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ASX Announcement

URB INVESTMENTS TO MERGE WITH 360 CAPITAL TOTAL RETURN FUND

The Board of URB Investments Limited (**ASX: URB**) announces that URB has entered into a Scheme Implementation Deed with 360 Capital FM Limited as responsible entity for 360 Capital Total Return Active Fund and 360 Capital Total Return Passive Fund (**ASX: TOT**) under which it is proposed that TOT will acquire 100% of the issued capital of URB (**Proposed Transaction**). The Proposed Transaction will be implemented by way of scheme of arrangement (**Scheme**).

If URB shareholders approve the Scheme at a meeting expected to be held in early December, it is anticipated that the Scheme will be implemented before the end of December.

The URB Board of Directors intend to unanimously recommend that URB Shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to the independent expert concluding, and continuing to conclude, that the Scheme is fair and reasonable and in the best interests of URB Shareholders.

Merger Consideration

Under the Scheme, URB shareholders will receive 0.9833 TOT units for each URB share they hold (**Scheme Consideration**).

Based on the most recent closing price of TOT units (\$1.18), the implied value of the consideration for URB shareholders is approximately \$1.16 per URB share.

The scheme consideration was calculated by reference to the adjusted 30 September 2019 net tangible asset backing (**NTA**) of URB and TOT.

Key Benefits for URB Shareholders

Premium to Pre-Tax NTA

The implied value of the Scheme Consideration of approximately \$1.16 per URB Share reflects an attractive value for URB Shares, incorporating a 3.0% premium to the URB adjusted pre-tax NTA per share of \$1.136 as at 30 September 2019 on an ex dividend basis and allowing for transaction costs.

Premium to Share Price Benchmarks

The implied value of the Scheme Consideration represents the following premiums to relevant URB Share price benchmarks:

- 13.2% premium to URB's closing price prior to the date of this announcement;
- 12.3% premium to URB's 30-day VWAP;
- 7.2% premium to URB's 3-month VWAP; and
- 29.6% premium to URB's trading price of \$0.895 on 24 May 2019 (being the date prior to TOT commencing to buy URB Shares).

Increase in Projected Distributions

URB Shareholders are expected to participate in the improved earnings and distribution profile of TOT post-merger (**the Combined Group**), including a forecast FY2020 distribution of 9.0 cents per TOT unit on an annualised basis, representing a substantial increase above URB's ordinary dividends of 2.25 cents and total dividends of 5.25 cents per URB Share for FY2019.

URB shareholders will have an entitlement to the TOT December 2019 quarterly distribution payable by the Combined Group, forecast to be 2.25 cents per unit if the Scheme is implemented prior to the record date for the distribution. If the Scheme implements after that record date, URB shareholders will, subject to certain conditions, receive additional cash consideration under the Scheme to the equivalent value of the quarterly distribution.

Increased Market Capitalisation and Sharemarket Liquidity

The Combined Group will have an estimated market capitalisation of approximately \$170 million, a substantial increase on URB's current market capitalisation of \$75.4 million, and an increased ownership base of over 3,500 securityholders.

Diversified Portfolio and dedicated Real Estate Investment Management Team

The investment theme of the Combined Group will be investment in a diversified portfolio of direct and indirect real estate assets and real estate debt investments. It will have the ability to access direct real estate credit transactions through 50.0% ownership of AMF Finance, 360 Capital's real estate credit origination platform and will have a dedicated real estate management team with diverse experience across real estate equity and debt investment, turnarounds and asset repositioning.

Chairman of URB, Mr Warwick Negus said: "The board of URB view a merger with TOT as an appropriate opportunity to redress the substantial discount to NTA at which URB shares have traded since last year, and to capitalise on both the increased distribution profile generated by TOT and to benefit from the increased sharemarket liquidity and resources a larger vehicle offers.

360 Capital is a well respected real estate investment group and the URB Board is pleased to recommend this transaction to our shareholders in the absence of a superior proposal and the Independent Expert concluding, and continuing to conclude, that the Scheme is fair and reasonable and in the best interests of URB Shareholders."

Major Shareholder

Major shareholder, Washington H. Soul Pattinson and Company Limited is supportive of the proposed merger and has indicated its intention to vote all securities in favour of the proposed merger, subject to a "fair and reasonable" opinion from an Independent Expert and no superior proposal emerging.

Conditions

The Scheme is subject to a number of conditions, including Court approval, approval by URB Shareholders, the Independent Expert concluding, and continuing to conclude, that the Scheme is fair and reasonable and in the best interests of URB Shareholders and the novation of the investment management agreement between URB and Contact Asset Management Pty Ltd to 360 Capital Group Limited.

URB has engaged Lonergan Edwards as Independent Expert to provide an opinion on whether the Scheme is fair and reasonable and in the best interests of URB Shareholders.

A copy of the Scheme Implementation Deed, including all applicable conditions, is attached to this announcement.

Indicative Timetable

URB Shareholders do not need to take any action at the present time. URB Shareholders will receive a Scheme Booklet containing information in relation to the Proposed Transaction in due course. This will include a more detailed explanation of the Proposed Transaction, including the reasons for the URB Board's recommendation, along with a copy of the independent expert's report.

A meeting of URB Shareholders is expected to be held in early December to consider the Proposed Transaction and vote to approve the Scheme.

In order for the Scheme to be approved and implemented, URB Shareholders eligible to vote must approve the Scheme Resolution by the requisite majorities, being:

- (a) a majority in number (more than 50%) of URB Shareholders present and voting at the meeting (either in person or by proxy); and
- (b) at least 75% of the total number of votes cast on the Scheme Resolution.

Advisers

URB has retained Andover Corporate Finance (financial), Ashurst (legal and tax) and McGrath Nicol (financial due diligence) as advisers in this matter.

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About URB Investments: URB is a research driven, listed investment company, focused on capturing long-term value by investing in a diversified portfolio of assets with exposure to urban renewal and regeneration. Listed on the ASX (URB:ASX) and managed by Contact Asset Management, an investment in URB gives shareholders access to a diversified portfolio of Equity Assets and Direct property Assets.



Scheme Implementation Deed

URB Investments Limited

ABN 89 615 320 262

360 Capital FM Limited as responsible entity for 360
Capital Total Return Active Fund and 360 Capital Total
Return Passive Fund

ABN 15 090 664 396

2019

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THIS DEED is made on 14 October 2019

BETWEEN:

- (1) **URB Investments Limited** ABN 89 615 320 262 whose registered office is at Level 14, 151 Clarence St Sydney NSW 2000 (**Target**); and
- (2) **360 Capital FM Limited** ABN 15 090 664 396 as responsible entity for **360 Capital Total Return Active Fund and 360 Capital Total Return Passive Fund** whose registered office is at Suite 804, Level 8 56 Pitt Street Sydney NSW 2000 (**Bidder**).

RECITALS:

- (A) Bidder and Target have agreed to merge by means of a members' scheme of arrangement under Part 5.1 of the Corporations Act.
- (B) At the request of the Bidder, Target intends to propose the Scheme and issue the Scheme Booklet.
- (C) Target and Bidder have agreed to implement the Scheme on the terms and conditions of this document.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

Announcement means a press release, announcement or other public statement (other than a draft explanatory statement, an explanatory statement or supplementary explanatory statement as required under Part 5.1 of the Corporations Act).

ASIC means the Australian Securities and Investments Commission.

ASIC Review Draft means the draft of the Scheme Booklet, which is provided to ASIC for approval under section 411(2) of the Corporations Act.

Associate has the meaning given in section 12(2) of the Corporations Act.

ASX means the Australian Securities Exchange or ASX Limited (ABN 98 008 624 691), as the context requires.

ASX Listing Rules means the listing rules of ASX.

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, licence, notarisation, permit or waiver, however it is described, including any renewal or amendment and any condition attaching to it from or by a Government Agency; and
- (b) in relation to anything that could be prohibited or restricted by law, if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken.

Bidder Disclosure Material means the Bidder Due Diligence Information and information available on the Public Registers prior to the date of this document.

Bidder Due Diligence Information means all written information relating to the business, assets, liabilities, operations, profits and losses, financial position and performance and prospects of any member of the Bidder Group made available by or on behalf of any member of the Bidder Group to Target on or before the DD Cut-off Date.

Bidder Group means TOT and its Subsidiaries.

Bidder Group Member means a member of the Bidder Group.

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

Bidder Information means the information provided by Bidder to Target in accordance with clause 4.3(c) for inclusion in the Scheme Booklet. For the avoidance of doubt this information includes pro-forma accounts for the post Implementation combined group, subject to the financial information provided by the Target as an input into those pro-forma accounts which remains Target Information.

Bidder Material Adverse Change means any event, occurrence or matter that individually or when aggregated with all such events, occurrences or matters:

- (a) diminishes, or is reasonably likely to diminish, (whether now or in the future) the consolidated net tangible assets of the Bidder Group by an amount equal to the Bidder NTA Decrease or more;
- (b) diminishes, or is reasonably likely to diminish the Bidder's distributions for the financial year ending 30 June 2020 to less than 9.0 cents per security (being the forecast distribution amount published in the Bidder's FY2019 results announcement); or
- (c) has the result that the Bidder Group is unable to carry on its business in substantially the same manner as carried on as at the date of this document, or that otherwise materially and adversely affects the prospects of the Bidder Group,

other than an event, occurrence or matter:

- (d) expressly required or permitted by this document, the Scheme or the transaction contemplated by this document or the Scheme;
- (e) done or not done at the written request or with the written acknowledgement and approval of the Target, including any consequence arising as a result of such matters;
- (f) resulting from changes in generally accepted accounting principles or the interpretation of them;
- (g) arising as a result of any change in law or governmental policy;
- (h) arising from changes in economic or business conditions or securities markets in general; or
- (i) to the extent that event, occurrence or matter is fairly disclosed in the Disclosure Materials,

but in respect of paragraphs (f), (g) and (h), in each case excluding any change, event, occurrence, circumstance or matter which has a disproportionate adverse effect on Bidder,

taken as a whole, as compared to other participants in the principal business segment in which Bidder operates.

Bidder Nominee means 360 Capital FM Limited ACN 090 664 396 as responsible entity for 360 Capital Total Return Active Fund.

Bidder NTA Decrease means the amount which is equal to 5% of the net tangible assets of the Bidder as at 30 September 2019, being \$4,724,000.

Bidder Prescribed Event means the occurrence of any of the following:

- (a) **(conversion)** Bidder converting all or any of its units into a larger or smaller number of units;
- (b) **(reduction of capital)** Bidder or another member of the Bidder Group resolving to reduce its capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its units;
- (c) **(buy-back)** Bidder or another member of the Bidder Group:
 - (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(distribution)** Bidder declaring, paying or distributing or announcing an intention to declare, pay or distribute any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie), other than a Permitted Bidder Distribution;
- (e) **(issuing or granting units or options)** a member of the Bidder Group issuing units, or granting an option over its units, or agreeing to make such an issue or grant such an option in each case to a person outside the Bidder Group (other than the issue of the Placement Units or units pursuant to a distribution reinvestment plan in connection with a Permitted Bidder Distribution);
- (f) **(securities or other instruments)** any member of the Bidder Group issuing or agreeing to issue securities or other instruments convertible into units or debt securities in each case to a person outside the Bidder Group;
- (g) **(constitution)** any member of the Bidder Group amending, modifying, replacing or adopting a constituent document;
- (h) **(acquisitions, disposals or tenders)** any member of the Bidder Group:
 - (i) acquiring or disposing of;
 - (ii) agreeing to acquire or dispose of; or
 - (iii) offering, proposing, announcing a bid or tendering for,

any business, assets, Entity or undertaking the value of which exceeds \$20,000,000 or which is not in the ordinary course and in accordance with the Bidder's investment strategy, as described in the Scheme Booklet without the written consent of the Target such consent not to be unreasonably withheld;
- (i) **(Encumbrances)** other than in the ordinary course of business and consistent with past practice any member of the Bidder Group creating, or agreeing to create, any

new Encumbrance over or declaring itself the trustee of the whole or a substantial part of its business or property;

- (j) **(related party transactions)** any member of the Bidder Group entering into or resolving to enter into or amend a transaction with a related party (as defined in section 228 of the Corporations Act) that is not on arm's length terms;
- (k) **(Insolvency)** Bidder or any of its Related Bodies Corporate becoming Insolvent;
- (l) **(trusts)** any of the following occur:
 - (i) TOT RE ceases to be the responsible entity of either TOT Active Fund or TOT Passive Fund;
 - (ii) the trustee of any Bidder Group Member as at the date of this document ceases to be the trustee of that Bidder Group Member;
 - (iii) the Bidder Unitholders resolve to remove or replace TOT RE as responsible entity of TOT or the trustee of any Bidder Group Member;
 - (iv) a meeting being convened to consider, and such meeting approves, a resolution for the removal, retirement or replacement of TOT RE as responsible entity of TOT, or the trustee of any Bidder Group Member; or
 - (v) any application being made in any court for the appointment of a temporary responsible entity of TOT or any Bidder Group Member in accordance with the Corporations Act;
- (m) **(indemnity)** TOT RE (or its Representatives) doing or failing to do anything that could restrict TOT RE's right of indemnity from the Trust Property in respect of the obligations incurred by TOT RE under the documents to which it is a party;
- (n) **(termination)** TOT RE (or its Representatives) effects or facilitates the termination or winding up of TOT or any Bidder Group Member;
- (o) **(resettlement)** TOT RE (or its Representatives) effects or facilitates the resettlement of the Trust Property;
- (p) **(delisting and extended suspension)** TOT ceases to be admitted to the official list of ASX or Bidder Units cease to be quoted by ASX or TOT is suspended from trading by ASX for a consecutive period of more than 2 weeks;
- (q) **(accounting policies)** there is a change to the existing accounting policies of TOT other than required by law or the Australian Accounting Standards; and
- (r) **(resolutions)** TOT RE (or its Representatives) or TOT (acting through TOT RE) or any Bidder Group Member (acting through its respective trustee) agrees or resolves to do any of the foregoing,

except to the extent contemplated by this document or the Scheme or where Target has consented to the event occurring, in writing.

Bidder Representations and Warranties means the representations and warranties of the Bidder set out in clause 12.3.

Bidder Unit means a stapled security in TOT consisting of one TOT Active Fund Unit and one TOT Passive Fund Unit.

Bidder Unitholder means a person who is registered in the TOT Register as a holder of Bidder Units from time to time.

Break Fee means \$758,100 (exclusive of GST).

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.

Cash Scheme Consideration means \$0.0225 for each Scheme Share held at the Record Date.

Claim means any claim, allegation, cause of action, proceeding, liability, suit or demand made against the person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Competing Proposal means a proposal, transaction or arrangement (whether by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale or issue of securities, joint venture or otherwise) which, if completed, would mean a Third Party whether alone or together with its Associates would:

- (a) directly or indirectly, acquire an interest or relevant interest in or become the holder of 20% or more of the Target Shares;
- (b) acquire control of Target, within the meaning of section 50AA of the Corporations Act;
- (c) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in all or a substantial part or a material part of the assets of or business conducted by the Target; or
- (d) otherwise acquire or merge (including by a reverse takeover bid, scheme of arrangement or dual listed company structure) with Target.

Condition means a condition precedent set out in clause 3.2.

Confidentiality Deed means the deed of that name between Target and Bidder in respect of the proposed Scheme dated 2 September 2019.

Constitution means the TOT Active Fund Constitution and the TOT Passive Fund Constitution (in each case as amended).

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

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

Court means the Federal Court of Australia.

DD Cut-off Date means 11 October 2019, or such later date as Target and Bidder agree.

Deed of Novation means the deed of novation to be entered into between the Investment Manager, the Target and 360 Capital Group Limited (ACN 113 569 136) on or after the date of this document.

Deed Poll means a document in the form or substantially in the form of Schedule 3, or in such other form as is agreed in writing between Target and Bidder.

Disclosure Materials means the Bidder Disclosure Material and the Target Disclosure Materials.

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

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

Encumbrance means 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 (as defined in section 12 of the *Personal Property Securities Act 2009* (Cth)).

End Date means 28 February 2020, subject to any extension to that date made under clause 3.6.

Entity includes a natural person, a body corporate, a partnership, a trust and the trustee of a trust.

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

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

First Court Date means the first day of the hearing of the Court of an application for an order under section 411(1) of the Corporations Act convening of the Scheme Meeting.

Government Agency means a government, government department or a governmental, semi-governmental, administrative, statutory or judicial entity, agency, authority, commission, department, tribunal, or person charged with the administration of a law or agency, whether in Australia or elsewhere, including the Australian Competition and Consumer Commission, ASIC, ASX, the Takeovers Panel, and any self-regulatory organisation established under statute or by ASX.

Group means the Bidder Group or Target, as applicable.

GST Law means the same as "GST Law" in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Implementation means the implementation of the Scheme, on it becoming Effective.

Implementation Date means the fifth Business Day following the Record Date.

Impugned Amount means all or any part of the payment required to be made under clause 9.2 or 10.2 that is found by the Takeovers Panel or court to:

- (a) be unlawful;
- (b) involve a breach of directors' duties; or
- (c) constitute Unacceptable Circumstances.

Independent Expert means an independent expert commissioned by the Target to express an opinion on whether the Scheme is fair and reasonable to and in the best interests of Target Shareholders.

Independent Expert's Report means the report from the Independent Expert commissioned by Target for inclusion in the Scheme Booklet, and any update to such report that the Independent Expert issues prior to the date of the Scheme Meeting.

Ineligible Overseas Shareholder means a Target Shareholder:

- (a) who is (or is acting on behalf of) a resident of a jurisdiction other than Australia or New Zealand and their respective external territories; or
- (b) whose address shown in the Register is a place outside Australia or New Zealand and their respective external territories.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in paragraphs (a), (b) or (c); or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Investment Manager means Contact Asset Management Pty Limited ACN 614 316 595.

Loan means a loan from the Target to the Bidder on the Loan Terms.

Loan Report means a loan book summary (EOM) to be in the same form, and consistent with, past practice.

Loan Terms means the terms agreed between the parties as set out in Schedule 4.

Loss includes any loss, damage, liability, obligation, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense) however it arises and whether it is present or future, fixed or unascertained, actual or contingent but excluding any consequential or indirect loss, economic loss or loss of profits.

Meeting Date means the date on which Target Shareholders vote on a resolution to approve the Scheme under section 411(4)(a)(ii) of the Corporations Act.

New Bidder Units means Bidder Units to be issued under the Scheme as Scrip Scheme Consideration.

Ordinary Course Equity Transaction means:

- (a) disposal of equity securities on the ASX undertaken in the ordinary course consistent with the existing investment strategy of the Target; or
- (b) any acquisition of equity securities on the ASX made after consultation with and consent from the Bidder, such consent not to be unreasonably withheld.

Penrith Asset means the Target's 49.9% interest in the units of the PURT No. 4 trust which owns the property at 510-536 High Street, Penrith NSW.

Permitted Bidder Distribution means a distribution of up to \$0.225 per Bidder Unit in respect of the 3 months ending 30 September 2019 and a distribution of up to \$0.0225 per Bidder Unit in respect of the 3 months ending 31 December 2019.

Placement Units means up to 9,143,498 stapled fully paid ordinary units in the TOT Active Fund and the TOT Passive Fund to be issued pursuant to the Bidder's institutional placement which was announced on or about the date of this document.

PPS Security Interest means a security interest that is subject to the PPSA.

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

Public Registers means the records made available for public inspection by ASIC or ASX and any other relevant public registers.

Record Date means 7.00 pm on the day which is two Business Days after the Effective Date, or any other date (after the Effective Date) agreed by the parties to be the record date to determine entitlements to receive Scheme Consideration under the Scheme.

Records means all originals and copies of all books, records, reports, correspondence, files, manuals and other documents and information created by, owned by, or under the control of the Target, whether in printed, electronic or any other form and including all:

- (a) books of account, trading and financial records, employee records, tax returns and related correspondence;
- (b) customer lists, supplier lists, price lists, pricing models and sales and marketing materials;
- (c) title deeds and other documents of title;
- (d) contracts to which the Target is a party and authorisations granted to the Target.

Register means the register of members of Target.

Regulatory Approvals means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Governmental Agency; or

- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Governmental Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

Related Body Corporate has the meaning given to 'related body corporate' in the Corporations Act.

Representatives means, in relation to an Entity:

- (a) each of the Entity's Subsidiaries; and
- (b) each of the directors, officers, employees and legal, financial and other expert advisers of the Entity or any of its Subsidiaries.

Reverse Break Fee means \$828,700 (exclusive of GST).

Scheme means a scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Target Shareholders in the form or substantially in the form of Schedule 2 or in such other form as is agreed in writing between Target and Bidder, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved by each party.

Scheme Booklet means the information memorandum in respect of the Scheme to be approved by the Court and dispatched to Target Shareholders, and includes the Scheme, a copy of the Deed Poll executed by Bidder, an explanatory statement as that term is defined in section 412 of the Corporations Act, the Independent Expert's Report and a notice of meeting and proxy form.

Scheme Consideration means the consideration provided by Bidder for the transfer of the Scheme Shares held by Scheme Shareholders to Bidder, being:

- (a) the Scrip Scheme Consideration; and
- (b) if the Target grants the Bidder the Loan and the Implementation Date is after the TOT Distribution Record Date (and prior to the End Date), the Cash Scheme Consideration.

For the avoidance of doubt, if the Implementation Date occurs prior to the TOT Distribution Record Date or after the End Date, the Cash Scheme Consideration does not form part of the Scheme Consideration.

Scheme Meeting means the meeting of Target Shareholders to be convened as ordered by the Court under section 411(1) of the Corporations Act, to consider the Scheme.

Scheme Resolution means a resolution to approve the Scheme.

Scheme Shareholders means each Target Shareholder as at the Record Date (taking into account registration of all registrable transfers and transmission applications received at Target's share registry by the Record Date), excluding the Bidder Nominee.

Scheme Shares means the Target Shares on issue on the Record Date excluding any Target Shares registered to the Bidder Nominee.

Scrip Scheme Consideration means 0.9833 Bidder Units for each Scheme Share held by a Scheme Shareholder as at the Record Date.

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

Security Interest means any security interest, including:

- (a) a PPS Security Interest;
- (b) any other mortgage, charge, pledge or lien; or
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Shared Costs means \$100,000 being the costs of the Independent Expert and the data room (exclusive of GST to the extent that the acquirer is entitled to an input tax credit on the acquisition).

Subsidiary has the meaning given in the Corporations Act, provided that an Entity will also be taken to be a Subsidiary of another Entity if it is controlled by that Entity (as 'control' is defined in section 50AA of the Corporations Act) and, without limitation:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and
- (b) an Entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.

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

- (a) reasonably capable of being completed taking into account all aspects of the Competing Proposal, including its conditions; and
- (b) of a higher financial value and is more favourable to Target Shareholders (as a whole) than the Scheme, taking into account all aspects of the Competing Proposal, including the identity, reputation and financial condition of the person making such a proposal, legal, regulatory and financial matters.

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

Target Board means the board of directors of Target as at the Implementation Date.

Target Confidential Information means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between Target and any third party (other than a Representative of Target in connection with a Competing Proposal) before, on or after the date of this document relating to the business, including the assets, liabilities contracts or other affairs, of the Target.

Target Disclosure Material means the Target Due Diligence Information and information available on the Public Registers prior to the date of this document.

Target Due Diligence Information means all written information relating to the business, assets, liabilities, operations, profits and losses, financial position and

performance and prospects of Target and its Subsidiaries provided or made available by or on behalf of the Target to Bidder on or before the DD Cut-off Date.

Target Incoming Director means Tony Pitt, James Storey and Glenn Butterworth.

Target Indemnified Parties means Target, its officers and advisers and its Related Bodies Corporate and the officers and advisers of each of its Related Bodies Corporate.

Target Information means all information included in the Scheme Booklet, other than the Bidder Information, the Independent Expert's Report and any other report or letter issued by a Third Party.

Target Material Adverse Change means any event, occurrence or matter that individually or when aggregated with all such events, occurrences or matters:

- (a) diminishes, or is reasonably likely to diminish, (whether now or in the future) the consolidated net tangible assets of the Target by an amount equal to the Target NTA Decrease or more;
- (b) diminishes, or is reasonably likely to diminish, (whether in the Target's current financial year or in a future financial year) the distributable income (to be calculated by reference to the manner in which 'distributable income' was calculated in the most recent Target results presentation) of the Target by an amount equal to \$153,000 or more, which amount will be calculated after taking into account any event, occurrence or matter not disclosed prior to the date of this document that has or could reasonably be expected to have a positive effect on the distributable income of the Target in the relevant financial year; or
- (c) has the result that the Target is unable to carry on its business in substantially the same manner as carried on as at the date of this document, or that otherwise materially and adversely affects the prospects of the Target,

other than an event, occurrence or matter:

- (d) expressly required or permitted by this document, the Scheme or the transaction contemplated by this document or the Scheme;
- (e) done or not done at the written request or with the written acknowledgement and approval of the Bidder, including any consequence arising as a result of such matters;
- (f) resulting from changes in generally accepted accounting principles or the interpretation of them;
- (g) arising as a result of any change in law or governmental policy;
- (h) arising from changes in economic or business conditions or securities markets (in particular the All Ordinaries (INDEX ASX: XAO)) in general; or
- (i) to the extent that event, occurrence or matter is fairly disclosed in the Disclosure Materials,

but in respect of paragraphs (f), (g) and (h), in each case excluding any change, event, occurrence, circumstance or matter which has a disproportionate adverse effect on Target, taken as a whole, as compared to other participants in the principal business segment in which Target operates.

Target NTA Decrease the amount which is equal to 5% of the adjusted net tangible assets of the Target as at 30 September 2019, being \$4,202,000.

Target Outgoing Director means all directors of the Target.

Target Prescribed Event means the occurrence of any of the following:

- (a) **(conversions)** Target converting all or any of its shares into a larger or smaller number of shares;
- (b) **(reduction of share capital)** Target resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) **(buy-back)** Target:
 - (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(distribution)** Target declaring, paying or distributing or announcing an intention to declare, pay or distribute any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);
- (e) **(issuing or granting shares or options)** Target issuing shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option in each case to any person other than Target;
- (f) **(securities or other instruments)** Target issuing or agreeing to issue securities or other instruments convertible into shares or debt securities;
- (g) **(constitution)** Target amending, modifying, replacing or adopting a constituent document;
- (h) **(acquisitions, disposals or tenders)** Target:
 - (i) acquiring or disposing of;
 - (ii) agreeing to acquire or dispose of; or
 - (iii) offering, proposing, announcing a bid or tendering for,

any interest in the Penrith Asset or any other business, assets, Entity or undertaking other than Ordinary Course Equity Transactions;
- (i) **(encumbrances)** the Target creates, or agrees to create, any Encumbrance over, or declares itself the trustee of, any part of its shares, assets or revenues;
- (j) **(arrangements with the Investment Manager)** Target enters into or amends any contract or commitment (or any series of related contracts or commitments) which involve the Investment Manager or any Related Body Corporate of the Investment Manager;
- (k) **(related party transactions)** Target entering into or resolving to enter into or amend a transaction with a related party (as defined in section 228 of the Corporations Act);
- (l) **(commitments and settlements)** other than pursuant to an Ordinary Course Equity Transaction:

- (i) entering into any contract or commitment involving revenue or expenditure of the Target;
 - (ii) terminating or amending in a material manner any contract material to the conduct of the Target's;
 - (iii) waiving any material third party default; or
 - (iv) accepting as a settlement or compromise of a material matter less than the full compensation due to Target or a Subsidiary of Target;
- (m) **(director, officer and employee remuneration)** the Target:
- (i) increases the remuneration of, or pays any bonus or issues any securities to, or otherwise varies the employment arrangements with, any director, officer or employee of the Target or the Investment Manager;
 - (ii) accelerates the rights of any of director, officer or employee of the Target or the Investment Manager to benefits of any kind; or
 - (iii) pays, gives, or agrees to pay or give, a director, officer or employee of the Target or the Investment Manager a termination payment or benefit (including a 'golden parachute') or a payment or benefit upon, or in connection with, a change of control, or any other kind of bonus, compensation or benefit,
- other than:
- (iv) increase of base salary in the ordinary course as part of annual remuneration reviews consistent with past practices; or
 - (v) as provided for in the Target's redundancy policy or an existing employment or services agreement;
- (n) **(cash)** the amount of cash on the Target's balance sheet falls below \$26,000,000, excluding as a result of the Loan;
- (o) **(Insolvency)** Target or any of its Related Bodies Corporate becoming Insolvent;
- (p) **(delisting and extended suspension)** Target ceases to be admitted to the official list of ASX or Target Shares cease to be quoted by ASX or Target is suspended from trading by ASX for a consecutive period of more than 2 weeks;
- (q) **(accounting policies)** there is a change to the existing accounting policies of Target other than required by law or the Australian Accounting Standards; and
- (r) **(resolutions)** Target (or its Representatives) agrees or resolves to do any of the foregoing,

except to the extent contemplated by this document or the Scheme or where Bidder has consented to the event occurring, in writing.

Target Representations and Warranties means the representations and warranties of the Target set out in clause 12.2.

Target Share means a fully paid ordinary share in Target.

Target Shareholder means each person entered in the Register as a holder of Target Shares.

Target Shareholder Approval means a resolution in favour of the Scheme passed by the required majorities in accordance with the Corporations Act.

Tax Act means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth) or either of them.

Third Party means any of the following:

- (a) a person other than any Bidder Group Member; or
- (b) a consortium, partnership, limited partnership, syndicate, trust or other group in which no Bidder Group Member has agreed to be a participant.

Timetable means the timetable for the Implementation of the Scheme as set out in Schedule 1, subject to any modifications as the parties may agree in writing.

TOT means 360 Capital Total Return Fund (ASX: TOT) which comprises TOT Active Fund and TOT Passive Fund.

TOT Active Fund means the 360 Capital Total Return Active Fund (ARSN 602 303 613).

TOT Active Fund Constitution means the trust deed of TOT Active Fund adopted on 13 October 2014 (as amended).

TOT Active Fund Register means the register of member of TOT Active Fund maintained by or on behalf of TOT Active Fund in accordance with section 168(1) of the Corporations Act.

TOT Active Fund Unit means a fully paid ordinary unit in TOT Active Fund.

TOT Distribution Record Date means the record date for the TOT distribution for the quarter ending 31 December 2019.

TOT Passive Fund means the 360 Capital Total Return Passive Fund (ARSN 602 304 432).

TOT Passive Fund Constitution means the trust deed of TOT Passive Fund adopted on 13 October 2014 (as amended).

TOT Passive Fund Register means the register of member of TOT Passive Fund maintained by or on behalf of TOT Active Fund in accordance with section 168(1) of the Corporations Act.

TOT Passive Fund Unit means a fully paid ordinary unit in TOT Passive Fund.

TOT RE means 360 Capital FM Limited ACN 090 664 396.

TOT Register means the TOT Active Fund Register and the TOT Passive Fund Register which together form the register of members of TOT maintained by or on behalf of TOT in accordance with section 168(1) of the Corporations Act.

Trust Property means the scheme property of TOT including all of TOT RE's rights, property and undertaking the subject of TOT:

- (a) of whatever kind and wherever situated; and
- (b) whether present or future.

Unacceptable Circumstances has the meaning given to that term in section 657A of the Corporations Act.

1.2 Rules for interpreting this document

Headings and catchwords are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The words **controller**, **officer**, **relevant interest** and **security interest** have the same meanings as given by the Corporations Act.
- (g) A reference to **\$** or **dollar** is to Australian currency.
- (h) The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document.
- (i) A matter is **to the knowledge** of a person at a relevant time if it would have been discovered by the enquiries that would have been made by a reasonable person in that person's position, even if, at that time, the matter is not actually known by that person.
- (j) Terms defined in the GST Law have the same meaning in this document unless the context otherwise requires.
- (k) A reference to time in this document is a reference to time in Sydney, Australia.

1.3 **Non-Business Days**

If the day on or by which a person must do something under this document is not a Business Day the person must do it on or by the previous Business Day.

2. **TARGET SCHEME**

2.1 **Agreement to propose and implement Scheme**

- (a) Target agrees to propose and implement the Scheme in accordance with Part 5.1 of the Corporations Act on and subject to the terms and conditions of this document, and must use all reasonable endeavours to do so in accordance with the Timetable.
- (b) Bidder agrees to assist Target to propose and implement the Scheme in accordance with Part 5.1 of the Corporations Act on and subject to the terms and conditions of this document, and must use all reasonable endeavours to do so in accordance with the Timetable.

2.2 **Nomination of Acquirer**

- (a) Bidder nominates Bidder Nominee to acquire the Scheme Shares under the Scheme.
- (b) The parties must procure that the Scheme Shares transferred under the Scheme are transferred to Bidder Nominee rather than Bidder.
- (c) Bidder must procure that Bidder Nominee complies with all of the relevant obligations of Bidder under this document and the Scheme relating to the transfer of the Scheme Shares.

2.3 **Outline of Scheme**

Target must propose a scheme of arrangement under which:

- (a) all of the Scheme Shares held by Scheme Shareholders at the Record Date will be transferred to Bidder; and
- (b) subject to the terms and conditions of this document and the Scheme each Scheme Shareholder will be entitled to receive the Scheme Consideration.

2.4 **No amendments to Scheme without consent**

Target must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of Bidder (not to be unreasonable withheld or delayed).

2.5 **Scheme Consideration**

- (a) Subject to this document and the Scheme, Bidder, subject to clauses 2.5(c) and 2.6(a), undertakes to Target (in its own right and separately as trustee or nominee of each Scheme Shareholder) that, in consideration of the transfer to Bidder of each Scheme Share held by a Scheme Shareholder, Bidder will, on the Implementation Date:
 - (i) accept the transfer; and
 - (ii) pay or procure the payment of the Cash Scheme Consideration (if applicable) and issue the Scrip Scheme Consideration to each Scheme Shareholder in accordance with the Scheme.

- (b) Where the calculation of the Cash Scheme Consideration to be provided to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up or down (as applicable) to the nearest cent.
- (c) Any fractional entitlement of a Scheme Shareholder to part of a Bidder Unit will be rounded up or down to the nearest whole number of Bidder Unit (and if the fraction entitlement would include one-half of a Bidder Unit, the entitlement will be rounded up to the nearest whole number of Bidder Units).

2.6 **Treatment of Ineligible Overseas Shareholders**

- (a) Bidder will be under no obligation under the Scheme to issue, and will not issue, any New Bidder Units to any Ineligible Overseas Shareholder, and instead Bidder will issue on the Implementation Date the New Bidder Units to which that Ineligible Overseas Shareholder would otherwise have been entitled (if they were a Scheme Shareholder who was not an Ineligible Overseas Shareholder) to a nominee appointed by Bidder.
- (b) Bidder will procure that, as soon as reasonably practicable and in any event not more than 15 Business Days after the Implementation Date, the nominee:
 - (i) sells on ASX all of the New Bidder Units issued to the nominee in accordance with clause 2.6(a) in such manner, at such price and on such other terms as the nominee determines in good faith, and at the risk of the Ineligible Overseas Shareholder; and
 - (ii) remits to Bidder the proceeds of sale after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges.
- (c) Promptly after the last remittance in accordance with clause 2.6(b), Bidder will pay to each Ineligible Overseas Shareholder the proportion of the net proceeds of sale received by Bidder pursuant to clause 2.6(b)(ii) to which that Ineligible Overseas Shareholder is entitled.

2.7 **Shares to rank equally**

Bidder covenants in favour of Target (in its own right and separately as trustee or nominee of each Scheme Shareholder) that:

- (a) the New Bidder Units will rank equally in all respects with all existing Bidder Units;
- (b) it will do everything reasonably necessary to ensure that trading in the New Bidder Units commences by the first Business Day after the Implementation Date; and
- (c) on issue, each New Bidder Unit will be fully paid and free from any Encumbrance.

3. **CONDITIONS**

3.1 **Obligations not binding until Conditions satisfied**

Subject to this clause 3, the Scheme will not become Effective, and the obligations of the parties with respect to Implementation (including the obligations of Bidder under clauses 2.5 and 4.3(j)) do not become binding unless and until each Condition is satisfied or waived under clause 3.3.

3.2 **Conditions**

The Conditions are as follows:

Conditions		
Conditions for the benefit of both parties		Responsibility to satisfy
(a)	(orders convening Scheme Meeting) the Court makes orders convening the Scheme Meeting under section 411(1) of the Corporations Act.	Target & Bidder
(b)	(Target Shareholder Approval) Target Shareholders approve the Scheme by the requisite majorities in accordance with the Corporations Act.	Target & Bidder
(c)	(ASIC) before 8.00 am on the Second Court Date ASIC issues or provides any consents or approvals, or has done any other acts, which the parties agree are reasonably necessary or desirable to implement the Scheme, and those consents, approval or other acts have not been withdrawn or revoked at that time.	Target & Bidder
(d)	(Court approval of Scheme) the Court makes orders under section 411(4)(b) of the Corporations Act approving the Scheme.	Target & Bidder
(e)	(Regulatory intervention) no Court or Government Agency has issued or taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Scheme and no such order, decree, ruling, other action or refusal is in effect as at 8.00 am on the Second Court Date.	Target & Bidder
Conditions for the benefit of Bidder		
(f)	(no Target Material Adverse Change) during the period commencing on the date of this document and ending at 8.00 am on the Second Court Date, no Target Material Adverse Change occurs, or is discovered, announced or disclosed or otherwise becomes known to Bidder.	Target
(g)	(no Target Prescribed Event) during the period commencing on the date of this document and ending at 8.00 am on the Second Court Date, no Target Prescribed Event occurs.	Target
(h)	(Target Representations and Warranties) each of the representations and warranties given or made by Target under this document is true and correct in all material respects as at the time it is given or made.	Target
(i)	(Deed of Novation) Target delivering a duly	Target

Conditions		
	executed counterpart of the Deed of Novation to 360 Capital Group Limited (executed by the Target only).	
Conditions for the benefit of Target		
(j)	(no Bidder Material Adverse Change) during the period commencing on the date of this document and ending at 8.00 am on the Second Court Date, no Bidder Material Adverse Change occurs, or is discovered, announced or disclosed or otherwise becomes known to Bidder.	Bidder
(k)	(Independent Expert's Report) the Independent Expert issues a report which concludes that the Scheme is fair and reasonable to and in the best interests of Scheme Shareholders before the date on which the Scheme Booklet is lodged with ASIC and the expert does not change its opinion or otherwise withdraw the report, before 8.00am on the Second Court Date.	Target
(l)	(no Bidder Prescribed Event) during the period commencing on the date of this document and ending at 8.00 am on the Second Court Date, no Bidder Prescribed Event occurs.	Bidder
(m)	(ASX quotation) before 8.00 am on the Second Court Date, the New Bidder Units to be issued to Scheme Shareholders in accordance with the Scheme are approved for official quotation on ASX, which approval may be conditional on the issue of those units and other conditions customarily imposed by ASX.	Bidder
(n)	(Bidder Representations and Warranties) each of the representations and warranties given or made by Bidder under this document is true and correct in all material respects as at the time it is given or made.	Bidder

3.3 Waiver of Conditions

- (a) If a Condition has been included for the benefit of:
- (i) one party only, only that party may, in its sole and absolute discretion, waive the breach or non-fulfilment of the Condition;
 - (ii) more than one party, the breach or non-fulfilment of the Condition may be waived only by the consent of all those parties.

However, a party for whom a Condition has been included must not waive the Condition if it would result in a breach of law.

- (b) The breach or non-fulfilment of a Condition may only be waived in writing.

- (c) If a party waives the breach or non-fulfilment of a Condition in accordance with this clause 3.3, then:
 - (i) subject to clause 3.3(c)(ii), that waiver precludes that party from suing the other for any breach of this document arising as a result of the breach or non-fulfilment of that Condition or arising from the same event which gave rise to the breach or non-fulfilment of that Condition; but
 - (ii) if the waiver of the Condition is itself conditional and the other party:
 - (A) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with clause 3.3(c)(i); or
 - (B) does not accept the condition, the Condition has not been waived.
- (d) A waiver of a breach or non-fulfilment in respect of a Condition does not constitute:
 - (i) a waiver of a breach or non-fulfilment of any other Condition arising from the same event; or
 - (ii) a waiver of a breach or non-fulfilment of that Condition resulting from any other event.

3.4 **Fulfilment of Conditions**

Each party must:

- (a) use its reasonable endeavours (other than waiver) to ensure and procure that each Condition for which it is a party responsible (as noted in clause 3.2) is satisfied as soon as practicable after the date of this document and continues to be satisfied at all times until the last time it is to be satisfied (as the case may require);
- (b) not take any action or refrain from taking any action (except as required by law) designed to prevent the Conditions being satisfied, without the prior consent of the other party;
- (c) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (d) promptly inform the other party of any circumstances of which it becomes aware which may result in any of the Conditions not being satisfied in accordance with its terms; and
- (e) promptly advise the other party of the satisfaction of a Condition.

3.5 **Parties to provide certificate to Court**

Each of Target and Bidder must provide to the other and to the Court before or at the Second Court Date, a certificate or such other evidence as the Court requests, confirming (in respect of matters within that party's knowledge) whether or not the Conditions set out in clause 3.2 of the Scheme Implementation Deed included for its benefit, other than the Condition in clause 3.2(d), have been satisfied (or waived by it) in accordance with the terms of the Scheme Implementation Deed.

3.6 **If a Condition is not fulfilled or waived**

- (a) If:
 - (i) there is a breach or non-fulfilment of a Condition that is not waived in accordance with clause 3.3 before the End Date; or
 - (ii) a Condition becomes incapable of satisfaction, having regard to the obligations of the parties under clause 3.4 (and the breach or non-fulfilment of the Condition that would otherwise occur has not already been waived),

Target may serve notice on Bidder, or Bidder may serve notice on Target, and the parties must then consult in good faith with a view to determining whether:

- (iii) the Scheme may proceed by way of alternative means or methods;
 - (iv) to extend the relevant time or date for satisfaction of the Condition;
 - (v) to change the date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme or to adjourn the application to another date agreed by the parties; or
 - (vi) to extend the End Date.
- (b) If Target and Bidder are unable to reach agreement under clauses 3.6(a)(iii) to (vi) within five Business Days after the delivery of the notice under that clause or any shorter period ending at 5.00 pm on the day before the Second Court Date, either Target or Bidder may terminate this document by notice in writing to the other party, provided that:
 - (i) the Condition to which the notice relates is for the benefit of that party (whether or not the Condition is also for the benefit of the other party); and
 - (ii) there has been no failure by that party to comply with its obligations under this document, where that failure directly and materially contributed to the Condition to which the notice relates becoming incapable of satisfaction, or being breached and not fulfilled before the End Date,

in which case clause 11.5 will have effect.

4. **IMPLEMENTATION**

4.1 **Obligations of the parties**

- (a) The parties agree to implement the Scheme on the terms and conditions of this document, subject to compliance with their respective obligations, powers and duties under their constituent documents and all applicable laws and the proper performance by the directors of each of the parties respectively of their fiduciary duties.
- (b) Target and Bidder must each:
 - (i) use all reasonable endeavours and commit necessary resources (including the resources of external advisers); and
 - (ii) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending meetings and by providing information),

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

4.2 **Target obligations**

Target must take all necessary steps to propose and implement the Scheme as expeditiously as practicable and use all reasonable endeavours to do so in accordance with the Timetable, including taking each of the following steps:

- (a) **(Announcement)** on the date of this document, make an Announcement, in a form agreed between Target and Bidder which includes a statement (on the basis of written statements made to it by each of its directors) that each director of Target:

- (i) considers the Scheme to be in the best interests of Target Shareholders and intends to recommend to Target Shareholders that the Scheme be approved; and
 - (ii) who holds Target Shares intends to vote his or her Target Shares in favour of the Scheme,

subject to there being no Superior Proposal and the Independent Expert concluding, and continuing to conclude, that the Scheme is fair and reasonable to and in the best interests of Target Shareholders;

- (b) **(prepare Scheme Booklet)** as soon as practicable after the date of this document, prepare the Scheme Booklet:

- (i) in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC regulatory guides, Takeovers Panel policy and guidance notes and the ASX Listing Rules; and

- (ii) which includes a statement by the Target Board:

- (A) unanimously recommending that the Scheme is in the best interests of the Target Shareholders and that the Target Shareholders vote in favour of the Scheme; and

- (B) that each Target Board member who holds Target Shares intends to vote his or her Target Shares in favour of the Scheme,

with such statement not to be qualified in any way, other than by words to the effect of "subject to the Independent Expert continuing to conclude that the Scheme is fair and reasonable to and in the best interests of Target Shareholders" and "subject to there being no Superior Proposal".

- (c) **(Independent Expert)** promptly appoint the Independent Expert (if the Independent Expert has not been appointed prior to the date of this document) and provide all assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare its report for the Scheme Booklet as soon as practicable;

- (d) **(consult with Bidder)** in a timely manner consult with Bidder as to the form and content of all documents required for the purposes of the Scheme, including:

- (i) the Scheme Booklet, including taking into account Bidder's reasonable comments and incorporating the Bidder Information; and

- (ii) documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any comments on, or suggested amendments to, those documents from Bidder prior to filing those documents with the Court;
- (e) **(lodgement of ASIC Review Draft)**
 - (i) as soon as practicable, subject to Bidder complying with its obligations under clause 4.3(c), provide a draft of the Scheme Booklet to ASIC as contemplated by section 411(2) of the Corporations Act (**ASIC Review Draft**) and provide a copy of the ASIC Review Draft to Bidder immediately thereafter;
 - (ii) keep Bidder reasonably informed of any material issues raised by ASIC in relation to the ASIC Review Draft and, where practical to do so, consult with Bidder in good faith prior to taking any steps or actions to address those material issues (provided that, where those issues relate to Bidder Information, Target must not take any steps to address them without Bidder's prior written consent, not to be unreasonably withheld);
- (f) **(Board approval)** procure that a meeting of the Target Board is convened to approve the Scheme Booklet for registration with ASIC and dispatch;
- (g) **(Court documents)** prepare and consult with the Bidder as to the content of all documents necessary for the Court proceedings relating to the Scheme in accordance with all applicable laws;
- (h) **(apply to Court for order to convene the Scheme Meeting)** apply to the Court under section 411(1) of the Corporations Act for an order directing Target to convene the Scheme Meeting;
- (i) **(dispatch Scheme Booklet)** as expeditiously as practicable following an order made by the Court under section 411(1) of the Corporations Act, dispatch a copy of the Scheme Booklet to each Target Shareholder and to all other persons entitled to receive notice of the Scheme Meeting, provided that, before dispatch, Target must obtain the written consent of Bidder to the inclusion of the Bidder Information in the Scheme Booklet, in the form and context in which it appears (such consent not to be unreasonably withheld or delayed);
- (j) **(supplementary disclosure)** if, after dispatch of the Scheme Booklet, Target becomes aware:
 - (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
 - (ii) of information that is required to be disclosed to Target Shareholders under any applicable law but was not included in the Scheme Booklet,

promptly consult with Bidder in good faith as to the need for, and the form of, any supplementary disclosure to Target Shareholders, and make any disclosure that Target considers reasonably necessary in the circumstances (taking into account any comments from the Bidder and its Representatives and obtaining written approval from the Bidder for any updates to the Bidder Information (such approval not to be unreasonably withheld or delayed)), having regard to applicable laws and to ensure that there would be no breach of clause 12.2(b) if it applied as at the date that information arose;

- (k) **(convene the Scheme Meeting)** convene the Scheme Meeting in accordance with any order made by the Court under section 411(1) of the Corporations Act;
- (l) **(explanatory statement)** take all reasonable measures necessary to cause ASIC to register the Scheme Booklet under section 412 of the Corporations Act;
- (m) **(proxy information)** upon any request of Bidder made before the commencement of the Scheme Meeting, inform Bidder of the total number of proxy votes in respect of which the appointment for the Scheme Meeting specified that:
 - (i) the proxy is to vote in favour of the Scheme Resolution;
 - (ii) the proxy is to vote against the Scheme Resolution;
 - (iii) the proxy is to abstain on the Scheme Resolution; and
 - (iv) the proxy may vote at the proxy's discretion.
- (n) **(section 411(17)(b)statement)** if Target Shareholder Approval is obtained, apply to ASIC for the production of a statement under section 411(17)(b) of the Corporations Act in relation to the Scheme;
- (o) **(no Target Prescribed Event)** ensure that no Target Prescribed Event occurs during the period commencing on the date of this document and ending at 8.00 am on the Second Court Date and, if a Target Prescribed Event occurs, immediately inform Bidder;
- (p) **(Representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of section 411(1) and section 411(4)(b) of the Corporations Act;
- (q) **(Court approval)** subject to satisfaction or waiver of all Conditions other than the Condition in clause 3.2(d), apply to the Court for orders approving the Scheme under section 411(4) of the Corporations Act;
- (r) **(certificate)** before 8.00am on the Second Court Date give:
 - (i) to Bidder a certificate signed by Target stating whether or not each representation or warranty given by Target is true and correct as at the time it is given or made under clause 12; and
 - (ii) to Bidder and the Court the certificate referred to in clause 3.5, a draft of which must be provided to Bidder by 5.00 pm two Business Days prior to the Second Court Date;
- (s) **(lodge copy of order)** if the Court approves the Scheme under section 411(4) of the Corporations Act, lodge an office copy of the Court order with ASIC in accordance with section 411(10) of the Corporations Act no later than 4.00 pm on the day after that office copy is received (or any later date agreed in writing by Bidder);
- (t) **(Scheme Shareholders)** give to the unit registry of Bidder details of the names, registered addresses and holdings of Target Shares of every Target Shareholder as shown in the Register on the Record Date, in such form as Bidder may reasonably require, and determine Scheme Shareholders' respective entitlements to the Scheme Consideration in accordance with the Scheme;
- (u) **(Register)** close the Register as at the Record Date to determine the identity of Scheme Shareholders and their entitlements to Scheme Consideration;

- (v) **(instruments of transfer)** subject to Bidder satisfying its obligations under clause 2.5 on the Implementation Date:
 - (i) execute proper instruments of transfer and effect the transfer of Scheme Shares to Bidder in accordance with the Scheme; and
 - (ii) register all transfers of Scheme Shares held by Scheme Shareholders to Bidder;
- (w) **(Suspension of trading)** apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date;
- (x) **(listing)** take all reasonable steps to maintain Target's listing on ASX, notwithstanding any suspension of the quotation of Target Shares, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC; and
- (y) **(other steps)** do all other things necessary to lawfully give effect to the Scheme and the orders of the Court approving the Scheme.

4.3 Bidder Obligations

Bidder must take all necessary steps to assist Target to propose and implement the Scheme as expeditiously as practicable and use all reasonable endeavours to do so in accordance with the Timetable, including taking each of the following steps:

- (a) **(Announcement)** on the date of this document make an Announcement, in a form agreed between Target and Bidder;
- (b) **(Independent Expert's Report)** provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (c) **(Scheme Booklet):**
 - (i) as expeditiously as practicable, give to Target for inclusion in the Scheme Booklet such information regarding Bidder as is required under all applicable laws, relevant ASIC regulatory guides, Takeovers Panel policy and guidance notes and the ASX Listing Rules to be included in the Scheme Booklet such information must include (but is not limited to) the distribution policy of, and a forecast of distributions to 30 June 2020 for, the combined group (in reasonable time to allow Target to prepare the Scheme Booklet in accordance with this document);
 - (ii) consent to the inclusion of the final form Bidder Information in the Scheme Booklet (in the form and context in which it appears in the Scheme Booklet); and
 - (iii) confirm in writing to Target before 8.00 am on the First Court Date that the Bidder Information (in the form and context in which it appears in the Scheme Booklet) is accurate, complete and not misleading or deceptive in any material respect (including because of any material omission) and otherwise complies in all material respects with all applicable laws, relevant ASIC regulatory guides, Takeovers Panel policy and guidance notes and the ASX Listing Rules.

- (d) **(further information):**
- (i) inform Target in writing if it becomes aware that the Bidder Information (or any part of it) is or has become misleading or deceptive in any material respect (including because of any material omission) or otherwise does not comply with all applicable laws, relevant ASIC regulatory guides, Takeovers Panel policy and guidance notes and the ASX Listing Rules; and
 - (ii) as expeditiously as practicable, give to Target any further information reasonably required by Target before the Meeting Date to ensure that the Bidder Information is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission), complies with all applicable laws, relevant ASIC regulatory guides, Takeovers Panel policy and guidance notes and the ASX Listing Rules and to ensure that there would be no breach of clause 12.3(b) if it applied as at the date on which such further new Bidder Information arose;
- (e) **(Deed Poll)** before the First Court Date, duly execute and deliver the Deed Poll;
- (f) **(no Bidder Prescribed Event)** ensure that no Bidder Prescribed Event occurs during the period commencing on the date of this document and ending at 8.00 am on the Second Court Date and if a Bidder Prescribed Event occurs, immediately inform Target;
- (g) **(certificates)** before 8.00 am on the Second Court Date give:
- (i) to Target a certificate signed by Bidder stating whether or not each representation or warranty given by Bidder is true and correct as at the time it is given or made under clause 12; and
 - (ii) to Target and the Court the certificate referred to in clause 3.5, a draft of which must be provided to Target by 5.00pm two Business Days prior to the Second Court Date;
- (h) **(not act inconsistently)** not act in a manner inconsistent with obtaining Court approval for the Scheme (provided that nothing in this paragraph prevents any action by or on behalf of Bidder or its directors if failure to take the action would, in the reasonable opinion of the board of directors of Bidder, be likely to involve a breach of duties of the directors of Bidder. The reasonable opinion of Bidder's board of directors must be based on specific legal and other appropriate advice);
- (i) **(New Bidder Units)** apply for the New Bidder Units to be approved for official quotation on ASX subject to the Scheme becoming Effective and use reasonable endeavours to obtain ASX's approval for official quotation by 8.00 am on the Second Court Date;
- (j) **(share transfer)** if the Scheme becomes Effective, accept a transfer of the Scheme Shares as contemplated by clause 2.5;
- (k) **(listing)** procure that the New Bidder Units to be issued as Scrip Scheme Consideration pursuant to the Scheme are approved for official quotation by ASX, subject to any conditions which ASX may reasonably require and which are acceptable to both Bidder and Target, acting reasonably and promptly;
- (l) **(Scheme Consideration)** if the Scheme becomes Effective:
- (i) register or cause to be registered the Scheme Shareholders (or the nominee of Ineligible Overseas Shareholders appointed pursuant to clause 2.6(a)) as

the holders of New Bidder Units to which the Scheme Shareholders are entitled under the Scheme; and

- (ii) if applicable, pay or procure the payment of the Cash Scheme Consideration in the manner and amount contemplated by clause 2.5 and the terms of the Scheme; and

- (m) **(Scheme)** do all things within its power that are reasonably necessary to lawfully give effect to the Scheme and the orders of the Court approving the Scheme.

4.4 **Scheme Booklet responsibility statement**

The responsibility statement to appear in the Scheme Booklet, in a form to be agreed by the parties, will contain words to the effect of:

- (a) Target has prepared, and is responsible for, the content of the Scheme Booklet other than, to the maximum extent permitted by law, the Bidder Information, the Independent Expert's Report or any other report or letter issued to Target by a third party; and
- (b) Bidder has prepared, and is responsible for, the Bidder Information in the Scheme Booklet (and no other part of the Scheme Booklet).

4.5 **Disagreement on content of Scheme Booklet**

If Bidder and Target disagree on the form or content of the Scheme Booklet, they must consult in good faith and promptly to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:

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

4.6 **Verification**

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

4.7 **Conduct of Court proceeding**

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

4.8 **Appeal process**

If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, Bidder and Target 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 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 document in accordance with clause 11.1. If the parties cannot agree on the appointment of an independent senior counsel for the purposes of 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.

5. BOARD RECOMMENDATION AND VOTING INTENTION

5.1 Recommendation and intention

Target must use its best endeavours to procure that none of its directors withdraws, or changes their recommendation in favour of the Scheme, or their intention to vote in favour of the Scheme, unless:

- (a) there is a Superior Proposal; or
- (b) the Condition in clause 3.2(k) (*Independent Expert's Report*) is not, or ceases to be, satisfied at any time before the Second Court Date; and
- (c) the Target Board determines in good faith, having received expert advice in writing from its legal advisors, that they must do so because of their fiduciary or statutory duties to Target Shareholders.

6. DIRECTORS

6.1 Release of Target and Target directors and officers

Subject to the Corporations Act, Bidder releases its rights, and agrees with Target that it will not make a Claim, against any Target Indemnified Party (other than Target and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:

- (a) any breach of any representations and warranties of Target in this document; or
- (b) any disclosures containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 6.1 limits Bidder's rights to terminate this document under clause 11.

6.2 Benefit for Target Indemnified Parties

Target receives and holds the benefit of this clause to the extent it relates to each Target Indemnified Party on behalf of each of them.

6.3 Release of Bidder and Bidder directors and officers

Subject to the Corporations Act, Target releases its rights, and agrees with Bidder that it will not make a Claim, against any Bidder Indemnified Party (other than Bidder and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:

- (a) any breach of any representations and warranties of Bidder or any other member of Bidder Group in this document; or
- (b) any disclosures containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 6.3 limits Target's rights to terminate this document under clause 11.

6.4 Benefit for Bidder Indemnified Parties

Bidder receives and holds the benefit of this clause to the extent it relates to each Bidder Indemnified Party on behalf of each of them.

6.5 Survival of indemnities and releases

Each indemnity and release in clauses 6.1 and 6.3 will:

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

6.6 Appointment/retirement of Target directors

On the Implementation Date, but subject to the Scrip Scheme Consideration having been issued and the Cash Scheme Consideration (if applicable) having been paid to the Scheme Shareholders and receipt by Target of signed consents to act, Target must:

- (a) cause the appointment of each Target Incoming Director to the Target Board; and
- (b) procure that the Target Outgoing Directors retire from the Target Board, unless Bidder gives notice of its desire for one or more of the directors not to retire (such notice to be given prior to 8:00am on the Second Court Date),

in each case, in accordance with Target's constitution, the Corporations Act and the ASX Listing Rules.

6.7 Directors' and officers' insurance

Subject to the Scheme becoming Effective, the Corporations Act and clause 6.9, Bidder undertakes in favour of Target and each other person who is a Target Indemnified Party that it will:

- (a) for a period of seven years from the Implementation Date, ensure that the constitution of Target continues to contain such rules as are contained in that constitution at the date of this document that provide for Target to indemnify each officer against any liability incurred by that person in his or her capacity as officer of the company to any person other than the Target or a Related Body Corporate; and
- (b) procure that Target complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time

and without limiting the foregoing, ensure that the directors' and officers' run-off insurance cover for those directors and officers is maintained, subject to clause 6.8, for a period of at least seven years from the Implementation Date.

6.8 Run-off

Each party acknowledges that, notwithstanding any other provision of this document, Target and its Subsidiaries may, prior to the Implementation Date, enter into a run-off insurance policy in respect of any directors or officers of Target for a seven year period (or longer if Bidder agrees acting reasonably) provided that:

- (a) the scope of cover of the policy will be on the same or substantially the same terms as the existing insurance policies in place for directors or officers of Target at the date of this document; and
- (b) Target will use reasonable endeavours to obtain the most attractive commercial terms for the policy from a reputable insurer and in no circumstances shall the aggregate cost of such insurance to Target exceed the amount agreed between the parties in writing for the purposes of this clause without the prior written consent of Bidder.

6.9 Period of undertaking

The undertakings contained in clause 6.7 are given until the earlier of the end of the relevant period specified in that clause or Target ceasing to be part of the Bidder Group.

6.10 Benefit of undertaking for Target

Target acknowledges that it receives and holds the benefit of clause 6.7 to the extent it relates to each director and officer of Target on behalf of each of them.

7. PRE-IMPLEMENTATION CONDUCT

7.1 Conduct of the business

During the period commencing on the date of this document and ending on the Implementation Date, each party must conduct (and must procure that each of its Subsidiaries conducts) its business in the ordinary course and in substantially the same manner as conducted on the date of this document, and to the extent consistent, use reasonable efforts to:

- (a) preserve intact its business organisation;
- (b) keep available the services of its officers and employees (if any);
- (c) preserve its relationship with managers, customers, suppliers, licensors, licensees and others having business dealings with it; and
- (d) maintain its business and assets, including maintaining at least its current level of insurance,

as in place on the date of this document.

7.2 Exception

Clause 7.1 does not apply to anything:

- (a) which the relevant party is required to do, permitted to do or is permitted not to do, under or in accordance with this document or the Scheme; or

- (b) in respect of which the other party consents (such consent not to be unreasonably withheld or delayed).

7.3 **Distributions**

- (a) Target must not declare, pay, make or incur a liability to pay or make, a distribution of income, profits, assets or capital, other than by agreement with the Bidder.
- (b) Other than a Permitted Bidder Distribution, Bidder must not declare, pay, make or incur a liability to pay or make, a distribution of income, profits, assets or capital, other than by agreement with the Target.

7.4 **Access to information**

- (a) During the period from the date of this document up to and including the earlier of the date on which this document is terminated and the Implementation Date, each of Target and Bidder must respond, and must procure that each member of their Group responds, to reasonable requests from the other Group and its Representatives for information concerning their businesses and operations, and gives the other Group and its Representatives reasonable access to their officers and records, and otherwise provide reasonable co-operation to the other Group and its Representatives, in each case for the purposes of:
 - (i) the Implementation of the Scheme;
 - (ii) integrating the business of Target with the business of Bidder following the Implementation of the Scheme; or
 - (iii) any other purpose which is agreed in writing between the parties,subject to the proper performance by the directors and officers of each Group of their statutory and fiduciary duties.
- (b) Without limiting clause 7.4(a), during the period from the date of this document up to and including the earlier of the date when this document is terminated and the Implementation Date, Target and Bidder must consult with each other, on a regular and ongoing basis, in relation to the conduct of material aspects of their respective Group's business and operations, and consider in good faith each other's views in relation to the same.
- (c) The obligations in clauses 7.4(a) and 7.4(b) do not require Bidder or Target to:
 - (i) provide information to each other concerning their respective directors' and management's consideration of the Scheme;
 - (ii) provide any commercially sensitive or competitive information;
 - (iii) breach an obligation of confidentiality to any person; or
 - (iv) do anything that would cause or result in that party being in breach of any material obligation owed to another party (whether under an agreement or otherwise) or a breach of any duty, whether arising under statute or general law owed by that party.
- (d) During the period commencing on the date of this document up to and including the earlier of the date on which this document is terminated and the Implementation Date the Bidder must provide monthly management accounts and a Loan Report to the Target within 14 days of each calendar month end.

- (e) The parties acknowledge that all information that is provided pursuant to this clause 7.4 will be provided subject to the terms of the Confidentiality Deed.
- (f) The parties acknowledge that with effect from Implementation, the Bidder will take ownership and control of the Records (including any information that is provided pursuant to this clause 7.4).

7.5 Information on representations and warranties

From the date of this document and up to and including the Implementation Date each party must promptly give to the other party details of any matter or occurrence which might reasonably make any representation or warranty given under this document by the first-mentioned party inaccurate in a material respect.

7.6 Information provided subject to confidentiality obligation

- (a) All information provided under or in connection with this document is subject to the terms of the Confidentiality Deed which continues to have full force and effect subject to clause 7.6(b) and the rest of this document.
- (b) The parties agree and acknowledge that upon execution of this document, clause 7 (*Standstill*) of the Confidentiality Deed will cease to apply and that the execution of this document does not constitute a breach of clause 7 of the Confidentiality Deed.

7.7 Required disclosure

Where a party is required by applicable law or any ASX Listing Rule to make any Announcement or make any disclosure in connection with the Scheme, it must use all reasonable endeavours, to the extent possible, to meaningfully consult with the other party prior to making the relevant disclosure.

7.8 Other Announcements

Subject to clauses 4.2(a), 4.3(a) and 7.7, no party may make any Announcement or disclosure in connection with the Scheme (including disclosure to a Government Agency) other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable.

8. EXCLUSIVITY

8.1 No-shop

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

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

with a view to obtaining, or that may be reasonably expected to lead to, any offer, proposal or expression of interest from any person in relation to a Competing Proposal.

8.2 No-talk

Subject to clause 8.4, during the Exclusivity Period, Target must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) negotiates or enters into; or

- (b) participates in negotiations or discussions with any other person regarding,

a Competing Proposal or any agreement, understanding or arrangement that may be reasonably 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 Target or any of its Representatives or the person has publicly announced the Competing Proposal.

8.3 **Due diligence information**

Subject to clause 8.4, during the Exclusivity Period, Target must ensure that neither it nor any of its Representatives:

- (a) enables a Third Party to undertake due diligence investigations on Target or its businesses or operations; or
- (b) makes available to a Third Party, or permits a Third Party to receive, any non-public information relating to Target or its businesses or operations,

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 Target or any part of it).

8.4 **Exceptions**

Clauses 8.2 and 8.3 do not apply to the extent that it restricts Target or the Target Board from taking or refusing to take any action with respect to a bona fide Competing Proposal (which was not solicited, invited, encouraged or initiated by Target in contravention of clause 8.1) provided that the Target Board has determined, in good faith that:

- (a) after consultation with its financial advisors, such a Competing Proposal is, or could reasonably be considered promptly to become, a Superior Proposal; and
- (b) after receiving written legal advice from its external legal advisers that failing to respond to such a Competing Proposal would be likely to constitute a breach of the Target Board's fiduciary or statutory obligations.

8.5 **Further exceptions**

Nothing in this document prevents Target or Investment Manager on behalf of the Target from:

- (a) continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Scheme or its business generally; or
- (b) subject to clause 7.8, fulfilling its continuous disclosure requirements.

8.6 **Notice of approach**

During the Exclusivity Period, Target must promptly notify Bidder if it, or any of its Related Bodies Corporate or Representatives, receives or becomes aware of any:

- (a) approach or proposal (whether written or otherwise) with respect to any Competing Proposal and must disclose to Bidder the fact that such an approach or proposal has been made and reasonable details of the approach or proposal, including, the details and identity of the party making the approach or proposal (and if different, details and identity of the proposed bidder or acquirer), the terms and conditions of the approach or proposal and any material updates to the approach or proposal; or

- (b) provision by Target or any of its Representatives of any information relating to Target or any of its business or investments to any person in connection with or for the purposes of the person formulating, developing or finalising an actual, proposed or potential Competing Proposal, now or in the future.

8.7 Matching right

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

- (a) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, Target or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal; and
- (b) must use its best endeavours to procure that none of its directors change their recommendation in favour of the Scheme to publicly recommend an actual, proposed or potential Competing Proposal (or recommend against the Scheme),

unless:

- (c) the Target Board acting in good faith and in order to satisfy what the Target Board considers to be its statutory or fiduciary duties (having received written advice from its external legal advisers), determines that the Competing Proposal is a Superior Proposal;
- (d) Target has provided Bidder with the material terms and conditions of the actual, proposed or potential Competing Proposal, including price, conditions, timing and break fees (if any), the identity of the Third Party making the actual, proposed or potential Competing Proposal and must disclose any Target Confidential Information that has been disclosed to the Third Party but not to Bidder;
- (e) Target has given Bidder at least five Business Days after the date of the provision of the information referred to in clause 8.7(d) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal; and
- (f) either:
 - (i) Bidder has not announced or delivered to the Target Board a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal (**Bidder Counter Proposal**) by the expiry of the five Business Day period referred to in clause 8.7(e); or
 - (ii) Bidder has announced or delivered to the Target Board a Bidder Counter Proposal by the expiry of the five Business Day period referred to in clause 8.7(e), and the Target Board, acting in good faith and after having taken written advice from Target's external legal and financial advisers, determines that the Bidder Counter Proposal is not as favourable or more favourable (as a whole) to Target Shareholders than the Competing Proposal.

Any modification to any Competing Proposal notified to the Bidder under clause 8.6 (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 Target must comply with its obligations under this clause 8.7 again.

8.8 Time of essence

Time is of the essence in this clause 8.

8.9 **Legal advice**

Target acknowledges that it has received legal advice on this document and the operation of this clause.

8.10 **No ongoing discussions**

- (a) Target represents and warrants to Bidder that, as at the date of this document, it is not (and none of its Representatives are) in discussions or negotiations with any Third Party regarding any Competing Proposal and Target has not directed any of its Representatives to commence any such negotiations or discussions.
- (b) From the date of this document, Target must promptly enforce the terms of any confidentiality agreement entered into with any Third Party in relation to any Competing Proposal in the 12 months before the execution of this document, and must promptly request, the return or destruction of the Target's confidential information in accordance with the terms of that confidentiality agreement, and terminate their access to the Target's confidential information under that confidentiality agreement.

9. **BREAK FEE**

9.1 **Background**

- (a) Each of Target and Bidder confirms its belief that the Scheme will provide significant benefits to it and its shareholders and unitholders (respectively) and acknowledges that each of them has and will incur significant costs in connection with performing its obligations under this document and the Scheme.
- (b) Bidder has requested that provisions be made in this document for the payments set out in clause 9.2 in the absence of which it would not have entered into this document.
- (c) Both parties believe that it is appropriate to agree to the payment which the Target agrees to make under this clause 9 in order to secure Bidder's participation in the Scheme.
- (d) Target acknowledges that the amount it has agreed to pay Bidder under this clause 9 is an amount which is appropriate to compensate Bidder for its reasonable external and internal costs and opportunity costs in connection with the Scheme.

9.2 **Payment by Target to Bidder**

Target undertakes to pay Bidder the Break Fee without withholding or set off if:

- (a) a Competing Proposal is announced or made prior to the earlier of the date this document is terminated and the End Date and either:
 - (i) the Condition in clause 3.2(k) (*Independent Expert's Report*) is not, or ceases to be, satisfied at any time before the Second Court Date (provided that the reasons for the Independent Expert's conclusions relate to the existence of a Competing Proposal) and this document is subsequently terminated automatically pursuant to clause 11.1(c) or by the Target in accordance with clause 3.6; or
 - (ii) that Competing Proposal is publically recommended, promoted or otherwise endorsed by a majority of the Target Board; or

- (b) prior to the earlier of the date this document is terminated and the End Date, any Target director (1) does not recommend the Scheme or agree to the inclusion of a statement in the Scheme Booklet that it intends to vote any Scheme Shares it holds in favour of the Scheme; (2) withdraws or adversely modifies or qualifies his or her earlier recommendation that Target Shareholders vote in favour of the Scheme or his or her intention to vote in favour of the Scheme; (3) approves or recommends or makes an Announcement in support of a Competing Proposal; or (4) announces an intention to do any of these acts, unless:
 - (i) Target is entitled to terminate this document under clause 11.1(b); or
 - (ii) the Condition in clause 3.2(k) (*Independent Expert's Report*) is not satisfied prior to the Second Court Date, or ceases to be satisfied at any time before the Second Court Date (provided that the reasons for the Independent Expert's conclusions do not include the existence of a Competing Proposal); or
- (c) Target is in material breach of any provision of this document and this document is terminated in accordance with clause 11.1(b).

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 Target under clause 9.2; and
- (b) if any amount has already been paid under clause 9.2 it must be refunded by Bidder.

9.4 **Demand for payment**

- (a) If an event referred to in clause 9.2 occurs, any demand by Bidder for payment under clause 9.2 must be in writing, state the circumstances which give rise to the demand and nominate an account in the name of Bidder into which Target must pay the amount. Target must pay the Break Fee to Bidder within 10 Business Days of receipt of the demand.
- (b) Bidder acknowledges and agrees that if a Break Fee is paid to it under clause 9.2, that payment constitutes its sole and exclusive remedy in respect of the matter giving rise to the payment.

9.5 **Nature of payment**

The Break Fee is an amount to compensate Bidder for:

- (a) advisory costs;
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;
- (d) the distraction of Bidder's management from conducting Bidder's business as usual caused by pursuing the Scheme;
- (e) reasonable opportunity costs incurred by Bidder in pursuing the Scheme or in not pursuing alternative acquisitions or strategic initiatives which Bidder could have developed to further its business and objectives; and

- (f) damage to Bidder's reputation associated with a failed transaction and the implications of that damage to Bidder's business.

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 Reduction in amount payable

- (a) The Break Fee is reduced by an amount equal to the amount which is recovered by Bidder as a result of a Claim against Target pursuant to any other remedies available to Bidder under this document including pursuant to clause 13.1.
- (b) Where the Break Fee has already been paid, Bidder must, within five Business Days of the event contemplated by clause 9.6(a) which would have reduced the amount payable, refund an amount to Target which is equivalent to that calculated under clause 9.6(a).

9.7 Compliance with law

If the Takeovers Panel or a court of competent jurisdiction determines that an amount paid or payable under clause 9.2 is an Impugned Amount and:

- (a) the period for lodging an application for review or a notice of appeal of that decision has expired without such application or notice having been lodged; or
- (b) an application for review or a notice of appeal has been lodged with the Takeovers Panel or a court within the prescribed period and the relevant review panel or court also determines that the amount is an Impugned Amount,

then:

- (c) the undertaking under clause 9.2 does not apply to the extent of the Impugned Amount; and
- (d) if a party has been paid an Impugned Amount under this document, it must refund that Impugned Amount to the other party.

9.8 Break Fee payable only once

Notwithstanding any other provision of this document, whether 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. REVERSE BREAK FEE

10.1 Background

This clause has been agreed in circumstances where:

- (a) Bidder and Target believe that the Scheme will provide significant benefits to Bidder, Target and their respective shareholders or unitholders, and Bidder and Target acknowledge that, if they enter into this document and the Scheme is subsequently not implemented, Target and Target Shareholders will incur significant costs including those set out in clause 10.5;
- (b) Target requested that provision be made for the payment of the Reverse Break Fee, without which Target would not have entered into this document;

- (c) both parties believe that it is appropriate for to agree to the payment referred to in this clause to secure Target's participation in the Scheme; and
- (d) both parties have received legal advice on this document and the operation of this clause.

10.2 **Payment by Bidder to Target**

Bidder agrees to pay the Reverse Break Fee to Target without withholding or set off if the Scheme does not proceed because:

- (a) **(termination for material breach)** Target validly terminates this document in accordance with clause 11.1(b); or
- (b) **(failure to issue or pay Scheme Consideration)** Bidder does not issue the Scrip Scheme Consideration or pay the Cash Scheme Consideration (if applicable) in accordance with the terms and conditions of this document, the Scheme and the Deed Poll.

10.3 **No amount payable if Scheme becomes Effective**

Notwithstanding the occurrence of any event in clause 10.2, if the Scheme becomes Effective:

- (a) no amount is payable by Bidder under clause 10.2; and
- (b) if any amount has already been paid under clause 10.2 it must be refunded by Target.

10.4 **Demand for payment**

- (a) If an event referred to in clause 10.2 occurs, any demand by Target for payment under clause 10.2 must be in writing, state the circumstances which give rise to the demand and nominate an account in the name of Target into which Bidder must pay the amount. Bidder must pay the Reverse Break Fee to Target within 10 Business Days of receipt of the demand.
- (b) Target acknowledges and agrees that if a Reverse Break Fee is paid to it under clause 10.2, that payment constitutes its sole and exclusive remedy in respect of the matter giving rise to the payment.

10.5 **Nature of payment**

The Reverse Break Fee is an amount to compensate Target for:

- (a) advisory costs;
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;
- (d) the distraction of Target's management from conducting Target's business as usual caused by pursuing the Scheme;
- (e) reasonable opportunity costs incurred by Target in pursuing the Scheme or in not pursuing strategic initiatives which Target could have developed to further its business and objectives; and

- (f) damage to Target's reputation associated with a failed transaction and the implications of that damage to Target's business.

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 10.2.

10.6 Reduction in amount payable

- (a) The Reverse Break Fee is reduced by an amount equal to the amount which is recovered by Target as a result of a Claim against Bidder pursuant to any other remedies available to Target under this document including pursuant to clause 13.2.
- (b) Where the Reverse Break Fee has already been paid, Bidder must, within two Business Days of the event contemplated by clause 10.6(a) which would have reduced the amount payable, refund an amount to Bidder which is equivalent to that calculated under clause 10.6(a).

10.7 Compliance with law

If the Takeovers Panel or a court of competent jurisdiction determines that an amount paid or payable under clause 10.2 is an Impugned Amount and:

- (a) the period for lodging an application for review or a notice of appeal of that decision has expired without such application or notice having been lodged; or
- (b) an application for review or a notice of appeal has been lodged with the Takeovers Panel or a court within the prescribed period and the relevant review Panel or court also determines that the amount is an Impugned Amount,

then:

- (c) the undertaking under clause 10.2 does not apply to the extent of the Impugned Amount; and
- (d) if a party has been paid an Impugned Amount under this document, it must refund that Impugned Amount to the other party.

10.8 Break Fee payable only once

Notwithstanding any other provision of this document, whether the Reverse Break Fee becomes payable to the Target under clause 10.2 and is actually paid to the Target, the Target cannot make any Claim against the Bidder for payment of any subsequent Reverse Break Fee.

11. TERMINATION

11.1 Termination by either party

Either party (terminating party) may terminate this document by notice to the other:

- (a) in accordance with clause 3.6;
- (b) if at any time before 8.00 am on the Second Court Date the other party is in material breach of any clause of this document, provided that the terminating party has given notice to the other party setting out the relevant circumstances and stating an intention to terminate this document, and the relevant circumstances have continued to exist for five Business Days (or any shorter period ending at

8.00 am on the Second Court Date) from the time such notice is given, such proviso not to apply where the Bidder is the terminating party in the case of a material breach by Target of clauses 5 and 8;

- (c) if the Scheme has not become Effective on or before the End Date; or
- (d) if the Scheme Resolution is not approved by the requisite majority at the Scheme Meeting.

For the avoidance of doubt, clause 11.1(b) does not apply in respect of a breach of either a Target Representation and Warranty or a Bidder Representation and Warranty which are dealt with in clause 11.2.

11.2 Termination for breach of representation and warranties

- (a) Bidder may, at any time prior to 8.00am on the Second Court Date, terminate this document for breach of a Target Representation and Warranty only if:
 - (i) the Bidder has given written notice to Target setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
 - (ii) the relevant breach continues to exist five Business Days (or any shorter period ending at 7.00am on the Second Court Date) after the date on which the notice is given under clause 11.2(a)(i); and
 - (iii) the Loss that would reasonably be expected to follow from such a breach is material in the context of the Scheme taken as a whole.
- (b) Target may, at any time before 8.00am on the Second Court Date, terminate this document for breach of a Bidder Representation and Warranty only if:
 - (i) Target has given written notice to the Bidder setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
 - (ii) the relevant breach continues to exist five Business Days (or any shorter period ending at 7.00am on the Second Court Date) after the date on which the notice is given under clause 11.2(b)(i); and
 - (iii) the Loss that would reasonably be expected to follow from such a breach is material in the context of the Scheme taken as a whole.

11.3 Termination by Bidder

The Bidder may terminate this document by written notice to Target before 8.00am on the Second Court Date if:

- (a) the Target Board fails to recommend the Scheme;
- (b) any director of Target:
 - (i) withdraws, adversely revises or in any way qualifies his or her recommendation that Target Shareholders vote in favour of the Scheme; or
 - (ii) does not agree to inclusion of a statement in the Scheme Booklet that it intends to vote any Scheme Shares it holds in favour of the Scheme or publically announces that it no longer intends to vote any Scheme Shares it holds in favour of the Scheme;

- (iii) recommends, supports or endorses a Competing Proposal or otherwise makes a public statement that it no longer supports the Scheme,

in each case, for any reason, whether or not permitted to do so under this document; or

- (c) Target enters into an agreement to implement a Competing Proposal.

11.4 **Termination by Target**

Target may terminate this document at any time before 8.00am on the Second Court Date by notice in writing to the Bidder if:

- (a) the majority of the Target Board publicly (including as permitted under clause 5.1) changes (including by attaching qualifications to) or withdraws its recommendation that Target Shareholders approve the Scheme or publicly recommends, promotes or otherwise endorses a Superior Proposal; and
- (b) Target has complied with its obligations set out in clause 8 and clause 9 (including payment of the Break Fee, if applicable).

11.5 **Obligations on termination**

- (a) If a party terminates this document, all obligations of the parties under this document, other than this clause 11, clauses 6.5 (Survival of indemnities and releases), 7.8 (Other Announcements), 9.2 (Break Fee), 10.2 (Reverse Break Fee) 12 (Representations and warranties), 13 (Indemnities), 15 (GST), 16 (Notices), 17 (Amendment and Assignment) and 18 (General), immediately cease to be of further effect.
- (b) The termination of this document does not affect any Claim that a party may have against another party where that Claim arose before this document is terminated.

12. **REPRESENTATIONS AND WARRANTIES**

12.1 **Mutual representations and warranties**

Each party represents and warrants to the other party that:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has full legal capacity and power to enter into this document and carry out the transactions that this document contemplates in accordance with its terms;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise it entering into this document and carrying out the transactions that this document contemplates in accordance with its terms;
- (d) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that this document contemplates in accordance with its terms;
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence; and
 - (iii) enable it to properly carry on its business,

and it is complying with any conditions to which any such Authorisation is subject;

- (e) **(document effective)** this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms;
- (f) **(no contravention)** neither its execution of this document nor the carrying out by it of the transactions that it contemplates in accordance with its terms, does or will contravene:
 - (i) any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - (ii) any Authorisation held by it;
 - (iii) any undertaking or instrument binding on it or any of its property; or
 - (iv) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
- (g) **(not Insolvent)** neither it nor any of its Subsidiaries is Insolvent; and
- (h) **(information provided to the Independent Expert)** all information provided by it to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report for inclusion in the Scheme Booklet.

12.2 Target Representations and Warranties

Target represents and warrants to Bidder that:

- (a) **(reliance)** the Target Information contained in the Scheme Booklet will be included in good faith and on the understanding that Bidder and its directors will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme;
- (b) **(Target Information)** the Target Information provided in accordance with this document and included in the Scheme Booklet as at the date of the Scheme Booklet will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the ASX Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (c) **(disclosure)** Target has provided to Bidder all information actually known to it (having made reasonable enquiries) as at the date of this document regarding matters affecting or relating to it:
 - (i) which is not already in the public domain; and
 - (ii) the disclosure of which might reasonably be expected to have resulted in Bidder not entering into this document at all or only entering into this document on materially different terms;
- (d) **(complete and accurate)** all the information provided to Bidder by Target in connection with this document, whether under due diligence or not, has been prepared and provided in good faith, and Target has not knowingly or recklessly:

- (i) omitted anything from the information disclosed to Bidder that would make any part of that information materially false or misleading;
 - (ii) included anything materially false or misleading in the information provided to Bidder; or
 - (iii) denied access to requested material information with the intention of misleading Bidder;
- (e) **(opinions)** any statement of opinion or belief contained in the Target Information is honestly held and there are reasonable grounds for holding the opinion or belief;
- (f) **(continuous disclosure)** Target is not in breach of its continuous disclosure obligation under ASX Listing Rule 3.1 and, except for information contained in the Announcement to be made in accordance with clause 4.2(a), there is no information to which ASX Listing Rule 3.1 does not apply because of ASX Listing Rule 3.1A;
- (g) **(complied with applicable laws)** to Target's knowledge, other than as fairly disclosed in the Target Disclosure Material, Target and its wholly owned Subsidiaries have complied in all material respects with all applicable laws;
- (h) **(material correspondence to be promptly disclosed)** all material correspondence between Target or any of its Subsidiaries and any Government Agency which is received following execution of this document until the Effective Date will be promptly disclosed in writing to Bidder;
- (i) **(no default)** other than as fairly disclosed in the Target Disclosure Material neither Target nor any of its wholly owned Subsidiaries is in default under any material document, agreement or instrument binding on it or its assets nor has anything occurred which is or would, with the giving of notice or lapse of time or both, constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect;
- (j) **(no litigation)** other than as fairly disclosed in the Target Disclosure Material no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending or to its knowledge, threatened which, if adversely decided, could reasonably be expected to result in a Target Material Adverse Change;
- (k) **(securities)** Target's issued securities as at the date of this document are 73,959,549 Target Shares and other than as fairly disclosed in the Target Due Diligence Information it has not issued or agreed to issue any other securities or instruments which are still outstanding and which may convert into Target Shares;
- (l) **(no Encumbrances)** there are no material Encumbrances over all or any of its present or future assets or revenues;
- (m) **(no Subsidiaries)** the Target does not own any Subsidiaries;
- (n) **(tax)** at Implementation, the Target will have paid any income tax arising under the Tax Act that has become lawfully due and payable by the Target and the Target will not have a franking deficit;
- (o) **(no other approvals necessary)** to Target's knowledge, other than as set out in this document, no consents, approvals or other acts by a Government Agency are necessary to effect Implementation; and

- (p) **(not representative capacity)** it is not entering into this document as trustee of any trust or settlement or otherwise in a representative capacity.

12.3 Bidder Representations and Warranties

Bidder represents and warrants to Target that:

- (a) **(reliance)** the Bidder Information contained in the Scheme Booklet will be included in good faith and on the understanding that Target and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act;
- (b) **(Bidder Information)** the Bidder Information provided in accordance with this document and included in the Scheme Booklet (other than to the extent it consists of information relating to the Target that was provided by or on behalf of Target, or has been extracted from announcements made by Target to the ASX regarding Target) as at the date of the Scheme Booklet will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the ASX Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (c) **(disclosure)** Bidder has provided to Target all information actually known to it (having made reasonable enquiries) as at the date of this document regarding matters affecting or relating to it:
 - (i) which is not already in the public domain; and
 - (ii) the disclosure of which might reasonably be expected to have resulted in Target not entering into this document at all or only entering into this document on materially different terms;
- (d) **(complete and accurate)** all the information provided to Target by Bidder in connection with this document, whether under due diligence or not, has been prepared and provided in good faith, and Bidder has not knowingly or recklessly:
 - (i) omitted anything from the information disclosed to Target that would make any part of that information materially false or misleading;
 - (ii) included anything materially false or misleading in the information provided to Target; or
 - (iii) denied access to requested material information with the intention of misleading Target;
- (e) **(opinions)** any statement of opinion or belief contained in the Bidder Information is honestly held and there are reasonable grounds for holding the opinion or belief;
- (f) **(continuous disclosure)** Bidder is not in breach of its continuous disclosure obligation under ASX Listing Rule 3.1 and, except for information contained in the Announcement to be made in accordance with clause 4.2(a), there is no information to which ASX Listing Rule 3.1 does not apply because of ASX Listing Rule 3.1A;
- (g) **(complied with applicable laws)** to Bidder's knowledge, other than as fairly disclosed in the Bidder Disclosure Material, Bidder and its wholly owned Subsidiaries have complied in all material respects with all applicable laws;

- (h) **(material correspondence to be promptly disclosed)** all material correspondence between Bidder or any of its Subsidiaries and any Government Agency which is received following execution of this document until the Effective Date will be promptly disclosed in writing to Target;
- (i) **(no default)** other than as fairly disclosed in the Bidder Disclosure Material, neither Bidder nor any of its wholly owned Subsidiaries is in default under any material document, agreement or instrument binding on it or its assets nor has anything occurred which is or would, with the giving of notice or lapse of time or both, constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect;
- (j) **(no litigation)** other than as fairly disclosed in the Bidder Disclosure Material, no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending or to its knowledge, threatened which, if adversely decided, could reasonably be expected to result in a Bidder Material Adverse Change;
- (k) **(no Encumbrances)** other than as fairly disclosed in the Bidder Disclosure Material, there are no material Encumbrances over all or any of its assets or revenues; and
- (l) **(securities)** Bidder's issued securities as at the date of this document are 70,225,399 Bidder Units and other than as fairly disclosed in the Bidder Disclosure Materials or the issue of the Placement Units, it has not issued or agreed to issue any other securities or instruments which are still outstanding and which may convert into Bidder Units;
- (m) **(no dealing with Target Shareholders)** other than as fairly disclosed in the Bidder Disclosure Materials (or to the extent any Target Shareholder may indirectly benefit from the transaction which is the subject of the Deed of Novation), neither it nor any of its Associates has any agreement, arrangement or understanding with any Target Shareholders under which that Target Shareholder (or an Associate of that Target Shareholder) would be entitled to receive consideration for their Target Shares different from the Scheme Consideration or under which the Target Shareholder agrees to vote in favour of the Scheme or against any Competing Proposal;
- (n) **(New Bidder Units)** the New Bidder Units will, upon issue:
 - (i) be duly issued and fully paid;
 - (ii) be free from any Security Interest or other Encumbrance, other than as provided for in the constitution of Bidder; and
 - (iii) rank equally in all respects, including for future dividends, with all existing Bidder Units; and
- (o) **(no other approvals necessary)** to Bidder's knowledge, other than as set out in this document, no consents, approvals or other acts by a Government Agency are necessary to effect Implementation; and
- (p) **(trustee)** on each date from the date of this document until (and including) the Second Court Date:
 - (i) each of TOT Active Fund and TOT Passive Fund is duly established and validly subsisting;

- (ii) TOT RE is the responsible entity of each of TOT Active Fund and TOT Passive Fund, has been validly appointed and remains as responsible entity of each of TOT Active Fund and TOT Passive Fund, and no action has been taken or proposed to be taken to remove it as responsible entity;
- (iii) TOT RE is empowered by the Constitutions to enter into and perform its obligations under this document and to carry out each transaction contemplated by this document, in its capacity as responsible entity of each of TOT Active Fund and TOT Passive Fund. There is and will be no restriction on or condition of it doing so, prior to the earlier of the End Date and the date when this document is terminated;
- (iv) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required or as may be required, including under the Constitutions, for TOT RE to enter into and perform this document, including without limitation, for the issue of the Scrip Scheme Consideration and payment of the Cash Scheme Consideration (if applicable);
- (v) this document constitutes TOT RE's legal, valid and binding obligations, enforceable against TOT RE in accordance with its terms;
- (vi) the execution and performance by TOT RE of this document and each transaction contemplated by this document did not and will not violate in any respect a provision of:
 - (A) a law, judgment, ruling, order or decree binding on it;
 - (B) the Constitutions; or
 - (C) any other document or agreement that is binding on it or any of its Subsidiaries; and
- (vii) TOT RE's right of indemnity out of, and lien over, the assets of each of TOT Active Fund and TOT Passive Fund have not been limited in any way. TOT RE has no liability which may be set off against that right of indemnity.

12.4 No representations made on economic or future matters

Each party acknowledges and agrees that the other party makes no representation or warranty other than as set out in this clause 12 and, in particular, at no time has the other party made or given any representation or warranty in relation to the achievability of:

- (a) any economic, fiscal or other interpretations or evaluations by it; or
 - (b) future matters, including future or forecast costs, prices, revenues or profits,
- other than those set out in the Bidder Information in the Scheme Booklet.

12.5 Reliance on representations and warranties

Each party acknowledges that the other party has executed this document and agreed to take part in the transactions that this document contemplates in reliance on the representations and warranties that are made in clauses 12.1, 12.2 and 12.3.

12.6 When warranties are given

Each representation and warranty given or made under clauses 12.1, 12.2 and 12.3 is given:

- (a) as at the date of this document;
- (b) as at 5.00 pm on the Business Day immediately prior to the Second Court Date; and
- (c) at any other date at which the representation or warranty is expressed to be given under this document.

13. INDEMNITIES

13.1 Indemnities by Target

Target indemnifies Bidder Indemnified Parties against, and must pay on demand, any Loss, Claim or damages (including any right to common law damage) arising from or incurred in connection with a breach of the representation and warranty in clause 12.2(a) to the fullest extent permitted by law.

13.2 Indemnities by Bidder

Bidder indemnifies Target Indemnified Parties against, and must pay on demand, any Loss, Claim or damages (including any right to common law damage) arising from or incurred in connection with a breach of the representation and warranty in clause 12.3(a) to the fullest extent permitted by law.

14. LIMITED LIABILITY OF BIDDER

- (a) Bidder enters into this document in its capacity as responsible entity of TOT Active Fund and TOT Passive Fund and in no other capacity.
- (b) A liability of Bidder arising under or in connection with this document is limited to the amount Bidder actually receives in the exercise of its right of indemnity from the property of TOT Active Fund or TOT Passive Fund. This limitation of liability applies despite any other provision of this document and extends to all liabilities and obligations of Bidder in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.
- (c) Target may not sue Bidder in any capacity other than as the responsible entity of TOT Active Fund and TOT Passive Fund, including seeking the appointment of a receiver (except in relation to property of TOT Active Fund or TOT Passive Fund), a liquidator, an administrator or any similar person to Bidder or prove in any liquidation, administration or arrangement of or affecting Bidder (except in relation to property of TOT Active Fund or TOT Passive Fund).
- (d) The provisions of this clause 14 will not apply to any obligation or liability of Bidder to the extent that it is not satisfied because under each Constitution or by operation of law there is a reduction in the extent of Bidder's indemnification out of the assets of TOT Active Fund or TOT Passive Fund as a result of Bidder's fraud, negligence or breach of trust.
- (e) Bidder is not obliged to do or refrain from doing anything under this document (including incur any liability) unless Bidder's liability is limited in the same manner as set out in paragraphs (a) to (d) above.

15. **GST**

15.1 **GST pass on**

If GST is or will be payable on a supply made under or in connection with this document, to the extent that the consideration otherwise provided for that supply under this document is not stated to include an amount for GST on the supply:

- (a) the consideration otherwise provided for that supply under this document is increased by the amount of that GST; and
- (b) the party to which the supply was made (**Recipient**) must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided, within seven days of receiving a written demand from the supplier.

15.2 **Tax Invoice**

The right of the supplier to recover any amount in respect of GST under this document on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the Recipient.

15.3 **Consideration exclusive of GST**

Any consideration otherwise provided for a supply or payment obligation in connection with this document is exclusive of GST unless stated otherwise.

15.4 **Adjustments**

If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the supplier, as appropriate, the supplier within 14 days of becoming aware of the adjustment event:

- (a) may recover from the Recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving seven days written notice; or
- (b) must refund to the Recipient the amount by which the amount already recovered exceeds the amount of GST on the supply to the extent that the supplier is entitled to a refund or credit from the Commissioner of Taxation; and
- (c) must issue an adjustment note or tax invoice reflecting the adjustment event in relation to the supply to the Recipient within 28 days of the adjustment event.

15.5 **Reimbursements**

Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party, or used as the basis for calculation of consideration for a supply, under this document must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit for the party being reimbursed or indemnified (or the representative member of a GST group of which that party is a member) and in relation to revenue, must exclude any amount in respect of GST referable to the revenue.

15.6 **Survival**

This clause 15 survives termination or expiry of this document, and does not merge on Implementation.

16. **NOTICES**

16.1 **How to give a notice**

A notice, consent or other communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given;
- (c) marked for the attention of the person referred to in clause 16.4 (or, if the recipient has notified otherwise, then marked for attention in the way last notified);
- (d) email communications must state the first and last name of the sender and are taken to be signed by the named sender; and
- (e) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (ii) sent by email to the address referred to in clause 16.4.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

16.2 **When a notice is given**

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is sent by mail:
 - (i) within Australia – three Business Days after posting; or
 - (ii) to or from a place outside Australia – seven Business Days after posting.
- (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

16.3 **Receipt outside business hours**

Despite anything else in this clause 16 if communications are received or taken to be received under clause 16.2 (*When a notice is given*) after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in clause 16.4 as the address of the recipient and the time of receipt is the time in that place.

16.4 **Address for notices**

A person's address and email address are those set out below, or as the person notifies the sender:

Bidder

Address: 360 Capital Group, Level 8, 56 Pitt Street, Sydney, NSW 2000
Email Address: tony.pitt@360capital.com.au
Attention: Tony Pitt

With a copy to:

Address: 360 Capital Group, Level 8, 56 Pitt Street, Sydney, NSW 2000
Email: jennifer.vercoe@360capital.com.au
Attention: Jennifer Vercoe

Target

Address: URB Investments Limited, Level 14, 151 Clarence Street, Sydney NSW 2000
Email Address: warwick.negus@gmail.com
Attention: Warwick Negus

With a copy to:

Address: Ashurst, Level 11, 5 Martin Place, Sydney NSW, 2000
Email: Anton.Harris@ashurst.com
Attention: Anton Harris, Partner

17. **AMENDMENT AND ASSIGNMENT**

17.1 **Amendment**

This document can only be amended or replaced by another document executed by the parties.

17.2 **Assignment**

A party may only assign, encumber, declare a trust over or otherwise deal with its rights under this document with the prior written consent of the other party.

18. **GENERAL**

18.1 **Governing law**

- (a) This document and any dispute arising out of or in connection with the subject matter of this document is governed by the laws of the State of New South Wales within the Commonwealth of Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of that State, and courts of appeal from them, in respect of any proceedings arising out of or in connection with the subject matter of this document.

18.2 **Liability for expenses**

- (a) Bidder must pay for or reimburse all stamp duty payable on this document or any instrument or transaction contemplated in or necessary to give effect to this document (including any fees, fines, penalties and interest in connection with any

of those amounts) and is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid by the Bidder under this clause 18.2(a).

- (b) Bidder indemnifies Target against, and agrees to reimburse and compensate it for, any liability in respect of stamp duty under clause 18.2(a).
- (c) Bidder agrees to pay amounts due to Target under this clause within five Business Days of demand from Target.
- (d) Subject to clauses 18.2(a) and 18.2(e), each party must pay its own expenses incurred in negotiating, preparing, executing and registering this document.
- (e) Each party must pay an amount equal to 50% of the Shared Costs.

18.3 Giving effect to this document

Each party must do anything within its power (including execute any document) that the other party may reasonably require to give full effect to this document.

18.4 Variation of rights

The exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this document. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this document.

18.5 No partnership or agency

Nothing in this document is to be treated as creating a partnership and, except as specifically provided in this document, no party may act as agent of or in any way bind another party to any obligation.

18.6 Operation of this document

- (a) Subject to clause 7.5:
 - (i) this document and the Confidentiality Deed contain the entire agreement between the parties about its subject matter;
 - (ii) any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and the Confidentiality Deed and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

18.7 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

18.8 Consents

Where this document contemplates that a party may agree or consent to something (however it is described), unless this document expressly contemplates otherwise, the party may:

- (a) agree or consent, or not agree or consent, in its sole and absolute discretion; and
- (b) agree or consent subject to conditions.

18.9 No merger

No provisions of this document merge on Implementation.

18.10 Inconsistency with other documents

If this document is inconsistent with any other document or agreement between the parties, this document prevails to the extent of the inconsistency.

18.11 Counterparts

This document may be executed in counterparts.

SCHEDULE 1

Timetable

Day	Event
Week commencing 14 October	Provision of draft Scheme Booklet and Independent Expert's Report to ASIC for review and comment
Week commencing 4 November	First Court Date The Court makes orders convening the Scheme Meeting Scheme Booklet to be amended to make any changes required by the Court
Week commencing 4 November	Scheme Booklet and Independent Expert's Report is printed Scheme Booklet and Independent Expert's Report is registered with ASIC, published on ASX and sent to Target Shareholders
Week commencing 2 December	Scheme Meeting held Target Shareholders approve the proposed scheme of arrangement by the required majorities
Week commencing 2 December	Results of Scheme Meeting are announced to ASX
Week commencing 9 December	Second Court Date Court approves the scheme of arrangement
Week commencing 9 December	Scheme becomes Effective (Effective Date) Bidder to lodge a preliminary Appendix 3B with the ASX applying for quotation of the New Bidder Units
Week commencing 9 December	New Bidder Units commence trading on the ASX on a deferred settlement basis
Week commencing 9 December	Target Shares are suspended from trading on the ASX
Week commencing 9 December	Scheme record date for determining entitlements to the Scheme Consideration (Record Date)
Week commencing 16 December	Implementation Date Bidder issues the Scrip Scheme Consideration and pays the Cash Scheme Consideration (if applicable) to those Scheme Shareholders and Scheme Shareholders' shares are transferred to TOT Active Fund Bidder to lodge final Appendix 3B with the ASX applying for quotation of the precise number of New Bidder Units issued as Scrip Scheme Consideration

SCHEDULE 2

Scheme of Arrangement (Scheme)



Scheme of Arrangement

URB Investments Limited

ACN 615 320 262

The holders of ordinary fully paid shares issued in
Target

SCHEME OF ARRANGEMENT

Under section 411 of the Corporations Act

BETWEEN:

- (1) URB Investments Limited ACN 615 320 262 whose registered office is at Level 14, 151 Clarence St Sydney NSW 2000 (**Target**); and
- (2) Each person registered as a holder of fully paid ordinary shares in Target as at 7.00 pm on the Record Date.

BACKGROUND

- (A) Target is a public company incorporated in Australia. It is registered in Victoria and is a company limited by shares. Target is admitted to the official list of ASX and Target Shares are quoted on the stock market conducted by ASX. As at 14 October 2019, 73,959,549 of Target Shares were on issue.
- (B) 360 Capital FM Limited ACN 090 664 396 as responsible entity for 360 Capital Total Return Active Fund and 360 Capital Total Return Passive Fund (**Bidder**) is a public company incorporated in Australia under the Corporations Act. Bidder is admitted to the official list of ASX and its fully paid ordinary stapled units are quoted on the stock market conducted by ASX. As at 14 October 2019, 70,225,399 of Bidder Units were on issue.
- (C) Target and Bidder entered into the Scheme Implementation Deed on or about 14 October 2019 to facilitate the implementation of the Scheme. The directors of Target have proposed the Scheme to the members of Target and consider that the Scheme is in the best interests of Target and its members as a whole.
- (D) Under the Scheme Implementation Deed, Target and Bidder have agreed that each of them will perform their respective obligations under the Scheme and do everything within their powers that is necessary to give full effect to the Scheme.
- (E) Bidder has executed the Deed Poll under which it covenants in favour of the Target Shareholders to carry out its obligations under the Scheme, including to provide the Scheme Consideration in accordance with the terms of the Scheme.
- (F) If the Scheme becomes Effective:
 - (1) Bidder will issue the Scheme Consideration in accordance with the terms of this Scheme in consideration of the transfer of the Scheme Shares to Bidder Nominee; and
 - (2) all the Scheme Shares will be transferred to Bidder Nominee and Target will become a wholly owned subsidiary of Bidder Nominee; and
 - (3) Target will enter the Bidder Nominee's name in the Register as the holder of all Scheme Shares.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document:

ASIC means the Australian Securities and Investments Commission.

ASX means the Australian Securities Exchange or ASX Limited (ABN 98 008 624 691), as the context requires.

ASX Listing Rules means the listing rules of ASX.

Bidder Nominee means 360 Capital FM Limited ACN 090 664 396 as responsible entity for 360 Capital Total Return Active Fund.

Bidder Unit means a stapled security in TOT consisting of one TOT Active Fund Unit and one TOT Passive Fund Unit.

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

Cash Scheme Consideration means \$0.0225 for each Scheme Share held at the Record Date.

CHESS means the clearing house electronic subregister system for the electronic transfer of securities operated by ASX Settlement Pty Limited, which provides for the electronic transfer, settlement and registration of securities.

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

Court means the Federal Court of Australia.

Deed Poll means the deed poll executed by Bidder and Bidder Nominee in favour of Target Shareholders dated [date] in the form of Schedule 3 of the Scheme Implementation Deed.

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

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

End Date means 28 February 2020, subject to any extension under clause 3.6 of the Scheme Implementation Deed.

Immediately Available Funds means a bank cheque or other form of cleared funds acceptable to Target.

Implementation means the implementation of the Scheme, on it becoming effective under section 411(10).

Implementation Date means the fifth Business Day immediately following the Record Date.

Ineligible Overseas Shareholder means a Scheme Shareholder:

- (a) who is (or is acting on behalf of) a resident of a jurisdiction other than Australia or New Zealand and their respective external authorities; or
- (b) whose address shown in the Register is a place outside Australia or New Zealand and their respective external territories.

Ineligible Overseas Shareholder Sale Facility means the facility to be conducted in accordance with clause 5.6.

Loan means a loan from the Target to the Bidder on the Loan Terms.

Loan Terms means the terms agreed between the parties as set out in Schedule 4 of the Scheme Implementation Deed.

New Bidder Units means Bidder Units to be issued under the Scheme as Scrip Scheme Consideration.

Record Date means 7.00 pm on the day which is two Business Days after the Effective Date or any other date (after the Effective Date) agreed by the parties to be the record date to determine entitlements to receive Scheme Consideration under the Scheme.

Register means the register of members of Target.

Registered Address means, in relation to a Target Shareholder, the address of the shareholder shown in the Register.

Scheme means a scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Target Shareholders set out in this document subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved by each party.

Scheme Consideration means the consideration provided by Bidder for the transfer of the Scheme Shares held by Scheme Shareholders to Bidder, being:

- (a) the Scrip Scheme Consideration; and
- (b) if the Target grants the Bidder the Loan and the Implementation Date is after the TOT Distribution Record Date (and prior to the End Date), the Cash Scheme Consideration.

For the avoidance of doubt, if the Implementation Date occurs prior to the TOT Distribution Record Date or after the End Date, the Cash Scheme Consideration does not form part of the Scheme Consideration.

Scheme Implementation Deed means the Scheme Implementation Deed between Target and Bidder dated 14 October 2019 relating to the implementation of the Scheme.

Scheme Meeting means the Target Shareholders' meeting or meetings ordered by the Court to be convened under section 411(1) in relation to the Scheme.

Scheme Shares means the Target Shares on issue on the Record Date excluding any Target Shares registered to the Bidder Nominee.

Scheme Shareholder means each Target Shareholder as at the Record Date, taking into account registration of all registrable transfers and transmission applications in accordance with clause 6.1, excluding the Bidder Nominee.

Scrip Scheme Consideration means 0.9833 Bidder Units for each Scheme Share held by a Scheme Shareholder as at the Record Date.

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

Share Scheme Transfer means, for each Scheme Shareholder, a duly completed and executed proper instrument 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.

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

Target Share Registry means Link Market Service Limited.

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

TOT Active Fund means the 360 Capital Total Return Active Fund (ARSN 602 303 613).

TOT Active Fund Unit means a fully paid ordinary unit in TOT Active Fund.

TOT Passive Fund means the 360 Capital Total Return Passive Fund (ARSN 602 304 432).

TOT Passive Fund Unit means a fully paid ordinary unit in TOT Passive Fund.

Trust Account means the trust account operated by or on behalf of Target to hold the Cash Scheme Consideration on trust for the purpose of paying the Cash Scheme Consideration to the Scheme Shareholders in accordance with clause 5.2.

1.2 Rules for interpreting this document

Headings and catchwords are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iii) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.

- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The words **officer** and **security interest** have the same meaning as in section 9 of the Corporations Act.
- (g) The expression **related body corporate** has the same meaning given in section 50 of the Corporations Act.
- (h) All references to time in this document are references to Sydney, Australia.
- (i) A reference to **\$** or **dollar** is to Australian currency.

1.3 **Non-Business Days**

If the day on or by which a person must do something under this document is not a Business Day the person must do it on or by the previous Business Day.

2. **CONDITIONS PRECEDENT**

2.1 **Conditions precedent to the Scheme**

The Scheme is conditional on the following:

- (a) as at 8.00am on the Second Court Date, the Deed Poll not having been terminated;
- (b) all the conditions set out in clause 3.2 of the Scheme Implementation Deed, other than the conditions in clause 3.2(d), having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed;
- (c) the Court having approved the Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Target and Bidder having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act; and
- (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.

2.2 **Conditions precedent and operation of clause 5**

The satisfaction of each condition of clause 2.1 of this Scheme is a condition precedent to the operation of clause 5 of this Scheme.

2.3 **Certificate in relation to conditions precedent**

- (a) Target and Bidder 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 2.1 of this Scheme (other than the conditions precedent in clause 2.1(c) and 2.1(d) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date.
- (b) The certificate referred to in this clause 2.3(a) will constitute conclusive evidence of whether the conditions precedent referred to in clause 2.1 of this Scheme (other than the conditions precedent in clause 2.1(c) and 2.1(d) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date.

3. SCHEME

3.1 Effective Date

Subject to clause 3.2, the Scheme takes effect pursuant to section 411(10) of the Corporations Act on the Effective Date.

3.2 End Date

The Scheme will lapse and be of no effect if the Effective Date has not occurred on or before the End Date.

4. THE SCHEME

4.1 Lodgement of Court orders with ASIC

If the conditions precedent set out in clause 2.1 of this Scheme (other than the condition precedent in clause 2.1(d) of this Scheme) are satisfied, Target must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the order of the Court approving the Scheme under section 411(4)(b) of the Corporations Act as soon as possible, and in any event by no later than 4.00 pm on the first Business Day after that office copy is received (or any later date agreed in writing by Bidder).

4.2 Transfer and registration of Scheme Shares

On the Implementation Date subject to the provision of the Scheme Consideration in accordance with the Scheme and Bidder having provided Target with written confirmation of the provision of the Scheme Consideration:

- (a) all Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Bidder Nominee without the need for any further act by any Scheme Shareholder (other than acts performed by Target as attorney and agent for the Scheme Shareholders under the Scheme) by:
 - (i) Target delivering to Bidder for execution duly completed and, if necessary, stamped Share Scheme Transfers to transfer the Scheme Shares to Bidder Nominee, duly executed by Target as the attorney and agent of each Scheme Shareholder as transferor under clauses 7.2 and 7.3;
 - (ii) Bidder Nominee executing the Share Scheme Transfers as transferee and delivering them to Target for registration; and
- (b) as soon as practicable after receipt of the duly executed Share Scheme Transfer, Target must enter or procure entry of the name of Bidder Nominee in the Target Register as the holders of all the Scheme Shares; and

4.3 Entitlement to Scheme Consideration

On the Implementation Date, in consideration for the transfer to Bidder 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 5 of this Scheme.

4.4 Title and rights in Scheme Shares

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 5 of this Scheme, on and from the Implementation Date, Bidder Nominee will be beneficially entitled to the Scheme Shares transferred to it under the

Scheme, pending registration by Target of Bidder Nominee in the Register as the holder of the Scheme Shares.

4.5 Agreement to become member of Bidder

Each Scheme Shareholder agrees for all purposes to become a unitholder of Bidder (without the need for any further act on its part) and to be bound by the constituent documents of Bidder.

4.6 Target Shares transferred free from encumbrance

To the extent permitted by law, the Scheme Shares (including any rights and entitlements attaching to those shares) transferred to Bidder Nominee under the Scheme will be transferred (subject to Target's constitution) free from all security interests (including mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise).

4.7 Warranty by Scheme Shareholders

Each Scheme Shareholder warrants to Bidder and Bidder Nominee and is deemed to have authorised Target to warrant to Bidder and Bidder Nominee as agent and attorney for the Scheme Shareholder, that:

- (a) all its Scheme Shares (including any rights and entitlements attaching to those Shares) will, as at the time of the transfer of them to Bidder Nominee, be fully paid and (subject to Target's constitution) free from all security interests (including mortgages, charges, liens, encumbrances, pledges, security interests and interests of third parties of any kind, whether legal or otherwise), and from any restrictions on transfer of any kind; and
- (b) that it has full power and capacity to sell and to transfer its Scheme Shares (including any rights and entitlements attaching to those shares) to Bidder Nominee under the Scheme.

5. SCHEME CONSIDERATION

5.1 Consideration under the Scheme

On the Implementation Date, Target must procure that, in consideration for the transfer to Bidder Nominee of the Scheme Shares, Bidder:

- (a) issues to the Scheme Shareholders (or to the nominee in the case of Ineligible Overseas Shareholders, in accordance with clause 5.6) the Scrip Scheme Consideration; and
- (b) pays to the Scheme Shareholders the Cash Scheme Consideration (if applicable),

in accordance with this clause 5.

5.2 Satisfaction of obligations for Cash Scheme Consideration (if applicable)

The obligation of Bidder to procure payment of the Cash Scheme Consideration pursuant to clause 5.1 (if applicable) of this Scheme will be satisfied by Target procuring Bidder no later than 2 Business Days before the Implementation Date to deposit (or procure the deposit) in Immediately Available Funds the aggregate amount of the Cash Scheme Consideration payable to all Scheme Shareholders into the Trust Account (except that the amount of any interest on the amount deposited will be to Bidder's account).

5.3 **Payment of Cash Scheme Consideration (if applicable)**

- (a) Within 2 Business Days after the Implementation Date, subject to receipt of the Scheme Consideration from Bidder in accordance with clause 5.2 of this Scheme, Target must pay to each Scheme Shareholder an amount equal to the Cash Scheme Consideration for each Scheme Share transferred to Bidder Nominee on the Implementation Date by that Scheme Shareholder.
- (b) Unless otherwise directed by the Scheme Shareholders before the Record Date, the amounts referred to in this clause 5.3 of this Scheme must be paid by direct credit or sending a cheque drawn on an Australian bank in Australian currency on the Implementation Date to each Scheme Shareholder by pre-paid ordinary post (or, if the address of the Scheme Shareholders in the Register is outside Australia, by pre-paid airmail post) to their address recorded in the Register on the Record Date.

5.4 **Unclaimed monies**

Target may cancel a cheque issued under clause 5.3 of this Scheme if the cheque:

- (a) is returned to Target; or
- (b) has not been presented for payment within 6 months after the date on which the cheque was sent.

During the period of 1 year commencing on the Implementation Date, on request from a Scheme Shareholder, Target must reissue a cheque that was previously cancelled under this clause 5.4.

5.5 **Orders of a Court**

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

- (a) which requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with clause 5 of this Scheme, then Target must procure that payment is made in accordance with that order; or
- (b) which would prevent Target from dispatching payment to any particular Scheme Shareholder in accordance with clause 5.3 of this Scheme, Target will retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Cash Scheme Consideration until such time as payment in accordance with clause 5.3 of this Scheme is permitted by law.

5.6 **Ineligible Overseas Shareholders**

- (a) Ineligible Overseas Shareholders are not entitled to be issued the Scrip Scheme Consideration under clause 4.3 and 5.1(a). Instead, the Scrip Scheme Consideration that, but for this clause, would be issued to the Ineligible Overseas Shareholders will be issued to a person nominated by Target for this purpose (the **Nominee**).
- (b) Where the Nominee is issued Scrip Scheme Consideration under this clause, Target will cause:
 - (i) the Nominee, as soon as reasonably practicable (but, in any case within one month after the Implementation Date), to offer all the Bidder Units comprising such Scrip Scheme Consideration for sale on ASX in such manner, at such price or prices and on such other terms as the Nominee

determines in good faith (and at the risk of the Ineligible Overseas Shareholders); and

- (ii) as reasonably practicable but in any case within 10 Business Days after settlement of all the sales of the Bidder Units comprising the Scrip Scheme Consideration issued to the Nominee having occurred, to be remitted to each Ineligible Overseas Shareholder the same proportion of the net proceeds of sale of all such shares (after deduction of any fees and taxes and other charges and costs of sale) as the Scrip Scheme Consideration issued to the Nominee in respect of that Ineligible Overseas Shareholder bears to the total number of Bidder Units issued to and sold by the Nominee under paragraph (i).
- (c) Each Ineligible Overseas Shareholder appoints Target as its agent to receive on its behalf any financial services guide or other notice that may be given under the Corporations Act by the Nominee to each Ineligible Overseas Shareholder for or in connection with its appointment or the sales.
- (d) Neither Target nor Bidder make any representation as to the amount of proceeds of sale to be received by Ineligible Overseas Shareholders under the Ineligible Overseas Shareholder Sale Facility. Both Target and Bidder expressly disclaim any fiduciary duty to the Ineligible Overseas Shareholders which may arise in connection with the Ineligible Overseas Shareholder Sale Facility.

5.7 Shares to rank equally

Bidder covenants in favour of Target (in its own right and on behalf of the Scheme Shareholders) that:

- (a) the New Bidder Units will rank equally in all respects with all existing Bidder Units;
- (b) it will do everything reasonably necessary to ensure that trading in the New Bidder Units commences by the first Business Day after the Implementation Date; and
- (c) on issue, each New Bidder Unit will be fully paid and free from all security interests (including mortgages, charges, liens, encumbrances, pledges, security interests and interests of third parties of any kind, whether legal or otherwise).

5.8 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any Bidder Units to be issued under this Scheme must be issued and registered in the names of the joint holders and entry in the TOT Register must take place in the same order as the holders' names appear in the Register;
- (b) any cheque required to be sent under this Scheme will be payable to the joint holders and sent to the holder whose name appears first in the Register as at the Record Date; and
- (c) any document required to be sent under this Scheme, will be forwarded to the holder whose name appears first in the Register as at the Record Date.

6. DEALINGS IN TARGET SHARES

6.1 What Target Share dealings are recognised?

To establish the persons who are Scheme Shareholders, dealings in Target Shares will be recognised by Target only if:

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

6.2 Target to register transfer and transmission applications

Target must register any registrable transfers and transmission applications of the Scheme Shares received in accordance with clause 6.1(b) by the Record Date.

6.3 Transfers received after Record Date not recognised

Target will not accept for registration, nor recognise for any purpose, any transfer or transmission application in respect of Scheme Shares received after the Record Date (except a transfer to Bidder Nominee pursuant to this Scheme and any subsequent transfer by Bidder Nominee or its successors in title).

6.4 No disposal after Effective Date

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 Effective Date in any way except as set out in this Scheme and any such disposal will be void and of no legal effect whatsoever.

6.5 Target to maintain Register to determine entitlements

In order to determine entitlements to the Scheme Consideration, Target will maintain, or procure the maintenance of, the Register in accordance with this clause 6.5 until the Scheme Consideration has been paid to Scheme Shareholders and the Register in this form will solely determine entitlements to the Scheme Consideration.

6.6 Holding statements no effect from Record Date

From the Record Date, all holding statements for Scheme Shares (other than statements of holding in favour of Bidder Nominee and its successors in title) will cease to have effect as documents of title (or evidence thereof) and each entry on the Register at the Record Date will cease to have any effect other than as evidence of the entitlements of Scheme Shareholders to the Scheme Consideration.

6.7 Target to provide contact information for Scheme Shareholders

As soon as practicable after the Record Date and in any event at least three Business Days before the Implementation Date, Target will give to Bidder or procure that Bidder be given details of the name, Registered Address and the number of Scheme Shares held by each Scheme Shareholder, as shown in the Register at the Record Date, in whatever form Bidder reasonably requires.

6.8 Suspension of trading

Suspension of trading in Target Shares on the stock market conducted by ASX will occur from the close of trading on the Effective Date.

6.9 Target to apply for termination of quotation of Target Shares

On a date after the Implementation Date to be determined by Bidder, Target will apply for termination of the official quotation on the stock market conducted by ASX of Target Shares and must apply to have itself removed from the official list of ASX.

7. GENERAL PROVISIONS

7.1 Target giving effect to the Scheme

Target must do anything (including execute any document) that is necessary or expedient to implement, and perform its obligation under, this Scheme. Without limiting Target's power under the Scheme, Target has power to do all things that it considers necessary or desirable to give effect to the Scheme and the Scheme Implementation Deed.

7.2 Scheme Shareholders' agreements and consents

Each Scheme Shareholder:

- (a) agrees to the transfer of their Target Shares, together with all rights and entitlements attaching to those Shares, to Bidder Nominee, in accordance with the Scheme; and
- (b) irrevocably consents to Target doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, expedient or incidental to Implementation and to give full effect to the Scheme and the transactions contemplated by it and Target, as agent of each Scheme Shareholder, may sub-delegate its functions under this document to any of its directors and officers, jointly and severally;

without the need for any further act by the Scheme Shareholder.

7.3 Appointment of Target as attorney of Scheme Shareholders

Each Scheme Shareholder, without the need for any further act by any Scheme Shareholder, irrevocably appoints Target and each of its directors and officers, jointly and severally, on and from the Effective Date, as the Scheme Shareholder's attorney and agent,

- (a) to execute any document or do any other act necessary, expedient or incidental to give full effect to the Scheme and the transactions contemplated by it, including the effecting of a valid transfer or transfers (or execution and delivery of any Share Scheme Transfer) under clause 4; and
- (b) to enforce the Deed Poll against Bidder,

and Target accepts such appointment.

7.4 No liability when acting in good faith

Without prejudice to the parties' rights under the Scheme Implementation Deed, neither Target nor Bidder, 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.

7.5 Binding effect of Scheme

Each Scheme Shareholder acknowledges that the Scheme binds Target and all Scheme Shareholders from time to time, including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against the Scheme.

7.6 Alteration or condition to Scheme

If the Court proposes to approve the Scheme subject to any alteration or condition Target may, by its counsel or solicitors, but subject to the prior approval of Bidder (which may not be unreasonably withheld or delayed), consent on behalf of all persons concerned, including each Scheme Shareholder, to those alterations or conditions.

7.7 Deed Poll

Target undertakes in favour of each Scheme Shareholder to enforce the Deed Poll against Bidder for and on behalf of each Scheme Shareholder.

7.8 Notices

Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to Target, it will be deemed to be received on the date (if any) on which it is actually received at Target's registered office or Share Registry and on no other date.

7.9 Costs and stamp duty

Bidder must pay for or reimburse all stamp duty payable on this document or any instrument or transaction contemplated in or necessary to give effect to this document (including any fees, fines, penalties and interest in connection with any of those amounts) and is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid by the Bidder under this clause 7.9.

7.10 Governing law

This document and any dispute arising out of or in connection with the subject matter of this document is governed by the laws of the State of New South Wales within the Commonwealth of Australia.

7.11 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address set out in the Details.

SCHEDULE 1

Deed Poll



Deed Poll

360 Capital FM Limited as responsible entity of 360
Capital Total Return Active Fund and 360 Capital Total
Return Passive Fund

ACN 090 664 396

Deed Poll relating to proposed Scheme of
Arrangement between URB Investments Limited
and its members

DEED POLL

THIS DEED POLL is made on

DATE

BY

360 Capital FM Limited ACN 090 664 396 as responsible entity of 360 Capital Total Return Active Fund and 360 Capital Total Return Passive Fund (**Bidder**)

FOR THE BENEFIT OF

Each holder of Scheme Shares as at the Record Date (**Scheme Shareholder**)

RECITALS

- (A) The directors of Target have resolved that Target should propose the Scheme.
- (B) The effect of the Scheme will be that all Scheme Shares will be transferred to Bidder Nominee.
- (C) URB Investments Limited ACN 615 320 262 (**Target**) and Bidder have entered into the Scheme Implementation Deed.
- (D) Under the Scheme Implementation Deed, Target has agreed to propose the Scheme, pursuant to which (among other things) the Scheme Shareholders will transfer to Bidder Nominee, and Bidder Nominee is to acquire, all the Scheme Shares, and Bidder is to provide the Scheme Consideration to each Scheme Shareholder.
- (E) Bidder is executing this document to covenant in favour of each Scheme Shareholder to perform the obligations contemplated of it under the Scheme.

THE BIDDER DECLARES AS FOLLOWS

1. INTERPRETATION

1.1 Definitions

The following definition applies in this document.

Scheme Implementation Deed means the scheme implementation deed between Target and Bidder dated 14 October 2019.

Words and expressions that are defined in the Scheme or Scheme Implementation Deed (other than words and expressions defined in this document) have the same meaning in this document as given to them in the Scheme Implementation Deed, unless the context makes it clear that a definition is not intended to apply.

1.2 Rules for interpreting this document

The rules in clause 1.2 of the Scheme Implementation Deed apply in interpreting this document, unless the context makes it clear that a rule is not intended to apply.

2. NATURE OF THIS DOCUMENT

Each of Bidder and Bidder Nominee acknowledges and agrees that:

- (a) this document is a deed poll and may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not parties to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints Target and each of its directors and officers, jointly and severally, as its agent and attorney to enforce this document against Bidder.

3. CONDITIONS PRECEDENT AND TERMINATION

3.1 Conditions precedent

The obligations of Bidder and Bidder Nominee under this document are subject to the Scheme becoming Effective.

3.2 Termination

The obligations of the Bidder and Bidder Nominee under this document will automatically terminate and the terms of this document will be of no further force or effect if:

- (a) the Scheme has not become Effective on or before the End Date; or
- (b) the Scheme Implementation Deed is terminated in accordance with its terms, unless Target and Bidder otherwise agree (and, if required, as approved by the Court).

3.3 Consequences of termination

If this document is terminated pursuant to clause 3.2 then, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Bidder and Bidder Nominee are released from their obligations to further perform this document except those obligations contained in clause 9.1 and any other obligations which by their nature survive termination; and
- (b) each Scheme Shareholder retains any rights, powers or remedies it has against Bidder and Bidder Nominee in respect of any breach of this document which occurred before this document was terminated.

4. PERFORMANCE OF OBLIGATIONS GENERALLY

Bidder will comply with its obligations under the Scheme Implementation Deed and do all acts and things necessary or desirable on its part to give full effect to the Scheme.

5. SCHEME CONSIDERATION

5.1 Compliance with Scheme obligations generally

Subject to clause 3, in consideration of the transfer of each Scheme Share to Bidder Nominee in accordance with the Scheme, Bidder covenants in favour of each Scheme Shareholder that it will duly and punctually observe and perform all obligations contemplated of it under the Scheme, including all obligations contemplated of it relating to the provision of the Scheme Consideration in accordance with the Scheme.

5.2 Provision of Scrip Scheme Consideration

- (a) Subject to clause 3, Bidder will on the Implementation Date, issue to each Scheme Shareholder (or to a nominee appointed by Bidder in respect of Ineligible Overseas

Shareholders) the Scrip Scheme Consideration in accordance with clause 2.5 of the Scheme Implementation Deed.

- (b) The New Bidder Units to be issued under the Scheme will be validly issued and fully paid up, be free from any Security Interest (other than as provided for under the constitution of Bidder) and will rank equally in all respect with all other Bidder Units on issue as at the Implementation Date.

5.3 **Payment of Cash Scheme Consideration**

Subject to clause 3, if applicable pursuant to the Scheme Implementation Deed, Bidder covenants in favour of each Scheme Shareholder to pay the Cash Scheme Consideration to the Trust Account on behalf of each Scheme Shareholder in accordance with the Scheme.

5.4 **Manner of payment**

Bidder's undertaking to provide the Cash Scheme Consideration to Target on behalf of each Scheme Shareholder is satisfied by Bidder, no later than 2 Business Days before the Implementation Date, depositing in Immediately Available Funds the aggregate amount of the Cash Scheme Consideration payable to all Scheme Shareholders into the Trust Account (except that the amount of any interest on the amount deposited will be to Bidder's account).

5.5 **Joint holders**

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

6. **REPRESENTATIONS AND WARRANTIES**

Each of Bidder and Bidder Nominee represents and warrants in favour of each Scheme Shareholder that:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power)** it has full legal capacity and power to execute this document and to carry out the transactions that this document contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its execution of this document and its carrying out of the transactions that this document contemplates;
- (d) **(documents effective)** this document is valid and binding on it and enforceable against it in accordance with its terms;
- (e) **(no adverse regulatory action)** no regulatory action of any nature has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this document and, to the knowledge of Bidder, no such regulatory action has been threatened or is proposed to be taken against Bidder;
- (f) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:

- (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
- (ii) any law binding on or applicable to it or its assets; or
- (iii) any encumbrance or document binding on or applicable to it; and
- (g) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced; and
- (h) **(solvent)** it is not Insolvent.

7. **CONTINUING OBLIGATIONS**

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

- (a) Bidder and Bidder Nominee having fully performed its obligations under this document; or
- (b) termination of this document pursuant to clause 3.2.

8. **NOTICES**

8.1 **How to give a notice**

A notice or other communication to a person in respect of this document is only effective if it is:

- (a) in writing, legible and in English, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (ii) sent by email to the address referred to in clause 8.4.

8.2 **When a notice is given**

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is sent by mail:
 - (i) within Australia – three Business Days after posting; or
 - (ii) to or from a place outside Australia – seven Business Days after posting.
- (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or

- (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

8.3 **Receipt outside business hours**

Despite anything else in this clause 8 if communications are received or taken to be received under clause 8.2(b) (*When a notice is given*) after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in clause 8.4 as the address of the recipient and the time of receipt is the time in that place.

8.4 **Address for notices**

The mail address and email address for Bidder and Bidder Nominee are those set out below:

Bidder

Address: 360 Capital Group, Level 8, 56 Pitt Street, Sydney, NSW 2000
Email Address: tony.pitt@360capital.com.au
Attention: Tony Pitt

Bidder Nominee

Address: 360 Capital Group, Level 8, 56 Pitt Street, Sydney, NSW 2000
Email Address: tony.pitt@360capital.com.au
Attention: Tony Pitt

9. **GENERAL**

9.1 **Stamp duty and registration fees**

Bidder:

- (a) agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document or any other transaction contemplated by this document (including any fees, fines, penalties and interest in connection with any of these amounts); and
- (b) indemnifies and agrees to keep indemnified each Scheme Shareholder against, and agrees to reimburse and compensate it, for any liability in respect of stamp duty under clause 9.1(a).

9.2 **Amendment**

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

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

in which event each of Bidder and Bidder Nominee executes a further deed poll in favour of each Scheme Shareholder giving effect to the variation, alteration or amendment.

9.3 Partial exercising of rights

Unless this document expressly states otherwise, if Bidder or Bidder Nominee does not exercise a right, power or remedy in connection with this document fully or at a given time, it may still exercise it later.

9.4 Assignment

The rights and obligations of Bidder, Bidder Nominee and of each Scheme Shareholder under this document are personal and, except with the prior written consent of Target and Bidder cannot be assigned, encumbered, charged or otherwise dealt with.

9.5 Operation of this document

- (a) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (b) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

9.6 Further steps

Each of Bidder and Bidder Nominee agrees, at its own expense, to do anything including executing all documents and do all things (on its own behalf or on behalf of each Scheme Shareholder) necessary or expedient to give full effect to this document and the transactions contemplated by it.

9.7 Governing law

- (a) This document and any dispute arising out of or in connection with the subject matter of this document is governed by the laws of the State of New South Wales.
- (b) Bidder submits to the non-exclusive jurisdiction of the courts of that state, and courts of appeal from them, in respect of any proceedings arising out of or in connection with the subject matter of this document.

9.8 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on Bidder or Bidder Nominee by being delivered or left at its respective address set out in clause 8.4.

EXECUTED as a deed poll.

SIGNED, SEALED AND DELIVERED by
360 CAPITAL FM LIMITED AS
RESPONSIBLE ENTITY OF 360 CAPITAL
TOTAL RETURN ACTIVE FUND:

Signature of director

Signature of director/secretary

Name

Name

SIGNED, SEALED AND DELIVERED by
360 CAPITAL FM LIMITED AS
RESPONSIBLE ENTITY OF 360 CAPITAL
TOTAL RETURN PASSIVE FUND:

Signature of director

Signature of director/secretary

Name

Name

SCHEDULE 3

Deed Poll



Deed Poll

360 Capital FM Limited as responsible entity of 360
Capital Total Return Active Fund and 360 Capital Total
Return Passive Fund

ACN 090 664 396

Deed Poll relating to proposed Scheme of
Arrangement between URB Investments Limited
and its members

DEED POLL

THIS DEED POLL is made on

DATE

BY

360 Capital FM Limited ACN 090 664 396 as responsible entity of 360 Capital Total Return Active Fund and 360 Capital Total Return Passive Fund (**Bidder**)

FOR THE BENEFIT OF

Each holder of Scheme Shares as at the Record Date (**Scheme Shareholder**)

RECITALS

- (A) The directors of Target have resolved that Target should propose the Scheme.
- (B) The effect of the Scheme will be that all Scheme Shares will be transferred to Bidder Nominee.
- (C) URB Investments Limited ACN 615 320 262 (**Target**) and Bidder have entered into the Scheme Implementation Deed.
- (D) Under the Scheme Implementation Deed, Target has agreed to propose the Scheme, pursuant to which (among other things) the Scheme Shareholders will transfer to Bidder Nominee, and Bidder Nominee is to acquire, all the Scheme Shares, and Bidder is to provide the Scheme Consideration to each Scheme Shareholder.
- (E) Bidder is executing this document to covenant in favour of each Scheme Shareholder to perform the obligations contemplated of it under the Scheme.

THE BIDDER DECLARES AS FOLLOWS

1. INTERPRETATION

1.1 Definitions

The following definition applies in this document.

Scheme Implementation Deed means the scheme implementation deed between Target and Bidder dated 14 October 2019.

Words and expressions that are defined in the Scheme or Scheme Implementation Deed (other than words and expressions defined in this document) have the same meaning in this document as given to them in the Scheme Implementation Deed, unless the context makes it clear that a definition is not intended to apply.

1.2 Rules for interpreting this document

The rules in clause 1.2 of the Scheme Implementation Deed apply in interpreting this document, unless the context makes it clear that a rule is not intended to apply.

2. NATURE OF THIS DOCUMENT

Each of Bidder and Bidder Nominee acknowledges and agrees that:

- (a) this document is a deed poll and may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not parties to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints Target and each of its directors and officers, jointly and severally, as its agent and attorney to enforce this document against Bidder.

3. CONDITIONS PRECEDENT AND TERMINATION

3.1 Conditions precedent

The obligations of Bidder and Bidder Nominee under this document are subject to the Scheme becoming Effective.

3.2 Termination

The obligations of the Bidder and Bidder Nominee under this document will automatically terminate and the terms of this document will be of no further force or effect if:

- (a) the Scheme has not become Effective on or before the End Date; or
 - (b) the Scheme Implementation Deed is terminated in accordance with its terms,
- unless Target and Bidder otherwise agree (and, if required, as approved by the Court).

3.3 Consequences of termination

If this document is terminated pursuant to clause 3.2 then, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Bidder and Bidder Nominee are released from their obligations to further perform this document except those obligations contained in clause 9.1 and any other obligations which by their nature survive termination; and
- (b) each Scheme Shareholder retains any rights, powers or remedies it has against Bidder and Bidder Nominee in respect of any breach of this document which occurred before this document was terminated.

4. PERFORMANCE OF OBLIGATIONS GENERALLY

Bidder will comply with its obligations under the Scheme Implementation Deed and do all acts and things necessary or desirable on its part to give full effect to the Scheme.

5. SCHEME CONSIDERATION

5.1 Compliance with Scheme obligations generally

Subject to clause 3, in consideration of the transfer of each Scheme Share to Bidder Nominee in accordance with the Scheme, Bidder covenants in favour of each Scheme Shareholder that it will duly and punctually observe and perform all obligations contemplated of it under the Scheme, including all obligations contemplated of it relating to the provision of the Scheme Consideration in accordance with the Scheme.

5.2 Provision of Scrip Scheme Consideration

- (a) Subject to clause 3, Bidder will on the Implementation Date, issue to each Scheme Shareholder (or to a nominee appointed by Bidder in respect of Ineligible Overseas

Shareholders) the Scrip Scheme Consideration in accordance with clause 2.5 of the Scheme Implementation Deed.

- (b) The New Bidder Units to be issued under the Scheme will be validly issued and fully paid up, be free from any Security Interest (other than as provided for under the constitution of Bidder) and will rank equally in all respect with all other Bidder Units on issue as at the Implementation Date.

5.3 **Payment of Cash Scheme Consideration**

Subject to clause 3, if applicable pursuant to the Scheme Implementation Deed, Bidder covenants in favour of each Scheme Shareholder to pay the Cash Scheme Consideration to the Trust Account on behalf of each Scheme Shareholder in accordance with the Scheme.

5.4 **Manner of payment**

Bidder's undertaking to provide the Cash Scheme Consideration to Target on behalf of each Scheme Shareholder is satisfied by Bidder, no later than 2 Business Days before the Implementation Date, depositing in Immediately Available Funds the aggregate amount of the Cash Scheme Consideration payable to all Scheme Shareholders into the Trust Account (except that the amount of any interest on the amount deposited will be to Bidder's account).

5.5 **Joint holders**

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

6. **REPRESENTATIONS AND WARRANTIES**

Each of Bidder and Bidder Nominee represents and warrants in favour of each Scheme Shareholder that:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power)** it has full legal capacity and power to execute this document and to carry out the transactions that this document contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its execution of this document and its carrying out of the transactions that this document contemplates;
- (d) **(documents effective)** this document is valid and binding on it and enforceable against it in accordance with its terms;
- (e) **(no adverse regulatory action)** no regulatory action of any nature has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this document and, to the knowledge of Bidder, no such regulatory action has been threatened or is proposed to be taken against Bidder;
- (f) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:

- (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
- (ii) any law binding on or applicable to it or its assets; or
- (iii) any encumbrance or document binding on or applicable to it; and
- (g) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced; and
- (h) **(solvent)** it is not Insolvent.

7. **CONTINUING OBLIGATIONS**

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

- (a) Bidder and Bidder Nominee having fully performed its obligations under this document; or
- (b) termination of this document pursuant to clause 3.2.

8. **NOTICES**

8.1 **How to give a notice**

A notice or other communication to a person in respect of this document is only effective if it is:

- (a) in writing, legible and in English, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (ii) sent by email to the address referred to in clause 8.4.

8.2 **When a notice is given**

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is sent by mail:
 - (i) within Australia – three Business Days after posting; or
 - (ii) to or from a place outside Australia – seven Business Days after posting.
- (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or

- (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

8.3 **Receipt outside business hours**

Despite anything else in this clause 8 if communications are received or taken to be received under clause 8.2(b) (*When a notice is given*) after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in clause 8.4 as the address of the recipient and the time of receipt is the time in that place.

8.4 **Address for notices**

The mail address and email address for Bidder and Bidder Nominee are those set out below:

Bidder

Address: 360 Capital Group, Level 8, 56 Pitt Street, Sydney, NSW 2000
Email Address: tony.pitt@360capital.com.au
Attention: Tony Pitt

Bidder Nominee

Address: 360 Capital Group, Level 8, 56 Pitt Street, Sydney, NSW 2000
Email Address: tony.pitt@360capital.com.au
Attention: Tony Pitt

9. **GENERAL**

9.1 **Stamp duty and registration fees**

Bidder:

- (a) agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document or any other transaction contemplated by this document (including any fees, fines, penalties and interest in connection with any of these amounts); and
- (b) indemnifies and agrees to keep indemnified each Scheme Shareholder against, and agrees to reimburse and compensate it, for any liability in respect of stamp duty under clause 9.1(a).

9.2 **Amendment**

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

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

in which event each of Bidder and Bidder Nominee executes a further deed poll in favour of each Scheme Shareholder giving effect to the variation, alteration or amendment.

9.3 Partial exercising of rights

Unless this document expressly states otherwise, if Bidder or Bidder Nominee does not exercise a right, power or remedy in connection with this document fully or at a given time, it may still exercise it later.

9.4 Assignment

The rights and obligations of Bidder, Bidder Nominee and of each Scheme Shareholder under this document are personal and, except with the prior written consent of Target and Bidder cannot be assigned, encumbered, charged or otherwise dealt with.

9.5 Operation of this document

- (a) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (b) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

9.6 Further steps

Each of Bidder and Bidder Nominee agrees, at its own expense, to do anything including executing all documents and do all things (on its own behalf or on behalf of each Scheme Shareholder) necessary or expedient to give full effect to this document and the transactions contemplated by it.

9.7 Governing law

- (a) This document and any dispute arising out of or in connection with the subject matter of this document is governed by the laws of the State of New South Wales.
- (b) Bidder submits to the non-exclusive jurisdiction of the courts of that state, and courts of appeal from them, in respect of any proceedings arising out of or in connection with the subject matter of this document.

9.8 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on Bidder or Bidder Nominee by being delivered or left at its respective address set out in clause 8.4.

EXECUTED as a deed poll.

SIGNED, SEALED AND DELIVERED by
360 CAPITAL FM LIMITED AS
RESPONSIBLE ENTITY OF 360 CAPITAL
TOTAL RETURN ACTIVE FUND:

Signature of director

Signature of director/secretary

Name

Name

SIGNED, SEALED AND DELIVERED by
360 CAPITAL FM LIMITED AS
RESPONSIBLE ENTITY OF 360 CAPITAL
TOTAL RETURN PASSIVE FUND:

Signature of director

Signature of director/secretary

Name

Name

SCHEDULE 4

Loan Terms

Item	Terms
Loan amount	90% of the URB cash as at 31 December 2019.
Security	Secured first charge over all assets of TOT Passive Fund will be provided pursuant to a general security agreement.
Drawdown	Loan may be drawn in one line or in tranches. Each drawdown will be payable on five Business Days' notice. A drawdown notice must be delivered prior to the earlier of the Second Court Date or the End Date.
Interest	7% p.a. Accrues daily and payable at the end of each calendar month.
Term	Principal and interest to be repaid in full on the date which is six months from the date of the first drawdown.
Other	There will be no restrictive covenants. The loan will otherwise be granted on customary market terms.

EXECUTED as a Deed.

EXECUTED by **URB Investments Limited**

ABN 89 615 320 262:

Signature of director

WARWICK NEGUS

Name

Signature of director/secretary

JAIME PINTO

Name

EXECUTED by **360 Capital FM Limited**
ABN 15 090 664 396 as responsible
entity for **360 Capital Total Return**
Active Fund



Signature of director

Tony Pitt

Name

EXECUTED by **360 Capital FM Limited**
ABN 15 090 664 396 as responsible
entity for **360 Capital Total Return**
Passive Fund:



Signature of director

Tony Pitt

Name



Signature of ~~director~~/secretary

Jennifer Vercoe

Name



Signature of ~~director~~/secretary

Jennifer Vercoe

Name