

# ASX RELEASE

26 February 2018

ASX Market Announcements  
20 Bridge Street  
SYDNEY NSW 2000

Dear Sir / Madam

## **BESIX to strengthen strategic partnership with Watpac through increased shareholding**

Watpac Limited (**Watpac** or **Company**) today announces that it has entered into a Scheme Implementation Agreement (**SIA**) with its major shareholder BESIX Group SA (**BESIX**), pursuant to which BESIX may acquire a further 50% of the issued shares in Watpac that it does not already own for an offer consideration of \$0.92 per share (**Proposal**).

As the largest shareholder in Watpac, BESIX currently holds voting power of 28.1%. If the Proposal is successfully implemented, it would result in BESIX holding 64.1% of Watpac's issued share capital. The Proposal values Watpac at \$168.7 million on an equity value basis.<sup>1</sup>

## **Summary of the Proposal**

- **BESIX is offering all-cash consideration of \$0.92 per share ("Offer Consideration") to obtain a further 36.0% of Watpac, which would result in BESIX holding 64.1% of the Company**
- **The Proposal is to be implemented by way of a scheme of arrangement through which 50% of each eligible shareholder's shares would be acquired by BESIX**
- **The Proposal price represents a premium of 37.3% to the last closing price of Watpac and 40.0% to the 3 month VWAP**
- **Watpac's Independent Directors recommend eligible shareholders vote in favour of the Proposal, subject to no superior proposal emerging, regulatory approvals being obtained and confirmation by an Independent Expert that the Proposal is in the best interests of shareholders**
- **The Proposal allows Watpac shareholders to continue to participate in Watpac's future growth, by retaining half of their current shareholding**
- **Watpac and its shareholders will benefit from a closer relationship with BESIX as it will add significant long-term value**
- **BESIX will continue to support and supplement Watpac's current Directors, Management and employees, and commits to ensure the protection of the interests of all shareholders through the continued implementation of appropriate governance protocols**

<sup>1</sup> Based on ordinary shares outstanding of 183.4 million. If the Proposal is successfully implemented, certain performance rights currently on issue, totalling 755,000 ordinary shares in Watpac, would vest in accordance with the terms of the SIA.

The Proposal is intended to be effected by way of a scheme of arrangement under section 411 of the *Corporations Act 2001* (Cth) and is subject to approval by eligible Watpac shareholders (other than BESIX) and other conditions (Scheme).

Watpac has formed an Independent Board Committee (IBC)<sup>2</sup> to consider BESIX's proposal. Following consideration and negotiation with BESIX, the IBC unanimously recommends that, in the absence of a superior proposal emerging and subject to regulatory approvals<sup>3</sup>, and an Independent Expert determining that the Proposal is in the best interests of shareholders, eligible shareholders vote in favour of the Proposal.

Subject to those qualifications, each member of the IBC intends to vote all Watpac shares held or controlled by them in favour of the Proposal.

The IBC has appointed Lonergan Edwards & Associates as the Independent Expert to opine on whether the Proposal is in the best interests of shareholders and to provide the Independent Expert's Report.

#### Transaction Rationale and Benefits

The transaction has a number of benefits for Watpac and its shareholders, including:

- **Proposal price at a premium** – The Offer Consideration of \$0.92 per share represents a premium of:
  - 37.3% to the most recent closing share price of \$0.67 on 23 February 2018;
  - 37.3% to the volume weighted average share price (VWAP) of \$0.67 in the one month up to and including 23 February 2018; and
  - 40.0% to the VWAP of \$0.66 in the three months up to and including 23 February 2018.
- **Continued participation in Watpac for accepting shareholders** – The structure of the Proposal (if approved and implemented) means that Watpac shareholders will retain half of their current holding, and accordingly, will continue to participate in Watpac's future growth.
- **BESIX will add significant long term value to Watpac** – Through a closer alliance with Watpac, BESIX can provide a range of benefits to the Company, including:
  - Access to other construction segments in Australia including Tier 1 or more complex building projects;
  - Opportunities to diversify into other contracting disciplines and sectors with higher margin potential;
  - Enhanced technical capabilities inherent in BESIX's business, such as the input of its in-house engineering department;
  - Optimal financial arrangements which can be supported by BESIX's strong balance sheet;

<sup>2</sup> The IBC comprises all of the Directors of Watpac other than BESIX representatives and the Managing Director. The Board has established protocols and procedures so that any potential conflicts of interest are managed.

<sup>3</sup> BESIX has already obtained a statement of no objections from the Foreign Investment Review Board.

- Enhanced career opportunities for current Watpac employees within an international environment, access to the experienced BESIX talent pool, as well as ability to attract new talent in Australia as part of a larger multi-services group;
- Access to BESIX's international client base as well as its network of key suppliers, subcontractors and consultants;
- Ability to benefit from BESIX's expertise in construction markets; and
- Access to BESIX's extensive innovation platform.

The IBC believes the benefits of a closer alignment with BESIX are substantial. BESIX has committed to provide these benefits to Watpac as soon as the Proposal is implemented. The IBC has taken into account that, in the event the Proposal is not implemented, BESIX could review its options in relation to its substantial shareholding in Watpac, as well as its strategic alliance with Watpac.

Commenting on the Proposal, Watpac Chair, Peter Watson, said:

*"Following careful consideration and negotiations with BESIX, the Independent Board Committee of Watpac has unanimously concluded that the Proposal will generate significant benefits for shareholders. We believe this is an attractive outcome for Watpac shareholders as the Proposal represents a significant premium to Watpac's share price and enhances the natural alignment of our two organisations. This is an exciting opportunity for Watpac, providing a phase of growth that builds on BESIX's extensive international contracting experience and expertise. If approved, this transaction will reinforce the Company's strategic direction and position Watpac for long-term success."*

BESIX Chief Executive Officer, Rik Vandenberghe, said:

*"BESIX is pleased that Watpac's Independent Board Committee has recommended that shareholders vote in favour of our Proposal. We are strong supporters of the current Watpac business and believe that by better accessing BESIX's broader service offering, international experience and extensive innovation platform, it will be able to compete for more complex projects, thereby growing shareholder value. The BESIX team members look forward to working more closely with Watpac management, together supporting the Company through the next stage of its development."*

### **Scheme Implementation Agreement**

The Proposal is subject to certain conditions, which are contained in the SIA (a full copy of which is attached to this announcement). A summary of the material terms and conditions of the SIA is set out below.

The SIA contains terms that are customary for a transaction of this nature, including no-shop, no-talk, due diligence and notice requirements and a 'matching right' for BESIX to match any superior proposal put forward by a third party.

Implementation of the Scheme is subject to customary conditions precedent including:

- Watpac shareholders approving the Scheme by a majority in number of shareholders who are eligible to vote and at least 75% of the total shares voted (noting that BESIX is not eligible to vote);
- Court approval of the Scheme and other regulatory approvals (noting that FIRB approval has already been received);
- an Independent Expert opining that the Scheme is in the best interests of Watpac shareholders;
- certain third party consents being obtained;
- no Prescribed Event, Material Adverse Effect or termination of the SIA occurring or Watpac becoming aware of information which would have a Material Adverse Effect;
- no Performance Rights are vested and no Watpac shares are issued or agreed to be issued as a result of the Scheme prior to the Second Court Date;<sup>4</sup> and
- no decline in the ASX300 Index to a level which is 80% or less than the level as at close of trading on the Announcement Date and remains at or below that level for at least 3 Business Days or until the date immediately before the Second Court Date.

### **Timetable**

No action is required by Watpac shareholders at this time.

A Scheme Booklet is expected to be sent to Watpac shareholders in April 2018. The Scheme Booklet will contain information relating to the proposed transaction, the reasons for the IBC's unanimous recommendation, details of the shareholder meeting and other matters relevant to Watpac's eligible shareholders' vote on the Scheme.

It is anticipated that Watpac's eligible shareholders will have the opportunity to vote on the Proposal at a meeting to be held in late May 2018.

Subject to the conditions of the Scheme being satisfied, the Scheme is expected to be implemented in mid-to-late June 2018.

These dates are indicative and subject to change.

### **Advisors**

Watpac is being advised by Herbert Smith Freehills as legal adviser and Luminis Partners as financial adviser. BESIX is being advised by King & Wood Mallesons as legal adviser.

– ENDS –

<sup>4</sup> If the Proposal is successfully implemented, certain performance rights currently on issue, totalling 755,000 ordinary shares in Watpac, would vest in accordance with the terms of the SIA.

For further information: Media – Amanda Campbell, Corporate Affairs Manager on 07 3251 6453  
Investor Relations – Mark Baker, Chief Financial Officer on 07 3251 6442

*Watpac is a leading national construction and mining contracting group with operations in all mainland States and Territories. Watpac has been listed on the Australian Securities Exchange since 1985 and have offices in Brisbane, Sydney, Melbourne, Adelaide, Perth, Townsville and Port Macquarie. More information is available at [www.watpac.com.au](http://www.watpac.com.au).*

*BESIX Group is a leading private Belgian Group, operating in construction, concessions and property development sectors. It profiles itself as a multi-services Group, catering for multi-size projects. BESIX was founded in 1909 and is active in practically every field of construction. BESIX has a presence in Australia, Belgium, Netherlands, France, Luxembourg, Eastern Europe, North and Central Africa and the Middle East, via Six Construct, and in South Asia. In 2016, the Group achieved revenues in excess of A\$ 3.5 billion. BESIX has about 14,000 employees active in 20 countries on 4 continents. **For further information on BESIX: Jim Kelly, Domestique Consulting on 0412 549 083***

**WATPAC LIMITED**  
ABN 98 010 562 562

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PO Box 2053  
Fortitude Valley QLD 4006

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**Web** [www.watpac.com.au](http://www.watpac.com.au)



## **Annexure A – SIA**

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# Scheme Implementation Agreement

Dated 25 February 2018

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# Scheme Implementation Agreement

## Details

Parties	Bidder and Watpac	
<b>Bidder</b>	Name	BESIX Group
	Incorporated in	Belgium as a limited liability company, under Company No. BCE 0400.459.154
	Address	Avenue des Communautés 100 B-1200 Brussels Belgium
	Email	fdeschrevel@besix.com
	Attention	Frédéric de Schrevel, Company Secretary
<b>Watpac</b>	Name	<b>Watpac Limited</b>
	ACN	010 562 562
	Incorporated in	Queensland
	Address	Level 1, 12 Commercial Road Newstead QLD 4006
	Email	mbaker@watpac.com.au
	Attention	Company Secretary
<b>Recitals</b>	<b>A</b>	Bidder proposes to acquire a proportion of Watpac Shares pursuant to a members' scheme of arrangement under Part 5.1 of the Corporations Act.
	<b>B</b>	At the request of Bidder, Watpac intends to propose the Scheme and issue the Scheme Booklet.
	<b>C</b>	Watpac and Bidder have agreed to implement the Transaction on the terms and conditions of this agreement.
<b>Governing law</b>	Queensland	
<b>Date of agreement</b>	See Signing page	

# Scheme Implementation Agreement

## General terms

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### 1 Definitions and interpretation

#### 1.1 Definitions

These meanings apply unless the contrary intention appears.

**Announcement Date** means the date on which the public announcement is made in accordance with clause 14.1.

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

**Associate** has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this agreement.

**ASX** means ASX Limited or the market operated by it, as the context requires.

**Authorised Officer** means a director or secretary of a party or any other person nominated by a party to act as an Authorised Officer for the purposes of this agreement.

**Business Day** means a business day as defined in the Listing Rules.

**Bidder Indemnified Parties** means Bidder, its Related Bodies Corporate and the officers, employees and advisers of each of Bidder and its Related Bodies Corporate.

**Bidder Information** means the information regarding Bidder as is required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or ASIC Regulatory Guide 60. Bidder Information does not include information about the Watpac Group.

**Bidder Request List** means the due diligence request list provided by Bidder to Watpac and attached to the Confidentiality Agreement and the responses provided electronically by Watpac up to 4pm on 22 February 2018.

**Change of Control Contracts** means client agreements to which Watpac or a Subsidiary is a party and where the Transaction would give rise to a right under the terms of that agreement for the relevant client to terminate, modify or take action which is, or is potentially, adverse to Watpac or the interests of Watpac or any Subsidiary.

**Competing Transaction** means any proposal, agreement, arrangement, reorganisation or transaction (whether by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale or issue of securities, joint venture or otherwise) which, if completed, would mean a person (other than Bidder and its Related Bodies Corporate) whether alone or together with its Associates would:

- (a) directly or indirectly, acquire an interest or Relevant Interest in, or become the holder of 10% or more of the Watpac Shares (other than as custodian, nominee or bare trustee); or
- (b) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in all or a substantial part or a material part of the assets of or business conducted by the Watpac Group; or

- (c) acquire control of Watpac, within the meaning of section 50AA of the Corporations Act; or
- (d) otherwise acquire or merge (including by a reverse takeover bid or dual listed company structure) with Watpac or implement any proposal which prejudices or jeopardises, or might reasonably be expected to prejudice or jeopardise, the completion of the Transaction.

**Conditions Precedent** means the conditions precedent set out in Schedule 2.

**Confidentiality Agreement** means the Confidentiality and Exclusivity Agreement between Watpac and Bidder dated on or about 15 February 2018.

**Controller** has the meaning it has in the Corporations Act.

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

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

**Court** means the Federal Court of Australia or the Supreme Court of Queensland, to be agreed by Bidder and Watpac.

**Data Room** means the documents contained as at 4pm on 22 February 2018 in the virtual data room established by Watpac, containing information relating to the Watpac Group and to which Bidder has access under the Confidentiality Agreement, an index of which is in agreed form.

**Deed Poll** means a deed poll substantially in the form of Annexure B to this agreement.

**Details** means the section of this agreement headed "Details".

**Dispute** includes any dispute, controversy, difference or claim arising out of or in connection with this document or the subject matter of this document, including any question concerning its formation, validity, interpretation, performance, breach and termination.

**Effective**, when used in relation to the Scheme, means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

**Encumbrance** means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, claim, covenant, profit à prendre, easement or any other security arrangement or any other arrangement having the same effect.

**End Date** means the date that is 6 months from the date of this agreement or such other date as determined in accordance with clause 3 or as agreed in writing by Bidder and Watpac.

**Excluded Share** means a Watpac Share held by an Excluded Shareholder as at the Record Date.

**Excluded Shareholder** means Bidder and its Associates.

**Exclusivity Period** means the period from and including the date of this agreement to the earlier of:

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

**Fairly Disclosed** means fairly disclosed to Bidder (but for the avoidance of doubt excluding any information which has been provided to nominee directors appointed by the Excluded Shareholder in their capacity as directors of Watpac) in writing or electronically prior to the date of this agreement, to the extent that a reasonable and sophisticated buyer such as Bidder has sufficient detail so as to enable Bidder to identify the nature and scope of the relevant matter, event or circumstance (including, in each case, that the possible financial effect (if any) of the relevant matter, event or circumstance was reasonably ascertainable from the information disclosed).

**FIRB** means the Foreign Investment Review Board.

**FIRB Act** means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

**First Court Date** means the first day on which an application made to the Court, in accordance with item 10 of Schedule 4, for orders under section 411(1) of the Corporations Act convening the Scheme Meeting to consider the Scheme is heard.

**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 Watpac Shareholders eligible to vote at the Scheme Meeting and who are present and voting, either in person or by proxy.

**Implementation Date** means the fifth Business Day following the Record Date or such other date agreed in writing by Watpac and Bidder.

**Independent Expert** means the independent expert appointed by Watpac under item 3 of Schedule 4 and in accordance with ASIC Regulatory Guides 111 and 112.

**Independent Expert's Report** means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating whether or not in the Independent Expert's opinion the Scheme is in the best interests of Watpac Shareholders.

**Input Tax Credit** has the meaning it has in the GST Act.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement);
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in

each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;

- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Listing Rules** means the listing rules of ASX modified to the extent of any express written waiver by ASX.

**Losses** means all claims, demands, damages, losses, costs, expenses and liabilities, excluding all liability for indirect and consequential loss or damage (including for loss of profit (whether direct, indirect, anticipated or otherwise), loss of expected savings, opportunity costs, loss of business (including loss or reduction of goodwill), damage to reputation and loss or corruption of data regardless of whether any or all of these things are considered to be indirect or consequential losses or damage), in contract, tort (including negligence), under any statute or otherwise arising from or related in any way to this agreement or its subject matter.

**Material Adverse Effect** means a Specified Event which, either individually or when aggregated with any other Specified Events, has, has had, or is reasonably likely to have, the effect of:

- (a) the value of the net assets of the Watpac Group (taken as a whole) being reduced by at least \$5m (which is 2.5% of the last reported figure as set out in the last publicly released financial statements), other than as a result of any non-cash impairment on tangible fixed assets, or changes to the Watpac Group's deferred tax asset position; or
- (b) the value of the forecasted net profit after tax of the Watpac Group for the year ending 30 June 2018 being reduced by at least \$5m, other than as a result of any non-cash impairment on tangible fixed assets or deferred tax assets,

but does not include:

- (c) any matter, event or circumstance that is Fairly Disclosed, or actually known by the Bidder on or before the date of this agreement (including as a result of disclosures made to ASX);
- (d) any matter, event or circumstance arising from changes in law or economic, regulatory, political or business conditions in Australia or that affects or otherwise has an impact on Australia;
- (e) any change in accounting policy required by law;
- (f) any change resulting directly from a general deterioration in equity markets, interest rates, exchange rates or credit spreads;
- (g) any change occurring directly or indirectly as a result of any matter, event or circumstance required by this agreement, the Scheme or the transactions contemplated by them; or

- (f) any change occurring with the written consent of Bidder.

**Material Contract** means a contract or commitment:

- (a) requiring payments to Watpac over the term of the contract in excess of \$100m (net of taxes);
- (b) requiring payments from Watpac in excess of \$30m (net of taxes);
- (c) requiring payments to or from a group of related contracts under subparagraph (a) or subparagraph (b) (as the case may be) with the same party or group of related parties that, when assessed collectively, would exceed the relevant thresholds specified in subparagraph (a) or subparagraph (b) (as the case may be); or
- (d) for a term of more than 3 years,

and includes a tender which on acceptance would give rise to a contract or commitment referred to in subparagraph (a) to subparagraph (d) above.

**Performance Rights** means any performance right issued by Watpac in respect of Watpac Shares, whether vested or unvested.

**PPSR** means the register maintained for the purposes of the *Personal Property Securities Act 2009* (Cth).

**Prescribed Event** means, except to the extent publicly disclosed prior to the date of this agreement or contemplated by this agreement or the Scheme, any of the events listed in Schedule 1 provided that a Prescribed Event listed in items 1 to 13 of Schedule 1 will not occur where Watpac has first consulted with Bidder in relation to the event and Bidder has approved the proposed event or has not objected to the proposed event within 5 Business Days of having being so consulted.

**Record Date** means 5.00pm on the second Business Day following the Effective Date or such other date as Watpac and Bidder agree in writing.

**Register** means the share register of Watpac and **Registry** has a corresponding meaning.

**Regulator's Draft** means the draft of the Scheme Booklet in a form acceptable to both parties which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

**Regulatory Approval** means any approval of a Regulatory Authority to the Transaction or any aspect of it which is necessary or desirable for the implementation of the Transaction.

**Regulatory Authority** includes:

- (a) ASX, ASIC, FIRB and the Takeovers Panel;
- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute,

including, in Australia or Belgium.



**Regulatory Review Period** means the period from the date on which the Regulator's Draft is submitted to ASIC to the date on which ASIC confirms that it does not intend to make any submissions at the Court hearing on the First Court Date or otherwise object to the Scheme.

**Related Body Corporate** has the meaning it has in the Corporations Act.

**Relevant Interest** has the same meaning as given by sections 608 and 609 of the Corporations Act.

**Representative** means, in relation to a party:

- (a) a Related Body Corporate;
- (b) a director, officer or employee of the party or any of the party's Related Bodies Corporate; or
- (c) an adviser to the party or any of the party's Related Bodies Corporate, where an "adviser" means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity and who has been engaged by that entity.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act under which all of the Scheme Shares will be transferred to Bidder substantially in the form of Annexure A together with any amendment or modification made pursuant to section 411(6) of the Corporations Act.

**Scheme Booklet** means, in respect of the Scheme, the information booklet to be approved by the Court and despatched to Watpac Shareholders which must:

- (a) include the Scheme, an explanatory statement complying with the requirements of the Corporations Act, notices of meeting and proxy forms; and
- (b) comply with the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules.

**Scheme Consideration** means \$0.92 per Scheme Share.

**Scheme Meeting** means the meeting to be convened by the Court at which Watpac Shareholders will vote on the Scheme.

**Scheme Participant** means each person who is a Watpac Shareholder at the Record Date, other than an Excluded Shareholder.

**Scheme Shares** means one half of all Target Shares on issue as at the Record Date.

**Second Court Date** means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme.

**Specified Event** means an event, occurrence or matter that:

- (a) occurs after the date of this agreement;
- (b) occurs before the date of this agreement but is only announced or publicly disclosed after the date of this agreement; or
- (c) will or is likely to occur after the date of this agreement and which has not been publicly announced prior to the date of this agreement.

**Subsidiaries** has the meaning it has in the Corporations Act.

**Superior Proposal** means a bona fide Competing Transaction which the Watpac Board, acting reasonably and in good faith, and after taking advice from its legal and financial advisers, determines is:

- (a) reasonably capable of being completed taking into account all aspects of the Competing Transaction, including its conditions; and
- (b) more favourable to Watpac Shareholders than the Scheme, taking into account all aspects of the Competing Transaction.

**Superior Proposal Period** means the period commencing on the date a Superior Proposal comes into existence and ending on the date that the Superior Proposal is withdrawn, terminated, rejected, expires or is otherwise concluded.

**Takeovers Panel** means the review body continuing in existence under section 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) and given powers under Part 6.10 of the Corporations Act.

**Target Shares** means the Watpac Shares other than the Excluded Shares.

**Tax Invoice** has the meaning it has in the GST Act.

**Timetable** means the indicative timetable set out in Schedule 3.

**Transaction** means the acquisition by Bidder of the Scheme Shares through the implementation of the Scheme and other transactions contemplated by this agreement.

**Treasurer** means the Treasurer of Australia.

**Watpac Board** means the board of directors of Watpac or, to the extent certain directors of Watpac may not and/or will not be providing a recommendation or an opinion in relation to the Transaction or a Competing Transaction because of an actual or potential conflict of interest, any committee consisting of the non-conflicted directors of Watpac that is formed to consider the Transaction or any Competing Transaction.

**Watpac Group** means Watpac and its Subsidiaries.

**Watpac Indemnified Parties** means Watpac, its officers, employees, and advisers and its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

**Watpac Information** means all information contained in the Scheme Booklet other than the Bidder Information and the Independent Expert's report.

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

**Watpac Shareholder** means each person registered in the Register as a holder of Watpac Shares.

## **1.2 References to certain general terms**

Unless the contrary intention appears, a reference in this agreement to:

- (a) a document (including this agreement) includes any variation or replacement of it;

- (b) a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;
- (c) a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) the singular includes the plural and vice versa;
- (f) the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Regulatory Authority;
- (g) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (j) a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (k) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (m) the words "include", "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (n) time is a reference to time in Brisbane, Queensland.

### **1.3 Next day**

If an act under this agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day.

### **1.4 Next Business Day**

If an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

### **1.5 Headings**

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.

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## **2 Agreement to propose and implement Scheme**

### **2.1 Watpac to propose Scheme**

Watpac agrees to propose the Scheme on and subject to the terms and conditions of this agreement.

### **2.2 Nomination of acquirer Subsidiary**

At any time prior to the Business Day before the First Court Date, Bidder may nominate N.V. BESIX S.A., a wholly-owned Subsidiary of Bidder ("**Bidder Nominee**") to acquire the Scheme Shares under the Scheme by providing a written notice which sets out the details of Bidder Nominee to Watpac. If Bidder decides to nominate Bidder Nominee to acquire the Scheme Shares:

- (a) the parties must procure that the Scheme Shares transferred under the Scheme are transferred to Bidder Nominee rather than Bidder; and
- (b) Bidder must procure that Bidder Nominee complies with all of the relevant obligations of Bidder under this agreement and the Scheme.

### **2.3 Agreement to implement Transaction**

The parties agree to implement the Transaction on the terms and conditions of this agreement.

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## **3 Conditions Precedent**

### **3.1 Conditions Precedent**

Subject to this clause 3, the obligations of Bidder under clause 4.2 are conditional on the satisfaction (or waiver, if applicable) of each of the Conditions Precedent contained in Schedule 2 to the extent and in the manner set out in clauses 3.2 and 3.4 and the Scheme will not become Effective unless and until all such Conditions Precedent are satisfied or waived.

### **3.2 Benefit of certain Conditions Precedent**

- (a) A Condition Precedent may only be waived in writing by a party entitled to the benefit of that Condition Precedent as noted in the table set out in Schedule 2 and will be effective only to the extent specifically set out in that waiver.
- (b) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.2 may do so in its absolute discretion.

### **3.3 Waiver of Conditions Precedent**

If either Watpac or Bidder waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause, then:

- (a) subject to subclause 3.3(b), that waiver precludes that party from suing the other for any breach of this agreement arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; but
- (b) if the waiver of the Condition Precedent is itself conditional and the other party:
  - (i) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with subclause 3.3(a); or

- (ii) does not accept the condition, the Condition Precedent has not been waived.

### **3.4 Reasonable endeavours**

- (a) Each of Watpac and Bidder agree to use reasonable endeavours to procure that:
  - (i) each of the Conditions Precedent for which it is a party responsible (as set out in Schedule 2):
    - (A) is satisfied as soon as practicable after the date of this agreement; and
    - (B) continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
  - (ii) there is no occurrence that would prevent the Condition Precedent for which it is a party responsible being satisfied.
- (b) Without limiting anything else in clause 3.4, in respect of the Condition Precedent set out in item 6 of Schedule 2:
  - (i) within 15 Business Days of the date of this agreement, Watpac will send each counterparty to a Change of Control Contract:
    - (A) a request (as is appropriate in light of the terms of the relevant Change of Control Contract) for consent, approval of the Transaction or confirmation that no adverse action will be taken by that counterparty; and
    - (B) such information, if any, as is required to be provided under the relevant Change of Control Contract as part of any such request;
  - (ii) Watpac will use reasonable endeavours to diligently pursue the consent or approval under clause 3.4(b)(i)(A) and keep Bidder updated on a weekly basis of progress in that regard, including by providing copies of correspondence with the relevant counterparty;
  - (iii) Bidder will use reasonable endeavours to promptly provide such information as is reasonably required by Watpac for the purposes of being provided to relevant counterparties as contemplated under clause 3.4(b)(i)(B);
  - (iv) where a counterparty to a Change of Control Contract has not responded to a request made under clause 3.4(b)(i) or otherwise definitively confirmed in writing that it waives any rights it might otherwise have or has no objection to, or will not take any action which is adverse to Watpac or the relevant Subsidiary as a result of the Transaction before the meeting contemplated by item 13 of Schedule 4, then that counterparty will be taken to have provided the consent, approval or confirmation sought under clause 3.4(b)(i)(A),  
  
unless the Bidder, acting reasonably and in good faith and after having the opportunity to meet with the counterparty:
    - (A) considers such a deeming to be an inaccurate representation of the situation; and

(B) provides written notice of such consideration to Watpac,

in which case, the failure to respond or to provide such definitive confirmation will be taken to be a withholding of the consent or approval under the relevant Change of Control Contract for the purposes of the thresholds in item 6 of Schedule 2.

### 3.5 Regulatory matters

Without limiting clause 3.4, each party:

- (a) **(Regulatory Approvals)** must promptly apply for all relevant Regulatory Approvals and take all steps it is responsible for as part of the approval process, including responding to requests for information from the relevant Regulatory Authority at the earliest practicable time;
- (b) **(representation)** subject to the requirements of the relevant Regulatory Authority, has the right to be represented and make submissions at any proposed meeting with any Regulatory Authority relating to any Regulatory Approval; and
- (c) **(consultation)** must consult with the other party in advance in relation to all communications (whether written or oral, and whether direct or via a Representative) with any Regulatory Authority relating to any Regulatory Approval **(Communications)** and, without limitation:
  - (i) provide the other party with drafts of any material written Communications to be sent to a Regulatory Authority and make such amendments as the other party reasonably requires; and
  - (ii) provide copies of any material written Communications sent to or received from a Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so.

### 3.6 Notices in relation to Conditions Precedent

Each party must:

- (a) **(notice of satisfaction)** promptly notify the other of satisfaction of a Condition Precedent and must keep the other informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;
- (b) **(notice of failure)** immediately give written notice to the other of a breach or non-fulfilment of a Condition Precedent, or of any event which will prevent a Condition Precedent being satisfied;
- (c) **(notice of waiver)** upon receipt of a notice given under clause 3.6(b), give written notice to the other party as soon as reasonably possible (and in any event before 5.00pm on the day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question; and
- (d) **(certificates)** give to:
  - (i) the other (in draft) by 5.00pm on the day immediately prior to the Second Court Date; and
  - (ii) the other (in final form) by 8:00am on the Second Court Date,

a certificate signed by an Authorised Officer in respect of the Conditions Precedent relating to it, other than the Conditions Precedent in item 4 of Schedule 2 whether or not those Conditions Precedent have been satisfied or waived.

### **3.7 Effect of waiver or non-fulfilment**

A waiver of breach or non-fulfilment in respect of one Condition Precedent does not constitute:

- (a) a waiver of the breach or non-fulfilment of any other Condition Precedent resulting from the same event; or
- (b) a waiver of the breach or non-fulfilment of that Condition Precedent resulting from any other event.

### **3.8 Consultation on failure of Conditions Precedent**

Subject to clause 3.11, if:

- (a) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this agreement by the time or date specified in this agreement for the satisfaction of the Condition Precedent;
- (b) there is an act, failure to act or occurrence which would, or does, prevent a Condition Precedent being satisfied by the time or date specified in this agreement for the satisfaction of the Condition Precedent (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this agreement); or
- (c) a termination right arises under clause 13,

then the parties must consult in good faith with a view to determining whether:

- (d) the Transaction may proceed by way of alternative means or methods;
- (e) to extend the relevant time for satisfaction of the Condition Precedent or to adjourn or change the date of an application to the Court; or
- (f) to extend the End Date.

### **3.9 Failure to agree**

If the parties are unable to reach agreement under clause 3.8 within 5 Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date):

- (a) subject to subclause 3.9(b), either party may terminate this agreement (and such termination will be in accordance with clause 13.1(f)(i)); or
- (b) if a Condition Precedent may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this agreement (and such termination will be in accordance with clause 13.1(f)(ii)),

in each case before 8.00am on the Second Court Date. A party will not be entitled to terminate this agreement pursuant to this clause 3.9 if the relevant Condition Precedent has not been satisfied or agreement cannot be reached as a result of:

- (c) a breach of this agreement by that party; or

- (d) a deliberate act or omission of that party.

### **3.10 Regulatory Approval**

A Regulatory Approval will be regarded as having been obtained notwithstanding that a condition or conditions may have been attached to that Regulatory Approval if that condition or those conditions (as the case may be) are satisfactory to Watpac and Bidder, each acting reasonably.

### **3.11 Scheme voted down**

If the Scheme is not approved by Watpac Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test then Watpac must, upon written request of Bidder (acting reasonably):

- (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 Watpac to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Act by making an order to disregard the Headcount Test.

### **3.12 Option to extend End Date**

If a party is not in breach of this agreement, that party may issue a written notice to the other party in the one month period prior to the End Date to seek permission to extend the End Date under this agreement by one month. If the other party agrees to such extension in writing, the End Date shall be extended by one month or as otherwise agreed.

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## **4 Outline of Scheme**

### **4.1 Scheme**

Watpac must propose a scheme of arrangement under which:

- (a) all of the Scheme Shares will be transferred to Bidder; and
- (b) each Scheme Participant will be entitled to receive the Scheme Consideration in accordance with the terms of the Scheme.

### **4.2 Scheme Consideration**

Subject to this agreement and the Scheme, Bidder covenants in favour of Watpac (in its own right and on behalf of each Scheme Participant) that in consideration of the transfer to Bidder of each Scheme Share, on the Implementation Date, Bidder will accept that transfer and pay to Watpac (as agent for each Scheme Participant) the Scheme Consideration for each Scheme Share in accordance with the terms of the Scheme.

### **4.3 Undertakings held as agent**

Watpac acknowledges that the undertakings by Bidder in clause 4.2 are given to Watpac in its capacity as agent for each Scheme Participant.

### **4.4 Payment to Scheme Participants**

Watpac must:



- (a) receive in a trust account in accordance with the Scheme and this agreement and as agent for each Scheme Participant, the Scheme Consideration;
- (b) pay to each Scheme Participant such moneys as each Scheme Participant is entitled to receive in accordance with the Scheme; and
- (c) otherwise comply with its obligations under the Scheme.

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## **5 Treatment of Performance Rights**

### **5.1 Treatment of Performance Rights**

- (a) Except as otherwise agreed with the Bidder in writing, or in accordance with this clause 5.1, Watpac must procure that no Performance Rights are vested and no new Watpac Shares are issued or agreed to be issued under the Performance Rights as a result or consequence of the Scheme.
- (b) Nothing in this clause 5 restricts the operation of Watpac's 2016 short term incentive plan in relation to the Performance Rights currently on issue which were deferred until the release of Watpac's first half financial year 2018 results.
- (c) With respect to the Watpac's 2015 LTI scheme issue of Performance Rights otherwise due for testing at 30 June 2018, the parties agree that Watpac will accelerate the vesting of the full 50% TSR component, without reference to testing, as at the Effective Date in accordance with clause 5.1(e).
- (d) The parties also agree that Watpac will procure that the 50% EPS component of Watpac's 2015 LTI scheme issue will terminate at the same time that the 50% TSR component vests.
- (e) Where a Performance right (and to the extent) is vested as contemplated by clauses 5.1(a) and 5.1(c), Watpac must take all steps in accordance with the plan rules governing any Performance Rights to:
  - (i) subject to clause 5.2 and the Scheme becoming Effective, accelerate the vesting of any unvested Performance Rights on issue as at the Effective Date on the condition that such Performance Rights will be deemed exercised upon vesting; and
  - (ii) notify the holders of such Performance Rights of the acceleration and deemed exercise prior to the Scheme Meeting, and Watpac must, prior to the Record Date, either:
    - (iii) procure the number of Shares required by the terms of any Performance Rights on vesting and exercise, so that the relevant former holders of the vested Performance Rights can participate in the Scheme; or
    - (iv) otherwise satisfy Watpac Group's obligations in respect of any such Performance Rights in accordance with the terms of the Performance Rights.

### **5.2 ASX waiver**

Without limiting clause 3.5, Watpac will apply for, and use its best endeavours to procure, any ASX waiver necessary to give effect to the treatment of the Performance Rights contemplated in this clause 5.

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## **6 Co-operation and timing**

### **6.1 General obligations**

The parties must each:

- (a) use all reasonable endeavours and commit all reasonably necessary resources (including reasonably necessary management and corporate relations resources and the resources of external advisers); and
- (b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending such meetings and by providing such information as in each case may reasonably be required),

to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable and in accordance with the Timetable.

### **6.2 Access to people and information**

Between the date of this agreement and the earlier of 5.00pm on the Business Day immediately before the Second Court Date and the date this agreement is terminated, Watpac must:

- (a) as soon as reasonably practicable provide Bidder and its Representatives with any documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) reasonably requested by them; and
- (b) provide Bidder and its Representatives with reasonable access to Watpac's officers, advisers and properties which Bidder reasonably requires for the purposes of:
  - (i) understanding Watpac Group's financial, operational and risk position (including its cashflow and working capital position, contingencies and provisions), trading performance and management control systems;
  - (ii) applying for all relevant Regulatory Approvals;
  - (iii) implementing the Scheme;
  - (iv) preparing for carrying on the business of Watpac as one of the Subsidiaries of the Bidder group following implementation of the Scheme; and
  - (v) any other purpose which is agreed in writing between the parties,

provided in every case that such access is reasonably necessary to Bidder and does not place an unreasonable burden on the ability of Watpac to run its business.

### **6.3 Right to separate representation**

Bidder is entitled to separate representation at all Court proceedings relating to the Scheme. Nothing in this agreement is to be taken to give Watpac any right or power to make or give undertakings to the Court for or on behalf of Bidder.

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## **7 Implementation obligations of the parties**

### **7.1 Watpac's obligations**

Watpac must comply with the obligations of Watpac set out in Schedule 4 and take all reasonable steps to implement the Scheme as soon as is reasonably practicable having regard to the Timetable and in any event prior to the End Date.

### **7.2 Bidder's obligations**

Bidder must comply with the obligations of Bidder set out in Schedule 5 and take all reasonable steps to assist Watpac to implement the Scheme as soon as reasonably practicable having regard to the Timetable and in any event prior to the End Date.

### **7.3 Appointment/retirement of Watpac directors**

- (a) As soon as practicable after the Second Court Date, Watpac must use its reasonable endeavours to cause the appointment to the Watpac Board of an additional Bidder's nominee, subject to that person providing a consent to act as a director of Watpac.
- (b) After the Implementation Date, Watpac and Bidder will use their reasonable endeavours to:
  - (i) maintain the current Watpac directors on the Watpac Board until the end of their current term; and
  - (ii) ensure in the prevailing circumstances that the Watpac Board includes at least two independent directors,

and Bidder will exercise its voting rights in respect of the election of Watpac directors, as well as any other right and entitlement under the Watpac constitution, in good faith.

### **7.4 Management of future dealings between Watpac and Bidder**

Bidder and Watpac acknowledge and agree that the Scheme Booklet shall include the principles that shall be documented in a timely way by Bidder to Watpac by way of appropriate protocols in relation to the management "*at arms' length*" of any related party transactions between Watpac Group and Bidder, Bidder Nominee or any Related Body Corporate, including those for which shareholder approvals will be required.

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## **8 Scheme Booklet**

### **8.1 Preparation**

Without limiting clauses 7.1 or 7.2:

- (a) **(preparation)** Watpac is generally responsible for the preparation of the Scheme Booklet (other than the Bidder Information and the Independent Expert's report) but will provide drafts to and consult with Bidder in accordance with clause 8.2; and
- (b) **(compliance)** Bidder and Watpac must take all necessary steps to ensure that the Scheme Booklet:
  - (i) complies with the requirements of:
    - (A) the Corporations Act and the Corporations Regulations;

- (B) applicable ASIC Regulatory Guides;
- (C) the Listing Rules; and
- (ii) is not, having regard to applicable disclosure requirements, misleading or deceptive in any material respect (including because of any material omission).

## 8.2 Content of the Scheme Booklet

Watpac must:

- (a) **(consult Bidder)** consult with Bidder as to the content and presentation of the Scheme Booklet, including:
  - (i) providing to Bidder a draft of the Scheme Booklet for the purpose of enabling Bidder in reasonable time to review and comment on that draft document;
  - (ii) taking the comments made by Bidder into account in good faith when producing a revised draft of the Scheme Booklet;
  - (iii) providing to Bidder a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable Bidder to review the Regulator's Draft at least 5 Business Days before its submission; and
  - (iv) implementing such changes to those parts of the Scheme Booklet relating to Bidder which are provided in accordance with clause 8.2(a) as reasonably requested by Bidder and prior to finalising the Regulator's Draft;
- (b) **(Regulatory Review Period)** during the Regulatory Review Period:
  - (i) promptly provide to Bidder, and include in a revised draft of the Scheme Booklet, any new information not included in the Regulator's Draft which is required by the Corporations Act, Corporations Regulations, applicable ASIC Regulatory Guides or the Listing Rules to be included in the Scheme Booklet; and
  - (ii) keep Bidder informed of any matters raised by ASIC in relation to the Scheme Booklet and provide Bidder with copies of material correspondence received from ASIC in respect of the Scheme as soon as practicable following receipt and use all reasonable endeavours, in co-operation with Bidder, to resolve any such matters (provided that, where those matters relate to Bidder Information, Watpac must not take any steps to address them without Bidder's prior written consent, which must not be unreasonably withheld or delayed);
- (c) **(Bidder Information)** obtain approval from Bidder for the form and context in which the Bidder Information appears in the Scheme Booklet; and
- (d) **(Court documents)** consult with Bidder as to the content and presentation of the documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any comments on, or suggested amendments to, those documents from Bidder prior to filing those documents with the Court.

### **8.3 Bidder information**

- (a) Bidder must consult with Watpac as to the content of the Bidder Information.
- (b) Bidder consents to the inclusion of the Bidder Information in the Scheme Booklet in a form acceptable to Bidder acting reasonably.
- (c) Bidder acknowledges that:
  - (i) it is responsible for ensuring that the Bidder Information is not misleading or deceptive in any material respect (whether by omission or otherwise) and that Watpac will not verify or edit that information in the Scheme Booklet; and
  - (ii) the Scheme Booklet will state that Bidder is responsible for the Bidder Information.

### **8.4 Disagreement on content**

If Bidder and Watpac disagree on the content of the Scheme Booklet, they 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:

- (a) if the disagreement relates to the content of the Bidder Information contained in the Scheme Booklet, Watpac will make such amendments as Bidder reasonably requires; and
- (b) if the disagreement relates to the content of any other part of the Scheme Booklet, the Watpac Board will, acting in good faith, decide the final content of the disputed part of the Scheme Booklet.

### **8.5 Verification**

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

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## **9 Conduct of business**

### **9.1 Overview**

From the date of this agreement up to and including the Implementation Date, Watpac must conduct, and must procure that each member of the Watpac Group conducts, its business:

- (a) in the usual, ordinary and proper course and materially in accordance with applicable laws;
- (b) consistent with the most recent business plans and budgets made public or disclosed to Bidder prior to the date of this agreement; and
- (c) in substantially the same manner as previously conducted and must regularly consult with Bidder on the manner of conduct of the business.

### **9.2 Specific obligations**

Without limiting clause 9.1 and other than with the prior approval of Bidder (which approval must not be unreasonably withheld or delayed) or as required by this agreement, Watpac must, during the period contemplated by clause 9.1, use all reasonable endeavours to ensure that Watpac and each member of the Watpac Group:

- (a) **(business and assets)** maintains the condition of its business and assets materially in the manner maintained prior to the date of this agreement;
- (b) **(officers and employees)** keeps available the services of its officers and employees;
- (c) **(relationships)** preserves its relationships with customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings (including its financiers);
- (d) **(standstill agreements)** enforces all standstill obligations under any agreements to which any member of the Watpac Group is a party (and not waive compliance with any of those standstill obligations);
- (e) **(change of control provisions)**: ensures that any contracts entered into by a member of the Watpac Group after the date of this agreement do not contain any change of control or similar provisions or, where they do contain such provisions, that consent to the change of control that will result from the Transaction is provided by the counterparty concurrently with the relevant contract being entered into;
- (f) **(cash)** ensures there is no decrease in the amount of cash in Watpac other than as used in the ordinary course of business or a result of reasonable costs incurred directly in relation to the transactions contemplated by the Scheme;
- (g) **(proxies)** advises Bidder on at least a daily basis on each of the 10 Business Days preceding the Scheme Meeting as to the aggregate tally of the proxies received in respect of the approval of the Scheme and those against (including the numbers of shares in each case) and, if applicable, a breakdown of any direct votes received; and
- (h) **(consultation)** consults with Bidder with respect to any decisions regarding its business and operations, other than decisions in the normal course of business consistent with past practice.

### 9.3 Prohibited actions

Other than with the prior approval of Bidder or as required by this agreement Watpac must not, and must procure that each member of the Watpac Group does not, during the period referred to in clause 9.1:

- (a) **(no new Watpac Shareholders)** issue any new shares or rights to be issued shares in the capital of Watpac;
- (b) **(Material Contracts)** enter into, materially amend or terminate a Material Contract or settle or agree to settle any claim:
  - (i) by Watpac for less than the alleged amount where the alleged amount of the claim was greater than \$5m; or
  - (ii) against Watpac where the alleged amount of the claim was greater than \$5m;
- (c) **(employment agreements)** increase the remuneration of (including with regard to superannuation benefits) or benefits provided to or pay any bonus (other than in accordance with existing arrangements and in the ordinary course and consistent with past practice) or issue any securities or options to, or otherwise vary the employment agreements with, any of its directors or employees;

- (d) **(accelerate rights)** accelerate the rights of any of its directors or employees to benefits of any kind;
- (e) **(termination payments)** pay a director, executive or employee a termination payment, other than as provided for in an existing employment contract in place as at the date of this agreement and a copy of which has previously been provided to Bidder;
- (f) **(financial arrangements)** amend in any material respect any arrangement with its financial advisers in respect of the transactions contemplated by this agreement;
- (g) **(dividends)** announce, declare or pay any dividends or other distributions to its shareholders;
- (h) **(Prescribed Event)** take any action which is a Prescribed Event, or would reasonably be expected to give rise to, a Prescribed Event;
- (i) **(information technology)** take any action in respect of its information technology systems which would have a material impact on those systems; or
- (j) **(agreement)** agree to do any of the matters set out above.

#### **9.4 Exceptions to conduct of business provisions**

Nothing in this clause 9 restricts the ability of Watpac to take any action which:

- (a) is required to meet its contractual obligations;
- (b) is required to respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property);
- (c) is expressly required or permitted by this agreement, the Scheme, or otherwise required by law; or
- (d) has been approved in writing by Bidder (such approval not to be unreasonably withheld or delayed).

If Watpac takes such action, it must maintain reasonable evidence of the matters enabling it to rely on this clause 9.4.

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## **10 Exclusivity**

### **10.1 No existing discussions**

Watpac represents and warrants that, other than the discussions with Bidder in respect of the Scheme, it is not currently in negotiations or discussions in respect of any Competing Transaction with any person.

### **10.2 No-shop**

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

- (a) solicits, invites, encourages or initiates any enquiries, negotiations or discussions; or
- (b) communicates any intention to do any of these things,

with a view to obtaining any offer, proposal or expression of interest from any person in relation to a Competing Transaction.

Nothing in this clause 10.2 prevents Watpac from continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Scheme or its business generally.

### **10.3 No-talk**

Subject to clause 10.6, during the Exclusivity Period, Watpac must ensure that neither it nor any of its Representatives:

- (a) negotiates or enters into; or
- (b) participates in negotiations or discussions with any other person regarding,

a Competing Transaction, even if that person's Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by Watpac or any of its Representatives or the person has publicly announced the Competing Transaction, or any offer, proposal or expression of interest from any person in relation to a Competing Transaction.

### **10.4 Due diligence**

Subject to clause 10.6, during the Exclusivity Period, Watpac must ensure that neither it nor any of its Representatives:

- (a) enables any other person other than Bidder and its Representatives to undertake due diligence investigations on any member of the Watpac Group or their businesses or operations; or
- (b) makes available to any other person, or permits any other person to receive, other than Bidder and its Representatives (in the course of due diligence investigations or otherwise) any non-public information relating to Watpac or any of its Related Bodies Corporate or permit access to Watpac's employees or officers to any other person (or that person's Representatives) who might reasonably be expected to submit a proposal for a Competing Transaction.

### **10.5 Notice of unsolicited approach**

During the Exclusivity Period, Watpac must promptly inform Bidder if it or any of its Related Bodies Corporate or Representatives:

- (a) receives any unsolicited approach with respect to any Competing Transaction and must disclose to Bidder all material details of the Competing Transaction, including details of the proposed bidder or acquirer except for reasons where such communication would constitute a breach by the Watpac directors of their fiduciary duties;
- (b) receives any request for information relating to Watpac or any of its Related Bodies Corporate or any of their businesses or operations or any request for access to the books or records of Watpac or any of its Related Bodies Corporate, which Watpac has reasonable grounds to suspect may relate to a current or future Competing Transaction; and
- (c) provides any information relating to Watpac or any of its Related Bodies Corporate or any of their businesses or operations to any person in connection with or for the purposes of a current or future Competing Transaction.



## 10.6 Exceptions to no-talk and no due diligence

Clauses 10.3 and 10.4 do not prohibit any action or inaction by Watpac, any of its Related Bodies Corporate or any of their respective Associates, following an actual or proposed Competing Transaction if compliance with either clause would, in the documented opinion of the Watpac Board, formed in good faith after receiving written legal advice from Queen's Counsel or Senior Counsel (which Watpac must maintain a copy of), constitute, or would be reasonably likely to constitute, a breach of any of the fiduciary or statutory duties of the directors of Watpac, provided that the actual or proposed Competing Transaction was not directly or indirectly brought about by, or facilitated by, a breach of clause 10.2.

## 10.7 Matching right

- (a) During the Exclusivity Period, Watpac:
- (i) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a third party or Watpac proposes to undertake or give effect to an actual or proposed Competing Transaction; and
  - (ii) must use its best endeavours to procure that none of the members of the Watpac Board change their recommendation in favour of the Scheme to publicly recommend an actual, proposed or potential Competing Transaction,
- unless
- (iii) the Watpac Board acting in good faith and in order to satisfy what the Watpac Board considers to be its statutory or fiduciary duties (having received written advice from Queen's Counsel or Senior Counsel), determines that the Competing Transaction would be or would be likely to be a Superior Proposal;
  - (iv) Watpac has provided Bidder with the material terms and conditions of the actual or proposed Competing Transaction, including price and the identity of the party making the proposal except for reasons where such communication would constitute a breach by the Watpac directors of their fiduciary duties; and
  - (v) Watpac has given Bidder 3 Business Days after the provision of the information referred to in clause 10.7(a)(iv) to provide a matching or superior proposal (**Matching Offer**) to the terms of the actual, proposed or potential Competing Transaction. Bidder shall have the opportunity, but not the obligation, to provide a Matching Offer.
- (b) This clause 10.7 has repeating applications so that if any further proposal which constitutes a Competing Transaction is made after Bidder has made a Matching Offer, Watpac must comply with clause (a)(i) and (a)(ii) of this clause in respect of any new Competing Transaction, unless clauses (a)(iii) to (a)(v) (inclusive) apply.
- (c) The Watpac Board must consider the Matching Offer and if it determines, acting in good faith, that the Matching Offer would provide an outcome that is at least as favourable to Watpac Shareholders as the relevant Competing Transaction, Watpac and Bidder must use their best endeavours to agree any amendments to this agreement and the contents of the Scheme Booklet (if applicable), which are reasonably necessary to reflect the Matching Offer, and to enter into an appropriate amending agreement to give effect to those amendments and to

implement the Matching Offer, in each case, as soon as reasonably practicable.

#### **10.8 Legal advice**

Watpac acknowledges that it has received legal advice on this agreement and the operation of this clause 10.

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### **11 Representations and warranties**

#### **11.1 Watpac's representations and warranties**

Subject to clause 11.9, Watpac represents and warrants to Bidder that each of the statements set out in Schedule 6 is true and correct and not misleading or deceptive as at the date of this agreement and as at 5.00pm on the Business Day immediately prior to the Second Court Date.

#### **11.2 Watpac's indemnity**

Subject to clause 11.9, Watpac indemnifies the Bidder Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 11.1 not being true and correct.

#### **11.3 Watpac warranty certificate**

Watpac must provide to Bidder by 5.00pm on the Business Day immediately prior to the Second Court Date a certificate signed by a director of Watpac and made in accordance with a resolution of the Watpac Board stating, as at that date, that the representations or warranties given by Watpac in clause 11.1 remain true and accurate or, if any such representation or warranty is not true and accurate as at that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or inaccurate.

#### **11.4 Qualifications to Watpac's representations and warranties**

The Watpac representations and warranties under clause 11.1 and Schedule 6 are each subject to matters:

- (a) Fairly Disclosed in the Data Room or responses to the Bidder Request List as at 4pm on 22 February 2018;
- (b) which were Fairly Disclosed in a document lodged with ASIC, given to ASX for public release or available from the registers maintained by the High Court and the Federal Courts of Australia, the Supreme Courts of each Australian State and Territory and the PPSR, in the 2 years prior to the date of this agreement; or
- (c) actually known to Bidder, other than matters known by representatives of professional advisers to the extent those representatives are not involved with the Transaction and provided that matters known to Mr R Vandenberghe, Mr C J Schreurs, Mr G Aelbrecht and Mr J C M C Beerlandt in the capacity as directors of Watpac are not to be regarded as within the knowledge of the Bidder solely by reason of them also being the officers or employees of the Bidder.

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

Bidder represents and warrants to Watpac that each of the statements set out in Schedule 7 is true and correct and not misleading or deceptive as at the date of this agreement and as at 5.00pm on the Business Day immediately prior to the Second Court Date.

### **11.6 Bidder's indemnity**

Bidder indemnifies the Watpac Indemnified Parties against all Losses incurred directly as a result of any of the representations and warranties in clause 11.5 not being true and correct.

### **11.7 Bidder warranty certificate**

Bidder must provide to Watpac by 5.00pm on the Business Day immediately prior to the Second Court Date a certificate signed on behalf of Bidder stating, as at that date, that the representations and warranties given by Bidder in clause 11.5 remain true and accurate or, if any such representation or warranty is not true and accurate as at that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or inaccurate.

### **11.8 Liability of directors and officers**

- (a) If the Scheme becomes Effective, each party releases its rights against, and will not make or commence any Claim against, any past or present director or employee of the other party in relation to information provided to it by the other party in connection with the Transaction containing any statement which is false or misleading to the extent that the past or present director or employee of the other party has not engaged in wilful misconduct or fraud. In this clause 11.8(a), the reference to any past or present director or employee of the other party refers to any past or present director or employee of Bidder or the Watpac Group.
- (b) Each party holds the releases in clause 11.8(a) in respect of its directors and employees as trustee for its past and present directors and employees.
- (c) This clause 11.8 is subject to any restriction at law (including the Corporations Act) and will be read down accordingly.

### **11.9 Limitations on Claims by Bidder**

- (a) Watpac is not liable to Bidder for any claim under clauses 11.1 and 11.2 unless and until the aggregate amount of all claims exceeds \$1 million.
- (b) Bidder may not make any claim for a breach of warranty unless the claim has been notified to Watpac (including reasonable detail, to the extent known to Bidder at the time of giving such notice) within 6 months from the Implementation Date.
- (c) Notwithstanding anything else in this agreement, the maximum aggregate amount of all claims for breach of warranties:
  - (i) 1, 2, 3, 4, 15, 16, 17 or 18 is an amount equal to 100% of the aggregate Scheme Consideration; and
  - (ii) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 or 19 is an amount equal to 30% of the aggregate Scheme Consideration,

provided that the maximum aggregate amount of claims for breach of warranty under this agreement is 100% of the aggregate Scheme Consideration.

- (d) Watpac excludes all liability for indirect and consequential loss or damage (including for loss of profit (whether direct, indirect, anticipated or otherwise), loss of expected savings, opportunity costs, loss of business (including loss or reduction of goodwill), damage to reputation and loss or corruption of data regardless of whether any or all of these things are considered to be indirect or consequential losses or damage)

in contract, tort (including negligence), under any statute or otherwise arising from or related in any way to any breach of warranty.

- (e) Bidder must take, and use reasonable endeavours to procure that Watpac and each of Watpac's Subsidiaries takes, reasonable steps to mitigate any Loss that may give rise to a claim under this agreement.
- (f) In calculating the liability of Watpac for a claim arising for a breach of any warranty, any tax benefit or reduction received by Bidder as a result of the loss or damage arising from that breach must be taken into account.
- (g) If payment is made for a breach of any warranty, the payment is to be treated as an equal reduction in the purchase price of each Scheme Share.

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## **12 Court proceedings**

### **12.1 Appeal process**

If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, Bidder and Watpac must appeal the Court's decision to the fullest extent possible except to the extent that:

- (a) the parties otherwise agree in writing;
- (b) there is, in the bona fide view of the Watpac Board, a Superior Proposal which should be recommended in preference to the Scheme, provided that Watpac complied with clause 10;
- (c) the first attempted appeal to the initial Court refusal to make orders convening the Scheme Meeting or approving the Scheme does not overturn the initial Court's decision; or
- (d) in circumstances where the parties determine, acting reasonably, that the prospects of success for the appeal are less than 50%,

in which case either party may terminate this agreement. A party will not be entitled to terminate this agreement pursuant to this clause 12.1 if the Court's refusal to make the orders was the result of a breach of this agreement by that party.

### **12.2 Defence of proceedings**

- (a) Subject to clause 12.2(b), each of Bidder and Watpac must vigorously defend, or must cause to be vigorously defended, any lawsuits or other legal proceeding brought against it (or any of its Subsidiaries) challenging this agreement or the completion of the Transaction. Neither Bidder nor Watpac will settle or compromise (or permit any of its Subsidiaries to settle or compromise) any claim brought in connection with this agreement without the prior written consent of the other, such consent not to be unreasonably withheld.
- (b) The obligations in clause 12.2(a) do not apply to Watpac during a Superior Proposal Period. For the avoidance of doubt, if the Superior Proposal that gave rise to the commencement of the Superior Proposal Period is withdrawn, terminated, rejected, expires or is otherwise concluded and this agreement remains on foot, the obligations in clause 12.2(a) will once again apply.

### 12.3 Costs

Any costs incurred as a result of the operation of this clause 12 will be borne equally by each party.

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## 13 Termination

### 13.1 Termination events

Without limiting any other provision of this agreement (including clauses 3.9 and 12.1), this agreement may be terminated:

- (a) **(End Date)** by either Bidder or Watpac, if the Scheme has not become Effective on or before the End Date, unless the Scheme has not become Effective due to a breach by such party of its obligations under this agreement;
- (b) **(lack of support or breach):**
  - (i) by Bidder at any time prior to 8.00am on the Second Court Date, if:
    - (A) any Watpac director does not recommend the Scheme to Scheme Participants, or changes or withdraws their recommendation to the Scheme Participants that they vote in favour of the Scheme, or makes any adverse modification or qualification to their recommendation, or otherwise makes a public statement indicating that they no longer support the Transaction; or
    - (B) any Watpac director qualifies or withdraws their voting intention to vote the Watpac Shares in which they have a Relevant Interest in favour of the resolution to approve the Scheme, in the absence of a Superior Proposal;
  - (ii) by either Bidder or Watpac at any time prior to 8.00am on the Second Court Date, if the other is in material breach of any term of this agreement (including a representation or warranty not being true and correct), taken in the context of the Transaction as a whole, provided that either Bidder or Watpac, as the case may be, has, if practicable, given notice to the other setting out the relevant circumstances and the relevant circumstances continue to exist 5 Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the time such notice is given;
- (c) **(Scheme not approved)** by either Bidder or Watpac, if the resolution submitted to the Scheme Meeting is not approved by the requisite majority;
- (d) **(competing interest)** by Bidder, if a person has a Relevant Interest in more than 10% of Watpac Shares (other than Bidder and its Associates) and that person did not have an interest of 10% or more as at the date of this agreement and their Relevant Interest has increased by at least 5% since the date of this agreement;
- (e) **(restraint)** by either Bidder or Watpac, if a Court or other Regulatory Authority has issued a final and non-appealable order, decree or ruling or taken other action which permanently restrains or prohibits the Scheme;
- (f) **(consultation or appeal failure)** in accordance with and pursuant to:

- (i) clause 3.9(a);
- (ii) clause 3.9(b); or
- (iii) clause 12.1;
- (g) **(Material Adverse Effect)** by Bidder, if a Material Adverse Effect or Prescribed Event occurs prior to 8.00am on the Second Court Date; or
- (h) **(Insolvency)** by either Bidder or Watpac, if the other party or, in the case of Watpac, any of its Related Bodies Corporate, becomes Insolvent.

## **13.2 Termination**

Where a party has a right to terminate this agreement, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this agreement. If such notice is not delivered within 10 Business Days of the party becoming aware of its right to terminate, or by 8.00am on the Second Court Date (if earlier), the right to terminate for the relevant event shall expire.

## **13.3 Effect of termination**

In the event that a party terminates this agreement, or if this agreement otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this agreement, other than the obligations and rights set out in clauses 3.8, 12.3, 14, 15, 17, 18 and 19, will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause 13.3 releases any party from liability for any pre-termination breach of this agreement.

## **13.4 Standstill**

If there is a Competing Proposal announced, then clause 6.3 of the Confidentiality Agreement shall apply, whereby the standstill as provided for in clause 6.2 of the Confidentiality Agreement ceases to apply.

## **13.5 Damages**

In addition to the rights of termination under clause 13.1, where there is no appropriate remedy for the breach in the agreement (other than termination), the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this agreement.

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# **14 Public announcements**

## **14.1 Public announcement of Scheme**

Immediately after signing this agreement, Watpac will issue a public announcement of the Transaction in the form agreed between Watpac and Bidder.

## **14.2 Required disclosure**

- (a) Subject to clause 14.2(b), where a party is required by law, the Listing Rules or a memorandum of understanding with a Regulatory Authority to make any announcement or make any disclosure relating to a matter the subject of the Transaction, it may do so only after it has given the other party as much notice as possible and has consulted to the extent reasonably practicable in the circumstances with the other party and its legal advisers.

- (b) The obligations in clause 14.2(a) do not apply to any announcements by Watpac which:
  - (i) relate to a Competing Proposal; or
  - (ii) are made during a Superior Proposal Period.

### **14.3 Other announcements**

Subject to clauses 14.1 and 14.2, no party may make any public announcement or disclosure in connection with the Transaction (including disclosure to a Regulatory Authority) other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable.

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## **15 Confidential Information**

Each party acknowledges and agrees that it continues to be bound by the Confidentiality Agreement in respect of all information received by it from the other party on, before or after the date of this agreement.

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## **16 Notices and other communications**

### **16.1 Form - all communications**

Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be:

- (a) in writing;
- (b) signed by the sender (if an individual) or an Authorised Officer of the sender; and
- (c) marked for the attention of the person identified in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).

### **16.2 Form - communications sent by email**

Communications sent by email need not be marked for attention in the way stated in clause 16.1. The email must state the first and last name of the sender.

Communications sent by email are taken to be signed by the named sender.

### **16.3 Delivery**

Communications must be:

- (a) left at the address set out or referred to in the Details; or
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details; or
- (c) sent by fax to the fax number set out or referred to in the Details; or
- (d) sent by email to the address set out or referred to in the Details; or
- (e) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or email address, then communications must be to that address or email address.

#### **16.4 When effective**

Communications take effect from the time they are received or taken to be received under clause 16.5 (whichever happens first) unless a later time is specified.

#### **16.5 When taken to be received**

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email:
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) when the sender receives a reply message from the recipient confirming receipt,

whichever happens first.

#### **16.6 Receipt outside business hours**

Despite clauses 16.4 and 16.5, if communications are received or taken to be received under clause 16.5 after 5.30pm or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

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### **17 Goods and services tax (GST)**

#### **17.1 Consideration GST exclusive**

Unless expressly stated otherwise in this agreement, all amounts payable or consideration to be provided under this agreement are exclusive of GST.

#### **17.2 Payment of GST**

If GST is payable on any supply made under this agreement, for which the consideration is not expressly stated to include GST, the recipient agrees to pay to the supplier an additional amount equal to the GST payable at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided. However:

- (a) the recipient need not pay the additional amount until the supplier gives the recipient a Tax Invoice or an adjustment note;
- (b) if an adjustment event arises in respect of the supply, the additional amount must be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment; and
- (c) this clause 17.2 does not apply to the extent that the GST on the supply is payable by the recipient under Division 84 of the GST Act.

#### **17.3 Reimbursements**

If a party is required under this agreement to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount



less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.

#### **17.4 Calculation of payments**

If an amount payable under this agreement is to be calculated by reference to:

- (a) the price to be received for a taxable supply then, for the purposes of that calculation, the price is reduced to the extent that it includes any amount on account of GST; and
- (b) the price to be paid or provided for an acquisition then, for the purposes of that calculation, the price is reduced to the extent that an input tax credit is available for the acquisition.

#### **17.5 Interpretation**

For the purposes of this clause 17:

- (a) a term which has a defined meaning in the GST Act has the same meaning when used in this clause 17;
- (b) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it is a separate supply.

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### **18 Dispute resolution**

#### **18.1 Disputes**

A party must not commence court proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute unless it has first complied with this clause 18.

#### **18.2 Notice of Dispute**

A Party raising any Dispute or claiming that a Dispute has arisen, must notify the other party by giving a written notice containing particulars of the Dispute (**Notice of Dispute**).

#### **18.3 Senior Executive Officers**

- (a) Upon receipt of a Notice of Dispute, the parties must meet together promptly and use reasonable endeavours to resolve the Dispute by discussion between them. If the Dispute is not resolved within 10 Business Days of receipt of the Notice of Dispute, each party must nominate in writing to the other party a senior executive officer of that Party authorised to settle the Dispute on its behalf (**Senior Executive Officer**).
- (b) The Senior Executive Officers must meet in good faith to resolve the Dispute within 10 Business Days of the expiry of the period specified in clause 18.3(a).

#### **18.4 General**

The provisions contained in this clause 18 will survive termination and/or expiration of this agreement.

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## **19 Miscellaneous**

### **19.1 Discretion in exercising rights**

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this agreement expressly states otherwise.

### **19.2 Partial exercising of rights**

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

### **19.3 No liability for loss**

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this agreement.

### **19.4 Approvals and consents**

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

### **19.5 Remedies cumulative**

The rights and remedies in this agreement are in addition to other rights and remedies given by law independently of this agreement.

### **19.6 Variation and waiver**

A provision of this agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

### **19.7 No merger**

The warranties, undertakings and indemnities in this agreement do not merge on the Implementation Date.

### **19.8 Indemnities**

The indemnities in this agreement are continuing obligations, independent from the other obligations of the parties under this agreement and continue after this agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.

### **19.9 Enforceability**

For the purpose of this agreement:

- (a) Watpac is taken to be acting as agent and trustee on behalf of and for the benefit of all Watpac Indemnified Parties; and
- (b) Bidder is taken to be acting as agent and trustee on behalf of and for the benefit of all Bidder Indemnified Parties,

and all of those persons are to this extent taken to be parties to this agreement.

### **19.10 Further steps**

Each party agrees, at its own expense, to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the party and any other person intended to be bound under this agreement; or
- (b) to show whether the party is complying with this agreement.

#### **19.11 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.

#### **19.12 Costs**

Other than as expressly provided for in this agreement, the parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this agreement and other related documentation except for stamp duty.

#### **19.13 Stamp duty**

Bidder agrees to pay all stamp duty (including fines and penalties) payable and assessed on this agreement or the Scheme and in respect of a transaction evidenced by this agreement or the Scheme.

#### **19.14 Entire agreement**

Except for the Confidentiality Agreement, this agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

#### **19.15 Assignment**

Other than as contemplated under clause 2.2, a party may not assign or otherwise deal with its rights under this agreement or allow any interest in them to arise or be varied in each case, without the prior written consent of the other party.

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

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement;
- (b) it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement; and
- (c) clauses 19.16(a) and 19.16(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

#### **19.17 Governing law**

This agreement is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

#### **19.18 Counterparts**

This agreement may consist of a number of copies, signed by one or more parties to the agreement. If so, the signed copies are treated as making up the

one document. This agreement will take effect when all counterparts are received (whether by email or otherwise) by Bidder at its address listed in the Details.

**19.19 Severability**

If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

**EXECUTED** as an agreement

# Scheme Implementation Agreement

## Schedule 1 Prescribed Events

- 1 **(Conversion)** Watpac converts all or any of its shares into a larger or smaller number of shares.
- 2 **(Reduction of share capital)** Watpac or another member of the Watpac Group resolves to reduce its share capital in any way or reclassifies, combines, splits or redeems or repurchases directly or indirectly any of its shares.
- 3 **(Buy-back)** Watpac or another member of the Watpac Group:
  - (a) enters into a buy-back agreement, executes any buy-back under the current buy-back agreement or undertakes any further buy-back; or
  - (b) resolves to approve the terms of a buy-back agreement under the Corporations Act.
- 4 **(Distribution)** Watpac makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie).
- 5 **(Issuing or granting shares or options)** any member of the Watpac Group:
  - (a) issues shares;
  - (b) grants an option over its shares; or
  - (c) agrees to make such an issue or grant such an option,

in each case to a person outside the Watpac Group other than as disclosed by Watpac to Bidder before the date of this agreement or pursuant to the exercise or conversion of any Performance Rights on issue prior to the date of this agreement.
- 6 **(Securities or other instruments)** any member of the Watpac Group:
  - (a) issues securities or other instruments convertible into shares or debt securities; or
  - (b) agrees to issue securities or other instruments convertible into shares or debt securities,

in each case to a person outside the Watpac Group other than as set out in item 18 of Schedule 6.
- 7 **(Constitution)** Watpac adopts a new constitution or modifies or repeals its constitution or a provision of it.
- 8 **(Disposals)** any member of the Watpac Group disposes, or agrees to dispose of the whole or a substantial part of the Watpac Group's business or property except to the extent it has been advised to the Bidder in writing prior to the date of this agreement.

- 9      **(Acquisitions, disposals or tenders)** other than as provided for in the most recent business plans and budget made public or disclosed to the Bidder prior to the date of this agreement, any member of the Watpac Group:
- (a)      acquires or disposes of;
  - (b)      agrees to acquire or dispose of; or
  - (c)      offers, proposes, announces a bid or tenders for (other than client bids or tenders in the ordinary course of Watpac's business),
- any business, assets, entity or undertaking the value of which exceeds \$1,000,000 (in aggregate).
- 10      **(Encumbrances)** other than in the ordinary course of business and consistent with past practice any member of the Watpac Group creates, or agrees to create, any Encumbrance over the whole or a substantial part of its business or property.
- 11      **(Employment arrangements)** other than in the ordinary course of business and consistent with past practice any member of the Watpac Group:
- (a)      increases the remuneration of, or otherwise varies the employment arrangements with, any of its directors or employees whose salary is currently in excess of \$200,000 or who are a member of the Watpac Group senior management;
  - (b)      other than in respect of Performance Rights on issue as at the date of this agreement for the purposes of clause 5.1, accelerates the rights of any of its directors or employees to compensation or benefits of any kind (including under any Watpac executive or employee share plans); or
  - (c)      pays any of its directors or employees a termination or retention payment (otherwise than in accordance with an existing contract in place at the date of this agreement).
- 12      **(Commitments and settlements)** any member of the Watpac Group:
- (a)      enters into or agrees to enter into a new Material Contract;
  - (b)      terminates or amends in a material manner a Material Contract or amends any other contract in such a manner that it becomes a Material Contract; or
  - (c)      waives any material third party default in any Material Contract.
- Provided that, for the purposes of Item 12(b) and 12(c) of this Schedule 1, a Material Contract will not include a contract captured by subparagraph (d) of that definition by reason only of its term.
- 13      **(Insolvency)** Watpac or any of its Related Bodies Corporate becomes Insolvent.

# Scheme Implementation Agreement

## Schedule 2 Conditions Precedent

Condition	Party entitled to benefit	Party responsible
<b>1 Regulatory Approvals</b>		
(a) <b>(ASIC and ASX)</b> before 8.00am on the Second Court Date, ASIC and ASX have issued or provided and not withdrawn such consents or approvals or have done such other acts which the parties agree are reasonably necessary to implement the Transaction;	Both	Watpac
(b) <b>(FIRB approval)</b> before 5.00pm on the Business Day before the Second Court Date, either: <ul style="list-style-type: none"> <li>(i) the Treasurer (or the Treasurer's delegate) has provided a written no objection notification to the Transaction either without conditions or with conditions acceptable to Bidder acting reasonably; or</li> <li>(ii) following notice of the Transaction having been given by Bidder to the Treasurer under the FIRB Act, the Treasurer has ceased to be empowered to make any order under Part 3 of the FIRB Act because the applicable time limit on making orders and decisions under the FIRB Act has expired;</li> </ul>	Cannot be waived	Bidder
(c) <b>(Regulatory Authority)</b> before 8.00am on the Second Court Date, all other approvals of a Regulatory Authority which Bidder and Watpac agree are necessary to implement the Scheme are obtained and those approvals have not been withdrawn or revoked; and	Both	Both
(d) <b>(Court orders)</b> no Court or Regulatory Authority has issued or taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Transaction and no such order, decree, ruling, other action or refusal is in effect as at 8.00am on the Second	Both	Both

Condition	Party entitled to benefit	Party responsible
Court Date.		
<b>2 Scheme approval</b>  Watpac Shareholders approve the Scheme by the requisite majorities in accordance with the Corporations Act at the Scheme Meeting.	Cannot be waived	Watpac
<b>3 Performance Rights</b>  Before the Second Court Date, no Performance Rights are vested and no relevant Watpac Shares are issued or agreed to be issued as a result or as a consequence of the Scheme.	Bidder	Watpac
<b>4 Court approval</b>  The Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.	Cannot be waived	Watpac
<b>5 Independent Expert Report</b>  The Independent Expert provides a report to Watpac that concludes that the Scheme is in the best interests of Watpac Shareholders before the date on which the Scheme Booklet is lodged with ASIC.	Watpac	Watpac
<b>6 Change of Control Contracts</b>  No clients under Change of Control Contracts actually withhold consent or approval in respect of the Transaction (or are taken to do so under clause 3.4(b)(iv) which results, or is likely to result, in an aggregate reduction of \$5m on the remaining and future forecast gross margin as set out in the Contract Profit Summary reporting as at 31 December 2017 provided to Bidder as part of the Data Room.	Bidder	Watpac
<b>7 No Prescribed Event</b>  No Prescribed Event occurs between the date of this agreement and 8.00am on the Second Court Date.	Bidder	Watpac
<b>8 No Material Adverse Effect</b>  No Material Adverse Effect occurs or becomes apparent between the date of this agreement and 8.00am on the Second Court Date.	Bidder	Watpac
<b>9 No termination</b>  This agreement has not been terminated in accordance	Both	Not applicable



Condition	Party entitled to benefit	Party responsible
with clause 13.		
<b>10 Index Decline</b>  After the Announcement Date the ASX300 Index does not fall to a level that is 80% or less of the level as at the close of trading on the Announcement Date and remains at or below that 80% level for at least 3 Business Days or until the date immediately before the Second Court Date.	Bidder	Watpac
<b>11 New information</b>  Between the date of this agreement and 8.00am on the Second Court Date Watpac does not become aware of any information which: <ul style="list-style-type: none"> <li>(a) Watpac would be obliged to tell ASX immediately pursuant to ASX Listing Rule 3.1 if it was not relying upon the exception in ASX Listing Rule 3.1A; or</li> <li>(b) if the Transaction were proceeding by way of a takeover bid pursuant to Chapter 6 of the Corporations Act, it would be required to include in a target's statement pursuant to section 638 of the Corporations Act,</li> </ul> where that information would, or would be reasonably likely to, have a Material Adverse Effect in relation to Watpac after the date of this agreement.	Bidder	Watpac

# Scheme Implementation Agreement

## Schedule 3 Timetable

Event	Date
Initial draft of Scheme Booklet to be provided to Bidder	9 March 2018
Lodge Scheme Booklet with ASIC and ASX	23 March 2018
Application in respect of the Court hearing to be held on the First Court Date, filed with the Court, served on ASIC	6 April 2018
First Court Date	12 April 2018
Printing and despatch of Scheme Booklet	By 23 April 2018
Scheme Meeting held	28 May 2018
Second Court Date	4 June 2018
Lodge Court order with ASIC (Effective Date)	5 June 2018
Record Date	8 June 2018
Implementation Date	15 June 2018

# Scheme Implementation Agreement

## Schedule 4 Watpac's obligations

- 1 **(Watpac Information)** ensure that the Watpac Information included in the Scheme Booklet complies with applicable law, the Listing Rules and applicable ASIC Regulatory Guides.
- 2 **(Further Watpac Information)** provide to Bidder and Scheme Participants such further or new Watpac Information as may arise after the Scheme Booklet has been sent until the date of the Scheme Meeting as may be necessary to ensure that the Watpac Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission).
- 3 **(Independent Expert)** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare its report for the Scheme Booklet.
- 4 **(Provide a copy of the report)** on receipt, provide Bidder with a copy of any draft or final report received from the Independent Expert.
- 5 **(Watpac Board recommendation)** state in the Scheme Booklet and the public announcement contemplated by clause 13.1 (on the basis of statements made to Watpac by each member of the Watpac Board) that each member of the Watpac Board recommends that the Scheme Participants vote in favour of the Scheme in the absence of a Superior Proposal, unless:
  - (a) the Independent Expert opines that the Scheme is not in the best interest of Watpac Shareholders; or
  - (b) in relation to matters occurring after the date of this agreement, the Watpac Board obtains written advice from Queen's Counsel or Senior Counsel that compliance or continued compliance with this clause would involve a breach of their fiduciary duties or would be unlawful on any other basis.
- 6 **(Directors' voting intentions)** ensure that the Scheme Booklet states (on the basis of statements made to Watpac by each member of the Watpac Board) that each member of the Watpac Board intends to vote the Watpac Shares in which they have a Relevant Interest in favour of the Scheme, subject to there being no Superior Proposal and the Independent Expert being of the opinion that the Scheme is in the best interests of Watpac Shareholders.
- 7 **(Registry details)** subject to the terms of the Scheme:
  - (a) provide all necessary information about the Scheme Participants to Bidder which Bidder requires in order to assist Bidder to solicit votes at the Scheme Meeting; and
  - (b) provide all necessary directions to the Registry to promptly provide any information that Bidder reasonably requests in relation to the Register, including any sub-register, and, where requested by Bidder Watpac must procure such information to be provided to Bidder in such electronic form as is reasonably requested by Bidder.

- 8      **(Proxies)** except to the extent that Watpac would be in breach of Australian privacy laws, cause the Registry to report to Watpac and Bidder on the status of proxy forms received by the Registration for the Scheme Meeting:
- (a)      on the day that is 10 Business Days before the Scheme Meeting;
  - (b)      on each Business Day following the day that is 10 Business Days before the Scheme Meeting, up to the deadline for receipt of proxy forms; and
  - (c)      immediately following such deadline,
- and to provide such other information as it may receive concerning the voting intentions of Watpac Shareholders to Bidder.
- 9      **(Section 411(17)(b) statement)** apply to ASIC for the production of a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme.
- 10     **(Court application)** apply to the Court for an order under section 411(1) of the Corporations Act directing Watpac to convene the Scheme Meeting.
- 11     **(Registration of explanatory statement)** 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.
- 12     **(Send Scheme Booklet)** send the Scheme Booklet to Watpac Shareholders as soon as practicable after the Court orders Watpac to convene the Scheme Meeting.
- 13     **(Scheme Meeting)** convene the Scheme Meeting in accordance with any such orders made by the Court and seek the approval of Watpac Shareholders for the Scheme and, for this purpose, the members of Watpac Board must participate in reasonable efforts to promote the merits of the Scheme, including meeting with key Scheme Participants at the reasonable request of Bidder. Watpac shall not seek to adjourn or otherwise change the timing of the Scheme Meeting (or actually do so) without the prior written consent of Bidder.
- 14     **(Court order)** apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act.
- 15     **(Conditions Precedent certificate)** at the hearing on the Second Court Date, provide to the Court (through its counsel):
- (d)      a certificate confirming (in respect of matters within Watpac's knowledge) whether or not the Conditions Precedent for which it is responsible, as noted in Schedule 2 (other than paragraph 4), have been satisfied or waived; and
  - (e)      any certificate provided to it by Bidder under clause 3.6(d);
- 16     **(Lodge)** lodge with ASIC an office copy of any such Court order approving the Scheme as approved by the Watpac Shareholders at the Scheme Meeting in accordance with section 411(10) of the Corporations Act.
- 17     **(Registration)** register all transfers of Scheme Shares to Bidder on the Implementation Date in accordance with the Scheme.
- 18     **(Listing)** take all reasonable steps to maintain Watpac's listing on ASX, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC.

- 19      **(Other steps)** do all other things necessary to give effect to the Transaction and the orders of the Court approving the Scheme and take all actions within its power to give effect to this agreement.

# Scheme Implementation Agreement

## Schedule 5 Bidder's obligations

- 1 **(Bidder Information)** provide to Watpac for inclusion in the Scheme Booklet such Bidder Information as Watpac reasonably requires to prepare and issue the Scheme Booklet (including any information required under the Corporations Act, Corporations Regulations, or applicable ASIC Regulatory Guides).
- 2 **(Board approval of Scheme Booklet)** review drafts of the Scheme Booklet and after finalisation of the Scheme booklet, procure that a meeting of the directors of Bidder approves those sections of the Scheme Booklet which include the Bidder Information as being in a form appropriate for provision to ASIC for review and complies with the requirements of the Corporations Act, Corporations Regulations, or applicable ASIC Regulatory Guides in respect of the Bidder Information.
- 3 **(Further Bidder Information)** provide to Watpac such further or new Bidder Information as may arise after the Scheme Booklet has been sent until the date of the Scheme Meeting as may be necessary to ensure that the Bidder Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission).
- 4 **(Independent Expert information)** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's report to be included in the Scheme Booklet.
- 5 **(Deed Poll)** simultaneous with the execution of this agreement, sign and deliver the Deed Poll.
- 6 **(Scheme consideration)** if the Scheme becomes Effective, procure the payment of the Scheme Consideration in the manner and amount contemplated by clause 4.2, the Scheme and the Deed Poll.
- 7 **(Share transfer)** if the Scheme becomes Effective, accept a transfer of the Scheme Shares as contemplated by clause 4.1(a).
- 8 **(Other steps)** do all things necessary to give effect to the Transaction and the orders of the Court approving the Scheme.

# Scheme Implementation Agreement

## Schedule 6 Watpac's representations and warranties

- 1 **(Incorporation)** Watpac and each of its Subsidiaries is a valid existing corporation registered under the laws of its place of incorporation.
- 2 **(Execution and corporate power)** the execution and delivery of this agreement by Watpac has been properly authorised by all necessary corporate actions of Watpac. Watpac has full corporate power and lawful authority to execute and deliver this agreement and to consummate and perform or cause to be performed its obligations under this agreement in accordance with its terms.
- 3 **(No contravention or impediment)** this agreement and performance by Watpac of its obligations under this agreement do not contravene the constitution of any member of the Watpac Group or any law by which any member of the Watpac Group is bound and does not result in the interest of Watpac in any Subsidiary being terminated or modified:
- 4 **(Binding obligations)** (subject to laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations on Watpac.
- 5 **(Watpac Information)** the Watpac Information provided in accordance with this agreement and included in the Scheme Booklet, as at the date of the Scheme Booklet, will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides, practice notes and other guidelines and requirements of ASIC.
- 6 **(Reliance)** the Watpac Information contained in the Scheme Booklet will be included in good faith and on the understanding that Bidder and its directors will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme.
- 7 **(Further information)** Watpac will, as a continuing obligation, provide to Bidder all such further or new information which may arise after the date of the Scheme Booklet until the date of the Scheme Meeting which may be necessary to ensure that there would be no breach of the warranty in item 5 if it applied as at the date upon which that information arose.
- 8 **(Disclosure)** Watpac has Fairly Disclosed to Bidder all information known to it (having made reasonable enquiries) as at the date of this agreement regarding matters affecting or relating to Watpac Group:
  - (a) which is not already in the public domain; and
  - (b) which would have, or is reasonably likely to have, resulted in a reasonable bidder not entering into this agreement at all or only entering into this agreement on materially different terms.
- 9 **(Continuous disclosure)** Watpac is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure.

- 10 **(Complete and accurate)** all the historical and factual information provided to Bidder by Watpac in connection with this agreement, whether under due diligence or not, is complete and accurate and is not misleading, whether by way of omission or otherwise.
- 11 **(Provision of information to Independent Expert)** all information provided by or on behalf of Watpac to the Independent Expert to enable the Independent Expert's report to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's report.
- 12 **(Compliance)** Watpac, its Subsidiaries and their officers and employees have complied in all material respects with all Australian and foreign laws and regulations applicable to them (including in relation to anti-bribery and corruption) and orders of Australian and foreign governmental agencies having jurisdiction over them and have all material licenses, permits and franchises necessary for them to conduct their respective businesses as presently being conducted.
- 13 **(Conduct of business)** since 1 July 2017, the business of the Watpac Group was conducted in the usual, ordinary and proper course and since the date of this agreement each member of the Watpac Group complied with clause 9.
- 14 **(No default)** neither Watpac nor any of its Subsidiaries:
- (a) is in default under any document, agreement or instrument binding on it or its assets; nor
  - (b) is aware of anything that has occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party thereto a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect,

in each case where such default, occurrence or event would have, or is reasonably likely to have, a Material Adverse Effect.

- 15 **(Securities)** Watpac's issued securities as at the date of this agreement are:

Number	Class
183,386,244	Ordinary shares
5,582,538	Performance Rights

Other than as identified above, none of the members of the Watpac Group has issued or agreed to issue any other securities or instruments which are still outstanding and which may convert into Watpac Shares or securities of any member of the Watpac Group.

- 16 **(No Encumbrances)** there is no Encumbrance over all or any of Watpac or Watpac's Subsidiaries' assets or revenues other than as Fairly Disclosed to Bidder or registered on the PPSR prior to the date of this agreement.
- 17 **(Insolvency)** Watpac and its Subsidiaries are not Insolvent.
- 18 **(shares in Subsidiaries)** Watpac is the full legal and beneficial owner of: all of the issued shares in the capital of all of its Subsidiaries (which are all fully paid ordinary shares).



- 19      **(No claims)** other than as Fairly Disclosed by Watpac to Bidder or disclosed to ASX prior to the date of this agreement, as at the date of this agreement there are no existing or threatened claims, litigations, disputes of more than \$1,000,000, in each case where written notice has been given or proceedings against any member of the Watpac Group or their directors.

# Scheme Implementation Agreement

## Schedule 7 Bidder's representations and warranties

- 1 **(Incorporation)** it is a valid existing corporation registered under the laws of its place of incorporation.
- 2 **(Execution)** the execution and delivery of this agreement has been properly authorised by all necessary actions of Bidder.
- 3 **(Power)** it has full power and lawful authority to execute and deliver this agreement and to consummate and perform or cause to be performed its obligations under this agreement in accordance with its terms.
- 4 **(Binding obligations)** (subject to laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations on it.
- 5 **(Reliance)** the Bidder Information provided to Watpac for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that Watpac and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act.
- 6 **(Bidder Information)** the Bidder Information provided in accordance with this agreement and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements.
- 7 **(Insolvency)** it is not Insolvent.
- 8 **(Scheme Consideration)** it has access to the necessary funds to, if the Scheme becomes Effective, satisfy its payment obligations under the Scheme and the Deed Poll.

## Signing page

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# Scheme Implementation Agreement

## Signing page

DATED: 25 February 2018

SIGNED for and on behalf of **BESIX GROUP S.A.** by its authorised representatives:

.....  
(Signature)

.....  
(Name)


.....  
(Title)

.....  
(Signature)


.....  
(Name)

.....  
(Title)

EXECUTED by **WATPAC LIMITED** in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:

  
.....  
Signature of director

PETER WATSON  
.....  
Name of director (block letters)

  
.....  
Signature of director/company secretary\*

\*delete whichever is not applicable

MARK BAILER  
.....  
Name of director/company secretary\* (block letters)

\*delete whichever is not applicable

# Scheme Implementation Agreement

## Annexure A Scheme

# Scheme of Arrangement

Dated [●] 2018

Watpac Limited (ABN 98 010 562 562) (**Watpac**)

Scheme Participants

**King & Wood Mallesons**

Level 30  
QV1 Building  
250 St Georges Terrace  
Perth WA 6000  
Australia  
T +61 8 9269 7000  
F +61 8 9269 7999  
DX 210 Perth  
[www.kwm.com](http://www.kwm.com)  
AVF:NRH:09-5507-5304

# Scheme of Arrangement

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# Scheme of Arrangement

## Details

Parties	Watpac and Scheme Participants	
Watpac	Name	<b>Watpac Limited</b>
	ACN	010 562 562
	Address	Level 1, 12 Commercial Road, Newstead QLD 4006
<b>Scheme Participants</b>	Each person registered as a holder of Watpac Shares as at 5.00pm on the Record Date (other than Excluded Shareholders)	
<b>Governing law</b>	Queensland	

# General terms

---

## 1 Definitions and interpretation

### 1.1 Definitions

Unless the contrary intention appears, these meanings apply in this Scheme:

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

**Associate** has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this agreement.

**ASX** means ASX Limited or the market operated by it, as the context requires.

**Bidder** means **[insert]**.

**Business Day** means a business day as defined in the Listing Rules.

**CHESS** means the Clearing House Electronic Subregister System managed by ASX.

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

**Court** means the Federal Court of Australia or the Supreme Court of Queensland, to be agreed by Bidder and Watpac.

**Deed Poll** means the deed poll executed by Bidder substantially in the form of Annexure B of the Scheme Implementation Agreement or as otherwise agreed by Bidder and Watpac, under which Bidder covenants in favour of each Scheme Participant to perform its obligations under this Scheme.

**Details** means the section of this agreement headed "Details".

**Effective** means the coming into effect, pursuant to 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, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

**Encumbrance** means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, claim, covenant, profit à prendre, easement or any other security arrangement having the same effect.

**End Date** means the date that is 6 months from the date of the Scheme Implementation Agreement or such other date as determined in accordance with the terms of the Scheme Implementation Agreement.

**Excluded Share** means a Watpac Share held by an Excluded Shareholder as at the Record Date.

**Excluded Shareholder** means Bidder and its Associates.

**FIRB** means the Foreign Investment Review Board.

**Immediately Available Funds** means electronic funds transfer or other form of cleared funds acceptable to Watpac.

**Implementation Date** means the fifth Business Day following the Record Date or such other date as is agreed in writing by Bidder and Watpac.

**Listing Rules** means the Listing Rules of the ASX.

**Performance Rights** means any performance rights issued by Watpac in respect of Watpac Shares, whether vested or unvested.

**Record Date** means 5.00pm on the second Business Day following the Effective Date or such other date as Watpac and Bidder agree in writing.

**Register** means the share register of Watpac and **Registry** has a corresponding meaning.

**Registered Address** means, in relation to a Watpac Shareholder, the address shown in the Register.

**Regulatory Authority** means:

- (a) ASX, ASIC, FIRB and the Takeovers Panel;
- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute,

including, in Australia or Belgium.

**Scheme** means this scheme of arrangement between Watpac and Scheme Participants under which all of the Scheme Shares will be transferred to Bidder under Part 5.1 of the Corporations Act as described in clause 5.2 of this Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Watpac and Bidder in accordance with clause 8.2 of this Scheme.

**Scheme Consideration** means \$0.92 for each Scheme Share.

**Scheme Implementation Agreement** means the scheme implementation agreement dated [●] 2018 between Watpac and Bidder under which, amongst other things, Watpac has agreed to propose this Scheme to Watpac Shareholders, and each of Bidder and Watpac has agreed to take certain steps to give effect to this Scheme.

**Scheme Meeting** means the meeting of Watpac Shareholders ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act at which Watpac Shareholders will vote on this Scheme.

**Scheme Participant** means each person registered as a Watpac Shareholder at the Record Date, other than an Excluded Shareholder.

**Scheme Shares** means one half of all Target Shares on issue as at the Record Date.

**Second Court Date** means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving this Scheme.

**Share Scheme Transfer** means, for each Scheme Participant, a duly completed and executed proper instrument of transfer of the Scheme Shares held by that Scheme Participant for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all Scheme Shares.

**Takeovers Panel** means the review body continuing in existence under section 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) and given powers under Part 6.10 of the Corporations Act.

**Target Shares** means the Watpac Shares other than the Excluded Shares.

**Trust Account** means the trust account operated by or on behalf of Watpac to hold the Scheme Consideration on trust for the Scheme Participants for the purpose of paying the Scheme Consideration to the Scheme Participants in accordance with clause 6.3 of this Scheme, as nominated by Watpac at least 5 Business Days prior to the Implementation Date.

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

**Watpac Shareholder** means each person registered in the Register as a holder of Watpac Shares.

## 1.2 Reference to certain general terms

Unless the contrary intention appears, a reference in this Scheme to:

- (a) **(variations or replacement)** a document, agreement (including this document) or instrument is a reference to that document, agreement or instrument as amended, consolidated, supplemented, novated or replaced;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(party)** a party means a party to this Scheme;
- (g) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Regulatory Authority;
- (h) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

- (i) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (j) **(calculation of time)** a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (m) **(time of day)** time is a reference to Brisbane, Queensland time.

### 1.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Scheme.

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## 2 Preliminary

### 2.1 Watpac

- (a) Watpac is a public company limited by shares incorporated in Australia and registered in Queensland.
- (b) Watpac is admitted to the official list of the ASX and Watpac Shares are officially quoted on the stock market conducted by ASX.
- (c) As at 25 February 2018, Watpac’s issued securities comprise:
  - (i) 183,386,244 Watpac Shares; and
  - (ii) 5,582,538 Performance Rights.

### 2.2 Bidder

Bidder is a private company limited by shares and is incorporated in Belgium as a limited liability company, under Company No. BCE 0400.459.154.

### 2.3 If Scheme becomes Effective

If this Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share to Bidder, Watpac will procure Bidder to provide the Scheme Consideration to Watpac on behalf of each Scheme Participant in accordance with the terms of this Scheme and the Deed Poll;
- (b) all Scheme Shares, and all the rights and entitlements attaching to them, will be transferred to Bidder on the Implementation Date; and
- (c) Watpac will enter the name of Bidder in the Register in respect of all Scheme Shares transferred to Bidder in accordance with the terms of this Scheme.

### 2.4 Scheme Implementation Agreement

By executing the Scheme Implementation Agreement, Watpac and Bidder have agreed to implement the terms of this Scheme.

## **2.5 Deed Poll**

Bidder has executed the Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform (or procure the performance of) its obligations as contemplated by this Scheme, including to pay the Scheme Consideration.

---

## **3 Conditions precedent**

### **3.1 Conditions precedent to Scheme**

This Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) as at 8.00am on the Second Court Date, neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms;
- (b) all of the conditions precedent in Schedule 2 of the Scheme Implementation Agreement having been satisfied or waived (other than the condition precedent relating to the approval of the Court in item 4) in accordance with the terms of the Scheme Implementation Agreement;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Watpac and Bidder having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act and any such conditions having been satisfied or waived; and
- (d) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

### **3.2 Conditions precedent and operation of clauses 5 and 6**

The satisfaction of each condition in clause 3.1 of this Scheme is a condition precedent to the operation of clauses 5 and 6 of this Scheme.

### **3.3 Certificate in relation to conditions precedent**

Watpac and Bidder must each provide to the other by 8:00am on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent set out in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and clause 3.1(d) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date.

The certificates referred to in this clause 3.3 will constitute conclusive evidence of whether the conditions precedent referred to in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and 3.1(d) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date.

---

## **4 Scheme**

### **4.1 Effective Date**

Subject to clause 4.2, this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

## **4.2 End Date**

This Scheme will lapse and be of no further force or effect if:

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

unless Watpac and Bidder otherwise agree in writing.

---

## **5 Implementation of Scheme**

### **5.1 Lodgement of Court orders with ASIC**

Watpac must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 5.00pm on the first Business Day after the day on which the Court approves this Scheme or such later time as Bidder and Watpac agree in writing.

### **5.2 Transfer and registration of Scheme Shares**

On the Implementation Date, but subject to the payment of the Scheme Consideration for the Scheme Shares in accordance with clauses 6.1 to 6.3 and 6.5(a) (but subject to clause 6.5(b)) of this Scheme and Bidder having provided Watpac with written confirmation thereof:

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Bidder without the need for any further act by any Scheme Participant (other than acts performed by Watpac as attorney and agent for Scheme Participants under clause 8.1 of this Scheme) by:
  - (i) Watpac delivering to Bidder a duly completed and executed Share Scheme Transfer executed on behalf of the Scheme Participants; and
  - (ii) Bidder duly executing the Share Scheme Transfer and delivering it to Watpac for registration; and
- (b) immediately following receipt of the duly executed Share Scheme Transfer, Watpac must enter the name of Bidder in the Register in respect of all Scheme Shares transferred to Bidder in accordance with the terms of this Scheme.

### **5.3 Entitlement to Scheme Consideration**

On the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clause 6 of this Scheme.

### **5.4 Title and rights in Scheme Shares**

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clauses 5.2 and 6.3 of this Scheme, on and from the Implementation Date, Bidder will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by Watpac of Bidder in the Register as the holder of the Scheme Shares.

## **5.5 Scheme Participants' agreements**

Under this Scheme, each Scheme Participant agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, in accordance with the terms of this Scheme.

## **5.6 Warranty by Scheme Participants**

Each Scheme Participant warrants to Bidder and is deemed to have authorised Watpac to warrant to Bidder as agent and attorney for the Scheme Participant by virtue of this clause 5.6, that:

- (a) all their Scheme Shares (including any rights and entitlements attaching to those shares) transferred to Bidder under the Scheme will, as at the date of the transfer, be fully paid and free from all Encumbrances; and
- (b) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those shares) to Bidder under the Scheme.

## **5.7 Transfer free of Encumbrances**

To the extent permitted by law, all Scheme Shares (including any rights and entitlements attaching to those shares) which are transferred to Bidder under this Scheme will, at the date of the transfer of them to Bidder, vest in Bidder free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind not referred to in this Scheme.

## **5.8 Appointment of Bidder as sole proxy**

Subject to the payment of the Scheme Consideration for the Scheme Shares as contemplated by clauses 5.2 and 6.3 of this Scheme, on and from the Implementation Date until Watpac registers Bidder as the holder of all of the Scheme Shares in the Register, each Scheme Participant:

- (a) irrevocably appoints Watpac as attorney and agent (and directs Watpac in such capacity) to appoint Bidder and each of its directors from time to time (jointly and each of them individually) as its proxy and where applicable, corporate representative, to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in its name (including signing any shareholders resolution), and no Scheme Participant may itself exercise the votes attaching to the Scheme Shares at any of those meetings, whether in person, by proxy or by corporate representative (other than pursuant to this clause 5.8(a)); and
- (b) must take all other actions in the capacity of the registered holder of Scheme Shares as Bidder directs; and
- (c) acknowledges and agrees that in exercising the powers referred to in clause 5.8(a), Bidder and any director, officer, secretary or agent nominated by Bidder under clause 5.8(a) may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

## **5.9 Fractions and splitting**

- (a) Where the calculation of the Scheme Shares of a particular Scheme Participant would result in a number that is not a whole number, the number of Scheme Share of that particular Scheme Participant will be rounded up to the nearest whole number.
- (b) If Bidder is of the opinion, formed reasonably, that several Scheme Participants, each of which holds Scheme Shares have, before the



Record Date, been party to a shareholding splitting or division in an attempt to obtain an advantage by reference to the rounding provided for in the calculation of each Scheme Participant's Scheme Shares under paragraph (a), Bidder may direct Watpac to give notice (and if Watpac is given such a direction it must give notice) to those Scheme Participants:

- (i) setting out the names and Registered Addresses of all of them;
- (ii) stating that opinion; and
- (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after the notice has been so given, the Scheme Participant specifically identified in the notice will, for the purposes of this Scheme, be taken to hold all those Scheme Shares and each of the other Scheme Participants whose names are set out in the notice will, for the purposes of this Scheme, be taken to hold no Scheme Shares.

---

## **6 Scheme Consideration**

### **6.1 Consideration under the Scheme**

On the Implementation Date, Watpac must procure Bidder to pay (or procure the payment of) the Scheme Consideration to the Scheme Participants in accordance with this clause 6.

### **6.2 Satisfaction of obligations**

The obligation of Watpac to procure payment of the Scheme Consideration pursuant to clause 6.1 of this Scheme will be satisfied by Watpac using its best endeavours to procure that Bidder does, no later than the Business Day before the Implementation Date, deposit (or procure the deposit) in Immediately Available Funds the aggregate amount of the Scheme Consideration payable to all Scheme Participants into the Trust Account (except that the amount of any interest on the amount deposited (less bank fees and other charges) and any amount remaining in the Trust Account after all payments to Scheme Participants have been made will be to Bidder's account).

### **6.3 Payment of Scheme Consideration**

On the Implementation Date, subject to receipt of the Scheme Consideration from Bidder in accordance with clause 6.2 of this Scheme, Watpac must pay or procure payment to each Scheme Participant an amount equal to the Scheme Consideration for each Scheme Share transferred to Bidder on the Implementation Date by that Scheme Participant (rounded down to the nearest whole cent).

Unless otherwise directed by a Scheme Participant before the Record Date, the amounts referred to in this clause 6.3 of this Scheme must be paid by direct credit or sending a cheque drawn on an Australian bank in Australian currency on the Implementation Date to each Scheme Participant by pre-paid ordinary post (or, if the address of the Scheme Participant in the Register is outside Australia, by pre-paid airmail post) to their address recorded in the Register at 5.00pm on the Record Date (or in the case of joint holders, in accordance with the procedures set out in clause 6.6).

### **6.4 Unclaimed monies**

Watpac may cancel a cheque issued under clause 6.3 of this Scheme if the cheque:

- (a) is returned to Watpac; or

- (b) has not been presented for payment within six months after the date on which the cheque was sent.

During the period of one year commencing on the Implementation Date, on a written request from a Scheme Participant, Watpac must reissue a cheque that was previously cancelled under this clause 6.4. Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Bidder.

## **6.5 Orders of a court**

In the case of notice having been given to Watpac (or the Registry) of an order made by a court of competent jurisdiction:

- (a) which requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Participant, which would otherwise be payable to that Scheme Participant in accordance with clause 6.3 of this Scheme, then Watpac must procure that payment is made in accordance with that order; or
- (b) which would prevent Watpac from dispatching payment to any particular Scheme Participant in accordance with clause 6.3 of this Scheme, Watpac will retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Participant multiplied by the Scheme Consideration until such time as payment in accordance with clause 6.3 of this Scheme is permitted by law.

## **6.6 Joint holders**

In the case of Scheme Shares held in joint names any cheque required to be paid to Scheme Participants by Bidder must be payable to the joint holders and be forwarded to the holder whose name appears first in the Register as at 5.00pm on the Record Date.

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# **7 Dealings in Watpac Shares**

## **7.1 Determination of Scheme Participants**

To establish the identity of the Scheme Participants, dealings in Watpac Shares will only be recognised by Watpac if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Register as the holder of the relevant Watpac Shares on or before 5.00pm on the Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received on or before 5.00pm on the Record Date at the place where the Register is kept.

## **7.2 Register**

Watpac must register any registrable transmission applications or transfers of the Watpac Shares received in accordance with clause 7.1(b) of this Scheme on or before 5.00pm on the Record Date.

## **7.3 No disposals after Record Date**

- (a) If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date in any way except as set out in this Scheme and any such disposal will be void and of no legal effect whatsoever.

- (b) Watpac will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Shares received after 5.00pm on the Record Date (except a transfer to Bidder pursuant to this Scheme and any subsequent transfer by Bidder or its successors in title) or received prior to the Record Date but not in registrable or actionable form.

#### **7.4 Maintenance of Watpac Register**

For the purpose of determining entitlements to the Scheme Consideration, Watpac will maintain the Register in accordance with the provisions of this clause 7 until the Scheme Consideration has been paid to the Scheme Participants and Bidder has been entered in the Register as the holder of all the Scheme Shares. The Register in this form will solely determine entitlements to the Scheme Consideration.

#### **7.5 Certificates and holding statements**

- (a) Subject to the provision of the Scheme Consideration and registration of the transfers to Bidder contemplated in clause 5.2(b), any statements of holding in respect of Watpac Shares will cease to have effect after 5.00pm on the Record Date as documents of title in respect of the Scheme Shares (other than statements of holding in favour of Bidder, its Associates and their successors in title). After 5.00pm on the Record Date, each entry current on the Register as at 5.00pm on the Record Date (other than entries in respect of Bidder, its Associates or their successors in title) will cease to have effect to the extent it records the Scheme Shares held by the Scheme Participants except as evidence of entitlement to the Scheme Consideration.
- (b) Watpac will issue and deliver holding statements relating to the Watpac Shares remaining to be held by each Scheme Participant in accordance with the Corporations Act, the CHES operating rules and the Listing Rules after implementation of the transfer of the Scheme Shares to the Bidder.

**[Note: mechanics of updating the register to be confirmed]**

#### **7.6 Details of Scheme Participants**

Within 2 Business Days after the Record Date, Watpac will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant, as shown in the Register at 5.00pm on the Record Date are available to Bidder in such form as Bidder reasonably requires.

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### **8 General Scheme provisions**

#### **8.1 Power of attorney**

Each Scheme Participant, without the need for any further act by any Scheme Participant, irrevocably appoints Watpac and each of its directors and secretaries (jointly and each of them individually) as its attorney and agent for the purpose of:

- (a) executing any document necessary or expedient to give effect to this Scheme including the Share Scheme Transfer;
- (b) enforcing the Deed Poll against Bidder,

and Watpac accepts such appointment. Watpac as attorney and agent of each Scheme Participant, may sub-delegate its functions, authorities or powers under this clause 8.1 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

## **8.2 Variations, alterations and conditions**

Watpac may, with the consent of Bidder (which cannot be unreasonably withheld or delayed), by its counsel or solicitor consent on behalf of all persons concerned to any variations, alterations or conditions to this Scheme which the Court thinks fit to impose. Each Scheme Participant agrees to any such variation, alteration or condition.

## **8.3 Further action by Watpac**

Watpac will execute all documents and do all things (on its own behalf and on behalf of each Scheme Participant) necessary or expedient to implement, and perform its obligations under, this Scheme.

## **8.4 Authority and acknowledgement**

Each of the Scheme Participants:

- (a) irrevocably consents to Watpac and Bidder doing all things and executing all deeds, instruments, transfers or other documents necessary or expedient for or incidental to the implementation of this Scheme; and
- (b) acknowledges that this Scheme binds Watpac and all Scheme Participants (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against the Scheme at the Scheme Meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of Watpac.

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

Neither Watpac nor Bidder, nor any of their respective directors, officers, employees and advisors (as applicable), will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

## **8.6 Enforcement of Deed Poll**

Watpac undertakes in favour of each Scheme Participant to enforce the Deed Poll against Bidder on behalf of and as agent and attorney for the Scheme Participants.

## **8.7 Stamp duty**

Bidder will pay all stamp duty (including any fines, penalties and interest) payable in connection with this Scheme.

## **8.8 Notices**

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Watpac, 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 Watpac's registered office or at the office of the registrar of Watpac Shares.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Watpac Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

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## **9 Governing law and jurisdiction**

This Scheme is governed by the law in force in the place specified in the Details. Each party irrevocably and unconditionally submits to the non-exclusive

jurisdiction of the courts of that place and waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

# Scheme Implementation Agreement

## Annexure B Deed Poll

# Deed Poll

Dated [•] 2018

Given by [insert] (Bidder)

In favour of the **Scheme Participants**

**King & Wood Mallesons**  
Level 30  
QV1 Building  
250 St Georges Terrace  
Perth WA 6000  
Australia  
T +61 8 9269 7000  
F +61 8 9269 7999  
DX 210 Perth  
[www.kwm.com](http://www.kwm.com)  
AVF:NRH:09-5507-5304

# Deed Poll

## Details

<b>Parties</b>	<b>Bidder</b>	
<b>Bidder</b>	Name	[insert]
	Incorporated in	[Belgium / Australia]
	Address	[insert]
	Attention	[Company Secretary]
<b>In favour of</b>	Each person registered as a holder of Watpac Shares as at 5.00pm on the Record Date (other than Excluded Shareholders)	
<b>Recitals</b>	<b>A</b>	Watpac and Bidder have entered into the Scheme Implementation Agreement.
	<b>B</b>	In the Scheme Implementation Agreement, Bidder agreed (amongst other things) to pay the Scheme Consideration to Watpac on behalf of the Scheme Participants, subject to the satisfaction of certain conditions.
	<b>C</b>	Bidder is entering into this deed poll for the purpose of covenanting in favour of Scheme Participants to perform its obligations in relation to the Scheme.
<b>Governing law</b>	Queensland	
<b>Date of Deed Poll</b>	See Signing page	



# Deed Poll

## General terms

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### 1 Definitions and interpretation

#### 1.1 Definitions

In this deed poll (unless the context otherwise requires):

**Authorised Officer** means a director or secretary of a party or any other person nominated by a party to act as an Authorised Officer for the purposes of this deed poll.

**Details** means the section of this agreement headed "Details".

**Scheme** means the proposed scheme of arrangement between Watpac and Scheme Participants under which all the Scheme Shares will be transferred to Bidder under Part 5.1 of the Corporations Act, substantially in the form of Annexure A to this deed poll, or as otherwise agreed by Bidder and Watpac, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act, to the extent they are approved in writing by Watpac and Bidder.

**Scheme Implementation Agreement** means the scheme implementation agreement dated [insert date] 2018 between Watpac and Bidder under which, amongst other things, Watpac has agreed to propose the Scheme to Watpac Shareholders, and each of Bidder and Watpac has agreed to take certain steps to give effect to the Scheme.

All other words and phrases used in this deed poll have the same meaning as given to them in the Scheme.

#### 1.2 Interpretation

Clause 1.2 of the Scheme applies to the interpretation of this deed poll except that references to "this Scheme" in that clause are to be read as references to "this deed poll".

#### 1.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed poll.

#### 1.4 Nature of deed poll

Bidder acknowledges that:

- (a) this deed poll may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not a party to it; and
- (b) under the Scheme, Watpac undertakes to enforce this deed poll against Bidder on behalf of and as agent and attorney for each Scheme Participant.

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## **2 Conditions precedent and termination**

### **2.1 Conditions precedent**

Bidder's obligations under this deed poll are subject to the Scheme becoming Effective.

### **2.2 Termination**

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

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

unless Bidder and Watpac otherwise agree in writing.

### **2.3 Consequences of termination**

If this deed poll is terminated under clause 2.2, then, in addition and without prejudice to any other rights, powers or remedies available to Scheme Participants:

- (a) Bidder is released from its obligations to further perform this deed poll except those obligations contained in clause 7.1; and
- (b) each Scheme Participant retains the rights, powers or remedies they have against Bidder in respect of any breach of this deed poll which occurs before it is terminated.

---

## **3 Performance of obligations generally**

Bidder undertakes in favour of each Scheme Participant that it will fulfil its obligations under the Scheme Implementation Agreement and do all acts and things necessary or desirable on its part to give full effect to the Scheme.

---

## **4 Scheme Consideration**

### **4.1 Provision of Scheme Consideration**

Subject to clause 2, Bidder undertakes in favour of each Scheme Participant to pay or procure the payment of the Scheme Consideration to the trust account held by Watpac on behalf of each Scheme Participant subject to and in accordance with the terms of the Scheme.

### **4.2 Payment of Scheme Consideration**

Bidder's obligation to provide the Scheme Consideration to Watpac on behalf of each Scheme Participant is satisfied by Bidder, no later than the Business Day before the Implementation Date, depositing in Immediately Available Funds the aggregate amount of the Scheme Consideration payable to all Scheme Participants into the Trust Account (except that the amount of any interest on the amount deposited (less bank fees and other charges) and any amount remaining in the Trust Account after all payments to Scheme Participants have been made will be to Bidder's account).

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## **5 Representations and warranties**

Bidder represents and warrants that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll; and
- (d) this deed poll is valid and binding upon Bidder and enforceable against Bidder in accordance with its terms.

---

## **6 Continuing obligations**

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

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

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## **7 General**

### **7.1 Stamp duty**

Bidder must:

- (a) pay all stamp duty (including fines, penalties and interest) payable and assessed on or in connection with this deed poll, the performance of this deed poll, or any instruments entered into under this deed poll and in respect of a transaction effected by or made under the Scheme and this deed poll; and
- (b) indemnify on demand each Scheme Participant against any liability arising from failure to comply with clause 7.1(a).

### **7.2 Notices**

Unless expressly stated otherwise in this deed poll, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed poll must be in writing and sent to the address stated in the Details, or as otherwise advised by the party from time to time, and marked to the attention of the person stated in the details.

### **7.3 Waiver**

- (a) A waiver of any right arising from a breach of this deed poll or of any right, power, authority, discretion or remedy arising upon default under this deed poll must be in writing and signed by the party giving the waiver.

- (b) A failure or delay in exercise, or partial exercise, of:
  - (i) a right arising from a breach of this deed poll; or
  - (ii) a right, power, authority, discretion or remedy created or arising upon default under this deed poll,

does not result in a waiver of that right, power, authority, discretion or remedy.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this deed poll or on a default under this deed poll as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

#### **7.4 Variation**

A provision of this deed poll or any right created under it may not be varied, altered or otherwise amended unless:

- (a) the variation is agreed to by Watpac and Bidder in writing; and
- (b) the Court indicates that the variation, alteration or amendment would not itself preclude approval of the Scheme,

in which event Bidder must enter into a further deed poll in favour of the Scheme Participants giving effect to the variation, alteration or amendment.

#### **7.5 Assignment**

The rights and obligations of Bidder and each Scheme Participant under this deed poll are personal and must not be assigned, encumbered or otherwise dealt with at law or in equity and no person may attempt or purport to do so without the prior written consent of Bidder and Watpac.

#### **7.6 Governing law and jurisdiction**

This deed poll is governed by the law in force in the place specified in the Details. Bidder irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place.

#### **7.7 Further action**

Bidder must execute all deeds and other documents and do all things (on its own behalf or on behalf of each Scheme Participant) necessary or expedient to give full effect to this deed poll and the transactions contemplated by it.

#### **7.8 Service of process**

Without preventing any other mode of service, any document in a legal action, suit or other proceeding in the courts of Queensland or courts of appeal from them (including any writ of summons or other originating process or any third or other party notice) may be served on Bidder by being delivered to or left for Bidder at the address shown in the Details.

**EXECUTED** as a deed poll

## Deed Poll

## Signing page

**DATED:** \_\_\_\_\_

**EXECUTED** by **[INSERT]** in  
accordance with the constituent  
documents in its place of incorporation:

Signature of Authorised Signatory

Name of Authorised Signatory in full

[illegible]

Signature of Authorised Signatory

Name of Authorised Signatory in full

Deed Poll

Annexure A - Scheme

# Scheme of Arrangement

Dated [●] 2018

Watpac Limited (ABN 98 010 562 562) (**Watpac**)

Scheme Participants

**King & Wood Mallesons**

Level 30  
QV1 Building  
250 St Georges Terrace  
Perth WA 6000  
Australia  
T +61 8 9269 7000  
F +61 8 9269 7999  
DX 210 Perth  
[www.kwm.com](http://www.kwm.com)  
AVF:NRH:09-5507-5304

# Scheme of Arrangement

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# Scheme of Arrangement

## Details

Parties	Watpac and Scheme Participants	
Watpac	Name	<b>Watpac Limited</b>
	ACN	010 562 562
	Address	Level 1, 12 Commercial Road, Newstead QLD 4006
<b>Scheme Participants</b>	Each person registered as a holder of Watpac Shares as at 5.00pm on the Record Date (other than Excluded Shareholders)	
<b>Governing law</b>	Queensland	

# General terms

---

## 1 Definitions and interpretation

### 1.1 Definitions

Unless the contrary intention appears, these meanings apply in this Scheme:

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

**Associate** has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this agreement.

**ASX** means ASX Limited or the market operated by it, as the context requires.

**Bidder** means **[insert]**.

**Business Day** means a business day as defined in the Listing Rules.

**CHESS** means the Clearing House Electronic Subregister System managed by ASX.

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

**Court** means the Federal Court of Australia or the Supreme Court of Queensland, to be agreed by Bidder and Watpac.

**Deed Poll** means the deed poll executed by Bidder substantially in the form of Annexure B of the Scheme Implementation Agreement or as otherwise agreed by Bidder and Watpac, under which Bidder covenants in favour of each Scheme Participant to perform its obligations under this Scheme.

**Details** means the section of this agreement headed "Details".

**Effective** means the coming into effect, pursuant to 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, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

**Encumbrance** means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, claim, covenant, profit à prendre, easement or any other security arrangement having the same effect.

**End Date** means the date that is 6 months from the date of the Scheme Implementation Agreement or such other date as determined in accordance with the terms of the Scheme Implementation Agreement.

**Excluded Share** means a Watpac Share held by an Excluded Shareholder as at the Record Date.

**Excluded Shareholder** means Bidder and its Associates.

**FIRB** means the Foreign Investment Review Board.

**Immediately Available Funds** means electronic funds transfer or other form of cleared funds acceptable to Watpac.

**Implementation Date** means the fifth Business Day following the Record Date or such other date as is agreed in writing by Bidder and Watpac.

**Listing Rules** means the Listing Rules of the ASX.

**Performance Rights** means any performance rights issued by Watpac in respect of Watpac Shares, whether vested or unvested.

**Record Date** means 5.00pm on the second Business Day following the Effective Date or such other date as Watpac and Bidder agree in writing.

**Register** means the share register of Watpac and **Registry** has a corresponding meaning.

**Registered Address** means, in relation to a Watpac Shareholder, the address shown in the Register.

**Regulatory Authority** means:

- (a) ASX, ASIC, FIRB and the Takeovers Panel;
- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute,

including, in Australia or Belgium.

**Scheme** means this scheme of arrangement between Watpac and Scheme Participants under which all of the Scheme Shares will be transferred to Bidder under Part 5.1 of the Corporations Act as described in clause 5.2 of this Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Watpac and Bidder in accordance with clause 8.2 of this Scheme.

**Scheme Consideration** means \$0.92 for each Scheme Share.

**Scheme Implementation Agreement** means the scheme implementation agreement dated [●] 2018 between Watpac and Bidder under which, amongst other things, Watpac has agreed to propose this Scheme to Watpac Shareholders, and each of Bidder and Watpac has agreed to take certain steps to give effect to this Scheme.

**Scheme Meeting** means the meeting of Watpac Shareholders ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act at which Watpac Shareholders will vote on this Scheme.

**Scheme Participant** means each person registered as a Watpac Shareholder at the Record Date, other than an Excluded Shareholder.

**Scheme Shares** means one half of all Target Shares on issue as at the Record Date.

**Second Court Date** means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving this Scheme.

**Share Scheme Transfer** means, for each Scheme Participant, a duly completed and executed proper instrument of transfer of the Scheme Shares held by that Scheme Participant for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all Scheme Shares.

**Takeovers Panel** means the review body continuing in existence under section 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) and given powers under Part 6.10 of the Corporations Act.

**Target Shares** means the Watpac Shares other than the Excluded Shares.

**Trust Account** means the trust account operated by or on behalf of Watpac to hold the Scheme Consideration on trust for the Scheme Participants for the purpose of paying the Scheme Consideration to the Scheme Participants in accordance with clause 6.3 of this Scheme, as nominated by Watpac at least 5 Business Days prior to the Implementation Date.

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

**Watpac Shareholder** means each person registered in the Register as a holder of Watpac Shares.

## 1.2 Reference to certain general terms

Unless the contrary intention appears, a reference in this Scheme to:

- (a) **(variations or replacement)** a document, agreement (including this document) or instrument is a reference to that document, agreement or instrument as amended, consolidated, supplemented, novated or replaced;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(party)** a party means a party to this Scheme;
- (g) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Regulatory Authority;
- (h) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

- (i) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (j) **(calculation of time)** a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (m) **(time of day)** time is a reference to Brisbane, Queensland time.

### 1.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Scheme.

---

## 2 Preliminary

### 2.1 Watpac

- (a) Watpac is a public company limited by shares incorporated in Australia and registered in Queensland.
- (b) Watpac is admitted to the official list of the ASX and Watpac Shares are officially quoted on the stock market conducted by ASX.
- (c) As at 25 February 2018, Watpac’s issued securities comprise:
  - (i) 183,386,244 Watpac Shares; and
  - (ii) 5,582,538 Performance Rights.

### 2.2 Bidder

Bidder is a private company limited by shares and is incorporated in Belgium as a limited liability company, under Company No. BCE 0400.459.154.

### 2.3 If Scheme becomes Effective

If this Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share to Bidder, Watpac will procure Bidder to provide the Scheme Consideration to Watpac on behalf of each Scheme Participant in accordance with the terms of this Scheme and the Deed Poll;
- (b) all Scheme Shares, and all the rights and entitlements attaching to them, will be transferred to Bidder on the Implementation Date; and
- (c) Watpac will enter the name of Bidder in the Register in respect of all Scheme Shares transferred to Bidder in accordance with the terms of this Scheme.

### 2.4 Scheme Implementation Agreement

By executing the Scheme Implementation Agreement, Watpac and Bidder have agreed to implement the terms of this Scheme.

## **2.5 Deed Poll**

Bidder has executed the Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform (or procure the performance of) its obligations as contemplated by this Scheme, including to pay the Scheme Consideration.

---

## **3 Conditions precedent**

### **3.1 Conditions precedent to Scheme**

This Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) as at 8.00am on the Second Court Date, neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms;
- (b) all of the conditions precedent in Schedule 2 of the Scheme Implementation Agreement having been satisfied or waived (other than the condition precedent relating to the approval of the Court in item 4) in accordance with the terms of the Scheme Implementation Agreement;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Watpac and Bidder having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act and any such conditions having been satisfied or waived; and
- (d) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

### **3.2 Conditions precedent and operation of clauses 5 and 6**

The satisfaction of each condition in clause 3.1 of this Scheme is a condition precedent to the operation of clauses 5 and 6 of this Scheme.

### **3.3 Certificate in relation to conditions precedent**

Watpac and Bidder must each provide to the other by 8:00am on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent set out in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and clause 3.1(d) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date.

The certificates referred to in this clause 3.3 will constitute conclusive evidence of whether the conditions precedent referred to in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and 3.1(d) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date.

---

## **4 Scheme**

### **4.1 Effective Date**

Subject to clause 4.2, this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

## **4.2 End Date**

This Scheme will lapse and be of no further force or effect if:

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

unless Watpac and Bidder otherwise agree in writing.

---

## **5 Implementation of Scheme**

### **5.1 Lodgement of Court orders with ASIC**

Watpac must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 5.00pm on the first Business Day after the day on which the Court approves this Scheme or such later time as Bidder and Watpac agree in writing.

### **5.2 Transfer and registration of Scheme Shares**

On the Implementation Date, but subject to the payment of the Scheme Consideration for the Scheme Shares in accordance with clauses 6.1 to 6.3 and 6.5(a) (but subject to clause 6.5(b)) of this Scheme and Bidder having provided Watpac with written confirmation thereof:

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Bidder without the need for any further act by any Scheme Participant (other than acts performed by Watpac as attorney and agent for Scheme Participants under clause 8.1 of this Scheme) by:
  - (i) Watpac delivering to Bidder a duly completed and executed Share Scheme Transfer executed on behalf of the Scheme Participants; and
  - (ii) Bidder duly executing the Share Scheme Transfer and delivering it to Watpac for registration; and
- (b) immediately following receipt of the duly executed Share Scheme Transfer, Watpac must enter the name of Bidder in the Register in respect of all Scheme Shares transferred to Bidder in accordance with the terms of this Scheme.

### **5.3 Entitlement to Scheme Consideration**

On the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clause 6 of this Scheme.

### **5.4 Title and rights in Scheme Shares**

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clauses 5.2 and 6.3 of this Scheme, on and from the Implementation Date, Bidder will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by Watpac of Bidder in the Register as the holder of the Scheme Shares.



## **5.5 Scheme Participants' agreements**

Under this Scheme, each Scheme Participant agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, in accordance with the terms of this Scheme.

## **5.6 Warranty by Scheme Participants**

Each Scheme Participant warrants to Bidder and is deemed to have authorised Watpac to warrant to Bidder as agent and attorney for the Scheme Participant by virtue of this clause 5.6, that:

- (a) all their Scheme Shares (including any rights and entitlements attaching to those shares) transferred to Bidder under the Scheme will, as at the date of the transfer, be fully paid and free from all Encumbrances; and
- (b) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those shares) to Bidder under the Scheme.

## **5.7 Transfer free of Encumbrances**

To the extent permitted by law, all Scheme Shares (including any rights and entitlements attaching to those shares) which are transferred to Bidder under this Scheme will, at the date of the transfer of them to Bidder, vest in Bidder free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind not referred to in this Scheme.

## **5.8 Appointment of Bidder as sole proxy**

Subject to the payment of the Scheme Consideration for the Scheme Shares as contemplated by clauses 5.2 and 6.3 of this Scheme, on and from the Implementation Date until Watpac registers Bidder as the holder of all of the Scheme Shares in the Register, each Scheme Participant:

- (a) irrevocably appoints Watpac as attorney and agent (and directs Watpac in such capacity) to appoint Bidder and each of its directors from time to time (jointly and each of them individually) as its proxy and where applicable, corporate representative, to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in its name (including signing any shareholders resolution), and no Scheme Participant may itself exercise the votes attaching to the Scheme Shares at any of those meetings, whether in person, by proxy or by corporate representative (other than pursuant to this clause 5.8(a)); and
- (b) must take all other actions in the capacity of the registered holder of Scheme Shares as Bidder directs; and
- (c) acknowledges and agrees that in exercising the powers referred to in clause 5.8(a), Bidder and any director, officer, secretary or agent nominated by Bidder under clause 5.8(a) may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

## **5.9 Fractions and splitting**

- (a) Where the calculation of the Scheme Shares of a particular Scheme Participant would result in a number that is not a whole number, the number of Scheme Share of that particular Scheme Participant will be rounded up to the nearest whole number.
- (b) If Bidder is of the opinion, formed reasonably, that several Scheme Participants, each of which holds Scheme Shares have, before the

Record Date, been party to a shareholding splitting or division in an attempt to obtain an advantage by reference to the rounding provided for in the calculation of each Scheme Participant's Scheme Shares under paragraph (a), Bidder may direct Watpac to give notice (and if Watpac is given such a direction it must give notice) to those Scheme Participants:

- (i) setting out the names and Registered Addresses of all of them;
- (ii) stating that opinion; and
- (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after the notice has been so given, the Scheme Participant specifically identified in the notice will, for the purposes of this Scheme, be taken to hold all those Scheme Shares and each of the other Scheme Participants whose names are set out in the notice will, for the purposes of this Scheme, be taken to hold no Scheme Shares.

---

## **6 Scheme Consideration**

### **6.1 Consideration under the Scheme**

On the Implementation Date, Watpac must procure Bidder to pay (or procure the payment of) the Scheme Consideration to the Scheme Participants in accordance with this clause 6.

### **6.2 Satisfaction of obligations**

The obligation of Watpac to procure payment of the Scheme Consideration pursuant to clause 6.1 of this Scheme will be satisfied by Watpac using its best endeavours to procure that Bidder does, no later than the Business Day before the Implementation Date, deposit (or procure the deposit) in Immediately Available Funds the aggregate amount of the Scheme Consideration payable to all Scheme Participants into the Trust Account (except that the amount of any interest on the amount deposited (less bank fees and other charges) and any amount remaining in the Trust Account after all payments to Scheme Participants have been made will be to Bidder's account).

### **6.3 Payment of Scheme Consideration**

On the Implementation Date, subject to receipt of the Scheme Consideration from Bidder in accordance with clause 6.2 of this Scheme, Watpac must pay or procure payment to each Scheme Participant an amount equal to the Scheme Consideration for each Scheme Share transferred to Bidder on the Implementation Date by that Scheme Participant (rounded down to the nearest whole cent).

Unless otherwise directed by a Scheme Participant before the Record Date, the amounts referred to in this clause 6.3 of this Scheme must be paid by direct credit or sending a cheque drawn on an Australian bank in Australian currency on the Implementation Date to each Scheme Participant by pre-paid ordinary post (or, if the address of the Scheme Participant in the Register is outside Australia, by pre-paid airmail post) to their address recorded in the Register at 5.00pm on the Record Date (or in the case of joint holders, in accordance with the procedures set out in clause 6.6).

### **6.4 Unclaimed monies**

Watpac may cancel a cheque issued under clause 6.3 of this Scheme if the cheque:

- (a) is returned to Watpac; or

- (b) has not been presented for payment within six months after the date on which the cheque was sent.

During the period of one year commencing on the Implementation Date, on a written request from a Scheme Participant, Watpac must reissue a cheque that was previously cancelled under this clause 6.4. Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Bidder.

## **6.5 Orders of a court**

In the case of notice having been given to Watpac (or the Registry) of an order made by a court of competent jurisdiction:

- (a) which requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Participant, which would otherwise be payable to that Scheme Participant in accordance with clause 6.3 of this Scheme, then Watpac must procure that payment is made in accordance with that order; or
- (b) which would prevent Watpac from dispatching payment to any particular Scheme Participant in accordance with clause 6.3 of this Scheme, Watpac will retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Participant multiplied by the Scheme Consideration until such time as payment in accordance with clause 6.3 of this Scheme is permitted by law.

## **6.6 Joint holders**

In the case of Scheme Shares held in joint names any cheque required to be paid to Scheme Participants by Bidder must be payable to the joint holders and be forwarded to the holder whose name appears first in the Register as at 5.00pm on the Record Date.

---

# **7 Dealings in Watpac Shares**

## **7.1 Determination of Scheme Participants**

To establish the identity of the Scheme Participants, dealings in Watpac Shares will only be recognised by Watpac if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Register as the holder of the relevant Watpac Shares on or before 5.00pm on the Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received on or before 5.00pm on the Record Date at the place where the Register is kept.

## **7.2 Register**

Watpac must register any registrable transmission applications or transfers of the Watpac Shares received in accordance with clause 7.1(b) of this Scheme on or before 5.00pm on the Record Date.

## **7.3 No disposals after Record Date**

- (a) If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date in any way except as set out in this Scheme and any such disposal will be void and of no legal effect whatsoever.

- (b) Watpac will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Shares received after 5.00pm on the Record Date (except a transfer to Bidder pursuant to this Scheme and any subsequent transfer by Bidder or its successors in title) or received prior to the Record Date but not in registrable or actionable form.

#### **7.4 Maintenance of Watpac Register**

For the purpose of determining entitlements to the Scheme Consideration, Watpac will maintain the Register in accordance with the provisions of this clause 7 until the Scheme Consideration has been paid to the Scheme Participants and Bidder has been entered in the Register as the holder of all the Scheme Shares. The Register in this form will solely determine entitlements to the Scheme Consideration.

#### **7.5 Certificates and holding statements**

- (a) Subject to the provision of the Scheme Consideration and registration of the transfers to Bidder contemplated in clause 5.2(b), any statements of holding in respect of Watpac Shares will cease to have effect after 5.00pm on the Record Date as documents of title in respect of the Scheme Shares (other than statements of holding in favour of Bidder, its Associates and their successors in title). After 5.00pm on the Record Date, each entry current on the Register as at 5.00pm on the Record Date (other than entries in respect of Bidder, its Associates or their successors in title) will cease to have effect to the extent it records the Scheme Shares held by the Scheme Participants except as evidence of entitlement to the Scheme Consideration.
- (b) Watpac will issue and deliver holding statements relating to the Watpac Shares remaining to be held by each Scheme Participant in accordance with the Corporations Act, the CHES operating rules and the Listing Rules after implementation of the transfer of the Scheme Shares to the Bidder.

**[Note: mechanics of updating the register to be confirmed]**

#### **7.6 Details of Scheme Participants**

Within 2 Business Days after the Record Date, Watpac will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant, as shown in the Register at 5.00pm on the Record Date are available to Bidder in such form as Bidder reasonably requires.

---

### **8 General Scheme provisions**

#### **8.1 Power of attorney**

Each Scheme Participant, without the need for any further act by any Scheme Participant, irrevocably appoints Watpac and each of its directors and secretaries (jointly and each of them individually) as its attorney and agent for the purpose of:

- (a) executing any document necessary or expedient to give effect to this Scheme including the Share Scheme Transfer;
- (b) enforcing the Deed Poll against Bidder,

and Watpac accepts such appointment. Watpac as attorney and agent of each Scheme Participant, may sub-delegate its functions, authorities or powers under this clause 8.1 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

## **8.2 Variations, alterations and conditions**

Watpac may, with the consent of Bidder (which cannot be unreasonably withheld or delayed), by its counsel or solicitor consent on behalf of all persons concerned to any variations, alterations or conditions to this Scheme which the Court thinks fit to impose. Each Scheme Participant agrees to any such variation, alteration or condition.

## **8.3 Further action by Watpac**

Watpac will execute all documents and do all things (on its own behalf and on behalf of each Scheme Participant) necessary or expedient to implement, and perform its obligations under, this Scheme.

## **8.4 Authority and acknowledgement**

Each of the Scheme Participants:

- (a) irrevocably consents to Watpac and Bidder doing all things and executing all deeds, instruments, transfers or other documents necessary or expedient for or incidental to the implementation of this Scheme; and
- (b) acknowledges that this Scheme binds Watpac and all Scheme Participants (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against the Scheme at the Scheme Meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of Watpac.

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

Neither Watpac nor Bidder, nor any of their respective directors, officers, employees and advisors (as applicable), will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

## **8.6 Enforcement of Deed Poll**

Watpac undertakes in favour of each Scheme Participant to enforce the Deed Poll against Bidder on behalf of and as agent and attorney for the Scheme Participants.

## **8.7 Stamp duty**

Bidder will pay all stamp duty (including any fines, penalties and interest) payable in connection with this Scheme.

## **8.8 Notices**

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Watpac, 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 Watpac's registered office or at the office of the registrar of Watpac Shares.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Watpac Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

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## **9 Governing law and jurisdiction**

This Scheme is governed by the law in force in the place specified in the Details. Each party irrevocably and unconditionally submits to the non-exclusive

jurisdiction of the courts of that place and waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.