

ASX Release

Charter Hall Group to acquire Folkestone Limited

22 August 2018

Charter Hall Group (**ASX:CHC**) (**Charter Hall**) and Folkestone Limited (**ASX:FLK**) (**Folkestone**) are pleased to announce that they have entered into a scheme implementation agreement for Charter Hall to acquire Folkestone (**Scheme**) for consideration of \$205 million funded by cash from available investment capacity.

Under the terms of the Scheme, Folkestone shareholders will be entitled to receive \$1.39 cash per share (Scheme Consideration), comprising a Charter Hall cash consideration of \$1.354 per share¹ and a special dividend of \$0.036 per share² (Special Dividend). In addition, Folkestone shareholders on the register as at 11 September 2018 will be entitled to a \$0.03 per share ordinary dividend for FY18, payable on 27 September 2018 (FY18 Dividend). The FY18 Dividend will be paid to Folkestone shareholders regardless of whether the Scheme is approved.

Folkestone is a property fund manager and developer with listed, unlisted and private funds, with a strategy similar to Charter Hall of accessing, deploying and managing property for its stable of property funds to deliver above benchmark returns for its fund investors and securityholders.

The transaction will grow Charter Hall's funds under management (FUM) by \$1.6 billion, delivering fund management and development investment earnings, driving earnings accretion for the Group.

The acquisition of Folkestone expands Charter Hall's investable universe into the social infrastructure and early learning sector. Early learning is a growth sector underpinned by population growth, increasing workforce participation and government funding. The early learning sector is still highly fragmented with low institutional participation, but with high quality covenants and long WALE triple net leases.

Charter Hall's Managing Director and Group CEO, David Harrison said: "We see the Folkestone business model as consistent with our existing strategy. We are attracted to their leading position in the social infrastructure sector and the suite of listed and unlisted funds adds to our diversity of sources of equity, whilst their origination capability is expected to generate property investments for the expanded list of managed funds.

"Importantly, the Folkestone culture shares many similarities to Charter Hall's own culture and we see the two organisations as a close fit. We look forward to Folkestone executives joining Charter Hall and the complementary skills they will bring as we work together to grow the funds management platform."

Folkestone Managing Director, Greg Paramor AO, commented "We see this as an excellent fit of two likeminded businesses. Folkestone brings significant expertise and skills in the fields of social infrastructure and early learning. Folkestone's other existing unlisted funds also complement Charter Hall's existing platform, providing opportunities for Charter Hall to either grow these funds, or create new fund initiatives leveraging Folkestone's extensive private client network and Charter Hall's extensive distribution network."

¹ As at the date of this announcement, Folkestone has 148,099,564 shares on issue and 3,268,128 unvested performance rights. In accordance with the terms of the Folkestone Executive Incentive Plan these performance rights will vest and as a result will receive the Scheme Consideration.

² Folkestone is applying to the ATO for a class ruling in relation to the tax implications of the Scheme, including the availability of franking credits for the Special Dividend.



Chair of Charter Hall, David Clarke, commented: “Should the Scheme be successfully implemented, it is the intention of the Board to invite Greg Paramor to become a Non-Executive Independent Director of Charter Hall Group. Greg is an experienced Director who is held in high esteem given his significant experience in the property sector and corporate life more broadly. We believe Greg’s experience and skill set and his broad-ranging property experience will be a valuable addition to the Charter Hall Group Board.”

The Scheme Implementation Agreement and Scheme are subject to the usual conditions precedent including:

- All necessary regulatory and court approvals;
- Independent Expert’s opinion;
- Folkestone shareholder approval by the requisite majorities (being a majority in number of shareholders who vote and at least 75% of the total number of shares voted); and
- Other customary conditions

Folkestone’s Board of Directors unanimously recommends that Folkestone shareholders vote in favour of the Scheme, in the absence of any superior proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of Folkestone shareholders.

The proposed Scheme Consideration of \$1.39, represents a 25% premium to the previous close of \$1.11.

Based on the FY18 FLK reported EBITDA of \$20.05 million, the Charter Hall cash consideration of \$205 million represents an approximate 10.2x EBITDA multiple.

Consistent with their recommendation, each member of the Folkestone Board intends to vote the Folkestone shares in his control in favour of the Scheme in the absence of a superior proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of Folkestone shareholders.

The obligations of Charter Hall and Folkestone regarding the implementation of the Scheme, the Scheme conditions and deal protections are set out in the Scheme Implementation Agreement, a full copy of which is attached.

Folkestone shareholders do not need to take any action at the present time. A Scheme Booklet containing information relating to the Scheme, an independent expert’s report on whether the Scheme is in the best interests of Folkestone shareholders, the reasons for the Board’s recommendation in favour of the Scheme, and details of the Scheme meeting is expected to be sent to Folkestone shareholders shortly.

The timetable is as follows:

Process	Date
First court hearing to approve scheme booklet dispatch to Folkestone shareholders	Mid September 2018
Dispatch scheme booklet to Folkestone shareholders	Mid September 2018
Scheme meeting for Folkestone shareholders	Mid October 2018
Second court hearing to approve scheme meeting for Folkestone shareholders	Mid/late October 2018
Transaction completion (if approved)	Early November 2018

Further details about the Scheme can also be found in the Charter Hall FY18 Full Year Results Presentation and the Folkestone FY18 Full Year Results Presentation, both of which have also released on the ASX today.



About Charter Hall

Charter Hall Group (ASX:CHC) is one of Australia's leading fully integrated property groups, with over 25 years' experience managing and investing in high quality property on behalf of institutional, wholesale and retail clients. Charter Hall has \$23.2 billion of funds under management across the office, retail and industrial sectors. The Group has offices in Sydney, Melbourne, Brisbane, Adelaide and Perth.

The Group's success is underpinned by a highly skilled and motivated team with diverse expertise across property sectors and risk-return profiles. Sustainability is a key element of its business approach and by ensuring its actions are commercially sound and make a difference to its people, customers and the environment, Charter Hall can make a positive impact for its investors, the community and the Group.

About Folkestone

Folkestone (ASX:FLK) is an ASX listed real estate funds manager and developer providing real estate wealth solutions. Folkestone's funds management platform, with more than \$1.6 billion under management, offers listed and unlisted real estate funds to private clients and select institutional investors, while its on balance sheet activities focus on value-add and opportunistic (development) real estate investments. www.folkestone.com.au

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Scheme Implementation Agreement

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Bidder

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Target

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Our reference 15387/18470/80196001

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Scheme implementation agreement

Date 22 August 2018

Parties **Charter Hall Limited** ACN 113 531 150 of Level 20, 1 Martin Place, Sydney NSW 2000 (**Bidder**)

Folkestone Limited ACN 004 715 226 of Level 10, 60 Carrington Street, Sydney NSW 2000 (**Target**)

Background

- A. The Bidder proposes that it will acquire all of the Target Shares pursuant to a scheme of arrangement under section 411 of the Corporations Act between Target and the holders of Target Shares.
- B. The Target has agreed to propose the Scheme and issue the Explanatory Memorandum at the request of the Bidder, and the Target and the Bidder have agreed to implement the Scheme on the terms and conditions of this agreement.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this agreement:

ANZ Facility means the loan facility granted pursuant to the letter of offer dated 19 December 2014 between the Target and Australia and New Zealand Banking Group Limited, as amended from time to time, and being with a limit of \$25 million and a term expiring 22 December 2019.

ASIC means the Australian Securities and Investments Commission.

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

ASX means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it known as the Australian Securities Exchange.

Beneficiary means a present or former director or officer of the Target Group in respect of whom the Policy applies.

Bidder Group means Bidder and each of its Subsidiaries.

Bidder Indemnified Parties means the Bidder and its Related Bodies Corporate and their respective directors, officers and employees.

Bidder Information means all information regarding Bidder or the Bidder Group as is required to be included in the Explanatory Memorandum by:

- (a) the Corporations Act and the Corporations Regulations 2001 (Cth);
- (b) ASIC policy (including Regulatory Guide 60); and

(c) any other applicable laws,

but excluding the Independent Expert's Report and the opinion or statement regarding the tax impacts of the Scheme.

Bidder Warranties means the representations and warranties made by the Bidder set out in Schedule 2.

Break Fee means an amount equal to 1% of the aggregate of the Scheme Consideration which the Bidder pays for the Scheme Shares.

Business Day means a day which is a "Business Day" within the meaning given in the Listing Rules.

Competing Proposal means a proposed transaction or arrangement, which, if implemented substantially in accordance with its terms, would result in a Third Party (either directly or indirectly):

- (a) acquiring or having a right to acquire, or obtaining an economic interest in all or a substantial part of the business, assets or undertakings of the Target Group;
- (b) acquiring Control of the Target; or
- (c) acquiring a Relevant Interest in any Target Shares, as a result of which the Third Party, together with any Associates, will have Relevant Interests in more than 20% of the Target Shares in aggregate.

Condition means each condition specified in clause 3.1.

Confidentiality Agreement means the Confidentiality Agreement between the Target and the Charter Hall Holdings Pty Ltd ACN 051 363 457 dated 22 May 2018.

Control has the meaning given in the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cth).

Court means the Federal Court of Australia or such other court of competent jurisdiction as the Target and the Bidder agree in writing.

Deed Poll means a deed poll to be executed by the Bidder in favour of the Scheme Shareholders, substantially in the form set out in Annexure B or in such other form as the Target and the Bidder agree in writing.

EBITDA means earnings before interest, taxes, depreciation, and amortisation.

Effective means, when used in relation to the Scheme, 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 the Scheme.

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

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

End Date means the date 5 months after the date of this agreement or such other date agreed in writing between the Target and the Bidder.

Exclusivity Period means the period commencing on the date of this agreement and ending on the earliest of:

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

Exempted Matters means:

- (a) any short term incentive or long term incentive offered by the Bidder to any executive of the Target in connection with a revised employment agreement; and
- (b) any transaction costs payable by the Target and arising from or in connection the Scheme and implementation of the Scheme.

Explanatory Memorandum means the explanatory memorandum to be prepared by the Target pursuant to section 412 of the Corporations Act in respect of the Scheme in accordance with the terms of this agreement and to be dispatched to the Target Shareholders.

Fairly Disclosed means fairly and accurately disclosed, in each case, with sufficient detail so as to enable a reasonable and sophisticated recipient to identify the nature and scope of the relevant matter, event or circumstance.

FET means Folkestone Education Trust (ASX:FET) (ARSN 102 955 931).

FET Acquisition Proposal means:

- (a) a Third Party (or more than one Third Party) publically proposes to make a takeover bid in respect of FET or a meeting is convened or required to be convened to give effect to any proposal, and which when completed substantially in accordance with its terms would result in a Third Party (or more than one Third Party) (**Third Party Acquirer**):
 - (i) acquiring an interest in, a Relevant Interest in or becoming the holder of 50% or more of FET Securities on issue, whether by way of takeover offer, scheme of arrangement, security holder approved acquisition, synthetic merger or any other form of similar transaction or arrangement;
 - (ii) merging or amalgamating with FET or obtaining a right to merge or amalgamate (including where the effect would be that FET Securities no longer exist, become wholly-owned or form part of a new stapled group) whether by way of takeover offer, scheme of arrangement, security holder approved acquisition, synthetic merger or any other form of transaction or arrangement; or
 - (iii) directly or indirectly acquiring, obtaining a right to acquire, or otherwise obtaining an economic interest in, more than 50% of the assets of FET (by value),

provided that the Bidder, any member of the Bidder Group or any of their respective Associates or Representatives has not directly or indirectly solicited, invited, encouraged, negotiated, proposed or in the case of the Bidder and the Bidder Group otherwise been involved in any such proposal or agreement with, from or to the Third Party Acquirer; or

- (b) the Target Group solicits a proposal from a Third Party which on implementation would give rise to an event or circumstance set out above in paragraph (a);

- (c) the Target Group receives a proposal from a Third Party which on implementation would give rise to an event or circumstance set out above in paragraph (a) and enters into an agreement, arrangement or understanding with a Third Party to implement such a proposal;
- (d) the Target Group receives a proposal from a Third Party which on implementation would give rise to an event or circumstance set out above in paragraph (a) and enters into negotiations for the purpose of entering into an agreement with a Third Party to implement such a proposal; or
- (e) the Target Group receives a proposal from a Third Party which on implementation would give rise to an event or circumstance set out above in paragraph (a) and provides due diligence to the Third Party.

FET Exit Transaction means a FIML Replacement Proposal or a FET Acquisition Proposal.

FIML means Folkestone Investment Management Limited ACN 111 338 937.

FIML Replacement Proposal means:

- (a) a meeting is convened, or required to be convened by the responsible entity of FET, to remove or replace FIML as responsible entity of FET with an entity that is a Third Party;
- (b) the Target Group solicits a proposal from a Third Party to have FIML replaced or removed as responsible entity of FET;
- (c) the Target Group receives a proposal from a Third Party to have FIML replaced or removed as responsible entity of FET and enters into an agreement, arrangement or understanding with a Third Party to hold a meeting to effect such replacement or removal;
- (d) the Target Group receives a proposal from a Third Party to have FIML replaced or removed as responsible entity of FET and enters into negotiations for the purpose of holding a meeting to effect such replacement or removal; or
- (e) the Target Group receives a proposal from a Third Party to have FIML replaced or removed as responsible entity of FET and provides due diligence to the Third Party in connection with such a proposal; or
- (f) the Target Group solicits a proposal, enters into or commences negotiating an agreement, arrangement or understanding, or otherwise seeks to progress a proposal (including by providing access to due diligence) in relation to the sale, transfer, disposal, acquisition or otherwise of all of the issued shares in FIML,

provided that the Bidder, any member of the Bidder Group or any of their respective Associates or Representatives has not directly or indirectly solicited, invited, encouraged, negotiated, proposed or in the case of the Bidder and the Bidder Group otherwise been involved in any such proposal or agreement with, from or to a Third Party.

FET Securities means units in FET.

First Court Date means the first day of the hearing of an application made to the Court for an order pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

Implementation Date means the date which is 5 Business Days after the Record Date or such other date as the Target and the Bidder agree in writing.

Impugned Amount has the meaning given in clause 9.7.

Independent Expert means the independent expert to be engaged by the Target to express an opinion on whether the Scheme is in the best interests of the Target Shareholders.

Independent Expert's Report means the report (including any supplementary reports) from the Independent Expert in respect of whether the Scheme is in the best interests of the Target Shareholders.

Insolvency Event means in relation to an entity:

- (a) the entity resolving that it be wound up or the making of an application or order for the winding up or dissolution of the entity, other than where the application or order (as the case may be) is set aside within 14 days;
- (b) a liquidator or provisional liquidator of the entity being appointed;
- (c) a court making an order for the winding up of the entity;
- (d) an administrator of the entity being appointed;
- (e) the entity being or becoming unable to pay its debts when they fall due or is unable to pay its debts within the meaning of the Corporations Act;
- (f) the entity executing a deed of company arrangement;
- (g) a receiver, or a receiver and manager, being appointed in relation to the entity, or a substantial part, of the property, business or assets of the entity; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that entity under the law of any jurisdiction.

Listing Rules means the official listing rules of the ASX.

Policy means the Target Group directors and officers insurance policy in effect at the date of this agreement.

Recommendation has the meaning in clause 7.1(a)(i).

Record Date means 7.00 pm (Sydney time) on the date which is 5 Business Days after the Effective Date or such other date and time as may be required by ASX or as may be agreed in writing between the Bidder and the Target.

Regulator's Draft has the meaning given in clause 4.2(d).

Regulatory Authority means:

- (a) any government or local authority, any department, minister or agency of any government and any other governmental, administrative, fiscal, monetary or judicial body; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

Regulatory Guides means all regulatory guides published by ASIC and in force at the date of this agreement.

Regulatory Review Period means the period from the date on which the Target provides the Regulator's Draft to ASIC in accordance with clause 4.2(d) to the date on which ASIC provides

a letter indicating whether or not it proposes to appear to make submissions, or will intervene to oppose the Scheme, when the application made to the Court for orders under section 411(1) of the Corporations Act convening the Scheme Meeting to consider the Scheme is heard.

Related Body Corporate of a corporation means a related body corporate of that corporation within the meaning of section 50 of the Corporations Act.

Relevant Interest has the meaning given in the Corporations Act.

Representatives means, in relation to a party, all directors, officers, employees, professional advisers (including financiers, financial advisers, corporate advisers, legal advisers or technical or other expert advisers or consultants) and agents of the party or of its Related Bodies Corporate.

Scheme means a scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders substantially in the form set out in Annexure A or in such other form as the Target and the Bidder agree in writing.

Scheme Cash Consideration means the Scheme Consideration less any amount that is paid by the Target per Target Share pursuant to its discretion in accordance with clause 6.4(b)(ii).

Scheme Consideration means for each Scheme Share, an amount equal to \$1.39 inclusive of any amount that is paid by the Target per Target Share pursuant to its discretion in accordance with clause 6.4(b)(ii).

Scheme Meeting means the meeting of the Target Shareholders to be convened by the Court in relation to the Scheme pursuant to section 411(1) of the Corporations Act.

Scheme Share means a Target Share on issue as at the Record Date.

Scheme Shareholder means each person registered in the Target Share Register as the holder of the Scheme Shares as at the Record Date.

Second Court Date means the first day of hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

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

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

Superior Proposal means a bona fide Competing Proposal which the Target Board, acting in good faith and after receiving advice from its external legal and financial advisers, considers it to be:

- (a) reasonably capable of being completed; and
- (b) is more favourable to the Target Shareholders than the Scheme,

in each case, taking into account all aspects of the Competing Proposal, including the terms and conditions of the Competing Proposal, the price and financial value of the Competing Proposal, timing considerations and any other matters relevant to the Competing Proposal being contemplated (including, the identity, expertise, reputation and financial condition of the person making such proposal and legal, regulatory and financial matters).

Target Board means the board of directors of the Target.

Target Due Diligence Materials means:

- (a) information and documents provided to the Bidder by or on behalf of the Target in the data room prior to 5pm on 17 August 2018, the index of which has been initialled by, or on behalf of, the parties for identification;
- (b) information and documents emailed to any of the following employees of the Bidder:
 - (i) David Harrison;
 - (ii) Sean McMahon;
 - (iii) Russell Prout;
 - (iv) William Sprott;
 - (v) Monica Loeffler; or
 - (vi) Phil Schretzmeyer,
 on behalf of the Target by any of the following employees of the Target:
 - (i) Greg Paramor;
 - (ii) Scott Martin;
 - (iii) Adrian Harrington;
 - (iv) Ben Dodwell;
 - (v) Nick Anagnostou; or
 - (vi) Travis Butcher,
 prior to 5pm on 21 August 2018; and
- (c) the questions raised by the Bidder during the due diligence process and the responses given to those questions by the Target and its respective Representatives prior to 5pm on 17 August 2018 as included in the data room.

Target Disclosure Letter means the letter (if any) executed by the Target and given to the Bidder by the date of this agreement.

Target Fund means a fund, trust or other investment vehicle which an entity of the Target Group is manager, trustee or responsible entity, other than a fund, trust or other investment vehicle wholly owned by the Target or a member by Target Group.

Target Group means the Target and each of its Subsidiaries.

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

Target Information means information included in the Explanatory Memorandum (or in any update to the Explanatory Memorandum released by Target) by or on behalf of the Target other than:

- (a) the Bidder Information;
- (b) the Independent Expert's Report; and

- (c) any statement of the tax consequences of the Scheme and associated matters for Target Shareholders on the letterhead of Target's tax adviser as may be included in the Explanatory Memorandum.

Target Performance Rights means performance rights in respect of Target Shares issued pursuant to the Folkestone Limited Executive Incentive Plan.

Target Prescribed Occurrence means the occurrence of any of the following events:

- (a) the Target converts all or any of its securities into a larger or smaller number of securities;
 - (b) the Target resolves to reduce its capital in any way or resolves to re-classify, combine, split, redeem or re-purchase directly or indirectly any of its shares;
 - (c) the Target:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
 - (d) the Target issues shares, or grants an option over its shares or agrees to make such an issue or grant such an option, other than in relation to the conversion of up to 3,268,128 Target Performance Rights to Target Shares in accordance with the terms of those Target Performance Rights (including as a result of an exercise of a discretion vested in the Target or the Target Board in those terms);
 - (e) the Target, or any member of the Target Group issues, or agrees to issue, convertible notes or any other security convertible into shares or debt securities;
 - (f) the Target agrees to pay, declares or pays a dividend or any other form of distribution of profits or return of capital to its members other than in accordance with clause 6.2;
 - (g) the Target or any member of the Target Group disposes of the whole, or a substantial part, of the business or property of the Target Group (taken as a whole) other than in relation to a Target Fund;
 - (h) the Target or any member of the Target Group creates, or agrees to create, any Encumbrance over any of its business or property, other than in the ordinary course of business or in relation to a Target Fund; or
 - (i) an Insolvency Event occurs in relation to the Target,
- other than an event:
- (j) expressly permitted or required to be undertaken or procured by the Target Group pursuant to the Transaction Documents (or reasonably necessary or incidental to the foregoing);
 - (k) where the Target has first consulted in writing with the Bidder in relation to the matter and the Bidder has, acting reasonably, approved the proposed matter or has not objected to the proposed matter in writing within 5 Business Days of having been so consulted; or
 - (l) Fairly Disclosed in the Target Due Diligence Material, the Target Disclosure Letter or in the public filings of the Target Group with ASX or ASIC at least two Business Days prior to the date of this agreement.

Target Material Adverse Change means one or more events, changes or circumstances occurring, discovered or announced between the date of this agreement and 8.00am on the Second Court Date which, whether individually or when aggregated with all such events, changes, or circumstances or things of a like kind has had or is reasonably likely (after taking into account any matter which offset the impact of the event, change or circumstance and in each case other than those events, change or circumstances):

- (a) to diminish the consolidated net assets of the Target Group by at least 10% compared with the consolidated net assets reported in the Target's audited financial statements for the year ended 30 June 2018, as calculated in accordance with the accounting policies and practices applied by Target as at the date of this agreement; or
- (b) to reduce the Target Groups' EBITDA by at least 20% compared with the 2019 financial year model included in the data room at document A-11-07 (FLK Analysis - Revised Project Buddy Model 09-07-18) (**Model**),

but other than those events, changes or circumstances:

- (c) expressly required or permitted by this agreement, the Scheme or the transactions contemplated by the agreement or the Scheme;
- (d) to the extent that it was Fairly Disclosed in the Target Due Diligence Materials or the Target Disclosure Letter, or the public filings of the Target or FET with ASIC or ASX at least two Business Days prior to the date of this agreement (or which ought reasonably have been expected to arise from an event, occurrence or matter which was so disclosed) or otherwise actually known to the Bidder Group prior to the date of this agreement).
- (e) done or not done at the written request or with the written acknowledgement and approval of the Bidder, including any consequences arising as a result of such matters;
- (f) resulting from changes in the trading price of FET Securities;
- (g) arising in connection with any Exempted Matter which the parties acknowledge have not been included in the Model;
- (h) any transaction fees from new funds under management not being achieved; and
- (i) any change in the amount and the timing of the receipt or accrual of development profits, where there has been no change to the Target Group's stake in the relevant project.
- (j) resulting from changes in generally accepted accounting principles or the interpretation of them;
- (k) arising as a result of any change in law or governmental policy;
- (l) arising from an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave or landslide, occurring on or after the date of this agreement; or
- (m) arising from changes in market, economic or business conditions or debt or securities markets in general.

For the avoidance of doubt and for the purposes of this definition, the Target Group does not include a Target Fund.

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

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

Target Shares means fully paid ordinary shares in the capital of the Target.

Target Warranties means the warranties made by Target set out in Schedule 3.

Tax means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax (including royalty withholding tax), impost or withholding obligation of whatever nature, whether direct or indirect, (including any tax payable under a country's foreign source income attribution or anti-tax-deferral rules) by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges in any country or jurisdiction but excluding any stamp duty payable on any transfer of the Target Shares.

Third Party means a person other than the Bidder, the Target, or their respective Related Bodies Corporate.

Third Party Consents means the third party consents and notifications which the parties agree in writing are "Third Party Consents" on or about the date of this agreement, but excludes any consents required under the ANZ Facility.

Timetable means the indicative timetable in relation to the Scheme set out in Schedule 1, or such other indicative timetable as the Target and the Bidder agree in writing.

Transaction means the acquisition by the Bidder of the Scheme Shares for the Scheme Consideration pursuant to the Scheme.

Transaction Documents means:

- (a) this agreement;
- (b) the Scheme;
- (c) the Deed Poll; and
- (d) any other document which the parties may agree in writing is a Transaction Document.

Trust Account means an Australian dollar denominated trust account operated by or on behalf of the Target as trustee for the Scheme Shareholders, as nominated by the Target and notified to the Bidder at least 5 Business Days prior to the Implementation Date, being the account into which the Bidder will deposit an amount equal to the Scheme Cash Consideration in accordance with clause 4.4(b).

Voting Intention has the meaning in clause 7.1(a)(ii).

Warranty Claim means any claim arising out of a breach of a Target Warranty or a Bidder Warranty (as applicable).

1.2 Best and reasonable endeavours

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

- (a) pay any money or to provide any financial compensation, or any other incentive to or for the benefit of any person in the form of an inducement or consideration except for payment of any applicable fee for the lodgement or filing of any relevant application with any Regulatory Authority or the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing; or

- (b) commence or defend any legal action or proceeding against any person,

except, in each case, where that provision expressly specifies otherwise and, for the avoidance of doubt, that party will not breach the relevant provision requiring the use of best or reasonable endeavours where the party does not procure that the thing is performed or occurs or does not occur as a result of matters outside the control or influence of the party.

1.3 Interpretation

In this agreement headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment, or annexure is a reference to a party, clause, schedule, exhibit, attachment, or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments, and annexures to it;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to **\$** or **dollar** is to Australian currency;
- (k) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this agreement;
- (l) a reference to a date or time is to that date or time in Sydney, Australia; and
- (m) this agreement must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

2. Obligations in relation to Scheme

2.1 Target to propose Scheme

- (a) The Target agrees to propose the Scheme on and subject to the terms and conditions of this agreement.
- (b) The Bidder agrees to assist the Target to propose the Scheme on and subject to the terms and conditions of this agreement.

2.2 Target and Bidder to Implement Scheme

The Target and the Bidder agree to implement the Scheme on and subject to the terms and conditions of this agreement.

3. Conditions precedent

3.1 Conditions

Subject to this clause 3, the Scheme will not become Effective and the obligations of the parties to implement the Scheme under clause 4, are not binding, until each of the conditions listed in the first column of the following table are either satisfied or waived in accordance with clause 3.5:

Condition	Right to benefit & waive	Responsibility to satisfy
(a) (Independent Expert's Report) the Independent Expert provides the Independent Expert's Report to the Target, stating that in its opinion the Scheme is in the best interests of the Target Shareholders before the date on which the Explanatory Memorandum is lodged with ASIC, and the Independent Expert does not change its conclusion or withdraw the Independent Expert's Report prior to the Scheme Meeting.	Target	Target
(b) (Regulatory approvals) before 8.00 am on the Second Court Date, ASIC and ASX have issued or provided such consents, confirmations or approvals or have done such other acts which the parties agree are reasonably necessary or desirable to implement the Transaction, and such consents, confirmations, approvals or other acts have not been revoked.	Target	Target
(c) (No restraint) no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction, no preliminary or final decision, determination, notice of objection, or order issued by any Regulatory Authority or any other legal restraint preventing any of the transactions contemplated by this agreement is in effect as at 8.00 am on the Second	Bidder and Target	Bidder and Target

Condition	Right to benefit & waive	Responsibility to satisfy
Court Date.		
(d) (Target Prescribed Occurrence) no Target Prescribed Occurrence occurs between the date of this agreement and 8.00 am on the Second Court Date.	Bidder	Target
(e) (Target Shareholder approval) Target Shareholders approve the Scheme by the majorities required under section 411(4)(a)(ii) of the Corporations Act.	None	Target
(f) (No Target Material Adverse Change) no Target Material Adverse Change occurs between the date of this agreement and 8.00 am on the Second Court Date.	Bidder	Target
(g) (FET Exit Transaction) as at the later of the date of the Scheme Meeting and, if applicable, the Deferred Date (as defined in clause 3.6), no FET Exit Transaction has occurred: (i) where the relevant meeting, offer or other corporate action remains outstanding; (ii) which in the case of a FET Acquisition Proposal, has resulted in an event listed in paragraphs (a), (b) or (c) of the definition of FET Acquisition Proposal; or (iii) which in the case of paragraph (a) of the definition of FIML Replacement Proposal, the relevant meeting has passed such resolutions as necessary to replace FIML as responsible entity of FET.	Bidder	-
(h) (Court approval) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.	None	Target
(i) (Target Warranties) the Target Warranties are true and correct in all material respects on the date of this agreement and as at 8:00 am on the Second Court Date.	Bidder	Target
(j) (Bidder Warranties) the Bidder Warranties are true and correct in all material respects as on the date of this agreement and as at 8:00 am on the Second Court Date.	Target	Bidder
(k) (Third Party Consents) as at 8:00 am on the Second Court Date all of the Third Party	Bidder	Target

Condition	Right to benefit & waive	Responsibility to satisfy
Consents have been obtained or been provided (as applicable), and have not been withdrawn, cancelled or revoked.		

3.2 General obligations in relation to Conditions

Without prejudice to any other obligations of the parties under this agreement, in respect of any given Condition:

- (a) if one party is specified in the third column of the table in clause 3.1 opposite that Condition, that party must use its best endeavours to procure that that Condition is satisfied as soon as practicable after the date of this agreement and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require);
- (b) if both parties are specified in the third column of a table in clause 3.1 opposite that Condition, both parties must, to the extent that it is within their respective control or influence, use their best endeavours to procure that that Condition is satisfied as soon as practicable after the date of this agreement and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require); and
- (c) each party must, to the extent that it is within its respective control or influence, use its best endeavours to procure that there is no occurrence that would prevent the Condition being satisfied and no party shall take any action that will or is likely to hinder or prevent the satisfaction of the Condition except to the extent that such action is required to be done or procured pursuant to the Transaction Documents or is required by law.

3.3 Obligations in relation to regulatory approvals

Without limiting clause 3.2, to the extent that clause 3.2 requires a party to use best endeavours to procure that a regulatory approval is obtained, that party must:

- (a) as soon as practicable prepare and, subject to clause 3.3(b), lodge, each notice or application required to be given by that party for the purposes of procuring that the regulatory approval is obtained and take all procedural steps it is responsible for as part of such approval process, including responding to requests for information at the earliest practicable time and use best endeavours to obtain such approvals as soon as practicable after the date of this agreement;
- (b) consult with the other party, in advance, in relation to all communications with any Regulatory Authority relating to any such regulatory approval (other than those of a purely mechanical or housekeeping type);
- (c) keep the other party informed of progress in relation to each such regulatory approval and of any material matters raised by, or conditions or other arrangements proposed by, or to, any Regulatory Authority which relate to any such regulatory approval; and
- (d) provide copies of all documents provided to and received from each relevant Regulatory Authority in relation to each such regulatory approval (including before the date of this agreement), on a confidential basis, to the other party on request,

provided that:

- (e) in relation to subparagraph (d), the party applying for the approval may withhold or redact information or documents if and to the extent that they are confidential to a third party;
- (f) nothing in this clause 3.3 or any other provision of this agreement requires a party to disclose materially commercially sensitive information to the other party; and
- (g) the party applying for the approval will not be prevented from taking procedural steps or communicating with or providing documents to a Regulatory Authority if the other party has not responded promptly under clause 3.3(b).

The other party must provide the applicant for a regulatory approval with all assistance and information reasonably requested by the applicant in connection with the application for and obtaining the approval.

3.4 Notice in relation to satisfaction of Conditions

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) in relation to any Condition, promptly notify the other party in writing upon becoming aware of:
 - (i) the satisfaction of that Condition, in which case the notifying party must also provide reasonable evidence that the Condition has been satisfied; or
 - (ii) any fact or circumstance that it becomes aware of which results in, or may result in, that Condition becoming incapable of satisfaction or may result in that Condition not being satisfied in accordance with its terms; and
- (c) in relation to any Condition, promptly notify the other party in writing of a breach or non-fulfilment of a Condition or any occurrence or event that will prevent a Condition from being satisfied and where a party is entitled to waive that Condition upon receipt or delivery of such a notice (as applicable) that party must notify the other party in accordance with clause 3.5 as soon as possible, (in any event before 5.00 pm on the day before the Second Court Date) as to whether the party waives the breach or non-fulfilment of the Condition resulting from the occurrence or event.

3.5 Waiver of Conditions

- (a) A Condition is only for the benefit of:
 - (i) if one party is specified in the second column of the table in clause 3.1 opposite that Condition, that party; or
 - (ii) if both parties are specified in the second column of the table in clause 3.1 opposite that Condition, both parties.
- (b) A Condition may be waived and may only be waived:
 - (i) if one party is specified in the second column of the table in clause 3.1 opposite that Condition, by that party by written notice to the other party; or

- (ii) if both parties are specified in the second column of the table in clause 3.1 opposite that Condition, by written agreement between the parties.
- (c) A party entitled to waive or to agree to waive a Condition under this clause 3.5 may do so in its absolute discretion subject to the provision of written notice to the other party.
- (d) A party that waives or agrees to waive a Condition is not prevented from bringing a claim against any other party in respect of any breach of this agreement that caused that Condition not to be satisfied.
- (e) Waiver of a breach or non-fulfilment in respect of one Condition does not constitute:
 - (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or
 - (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event.

3.6 Consultation on failure of Conditions

If:

- (a) there is a breach or non-fulfilment of a Condition which is not waived in accordance with this agreement by the time or date specified in this agreement for the satisfaction of the Condition;
- (b) there is an act, failure to act or occurrence which will, or which either party becomes aware will prevent a Condition being satisfied by the time or date specified in this agreement for the satisfaction of the Condition (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this agreement); or
- (c) the Scheme has not become Effective by the End Date,

then the parties must serve notice on the other party and consult, acting reasonably, with a view to determining whether:

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

provided that, if the Condition in clause 3.1(g) is not satisfied by virtue of a FET Exit Transaction being outstanding as provided in clause 3.1(g) by the date of the Scheme Meeting, the Target and the Bidder must use all reasonable endeavours, including making or supporting any application, to the defer the hearing on the Second Court Date for a period of 30 days (or a date as soon as possible thereafter) or such other period as the Bidder and Target agree (**Deferred Date**), and following such deferral the Timetable (including the Second Court Date) is to be adjusted accordingly.

3.7 Failure to agree

If the parties are unable to reach agreement under clause 3.6 within 5 Business Days after the delivery of the notice under that clause (or any shorter period ending at 5.00pm on the day before the Second Court Date) then, in each case before 8.00 am on the Second Court Date:

- (a) subject to clause 3.7(b), either party may terminate this agreement in writing to the other party; or
- (b) if a Condition may be waived and exists for the benefit of one party only, that party may only waive that Condition or terminate this agreement,

provided that a party will not be entitled to terminate this agreement pursuant to this clause 3.7 if the relevant Condition 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 for the purpose of frustrating satisfaction of the Condition.

4. Implementation of Scheme

4.1 Timetable

Each party must use its best endeavours to perform its obligations as set out in this clause 4 substantially in accordance with the Timetable.

4.2 Target's obligations

The Target must use its best endeavours to implement the Scheme as soon as is reasonably practicable after the date of this agreement in accordance with the Timetable and, in particular, the Target must:

- (a) **(Explanatory Memorandum)** prepare the Explanatory Memorandum (excluding the Bidder Information and the Independent Expert's Report) in accordance with all applicable laws;
- (b) **(Consultation with the Bidder in relation to Explanatory Memorandum)** consult with the Bidder (noting that the Target has ultimate discretion with respect to the preparation, content and presentation of the Explanatory Memorandum other than expressly provided in this agreement with respect to the Bidder Information and Independent Expert's Report) as to the content and presentation of the Explanatory Memorandum including:
 - (i) allowing the Bidder a reasonable opportunity to review and make comments on the draft Explanatory Memorandum;
 - (ii) taking any reasonable comments made by the Bidder into account in good faith when producing a revised draft of the Explanatory Memorandum;
 - (iii) obtaining the Bidder's written consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Explanatory Memorandum) such consent not to be unreasonably withheld; and
 - (iv) during the period until the Bidder Information (or any information solely derived from, or prepared solely in reliance on, the Bidder Information) becomes publicly available, only use that information with the prior written consent of the Bidder.
- (c) **(Independent Expert)** appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Explanatory Memorandum;

- (d) **(ASIC review)** as soon as reasonably practicable provide an advanced draft of the Explanatory Memorandum **(Regulator's Draft)** to ASIC, for its review and approval for the purposes of section 411(2) of the Corporations Act, and to the Bidder and:
 - (i) liaise with ASIC as necessary and to the extent reasonable practicable during the Regulatory Review Period; and
 - (ii) keep informed and consult with, the Bidder in relation to any matters raised by ASIC in connection with the Explanatory Memorandum or the Scheme and any presentation or submission to, or at any proposed meeting with, ASIC, and co-operate and consult with the Bidder to resolve any such matters;
- (e) **(Section 411(17)(b) statement)** apply to ASIC for the production of a statement in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (f) **(Court documents)** prepare all documents necessary for the Court proceedings (including any appeals) relating to the Scheme in accordance with all applicable laws and provide the Bidder with copies of those documents;
- (g) **(First Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that an application is heard by the Court for an order under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meeting;
- (h) **(Approval of Explanatory Memorandum)** procure that a meeting of the Target Board is convened to approve the Explanatory Memorandum for registration with ASIC and despatch to the Target Shareholders;
- (i) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Explanatory Memorandum (other than the Bidder Information and the Independent Expert's Report and any statement of the tax consequences of the Scheme and associated matters for Target Shareholders on the letterhead of Target's tax adviser as may be included in the Explanatory Memorandum);
- (j) **(Register Explanatory Memorandum)** request to ASIC that the explanatory statement included in the Explanatory Memorandum in relation to the Scheme be registered in accordance with section 412(6) of the Corporations Act;
- (k) **(Compliance with Court orders)** comply with applicable Court orders, laws and regulations in connection with the Scheme, including, as required, despatching the Explanatory Memorandum to Target Shareholders, convening and holding the Scheme Meeting, and putting the resolution submitted to the Scheme Meeting in relation to the Scheme to Target Shareholders at the Scheme Meeting;
- (l) **(Target Performance Rights)** procure that all outstanding Target Performance Rights are vested or lapsed and the relevant Target Shares are issued or agreed to be issued before the Record Date;
- (m) **(Update Explanatory Memorandum)** until the date of the Scheme Meeting, promptly update the Explanatory Memorandum with any information that arises after the Explanatory Memorandum has been despatched that is necessary so that the Explanatory Memorandum does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (n) **(ASX listing)** not do anything to cause the Target to cease to be admitted to the ASX, and that the Target Shares continue to be quoted for trading on ASX, until the Implementation Date and in accordance with the directions of the Bidder;

- (o) **(No breach certificate)** if requested by the Bidder, provide a copy of the certificate referred to in clause 4.2(q) on the Second Court Date addressed in favour of the Bidder;
- (p) **(Second Court hearing)** if the resolution submitted to the Scheme Meeting in relation to the Scheme is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act and subject to all other Conditions (other than the Condition in clause 3.1(h)) being satisfied or waived in accordance with this agreement, apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (q) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(h)) have been satisfied or waived in accordance with this agreement and provide a draft of that certificate to the Bidder by 5.00 pm on the Business Day prior to the Second Court Date;
- (r) **(Implementation of Scheme)** if the Scheme is approved by the Court:
 - (i) lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act before 5:00pm on the Business Day following the receipt of such office copy (or such other date as is agreed between the parties in writing);
 - (ii) close the Target Share Register as at the Record Date and determine entitlements to the Scheme Cash Consideration in accordance with the Scheme;
 - (iii) provide to the Bidder all information about the Scheme Shareholders that the Bidder reasonably requires in order for the Bidder to provide, or procure the provision of, the Scheme Cash Consideration in accordance with the Scheme; and
 - (iv) subject to the Bidder satisfying its obligations under clause 4.4(b), on the Implementation Date (or as soon as practicable thereafter) register all transfers of Scheme Shares to the Bidder in accordance with the Scheme;
- (s) **(Compliance with laws)** comply with applicable laws and regulations in connection with the Scheme;
- (t) **(Information)** instruct the Target's share registry to deliver to the Bidder promptly at the Bidder's reasonable request, any information held by the Target's share registry required for providing the Scheme Cash Consideration to the Scheme Shareholders in accordance with the terms of the Scheme; and
- (u) **(Other things)** promptly do all other things contemplated by or necessary to give effect to the Scheme and, if the Scheme is approved by the Court, the orders of the Court approving the Scheme.

4.3 Bidder's obligations

The Bidder must use its best endeavours to assist the Target to implement the Scheme as soon as is reasonably practicable after the date of this agreement in accordance with the Timetable and, in particular, the Bidder must:

- (a) **(draft of Bidder Information)** provide to the Target a draft of the Bidder Information as soon as reasonably practicable after the date of this agreement and consult with the Target in relation to the content of drafts of the Bidder Information

and (acting reasonably and in good faith) take into account any comments from the Target and its Representatives on those drafts;

- (b) **(final form of Bidder Information)** provide to the Target the Bidder Information in a form appropriate for inclusion in the Explanatory Memorandum;
- (c) **(review Explanatory Memorandum)** review the drafts of the Explanatory Memorandum provided by the Target and provide comments on those drafts promptly and in good faith;
- (d) **(Independent Expert)** promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare its report for inclusion in the Explanatory Memorandum;
- (e) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Bidder Information;
- (f) **(reasonable assistance)** provide reasonable assistance to the Target to assist the Target in applying for any regulatory modifications determined appropriate or necessary by the Target and provide any necessary consents in relation to such applications;
- (g) **(liaison with ASIC)** provide reasonable assistance to the Target to assist the Target to resolve any matter raised by ASIC regarding the Explanatory Memorandum or the Scheme;
- (h) **(Approval of Bidder Information)** as soon as reasonably practicable after receipt from the Target of the draft of the Explanatory Memorandum that the Target proposes to dispatch to the Target Shareholders, confirm in writing to the Target that the Bidder Information in the form and context in which it appears of the Explanatory Memorandum is not misleading or deceptive and does not contain any material omission and is in a form appropriate for dispatch to the Target Shareholders (subject to the approval of the Court);
- (i) **(Keep Target informed)** promptly inform the Target if it becomes aware from the First Court Date until the Implementation Date that the Bidder Information in the form and context in which it appears in the Explanatory Memorandum is or has become misleading or deceptive or contains any omission, and provide such further or new information as is required to ensure that such information is no longer misleading or deceptive in any material respect or contains any material omission;
- (j) **(Deed Poll)** by the Business Day prior to the First Court Date, enter into the Deed Poll and deliver the executed Deed Poll to Target;
- (k) **(Representation)** procure that, if requested by the Target, it is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel and, if requested by the Court, the Bidder will undertake to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme;
- (l) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(h)) have been satisfied or waived in accordance with this agreement and provide a draft of that certificate to the Target by 5:00 pm on the Business Day prior to the Second Court Date;
- (m) **(Scheme Consideration)** if the Scheme becomes Effective, provide, or procure the provision of, the Scheme Cash Consideration on the Implementation Date in accordance with clause 4.4 and the terms of the Scheme and Deed Poll;

- (n) **(Compliance with laws)** comply with applicable laws and regulations in connection with the Scheme;
- (o) **(promote merits of Transaction)** participate in efforts reasonably requested by the Target to promote the merits of the Transaction and the Scheme Consideration, including meeting with key the Target Shareholders and key unitholders of the Target's listed and unlisted funds at the reasonable request of the Target; and
- (p) **(Other things necessary)** promptly do all other things reasonably within its power to lawfully give effect to the Scheme.

4.4 Obligations in respect of the Scheme Consideration

- (a) Subject to the Scheme becoming Effective, the Bidder covenants and agrees in favour of the Target (in the Target's own right and separately as trustee for each of the Scheme Shareholders) that in consideration of the transfer to the Bidder of each Scheme Share held by a Scheme Shareholder under the terms of the Scheme, the Bidder will:
 - (i) accept that transfer; and
 - (ii) provide, or procure the provision of, the Scheme Cash Consideration to that Scheme Shareholder for each of their Scheme Shares in accordance with the terms of the Scheme.
- (b) Subject to the Scheme becoming Effective, before the Scheme Shares are transferred to the Bidder under the Scheme, the Bidder must, by no later than the Business Day before the Implementation Date deposit an amount equal to the Scheme Cash Consideration in cleared funds into the Trust Account.

4.5 Dispute as to Explanatory Memorandum

If, after a reasonable period of consultation, the parties, each acting reasonably and in good faith, are unable to agree on the form or content of the Explanatory Memorandum, then:

- (a) if the disagreement relates to the form or content of Bidder Information (or any information solely derived from, or prepared solely in reliance on, Bidder Information), the Target will, acting in good faith, make such amendments to that information in the Explanatory Memorandum as the Bidder may reasonably require; and
- (b) if the disagreement relates to the form or content of the Target Information (or any information solely derived from, or prepared solely in reliance on, information provided by or on behalf of the Target, or extracted from announcements made by the Target to ASX regarding the Target Group), the Target will, acting in good faith, decide the final form of that information in the Explanatory Memorandum.

4.6 Responsibility statement

The Explanatory Memorandum will contain a responsibility statement to the effect that:

- (a) the Bidder is responsible for the Bidder Information contained in the Explanatory Memorandum;
- (b) the Target is responsible for the Target Information contained in the Explanatory Memorandum; and
- (c) the Independent Expert is responsible for the Independent Expert's Report.

4.7 Conduct of Court proceeding

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

4.8 Appeal process

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

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

in which case either party may terminate this agreement in accordance with clause 13.1(a). If the parties cannot agree on the appointment of an independent senior counsel for the purposes of clause 4.8(b) within three Business Days of the Court's refusal to make orders, the independent senior counsel will be appointed by the chairperson or other senior office bearer for the time being of the New South Wales Chapter of the Resolution Institute or a delegate of such person, on the application of any party.

4.9 Reconstitution of Target Board

On the Implementation Date, and subject to the Bidder having provided the Scheme Cash Consideration in accordance with clause 4.4, the Target must:

- (a) cause the appointment to the Target Board and to the boards of each Subsidiary of the Target of such persons as nominated by the Bidder, subject to those persons being appointed having provided a consent to act as directors of the relevant companies; and
- (b) procure that the directors of the Target and of each subsidiary of the Target which the Bidder nominates resign from the relevant board of each entity.

5. Scheme Consideration

5.1 Consideration

- (a) Subject to the Scheme becoming Effective, the Bidder covenants and agrees in favour of the Target that, in consideration of the transfer to the Bidder of each Scheme Share under the Scheme, Bidder will provide to each Scheme Shareholder the Scheme Cash Consideration for each Scheme Share held by them.
- (b) Subject to clause 5.2, Bidder will pay, or procure the payment to each Scheme Shareholder the Scheme Cash Consideration to which they are entitled in respect of each Scheme Share held by that Scheme Shareholder.

5.2 Fractional entitlements

If the number of Scheme Shares held by a Scheme Shareholder is such that the aggregate entitlement of the Scheme Shareholder to Scheme Cash Consideration comprising cash is such that a fractional entitlement to a cent arises, then the entitlement of that Scheme

Shareholder must be rounded up or down, with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole number of cents and any such fractional entitlement of 0.5 or more will be rounded up to the nearest whole number of cents.

6. Conduct of business

6.1 Conduct of Target's business

- (a) From the date of this agreement up to and including the Implementation Date, the Target must procure that the business and operations of the Target Group are conducted in the ordinary course and substantially consistent (subject to any applicable laws, regulations and requirements of Regulatory Authorities) with the manner in which each such business and operation has been conducted in the period prior to the date of this agreement, and in any event not undertake a Target Prescribed Occurrence, do (or omit to do) anything that may reasonably give rise to a Target Prescribed Occurrence, or commence any litigation, and in compliance in all material respects with all applicable laws, regulations and requirements of Regulatory Authorities.
- (b) The Target must use, and must procure that each member of the Target Group uses, its reasonable endeavours to ensure that it:
 - (i) materially maintains the condition of its business and material assets;
 - (ii) keeps available the services of its officers and key employees;
 - (iii) preserves its material relationships with Regulatory Authorities, customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings; and
 - (iv) complies in all material respects with all material contracts to which a member of the Target Group is a party, and with the material laws, authorisations and licences applicable to the Target Group.
- (c) From the date of this agreement up to and including the Implementation Date, the Target must not, and must procure that each entity of the Target Group does not:
 - (i) enter into or agree to enter into any contract, arrangement or understanding that generates, or is expected to generate, annual revenue to the Target Group of more than \$1.5 million;
 - (ii) terminate or seek to change the terms of the termination of any contract, arrangement or understanding that generates, or is expected to generate, annual revenue to the Target Group of more than \$1.5 million ;
 - (iii) change or seek to change the terms of any contract, arrangement or understanding that generates, or is expected to generate, annual revenue to the Target Group of more than \$1.5 million;
 - (iv) pay, discharge or satisfy any liability under a contract, arrangement or understanding to the Target Group of more than \$1.5 million other than in accordance with its terms;
 - (v) waive any material claim or rights under, or waive the benefit of, any provisions of any contract, arrangement or understanding which generates annual revenue to the Target Group of more than \$1.5 million;
 - (vi) commit to any capital expenditure in excess of \$1.5 million other than with the written consent of the Bidder;

- (vii) in respect of the Target only, adopt, modify or repeal its constituent documents or any provision of it;
 - (viii) enter into a new loan, advance or financing arrangement (other than with another member of the Target Group) as lender or borrower;
 - (ix) guarantee or indemnify the obligations of any other person other than a member of the Target Group;
 - (x) amend (or waive any right under) any existing financing arrangements;
 - (xi) in respect of the Target only, incur or increase any financial indebtedness of more than \$1.5 million (excluding any drawing or redrawing on existing facilities);
 - (xii) in respect of the Target only, cease to be admitted to the official list of ASX, the Target Shares cease to be quoted by ASX (other than pursuant to any temporary suspension) or the Target is suspended from quotation for five or more trading days; or
 - (xiii) cease, or threaten to cease, to carry on a substantial part of its business.
- (d) From the date of this agreement up to and including the Implementation Date, the Target must ensure that, and must procure that each entity of the Target Group ensures that, no party to a contract entered into by the Target or any member of the Target Group, that generates, or is expected to generate, annual revenue of the Target Group of more than \$1.5 million, terminates that contract due to the Transaction.
- (e) Nothing in this clause restricts the ability of the Target or any member of the Target Group to take any action:
- (i) which is required or expressly permitted by this agreement or the Scheme;
 - (ii) which has been agreed to in writing by the Bidder;
 - (iii) which is Fairly Disclosed in the Target Due Diligence Material or the Target Disclosure Letter as being actions that it may carry out between the date of this agreement and the Implementation Date (including any transaction, expenditure or other matter disclosed in operating and development budgets of the Target Group provided to the Bidder and/or its Representatives prior to the date of this agreement);
 - (iv) which relates to a Target Fund;
 - (v) to avoid the occurrence of a Target Material Adverse Change;
 - (vi) which is Fairly Disclosed in the Target's announcements to ASX or a document lodged with ASIC, in each case prior to the date of this agreement; or
 - (vii) required by law or by an order of a court or Regulatory Authority.
- (f) For the avoidance of doubt, nothing in this clause 6.1 restricts the ability of the Target to respond to a Competing Proposal in accordance with clause 8.

6.2 Access to information and co-operation

- (a) During the period from the date of this agreement up to the Implementation Date, the Target must use reasonable endeavours to:
- (i) promptly provide the Bidder and its Representatives with reasonable access to the documents, records and other information relating to the Target Group and its business (subject to existing confidentiality obligations owed to third parties, or applicable privacy laws), including, providing the Bidder and its Representatives with reasonable access to officers and employees of the Target Group or its Related Bodies Corporate, by way of site visits and/or access to the Representatives of the Target Group as reasonably requested by the Bidder or its Representatives, which the Bidder reasonably requires and requests in writing for the purposes of:
 - A. the implementation and facilitation of the Scheme, including obtaining any regulatory approvals contemplated by this agreement or required to facilitate the Scheme and satisfying Conditions;
 - B. the refinancing of any Target Group debt facilities which the Bidder intends to repay on or following the Effective Date;
 - C. planning the transition of the Target and other matters relating to the conduct of the Target following the Implementation Date; or
 - D. any other purpose that is agreed in writing between the parties,

provided that all requests for such information are provided to Greg Paramor (or any person he may elect), and that the parties work together in good faith and take reasonable actions to minimise disruption to the business of the Target Group and Target Funds.

- (ii) keep the Bidder reasonably informed of all material developments relating to:
 - A. the Target Group and its business (including any events or circumstances reasonably likely to give rise to an Target Prescribed Occurrence or Target Material Adverse Change); and
 - B. the Scheme, including the proxy position in respect of the resolution to be submitted to the Scheme Meeting,

subject to the proper performance by the officers of the Target of their fiduciary duties.

- (b) The parties acknowledge that all information that is provided pursuant to this clause 6.2 will be provided subject to the terms of the Confidentiality Deed.

6.3 Limitation on obligations

Nothing in clauses 6.1 or 6.2 will require either party to provide any information or undertake any actions which may result in a contravention of any law or fiduciary duties of a Target Director.

6.4 Target Dividends

- (a) The Target must not declare, pay, make, or incur a liability to pay or make, a dividend, other than in accordance with this clause 6.4.
- (b) Subject to, in each case, the Target complying with the requirements of section 254T of the Corporations Act, the Target must make the following dividends:
 - (i) an amount to be paid in cash to all Target Shareholders in respect of the financial year ending 30 June 2018 of \$0.03 per Target Share (**FY18 Dividend**); and
 - (ii) an amount paid in cash to all Target Shareholders of \$0.036 per Target Share (**Special Dividend**), subject to the Scheme becoming Effective.
- (c) In relation to the FY18 Dividend and the Special Dividend:
 - (i) the record date for the FY18 Dividend and the Special Dividend must each occur on or before the Record Date; and
 - (ii) the payment date for the FY18 Dividend and the Special Dividend will be determined by the Target in its discretion, provided that they each occur on or before the Implementation Date.
- (d) Each of the FY18 Dividend and the Special Dividend may be partially or fully franked (in the discretion of the Target), provided that the Target's franking account does not fall into deficit upon payment of the FY18 Dividend or the Special Dividend respectively.
- (e) The Scheme Consideration paid to each Scheme Shareholder will be reduced by the cash amount of the Special Dividend.
- (f) For the avoidance of doubt, any member of the Target Group may declare, pay and make distributions of income, profits, assets or capital to the extent necessary to give effect to this clause 6.4.

7. Recommendation and Voting Intention

7.1 Target Board Recommendation and Voting Intention

- (a) The Target must ensure that the Explanatory Memorandum states to the effect that each Target director:
 - (i) recommends that Target Shareholders vote in favour of the resolution to approve the Scheme (**Recommendation**); and
 - (ii) intends to cause any Target Shares in which they have a Relevant Interest to be voted in favour of the resolution to approve the Scheme (**Voting Intention**),

subject to there being no Superior Proposal and the Independent Expert concluding, and not withdrawing or varying its conclusion, that the Scheme is in the best interests of Target Shareholders.
- (b) The Target must procure that the Target Board:
 - (i) unanimously recommends to approve the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of Target Shareholders, and does not

change or withdraw those statements or recommendations once made;
and

- (ii) any members of the Target Board do not make any public statement to the effect, or take any other action that suggests, that the Scheme is no longer so considered or recommended or supported,

unless:

- (iii) either:

- A. the Independent Expert has not concluded in the Independent Expert's Report that the Scheme is in the best interests of the Target Shareholders (or it withdraws or varies its conclusion such that it considers that the Scheme is not in the best interests of the Target Shareholders); or

- B. there is a Superior Proposal; and

the Target Board, after considering the matter in good faith and taking advice from its legal and financial advisers determines in good faith and acting reasonably, no longer considers the Scheme to be in the best interests of the Target Shareholders; or

- C. this agreement is validly terminated in accordance with its terms.

7.2 Target directors

The Target represents and warrants to the Bidder that it has been advised by each director of the Target in office at the date of this agreement that he will make and maintain the Recommendation and Voting Intention in accordance with clause 7.1.

7.3 Notification obligation

If the Target becomes aware of one or more the Target directors changing, withdrawing or modifying his recommendation in favour of the Scheme for any reason (other than such circumstances as provided for in clauses 8.5 or 8.6 which will be regulated by those clauses), the Target must promptly notify the Bidder of this fact.

8. Exclusivity arrangements

8.1 No shop

During the Exclusivity Period, the Target must not, and must ensure that its Representatives do not, except with the prior written consent of the Bidder, solicit, encourage, initiate or invite any Competing Proposal or initiate any discussions or negotiations with any Third Party which may reasonably be expected to lead to any offer, proposal or expression of interest in relation to a Competing Proposal.

8.2 No talk and no due diligence

Subject to clause 8.3, during the Exclusivity Period, the Target must not, and must ensure that its Representatives do not, except with the prior written consent of the Bidder, directly or indirectly:

- (a) participate in any negotiations or discussions with a Third Party in relation to, a Competing Proposal or any agreement, understanding or arrangement that may reasonably be expected to lead to a Competing Proposal even if that person's

Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by the Target or any of its Representatives or the person has publicly announced the Competing Proposal; or

- (b) make available to any Third Party, or permit any Third Party to receive, any non-public information relating to the Target Group, or any part of it, in connection with the formulation, development or finalisation of an actual, proposed or potential Competing Proposal (including by way of providing information and access to perform due diligence on the Target Group or any part of it).

8.3 Limitation to no talk and no due diligence

The Target, its Related Bodies Corporate and their Representatives may undertake any action that would otherwise be prohibited by clause 8.2 (which was not solicited, invited, encouraged or initiated by the Target in contravention of clause 8.1) in relation to a potential or proposed Competing Proposal, where:

- (a) after consultation with its financial advisers, such a Competing Proposal is, or could reasonably be considered to become, a Superior Proposal; and
- (b) after receiving legal advice from external legal advisers, the Target Board, acting in good faith and in order to satisfy what the Target Board considers to be its fiduciary or statutory duties, determines that not undertaking that act is likely to be a breach of the fiduciary or statutory duties owed by any Target director.

8.4 Notification of approaches

During the Exclusivity Period, the Target must promptly notify the Bidder (and in any event within 2 Business Days of becoming aware) if:

- (a) it (or any of its Representatives) receives an approach by any person which proposes a bona fide Competing Proposal, including details of the party making the proposal, the terms of the proposal and any material updates to the proposal; or
- (b) the Target or its Representatives provide any non public information concerning the business or operations of the Target or the Target Group to any person in connection with the formulation, development or finalisation of an actual, proposed or potential Competing Proposal.

8.5 Matching right

Without limiting clauses 8.1 and 8.2, during the Exclusivity Period, the Target:

- (a) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, the Target or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal; and
- (b) must procure that none of the Target Board change their Recommendation or Voting Intention to publicly recommend an actual, proposed or potential Competing Proposal (or recommend against the Scheme or either of them),

unless:

- (c) the Target Board, after taking advice from their legal and financial advisers, determines in good faith and acting reasonably that the Competing Proposal is a Superior Proposal (or is a Competing Proposal which may reasonably be expected to become a Superior Proposal), provided that the actual, proposed or potential Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of this clause 8;

- (d) the Target has provided the Bidder with the material terms and conditions of the bona fide, written Competing Proposal, including price and the identity of the Third Party making the bona fide, written Competing Proposal;
- (e) the Target has given the Bidder at least five Business Days after the date of the provision of the information referred to in clause 8.5(d) to provide a matching or superior proposal to the terms of the bona fide, written Competing Proposal; and
- (f) the Bidder has not announced or otherwise formally offered to the Target a matching or superior proposal to the terms of the bona fide, written Competing Proposal by the expiry of the five Business Day period referred to in clause 8.5(e).

Any modification to any Competing Proposal notified to the Bidder under clause 8.5(d) (which will include any modification relating to the price or value of any Competing Proposal) will be taken to make that proposal a new Competing Proposal in respect of which the Target must comply with its obligations under this clause 8.5 again.

8.6 Provision of information

Without prejudice to the Target's exclusivity obligations under this clause 8, during the Exclusivity Period, the Target must as soon as possible and without delay provide the Bidder with:

- (a) in the case of written materials, a copy of; and
- (b) in any other case, a written statement of,

any non-public information about the business or affairs of the Target or the Target Group disclosed or otherwise provided to any Third Party during the Exclusivity Period in connection with an actual, proposed or potential Competing Proposal that has not previously been provided to the Bidder.

8.7 Normal provision of information

Nothing in this clause 8 prevents the Target from:

- (a) providing information to its Representatives;
- (b) providing information to any Regulatory Authority;
- (c) providing information to its auditors, advisers, customers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information to its advisers acting in that capacity in connection with the Transaction or a Competing Proposal;
- (e) providing information to be required to be provided by law or any Regulatory Authority; or
- (f) making presentations to brokers, portfolio investors, analysts and other Third Parties in the ordinary course of business.

8.8 Legal advice

The Target acknowledges that it has received legal advice on this agreement and the operation of this clause 8 from reputable advisers experienced in transactions of this nature.

9. Break Fee

9.1 Background

This clause 9 has been agreed in circumstances where:

- (a) the Target believes, having taken advice from its legal advisers and financial advisors, that the Scheme will provide significant benefits to Target Shareholders, and the Target acknowledges that, it is appropriate for the Target to agree to the payments referred to in this clause 9 in order to secure for the Target Shareholders the opportunity to vote on the Scheme;
- (b) the Bidder has requested that provision be made for the Break Fee, without which the Bidder would not have entered into this agreement;
- (c) both the Target and the Bidder believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure the Bidder's participation in the Scheme; and
- (d) both parties have received legal advice on this agreement and the operation of this clause.

9.2 Break Fee triggers

Subject to clause 9.3, the Target agrees to pay the Break Fee to the Bidder without withholding (unless required by law, in which case the amount of the payment due by the Target shall be increased to an amount which (after making any such withholding) leaves an amount equal to the payment which would have been due if no withholding had been required) or set off if:

- (a) **(Competing Proposal)** a Competing Proposal is notified to the Bidder pursuant to clause 8.5(d) or announced before the earlier of:
 - (i) the Second Court Date; and
 - (ii) termination of this agreement,
 and within 12 months of the date of this agreement, the Third Party who announced or made the Competing Proposal (or any of its Associates) completes a Competing Proposal;
- (b) **(change of Recommendation or Voting Intention)** during the Exclusivity Period, any Target director fails to recommend the Scheme or withdraws their Recommendation or Voting Intention, adversely changes or adversely qualifies their Recommendation or Voting Intention or otherwise makes a public statement indicating that they no longer support the Scheme, except where the change of Recommendation or Voting Intention is made after:
 - (i) the Independent Expert has concluded that the Scheme is not in the best interests of the Target Shareholders; or
 - (ii) the Independent Expert withdraws or varies its conclusion such that the Scheme is no longer in the best interests of the Target Shareholders,
 other than where the conclusion is due wholly or in material part to the existence, announcement or publication of a Competing Proposal; or
- (c) **(Termination)** the Bidder validly terminates this agreement in accordance with clause 13.2(a).

9.3 No amount payable if Scheme becomes Effective

Notwithstanding the occurrence of any event in clause 9.2, if the Scheme becomes Effective:

- (a) no amount is payable by the Target under clause 9.2; and
- (b) if any amount has already been paid under clause 9.2 that amount must be refunded by the Bidder less the incremental costs incurred by the Bidder as a result of the event giving rise to the obligation to pay the Break Fee.

9.4 Timing of payments

- (a) A demand by the Bidder for payment of the Break Fee under clause 9.2 must:
 - (i) be in writing;
 - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account into which the Target must pay the Break Fee.
- (b) The Target must pay the Break Fee to the Bidder under clause 9.2 within five Business Days of receipt by the Target of a valid demand for payment from the Bidder under clause 9.2, which demand may only be made after the occurrence of an event referred to in clause 9.2.
- (c) Without limiting clause 13, this clause 9 survives termination of this agreement such that the Bidder may give the Target a demand for payment of the Break Fee even if this agreement has been terminated, provided that the event referred to in clause 9.2 occurred prior to the termination of this agreement.

9.5 Nature of payment

- (a) The Break Fee is an amount to compensate the Bidder for:
 - (i) advisory costs;
 - (ii) costs of management and directors' time;
 - (iii) out-of-pocket expenses;
 - (iv) the distraction of the Bidder's management from conducting the Bidder's business as usual caused by pursuing the Scheme;
 - (v) reasonable opportunity costs incurred by the Bidder in pursuing the Transaction and the Scheme or in not pursuing alternative acquisitions or strategic initiatives which the Bidder could have developed to further its business and objectives; and
 - (vi) damage to the Bidder's reputation associated with a failed transaction and the implications of that damage to the Bidder's business.
- (b) The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 9.2.

9.6 Target limitation of liability

- (a) The maximum aggregate liability of the Target to all other parties under or in connection with this agreement and the Scheme, including in respect of any breach of this agreement or the Scheme, will be the amount of the Break Fee.
- (b) A payment by the Target in accordance with clause 9 represents the sole and absolute liability of the Target and any member of the Target Group under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by the Target in connection with this agreement.
- (c) The amount of the Break Fee paid to the Bidder under this clause 9 shall be reduced by the amount of any loss or damage recovered by the Bidder in relation to a breach of this agreement.

9.7 Compliance with law

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court that all or any part of the Break Fee (the **Impugned Amount**):

- (a) would, if paid, be unlawful for any reason;
 - (b) involves a breach of the fiduciary or statutory duties of the Target Board; or
 - (c) constitutes 'unacceptable circumstances' within the meaning of the Corporations Act or breaches an order of the Takeovers Panel,
- then
- (d) the requirement to pay the Break Fee does not apply to the extent of the Impugned Amount; and
 - (e) if the Bidder has received the Impugned Amount, it must refund it within 5 Business Days of the final determination being made.

9.8 Break Fee payable only once

Notwithstanding any other provision of this agreement, where the Break Fee becomes payable to the Bidder under clause 9.2 and is actually paid to the Bidder, the Bidder cannot make any claim against the Target for payment of any subsequent Break Fee.

10. Liability of directors, officers and employees

10.1 Liability of directors and employees

To the maximum extent permitted by law, each party (first party) releases all rights against, and agrees that it will not make any claim against, each past, present and future, director, officer and employee of the other party of this agreement (other party) in respect of any matter arising in connection with this agreement or the Transaction, including:

- (a) any breach of any representation or warranty;
- (b) any disclosure containing any statement which is false or misleading (whether by omission or otherwise);
- (c) any failure to provide information; or

- (d) whether current, future, known or unknown, arising at common law, in equity, under statute or otherwise,

except to the extent arising from the fraud, dishonesty or wilful default of such director, officer or employee.

10.2 Directors' and officers' insurance

The Parties acknowledge and agree that:

- (a) prior to the Effective Date, the Target will arrange for run off directors' and officers' liability insurance cover (**Run Off Cover**) to be put in place for the benefit of each Beneficiary on, so far as practicable, terms (including as to limits of liability and deductibles) no less favourable than under the Policy under which each Beneficiary is insured prior to the Effective Date;
- (b) the Run Off Cover will cover claims made up to 7 years after the Implementation Date in respect of conduct or matters occurring on or before the Implementation Date; and
- (c) payment for the Run Off Cover may not be made until after the Implementation Date and that the Bidder will, in this event, procure that the Target pays for the Run Off Cover as soon as practicable after the Implementation Date but in any event, no later than the last date for payment under the terms of the Run Off Cover or related invoice.

10.3 Obligations in relation to directors' and officers' insurance

From the Implementation Date, the Bidder must procure that the Target does not:

- (a) vary or cancel the Policy or Run Off Cover; or
- (b) unless required under the Policy or Run Off Cover, commit any act or omission that may prejudice any claim by a Beneficiary under the Policy or Run Off Cover.

10.4 Directors' and officers' indemnities

- (a) Without limiting any other term of this agreement, from the Effective Date, the Bidder undertakes that it will, in respect of each deed of indemnity, access and insurance (**Relevant Deed**) made by a member of the Target Group (**Relevant Entity**) in favour of a director or officer of any member of the Target Group (**Indemnified Person**) from time to time procure that:
 - (i) the Relevant Entity complies with the Relevant Deed; and
 - (ii) to the extent that the Relevant Entity ceases to exist after the Implementation Date, each Indemnified Person has the benefit of an indemnity from another member of the Target Group of good financial standing on terms no less favourable than those contained in the Relevant Deed as at the Effective Date.
- (b) This clause 10.4 applies to the maximum extent permitted by the Corporations Act and will be read down accordingly.

10.5 Benefit

- (a) The Bidder acknowledges that the Target holds the benefit of this clause 9 to the extent it relates to each the Target Indemnified Party as trustee for them, and, as such, each such the Target Indemnified Party may enforce this clause 9 against the Bidder.

- (b) The Target acknowledges that the Bidder holds the benefit of this clause 9 to the extent it relates to each the Bidder Indemnified Party as trustee for them, and, as such, each such the Bidder Indemnified Party may enforce this clause 9 against the Target.

11. Representations, warranties and indemnities

11.1 Representations and warranties by Bidder

The Bidder represents and warrants to the Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) that each of the Bidder Warranties are true and correct in all material respects as at the date of this agreement and 8:00 am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).

11.2 Bidder indemnity

- (a) The Bidder acknowledges that in entering into this agreement the Target and the Target Indemnified Parties have relied on the Bidder Warranties.
- (b) Bidder indemnifies the Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) against any loss suffered or incurred by reason of any breach of any of the Bidder Warranties.

11.3 Representations and warranties by Target

The Target represents and warrants to the Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) that each of the Target Warranties are true and correct in all material respects as at the date of this agreement and 8:00 am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).

11.4 Target indemnity

- (a) The Target acknowledges that in entering into this agreement the Bidder and the Bidder Indemnified Parties have relied on the Target Warranties.
- (b) The Target indemnifies the Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) against any loss suffered or incurred by reason of any breach of any of the Target Warranties.

11.5 Limitation of Warranties

The Target is not liable in respect of a Warranty Claim in relation to a Target Warranty if the fact, matter, circumstance or act giving rise to the Warranty Claim:

- (a) was expressly required to be done by Target under the Transaction Documents;
- (b) was approved by the Bidder in writing;
- (c) Fairly Disclosed in the Target Due Diligence Material or the Target Disclosure Letter; or
- (d) Fairly Disclosed in the Target's announcements to ASX or a document lodged with ASIC (in each case at least two Business Days prior to the date of this agreement).

11.6 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 11.

11.7 Status of representations and warranties

Each representation and warranty in this clause 11:

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

11.8 Timing of representations and warranties

Each representation and warranty made or given under in this clause 11 is given:

- (a) at the date of this agreement and at 5.00 pm on the day before the Second Court Date; or
- (b) where expressed to be given at a particular time, at that time.

12. Confidentiality and announcements

12.1 Confidentiality Agreement

Each party acknowledges and agrees that the terms of the Confidentiality Agreement continue to apply to the parties after the date of this agreement (including in respect of all information received by it from the other party on, before or after the date of this agreement) and that the terms of this agreement will prevail over the terms of the Confidentiality Agreement to the extent of any inconsistency.

12.2 Survival of obligations

The rights and obligations of the parties under the Confidentiality Agreement survive termination of this agreement.

12.3 Public Announcements

- (a) Immediately after execution of this agreement (or as otherwise agreed between Bidder and Target), each of Bidder and Target must issue a written public announcement in a form agreed by the parties.
- (b) Where a party proposes or is required to make any subsequent public announcement or disclosure in connection with the Transaction or the Scheme, that party must, before making such announcement, to the extent lawful to do so, consult with the other party prior to making the relevant announcement or disclosure and must give the other party a reasonable opportunity to comment on the form and content of the public announcement and consider in good faith any such comments from the other party, including accommodating any reasonable request to include in any significant announcement a statement in respect of each Target director's Recommendation and Voting Intention .

13. Termination and remedies

13.1 Termination by either party

Either party may terminate this agreement by written notice to the other party:

- (a) in accordance with clause 3.7 or clause 4.8;
- (b) if, before 5.00pm on the Business Day before the Second Court Date, at the Scheme Meeting or any adjournment or postponement of it at which the Scheme is voted on, the Scheme is not approved by the requisite majority of Target Shareholders required under the Corporations Act;
- (c) if the Scheme has not been Implemented by the End Date; or
- (d) if the parties otherwise agree in writing.

13.2 Termination by Bidder

The Bidder may terminate this agreement by notice in writing to the Target:

- (a) if, before 8.00 am on the Second Court Date, the Target is in material breach of this agreement (including the Target Warranties but other than clause 7.1), and:
 - (i) the Bidder has given written notice to the Target setting out the relevant circumstances and stating an intention to terminate this agreement; and
 - (ii) the relevant circumstances are not remedied and have continued to exist for 10 Business Days from the time such notice is received by the Target (or any shorter period ending at 8:00 am on the Second Court Date);
- (b) a majority of the Target Directors do not provide the Recommendation in the Explanatory Memorandum or publicly change or withdraw their Recommendation or Voting Intention or publicly recommend a Superior Proposal, for any reason; or
- (c) the Target enters into an agreement to implement a Superior Proposal.

13.3 Termination by Target

The Target may terminate this agreement at any time before 8.00 am on the Second Court Date:

- (a) if, before 8.00 am on the Second Court Date, the Bidder is in material breach of this agreement (including the Bidder Warranties), and:
 - (i) the Target has given written notice to the Bidder setting out the relevant circumstances and stating an intention to terminate this agreement; and
 - (ii) the relevant circumstances are not remedied and have continued to exist for 10 Business Days from the time such notice is received by the Bidder (or any shorter period ending at 8:00 am on the Second Court Date);
- (b) a majority of the Target directors publicly change or withdraw their Recommendation or Voting Intention or publicly recommend a Superior Proposal and the Target has complied with its obligations under clauses 8 and 9 (including payment of the Break Fee, if applicable).

13.4 Effect of termination

If this agreement is terminated in accordance with clause 13, the provisions of this agreement shall cease to have effect and the rights and obligations of the parties under this agreement will cease, except that:

- (a) the provisions of clauses 1, 9, 12, 13.4, 13.5 and 14 to, 16.1 to 16.7, 16.9 to 16.12 and 17 will survive termination; and
- (b) termination will be without prejudice to rights and liabilities of a party which have accrued before termination.

13.5 Remedies

The parties acknowledge that damages may not be a sufficient remedy for breach of this agreement. Specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law are available as a remedy for a breach or threatened breach of this agreement by any party, notwithstanding the ability of the other party to terminate this agreement or seek damages for such a breach or threatened breach.

14. Notices

14.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) may be given by personal service, post or email;
- (b) must be in writing;
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

- (i) if to the Target:

Address: Level 10, 60 Carrington Street, Sydney NSW

Email: MStewien@folkestone.com.au

Attention: Mark Stewien

with a copy in each case to:

Email: manderson@claytonutz.com

- (ii) if to Bidder: Charter Hall Limited

Address: Level 20, 1 Martin Place, Sydney NSW 2000

Email: Mark.Bryant@charterhall.com.au

Attention: Mark Bryant

with a copy in each case to:

Email: stuart.mcculloch@allens.com.au

- (d) **(in the case of personal service or post)** must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
- (e) **(in the case of email)** must state that the email is a communication under this agreement; and
- (f) must be delivered by hand or posted by prepaid post to the address or sent by email to the email address, of the addressee, in accordance with this clause 14.1.

14.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement is taken to be received by the addressee:

- (a) **(in the case of prepaid post sent to an address in the same country)** on the third day after the date of posting;
- (b) **(in the case of prepaid post sent to an address in another country)** on the fifth day after the date of posting by airmail;
- (c) **(in the case of delivery by hand)** on delivery; and
- (d) **(in the case of email)** unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of clause 14.1, 4 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

15. GST

15.1 Interpretation

- (a) Except where the context suggests otherwise, and subject to clause 15.1(b), terms used in this clause have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).
- (b) "Input tax credit" has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 and a reference to an input tax credit entitlement of an entity includes an input tax credit for an acquisition made by that entity but to which another member of the same GST group is entitled.
- (c) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (d) Any consideration for a supply that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to that supply for the purpose of this clause.

15.2 Reimbursements and similar payments

Any payment or reimbursement required to be made under this agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total

cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

15.3 GST payable

- (a) If GST is payable in relation to a taxable supply made under or in connection with this agreement then any party (Recipient) that is required to provide consideration to another party (Supplier) for that supply must, subject to clause 15.1(d), pay an additional amount to the Supplier equal to the amount of that GST at the same times as other consideration is to be provided for that supply.
- (b) No payment of any amount pursuant to clause 15.3(a) is required until the Supplier has provided a valid tax invoice to the Recipient.
- (c) Where additional amounts are payable between parties to this agreement pursuant to clause 15.3(a), amounts so payable, to the extent they are equivalent in amount, shall be set off against each other as if paid and each party shall be obliged only to provide the tax invoice referred to in clause 15.3(b) no later than the time at which any consideration is to be first provided for that supply.
- (d) If the GST payable in relation to a supply made under or in connection with this agreement varies from the additional amount paid by the Recipient under clause 15.3(a) then the Supplier must promptly issue an adjustment note to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 15.3(a).

16. General

16.1 Entire agreement

The Transaction Documents and the Confidentiality Agreement constitute the entire agreement between the parties in relation to their subject matter and supersede all previous agreements and understandings between the parties in relation to their subject matter.

16.2 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this agreement, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this 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.

16.3 Amendments

This agreement may only be varied by a document signed by or on behalf of each party.

16.4 Assignment

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

16.5 Consents

Unless this agreement expressly provides otherwise, a consent under this agreement may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

16.6 Costs

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing each Transaction Document.

16.7 Counterparts

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

16.8 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this agreement.

16.9 No merger

A party's rights and obligations do not merge on completion of any transaction contemplated by this agreement.

16.10 Severance

If any provision or part of a provision of this agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of violability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

16.11 Stamp duties

The Bidder must pay all stamp duties and any related fines and penalties in respect of this agreement, the performance of this agreement and each transaction effected by or made under this agreement and is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

16.12 Waivers

Without limiting any other provision of this agreement, the parties agree that:

- (a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement;
- (b) a waiver given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party; and
- (c) no waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.

17. Governing law, jurisdiction and service of process**17.1 Governing law**

This agreement is governed by the law applying in New South Wales.

17.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non exclusive jurisdiction of the courts of New South Wales, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 17.2(a).

Schedule 1 - Timetable

Event	Date
Submit draft Explanatory Memorandum to ASIC	27 August 2018
First Court Date	12 September 2018
Despatch of Explanatory Memorandum	17 September 2018
Scheme Meeting	17 October 2018
Second Court Date	18 October 2018
Effective Date	19 October 2018
Record Date	26 October 2018
Implementation Date	2 November 2018

Schedule 2 - Bidder Representations and Warranties

The Bidder represents and warrants to the Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) that:

- (a) it is a company properly incorporated and validly existing under the laws of its place of incorporation;
- (b) the execution and delivery by the Bidder of the Transaction Documents to which the Bidder is party have been properly authorised by all necessary corporate action and the Bidder has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
- (c) the Transaction Documents to which the Bidder is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms, and do not conflict with or result in a breach of or default under:
 - (i) the constitution or equivalent constituent documents of the Bidder or any of its Subsidiaries; or
 - (ii) any writ, order or injunction, judgment, law, rule, obligation or regulation to which the Bidder or any of its Subsidiaries is party, or by which the Bidder or any of its Subsidiaries is bound; and
 - (iii) any other document or agreement that is binding on it or any of its Subsidiaries.
- (d) other than as expressly contemplated by clause 3, no shareholder or Regulatory Authority approvals are required to be obtained by the Bidder Group in order for it to execute and perform the Transaction Documents to which it is a party;
- (e) no Insolvency Event has occurred in relation to the Bidder;
- (f) on the First Court Date, the date of despatch of the Explanatory Memorandum and the date of the Scheme Meeting:
 - (i) Bidder Information has been prepared and included in the Explanatory Memorandum in good faith and on the understanding that the Target and the Target Indemnified Parties have relied on that information for the purposes of preparing the Explanatory Memorandum and proposing the Scheme and that the Independent Expert has relied on the information for the purposes of preparing the Independent Expert's Report;
 - (ii) Bidder Information complies in all material respects with relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides), and includes all information regarding Bidder, its Related Bodies Corporate and the Scheme Consideration that is required by the Corporations Act, Regulatory Guides and Listing Rules to be included in the Explanatory Memorandum;
 - (iii) Bidder Information in the form and context in which it appears in the Explanatory Memorandum is not misleading or deceptive in any material respect and does not contain any material omission; and
 - (iv) all information provided by or on behalf of the Bidder to the Independent Expert to be prepared has been prepared and provided in good faith and on the understanding that the Independent Expert have relied on the

information for the purposes of preparing the Independent Expert's Report;

- (g) Bidder will provide to Target all such further or new material information that arises after the Explanatory Memorandum has been despatched until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information, in the form and context in which that information appears in the version of the Explanatory Memorandum sent to Target Shareholders is not misleading or deceptive in any material respect (whether by omission or otherwise), and if it becomes aware that the Bidder Information contains a misleading or deceptive statement or is subject to a material omission, or has become misleading or deceptive or subject to a material omission, provide such further or new information as is required to correct the defect;
- (h) as at the date of this agreement, the Bidder has reasonable basis to expect that it will, by the Business Day prior to the Implementation Date, have funds sufficient to perform its obligations in respect of the Scheme, if the Scheme becomes Effective;
- (i) as at 8:00am on the Second Court Date, the Bidder will have sufficient cash on its balance sheet, or financial commitments available to it on an unconditional basis (other than conditions relating to the approval of the Court and related procedural matters or documentary requirements which, by their terms or nature, can only be satisfied or performed after the Second Court Date), to ensure that the Scheme Cash Consideration is paid to Scheme Shareholders in accordance with the terms of this agreement; and
- (j) neither the Bidder nor any of its Associates:
 - (i) has a Relevant Interest in any Target Shares; or
 - (ii) is a party to any agreement, arrangement or understanding involving the conferring of rights on it the economic effect of which is equivalent, substantially equivalent, or similar to it acquiring, holding or disposing of Target Shares (whether combined with a financing arrangement or not).

Schedule 3 - Target Representations and Warranties

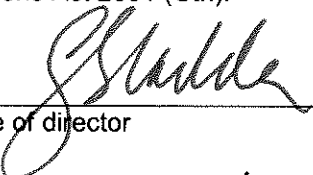
The Target represents and warrants to Bidder (on its own behalf and separately as trustee for each of Bidder Indemnified Parties) that:

- (a) it is a company properly incorporated and validly existing under the laws of its place of incorporation;
- (b) the execution and delivery by the Target of the Transaction Documents to which the Target is party has been properly authorised by all necessary corporate action and the Target has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
- (c) the Transaction Documents to which the Target is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms, and do not conflict with or result in a breach of or default under:
 - (i) the constitution or equivalent constituent documents of the Target or any of its Subsidiaries; or
 - (ii) any writ, order or injunction, judgment, law, rule, obligation or regulation to which the Target or any of its Subsidiaries is party, or by which the Target or any of its Subsidiaries is bound; and
- (d) other than as expressly contemplated by clause 3, no shareholder or Regulatory Authority approvals are required to be obtained by the Target Group in order for Target to execute and perform the Transaction Documents to which it is a party;
- (e) as at the date of this agreement,
 - (i) there are 148,099,564 Target Shares on issue; and
 - (ii) there are 3,537,528 Target Performance Rights on issue,
 and the Target has not issued any other securities or instruments or rights which may convert into Target Shares which are still outstanding;
- (f) on the First Court Date, the date of despatch of the Explanatory Memorandum and the date of the Scheme Meeting:
 - (i) the Target Information has been prepared and included in the Explanatory Memorandum in good faith and on the understanding that the Bidder and the Bidder Indemnified Parties have relied on that information for the purposes of considering and approving the Bidder Information in the Explanatory Memorandum and that the Independent Expert has relied on the information for the purposes of preparing the Independent Expert's Report;
 - (ii) the Target Information does not contain a statement which is misleading or deceptive in any material respect and does not contain any material omission; and
 - (iii) the Target Information complies in all material respects with relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides);

- (g) as far as the Target is aware, it has complied in all material respects with applicable laws including the Corporations Act and Listing Rules (in particular its continuous disclosure obligations under Listing Rule 3.1);
- (h) as far as the Target is aware, it, and each entity within the Target Group, hold all licences and permits necessary for it to conduct its activities as being conducted as at the date of this agreement and is not in material breach of any of those licences or permits;
- (i) as at the date of this agreement, neither ASIC nor ASX (as applicable) has made a determination against the Target for any contravention of the requirements of the Corporations Act or the ASX Listing Rules or any rules, regulations or regulatory guides under the Corporations Act or the ASX Listing Rules;
- (j) as far as the Target is aware, there has not been any event, change, effect or development that would require a restatement of the Target's financial statements as disclosed to ASX;
- (k) on the date of this agreement and as far as the Target is aware, neither it nor any of its Subsidiaries is in default under any material contract to which a member of the Target Group is a party nor has anything occurred which is or would be with the giving of notice or lapse of time constitute an event of default; and
- (l) no Insolvency Event has occurred in relation to the Target or any member of the Target Group.

Executed as an agreement.

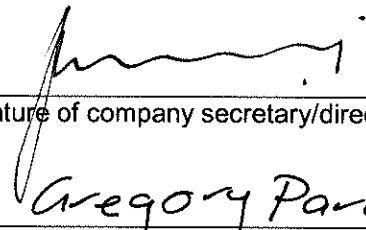
Executed by FOLKESTONE LIMITED ACN 004
715 226 in accordance with section 127 of the
Corporations Act 2001 (Cth):



Signature of director

Garry Sladden

Full name of director

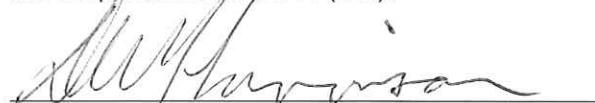


Signature of company secretary/director

Gregory Paramor

Full name of company secretary/director

Executed by **CHARTER HALL LIMITED ACN 113 531 150** in accordance with section 127 of the Corporations Act 2001 (Cth):


Signature of director

DAVID WILLIAM HARRISON
Full name of director


Signature of company secretary/~~director~~

MARK ROBERT BRYANT
Full name of company secretary/~~director~~

Annexure A - Scheme

Scheme of Arrangement

Pursuant to section 411 of the Corporations Act

Folkestone Limited ACN 004 715 226

Target

The registered holders of fully paid ordinary shares in the capital of the Target as at the Record Date

Clayton Utz
Lawyers
Level 15 1 Bligh Street
Sydney NSW 2000
GPO Box 9806
Sydney NSW 2001
Tel +61 2 9353 4000
Fax +61 2 8220 6700
www.claytonutz.com

Our reference 15387/18470/80196001

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Scheme of Arrangement made under section 411 of the Corporations Act 2001

Date

2018

Parties

Folkestone Limited ACN 004 715 226 of Level 10, 60 Carrington Street, Sydney NSW (**Target**)

The registered holders of fully paid ordinary shares in the capital of the Target as at the Record Date.

Background

- A. The Target and the Bidder have entered into the Scheme Implementation Agreement pursuant to which, amongst other things, the Target has agreed to propose this Scheme to the Target Shareholders, and each of the Target and the Bidder have agreed to take certain steps to give effect to the Scheme.
- B. If the Scheme becomes Effective, then:
- i. all the Scheme Shares will be transferred to the Bidder and the Scheme Consideration will be provided to the Scheme Shareholders; and
 - ii. the Target will enter the name and address of the Bidder in the Target Register as the holder of the Scheme Shares,
- subject to and in accordance with the provisions of the Scheme.
- C. The Bidder has entered into the Deed Poll for the purpose of covenanting in favour of Scheme Shareholders to perform the obligations contemplated of it under the Scheme.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Scheme:

Aggregate Scheme Consideration means the aggregate amount of the Scheme Consideration payable to Scheme Shareholders under this Scheme.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it known as the Australian Securities Exchange.

Bidder means Charter Hall Limited ACN 113 531 150.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney.

CHESS means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Limited ACN 008 504 532 and ASX Clear Pty Limited ACN 001 314 503.

Condition means each condition to this Scheme set out in clause 2.1.

Corporations Act means the Corporations Act 2001 (Cth).

Court means the Federal Court of Australia or such other court of competent jurisdiction as the Target and the Bidder agree in writing.

Deed Poll means a deed poll to be executed by the Bidder in favour of the Scheme Shareholders, substantially in the form attached to the Scheme Implementation Agreement or in such other form as the Target and the Bidder agree in writing.

Effective means, when used in relation to this Scheme, 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.

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

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

End Date has the meaning given in the Scheme Implementation Agreement.

Implementation Date means the date which is 5 Business Days after the Record Date or such other date as the Target and the Bidder agree in writing.

Record Date means 7.00 pm (Sydney time) on the date which is 5 Business Days after the Effective Date or such other time and date as may be required by ASX or as may be agreed in writing between the Bidder and the Target.

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

Related Body Corporate means a related body corporate of that corporation within the meaning of section 50 of the Corporations Act.

Scheme means this scheme of arrangement subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Target and the Bidder.

Scheme Consideration means for each Scheme Share, an amount equal to \$1.39 inclusive of any amount that is paid by the Target per Target Share pursuant to clause 6.4(b)(ii) of the Scheme Implementation Agreement.

Scheme Implementation Agreement means the Scheme Implementation Agreement dated  between the Target and the Bidder relating to the implementation of this Scheme.

Scheme Share means a Target Share on issue as at the Record Date and, for the avoidance of doubt, includes any Target Shares issued after the date of the Scheme Implementation Agreement but on or before the Record Date.

Scheme Shareholder means a person who holds the Target Shares as at the Record Date and, for the avoidance of doubt, includes any such person who holds the Target Shares as a result of the exercise or vesting of options or rights.

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

Second Court Date means the first day of hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving this Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

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

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

Target Shares means fully paid ordinary shares in the capital of the Target.

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

Target Registry means Boardroom Pty Ltd ACN 003 209 836.

Third Party means a person other than the Bidder, the Target, or their respective Related Bodies Corporate.

Timetable means the timetable set out in Schedule 1 to the Scheme Implementation Agreement.

Trust Account means an Australian dollar denominated trust account operated by the Target as trustee for the Scheme Shareholders, as nominated by the Target and notified to the Bidder at least 5 Business Days prior to the Implementation Date, being the account into which the Bidder will deposit the Aggregate Scheme Consideration in accordance with clause 5.1(b).

1.2 Business Day

If the day on which any act to be done under this Scheme is a day other than a Business Day, that act must be done on the immediately preceding Business Day except where this Scheme expressly specifies otherwise.

1.3 Interpretation

In this Scheme headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this Scheme) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment, or annexure is a reference to a party, clause, schedule, exhibit, attachment, or annexure to or of this

Scheme, and a reference to this Scheme includes all schedules, exhibits, attachments, and annexures to it;

- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to \$ or **dollar** is to Australian currency;
- (k) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this Scheme;
- (l) a reference to a date or time is to that date or time in Sydney, Australia; and
- (m) this Scheme must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

2. Conditions

2.1 Conditions precedent

This Scheme is conditional upon, and will have no force or effect (including clauses 3, 4 and 5) until, the satisfaction of each of the following conditions:

- (a) all the conditions in clause 3.1 of the Scheme Implementation Agreement (other than the condition in clause 3.1(h) of the Scheme Implementation Agreement relating to Court approval of this Scheme) having been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement by 8.00am on the Second Court Date;
- (b) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms before 8.00am on the Second Court Date;
- (c) approval of this Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to the Target and the Bidder;
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and agreed to by the Target and the Bidder having been satisfied or waived; and
- (e) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving this Scheme coming into effect, pursuant to section 411(10) of the Corporations Act.

2.2 Certificate in relation to conditions precedent

On the Second Court Date:

- (a) the Target must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8.00 am on the Second Court Date the conditions set out in clause 3.1

(other than clause 3.1(h)) of the Scheme Implementation Agreement have been satisfied or waived in accordance with the Scheme Implementation Agreement; and

- (b) the Bidder must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8.00 am on the Second Court Date the conditions set out in clause 3.1 (other than clause 3.1(h)) of the Scheme Implementation Agreement have been satisfied or waived in accordance with the Scheme Implementation Agreement.

2.3 Termination of Scheme Implementation Agreement

Without limiting any rights under the Scheme Implementation Agreement, in the event that the Scheme Implementation Agreement is terminated in accordance with its terms before 8.00am on the Second Court Date, the Target and the Bidder are each released from:

- (a) any further obligation to take steps to implement the Scheme; and
- (b) any liability with respect to the Scheme.

3. Scheme

3.1 Effective Date of the Scheme

Subject to clause 3.2, the Scheme will take effect on and from the Effective Date.

3.2 End Date

The Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the End Date, or such later date as the Target and the Bidder agree in writing.

4. Implementation of Scheme

4.1 Lodgement

If the Conditions are satisfied, the Target must lodge with ASIC, for the purposes of section 411(10) of the Corporations Act, an office copy of the Court orders approving this Scheme as soon as possible and in any event by 5.00pm on the Business Day following the date on which the Court approves the Scheme or such other day as the Target and the Bidder agree in writing.

4.2 Transfer of Scheme Shares

On the Implementation Date, subject to the provision of the Scheme Consideration in the manner contemplated by clause 5.1:

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to the Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by the Target as attorney and agent for Scheme Shareholders under clause 8.4), by:
 - (i) the Target delivering to the Bidder a duly completed Scheme Transfer, executed on behalf of the Scheme Shareholders by the Target (as transferor), for registration; and
 - (ii) the Bidder duly executing the Scheme Transfer (as transferee), attending to the stamping of the Scheme Transfer (if required) and delivering it to the Target for registration; and

- (b) immediately after receipt of the Scheme Transfer in accordance with clause 4.2(a)(ii), the Target must enter, or procure the entry of, the name and address of the Bidder in the Target Register as the registered holder of all the Scheme Shares.

5. Scheme Consideration

5.1 Provision of Scheme Consideration

- (a) The Bidder will provide, or procure the provision of, the Scheme Consideration payable to all Scheme Shareholders (as applicable) in accordance with clause 5.1(b).
- (b) The Bidder will, no later than 12:00pm on the Business Day before the Implementation Date, deposit (or will procure the deposit of) the Aggregate Scheme Consideration into the Trust Account in cleared and immediately available funds.
- (c) Subject to the Bidder having complied with clause 5.1(a), the Target must, on the Implementation Date and from the Trust Account, pay or procure the payment to each Scheme Shareholder of an amount equal to the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder as set out in the Target Register on the Record Date in the Target's absolute discretion:
 - (i) where a Scheme Shareholder has, before the Record Date, made an election in accordance with the requirements of the Target Registry to receive dividend payments from the Target by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
 - (ii) otherwise, dispatching, or procuring the dispatch of, a cheque in Australian currency to the Scheme Shareholder by prepaid post to their Registered Address, such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 5.2), for the relevant amount.

5.2 Joint holders

In the case of Scheme Shares held in joint names, the Scheme Consideration is payable to the joint holders and:

- (a) any cheque or electronic funds transfer required to be sent or made under this Scheme will, in the case of a cheque, be made payable to the joint holders and, in each case, sent or made to the holder whose name appears first in the Target Register as at the Record Date; and
- (b) any other document required to be sent under this Scheme, will be forwarded to the holder whose name appears first in the Target Register as at the Record Date.

5.3 Unclaimed monies

- (a) The Target may cancel a cheque or electronic funds transfer issued under this clause 5 if the cheque or electronic funds transfer:
 - (i) is returned to the Target; or
 - (ii) in the case of a cheque, has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Implementation Date, on request from a Scheme Shareholder, the Bidder must reissue a cheque or electronic funds transfer that was previously cancelled under this clause 5.

5.4 Orders of a court

If:

- (a) written notice is given to the Target (or the Target Registry) or the Bidder of an order made by a court of competent jurisdiction that requires provision to a Third Party of all or part of the Scheme Consideration that would otherwise be payable to a particular Scheme Shareholder in accordance with this clause 5, then the Bidder shall be entitled to procure compliance with that order; or
- (b) written notice is given to the Target (or the Target Registry) or the Bidder of an order made by a court of competent jurisdiction that prevents provision of all or part of the Scheme Consideration to a particular Scheme Shareholder in accordance with this clause 5, or such provision is otherwise prohibited by applicable law, the Bidder shall be entitled to retain the relevant part of the Scheme Consideration to which that Scheme Shareholder would otherwise have been entitled to receive pursuant to this clause 5 until such time as provision of that part of the Scheme Consideration to that Scheme Shareholder is permitted by that order or otherwise by law.

6. Dealings in Target Shares

6.1 Determination of Scheme Shareholders

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

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Target Register as the holder of the relevant the Target Shares at or before the Record Date; and
- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received at or before 5:00pm on the Record Date at the place where the Target Register is kept (in which case, the Target must register such transfers or transmission applications before 7:00pm on that day),

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

6.2 Target Register

- (a) The Target must register registrable transmission applications or transfers of the Target Shares in accordance with clause 6.1(b) at or before the Record Date; provided that, for the avoidance of doubt, nothing in this clause 6.2(a) requires the Target to register a transfer that would result in a Target Shareholder holding a parcel of the Target Shares that is less than a 'marketable parcel' (as defined in the operating rules of the ASX).
- (b) If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that holder) must not dispose of or purport or agree to dispose of, any Scheme Shares or any interest in them. and the Target must not accept or register any such transfer, after the Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect.
- (c) For the purpose of determining entitlements to the Scheme Consideration, the Target must maintain the Target Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to the Scheme

Shareholders. The Target Register in this form will solely determine entitlements to the Scheme Consideration.

- (d) All statements of holding for the Target Shares (other than statements of holding in favour of the Bidder) will cease to have effect after the Record Date as documents of title in respect of those shares and, as from that time and date, each entry current at that date on the Target Register (other than entries on the Target Register in respect of the Bidder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Target Shares relating to that entry.
- (e) As soon as possible after the Record Date, and in any event within 3 Business Days, the Target will ensure that details of the names, Registered Addresses and holdings of the Target Shares for each Scheme Shareholder as shown in the Target Register are available to the Bidder in the form the Bidder reasonably requires.

7. Suspension and termination of quotation

- (a) The Target must apply to ASX to suspend trading on the ASX in the Target Shares with effect from the close of trading on the Effective Date.
- (b) The Target must apply to ASX for termination of official quotation of the Target Shares on ASX and the removal of the Target from the official list of ASX with effect from the Business Day immediately following the Implementation Date, or such later date advised by the Bidder.

8. General Scheme provisions

8.1 Consent to amendments to this Scheme

The Target may, by its counsel or solicitors, and with the consent of the Bidder, consent on behalf of all persons concerned, including a Scheme Shareholder, to any modification of or amendment to the Scheme which the Court thinks fit to impose.

8.2 Scheme Shareholders' agreements and warranties

- (a) Each Scheme Shareholder:
 - (i) irrevocably agrees to the transfer of their Target Shares together with all rights and entitlements attaching to those Target Shares in accordance with this Scheme;
 - (ii) irrevocably agrees to the variation, cancellation or modification of the rights attached to their Target Shares constituted by or resulting from this Scheme; and
 - (iii) acknowledges that this Scheme binds all Scheme Shareholders.
- (b) Each Scheme Shareholder is taken to have warranted to the Bidder, that all their Scheme Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme will, at the date of transfer, be fully paid and free from all Encumbrances and interests of Third Parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Scheme Shares to the Bidder together with any rights attaching to those shares.

8.3 Title to and rights in Scheme Shares

- (a) The Scheme Shares transferred under this Scheme will be transferred free from all Encumbrances and interests of Third Parties of any kind, whether legal or otherwise.
- (b) Subject to payment of consideration under clause 5.1, on and from the Implementation Date, the Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by the Target of the Bidder in the Target Register as the holder of the Scheme Shares.

8.4 Authority given to the Target

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

- (a) enforcing the Deed Poll against the Bidder and the Target undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against the Bidder on behalf of and as agent and attorney for Scheme Shareholders; and
- (b) executing any document or doing or taking any other act, necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it, including (without limitation) executing the Scheme Transfer,

and the Target accepts such appointment. The Target as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.4 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

8.5 Appointment of the Bidder as sole proxy

On and from the Implementation Date and until registration by the Target of the Bidder on the Target Registry as the registered holder of all the Scheme Shares, each Scheme Shareholder:

- (a) without the need for any further act, irrevocably appoints the Bidder and each of its directors, officers and secretaries (jointly and each of them separately) as its agent and attorney to appoint an officer or agent nominated by the Bidder as its sole proxy and where applicable, corporate representative to:
 - (i) attend shareholders' meetings of the Target;
 - (ii) exercise the votes attached to the Scheme Shares registered in the name of the Scheme Shareholder; and
 - (iii) sign any shareholders' resolution of the Target;
- (b) undertakes not to attend or vote at any such meetings or sign any such resolutions, whether in person, by proxy or by corporate representative other than under this clause 8.5;
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as the Bidder reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in this clause 8.5, the Bidder and each of the directors, officers and secretaries of the Bidder may act in the best interests of the Bidder as the intended registered holder of the Scheme Shares,

and the Target undertakes in favour of each Scheme Shareholder that it will appoint the officer or agent nominated by the Bidder as that Scheme Shareholder's proxy or, where applicable, corporate representative in accordance with clause 8.5(a).

8.6 Binding effect of Scheme

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

9. General

9.1 Stamp duty

The Bidder will:

- (a) pay all stamp duty (if any) and any related fines and penalties payable on or in connection with the transfer by the Scheme Shareholders of the Scheme Shares to the Bidder pursuant to this Scheme; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 9.1(a).

9.2 Consent

Each of the Scheme Shareholders consents to the Target doing all things necessary or incidental to give full effect to the implementation of this Scheme and the transactions contemplated by it.

9.3 Notices

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

9.4 Governing law

This Scheme is governed by the law applying in New South Wales.

9.5 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 9.5(a).

9.6 Further action

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

Annexure B - Deed Poll

Deed Poll

(in respect of the Scheme)

Charter Hall Limited ACN 113 531 150
Bidder

In favour of each registered holder of fully paid ordinary shares in the capital of Folkestone Limited ACN 004 715 226 as at the Record Date

Clayton Utz
Lawyers
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Deed Poll made on**2018****Parties**

Charter Hall Limited ACN 113 531 150 of Level 20, 1 Martin Place, Sydney NSW 2000 (**Bidder**)

In favour of each holder of fully paid ordinary shares in Folkestone Limited ACN 004 715 226 (**Target**) as at the Record Date (**Scheme Shareholders**)

Background

- A. The Target and the Bidder have entered into the Scheme Implementation Agreement.
- B. The Target has agreed in the Scheme Implementation Agreement to propose a scheme of arrangement between the Target and the Scheme Shareholders, the effect of which will be that the Bidder acquires all of the Scheme Shares from Scheme Shareholders for the Scheme Consideration, subject to the satisfaction of certain conditions.
- C. In accordance with clause 4.3(j) of the Scheme Implementation Agreement, the Bidder is entering into this deed poll to covenant in favour of the Scheme Shareholders that it will observe and perform its obligations under the Scheme.

Operative provisions

1. Interpretation and definitions**1.1 Definitions**

Unless the context requires otherwise, in this deed poll:

- (a) **Scheme** means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to by the Bidder and the Target.
- (b) **Scheme Implementation Agreement** means the scheme implementation agreement dated [] between the Target and the Bidder under which, amongst other things, the Target has agreed to propose the Scheme to Scheme Shareholders, and each of the Bidder and the Target has agreed to take certain steps to give effect to the Scheme.
- (c) Capitalised terms have the meaning given to them in the Scheme.

1.2 Interpretation

In this deed poll, unless the contrary intention appears or the context requires otherwise, clause 1.3 of the Scheme applies to the interpretation of this deed poll, except that references to 'Scheme' are to be read as references to 'deed poll'.

1.3 Nature of deed poll

The Bidder acknowledges and agrees that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and

- (b) under the Scheme, each Scheme Shareholder irrevocably appoints the Target and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this deed poll against the Bidder.

2. Conditions

2.1 Conditions Precedent

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

2.2 Termination

Unless the Target and the Bidder agree otherwise in writing, the obligations of the Bidder under this deed poll will automatically terminate and the terms of this deed poll will be of no further force or effect if:

- (a) the Scheme Implementation Agreement is terminated in accordance with its terms; or
- (b) the Scheme does not become Effective by the End Date.

2.3 Consequences of termination

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

- (a) the Bidder is released from its obligations to further perform this deed poll except those obligations contained in clause 6.1; and
- (b) each Scheme Shareholder retains the rights they have against the Bidder in respect of any breach of this deed poll by the Bidder which occurs before this deed poll is terminated.

3. Obligation to pay Scheme Consideration

Subject to clause 2, in consideration for the transfer to the Bidder of the Scheme Shares, the Bidder covenants in favour of each Scheme Shareholder to:

- (a) deposit the Aggregate Scheme Consideration in cleared funds into the Trust Account no later than the Business Day before the Implementation Date; and
- (b) undertake all other actions attributed to it under the Scheme, as if named as a party to the Scheme,

subject to and in accordance with the terms of the Scheme.

4. Representations and warranties

The Bidder represents and warrants that:

- (a) **(Status)** it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) **(Power)** 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) **(Authorisation)** 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;

- (d) **(Binding)** this deed poll is valid and binding on it and is enforceable against it in accordance with its terms;
- (e) **(Transaction permitted)** execution and performance by it of this deed poll and each transaction contemplated by this deed poll did not and will not violate in any respect;
 - (i) a law, judgment, ruling, or decree binding on it; or
 - (ii) its constitution or other constituent documents.
- (f) **(Solvency)** it is solvent and no resolution has been passed nor has any other step been taken or legal proceedings commenced or threatened against it for the winding up, dissolution or termination of itself or for the appointment of a liquidator, receiver, administrator, or similar officer over any or all of its assets; and
- (g) **(No default)** this deed poll does not conflict with or result in the breach of or default under, any provision of its constitution, any material term or provision of any material agreement or any writ, order or injunction, judgment, law, rule, regulation or instrument to which it is party, of which it is subject of or of which it is bound.

5. Continuing obligations

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

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

6. General

6.1 Stamp duty

The Bidder must:

- (a) pay or procure the payment of all stamp duty (if any) and any related fines and penalties in respect of this deed poll, the performance of this deed poll and each transaction effected by or made under this deed poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 6.1(a).

6.2 Notices

- (a) Any notice or other communication given to the Bidder under or in connection with this deed poll:
 - (i) may be given by personal service, email or post;
 - (ii) must be in legible writing and in English;
 - (iii) must be addressed to the Bidder as follows (or as otherwise notified by the Bidder to the Target from time to time):

Address: Level 20, 1 Martin Place, Sydney NSW 2000

Email: Mark.Bryant@charterhall.com.au

Attention: Mark Bryant

with a copy in each case to:

Email: stuart.mcculloch@allens.com.au

- (iv) **(in the case of personal service or post)** must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
 - (v) must be delivered by hand or posted by prepaid post to the address of the addressee, in accordance with this clause 6.2.
- (b) A notice or other communication given to the Bidder is taken to be received:
- (i) **(in the case of prepaid post sent to an address in the same country)** on the third day after the date of posting;
 - (ii) **(in the case of prepaid post sent to an address in another country)** on the fifth day after the date of posting by airmail; and
 - (iii) **(in the case of delivery by hand)** on delivery;
 - (iv) **(in the case of email)** unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of clause 6, 4 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

6.3 Cumulative rights

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

6.4 Waiver and variation

- (a) A party waives a right under this deed poll only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) Failure to exercise or enforce, a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed poll by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this deed poll.
- (c) A provision of this deed poll may not be varied unless:
 - (i) if before the First Court Date, the variation is agreed to by the Target and the Bidder in writing; and

- (ii) if after the First Court Date, the variation is agreed to by the Target and the Bidder in writing and the Court indicates that the variation would not of itself preclude approval of the Scheme,

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

6.5 Governing law and jurisdiction

- (a) This deed is governed by the law applying in New South Wales.
- (b) Each party irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of New South Wales, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed poll; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 6.5(b).

6.6 Assignment

- (a) The rights of a Scheme Shareholder under this deed poll are personal. They cannot be assigned, charged or otherwise dealt with, and no person shall attempt or purport to do so, without the prior written consent of the Bidder.
- (b) Any purported dealing in contravention of clause 6.6(a) is invalid.

6.7 Further Action

The Bidder must promptly do all things and execute all deeds, instruments, transfers or other documents and do all acts or things as may be necessary or desirable to give full effect to the provisions of this deed poll and the transactions contemplated by it.

Executed as a deed

Executed by **CHARTER HALL LIMITED ACN 113 531 150** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director