



ASX/MEDIA RELEASE

13 September 2018

## Lodgement of Court orders with ASIC

### Sydney, Australia

Sirtex Medical Limited (ASX:SRX) (**Sirtex**) announces that the orders of the Federal Court of Australia (**Court**) approving the Scheme of Arrangement (**Scheme**) under which Grand Pharma Sphere (Australia Bidco) Pty Limited, an entity owned by CDH Genetech Limited and China Grand Pharmaceutical and Healthcare Holdings Limited, will acquire all of the shares in Sirtex have been lodged with the Australian Securities and Investments Commission. Accordingly, under section 411(1) of the Corporations Act 2001, the Scheme is now legally effective.

Copies of the Court orders approving the Scheme and the Scheme are attached to this announcement.

It is expected that trading in Sirtex Shares on ASX will be suspended from close of trading today.

**- ENDS -**

### About Sirtex Medical, [www.sirtex.com](http://www.sirtex.com)

Sirtex Medical Limited (ASX:SRX) is an Australian based medical device company with global market coverage. Its core revenue producing technology, which has regulatory approvals, is a selective internal radiation therapy (SIRT), with clinically proven applications for liver cancer with approximately 92,000 doses supplied and administered at over 1,230 medical centres in more than 40 countries.

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Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1267/2018

**SIRTEX MEDICAL LIMITED** and another named in the schedule  
Plaintiff

### ORDER

**JUDGE:** JUSTICE MARKOVIC


**DATE OF ORDER:** 12 September 2018

**WHERE MADE:** Sydney

### THE COURT ORDERS THAT:

1. Pursuant to s 411(4)(b) of the *Corporations Act 2001* (Cth) (**Act**), the scheme of arrangement between Sirtex Medical Limited (**Sirtex**) and its members, in the form of Exhibit C in the proceeding, be approved (**Scheme**).
2. Sirtex lodge with the Australian Securities and Investments Commission a copy of the approved Scheme at the time of lodging a copy of these Orders.
3. Pursuant to s 411(12) of the Act, Sirtex be exempt from compliance with s 411(11) of the Act in relation to Order 1.
4. These Orders be entered forthwith.

Date that entry is stamped: 12 September 2018

  
Registrar



## **Schedule**

No: NSD1267/2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Applicant

TODD HAYWARD



## **Scheme of Arrangement**

Dated

**Sirtex Medical Limited**  
(ABN 35 078 166 122)

## **Scheme Shareholders**

**Watson Mangioni Lawyers Pty Limited**  
Corporate and Commercial Lawyers  
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SYDNEY NSW 2000  
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Ref: CSC 217 7345

## Table of Contents

1.	Definitions and Interpretation .....	1
2.	Preliminary .....	4
3.	Conditions Precedent.....	5
4.	Scheme .....	6
5.	Implementation of Scheme .....	6
6.	Scheme Consideration.....	8
7.	Dealings in Scheme Shares.....	9
8.	Quotation of Sirtex Shares .....	10
9.	General Scheme Provisions .....	11

**Scheme of Arrangement** under Part 5.1 of the *Corporations Act* 2001 (Cth).

## **Parties:**

1. **Sirtex Medical Limited** (ABN 35 078 166 122) of Level 33, 101 Miller Street, North Sydney NSW 2060, Australia (**Sirtex**);
2. Each person registered as a holder of fully paid ordinary shares in Sirtex as at the Record Date (**Scheme Shareholders**).

## **1. Definitions and Interpretation**

### **1.1. Definitions**

In this Scheme:

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

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

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

**Bidders** means each of:

- (a) CDH Genetech Limited, an exempted company incorporated in the Cayman Islands of 1503 International Commerce Center, 1 Austin Road West, Kowloon, Hong Kong; and
- (b) China Grand Pharmaceutical and Healthcare Holdings Limited, a company incorporated in Bermuda and whose shares are listed on the Main Board of the Stock Exchange of Hong Kong Limited (stock code: 512), of Units 3302, 33/F, The Center, 99 Queen's Road Central, Hong Kong,

jointly and severally.

**Bidders' Nominee** means Grand Pharma Sphere (Australia Bidco) Pty Limited (ACN 627 686 953).

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

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

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

**Court** means the Federal Court of Australia (NSW registry) or such other court of competent jurisdiction under the Corporations Act agreed to in writing between Sirtex and the Bidders.

**Deed Poll** means the deed poll dated 1 August 2018 executed by the Bidders and the Bidders' Nominee substantially in the form of Annexure C of the Scheme Implementation Deed or as otherwise agreed by Sirtex and the Bidders under which the Bidders and the Bidders' Nominee each covenants in favour of each Scheme Shareholder to perform its obligations under this Scheme.

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

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

**Encumbrance** means any security for payment of money or performance of obligations, including a mortgage, lien, charge, pledge, trust, power or title retention or flawed deposit arrangement and any “security interest” as defined in sections 12(1) or 12(2) of the *Personal Property Securities Act 2009* (Cth) or any agreement to create any of them or allow them to exist.

**End Date** means the date that is 12 months after the date of the Scheme Implementation Deed or such other date as is agreed in writing between Sirtex and the Bidders.

**Government Agency** means any government or any governmental, semi-governmental, statutory or judicial entity, agency or authority, whether in Australia, the United States of America or elsewhere, including any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions, and the ASX or any other stock exchange.

**Implementation Date** means the fifth Business Day after the Record Date or such other date as agreed in writing between Sirtex and the Bidders.

**Permitted Dividend** means one or more dividends declared or determined by the board of directors of Sirtex in respect of the period 1 July 2017 to 30 June 2018, provided that the maximum aggregate amount paid or payable by Sirtex in respect of all such dividends is \$0.30 per Sirtex Share.

**Record Date** means 7pm on the fifth Business Day following the Effective Date or such other date as Sirtex and the Bidders agree.

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

**Scheme** means this scheme of arrangement between Sirtex and the Scheme Shareholders under which all of the Scheme Shares will be transferred to the Bidders’ Nominee under Part 5.1 of the Corporations Act as described in clause 6 of this Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Sirtex, the Bidders and the Bidders’ Nominee in accordance with clause 9.2 of this Scheme.

**Scheme Consideration** means the consideration per Scheme Share to be provided by the Bidders (or the Bidders’ Nominee) in consideration for the transfer of the Scheme Share to the Bidders (or the Bidders’ Nominee), being, in respect of each Scheme Share, \$33.60 less the amount of any Permitted Dividend paid in respect of the Scheme Share in accordance with clause 4.4(e) of the Scheme Implementation Deed.

**Scheme Implementation Deed** means the scheme implementation deed dated 14 June 2018 between Sirtex and the Bidders under which, amongst other things, Sirtex has agreed to propose this Scheme to Sirtex Shareholders and each of the Bidders and Sirtex has agreed to take certain steps to give effect to this Scheme.

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

**Scheme Share** means a Sirtex Share held by a Scheme Shareholder at the Record Date.

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

**Scheme Shareholders** means Sirtex Shareholders at the Record Date.

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

**Share Register** means the register of members of Sirtex maintained in accordance with the Corporations Act.

**Sirtex Registry** means Link Market Services Limited (ABN 54 083 214 537).

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

**Sirtex Shareholder** means each person who is registered in the Share Register as the holder of Sirtex Shares.

**Trust Account** means the trust account operated by or on behalf of Sirtex to hold the Scheme Consideration on trust for the purpose of paying the Scheme Consideration to the Scheme Shareholders in accordance with clause 6.1 of this Scheme.

## 1.2. Interpretation

In this Scheme, headings are for convenience only and do not affect interpretation and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Scheme have a corresponding meaning;
- (d) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership, a trust and any Government Agency;
- (e) a reference to a clause, party, attachment, exhibit or schedule is a reference to a clause of, and a party, attachment, exhibit and schedule to this Scheme, and a reference to this Scheme includes any attachment, exhibit and schedule;
- (f) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (g) a reference to any document (including this Scheme) is to that document as varied, novated, ratified or replaced from time to time;
- (h) the word “includes” in any form is not a word of limitation;
- (i) a reference to “\$”, “A\$” or “dollar” is to Australian currency;
- (j) a reference to any time is, unless otherwise indicated, a reference to the time in Sydney, New South Wales, Australia;
- (k) a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (l) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (m) a reference to “associate”, “control” (by an entity of another entity), “officer”, “related body corporate”, “subsidiary”, “relevant interest” or “voting power” is to that term as defined in the Corporations Act;



- (n) a reference to the ASX Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

### **1.3. Business Day**

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

### **1.4. Listing requirements included as law**

A listing rule or business rule of a securities exchange will be regarded as a "law", and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

## **2. Preliminary**

### **2.1. Sirtex**

- (a) Sirtex is:
  - (i) a public company limited by shares;
  - (ii) incorporated in Australia and registered in Western Australia; and
  - (iii) admitted to the official list of the ASX and Sirtex Shares are officially quoted on the stock market conducted by ASX.
- (b) As at 12 September 2018, 55,789,512 Sirtex Shares were on issue.

### **2.2. The Bidders**

The Bidders are:

- (a) CDH Genetech Limited, which is an exempted company incorporated in the Cayman Islands; and
- (b) China Grand Pharmaceutical and Healthcare Holdings Limited, a company incorporated in Bermuda and whose shares are listed on the Main Board of the Stock Exchange of Hong Kong Limited (stock code: 512).

### **2.3. Bidders' Nominee**

- (a) Pursuant to clause 2.2 of the Scheme Implementation Deed, the Bidders have nominated the Bidders' Nominee to pay the Scheme Consideration and to which the Scheme Shares are to be transferred in accordance with clause 5 of this Scheme.
- (b) Clause 2.2 of the Scheme Implementation Deed provides that:
  - (i) the Bidders must procure that the Bidders' Nominee complies with all of the relevant obligations of the Bidders under the Scheme Implementation Deed and the Deed Poll; and
  - (ii) any such nomination will not relieve the Bidders of their obligations under the Scheme Implementation Deed, including the obligation to pay (or procure the payment by Bidders' Nominee of) the Scheme Consideration as contemplated by the terms of this Scheme.

## **2.4. If Scheme becomes Effective**

If this Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share to the Bidders' Nominee, the Bidders' Nominee will provide (or Bidders will provide on behalf of the Bidders' Nominee) the Scheme Consideration to Sirtex on behalf of each Scheme Shareholder in accordance with the terms of this Scheme;
- (b) all Scheme Shares will be transferred to the Bidders' Nominee on the Implementation Date; and
- (c) Sirtex will enter the name of the Bidders' Nominee in the Share Register in respect of all Scheme Shares transferred to the Bidders' Nominee in accordance with the terms of this Scheme.

## **2.5. Scheme Implementation Deed**

Sirtex and the Bidders have agreed by executing the Scheme Implementation Deed to implement the terms of this Scheme.

## **2.6. Deed Poll**

The Bidders and the Bidders' Nominee have executed the Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders to perform (or procure the performance of) its obligations as contemplated by this Scheme, including to provide (or procure the provision of) the Scheme Consideration.

# **3. Conditions Precedent**

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

This Scheme is conditional on, and will not become Effective until, the satisfaction of each of the following conditions precedent:

- (a) as at 8am on the Second Court Date, neither the Deed Poll nor the Scheme Implementation Deed have been terminated in accordance with their terms;
- (b) all of the conditions precedent in clause 3.1 of the Scheme Implementation Deed having been satisfied or waived (other than the condition precedent in clause 3.1(c) of this Scheme) in accordance with the terms of the Scheme Implementation Deed by 8am on the Second Court Date;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Sirtex, the Bidders and the Bidders' Nominee having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act; and
- (d) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

## **3.2. Conditions precedent and operation of clause 5**

The satisfaction of each condition of clause 3.1 of this Scheme is a condition precedent to the operation of clauses 5.2 to 5.8 and 6 of this Scheme.

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

- (a) Each of Sirtex and the Bidders must provide to the Court on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent set out in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and clause 3.1(d) of this Scheme) have been satisfied or waived as at 8am on the Second Court Date.
- (b) The certificates referred to in clause 3.3(a) will constitute conclusive evidence of whether the conditions precedent referred to in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and 3.1(d) of this Scheme) have been satisfied or waived as at 8am on the Second Court Date.

## **4. Scheme**

### **4.1. Effective Date**

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

### **4.2. Termination and End Date**

Without limiting any rights under the Scheme Implementation Deed, if:

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

then each of the Bidders, the Bidders' Nominee and Sirtex are released from any further obligation to take steps to implement the Scheme.

## **5. Implementation of Scheme**

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

If the conditions precedent set out in clause 3.1 of this Scheme (other than the condition precedent in clause 3.1(d) of this Scheme) are satisfied, Sirtex must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 5pm on the first Business Day after the day on which the Court approves this Scheme or such later time as the Bidders, the Bidders' Nominee and Sirtex agree in writing.

### **5.2. Transfer and registration of Sirtex Shares**

On the Implementation Date, but subject to the payment of the Scheme Consideration for the Scheme Shares into the Trust Account in accordance with clause 6.1(a) of this Scheme and the Bidders having provided Sirtex with written confirmation thereof:

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to the Bidders' Nominee without the need for any further act by any Scheme Shareholder (other than acts performed by Sirtex as attorney and agent for Scheme Shareholders under clause 9.1 of this Scheme) by:
  - (i) Sirtex delivering to the Bidders' Nominee a duly completed and executed Scheme Share Transfer executed on behalf of the Scheme Shareholders; and

- (ii) the Bidders' Nominee duly executing the Scheme Share Transfer, attending to the stamping of the Scheme Share Transfer (if required) and delivering it to Sirtex for registration; and
- (b) as soon as practicable after receipt of the duly executed Scheme Share Transfer, Sirtex must enter, or procure the entry of, the name of the Bidders' Nominee in the Share Register in respect of all Scheme Shares transferred to the Bidders' Nominee in accordance with the terms of this Scheme.

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

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

### **5.4. Title and rights in Sirtex Shares**

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 6 of this Scheme, on and from the Implementation Date, the Bidders' Nominee will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by Sirtex of the Bidders' Nominee in the Share Register as the holder of the Scheme Shares.

### **5.5. Scheme Shareholders' agreements**

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

### **5.6. Warranty by Scheme Shareholders**

Each Scheme Shareholder warrants to the Bidders' Nominee, and is deemed to have authorised Sirtex to warrant to the Bidders' Nominee as agent and attorney for the Scheme Shareholder by virtue of this clause 5.6, that:

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

### **5.7. Transfer free of Encumbrances**

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

### **5.8. Appointment of the Bidders' Nominee as sole proxy**

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 6.1 of this Scheme, on and from the Implementation Date until Sirtex registers the Bidders' Nominee as the holder of all of the Sirtex Shares in the Share Register, each Scheme Shareholder:

- (a) irrevocably appoints Sirtex as attorney and agent (and directs Sirtex in such capacity) to appoint the Bidders' Nominee and each of its directors from time to time (jointly and each of them individually) as its sole proxy and where applicable, corporate representative, to attend

shareholders' meetings, exercise the votes attaching to Sirtex Shares registered in its name and sign any shareholders resolution, and no Scheme Shareholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 5.8(a));

- (b) must take all other actions in the capacity of the registered holder of Sirtex Shares as the Bidders' Nominee reasonably directs;
- (c) acknowledges and agrees that in exercising the powers referred to in this clause 5.8(a), the Bidders' Nominee and any director, officer or agent nominated under this clause 5.8(a) may act in the best interests of the Bidders' Nominee as the intended registered holder of the Scheme Shares.

Sirtex undertakes in favour of each Scheme Shareholder that it will appoint the Bidders' Nominee and each of its directors from time to time (jointly and each of them individually) as that Scheme Shareholder's proxy or, where applicable, corporate representative in accordance with clause 5.8(a) of this Scheme.

## **6. Scheme Consideration**

### **6.1. Payment of Scheme Consideration**

- (a) The Bidders and the Bidders' Nominee must (pursuant to their respective obligations under the Scheme Implementation Deed and the Deed Poll), by no later than the Business Day before the Implementation Date, deposit (or procure the deposit) in cleared funds the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders into the Trust Account.
- (b) On the Implementation Date, subject to receipt of the Scheme Consideration from or on behalf of the Bidders (or the Bidders' Nominee) in accordance with clause 6.1(a) of this Scheme, Sirtex must pay from the Trust Account to each Scheme Shareholder an amount equal to the Scheme Consideration for each Scheme Share transferred to the Bidders' Nominee on the Implementation Date by that Scheme Shareholder, which obligation will be satisfied by Sirtex:
  - (i) where a Scheme Shareholder has, before the Record Date, made an election in accordance with the requirements of the Share Register to receive dividend payments from Sirtex 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) whether or not a Scheme Shareholder has made an election referred to in clause 6.1(b)(i), dispatching, or procuring the dispatch of, a cheque drawn on an Australian bank in Australian currency for the relevant amount to the Scheme Shareholder by pre-paid ordinary post (or, if the address of the Scheme Shareholder in the Share Register is outside Australia, by pre-paid airmail post) to their Registered Address at the Record Date, such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with clause 6.5).
- (c) If there is any surplus in the amount held by Sirtex in the Trust Account, that surplus must be paid by Sirtex to the Bidders' Nominee following the satisfaction of Sirtex's obligations under this clause.
- (d) Any interest on the amount on the Trust Account will be to the Bidders' or Bidders' Nominee's account (less bank fees and other charges).

### **6.2. Cancellation and re-issue of cheques**

- (a) Sirtex may cancel a cheque issued under clause 6.1 of this Scheme if the cheque:

- (i) is returned to Sirtex; or
  - (ii) has not been presented for payment within 6 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 (which request may not be made until the date which is 5 Business Days after the Implementation Date), Sirtex must reissue a cheque that was previously cancelled under this clause 6.2.
- (c) Sirtex must maintain appropriate records of all payments made in accordance with this clause 6 of this Scheme, including (amongst other things) the amounts paid (including the method of payment in accordance with clause 6.1(b)), the persons paid and any cancelled cheques pursuant to this clause 6.2.

### **6.3. Unclaimed monies**

- (a) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes “unclaimed money” (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).
- (b) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of the Bidders’ Nominee.

### **6.4. Orders of a court**

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

- (a) which requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with clause 6.1 of this Scheme, then Sirtex shall procure that payment is made in accordance with that order; or
- (b) which would prevent Sirtex from dispatching payment to any particular Scheme Shareholder in accordance with clause 6.1 of this Scheme, or such payment is otherwise prohibited by applicable law, Sirtex will be entitled to retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration until such time as payment in accordance with clause 6.1 of this Scheme is permitted by law.

### **6.5. Joint holders**

In the case of Scheme Shares held in joint names, any bank cheque required to be paid to Scheme Shareholders under the Scheme must be payable to the joint holders and be forwarded to the holder whose name appears first in the Share Register as at the Record Date.

## **7. Dealings in Scheme Shares**

### **7.1. Determination of Scheme Shareholders**

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

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Share Register as the holder of the relevant Scheme Shares on or before the Record Date; and

- (b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received on or before the Record Date at the place where the Share Register is kept.

## **7.2. Share Register**

Sirtex must register any registrable transmission applications or transfers of the Scheme Shares received in accordance with clause 7.1(b) of this Scheme on or before the Record Date, provided that nothing in this clause 7.2 requires Sirtex to register a transfer that would result in a Sirtex Shareholder holding a parcel of Sirtex Shares that is less than a “marketable parcel” (as defined in the operating rules of ASX).

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

- (a) If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date in any way except as set out in this Scheme and any such disposal will be void and of no legal effect whatsoever.
- (b) Sirtex will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Shares received after the Record Date (except a transfer to the Bidders’ Nominee pursuant to this Scheme and any subsequent transfer by the Bidders’ Nominee or its successors in title) or received prior to the Record Date but not in registrable or actionable form.

## **7.4. Maintenance of Share Register**

For the purpose of determining entitlements to the Scheme Consideration, Sirtex will maintain the Share Register in accordance with the provisions of this clause 7 until the Scheme Consideration has been paid to the Scheme Shareholders and the Bidders’ Nominee has been entered in the Share Register as the holder of all the Scheme Shares. The Share Register in this form will solely determine entitlements to the Scheme Consideration.

## **7.5. Effect of certificates and holding statements**

Subject to provision of the Scheme Consideration and registration of the transfer to the Bidders’ Nominee contemplated in clauses 5.2 and 6.1 of this Scheme, any statements of holding in respect of Scheme Shares will cease to have effect after the Record Date as documents of title in respect of those Scheme Shares (other than statements of holding in favour of the Bidders’ Nominee and its successors in title). After the Record Date, each entry current on the Share Register as at the Record Date (other than entries in respect of the Bidders’ Nominee or its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration.

## **7.6. Details of Scheme Shareholders**

Within 3 Business Days after the Record Date Sirtex will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Shareholder, as shown in the Share Register at the Record Date, are available to the Bidders and the Bidders’ Nominee in such form as the Bidders and the Bidders’ Nominee reasonably requires.

# **8. Quotation of Sirtex Shares**

- (a) Suspension of trading on ASX in Sirtex Shares will occur from the close of trading on ASX on the Effective Date.
- (b) After the Scheme has been fully implemented, Sirtex will apply:
  - (i) for termination of the official quotation of Sirtex Shares on the ASX; and

- (ii) to have itself removed from the official list of the ASX,

in each case with effect on and from the close of trading on the day immediately following, or shortly after, the Implementation Date, as determined by the Bidders' Nominee.

## **9. General Scheme Provisions**

### **9.1. Power of attorney**

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

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

and Sirtex accepts such appointment.

### **9.2. Variations, alterations and conditions**

Sirtex may, with the consent of the Bidders and the Bidders' Nominee (which cannot be unreasonably withheld), by its counsel or solicitor consent on behalf of all persons concerned to any variations, alterations or conditions to this Scheme which the Court thinks fit to impose.

### **9.3. Further action by Sirtex**

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

### **9.4. Authority and acknowledgement**

Each of the Scheme Shareholders:

- (a) irrevocably consents to Sirtex, the Bidders and the Bidders' Nominee doing all things necessary or expedient for or incidental to the implementation of this Scheme; and
- (b) acknowledges that this Scheme binds Sirtex and all Scheme Shareholders (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against the Scheme at the Scheme Meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of Sirtex.

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

Neither Sirtex nor the Bidders and the Bidders' Nominee, nor any of their respective officers, will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

### **9.6. Enforcement of Deed Poll**

Sirtex undertakes in favour of each Scheme Shareholder to enforce the Deed Poll against the Bidders and the Bidders' Nominee on behalf of and as agent and attorney for the Scheme Shareholders.

### **9.7. Stamp duty and registration fees**

The Bidders' Nominee (or the Bidders on behalf of the Bidders' Nominee) will:



- (a) pay all stamp duties, registration fees and similar taxes payable or assessed as being payable in connection with this Scheme or the Deed Poll (including any fees, fines, penalties and interest in connection with those amounts); and
- (b) indemnify each Scheme Shareholder against any liability incurred by the Scheme Shareholder arising from its failure to comply with clause 9.7(a).

#### **9.8. Notices**

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

#### **9.9. Governing law and jurisdiction**

- (a) This Scheme is governed by the law in force in New South Wales.
- (b) Each party irrevocably and unconditionally:
  - (i) submits to the non-exclusive jurisdiction of the courts of that place; and
  - (ii) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.