights;
 - (ii) amend the terms of any Offer Letter (as that term is defined in the Target Performance Rights Plan) provided on or prior to the date of this deed to any participant or proposed participant in the Target Performance Rights Plan;
 - (iii) grant or agree to grant any Target Performance Rights or otherwise taking any action affecting any or all of the Target Performance Rights;
 - (iv) accelerate, or otherwise cause or permit, the vesting of any Target Performance Rights (except as agreed by the Target and the Bidder in writing); or
 - (v) pay (or agree to pay) any money or provide (or agree to provide) any financial compensation, valuable consideration or any other incentive to or for the benefit of a holder or former holder of Target Performance Rights in respect of the lapse of their Target Performance Rights or otherwise in connection with the matters referred to in clause 4.6;
- (c) make any change to its constitution, except with the written consent of the Bidder;
- (d) commence or undertake business activities (whether alone or with a third party) which are materially different in nature to business activities already carried out as at the date of this deed, whether by way of acquisition or otherwise;
- (e) do any of the following:

- (i) acquire or dispose of;
 - (ii) agree, offer or propose to acquire or dispose of; or
 - (iii) announce a bid or tendering for,
- any business, entity or undertaking (including any shares or other interests in any company or other entity) or interest in real property (including giving notice under, or otherwise bringing about the termination or extinguishment of any lease to which any Target Group Member is a party);
- (f) do any of the following:
- (i) enter into any contract (including renewing or otherwise extending any existing contract) or commitment (other than in respect of financial accommodation or information technology) requiring payments by the Target Group in excess of:
 - (A) in the case of contracts or commitments relating to the purchase of assets by the Target Group for resale by auction in the ordinary course of business, or to the guarantee in the ordinary course of business of prices to be realised for assets to be sold by auction by the Target Group, \$5,000,000 (individually or in aggregate); or
 - (B) otherwise, \$150,000 (individually or in aggregate);
 - (ii) (without limiting the foregoing) agree to incur capital expenditure from the date of this deed that is not reflected in the Target Group's budget (as contained in the Due Diligence Materials) and is more than \$100,000 (individually or in aggregate);
 - (iii) waive any material third party default where the financial impact on the Target Group will be in excess of \$200,000 (individually or in aggregate);
 - (iv) accept as a compromise of a matter less than the full compensation due to a Target Group Member where the financial impact of the compromise on the Target Group is more than \$200,000 (individually or in aggregate);
 - (v) enter into any lease or lease renewal (or agreement to lease or to renew any lease) real property;
 - (vi) enter into any contract (including renewing any existing contract) or commitment, relating to any information technology (whether hardware, software or otherwise);
 - (vii) acquire or dispose of, or enter into or announce any agreement for the acquisition or disposal of, any asset or business, or entering into any corporate transaction, which would or would reasonably be likely to involve a material change in the manner in which the Target Group conducts its business or the nature (including balance sheet classification);
 - (viii) enter into a contract or commitment restraining a Target Group Member from competing with any person or conducting any activities in any market; or
 - (ix) do any thing that would result in a Target Warranty in clause 9.3(b)(x) being or becoming inaccurate, or the Bidder otherwise becoming aware that that warranty is not accurate;
- (g) provide, or enter into any contract or commitment to provide, financial accommodation (irrespective of what form of financial indebtedness that accommodation takes) in excess of \$20,000 (individually) other than:
- (i) to wholly owned members of the Target Group; or
 - (ii) where that financial accommodation is provided, or to be provided, in compliance with clause 7.1(b)(iii) ;
- (h) receive, or enter into any contract or commitment to receive, financial accommodation other than:
- (i) from one or more wholly owned Target Group Members; or

- (ii) draw-downs on existing banking facilities to provide financial accommodation permitted by clause 7.2(g)(ii) or that are consistent with the Target Group's current budget as Fairly Disclosed in the Target Disclosure Letter);
- (i) enter into any agreement, arrangement or transaction with respect to derivative instruments (including, but not limited to, swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments;
- (j) enter into, or resolve to enter into, a transaction with any "related party" (as defined in section 228 of the Corporations Act) of the Target or another Target Group Member (other than a related party which is a wholly owned Target Group Member);
- (k) employ, or offer to employ, an individual who is not an employee of a Target Group Member as at the time of signing this deed where:
 - (i) the total remuneration payable to that individual would exceed \$150,000 (inclusive of superannuation and other entitlements) in any 12 month period; or
 - (ii) that individual will, or is intended to, report directly to the Chairman, Chief Executive Officer or Chief Financial Officer of the Target Group or any of their respective direct reports (other than as a direct replacement for a departed employee or as provided in the Target Group's current budget);
- (l) enter into or alter, vary or amend any employment, consulting, severance or similar agreement or arrangement with one or more of its existing officers, directors, other executives or employees, or accelerating or otherwise increasing compensation or benefits for any of the above, where the aggregate financial impact on the Target Group of all such entries, alterations, variations or amendments would be greater than \$300,000 in any 12 month period, other than:
 - (i) pursuant to contractual arrangements in effect on the date of this deed and which have been Fairly Disclosed in the Due Diligence Material and/or the Target Disclosure Letter;
 - (ii) as expressly provided for in the Target's policies and guidelines in effect on the date of this deed and which have been Fairly Disclosed in the Due Diligence Material and/or the Target Disclosure Letter;
 - (iii) as expressly provided for in clause 8; or
 - (iv) an increase in compensation or benefits that is in the ordinary and usual course of business, consistent with the Target Group's practice throughout the 12 months preceding the date of this deed, to employees other than executives, or members of the management team, of the Target Group;
- (m) pay or agree to pay any of its officers, directors, other executives or employees a termination or retention payment, bonus or other payment (whether provided in cash or as a non-cash benefit) exceeding \$200,000 in aggregate, other than a payment:
 - (i) that is in accordance with contractual arrangements in effect on the date of this deed which are Fairly Disclosed in the Due Diligence Material and/or the Target Disclosure Letter; and
 - (ii) that in aggregate with all other such payments after the date of this deed is in an amount that does not exceed the provisions for such payments in the accounts of the Target contained in the Due Diligence Material and/or the Target Disclosure Letter;
- (n) enter into any enterprise bargaining agreement;
- (o) amend in any material respect any arrangement with its Advisors or enter into agreements or arrangements with a new legal or financial advisor (other than a barrister to appear on behalf of the Target on the First Court Date or the Second Court Date), in respect of the Proposed Transaction or a Competing Proposal;
- (p) change any accounting policy applied by them to report their financial position other than any change in policy required by a change in accounting standards;
- (q) do anything that would result in a change in the Target Group's consolidated tax group; or

- (r) agree to do any of the matters set in clauses 7.2(a) to 7.2(q) (inclusive).

7.3 Permitted activities

The obligations of the Target under clauses 7.1(a) and 7.2 do not apply in respect of any event, change, circumstance, occurrence, matter or thing:

- (a) expressly required to be done or procured by the Target pursuant to, or which otherwise contemplated by, this deed or the Scheme;
- (b) required by law or by an order of a court or Government Agency (except where that requirement arises as a result of an action by a Target Group Member);
- (c) the undertaking or occurrence of which the Bidder has approved in writing (which approval must not be unreasonably withheld or delayed in respect of any event, change, circumstance, occurrence, matter or thing the subject of clauses 7.2(c), 7.2(d), 7.2(g), 7.2(h), 7.2(k), 7.2(l) or 7.2(m)); or
- (d) the undertaking or occurrence of which:
 - (i) relates directly to the Target's 'B2C rationalisation program' (as outlined in the Target Disclosure Letter);
 - (ii) the Target has given the Bidder reasonable notice, accompanied by all relevant information regarding that event, change, circumstance, occurrence, matter or thing; and
 - (iii) has been approved by the Bidder in writing (which approval must not be unreasonably withheld or delayed).

7.4 Access

- (a) In the period from the date of this deed to the Implementation Date, the Target must:
 - (i) respond to any reasonable request from the Bidder or its Authorised Persons (including in response to requests for information from financial markets and any Governmental Agency) for information concerning the Target Group and its business and operations as may be required solely in order to implement the Proposed Transaction and on the basis that such information will not be used for any purposes inconsistent with the Confidentiality Agreement; and
 - (ii) provide the Bidder and its Authorised Persons with all reasonable access during normal business hours and on reasonable notice to the management, offices, books, records and business operations of the Target that the Bidder reasonably requires in order to implement the Proposed Transaction or for the Bidder to prepare for the transition of ownership of the Target Group to the Bidder.
- (b) Nothing in this clause 7.4 obliges the Target to provide to the Bidder or its Authorised Persons with any information:
 - (i) concerning the Target Directors' consideration of the Scheme; or
 - (ii) which would breach an obligation of confidentiality to any person or any applicable privacy laws.
- (c) The Target will provide reasonable assistance to the Bidder for the purpose of satisfying the obligations which are imposed on the Target under this clause 7.4, but nothing in this clause 7.4 requires the Target to provide access to any documentation or to take any other action that would unreasonably disrupt the usual and ordinary course of the businesses and operations of the Target Group.

7.5 Access to the Bidder information

- (a) In the period from the date of this deed up until and including the Implementation Date, the Bidder must ensure that the Bidder Group Members respond to any reasonable request from the Target and its Authorised Persons (including in response to requests for information from financial markets and any Governmental Agency) for information concerning the Bidder Group and its business and operations as may be required solely in

order to implement the Proposed Transaction and on the basis that such information will not be used for any purposes inconsistent with the Confidentiality Agreement.

- (b) Nothing in this clause 7.5 requires the Bidder to provide the Target with any information:
 - (i) concerning the consideration of the Proposed Transaction by the board of directors of the Bidder; or
 - (ii) which would breach an obligation of confidentiality to any person or any applicable privacy laws.
- (c) The Bidder will provide reasonable assistance to the Target for the purpose of satisfying the obligations which are imposed on the Bidder under this clause 7.5, but nothing in this clause 7.5 requires the Bidder to provide access to any documentation or to take any other action that would disrupt the usual and ordinary course of the businesses and operations of the Bidder Group.

7.6 Change of control

- (a) As soon as practicable after the date of this deed, the Target and the Bidder must seek to identify any change of control or similar provisions in leases and material contracts to which a Target Group Member is a party which may be triggered by the implementation of the Proposed Transaction (**Change of Control Contract**).
- (b) In respect of each Change of Control Contract, the parties agree as follows, the Target and the Bidder will:
 - (i) use reasonable endeavours to agree a proposed course of action with respect to obtaining from each counterparty to the Change of Control Contract the consents and approvals required under the Change of Control Contract in relation to the implementation of the Proposed Transaction (**Counterparty Consent**); and
 - (ii) jointly initiate contact with each relevant counterparties to the Change of Control Contract and request that each such counterparty provide the required Counterparty Consent. The parties agree that no Bidder Group Member or any of its Authorised Persons may directly contact any counterparty to a Change of Control Contract in connection with obtaining the required Counterparty Consent without the Target's prior written consent.
- (c) The Target must cooperate with, and provide reasonable assistance to, the Bidder to obtain any required Counterparty Consent as expeditiously as possible, including by:
 - (i) promptly providing any information reasonably required by any counterparty to a Change of Control Contract; and
 - (ii) making available any Authorised Person of a Target Group Member, where necessary, to meet with any counterparty to a Change of Control Contract to deal with issues arising in relation to the change of control of the Target, the implementation of the Proposed Transaction and obtaining any required Counterparty Consent.
- (d) The Target and the Bidder acknowledge and agree that a failure by a Target Group Member to obtain any Counterparty Consent in relation to a Change of Control Contract will not constitute a breach of this deed by the Target and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed, provided that the existence of that Change of Control Contract was Fairly Disclosed in the Due Diligence Material and/or in the Target Disclosure Letter.

7.7 Payment of the Target Permitted Special Dividend

- (a) Despite any other provision of this deed, the Target may at any time in, its sole discretion, declare and/or pay a dividend but subject to all applicable laws and regulations (**Target Permitted Special Dividend**) to Target Shareholders, provided that in respect of the Target Permitted Special Dividend:
 - (i) the aggregate amount of the Target Permitted Special Dividend must not exceed \$7,300,000 and at least this amount has been received by the Target Group from

the trust account referred to in the Target's announcement referred to in clause 9.3(b)(xxii);

- (ii) the payment date for the Target Permitted Special Dividend will be determined by the Target at its discretion;
 - (iii) the Target Permitted Special Dividend will be franked to the maximum extent possible, subject to the franking account of the Target not being in deficit after the payment of the Target Permitted Special Dividend; and
 - (iv) the declaration and/or payment of the Target Permitted Special Dividend will not be in any way conditional on any aspect of the Scheme (including it becoming Effective).
- (b) Despite any other provision of this deed, the Target may, subject to all applicable laws and regulations, make any intra-group dividends, distributions and/or payments between Target Group Members to the extent necessary or desirable in order to be able to declare and/or pay the Target Permitted Special Dividend in accordance with clause 5.4(a).
- (c) The Target and the Bidder each acknowledge and agree that if the Target Permitted Special Dividend is declared and/or paid in accordance with clause 5.4(a), the Scheme Consideration will not be reduced by any amount referable to the Target Permitted Special Dividend.

7.8 Bidder conduct

From the date of this deed up to and including the Implementation Date, and without limiting any other obligations of the Bidder under this deed, the Bidder must:

- (a) not take or fail to take (and procure that each other Bidder Group Member does not take or fail to take) any action that constitutes a Bidder Prescribed Occurrence or that could reasonably be expected to result in a Bidder Prescribed Occurrence;
- (b) not take or fail to take (and procure that each other Bidder Group Member does not take or fail to take) any action that would, or would be likely to, prevent a Condition being satisfied or result in a Condition not being satisfied; and
- (c) as soon as practicable following the Target's notification that it wishes to provide financial accommodation to a person of the type contemplated by clause 7.1(b)(iii):
 - (i) notify the Target of the Bidder's approval or rejection the proposed accommodation; and
 - (ii) if the proposed accommodation is approved by the Bidder, notify the Target of the term and conditions on which the financial accommodation is to be provided.

8. Reconstitution of the board of each Target Group Member

8.1 Appointment of directors

On or prior to the Implementation Date, the Target must take all actions necessary (and in accordance with the constitution of each relevant Target Group Member, the Corporations Act and the Listing Rules) to appoint with effect from implementation of the Scheme each person nominated by the Bidder prior to the Implementation Date as a director and/or secretary of a Target Group Member (**Incoming Officer**), subject to:

- (a) the Scheme Consideration having been provided in full by the Bidder to Scheme Shareholders; and
- (b) the Target having received from each Incoming Officer prior to the Implementation Date a signed consent to act as a director and/or secretary of each relevant Target Group Member that the Incoming Officer is proposed to be appointed as a director and/or secretary (as the case may be).

8.2 Resignation of directors

Without limiting clause 8.1, on or prior to the Implementation Date, the Target must take all actions necessary (and in accordance with the constitution of each relevant Target Group Member, the Corporations Act and the Listing Rules) to:

- (a) procure, prior to the Implementation Date, from each person acting immediately prior to the Implementation Date as a director and/or secretary of each Target Group Member (**Outgoing Officer**) a written resignation as a director and/or secretary (as the case may be) of the relevant Target Group Member and to the effect that the Outgoing Officer has no Claim outstanding against any Target Group Member in respect of the Outgoing Officer's office as a director and/or secretary of a Target Group Member; and
- (b) subject to the Scheme Consideration having been provided in full by the Bidder to Scheme Shareholders, cause each Outgoing Officer to resign as a director and/or secretary of the Target Group Member with effect from implementation of the Scheme.

9. Representations and warranties

9.1 Bidder representations and warranties

- (a) The Bidder represents and warrants to the Target (on the Target's own behalf and separately as trustee for each other Target Party) that each of the matters set out in clause 9.1(b) is true and correct as at the date of this deed and at all subsequent times until the Delivery Time (except that where any statement is expressed to be made at a particular date or time only it is given only at that date or time).
- (b) The Bidder represents and warrants to the Target that:
 - (i) the Bidder Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Target Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
 - (ii) the Bidder Information:
 - (A) will be provided to the Target in good faith and on the understanding that the Target and each other Target Party will rely on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme; and
 - (B) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules,and all information provided by the Bidder to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
 - (iii) the Bidder will, as a continuing obligation, provide to the Target all further or new information which arises after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Target Information is not misleading or deceptive (including by way of omission);
 - (iv) the Bidder is a validly existing corporation registered under the laws of its place of incorporation;
 - (v) the execution and delivery of this deed has been properly authorised by all necessary corporate action of the Bidder;
 - (vi) the Bidder has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
 - (vii) this deed does not conflict with or result in the breach of or a default under:

- (A) any provision of the Bidder's constitution; or
- (B) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which the Bidder or any other Bidder Group Member is bound,

and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;

- (viii) this deed is a valid and binding obligation of the Bidder, enforceable in accordance with its terms;
- (ix) the Bidder has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure, other than in relation to:
 - (A) the Proposed Transaction; or
 - (B) any matter disclosed in writing by the Bidder to the Target on or prior to the date of this deed;
- (x) the Bidder's capital structure, including all issued securities as at the date of this deed, is as set out below and the Bidder has not issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into Bidder Shares and the Bidder is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any Bidder Shares, options, warrants, performance rights or other securities or instruments in the Bidder:
 - (A) 265,300,492 Bidder Shares; and
 - (B) 15,270,000 options; and
 - (C) 3,350,000 rights;
- (xi) the Bidder does not require the approval of its shareholders or the approval or consent of any other person to enter into or perform any of its obligations under this deed;
- (xii) no Insolvency Event has occurred in relation to the Bidder or another substantial Bidder Group Member, nor has any regulatory action of any nature of which the Bidder is aware been taken that would prevent or restrict the Bidder's ability to fulfil its obligations under this deed;
- (xiii) each Bidder Group Member has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Governmental Agencies having jurisdiction over them and have all material licenses, authorisations and permits necessary for them to conduct the business of the Bidder Group as presently being conducted;
- (xiv) the Bidder has collated and prepared all of the disclosure materials concerning the Bidder Group provided to the Target in connection with the Proposed Transaction in good faith and, as far as the Bidder is aware, those disclosure materials have been collated with all reasonable care and skill;
- (xv) as at the date of this deed, the Bidder is not aware of any information relating to the Bidder Group or its respective businesses or operations (having made reasonable enquiries) as at the date of this deed that has or could reasonably be expected to give rise to a material adverse change in respect of the Bidder Group that has not been disclosed to ASX or to the Target in writing prior to the date of this deed; and
- (xvi) all information the Bidder has provided to the Independent Expert or to the Target is not misleading in any material respect and it has not omitted any information required to make the information provided to the Independent Expert or the Target not misleading in any material respect.

9.2 Bidder's indemnity

The Bidder agrees with the Target (on the Target's own behalf and separately as trustee or nominee for each other Target Party) to indemnify and keep indemnified each Target Party from and against all Claims which any Target Party may suffer or incur by reason of any of the representations and warranties in clauses 9.1(a) or 9.1(b) being untrue or incorrect or any breach of any of the representations and warranties in clauses 9.1(a) or 9.1(b).

9.3 Target representations and warranties

- (a) The Target represents and warrants to the Bidder (on the Bidder's own behalf and separately as trustee for each other Bidder Party) that each of the matters set out in clause 9.3(b) is true and correct as at the date of this deed and at all subsequent times until the Delivery Time (except that where any statement is expressed to be made at a particular date or time only it is given only at that date or time).
- (b) The Target represents and warrants to the Bidder that:
 - (i) the Target Information, as at the date the Scheme Booklet is despatched to Target Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
 - (ii) the Target Information:
 - (A) will be prepared in good faith and on the understanding that the Bidder and each other Bidder Party will rely on that information for the purposes of determining whether to proceed with the Proposed Transaction; and
 - (B) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules,and all information provided by the Target to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
 - (iii) the Target will, as a continuing obligation (but in respect of the Bidder Information, only to the extent that the Bidder provides the Target with updates to the Bidder Information), ensure that the Scheme Booklet is updated to include all further or new information which arises after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Target Information is not misleading or deceptive (including by way of omission);
 - (iv) the Target is a validly existing corporation registered under the laws of its place of incorporation;
 - (v) the execution and delivery of this deed has been properly authorised by all necessary corporate action of the Target;
 - (vi) the Target has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
 - (vii) this deed does not conflict with or result in the breach of or a default under:
 - (A) any provision of the Target's constitution; or
 - (B) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which the Target or any other Target Group Member is bound,and it is not otherwise bound by any agreement that would prevent or restrict the Target from entering into or performing this deed;
 - (viii) this deed is a valid and binding obligation of the Target, enforceable in accordance with its terms;

- (ix) the Target has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure, other than in relation to:
 - (A) the Proposed Transaction; or
 - (B) any matter disclosed in writing by the Target to the Bidder prior to the date of this deed;
- (x) the Target's capital structure, including all issued securities as at the date of this deed, is as set out below and the Target has not issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into Target Shares and the Target is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any Target Shares, options, warrants, performance rights or other securities or instruments in the Target:
 - (A) 127,477,311 Target Shares;
 - (B) 4,375,636 Target Performance Rights (of which up to 1,309,732 may vest before the Effective Date),

and, subject to receipt of any necessary waivers from ASX or approvals from Target Shareholders to permit the lapse of all unvested, or vested but unexercised, Target Performance Rights, the Target has done or will do all things necessary to ensure that on the Effective Date there will be no Target Performance Rights on issue;
- (xi) all the issued securities of each Target Group Member (other than the Target) are held by either the Target or a another Target Group Member that is directly or indirectly wholly-owned by the Target and no Target Group Member has issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into shares and no Target Group Member is under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any shares, options, warrants, performance rights or other securities or instruments in a Target Group Member;
- (xii) any company, partnership, trust, joint venture or other enterprise or entity in which a Target Group Member owns or has an equity interest is set out in the Due Diligence Material and/or the Target Disclosure Letter
- (xiii) except for approval under section 411(4)(a)(ii) of the Corporations Act, the Target does not require the approval of its shareholders or, so far as the Target is aware, the approval or consent of any other person to enter into or perform any of its obligations under this deed;
- (xiv) no Insolvency Event has occurred in relation to the Target or another substantial Target Group Member, nor has any regulatory action of any nature of which it is aware been taken that would prevent or restrict its ability to fulfil its obligations under this deed;
- (xv) each Target Group Member has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Governmental Agencies having jurisdiction over them and have all material licenses, authorisations and permits necessary for them to conduct the business of the Target Group as presently being conducted;
- (xvi) the Target has collated and prepared all of the Due Diligence Materials and the Target Disclosure Letter in good faith and, as far as the Target is aware, the Due Diligence Materials and Target Disclosure Letter have been collated and prepared with all reasonable care and skill;
- (xvii) as at the date of this deed, the Target is not aware of any information relating to the Target Group or its respective businesses or operations (having made reasonable enquiries) as at the date of this deed that has or could reasonably be

expected to give rise to a material adverse change in respect of the Target Group that has not been disclosed to ASX or to the Bidder in writing prior to the date of this deed;

- (xviii) all information the Target has provided to the Independent Expert or to the Bidder is not misleading in any material respect and it has not omitted any information required to make the information provided to the Independent Expert or the Bidder not misleading in any material respect;
- (xix) as far as the Target is aware, after diligent investigation with all reasonable care and skill, all leases and material contracts to which a Target Group Member is a party have been included in the Due Diligence Materials;
- (xx) the Target has provided complete and accurate information, as at the date of this deed, regarding fee levels in all retainers, mandates and fee estimates with its Advisers in relation to the Proposed Transaction and any other transaction where such retainer or mandate is current or under which the Target Group still has undischarged obligations;
- (xxi) it has not, before the date of this deed, received written notice of any material investigation, prosecution, arbitration, litigation or dispute threatened against a Target Group Member which could reasonably be expected to give rise to a liability for the Target Group in excess of A\$1,250,000 (**Material Proceedings**) and, as at the date of this deed is not aware of circumstances which could reasonably be expected to give rise to any Material Proceedings; and
- (xxii) the announcement made by the Target dated 2 May 2017 titled *Variation of Lease – Sydney Premises* was accurate in all material respects at the time it was made and, as at the date of this deed, the payment from the landlord referred to in that announcement has been deposited in the Bidder's solicitors' trust account.

9.4 Target's indemnity

Target agrees with the Bidder (on the Bidder's own behalf and separately as trustee or nominee for each other Bidder Party) to indemnify and keep indemnified each Bidder Party from and against all Claims which any Bidder Party may suffer or incur by reason of any of the representations and warranties in clauses 9.3(a) or 9.3(b) being untrue or incorrect or any breach of any of the representations and warranties in clauses 9.3(a) or 9.3(b).

9.5 Notifications

Each party must promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which causes or may cause any of the representations and warranties given by it in under this clause 9 to be untrue or inaccurate or which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 9.

9.6 Survival of representations

Each representation and warranty in clauses 9.1 and 9.3:

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

9.7 Survival of indemnities

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

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

9.8 Limitations on Claims against the Target

The Target's representations and warranties in clause 9.3 and the indemnity given by the Target in clause 9.4 are each subject to, and no Claim by any Bidder Party in connection with any representation and warranty in clauses 9.3(a) or 9.3(b) being untrue or incorrect or any breach of any of the representations and warranties in clauses 9.3(a) or 9.3(b) can be made against the Target, in respect of any fact, matter or thing:

- (a) which was Fairly Disclosed in an announcement made by the Target to the ASX in the six months prior to the date of this deed or a document lodged by the Target with ASIC in the six months prior to the date of this deed;
- (b) which was Fairly Disclosed in the Due Diligence Material and/or the Target Disclosure Letter; or
- (c) the undertaking of which the Bidder has approved in writing.

9.9 Limitation on Claims against the Bidder

The Bidder's representations and warranties in clause 9.1 and the indemnity given by the Bidder in clause 9.2 are each subject to, and no Claim by any Target Party in connection with any representation and warranty in clauses 9.1(a) or 9.1(b) being untrue or incorrect or any breach of any of the representations and warranties in clauses 9.1(a) or 9.1(b) can be made against the Bidder in respect of any fact, matter or thing:

- (a) which was Fairly Disclosed in an announcement made by the Bidder to the ASX in the six months prior to the date of this deed or a document lodged by the Bidder with ASIC in the six months prior to the date of this deed;
- (b) which was Fairly Disclosed in the Bidder Disclosure Letter; or
- (c) the undertaking of which the Target has approved in writing.

10. Exclusivity

10.1 No existing discussions

Other than in relation to the discussions with the Bidder in connection with the Proposed Transaction, the Target represents and warrants to the Bidder that as at the date of this deed:

- (a) no Target Group Member nor any Authorised Person of a Target Group Member is a party to any agreement, arrangement or understanding with a Third Party in relation to any actual, proposed or potential Competing Proposal; and
- (b) no Target Group Member nor any Authorised Person of a Target Group Member is, directly or indirectly, participating in any discussions or negotiations with any Third Party that concern, or that could reasonably be expected to lead to, a Competing Proposal.

10.2 No-shop

During the Exclusivity Period, the Target must not, and must ensure that each other Target Group Member and each Authorised Person of a Target Group Member does not, directly or indirectly:

- (a) solicit, invite, initiate or encourage (including, without limiting the application of clause 10.4, by the provision of any non-public information relating to the Target or any Target Group Member (or any of their respective businesses and operations) to any Third Party other than any Authorised Person of a Bidder Group Member) any enquiry, expression of interest, proposal, offer, discussion or negotiation in relation to, or that could reasonably be expected to encourage or lead to, the making of an actual, proposed or potential Competing Proposal; or
- (b) communicate to a Third Party (other than any Authorised Person of a Bidder Group Member) any intention to do any of the things referred to in clause 10.2(a).

10.3 No-talk

Subject to clause 10.7, during the Exclusivity Period, the Target must not, and must ensure that each other Target Group Member and each Authorised Person of a Target Group Member does not, directly or indirectly:

- (a) negotiate or enter into or participate in negotiations or discussions with any Third Party (other than any Authorised Person of a Bidder Group Member);
- (b) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding with any Third Party (other than any Authorised Person of a Bidder Group Member); or
- (c) communicate to any Third Party (other than any Authorised Person of a Bidder Group Member) any intention to do any of the things referred to in clauses 10.3(a) or 10.3(b), in relation to, or which may reasonably be expected to encourage or lead to, an actual, proposed or potential Competing Proposal, even if:
- (d) that Third Party's actual, proposed or potential Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by a Target Group Member or any Authorised Person of a Target Group Member; or
- (e) that Third Party has publicly announced the Competing Proposal.

10.4 No due diligence

- (a) Subject to clause 10.7, during the Exclusivity Period, except with the prior written consent of the Bidder, the Target must ensure that each Target Group Member and each Authorised Person of a Target Group Member does not, directly or indirectly, disclose, provide or otherwise make available to any Third Party, or permit any such person to receive any non-public information relating to the Target or any Target Group Member (or any of their respective businesses or operations) in connection with, with a view to obtaining or which could reasonably be expected to lead to, the formulation, development, finalisation or announcement of an actual, proposed or potential Competing Proposal (whether by that Third Party or another person), including providing such information for the purposes of the conduct of due diligence investigations in respect of the Target, any other Target Group Member or the business of the Target Group.
- (b) If the Target proposes that any non-public information be disclosed, provided or otherwise made available to a Third Party, then:
 - (i) before such information is disclosed, provided or made available by or on behalf of the Target, the Third Party must enter into a confidentiality agreement with the Target which contains obligations on the Third Party which are no less onerous in any material respect than the obligations of the Bidder under the Confidentiality Agreement; and
 - (ii) any non-public information disclosed, provided or made available to that Third Party must also be provided to the Bidder as soon as reasonably practicable after the non-public information is disclosed, provided or made available to that Third Party (unless the information has already been provided to the Bidder or an Authorised Person of a Bidder Group Member).

For the avoidance of doubt, any of the acts described in this clause 10.4(b) may only be taken by the Target or any Target Group Member or Authorised Person of a Target Group Member if not proscribed by clause 10.4(a).

10.5 Notification of approaches

- (a) During the Exclusivity Period, the Target must as soon as possible after becoming aware of any of the matters referred to in clauses 10.5(a)(i) or 10.5(a)(ii) (and, in any event, no later than 10:00am on the day being 2 Business Days after becoming aware of any such matters) notify the Bidder in writing of:

- (i) any negotiations or discussions, approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate negotiations or discussions, in respect of any expression of interest, inquiry, offer or proposal in relation to any actual, proposed or potential Competing Proposal; or
- (ii) a proposal (whether or not made to the Target or any Target Group Member or Authorised Person of a Target Group Member) in connection with, or in respect of any exploration or consummation of an actual, proposed or potential Competing Proposal,

whether such matters are solicited or unsolicited, and in writing or otherwise.

- (b) For the avoidance of doubt, any of the acts described in clauses 10.5(a)(i) and 10.5(a)(ii) above may only be taken by the Target or any Target Group Member or Authorised Person of a Target Group Member if not proscribed by clauses 10.2 to 10.4 (inclusive).
- (c) A notification under clause 10.5(a) must include the identity of the relevant person making or proposing the relevant actual, proposed or potential Competing Proposal, together with all material terms and conditions of the actual, proposed or potential Competing Proposal. The Target must also notify the Bidder in writing as soon as possible after becoming aware of any material developments in relation to such actual, proposed or potential Competing Proposal.

10.6 Target's response to Rival Acquirer and the Bidder's right to respond

- (a) If the Target receives a Competing Proposal and as a result, any Target Director proposes to either:
 - (i) change, withdraw or modify his or her recommendation of the Scheme; or
 - (ii) approve or recommend the entry into any agreement, commitment, arrangement or understanding relating to the Competing Proposal,
 the Target must ensure that no Target Director does so until each of the following has occurred:
 - (iii) the Target Board has determined in good faith after consultation with Target's financial advisers that the Competing Proposal is, or would reasonably be expected to lead to, a Superior Proposal;
 - (iv) the Target has given the Bidder written notice (**Relevant Notice**) of the Target Director's proposal to take the action referred to in clauses 10.6(a)(i) or 10.6(a)(ii) (as applicable) (subject to the Bidder's rights under clause 10.6(b)), including details of the grounds on which the Target Director proposes to take such action;
 - (v) the Target has provided the Bidder with the identity of the relevant Third Party (**Rival Acquirer**) and the material terms of the Competing Proposal;
 - (vi) the Bidder's rights under clause 10.6(b) have been exhausted; and
 - (vii) the Target Board has determined in good faith after consultation with Target's financial advisers that that the Competing Proposal is, or would reasonably be expected to lead to, a Superior Proposal after the Bidder's rights under clause 10.6(b) have been exhausted and after evaluation of any Counter Proposal by the Bidder pursuant to 10.6(b).
- (b) If the Target gives a Relevant Notice to the Bidder under clause 10.6(a)(iv), the Bidder will have the right, but not the obligation, at any time during the period of 5 Business Days following the receipt of the Relevant Notice, to amend by notice in writing to the Target the terms of the Proposed Transaction including increasing the amount of consideration offered under the Proposed Transaction or proposing any other form of transaction (**Counter Proposal**), and if the Bidder makes a Counter Proposal then the Target Directors must review the Counter Proposal in good faith and in consultation with Target's financial advisers. If the Target Directors determine in good faith after consultation with Target's financial advisers that the Counter Proposal would be more favourable, or at least no less favourable, to the Target and the Target Shareholders than the Competing Proposal which the Bidder has responded to with that Counter Proposal (having regard to the matters noted in clause 10.7), then:

- (i) the Target and the Bidder must use their respective best endeavours to agree the amendments to this deed that are reasonably necessary to reflect the Counter Proposal and to enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal; and
 - (ii) the Target must use its best endeavours to procure that the Target Directors unanimously recommend the Counter Proposal to the Target Shareholders and not recommend the Competing Proposal which the Bidder has responded to with that Counter Proposal.
- (c) For the purposes of this clause 10.6, each successive material modification of any expression of interest, offer or proposal by a Third Party in relation to a Competing Proposal will constitute a new Competing Proposal in respect of which this clause 10.6 will apply.

10.7 Fiduciary out

The restrictions in clauses 10.3 and 10.4 do not apply to the extent they restrict the Target or any Target Director from taking or refusing to take any action with respect to an actual, proposed or potential Competing Proposal in relation to which there has been no contravention by the Target of this clause 10, provided that:

- (a) the actual, proposed or potential Competing Proposal is bona fide; and
- (b) the Target Board has determined in good faith after:
 - (i) consultation with Target's financial advisers in respect of the financial aspects of the Competing Proposal, that the Competing Proposal is or would reasonably be expected to lead to a Superior Proposal; and
 - (ii) receiving written advice from the Target's external Australian legal adviser practising in the area of corporate law, that failing to take the action or refusing to take the action (as the case may be) with respect to the Competing Proposal would constitute or would be likely to constitute a breach of the fiduciary or statutory obligations of any Target Director.

11. Target Break Fee

11.1 Background

- (a) The Target and the Bidder acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, the Bidder will incur significant costs including those described in clause 11.2.
- (b) In the circumstances referred to in clause 11.1(a), the Bidder has requested that provision be made for the payments outlined in clause 11.3, without the benefit of which the Bidder would not have entered into this deed.
- (c) The Target Board believes that the Scheme will provide benefit to the Target and the Target Shareholders and that it is appropriate for the Target to agree to the payments referred to in this clause 11 in order to secure the Bidder's participation in the Proposed Transaction.

11.2 Costs incurred by the Bidder

- (a) The fee payable under clause 11.3 has been calculated to reimburse the Bidder for the following:
 - (i) fees for reasonable legal, financial and other professional advice in planning and implementing the Proposed Transaction;
 - (ii) reasonable opportunity costs incurred in engaging in the Proposed Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
 - (iii) costs of management and directors' time in planning and implementing the Proposed Transaction; and

- (iv) out of pocket expenses incurred in planning and implementing the Proposed Transaction,

in each case, incurred by the Bidder directly or indirectly as a result of having entered into this deed and pursuing the Proposed Transaction, and including any amounts in respect of GST incurred by the Bidder in respect of which it is not entitled to an input tax credit.

- (b) The parties acknowledge that:
 - (i) the amount of fees, costs and losses referred to in this clause 11.2 is inherently unascertainable and that, even after termination of this deed, the costs will not be able to be accurately ascertained; and
 - (ii) the amount of the costs payable under clause 11.3 is a genuine and reasonable pre-estimate of those fees, costs and losses.

11.3 Payment by the Target to the Bidder

- (a) The Target agrees to pay to the Bidder \$1.79 million (exclusive of GST) (**Target Break Fee**) if:
 - (i) (**Competing Proposal**): a Competing Proposal is publicly announced prior to the Delivery Time (whether or not such proposal is stated to be subject to any preconditions) and, within 12 months from the date of the public announcement of that Competing Proposal, the proponent of that Competing Proposal (either alone or together with any Associates of the proponent of that Competing Proposal) or any Associate of that proponent:
 - (A) completes a Competing Proposal of a kind referred to in any of paragraphs (c), (d), (e) or (f) of the definition of 'Competing Proposal'; or
 - (B) becomes the legal holder of at least 50% of Target Shares;
 - (ii) (**Recommendation**): at any time prior to the Delivery Time, any Target Director:
 - (A) fails to recommend the Scheme in the manner described in clause 6;
 - (B) withdraws or adversely modifies or adversely qualifies his or her recommendation of the Scheme or support for it;
 - (C) makes any public statement to the effect that the Scheme is not, or is no longer, recommended or supported by that Target Director; or
 - (D) makes any public statement to the effect that the Target Director recommends or supports a Competing Proposal,except:
 - (E) where the Independent Expert concludes in the Independent Expert's Report (or any update of, or revision, amendment or addendum to, that report) that the Scheme is not in the best interest of Scheme Shareholders (except where that conclusion is due wholly or partly to the existence, announcement or publication of a Competing Proposal); or
 - (F) as a result of any matter or thing giving the Target the right to terminate this deed under clause 15.1(a); or
 - (iii) (**Material Breach**): the Target is:
 - (A) in material breach of any material obligations of the Target under this deed or in breach of any obligations of Target under clause 7.2 (in either case, other than a wilful, deliberate or reckless breach of a Target Excluded Obligation); or
 - (B) in material breach of any representations and warranties given by the Target under clause 9.3,

and the Bidder terminates this deed in accordance with clause 15.1(a).

- (b) The Target must pay the Bidder the Target Break Fee within 5 Business Days of receipt by the Target of a demand for payment from the Bidder that is made after the occurrence of the event referred to in clause 11.3(a).
- (c) The maximum amount payable by the Target under this clause 11.3 is \$1.79 million (exclusive of GST).
- (d) The Target Break Fee:
 - (i) will not be payable to the Bidder if the Scheme becomes Effective; and
 - (ii) is only payable once.
- (e) For the avoidance of doubt, the Target Break Fee is not payable merely because the resolution submitted to the Scheme Meeting in respect of the Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act.
- (f) Where the Target Break Fee becomes payable to the Bidder under this clause 11.3 and is actually paid to the Bidder, the Bidder (for itself and as agent of every other Bidder Group Member):
 - (i) releases all rights against, and agrees with the Target that the Bidder will not make a Claim against, any Target Party (other than a Claim under this clause 11) which relates solely to the event, fact, matter or circumstance that gave rise to the right to demand the payment of the Target Break Fee; and
 - (ii) indemnifies each Target Party against a Claim that is made by a Bidder Group Member contrary to the release under clause 11.3(f)(i).
- (g) Clause 11.3(f) has no application in relation to any Claim by the Bidder against the Target in connection with any wilful, deliberate or reckless breach by the Target of a Target Excluded Obligation.

12. Bidder Break Fee

12.1 Background

- (a) The Target and the Bidder acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, the Target will incur significant costs including those described in clause 12.2.
- (b) In the circumstances referred to in clause 12.1(a), the Target has requested that provision be made for the payments outlined in clause 12.3, without the benefit of which the Target would not have entered into this deed.
- (c) The board of directors of the Bidder believes that the Scheme will provide benefit to the Bidder (and its shareholders) and that it is appropriate for the Bidder to agree to the payments referred to in this clause 12.

12.2 Costs incurred by the Bidder

- (a) The fee payable under clause 12.3 has been calculated to reimburse the Target for the following:
 - (i) fees for reasonable legal, financial and other professional advice in planning and implementing the Proposed Transaction;
 - (ii) reasonable opportunity costs incurred in engaging in the Proposed Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
 - (iii) costs of management and directors' time in planning and implementing the Proposed Transaction; and
 - (iv) out of pocket expenses incurred in planning and implementing the Proposed Transaction,

in each case, incurred by the Target directly or indirectly as a result of having entered into this deed and pursuing the Proposed Transaction, and including any amounts in respect of GST incurred by the Target in respect of which it is not entitled to an input tax credit.

- (b) The parties acknowledge that:
 - (i) the amount of fees, costs and losses referred to in this clause 12.2 is inherently unascertainable and that, even after termination of this deed, the costs will not be able to be accurately ascertained; and
 - (ii) the amount of the costs payable under clause 12.3 is a genuine and reasonable pre-estimate of those fees, costs and losses.

12.3 Payment by the Bidder to the Target

- (a) The Bidder agrees to pay to the Target \$1.79 million (exclusive of GST) (**Bidder Break Fee**) if the Bidder is in material breach of any:
 - (i) material obligations of the Bidder under this deed (other than a wilful, deliberate or reckless breach of a Bidder Excluded Obligation); or
 - (ii) representations and warranties given by the Bidder under clause 9.1,and the Target terminates this deed in accordance with clause 15.1(a).
- (b) The Bidder must pay the Target the Bidder Break Fee within 5 Business Days of receipt by the Bidder of a demand for payment from the Target that is made after the occurrence of the event referred to in clause 12.3(a).
- (c) The maximum amount payable by the Target under this clause 12.3 is \$1.79 million (exclusive of GST).
- (d) The Bidder Break Fee:
 - (i) will not be payable to the Target if the Scheme becomes Effective; and
 - (ii) is only payable once.
- (e) Where the Bidder Break Fee becomes payable to the Target under this clause 12.3 and is actually paid to the Target, the Target (for itself and as agent of every other Target Group Member):
 - (i) releases all rights against, and agrees with the Bidder that the Target will not make a Claim against, any Bidder Party (other than a Claim under this clause 12) which relates solely to the event, fact, matter or circumstance that gave rise to the right to demand the payment of the Bidder Break Fee; and
 - (ii) indemnifies each Bidder Party against a Claim that is made by a Target Group Member contrary to the release under clause 12.3(e)(i).
- (f) Clause 12.3(e) has no application in relation to any Claim by the Target against the Bidder in connection with any wilful, deliberate or reckless breach by the Bidder of a Bidder Excluded Obligation.

13. Break Fee qualification

13.1 Determination by Governmental Agency

If:

- (a) a Governmental Agency determines or declares that payment of all or any part of the Target Break Fee or Bidder Break Fee is unenforceable or unlawful (including because it involves a breach of the fiduciary or statutory duties of the members of the Target Board or board of directors of the Bidder (as applicable)) or constitutes 'unacceptable circumstances' (as that term is used in the Corporations Act) (**Impugned Amount**); and
- (b) no appeal from or review of that determination or declaration is available, available appeals from or reviews of that determination or declaration have been exhausted, or the parties agree in writing not to appeal or seek review of that determination or declaration,

then:

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

For the avoidance of doubt, any part of the Target Break Fee or Bidder Break Fee that does not comprise the Impugned Amount must be paid by the Target or Bidder (as applicable).

13.2 Obligations of the Bidder and the Target

The parties must:

- (a) take all steps within their respective control (or that of their respective Related Bodies Corporate) to ensure that any determination or declaration referred to in clause 13.1 applies to the minimum extent possible; and
- (b) not cause or permit to be made, and must procure that their respective Related Bodies Corporate do not cause or permit to be made, any application to the Takeovers Panel, a court or other Governmental Agency for or in relation to a declaration or determination referred to in clause 13.1.

14. Confidentiality and Public Announcement

14.1 Confidentiality

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

14.2 Agreed Announcement on execution

Immediately after the execution of this deed, the parties must issue public announcements in a form previously agreed to in writing between them (**Agreed Announcement**).

14.3 Further public announcements

Subject to clause 14.4, other than the Agreed Announcement, any further public announcements by the Target or the Bidder in relation to, or in connection with, the Proposed Transaction or any other transaction the subject of this deed or the Scheme may only be made in a form approved by each party in writing (acting reasonably).

14.4 Required announcement

Where a party is required by applicable law, the ASX Listing Rules or any other applicable financial market regulation to make any announcement or to make any disclosure in connection with the Proposed Transaction or any other transaction the subject of this deed or the Scheme, it may do so but must use reasonable endeavours, to the extent practicable and lawful, to consult with the other party before making the relevant disclosure and must give the other party as much notice as reasonably practical.

14.5 Statements on termination

The parties must use all reasonable endeavours to issue agreed statements in respect of any termination of this deed and, to that end but without limitation, clauses 14.3 and 14.4 apply to any such statements or disclosures.

14.6 Variations to Confidentiality Agreement

The parties agree that the Confidentiality Agreement is amended as follows:

- (a) clause 8(a)(iii) is deleted;
- (b) the word “and” at the end of clause 8(a)(vi)(B) is deleted;
- (c) the period at the end of clause 8(a)(vii) is deleted and replaced with “; and”; and
- (d) a new clause 8(a)(viii) is inserted which reads:

“the provisions of clauses 8(a)(i) to 8(a)(v) shall cease with immediate effect to apply if:

- (A) *a Third Party publicly announces or proposes a Competing Proposal after the date of this deed or otherwise publicly indicates after the date of this deed that it is considering a scheme of arrangement, takeover or other control proposal for Target;*
- (B) *any Third Party who is a substantial holder (as defined in the Corporations Act) in the Target as at the date of this deed, sends a notice to the ASX and / or the Target indicating that it (1) has acquired a Relevant Interest in an additional 3% or more of the shares in the Target or (2) has directly or indirectly acquired an interest in, or an economic exposure to, an additional 3% or more of the shares in the Target including through entering into any agreement or arrangement with any person involving the conferring of rights, the economic effect of which is equivalent or substantially equivalent to the acquisition, holding or disposal of target shares (including, but not limited to, cash-settled derivative contracts, swaps, contracts for differences or other derivative contracts) (**Equivalent Acquisition**);*
- (C) *any Third Party who is not identified in a notice sent to ASX as a substantial holder (as defined in the Corporations Act) in Target as at the date of this deed, sends a notice to the ASX and / or the Target indicating that it (1) holds or has acquired a Relevant Interest in at least 5% of the shares in the Target or (2) has directly or indirectly acquired an interest in, or an economic exposure to, 5% or more of the shares in the Target, including through an Equivalent Acquisition; or*
- (D) *the Target gives the Bidder a notice under clause 10.5 of the scheme implementation deed between the Target and the Bidder.”*

15. Termination

15.1 Termination by notice

A party (**Terminating Party**) may, by notice in writing to the other party (**Other Party**), terminate this deed at any time prior to the Delivery Time:

- (a) if the Other Party:
 - (i) is:
 - (A) either the Target or the Bidder, and is in material breach of any of its material obligations under this deed (except, in relation to the Target, those obligations in clause 7.2), including a material breach of a material representation or warranty given by the Other Party under clause 9.1 (if the Other Party is the Bidder) or clause 9.3 (if the Other Party is the Target). Without limiting the generality of the foregoing, the parties agree that any breach of the representations or warranties in clause 9.3(b)(x) and clause 9.3(b)(xx) will be deemed to be a material breach of a material representation or warranty; or
 - (B) the Target, and is in breach of any of its obligations under clause 7.2; and
 - (ii) has failed to remedy such breach prior to the earlier of the Delivery Time and the date being 5 Business Days after the date of receipt by the Other Party of a notice in writing from the Terminating Party setting out details of the relevant

circumstance and requesting the Other Party to remedy such breach to the reasonable satisfaction of the Terminating Party;

- (b) in accordance with clause 3.6;
- (c) if the Court refuses to make any order directing the Target to convene the Scheme Meeting;
- (d) if the Effective Date for the Scheme has not occurred on or before the End Date; or
- (e) such number of Target Directors as constitutes a majority of the Target Board:
 - (i) withdraws or adversely modifies or adversely qualifies their respective recommendation of the Scheme or support for it;
 - (ii) make any public statement to the effect that the Scheme is not, or is no longer, recommended or supported by those Target Directors; or
 - (iii) make any public statement to the effect that those Target Directors recommend a Competing Proposal,and do not, within 3 Business Days, reinstate their respective recommendation of the Scheme, provided that if the Terminating Party is the Target it may only terminate this deed under this clause 15.1(e) if:
 - (iv) the action described in clauses 15.1(e)(i) to 15.1(e)(iii) (inclusive) that is taken by the relevant Target Directors is permitted by clause 6(b); and
 - (v) the Bidder is entitled or will become entitled to the Target Break Fee as a result of that action by the one or more of the relevant Target Directors, that amount has been paid to the Bidder in accordance with clause 18.3.

15.2 Automatic termination

Without limiting any other term of this deed, this deed will terminate automatically if the resolution submitted to the Scheme Meeting in respect of the Scheme is not approved by the majorities required under section 411(4)(a)(ii)(B) of the Corporations Act.

15.3 Effect of termination

- (a) In the event of termination of this deed under clause 3.6, 15.1 or 15.2, this deed will become void and have no effect, except that the provisions of clauses 9.6, 9.7, 11, 12, 13, 14, 15, 16.1, 16.2 and 18.3 to 18.17 (inclusive) survive termination.
- (b) Termination of this deed does not affect any accrued rights of a party in respect of a breach of this deed prior to termination.

16. Releases

16.1 Release of Target Indemnified Parties

- (a) Subject to any restrictions imposed by law, the Bidder releases, and will procure that Bidder Sub releases, any and all rights that it may have as at the date of this deed and from time to time, and agrees with the Target that it will not, and will procure that Bidder Sub will not, make any Claim, against a Target Indemnified Party in connection with:
 - (i) the Target's execution or delivery of this deed;
 - (ii) any breach of any representation, warranty, covenant or obligation of the Target in this deed;
 - (iii) the implementation of the Scheme; or
 - (iv) any disclosure made by any Target Indemnified Party which is false or misleading (whether by omission or otherwise),

except to the extent the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct or wilful concealment. To avoid doubt, nothing in this clause 16.1(a) limits the rights of the Bidder to terminate this deed under clause 15.

- (b) The Target receives and holds the benefit of clause 16.1(a) as trustee for each Target Indemnified Party.

16.2 Release of Bidder Indemnified Parties

- (a) Subject to any restrictions imposed by law, the Target releases any and all rights that it may have as at the date of this deed and from time to time, and agrees with the Bidder that it will not make any Claim, against a Bidder Indemnified Party in connection with:
 - (i) the execution or delivery of this deed by the Bidder or the execution or delivery of the Deed Poll by the Bidder or the Bidder Sub;
 - (ii) any breach of any representation, warranty, covenant or obligation of the Bidder in this deed;
 - (iii) the implementation of the Scheme; or
 - (iv) any disclosure made by any Bidder Indemnified Party which is false or misleading (whether by omission or otherwise),except to the extent the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or wilful concealment. To avoid doubt, nothing in this clause 16.2(a) limits the rights of the Target to terminate this deed under clause 15.
- (b) The Bidder receives and holds the benefit of clause 16.2(a) as trustee for each Bidder Indemnified Party.

16.3 Deeds of indemnity

- (a) Subject to the Scheme becoming Effective, the Bidder undertakes in favour of the Target and each other person who is a Target Party that it will:
 - (i) ensure that the constitutions of the Target and each other Target Group Member continue to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a Target Group Member; and
 - (ii) procure that the Target and each other Target Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time.
- (b) The undertakings contained in clause 16.3(a) are subject to any Corporations Act restriction, or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly.
- (c) The Target receives and holds for the benefit of clause 16.3(a), to the extent it relates to any other Target Party, as trustee for them.
- (d) The undertakings contained in clause 16.3(a) are given:
 - (i) in the case of clause 16.3(a)(i), until the earlier of the time that the relevant Target Group Member ceases to be part of the Bidder Group or 7 years from the Implementation Date; or
 - (ii) in the case of clause 16.3(a)(ii), until the earlier of the time that the relevant Target Group Member ceases to be part of the Bidder Group or 7 years from the retirement of each director and officer.

16.4 Directors' and officers' insurance

- (a) The Bidder acknowledges that the Target will in respect of the Target and all other Target Group Members:
 - (i) prior to the Effective Date, arrange for the cover currently provided under the directors' and officers' insurance policy for the Target and all other Target Group Members (**Policy**) to be extended for a further period of 12 months; and

- (ii) by no later than the Implementation Date, to the extent practicable at normal commercial rates, arrange for the cover provided under the Policy to be amended so as to provide run off cover in accordance with the terms of the Policy for a 7 year period from the end of the term of the Policy, and pay all premiums required so as to ensure that insurance cover is provided under the Policy on those terms until that date,

and that any actions to facilitate that insurance or in connection therewith will not be or constitute a Target Prescribed Occurrence, a breach of clause 7, a Target Material Adverse Change or otherwise breach any provision of this deed.

- (b) The Target receives and holds the benefit of clause 16.4(a) as trustee for each director and officer of each Target Group Member.

17. Notices

Any communication under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as shown on the Details page (or as otherwise notified by that party to the other party from time to time);
- (c) must be signed by the party making the communication or by a person duly authorised by that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 17(b); and
- (e) will be deemed to be received by the addressee:
 - (i) **(in the case of prepaid post):** on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;
 - (ii) **(in the case of fax):** at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is not a Business Day, or is after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day;
 - (iii) **(in the case of delivery by hand):** on delivery at the address of the addressee as provided in clause 17(b), unless that delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day; and
 - (iv) **(in the case of email):** at the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered.

18. General

18.1 Further acts

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

18.2 Timetable

The parties agree that the Timetable is indicative only and is not binding on the parties. The parties agree to consult regularly with each other in relation to:

- (a) performing their respective obligations within the framework established by the Timetable; and
- (b) any need to modify the Timetable.

18.3 Payments

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

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

18.4 Interest

- (a) If a party fails to pay any amount payable under this deed on the due date for payment, that party must pay interest on the amount unpaid at the higher of the Interest Rate plus 3% per annum or the rate (if any) fixed or payable under any judgment or other thing into which the liability to pay the amount becomes merged.
- (b) The interest payable under clause 18.4(a):
 - (i) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the amount becomes merged; and
 - (ii) may be capitalised by the person to whom it is payable at monthly intervals.

18.5 Consents or approvals

A party may:

- (a) give conditionally or unconditionally; or
- (b) withhold,

its approval or consent in its absolute discretion unless this deed expressly provides otherwise.

18.6 GST

- (a) Any reference in this clause 18.6 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST.
- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this deed is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this deed but for the application of this clause 18.6(c) for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 18.6(c) does not apply to any taxable supply under or in connection with this deed that is expressly stated to include GST.
- (d) The amount on account of GST payable in accordance with this clause 18.6 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided. A party need not make a payment for a taxable supply made pursuant to this deed until it receives a tax invoice for the supply to which the payment relates.
- (e) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the

person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.

- (f) Unless expressly included, any monetary thresholds specified in this deed are exclusive of GST.

18.7 Stamp duty

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

18.8 Expenses

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

18.9 Amendments

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

18.10 Assignment

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

18.11 Business Day

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

18.12 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by any party under this deed will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) Nothing in this deed obliges a party to exercise a right to waive any conditional term of this deed that may be in its power.

18.13 Counterparts

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

18.14 Entire agreement

- (a) This deed:
 - (i) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and
 - (ii) supersedes any prior agreement (whether or not in writing) between the parties.
- (b) Despite clause 18.14(a), the Confidentiality Agreement (as varied by clause 14.6) continues to apply to the parties in accordance with its terms, except to the extent of any express inconsistency, in which case this deed prevails.

18.15 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.
- (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 party, except for any representation or inducement expressly set out in this deed.

18.16 No merger

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

18.17 Governing law

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

Schedule 1 – Indicative timetable

Event	Date
Enter into Scheme Implementation Deed	Thursday, 4 May 2017
Lodge Scheme Booklet with ASIC for review and comment	Thursday, 25 May 2017
First Court Date	Tuesday, 20 June 2017
Despatch Scheme Booklet to Target Shareholders	Thursday, 22 June 2017
Scheme Meeting	Tuesday, 25 July 2017
Second Court Date	Monday, 31 July 2017
Effective Date – lodge office copy of Court order approving the Scheme with ASIC	Tuesday, 1 August 2017
Record Date	Tuesday, 8 August 2017
Implementation Date:	Tuesday, 15 August 2017
<ul style="list-style-type: none"> ▪ Pay Scheme Consideration to Scheme Shareholders ▪ Reconstitute boards of each Target Group Member 	

Schedule 2 – Deed Poll

[Attached]



Deed poll

—

Eclipx Group Limited (**Bidder**)

Leasing Finance (Australia) Pty Limited (**Bidder Sub**)

—

Deed poll

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Details

Date

2017

Deed poll made by

Name	Eclix Group Limited
ABN	85 131 557 901
Short form name	Bidder
Notice details	Level 32, 1 O'Connell Street, Sydney, New South Wales, 2000
	Facsimile: +61 2 8973 7171
	Email: Matt.Sinnamon@eclix.com
	Attention: Group General Counsel

and

Name	Leasing Finance (Australia) Pty Limited
ABN	39 121 167 824
Short form name	Bidder Sub
Notice details	Level 32, 1 O'Connell Street, Sydney, New South Wales, 2000
	Facsimile: +61 2 8973 7171
	Email: Matt.Sinnamon@eclix.com
	Attention: Group General Counsel

in favour of

each person registered in the Target Register as a holder of fully paid ordinary shares in the Target as at the Record Date (other than Excluded Shareholders).

Background

- A On 4 May 2017, Grays eCommerce Group Limited ABN 94 125 736 914 (**Target**) and the Bidder entered into the Scheme Implementation Deed to provide for (among other matters) the implementation of the Scheme.
- B The effect of the Scheme will be to transfer all Scheme Shares to Bidder Sub in return for the Scheme Consideration.
- C The Bidder and Bidder Sub enter this deed poll to covenant in favour of Scheme Shareholders to:
 - (i) perform the steps attributed to them under the Scheme; and
 - (ii) provide the Scheme Consideration in accordance with the Scheme.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders, the form of which is set out in Attachment 1, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to by the Bidder and the Target.

Scheme Implementation Deed means the Scheme Implementation Deed dated 4 May 2017 between the Bidder and the Target.

1.2 Terms defined in Scheme Implementation Deed

Capitalised words and phrases defined in the Scheme have the same meaning in this deed poll unless the context requires otherwise.

1.3 Incorporation by reference

The provisions of clauses 1.2, 1.3 and 1.4 of the Scheme form part of this deed poll as if set out at length in this deed poll but with 'deed poll' substituted for 'deed' and with any reference to 'party' being taken to include the Scheme Shareholders.

2. Nature of this deed poll

The Bidder and Bidder Sub acknowledge that this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not a party to it.

3. Conditions

3.1 Conditions

This deed poll and the obligations of the Bidder and Bidder Sub under clause 4 are subject to the Scheme becoming Effective.

3.2 Termination

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

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

unless the Target, the Bidder and Bidder Sub otherwise agree in writing.

3.3 Consequences of termination

If this deed poll terminates under clause 3.2, in addition and without prejudice to any other rights, powers or remedies available to them:

- (a) the Bidder and Bidder Sub are released from their obligations to further perform this deed poll; and
- (b) Scheme Shareholders retain the rights they have against the Bidder and Bidder Sub in respect of any breach of this deed poll which occurred before it terminated.

4. Performance of obligations

4.1 Generally

Subject to clause 3, the Bidder and Bidder Sub covenant in favour of Scheme Shareholders to perform the actions attributed to them under, and otherwise comply with, the Scheme as if the Bidder and Bidder Sub were parties to the Scheme.

4.2 Provision of Scheme Consideration

- (a) Subject to clause 3, the Bidder undertakes in favour of each Scheme Shareholder to provide or procure the provision of the Scheme Consideration to each Scheme Shareholder in accordance with the terms of the Scheme.
- (b) The obligations of the Bidder under clause 4.2(a) will be satisfied if, on or before the Implementation Date, in accordance with the provisions of the Scheme, the Bidder issues all of the New Bidder Shares which it is obliged to issue to Scheme Shareholders and to the Nominee under the Scheme and provides the Target with written confirmation that it has done so.

5. Warranties

Each of the Bidder and Bidder Sub represents and warrants to each Scheme Shareholder, in respect of itself, that:

- (a) **(status)**: it is a corporation duly incorporated and validly existing under the laws of the place of its incorporation;
- (b) **(power)**: it has the power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) **(corporate authorisations)**: it has taken all necessary corporate action to authorise the entry into and performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) **(documents binding)**: this deed poll is its valid and binding obligation enforceable in accordance with its terms;
- (e) **(transactions permitted)**: the execution and performance by it of this deed poll and each transaction contemplated by this deed poll did not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree of a Regulatory Authority binding on it;
 - (ii) its constitution or other constituent documents; or
 - (iii) any other document which is binding on it or its assets; and
- (f) **(solvency)**: it is solvent and no resolutions have been passed nor has any other step been taken or legal action or proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets.

6. Continuing Obligations

6.1 Deed poll irrevocable

This deed poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) the Bidder and Bidder Sub having fully performed their obligations under this deed poll; and
- (b) termination of this deed poll under clause 3.2.

6.2 Variation

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

- (a) before the Second Court Date, the variation is agreed to in writing by the Target; or
- (b) on or after the Second Court Date, the variation is agreed to in writing by the Target and is approved by the Court,

in which event the Bidder and Bidder Sub will enter into a further deed poll in favour of each Scheme Shareholder giving effect to the variation.

7. Notices

Any notice, demand or other communication (**Notice**) in respect of this deed poll:

- (a) must be in writing and signed by the sender or a person duly authorised by it;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number specified in the Details; and
- (c) will be conclusively taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered at the address of the addressee as provided in clause 7(b), unless that delivery is not made on a Business Day, or is made after 5.00pm on a Business Day, in which case that Notice will be deemed to be received at 9.00am on the next Business Day;
 - (ii) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country);
 - (iii) in the case of fax, at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is not a Business Day, or is after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day; and
 - (iv) if the case of email, at the local time (in the place of receipt of that email) which then equates to the time at which that email is sent as shown unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee, but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, that communication will be deemed to be received at 9.00am on the next Business Day.

8. General Provisions

8.1 Assignment

- (a) The rights and obligations of the Bidder, Bidder Sub and each Scheme Shareholder under this deed poll are personal. They cannot be assigned, charged, encumbered or otherwise dealt with at law or in equity without the prior written consent of the Target, the Bidder and Bidder Sub.
- (b) Any purported dealing in contravention of clause 8.1(a) is invalid.

8.2 Cumulative rights

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

8.3 No waiver

- (a) The Bidder and Bidder Sub may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) If a Scheme Shareholder does not exercise a right arising from a breach of this deed poll at a given time, it may, unless it has waived that right in writing, exercise the right at a later point in time.
- (c) No Scheme Shareholder may rely on words or conduct of the Bidder or Bidder Sub as a waiver of any right unless the waiver is in writing and signed by the Bidder or Bidder Sub, as appropriate.
- (d) The meanings of the terms used in this clause 8.4 are set out below.

conduct includes delay in the exercise of a right;

right means any right arising under or in connection with this deed poll and includes the right to rely on this clause; and

waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

8.4 Stamp duty

The Bidder:

- (a) must pay or procure the payment of all stamp duty (if any) any related fines, penalties and interest in respect of the Scheme and this deed poll (including the acquisition or transfer of Scheme Shares pursuant to the Scheme), the performance of this deed poll and each transaction effected by or made under or pursuant to the Scheme and this deed poll; and
- (b) indemnifies and undertakes to keep indemnified each Scheme Shareholder against any liability arising from failure to comply with clause 8.4(a).

8.5 Further assurances

The Bidder and Bidder Sub will, at their own expense, do all things reasonably required of them to give full effect to this deed poll.

8.6 Governing law and jurisdiction

This deed poll is governed by the laws of the State of New South Wales. In relation to it and related non-contractual matters the Bidder and Bidder Sub irrevocably submit to the non-exclusive jurisdiction of courts with jurisdiction there, and waive any right to object to the venue on any ground.

Signing page

EXECUTED as a deed poll.

Executed by Eclipx Group Limited

ABN 85 131 557 901 in accordance with
Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)

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

Name of director/company secretary (print)

**Executed by Leasing Finance (Australia) Pty
Limited** ABN 39 121 167 824 in accordance with
Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)

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

Name of director/company secretary (print)

Schedule 3 – Scheme

[Attached]



Scheme of Arrangement

Grays eCommerce Group Limited (**Target**)
Scheme Shareholders

Scheme of Arrangement

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Details

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

Between the parties

Name	Grays eCommerce Group Limited
ABN	94 125 736 914
Short name	Target
Address details	Homebush Corporate Park, 29-33 Carter Street, Lidcombe, New South Wales, 2141 and Each Scheme Shareholder

1. Definitions and interpretation

1.1 Definitions

In this Scheme, unless the context requires otherwise:

ASIC means the Australian Securities and Investments Commission.

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

Bidder means Eclix Group Limited ABN 85 131 557 901.

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

Bidder Sub means Leasing Finance (Australia) Pty Limited ABN 39 121 167 824, being a wholly owned Subsidiary of the Bidder.

Bidder Group means the Bidder and each Subsidiary of the Bidder (excluding, at any time, each Target Group Member to the extent that such Target Group Member is a subsidiary of the Bidder at that time) and **Bidder Group Member** means any one of them.

Bidder Registry means Link Market Services Limited or any replacement provider of share registry services to the Bidder and to Bidder Sub from time to time.

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

CHESS means the clearing house electronic subregister system of share transfers operated by ASX Settlement Pty Limited ABN 49 008 504 532.

CHESS Holding has the meaning given to that expression in the Settlement Rules.

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

Court means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act as the Target and the Bidder may agree in writing.

Deed Poll means the deed poll dated [●] executed by the Bidder and Bidder Sub under which each covenants in favour of the Scheme Shareholders to perform the actions attributed to the Bidder and Bidder Sub under this Scheme.

Deemed Holder has the meaning given to that expression in clause 5.7(b).

Delivery Time means the time being 2 hours before the commencement of the hearing of the Court on the Second Court Date.

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

Effective Date means in relation to the Scheme, the date on which this Scheme becomes Effective.

End Date means the 'End Date' determined in accordance with the Scheme Implementation Deed.

Excluded Shareholder means any Target Shareholder who is a Bidder Group Member or any other Target Shareholder to the extent it holds the Target Shares on behalf of, or for the benefit of, any Bidder Group Member.

Governmental Agency means any Australian or foreign government or representative of a government or any Australian or foreign governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX or any other stock exchange and any regulatory organisation established under statute.

Implementation Date means, in relation to the Scheme, the date being 5 Business Days after the Record Date or such other Business Day agreed in writing by the Target and the Bidder.

Ineligible Foreign Scheme Shareholder means a Scheme Shareholder whose address as shown in the Target Register as at the Record Date is a place located outside of Australia and its external territories, New Zealand and any other jurisdiction as the Target and the Bidder may agree in writing (unless the Bidder is satisfied, acting reasonably, that the Bidder is permitted to allot and issue New Bidder Shares to that Scheme Shareholder pursuant to the Scheme under the laws of that place either unconditionally or after compliance with conditions that the Bidder reasonably regards as acceptable and not unduly onerous or impracticable).

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

Net Sale Proceeds has the meaning given to that expression in clause 5.5(a)(iii).

New Bidder Shares means the Bidder Shares to be issued under the terms of the Scheme as Scheme Consideration and **New Bidder Share** means any one of them.

Nominee has the meaning given to that expression in clause 5.5(a)(i).

Record Date means 7.00pm on the date being 5 Business Days after the Effective Date or such other Business Day agreed in writing between the Target and the Bidder.

Registered Address means, in relation to a Target Shareholder, the address of that Target Shareholder shown in the Target Register as at the Record Date.

Relevant New Bidder Shares has the meaning given to that expression in clause 5.5(a)(i).

Respective Proportion means, in relation to an Ineligible Foreign Scheme Shareholder, the proportion (expressed as a percentage) that the number of Scheme Shares held by that Ineligible Foreign Scheme Shareholder as at the Record Date bears to the total number of Scheme Shares held by all Ineligible Foreign Scheme Shareholders as at the Record Date.

Scheme means this scheme of arrangement, subject to any alterations or conditions:

- (a) agreed to in writing by the Target and the Bidder; or
- (b) made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Target and the Bidder.

Scheme Consideration means, in respect of each Scheme Share held by a Scheme Shareholder, subject to the operation of clauses 5.5 and 5.7, the number of New Bidder Shares for that Scheme Share determined in accordance with the Scheme Consideration Ratio as at the Record Date.

Scheme Consideration Ratio means 0.365588962370616 New Bidder Shares per Scheme Share.

Scheme Implementation Deed means the Scheme Implementation Deed dated 4 May 2017 between the Bidder and the Target.

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

Scheme Share means a Target Share on issue as at the Record Date other than any Target Share held at that time by an Excluded Shareholder (but includes any Target Share held at that time by an Excluded Shareholder on behalf of one or more Third Parties who are not Excluded Shareholders or otherwise in a fiduciary capacity on behalf of persons who are not Excluded Shareholders).

Scheme Shareholder means a Target Shareholder that holds Scheme Shares as at the Record Date.

Second Court Date means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

Settlement Rules means the ASX Settlement Operating Rules.

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

Target Group means the Target and its Subsidiaries and **Target Group Member** means any one of them.

Target Performance Right means a right granted under the Target Performance Rights Plan to acquire a Target Share, subject to the terms and conditions of the Target Performance Rights Plan.

Target Performance Rights Plan means the Grays eCommerce Group Limited Performance Rights Plan dated 17 January 2014.

Target Register means the register of members of the Target maintained by, or on behalf of, the Target in accordance with section 168(1) of the Corporations Act.

Target Registry means Computershare Investor Services Pty Limited or any replacement provider of share registry services to the Target from time to time.

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

Target Shareholder means each person who is registered in the Target Register as a holder of Target Shares.

Third Party means any person or entity (including a Governmental Agency) other than a Target Group Member or a Bidder Group Member.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) the singular includes the plural, and the converse also applies;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) a reference to a clause or schedule is a reference to a clause of or schedule to this Scheme;
- (f) a reference to an **agreement** or **document** (including a reference to this Scheme) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Scheme or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document;

- (g) a reference to a party to this Scheme or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (h) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (i) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (j) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- (k) a reference to **dollars** and **\$** is to Australian currency;
- (l) all references to time are to Sydney, Australia time;
- (m) mentioning anything after *includes*, *including*, *for example*, or similar expressions, does not limit what else might be included; and
- (n) a reference to an **officer** is to that term as it is defined in the Corporations Act.

1.3 Business Day

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

1.4 Listing requirements included as law

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

2. Preliminary

2.1 Target

- (a) The Target is a public company limited by shares, registered in Queensland, Australia and admitted to the official list of ASX.
- (b) The Target Shares are officially quoted on ASX. As at [4 May 2017], the Target's capital structure, including all issued securities as at the date of this deed, is as set out below:
 - (i) [127,477,311] Target Shares were on issue which are officially quoted on ASX; and
 - (ii) [4,375,636] Target Performance Rights were on issue which are not quoted on any financial market.

2.2 Bidder

- (a) The Bidder is a public company limited by shares, registered in Victoria, Australia and admitted to the official list of ASX.
- (b) Bidder Sub, a wholly-owned Subsidiary of the Bidder, is a proprietary company limited by shares registered in Victoria, Australia.
- (c) The Bidder Shares are officially quoted on ASX. As at [4 May 2017], the Bidder's capital structure, including all issued securities as at the date of this deed, is as set out below:
 - (i) [265,300,492] Bidder Shares were on issue which are officially quoted on ASX; and
 - (ii) [15,270,000] options were on issue which are not quoted on any financial market;
 - (iii) [3,350,000] rights were on issue which are not quoted on any financial market.

2.3 General

- (a) The Target and the Bidder have agreed by executing the Scheme Implementation Deed to implement this Scheme.
- (b) This Scheme attributes actions to the Bidder and Bidder Sub but does not itself impose an obligation on them to perform those actions, as the Bidder and Bidder Sub are not parties to this Scheme. The Bidder and Bidder Sub have agreed, by executing the Deed Poll, to perform the actions attributed to them under this Scheme, including the provision or procuring the provision of the Scheme Consideration to the Scheme Shareholders.

2.4 Consequence of this Scheme becoming Effective

If this Scheme becomes Effective:

- (a) the Bidder will provide or procure the provision of the Scheme Consideration to Scheme Shareholders in accordance with this Scheme; and
- (b) all the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares, will be transferred to Bidder Sub, and the Target will enter Bidder Sub in the Target Register as the holder of the Scheme Shares with the result that the Target will become a wholly-owned subsidiary of the Bidder.

3. Conditions

- (a) This Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions precedent:
 - (i) each of the conditions precedent in clause 3.1 of the Scheme Implementation Deed (other than the condition in clause 3.1(b) relating to Court approval of the Scheme) having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed by the Delivery Time;
 - (ii) neither the Scheme Implementation Deed nor the Deed Poll having been terminated in accordance with their terms before the Delivery Time;
 - (iii) approval of this Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are agreed to in writing by the Bidder and the Target;
 - (iv) such other conditions imposed by the Court under section 411(6) of the Corporations Act, as are acceptable to the Target and the Bidder, having been satisfied or waived; and
 - (v) the orders of the Court (including, if applicable, any orders of the Court under section 411(6) of the Corporations Act) approving the Scheme under section 411 of the Corporations Act coming into effect, under section 411(10) of the Corporations Act, on or before the End Date (or any later date that the Target and the Bidder agree in writing).
- (b) The satisfaction of the conditions referred to in clause 3(a) of this document is a condition precedent to the operation of clauses 4 and 5.
- (c) Subject to clause 3.2, this Scheme will take effect on and from the Effective Date.

3.2 Certificate

- (a) The Target and the Bidder will provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent in clauses 3(a)(i) and 3(a)(ii) have been satisfied or waived.
- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent were satisfied, waived or taken to be waived.

3.3 End date

- (a) 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;
 - (ii) the Scheme Implementation Deed is terminated before implementation of this Scheme on the Implementation Date,unless the Target and the Bidder otherwise agree in writing.

4. Implementation

4.1 Lodgement of Court orders

The Target must lodge with ASIC office copies of any Court orders under section 411 of the Corporations Act approving this Scheme as soon as possible and in any event no later than by 5.00pm on the first Business Day after the Court approves this Scheme.

4.2 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 5, the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Bidder Sub, without the need for any further act by any Scheme Shareholder (other than acts performed by the Target or its officers as agent and attorney of the Scheme Shareholders under clause 8.6 or otherwise) by:
 - (i) the Target delivering to Bidder Sub a share transfer form duly completed and executed by the Target on behalf of Scheme Shareholders to transfer all the Scheme Shares to Bidder Sub; and
 - (ii) Bidder Sub duly executing such transfer form and delivering it to the Target for registration; and
- (b) immediately after receipt of the transfer form in accordance with clause 4.2(a)(ii), but subject to the stamping of such transfer form (if required) the Target must enter, or procure the entry of, the name of Bidder Sub in the Target Register in respect of the Scheme Shares.

5. Scheme Consideration

5.1 Amount of Scheme Consideration

Subject to the other provisions in this clause 5, each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share registered in the name of the Scheme Shareholder.

5.2 Provision of Scheme Consideration

- (a) Subject to clauses 5.4, 5.5, 5.6 and 5.7, the Bidder must before on or before the Implementation Date:
 - (i) allot and issue to each Scheme Shareholder such number of New Bidder Shares as that Scheme Shareholder is entitled to in accordance with the Scheme and on the terms set out in clause 5.3 and procure that the name of the Scheme Shareholder is entered in the Bidder's register of members in respect of those New Bidder Shares (in holdings having the same holding name and address and other details as the holding of the relevant Scheme Shares); and
 - (ii) procure that the name of the Nominee is entered in the Bidder's register of members as the holder of the Relevant New Bidder Shares (with such holding details as the Nominee notifies).

- (b) On or before the date that is 5 Business Days after the Implementation Date, the Bidder must send or procure the sending of an allotment advice or holding statement (or equivalent document) to each Scheme Shareholder entitled to receive New Bidder Shares under this Scheme, reflecting the issue of such New Bidder Shares in accordance with clause 5.2(a)(i).

5.3 Status of the New Bidder Shares

Subject to this Scheme becoming Effective, the Bidder must:

- (a) issue the New Bidder Shares required to be issued under this Scheme on terms such that each such New Bidder Share will rank equally in all respects with each existing Bidder Share;
- (b) ensure that each such New Bidder Share required to be issued under this Scheme is duly issued and is fully paid and free from any mortgage, charge, lien, encumbrance or other security interest (except for any lien arising under the constitution of the Bidder); and
- (c) do everything reasonably necessary to ensure that the New Bidder Shares are approved for official quotation on ASX and that trading in the New Bidder Shares is able to commence as soon as practicable after the Implementation Date.

5.4 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any New Bidder Shares comprised in the Scheme Consideration are to be issued to and registered in the names of the joint holders; and
- (b) any other document required to be sent under this Scheme, will be forwarded to the holder whose name appears first in the Target Register as at the Record Date.

5.5 Ineligible Foreign Scheme Shareholders

- (a) Unless the Bidder is satisfied that the laws of an Ineligible Foreign Scheme Shareholder's country of residence (as shown in the Target Register as at the Record Date) permit the issue of New Bidder Shares to the Ineligible Foreign Scheme Shareholder either unconditionally or after compliance with conditions that the Bidder reasonably regards as acceptable and not unduly onerous or impracticable:
 - (i) the Bidder will be under no obligation under the Scheme to issue, and will not issue, any New Bidder Shares to any Ineligible Foreign Scheme Shareholders and instead must issue, subject to clauses 5.6 and 5.7, the New Bidder Shares that would otherwise have been issued to the Ineligible Foreign Scheme Shareholders (**Relevant New Bidder Shares**) to a nominee appointed by the Bidder (**Nominee**);
 - (ii) the Bidder must procure that as soon as reasonably practicable and in any event by no later than the date being 15 Business Days after the Implementation Date, the Nominee sell the Relevant New Bidder Shares on-market in such manner, at such price and on such other terms as the Nominee determines in good faith;
 - (iii) promptly after the sale of the last of the Relevant New Bidder Shares in the manner contemplated under clause 5.5(a)(ii), the Bidder must procure that the Nominee pays the aggregate proceeds for the sale of the Relevant New Bidder Shares (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges) (**Net Sale Proceeds**) to the Bidder; and
 - (iv) the Bidder must then, as soon as reasonably practicable and in any event by no later than the date being 5 Business Days after receipt of the Net Sale Proceeds from the Nominee, remit to each Ineligible Foreign Scheme Shareholder the amount equal to that Ineligible Foreign Scheme Shareholder's Respective Proportion of the Net Sale Proceeds (rounded down to the nearest cent).

- (b) The amount referred to in clause 5.5(a)(iv) must be paid by the Bidder doing any of the following at its election:
- (i) sending (or procuring the Bidder Registry or Target Registry to send) it to the Scheme Shareholder's Registered Address by cheque in Australian currency;
 - (ii) depositing (or procuring the Bidder Registry or Target Registry to deposit) it into a bank account notified to the Bidder or the Target (or the Bidder Registry or the Target Registry) by an appropriate authority from the relevant Scheme Shareholder; or
 - (iii) where an Ineligible Foreign Scheme Shareholder has, before the Record Date, made a valid election in accordance with the requirements of the Target Registry to receive dividend payments from the Target by electronic funds transfer to a bank account nominated by the Ineligible Foreign Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election.
- (c) In the event that the Bidder believes, after consultation with the Target Registry, that an Ineligible Foreign Scheme Shareholder is not known at its Registered Address (including as a result of any cheque sent to an Ineligible Foreign Shareholder in accordance with clause 5.5(b)(i) being returned to sender) and no account has been notified in accordance with clause 5.5(b)(ii) or a deposit into such account notified in accordance with clause 5.5(b)(ii) is rejected or refunded, the Bidder may credit the amount payable to that Ineligible Foreign Scheme Shareholder to a separate bank account of the Bidder until the Ineligible Foreign Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 1995* (NSW), and the Bidder must hold the amount in trust but any amount accruing from the amount will be to the benefit of the Bidder. An amount credited to the account is to be treated as having been paid to the Ineligible Foreign Scheme Shareholder.
- (d) The Ineligible Foreign Scheme Shareholders acknowledge that neither the Bidder nor the Nominee gives any assurance as to the price that will be achieved for the sale of the New Bidder Shares described in clause 5.5(a).
- (e) If the Bidder receives professional advice that any withholding or other tax is required by law or a Governmental Agency to be withheld from a payment to an Ineligible Foreign Scheme Shareholder, the Bidder is entitled to withhold the relevant amount before making the payment to the Ineligible Foreign Scheme Shareholder (and payment of the reduced amount shall be taken to be full payment of the relevant amount for the purposes of this Scheme, including clause 5.5(a)(iv)). The Bidder must pay any amount so withheld to the relevant taxation authorities within the time permitted by law, and, if requested in writing by the relevant Ineligible Foreign Scheme Shareholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Ineligible Foreign Scheme Shareholder.
- (f) Each Ineligible Foreign Scheme Shareholder appoints the Target as its agent to receive on its behalf any financial services guide (or similar or equivalent document) or other notices (including any updates of those documents) that the Nominee is required to provide to Ineligible Foreign Shareholders under the Corporations Act or any other applicable law.
- (g) If there is any surplus Net Sale Proceeds, that surplus may be retained by the Bidder following the satisfaction of the Bidder's obligations under this clause. Any interest on the Net Sale Proceeds (less bank fees and other charges) will be to the Bidder's account.
- (h) If any amount is required under any law or by any Governmental Agency to be:
- (i) withheld from any amount of the Net Sale Proceeds payable under this clause 5.5 and paid to that entity or authority; or
 - (ii) retained by the Bidder out of an amount payable under this clause 5.5,
- its payment or retention by the Bidder (or the Bidder Registry) will constitute the full discharge of the Bidder's obligations under this clause with respect to the amount so paid or retained until, in the case of clause 5.5(h)(ii), it is no longer required to be retained.

- (i) Payment of the amount calculated in accordance with clause 5.5(a)(iv) to an Ineligible Foreign Scheme Shareholder in accordance with this clause 5.5 satisfies in full the Ineligible Foreign Scheme Shareholder's right to Scheme Consideration for each Scheme Share held by the Ineligible Foreign Scheme Shareholder.

5.6 Orders of a court or Governmental Agency

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

- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder by the Bidder in accordance with this clause 5, then the Bidder shall be entitled to procure that the provision of that consideration is made in accordance with that order or direction; or
- (b) prevents the Bidder from providing consideration to any particular Scheme Shareholder in accordance with this clause 5, or the payment or issuance of such consideration is otherwise prohibited by applicable law, the Bidder shall be entitled to (as applicable):
 - (i) retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration for each Scheme Share; and/or
 - (ii) not issue, or issue to a trustee or nominee, such number of New Bidder Shares as that Scheme Shareholder would otherwise be entitled to under clause 5.2;until such time as payment in accordance with this clause 5 is permitted by that (or another) order or direction or otherwise by law.

5.7 Fractional entitlements and splitting

- (a) Where the calculation of the number of New Bidder Shares to be issued to a particular Scheme Shareholder would result in a Scheme Shareholder becoming entitled to a fraction of a New Bidder Share, the fractional entitlement will be rounded down to the nearest whole number of New Bidder Shares.
- (b) If the Bidder reasonably forms the opinion that two or more Scheme Shareholders, each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 5.7(a), have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain advantage by reference to such rounding, the Bidder may send a notice to those Scheme Shareholders stating that opinion and attributing to one of them specifically identified in the notice (**Deemed Holder**) all of the Scheme Shares held by all of them, on which, for the purposes of the Scheme:
 - (i) the Deemed Holder will be taken to hold all of the Scheme Shares referred to in the notice; and
 - (ii) each of the other Scheme Shareholders whose names are set out in the notice, will be taken not to hold any of the Scheme Shares,and, by complying with this clause 5.7(b), the Bidder will be taken to have satisfied and discharged its obligations under the terms of the Scheme to all the Scheme Shareholders named in the notice.

5.8 Definition of 'sending'

For the purposes of clause 5, the expression **sending** means, in relation to each Scheme Shareholder:

- (a) sending by ordinary pre-paid post or courier to the Registered Address of that Scheme Shareholder as at the Record Date; or
- (b) delivery to the Registered Address of that Scheme Shareholder as at the Record Date by any other means at no cost to the recipient.

6. Entitlement to participate and dealings in the Target Shares

6.1 Entitlement to participate

Each Scheme Shareholder will be entitled to participate in the Scheme.

6.2 Determination of Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in the Target Shares will only be recognised if:

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

and the Target will not accept for registration, nor recognise for any purpose (except a transfer to Bidder Sub under this Scheme and any subsequent transfer by Bidder Sub or its successors in title), any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

6.3 Register

- (a) **(Registration of transfers)** The Target must register registrable transmission applications or transfers of the kind referred to in clause 6.2(b) by the Record Date (provided that for the avoidance of doubt nothing in this clause 6.3 requires the Target to register a transfer that would result in a Target Shareholder holding a parcel of Target Shares that is less than a 'marketable parcel' (as defined in the Settlement Rules)).
- (b) **(No registration after Record Date)** The Target will not accept for registration or recognise for any purpose any transmission application or transfer in respect of the Target Shares received after the Record Date, other than to Bidder Sub in accordance with this Scheme.
- (c) **(Maintenance of the Target Register)** For the purpose of determining entitlements to the Scheme Consideration, the Target must maintain the Target Register in accordance with the provisions of this clause until the Scheme Consideration has been delivered to the Scheme Shareholders. The Target Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) **(No disposal after Record Date)** From the Record Date until registration of Bidder Sub in respect of all Scheme Shares under clause 4, no Target Shareholder may dispose or otherwise deal with the Target Shares in any way except as set out in this Scheme and any attempt to do so will have no effect and the Target shall be entitled to disregard any such disposal.
- (e) **(Statements of holding from Record Date)** All statements of holding for Target Shares will cease to have effect from the Record Date as documents of title in respect of those shares (other than statements of holding in favour of any Excluded Shareholders). As from the Record Date, each entry current at that date on the Target Register (other than entries in respect of any Excluded Shareholder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Target Shares relating to that entry.
- (f) **(Provision of Scheme Shareholder details)** As soon as practicable after the Record Date and in any event by no later than 5:00pm on the Business Day after the Record Date, the Target will ensure that details of the names, Registered Addresses and holdings of the Target Shares for each Scheme Shareholder are available to the Bidder in the form the Bidder reasonably requires.

7. Quotation of the Target Shares

- (a) The Target will apply to ASX to suspend trading on the ASX in the Target Shares with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by the Bidder, and only after the transfer of the Scheme Shares has been registered in accordance with clause 4.2(b), the Target will apply:
 - (i) for termination of the official quotation of the Target Shares on ASX; and
 - (ii) to have itself removed from the official list of ASX.

8. General Scheme provisions

8.1 Consent

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

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

8.2 Binding effect of Scheme

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

8.3 Scheme Shareholders' agreements and acknowledgment

Each Scheme Shareholder:

- (a) agrees to the transfer of the Target Shares registered in the name of the Scheme Shareholder as at the Record Date together with all rights and entitlements attaching to those Target Shares in accordance with this Scheme;
- (b) agrees to the variation, cancellation or modification of the rights attached to their Target Shares constituted by or resulting from this Scheme;
- (c) who holds their the Target Shares in a CHESS Holding agrees to the conversion of those Target Shares to an Issuer Sponsored Holding and irrevocably authorises the Target to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion;
- (d) agrees to become a shareholder in the Bidder and to be bound by the constitution of the Bidder; and
- (e) acknowledges that this Scheme binds the Target and all Scheme Shareholders (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against this Scheme at that Scheme Meeting).

8.4 Warranties by Scheme Shareholders

- (a) Each Scheme Shareholder is deemed to have warranted to the Target, the Bidder and Bidder Sub, and appointed and authorised the Target as its attorney and agent to warrant to the Bidder and to Bidder Sub on the Implementation Date that, as at the Implementation Date:
 - (i) all Target Shares registered in its name (including any rights and entitlements attaching to those shares) which are transferred to Bidder Sub under this Scheme will, on the date on which they are transferred to Bidder Sub, be free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind;

- (ii) all Target Shares registered in its name which are transferred to Bidder Sub under this Scheme will, on the date on which they are transferred to Bidder Sub, be fully paid;
 - (iii) it has full power and capacity to transfer Target Shares registered in its name to Bidder Sub together with any rights and entitlements attaching to those shares; and
 - (iv) it has no existing right to be issued any Target Shares, Target Performance Rights or any other Target securities, other than, in the case of any Scheme Shareholder who is also the holder of Target Performance Rights, the right to be issued Target Shares on the exercise or vesting of those the Target Performance Rights in accordance with their terms.
- (b) The Target undertakes that it will provide the warranties in clause 8.4(a) to Bidder Sub as agent and attorney of each Scheme Shareholder.

8.5 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to those shares) transferred under this Scheme will be transferred free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise and free from any restrictions on transfer of any kind.
- (b) Immediately upon the provision of the Scheme Consideration for each Scheme Share to each Scheme Shareholder in the manner contemplated by clause 5, Bidder Sub will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by the Target of Bidder Sub in the Target Register as the holder of the Scheme Shares.

8.6 Authority given to the Target

Each Scheme Shareholder, without the need for any further act:

- (a) on the Effective Date, irrevocably appoints the Target and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent to do and execute all acts, matters, things and documents on the part of each Scheme Shareholder necessary for or incidental to the implementation of this Scheme, including executing, as agent and attorney of each Scheme Shareholder, a share transfer or transfers in relation to Scheme Shares as contemplated by clause 4.2; and
- (b) on the Implementation Date, irrevocably appoints the Target and all of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purpose of executing any document necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it including (without limitation) a proper instrument of transfer of its Scheme Shares for the purposes of section 1071B of the Corporations Act which may be a master transfer of all the Scheme Shares,

and the Target accepts each such appointment. Each Scheme Shareholder agrees that the Target as attorney and agent of each Scheme Shareholder may sub-delegate its functions, authorities or powers under this clause 8.6 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

8.7 Appointment of sole proxy

Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder or to the Nominee (as applicable) in the manner contemplated by clause 5 and until the Target registers Bidder Sub as the holder of all the Target Shares in the Target Register, each Scheme Shareholder:

- (a) is deemed to have irrevocably appointed Bidder Sub as its attorney and agent (and directed Bidder Sub in such capacity) to appoint an officer or agent nominated by Bidder Sub as its sole proxy and, where applicable, corporate representative to attend shareholders' meetings of the Target, exercise the votes attaching to the Scheme Shares registered in its name and sign any Target Shareholders' resolutions or document;

- (b) undertakes not to otherwise attend shareholders' meetings, exercise the votes attaching to Scheme Shares registered in their names or sign or vote on any resolutions (whether in person, by proxy or by corporate representative) other than as under clause 8.7(a);
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder Sub reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 8.7(a), Bidder Sub and any officer or agent nominated by Bidder Sub under clause 8.7(a) may act in the best interests of Bidder Sub as the intended registered holder of the Scheme Shares.

8.8 Instructions and elections

If not prohibited by law (and including where permitted or facilitated by relief granted by a Governmental Agency), all instructions, notifications or elections by a Scheme Shareholder to the Target binding or deemed binding between the Scheme Shareholder and the Target relating to the Target or the Target Shares (including any email addresses, instructions relating to communications from the Target, whether dividends are to be paid by cheque or into a specific bank account, notices of meetings or other communications from the Target) will be deemed from the Implementation Date (except to the extent determined otherwise by the Bidder in its sole discretion), by reason of this Scheme, to be made by the Scheme Shareholder to the Bidder and to be a binding instruction, notification or election to, and accepted by, the Bidder in respect of the New Bidder Shares issued to that Scheme Shareholder until that instruction, notification or election is revoked or amended in writing addressed to the Bidder at its registry.

9. General

9.1 Stamp duty

The Bidder must pay all stamp duty payable in connection with the transfer of the Scheme Shares to Bidder Sub.

9.2 Notices

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

9.3 Further assurances

- (a) The Target must do anything necessary (including executing agreements and documents) or incidental to give full effect to this Scheme and the transactions contemplated by it.
- (b) Each Scheme Shareholder consents to the Target doing all things necessary or incidental to give full effect to this Scheme and the transactions contemplated by it, whether on behalf of the Scheme Shareholder, the Target or otherwise.

9.4 Governing law and jurisdiction

- (a) This Scheme is governed by the laws of New South Wales.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Scheme.

9.5 Further action

The Target must do all things and execute all documents 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 that neither the Target, nor the Bidder, nor Bidder Sub, nor any director, officer, secretary or employee of any of those companies shall be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

Schedule 4 – Certificate

[Attached]

Conditions precedent certificate

Date:

We refer to the scheme implementation deed dated 4 May 2017 between Grays eCommerce Group Limited ABN 94 125 736 914 (**Grays**) and Eclipx Group Limited ABN 85 131 557 901 (**Eclipx**) (**SID**).

1. Grays certifies, confirms and agrees that each of the following conditions precedent of the SID has been satisfied or is hereby waived in accordance with the terms of the SID:
 - clause 3.1(a) (**Shareholder approval**);
 - clause 3.1(c) (**Regulatory Approvals**);
 - clause 3.1(d) (**Restraints**);
 - clause 3.1(e) (**ASIC and ASX**);
 - clause 3.1(g) (**No Target Prescribed Occurrence**);
 - clause 3.1(h) (**No Target Material Adverse Change**);
 - clause 3.1(i) (**Target Warranties**); and
 - clause 3.1(m) (**Independent Expert**).
2. Eclipx certifies, confirms and agrees that each of the following conditions precedent of the SID has been satisfied or is hereby waived in accordance with the terms of the SID:
 - clause 3.1(c) (**Regulatory Approvals**);
 - clause 3.1(d) (**Restraints**);
 - clause 3.1(e) (**ASIC and ASX**);
 - clause 3.1(f) (**New Bidder Shares**);
 - clause 3.1(j) (**No Bidder Prescribed Occurrence**);
 - clause 3.1(k) (**No Bidder Material Adverse Change**); and
 - clause 3.1(l) (**Bidder Warranties**).
3. Eclipx and Grays certify, confirm and agree that each of the conditions in clauses 3(a)(i) and 3(a)(ii) of the scheme of arrangement between Grays and the relevant Grays shareholders which appears in an annexure to Gray's scheme booklet has been satisfied.

Executed as a deed

Signed sealed and delivered by
Grays eCommerce Group Limited
by

sign here ▶ _____
Company Secretary/Director

print name _____

sign here ▶ _____
Director

print name _____

Signed sealed and delivered by
Eclipx Group Limited
by

sign here ▶ _____
Company Secretary/Director

print name _____

sign here ▶ _____
Director

print name _____

Signing page

EXECUTED as a deed.

Signed sealed and delivered by
Grays eCommerce Group Limited
by

sign here ►



Company Secretary/Director

print name

DAVID GRBIN

sign here ►



Director

print name

MARK BAYLISS.

Signed sealed and delivered by
Eclipx Group Limited
by

sign here ►

Company Secretary/Director

print name

sign here ►

Director

print name

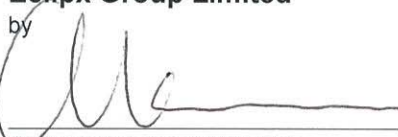
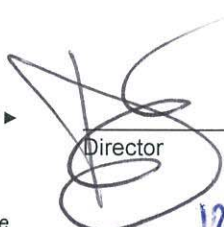
Signing page

EXECUTED as a deed.

Signed sealed and delivered by
Grays eCommerce Group Limited
by

sign here ►	_____	sign here ►	_____
	Company Secretary/Director		Director
print name	_____	print name	_____

Signed sealed and delivered by
Eclix Group Limited
by

sign here ►		sign here ►	
	Company Secretary/Director		Director
print name	<u>Abby Melman</u>	print name	<u>Irwin Klotz</u>