

13th November 2019

Merger to create a leading financial services group focusing on servicing SME businesses

- Consolidated Operations Group Limited (ASX:COG) (**COG**) and CML Group Limited (ASX:CGR) (**CML**) are pleased to announce that the companies have entered into a Scheme Implementation Agreement (**SIA**) under which the companies have agreed to a proposed merger to establish a leading financial services group focusing on servicing SME businesses in Australia (**Merger**).
- The Merger will be implemented via a scheme of arrangement with CML shareholders (**Scheme**), with the new merged group listed on the Australian Securities Exchange (**ASX**), initially under COG, with a new name for the merged group to be agreed between the parties.
- The SIA contains customary reciprocal “no shop” and “no talk” provisions and a “notification” and “matching right” provision in favour of COG, with a reciprocal break fee payable by either party in certain circumstances
- Significant revenue synergies are anticipated to be achieved through cross-selling CML’s established SME finance products through COG’s extensive finance broking network
- Material cost synergies are anticipated to be realised post integration
- Both groups announce the launch of simultaneous equity raisings via pro rata non-renounceable entitlement offers of approximately A\$20.2m for COG and A\$14.5m for CML

Transaction summary

The Merger will be implemented via a court-approved scheme of arrangement with CML shareholders pursuant to which COG will acquire all of the issued share capital of CML.

CML shareholders will have the option to elect to receive 100% of the Scheme consideration in COG shares or to receive a mixture of cash and COG shares. The Scheme consideration is as follows:

- scrip consideration of 5.4 COG shares for every 1 CML share held; or
- cash and scrip consideration of 2.7 COG shares plus A\$0.24 for every 1 CML share held (up to a total capped cash amount of A\$20 million)

Each of these alternatives implies Scheme consideration of approximately A\$0.48 per CML share, valuing the equity of CML at approximately A\$111.4 million.

In addition to the Scheme consideration, CML will pay a dividend of A\$0.03 per CML share immediately prior to the Scheme implementation date and subject to the Scheme becoming effective.

The Scheme will be subject to the conditions set out in the SIA, which include:

- approval being received from CML shareholders;
- court approval;
- an independent expert concluding that the Scheme is fair and reasonable and in the best interests of CML shareholders, and not changing that conclusion; and
- other conditions that are relatively customary for a transaction of this nature.

The SIA (a full copy of which is attached to this announcement) contains further details on the conditions and the consideration to be provided under the Scheme. Interested parties should read it carefully as it contains full details of the Scheme.

CML board recommendation and shareholder support

The CML board has unanimously recommended that, in the absence of a superior proposal and subject to the independent expert to be appointed by CML opining that the Scheme is fair and reasonable and in the best interests of CML shareholders (**Standard Qualifications**), CML shareholders vote **in favour** of the Scheme.¹

Major shareholders of CML, NAOS Asset Management, First Samuel and the CML board that together account for approximately 51% of CML's share register have advised CML that their current intention is to vote in favour of the Scheme, in the absence of a superior proposal.

Transaction rationale

Strategic Objectives

The proposed combination satisfies both groups' respective strategic objectives. Namely for COG, it expands its existing in-house product capability and broadens its funding sources. For CML, the combination delivers cross-selling opportunities with which to accelerate volume growth and achieve improved scale for all its finance products

Leverages key strengths of both groups (broking distribution & finance products) driving revenue synergies

COG is Australia's largest equipment finance broking company with ~17% market share of the broker originated asset finance market. CML provides secured lending to a broad segment of SME's with facility sizes ranging from A\$100k to A\$14m in its Invoice Finance product, up to A\$2m for its Equipment Finance product and facilities up to A\$1.5m in its Trade Finance product. Combining these two companies provides a material cross-selling opportunity, in particular an ability to offer COG's SME's with an invoice financing product and the ability to better leverage debt inside its equipment financing business.

Delivers low cost of funding with significant headroom

CML's recent acquisition of Classic Funding Group saw CML's total available funding increase to A\$397m with ~A\$100m in headroom, including 3 wholesale funding facilities.² With increased lending volumes the combined group will benefit from a lower cost of funding. Existing COG loans may also be able to be transitioned to cheaper wholesale funding structures.

Provides opportunity for operational cost synergies to be achieved

Operational synergies are expected to be achieved through lower corporate overheads and lower ASX and compliance costs.

Combines highly experienced Board and Management teams

Delivers a refreshed Board with complimentary skillsets and shared strategic vision.

Commenting on the Merger, Andrew Bennett, CEO of COG, said:

"The merger with CML accelerates the execution of COG's strategic plan of delivering product to COG's distribution network. The combined entities increased market capitalization and liquidity should provide additional value to shareholders."

We see this transaction as a partnership, with compelling benefits for both sets of shareholders."

¹ Daniel Riley, an executive director of CML, provides his recommendation in the context of potentially having a personal interest in the outcome of the Scheme as a consequence of the agreement under the SIA that Mr Riley's options may be bought back in conjunction with the implementation of the Scheme.

² Subject to obtaining financier consents and waivers in connection with the Scheme.

Commenting on the Merger, Daniel Riley, Managing Director of CML said:

“The CML Board considers the implementation of a Scheme with COG to reflect a compelling value proposition for CML shareholders, who will benefit from growth in lending volumes through leverage of COG’s substantial existing distribution network of asset lending brokers.”

We see this partnership as providing the opportunity to gain market share in secured business lending at a faster rate than could be achieved independently, driving earnings growth in the merged entity to maximise shareholder value.

The transaction will provide CML shareholders with a material interest in a substantially larger and diversified business.”

Simultaneous Entitlement Offers

Under the SIA, both companies agree to each undertake a pro rata non-renounceable entitlement offer at an issue price of A\$0.09 for COG and A\$0.48 for CML. COG will raise up to A\$20.2m and CML will raise up to A\$14.5m (**Entitlement Offers**). The Entitlement Offers will be undertaken contemporaneously following approximately the same timetable as set out below in this announcement and both completed before the first court date for the Scheme. ASX has granted a waiver to CML from Listing Rule 7.9 to permit the issue of any shortfall under the Entitlement Offer, without the need for prior shareholder approval.

Details on the COG Entitlement Offer are set out in the announcement made by COG today.

CML Entitlement Offer

CML is undertaking a 3 for 20 (3 new Offer Shares for every 20 existing Shares) non-renounceable pro rata entitlement offer (**CML Entitlement Offer**) to raise up to A\$14,525,300.64 (before costs) via the issue of up to approximately 30,261,043 shares (subject to rounding) to existing eligible shareholders of CML (**CML Eligible Shareholders**) at an issue price of A\$0.48 per share.

CML Eligible Shareholders will only be those who are shareholders on the share register of CML as of the Rights Issue Record Date with a registered address in Australia and New Zealand.

If the CML Entitlement Offer is fully subscribed, CML will raise A\$14,525,300.64 (before expenses).

If the Scheme is implemented, the proceeds from the CML Entitlement Offer will be used by the Merged Group for some or all of the following:

- working capital;
- payment the costs associated with the Scheme and CML Entitlement Offer;
- reduction of debt.

If, however, the Scheme is not implemented, the proceeds from the CML Entitlement Offer will be used by CML as follows:

- working capital;
- payment the costs associated with the CML Entitlement Offer and costs of the failed Scheme (including the Break Fee if payable); and
- reduction of debt.

All shares issued under the CML Entitlement Offer will rank equally with existing fully paid ordinary shares in CML as of the date of this announcement.

The CML Entitlement Offer is non-renounceable and the rights will not be traded on the ASX or otherwise be transferable. CML Eligible Shareholders who do not take up their entitlement under the CML Entitlement Offer in full or in part will not receive any value in respect of those entitlements not taken up.

CML Eligible Shareholders wishing to participate in the CML Entitlement Offer should carefully read the CML Entitlement Offer Booklet and accompanying personalised CML Entitlement and Acceptance Form which are expected to be dispatched on or around 15 November 2019. Copies of the CML Offer Booklet will be available on CML's ASX website.

Please note that this Entitlement Offer is not interconditional with the Scheme proceeding and if you should choose to invest under the Entitlement Offer your additional shares will be added to your existing shareholding irrespective of whether or not the Scheme proceeds

Timetable

A Scheme Booklet is expected to be finalised for dispatch to CML shareholders in late December 2019. The Scheme Booklet will include full details of the Scheme, including the recommendation of the CML Board and the rationale for it, information about CML, COG and the Merged Group, the Independent Expert's report, and other matters relevant to SRG shareholders' vote on the Scheme.

An indicative timetable of the Merger and Rights Issues is set out below.

Event	Date
Rights Issues	
Ex-date for the Rights Issue	Friday, 15 November 2019
Rights Issue Record Date	7.00pm (AEDT), Monday, 18 November 2019
Entitlement Offers open Right Issue Booklets dispatched to COG and CML Shareholders	Wednesday, 20 November 2019
Entitlement Offers close (Closing Date)	5.00pm (AEDT), Friday, 29 November 2019
CML Shares under the Rights Issues quoted on a deferred settlement basis	Monday, 2 December 2019
Announcement of shortfall (if any) under the CML Entitlement Offer Notification of undersubscriptions	Tuesday, 3 December 2019
Issue and allotment of COG and CML shares under the Rights Issues	Thursday, 5 December 2019
Dispatch of holding statements	Thursday, 5 December 2019
Commencement of trading of new shares	Friday, 6 December 2019
Scheme	
First Court Hearing and Scheme Booklet dispatched to CML Shareholders	Friday, 20 December 2019
CML Scheme Meeting	Wednesday, 29 January 2020
Second Court Hearing	Monday, 3 February 2020
Scheme Effective Date	Tuesday, 4 February 2020
Scheme Record Date	Tuesday, 11 February 2020
Implementation Date	Tuesday, 18 February 2020
All dates in the above table are indicative only and are subject to change.	

About COG

More information can be found at <http://www.coglimited.com.au/>

About CML

More information can be found at <http://www.cml-group.com.au/>

Key contacts

For further information on the Merger and the Entitlement Offers, please contact:

COG

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Office: +61 405380241

CML

Daniel Riley – CML Managing Director
Office: +61 2 8116 4710

SCHEME IMPLEMENTATION AGREEMENT

CML Group Limited (**Target**)

Consolidated Operations Group Limited ACN 100 854 788 (**Bidder**)



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AGREEMENT dated

PARTIES

- A **CML Group Limited ACN 098 952 277** of Level 1/201 Miller Street, North Sydney NSW 2060 (**Target**); and
- B **Consolidated Operations Group Limited ACN 100 854 788** of Level 1, 72 Archer Street, Chatswood NSW 2067 (**Bidder**)

RECITALS

- 1 Bidder has agreed to acquire all of the issued capital of Target by means of the Scheme pursuant to Part 5.1 of the Corporations Act.
- 2 The Target Board has determined to support and implement the Transaction and to recommend that Target Shareholders vote in favour of the Scheme, in the absence of a Superior Proposal and subject to Target receiving a Favourable Independent Expert's Report.
- 3 Target and Bidder wish to record and confirm the terms and conditions upon which they propose in good faith to co-operate with and assist each other to implement the Transaction.

THE PARTIES AGREE AS FOLLOWS:

1 INTERPRETATION

1.1 Definitions

Meanings shall apply to capitalised terms used in this Agreement as specified in this provision, unless the context otherwise requires:

ACCC means the Australian Competition and Consumer Commission.

Acquisition Proposal means any expression of interest, proposal or offer with respect to any transaction (by purchase, merger, amalgamation, arrangement, business combination, liquidation, dissolution, recapitalisation, takeover bid or otherwise) that would result in any person (or group of persons) other than Bidder (or any Related Entity of Bidder) acquiring (or having a right to acquire):

- (a) a legal, beneficial or economic interest in or control of, all or a substantial part of the assets of Target or any of its Related Entities;
- (b) a Relevant Interest in 20% or more of the Target Shares or the shares of any Related Entity of Target; or
- (c) Control of Target.

and to avoid doubt does not, and is not intended to, include any third party who acquires shares in Target through the Target's rights issue contemplated under clause 7.2.

Aggregate Cash Consideration means the aggregate of the Cash Consideration payable to Scheme Shareholders under the Scheme (taking into account all valid Elections made by the Election Date and the terms of the Scheme).

Aggregate Scrip Consideration means the aggregate number of New Bidder Shares payable to Scheme Shareholders under the Scheme (taking into account all valid Elections made by the Election Date and the terms of the Scheme).

All Cash Consideration means \$0.48 per Scheme Share.

APRA means the Australian Prudential Regulation Authority.

ASIC means the Australian Securities & Investments Commission.

Associate has the meaning given thereto in the Corporations Act.

ASX means ASX Limited ABN 98 008 624 691 or the market operated by it.

AUSTRAC means the Australian Transaction Reports and Analysis Centre.

Australian Accounting Standards means:

- (a) accounting standards approved under the Corporations Act and its requirements about the preparation and contents of accounts; and
- (b) generally accepted accounting principles, policies, practices and procedures in Australia as approved by the Australian Accounting Standards Board.

Bidder Board means the board of directors of Bidder.

Bidder Constitution means the constitution of Bidder.

Bidder Data Room means the electronic facility established by or on behalf of Bidder for the purpose of providing Target with certain information and materials relating to, among other things, Bidder and its Related Entities.

Bidder Data Room Materials means the written information relating to Bidder made available to Target via the Data Room prior to the date of this Agreement, recorded in CD-ROM disks (initialled duplicates of which were exchanged between Target and Bidder on or before the date of this Agreement).

Bidder Group means Bidder and its Subsidiaries (and a reference to the "Bidder Group" is a reference to each entity within the Bidder Group as well as a reference to all such entities).

Bidder Rights Issue means the rights issue to be undertaken by Bidder as contemplated by clause 7.2(b).

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

Bidder Shareholders means each holder at the relevant time of Bidder Shares.

Bidder Superior Proposal means a bona fide Competing Proposal not resulting from a breach by Bidder of any of its obligations under clause 12.8, received by Bidder that the Bidder Board, acting in good faith and after having obtained written advice from Bidder's external legal and financial advisers, determines:

- (a) is capable of being valued and completed, taking into account all aspects of the Competing Proposal (including its conditions) and the person making it (including such person's identity, reputation and financial standing); and

- (b) would, if completed substantially in accordance with its terms, be more favourable to Bidder Shareholders than Bidder continuing to pursue the Transaction (if that were completed substantially in accordance with its terms), or be more favourable to Bidder Shareholders if it is pursued in conjunction with the Transaction, taking into account all the terms and conditions of the Competing Proposal.

Break Fee means the break fee payable by Target or Bidder in accordance with clauses 11.2 and 11.3 respectively.

Business Day has the meaning given to that expression in the Listing Rules.

Cash Cap means A\$20,000,000 less the aggregate amount of the All Cash Consideration.

Cash Consideration means such amount of cash as described in Consideration Option 1 or All Cash Consideration.

CEFT Facility means the Classic Equipment Finance Trust Series as contemplated by paragraph (e)(ii) of Schedule 3.

Competing Proposal means any expression of interest, proposal or offer with respect to any transaction (by purchase, merger, amalgamation, arrangement, business combination, liquidation, dissolution, recapitalisation, takeover bid or otherwise), if entered into or completed, would:

- (a) result in a third party (either alone or together with any Associate) acquiring (or having a right to acquire):
- (i) a legal, beneficial or economic interest in or control of, all or a substantial part of the assets of Bidder or any of its Related Entities;
 - (ii) a Relevant Interest in 20% or more of the Bidder Shares or the shares of any Related Entity of Bidder;
 - (iii) Control of Bidder; or
- (b) require Bidder to abandon, or otherwise fail to proceed with the Transaction,

and to avoid doubt does not, and is not intended to, include any third party who acquires shares in Bidder through the Bidder's rights issue contemplated under clause 7.2.

Confidentiality Deed means the Confidentiality Deed dated 19 September 2019 between Target and Bidder.

Consideration Option 1 means:

- (a) \$0.24 per Scheme Share; plus
- (b) 2.7 New Bidder Shares per Scheme Share.

Consideration Option 2 means 5.4 New Bidder Shares per Scheme Share.

Contract means, with respect to a person, any contract, instrument, permit, concession, franchise, licence, loan or credit agreement, note, bond, mortgage, indenture, lease or other property agreement, partnership or joint venture agreement or other legally binding agreement, arrangement or understanding, whether written or oral, to which the person is party or by which the person or its property and assets is bound or affected.

Control has the meaning given to that term in section 50AA of the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth), as amended.

Court means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Target and Bidder.

CRFT Facility means the Classic Receivables Finance Trust Series as contemplated by paragraph (e)(i) of Schedule 3.

Deed Poll means a deed poll in the form which is set out in Schedule 9 under which Bidder covenants in favour of the Scheme Shareholders to perform the obligations attributed to Bidder under the Scheme.

Distribution means any pro rata distribution to Target Shareholders by way of dividend, capital return or otherwise that may be made by Target between the date of this Agreement and the Implementation Date.

Distribution Date means the date on which a Distribution is made.

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.

Effective Time means the time on the Effective Date that the Scheme becomes effective in accordance with the Final Order and the Corporations Act.

Election means an Election Option 1 or an Election Option 2.

Election Cash Consideration means the aggregate cash consideration elected by Scheme Shareholders under Election Option 1.

Election Date means 7.00 pm on the date which is at least three Business Days prior to the Record Date or such other date as agreed between Bidder and Target in writing.

Election Form means the form of election under which a Target Shareholder is offered the opportunity to make an Election, in a form agreed with Bidder (acting reasonably).

Election Option 1 means an election by a Scheme Shareholder to receive the Consideration Option 1 for the Scheme Shares held by that Scheme Shareholder.

Election Option 2 means an election by a Scheme Shareholder to receive the Consideration Option 2 for the Scheme Shares held by that Scheme Shareholder.

Employee means, with respect to the Target Group, a director, officer or employee of the person or a person providing services to the Target Group.

Employee Benefit Plan means, with respect to a person, any employee benefit plan, program, policy, practice or other arrangement providing benefits to any current or former Employee of the person or any dependent or beneficiary thereof that is sponsored or maintained by the person or to which the person contributes or is obligated to contribute or with respect to which the person may have liabilities, whether or not written, including any bonus, incentive, deferred compensation, vacation, stock purchase, stock option, severance, employment, change of control or fringe benefit plan, program or agreement.

Employment Agreement means, with respect to a person, a contract, offer, letter or agreement of the person with or addressed to any individual who is rendering or has rendered services thereto as an Employee pursuant to which the person has any actual or contingent liability or obligation to provide compensation or benefits or severance or termination payments in respect of past, present or future services.

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

Favourable Independent Expert's Report means an independent Expert's Report which contains an opinion from the Independent Expert that the Scheme is fair and reasonable and in the best interests of Target Shareholders.

Final Order means the final order of the Court approving the Scheme in accordance with sections 411(4)(b) and (if applicable) 411(6) of the Corporations Act, as such order may be amended by the Court at any time before the Effective Time, or if appealed, unless that appeal is withdrawn or denied, as affirmed or as amended on appeal.

First Court Date means the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Scheme Meeting is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

Implementation Date means the fifth Business Day after the Record Date or such other date agreed to in writing between Target and Bidder.

Ineligible Foreign Shareholder means a Scheme Shareholder whose address shown in the Target Share Register at 7.00 pm on the Record Date is a place outside Australia and New Zealand and their external territories unless Bidder determines that it is lawful and not unduly onerous or impracticable to issue that Scheme Shareholder with New Bidder Shares when the Scheme becomes Effective.

Independent Expert means each independent expert appointed by Target to prepare an Independent Expert's Report.

Independent Expert's Report means a report from the Independent Expert for inclusion in the Target Scheme Document and, including any update to such a report or any supplementary or replacement report, stating the Independent Expert's opinion regarding whether or not the Scheme is fair and reasonable and whether or not it is in the best interests of Target Shareholders, and setting out its reasons for such opinions.

Insolvency Event means in relation to an entity:

- (a) a receiver, receiver and manager, administrator, trustee or similar official being appointed over any of the party's assets or undertaking;
- (b) the party suspending payments of its debts generally;
- (c) the party being or becoming unable to pay its debts when they fall due or being unable to pay its debts within the meaning of the Corporations Act;
- (d) the party entering into or resolving to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) an order being made for the winding up or dissolution of, or the appointment of a provisional liquidator to the party; or
- (f) a resolution being passed or steps taken to pass a resolution for the winding up or dissolution of the party otherwise than for the purpose of an amalgamation or reconstruction;

Interim Order means an order of the Court, as may be amended, providing for, among other things, the calling and holding of the Scheme Meeting pursuant to section 411(1) of the Corporations Act.

Laws means all laws, statutes, by-laws, rules, regulations, orders, decrees, ordinances, protocols, codes, guidelines, policies, notices, directions and judgments or other requirements of any Regulatory Authority, and includes the Listing Rules.

Listing Rules means the official listing rules of the ASX.

Material Contract means any contract or commitment (or any series of related contracts or commitments) involving:

- (a) annual revenue of \$250,000 or more; or
- (b) expenditure of a Target Group entity (either alone or together with any other Target Group entity) of \$250,000 or more, over the period of the contract or commitment.

Materially Adverse means, with respect to an entity, any fact, circumstance, change, effect, occurrence, event or term that is or could reasonably be expected (whether individually or when aggregated with all other facts, circumstances, changes, effects, occurrences, events or terms) to materially and adversely affect the profitability, financial position, cashflow, operations, results of operations, business, assets, capital or prospects of the entity, other than any fact, circumstance, change, effect, occurrence, event or term:

- (a) required or permitted by this Agreement, the Scheme or the transactions contemplated by either party;
- (b) that have been disclosed to the other party;
- (c) agreed in writing between Target and Bidder;
- (d) arising as a result of any generally applicable change in accounting standards, law or governmental policy in Australia;

- (e) arising from changes in exchange rates, or interest rates, general economic, political or business conditions including material adverse changes or major disruptions to, or fluctuations in, domestic or international financial markets, and acts of terrorism, war (whether or not declared) natural disaster or the like, that affect Australia and that impact on Target and its competitors in a similar manner; and
- (f) that Target or Bidder disclosed in an announcement it made to ASX in the 2 years prior to the date of this Agreement, or which would be disclosed in a search of ASIC records in relation to Target or Bidder, prior to the date of this Agreement.

New Bidder Share means a fully paid ordinary share in the capital of Bidder to be issued to the Scheme Shareholder under the Scheme.

Notice of General Meeting means the notice of General Meeting and the accompanying explanatory memorandum and Independent Expert's Report to be despatched to Target Shareholders.

Operating Budget means the budget prepared by Target, signed by two directors of Target and provided to Bidder setting out the amounts that Target's directors and management reasonably consider are required for Target to continue its operations during the period commencing on the date of this Agreement and ending on the Implementation Date.

Operating Budget Amount means the total aggregate amount specified in the Operating Budget.

Options means, with respect to a person, all options, warrants, puts, calls, rights, commitments, agreements, arrangements or undertakings of any kind to which the person is a party or by which the person is bound relating to the issued or unissued share capital of the person, or obligating the person to issue, transfer, grant, sell or pay for or repurchase any shares or other equity interests in, or securities convertible or exchangeable for any shares or other equity interests in, the person or obligating the person to issue, grant, extend or enter into any such options, warrants, puts, calls, rights, commitments, agreements, arrangements or undertakings, and to avoid doubt, includes any rights issued, or agreed to be issued by the Target under the "CML Group Limited Rights Plan", or any other Employee Benefit Plan or bonus arrangement.

Option Sale Deed means a deed for the sale of Options as contemplated by clause 5.7(a)(ii).

Permit means, in relation to any person, all certificates, licences, permits, grants, easements, covenants, certificates, orders, authorisations and approvals issued or granted by Agencies or third parties to the person necessary for such person to own and to conduct its business as such business is currently conducted or is expected to be conducted following the completion of the Transaction.

Person means and includes any individual, sole proprietorship, partnership, joint venture, unincorporated association, unincorporated syndicate, unincorporated organisation, trust, body corporate, a trustee, executor, administrator or other legal representative.

Prescribed Event means, other than with the prior written consent of the other party or as otherwise expressly contemplated or permitted by this Agreement, any entity in the Target Group or the Bidder Group (as applicable):

- (a) converting all or any of its shares into a larger or smaller number of shares; or

- (b) resolving to reduce its share capital in any way or re-classifying, or redeeming any of its shares; or
- (c)
 - (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act; or
- (d) issuing shares, securities convertible into shares, or granting a performance right or an option over its shares, or agreeing to make such an issue or grant such a performance right or an option, other than to a directly or indirectly wholly-owned Subsidiary; or
- (e) except as contemplated under this Agreement, making, determining as payable or declaring any dividend or distribution (whether by way of dividend, capital reduction or otherwise, and whether in cash or in specie); or
- (f) being the subject of an Insolvency Event; or
- (g) disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property; or
- (h) granting, or agreeing to grant, a security interest in the whole, or a substantial part, of its business or property.

Properties means, with respect to a person, all real property owned, leased, controlled or used by the person or in which the person has a right or interest.

Record Date means 7.00 pm Sydney time on the fifth Business Day after the Effective Date or such other time and date agreed in writing between Target and Bidder.

Regulatory Approvals means any approval of a Regulatory Authority to the Scheme or any aspect of it which both parties agree are necessary or desirable to implement the Scheme.

Regulatory Authority includes, in any jurisdiction:

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

and includes ASX, ACCC, ASIC, the Takeovers Panel, APRA and AUSTRAC.

Related Body Corporate has the meaning given in the Corporations Act.

Related Entity has the meaning given in the Corporations Act.

Relevant Interest has the meaning given to that term by section 9 of the Corporations Act.

Representatives means, in relation to an entity, collectively:

- (a) the entity's Related Bodies Corporate; and

- (b) the directors, officers, employees, professional advisors (including financial adviser, legal adviser or accountant), agents or other authorised representatives of the entity and/or of the Related Bodies Corporate of the entity.

Scheme means a scheme of arrangement pursuant to Part 5.1 of the Corporations Act to be made between Target and the Scheme Shareholders in respect of the Scheme Shares, the form of which is set out in Schedule 8, subject to:

- (a) any amendments which are agreed between Target and Bidder; and
- (b) any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act.

Scheme Consideration means (depending on the Election or default position and subject to the terms of the Scheme):

- (a) All Cash Consideration;
- (b) Consideration Option 1; or
- (c) Consideration Option 2.

Scheme Counsel means senior counsel engaged by Target to advise in relation to, and appear before the Court, in connection with the Scheme.

Scheme Meeting means the meeting of Target Shareholders, including any adjournment thereof, to be called and held in accordance with the Interim Order at which Target Shareholders will consider and vote on the Scheme.

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

Scheme Shares means the Target Shares on issue as at the Record Date.

Scrip Consideration means such number of New Bidder Shares as described in Consideration Option 1 or Consideration Option 2.

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 application or appeal is heard.

Securities means pledges, claims, liens, charges, mortgages, deeds of trust, net profit interests, net smelter returns, royalties, overriding royalty interests, other payments out of production, other burdens, security interests and other encumbrances of any kind or nature whatsoever held by third parties.

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

Sunset Date means 30 April 2020, or such later date as may be agreed between Target and Bidder.

Superior Proposal means a bona fide Acquisition Proposal not resulting from a breach by Target of any of its obligations under clause 12, received by Target that the Target Board, acting in good faith and after having obtained written advice from Target's external legal and financial advisers, determines:

- (a) is capable of being valued and completed, taking into account all aspects of the Acquisition Proposal (including its conditions) and the person making it (including such person's identity, reputation and financial standing); and
- (b) would, if completed substantially in accordance with its terms, be more favourable to Target Shareholders than the Transaction (if that were completed substantially in accordance with its terms), taking into account all the terms and conditions of the Acquisition Proposal.

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

Target Board means the board of directors of Target.

Target Data Room means the electronic facility established by or on behalf of Target for the purpose of providing Bidder with certain information and materials relating to, among other things, Target and its Related Entities.

Target Data Room Materials means the written information relating to Target made available to Bidder via the Data Room prior to the date of this Agreement, recorded in CD-ROM disks (initialled duplicates of which were exchanged between Target and Bidder on or before the date of this Agreement).

Target Group means Target and its Subsidiaries (and a reference to the "Target Group" is a reference to each entity within the Target Group as well as a reference to all such entities).

Target Scheme Document means the document to be sent to Target Shareholders in connection with the Scheme Meeting including a notice convening the Scheme Meeting, the Explanatory Memorandum, the Independent Expert's Report, a copy of the Scheme, a copy of the executed Deed Poll and this Agreement.

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

Target Shareholder Approval means approval of the Scheme by the affirmative vote of at least 75% of the votes cast at the Scheme Meeting and the majority in number of the Target Shareholders who are present and voting (either in person, by corporate representative or by proxy).

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

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

Target Rights Issue means the rights issue to be undertaken by the Target as contemplated by clause 7.1.

Taxes means, with respect to a person, all income taxes (including any tax on or based upon net income, gross income, income as specially defined, earnings profits or selected items of income, earnings or profits) and all capital taxes, gross receipts taxes, environmental taxes, sales taxes, use taxes, ad valorem taxes, value added taxes, transfer taxes, franchise taxes, license taxes, withholding taxes or other withholding obligations, payroll taxes, employment taxes, pension plan premiums, excise, severance, social security

premiums, workers' compensation premiums, unemployment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, property taxes, windfall profits taxes, alternative or add on minimum taxes, goods and services tax, customs duties or other taxes of any kind whatsoever, together with any interest and any penalties or additional amounts imposed by any taxing authority (domestic or foreign) on such person or for which such person is responsible, and any interest, penalties, additional taxes, additions to tax or other amounts imposed with respect to the foregoing.

Timetable means the indicative timetable for the implementation of the Scheme set out in Schedule 7.

Transaction means the transaction under which Target becomes a wholly-owned Subsidiary of Bidder pursuant to the terms of this Agreement and the Scheme.

Westpac means Westpac Banking Corporation ABN 33 007 457 141.

Withheld Tax Amounts means any such amount of Taxes which the Australian Taxation Office requires any Bidder Group entity, by written notice(s) pursuant to section 255 of the *Income Tax Assessment Act 1936* (Cth) which is or are received by any Target Group entity on the Implementation Date (for the purposes of clause 5.1(c)) to pay to the Australian Taxation Office in respect of any Scheme Shareholder.

1.2 Interpretational Rules

Rules of interpretation shall apply to this Agreement as specified in this provision, unless the context otherwise requires:

- (a) headings and subheadings are for convenience only and shall not affect interpretation, except for specified cross-references;
- (b) words denoting the singular number include the plural, and the converse also applies;
- (c) words denoting any gender include all genders;
- (d) a defined word or expression has corresponding effect in relation to its other grammatical forms;
- (e) any reference to a party to any agreement or document includes its executors, administrators, legal personal representatives, successors and permitted assigns and substitutes by way of assignment or novation;
- (f) any reference to any agreement or document includes that agreement or document as amended, ratified, supplemented, novated or replaced at any time;
- (g) any reference to a clause, schedule, annexure, exhibit or attachment is a reference to a clause of, or schedule, annexure, exhibit or attachment to, this Agreement;
- (h) any reference to a provision of or in this Agreement, means a clause, schedule, annexure, exhibit or attachment of or to this Agreement, including each clause, subclause, paragraph and subparagraph of that clause, schedule, annexure, exhibit or attachment;
- (i) any reference to any legislation includes a reference to that legislation as amended, re-enacted, consolidated or replaced at any time, and includes all regulations, delegations, instruments and orders made under it;

- (j) the words “include”, “including”, “for example”, and similar expressions are used without limitation;
- (k) any reference to any whole or collective items includes any part of that item;
- (l) the expression at any time includes reference to past, present and future time and the performance of any action from time to time and any liability at all times during any specified period;
- (m) a reference to dollars and \$ is to Australian currency;
- (n) all references to time are to Sydney, Australia time; and
- (o) a reference to a party using or an obligation on a party to use its best endeavours or reasonable endeavours does not oblige that party to:
 - (i) pay money;
 - (A) in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing); or
 - (B) in circumstances that are commercially onerous or unreasonable in the context of this Agreement;
 - (ii) provide other valuable consideration to or for the benefit of any person; or
 - (iii) agree to commercially onerous or unreasonable conditions.

1.3 Liability

Any agreement in this Agreement by two or more persons named as the same separate party to this Agreement shall be a joint and several liability of each named person.

1.4 Performance

- (a) Any action required to be performed under any provision of this Agreement on or prior to a day which is not a Business Day shall be performed on or prior to the immediately following Business Day.
- (b) In relation to each material obligation of a party under this Agreement, time is of the essence.

1.5 Accounting Practices

For the purposes of this Agreement, unless otherwise specified:

- (a) any determination as to financial matters and any financial accounts or statements made or prepared under this Agreement shall comply with Australian Accounting Standards, except for any disclosed departure;
- (b) any accounting term used in this Agreement (including cash and cash-equivalent assets) shall be interpreted in compliance with general accounting standards; and

- (c) all accounting terms used in this Agreement (including cash and cash-equivalent assets) shall have the meanings attributable thereto under Australian Accounting Standards.

1.6 Knowledge

Certain statements made in Schedule 5 and Schedule 6 are given and made by a party only on the basis of its knowledge, belief or awareness. For the purposes of this Agreement, a party's knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of that party, having made reasonable enquiries of the directors, the (acting) chief executive officer and the chief financial officer.

2 SCHEME

- (a) Target shall propose the Scheme in accordance with the terms of this Agreement.
- (b) Target must not consent to any modification of, or amendment to, or the making or imposition by the Court of any modification in respect of, the Scheme without the prior written consent of Bidder, such consent not to be unreasonably withheld or delayed.

3 IMPLEMENTATION

3.1 Mutual Obligations

- (a) Each party must use all reasonable endeavours to give effect to the Scheme (including by way of using reasonable endeavours to satisfy each of the conditions precedent to the Scheme) in accordance with this Agreement and the Timetable subject to compliance with their respective obligations, powers and duties under this Agreement, its constitution, all applicable Laws and the proper performance by the directors of each party of their fiduciary duties.
- (b) For the avoidance of doubt, clause 3.1(a) operates without prejudice to and does not limit any other obligation imposed on a party under this Agreement.
- (c) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matter outside of a party's control, the parties will consult in good faith to agree to any necessary extension to ensure such matters are completed within the shortest possible timeframe.

3.2 Target's Obligations

As soon as is practicable, Target shall take all action necessary to propose and implement the Scheme including:

- (a) appointing the Independent Expert and providing all assistance and information reasonably requested by the Independent Expert to enable it to prepare its Independent Expert's Report in accordance with the Timetable;
- (b) subject to obtaining the Independent Expert's consent (which Target must use all reasonable endeavours to obtain), on receipt, providing Bidder with:
 - (i) a copy of a near-final 'factual accuracy drafts' of the Independent Expert's Report received from the Independent Expert; and
 - (ii) a copy of the final Independent Expert's Report received from the Independent Expert;

- (c) applying to the Court for the Interim Order and using all reasonable endeavours to file such application as soon as reasonably practicable and in any event within 4 weeks after the date of this Agreement, and consulting with Bidder as to the content of all relevant originating processes, affidavits, submissions and draft minutes of Court orders;
- (d) applying to ASIC for:
 - (i) a letter indicating whether ASIC proposes to make submissions to the Court, or intervene to oppose the Scheme, at the hearing in respect of the application for the Interim Order; and
 - (ii) production of a statement pursuant to section 411(17)(b) of the Corporations Act to the effect that ASIC has no objection to the Scheme,and using all reasonable endeavours to lodge such application within 4 weeks after the date of this Agreement;
- (e) if the Interim Order is obtained:
 - (i) calling and holding the Scheme Meeting in accordance with the Interim Order;
 - (ii) in connection therewith, filing and distributing the Target Scheme Document and such other documents (including documents required by the ASX, ASIC, the Court or any applicable Laws) as may be necessary or desirable to permit Target Shareholders to vote on the Scheme;
 - (iii) requesting ASIC to register the explanatory statement included in the Target Scheme Document in accordance with section 412(6) of the Corporations Act;
- (f) if the Scheme is approved at the Scheme Meeting as set out in the Interim Order:
 - (i) apply to the Court for the Final Order within 5 Business Days after the date of the Scheme Meeting subject to the Court's availability or within such longer period as the parties may agree, and consulting with Bidder as to the content of all relevant originating processes, affidavits, submissions and draft minutes of Court orders; and
 - (ii) on the Second Court Date provide to the Court a certificate certifying whether or not:
 - (A) all the conditions referred to in clause 4 have been satisfied or waived in accordance with the terms of this Agreement; and
 - (B) it is aware of any matter, circumstance or event which would, or would be likely to, prevent any condition being satisfied by the Effective Date;
- (g) if the Final Order is obtained and the conditions set out in clause 4 have been satisfied or waived in accordance with the terms of this Agreement:
 - (i) promptly notify ASX that the Final Order has been obtained;

- (ii) lodge with ASIC a copy of the Final Order in accordance with section 411(10) of the Corporations Act by no later than 5:00 pm (Sydney time) on the first Business Day after the day on which the Final Order is obtained;
- (iii) close the Register as at the Record Date and determine entitlements to Scheme Consideration in accordance with the Scheme;
- (iv) execute proper instruments of transfer of, and effect and register the transfer of, the Scheme Shares in accordance with the Scheme;
- (v) procure ASX to suspend trading in Target Shares from the close of trading on the Effective Date;
- (vi) take all reasonable steps to maintain Target's listing on ASX, notwithstanding any suspension in quotation of Target Shares, up to and including the Implementation Date;
- (vii) take all reasonable steps for Target to be removed from the official list of ASX on the Business Day after the Implementation Date, including lodging a request for removal with ASX prior to the Implementation Date and satisfying any conditions reasonably required by ASX for it to act on that request; and
- (viii) do all other things contemplated by or necessary to give effect to the Scheme and the Final Order.

3.3 Bidder's Obligations

Bidder shall take all action necessary to implement the Transaction including:

- (a) reviewing the drafts of the Scheme Document prepared by Target and provide comments promptly on those drafts in good faith;
- (b) providing all assistance and information reasonably required by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (c) procuring that it is represented at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act;
- (d) executing, and delivering to Target, the Deed Poll prior to the First Court Date;
- (e) on the Second Date provide to the Court a certificate certifying whether or not:
 - (i) all the conditions referred to in clause 4 have been satisfied or waived in accordance with the terms of this Agreement; and
 - (ii) it is aware of any matter, circumstance or event which would, or would be likely to, prevent any condition being satisfied by the Effective Date;
- (f) calling and holding a general meeting of the holders of Bidder Shares to approve issuance of adequate amount of New Bidder Shares that Bidder must issue in order to meet its obligations under the Scheme, if such shareholder approval is required;

- (g) if the Final Order is obtained and the conditions set out in clause 4 have been satisfied or waived in accordance with the terms of this Agreement, provide the Scheme Consideration in the manner and amount contemplated by clause 5; and
- (h) do all other things contemplated by or necessary to give effect to the Scheme and the Final Order; and
- (i) on a date (to be determined by Bidder) after the Implementation Date, seeking removal of Target from the official list of ASX in accordance with the requirements of ASX.

3.4 Shareholder Materials

- (a) Target shall:
 - (i) prepare the Target Scheme Document and cause the Target Scheme Document to be distributed, in accordance and compliance with applicable Laws (including the Corporations Act and, in respect of the Target Scheme Document, ASIC Regulatory Guide 60);
 - (ii) consult with Bidder and provide Bidder and its Representatives with a reasonable opportunity to provide input into the presentation and content of the Target Scheme Document;
 - (iii) obtain Bidder's prior written consent to include information in relation to Bidder in the Target Scheme Document (which consent must not be unreasonably withheld or delayed by Bidder);
 - (iv) if, at any time after the despatch of the Target Scheme Document to Target Shareholders, it becomes aware that the Target Scheme Document, or any document delivered to the Court in connection with the application for the Interim Order or Final Order or any other document delivered to Target Shareholders in connection with the Scheme Meeting or General Meeting:
 - (A) contains a misleading or deceptive statement of a material fact, omits to state a material fact required to be stated in those documents or that otherwise requires an amendment or a supplement to those documents; or
 - (B) is misleading or deceptive in any material respect (including by way of material omission),then if considered by Target that supplementary disclosure is required, Target must provide supplementary disclosure to Target Shareholders after providing Bidder with a reasonable opportunity to comment on the proposed content and presentation of that supplementary disclosure (and Bidder must provide any comments as soon as reasonably practicable) and after obtaining any required Court approvals.
 - (v) keep Bidder informed regarding any matters raised by ASIC or ASX in connection with the Target Scheme Document and use all reasonable endeavours, in co-operation with the Bidder, to resolve any such matters.

- (b) Bidder shall furnish to Target all information regarding itself and its directors, officers and shareholders as may reasonably be required to be included in the Target Scheme Document pursuant to applicable Laws (including the Corporations Act and ASIC Regulatory Guide 60) and shall:
 - (i) ensure that all information provided by it or on its behalf that is contained in the Target Scheme Document does not contain any misrepresentation or any untrue statement of a material fact or omits to state a material fact required to be stated in the Target Scheme Document that is necessary to make any statement that it contains not misleading in light of the circumstances in which it is made;
 - (ii) verify and confirm in writing to Target the accuracy of all information provided by it or on its behalf that is contained in the Target Scheme Document; and
 - (iii) promptly notify Target if, at any time after the despatch of the Target Scheme Document to Target Shareholders, it becomes aware that the Target Scheme Document, any document delivered to the Court in connection with the application for the Interim Order or Final Order or any other document delivered to Target Shareholders in connection with the Scheme Meeting:
 - (A) contains a misleading or deceptive statement of a material fact, omits to state a material fact required to be stated in those documents or that otherwise requires an amendment or a supplement to those documents; or
 - (B) is misleading or deceptive in any material respect (including because of any material omission).

3.5 Public Announcement

- (a) Immediately after the execution of this Agreement, Target and Bidder shall respectively each release an ASX announcement announcing the entering into of this Agreement, where such announcement must be in the form and substance previously agreed between Target and Bidder.
- (b) Nothing in this clause 3.5 shall prevent any party from making any disclosure required by Law but in any such case, subject to applicable Laws, the disclosing party will provide the other party with prior notice before making the disclosure and, to the extent time permits, provide details of the proposed form, nature and purpose of such disclosure.

3.6 Reconstitution of Target Board

On the Implementation Date, but subject to the Scheme Consideration having been paid by Bidder to Target in accordance with the Scheme and Target having received a consent to act as a Director from each person nominated by Bidder, Target must:

- (a) take all actions necessary to appoint the persons nominated by Bidder as new directors of Target and other Target Group entities; and
- (b) procure that all directors on the Target Board (other than the directors appointed pursuant to clause 3.6(a)) resign from the Target Board and release the Target Group from any claims the directors may have.

3.7 Reconstitution of Bidder Board

On the Implementation Date (or such other date agreed between the Bidder and Target in writing), but subject to the Scheme Consideration having been paid by Bidder to Target in accordance with the Scheme and Bidder having received a consent to act as a Director from each person nominated by Target, Bidder must:

- (a) take all actions necessary to appoint Daniel Riley and two other persons nominated by Target and approved by Bidder as new directors of Bidder; and
- (b) procure that all directors on the Bidder Board (other than Patrick Tuttle, Cameron McCullagh and one other director nominated by Bidder) resign from the Bidder Board and release the Bidder Group from any claims those resigning directors may have.

4 CONDITIONS PRECEDENT

4.1 Mutual Conditions

The respective obligations of Target and Bidder to complete the Transaction (which, for the purposes of this clause 4.1, means the obligations of Target to comply with clause 3.2(g) and the obligations of Bidder to provide Scheme Consideration in accordance with clause 5 and the Scheme and to otherwise comply with clause 3.3(h)) shall be subject to the fulfilment, or the waiver (if applicable) by each of Target and Bidder, on or before the Sunset Date, of the conditions set out in Schedule 1, of which the conditions in paragraph (a) and paragraph (e) of Schedule 1 cannot be waived, and all other conditions in Schedule 1 may be waived by mutual consent of Target and Bidder, in whole or in part (in each case in their respective absolute discretion).

4.2 Conditions in Favour of Target

The obligations of Target to complete the Transaction (which, for the purposes of this clause 4.2, means the obligations of Target to comply with clause 3.2(g)) shall be subject to the fulfilment, or the waiver by Target, on or before the Sunset Date, of the conditions set out in Schedule 2, each of which is for the exclusive benefit of Target and may be waived by Target alone, at any time, in whole or in part, in its sole and absolute discretion.

4.3 Conditions in Favour of Bidder

The obligations of Bidder to complete the Transaction (which, for the purposes of this clause 4.3, means the obligations of Bidder to provide Scheme Consideration in accordance with clause 5 and the Scheme and to otherwise comply with clause 3.3(h)) shall be subject to the fulfilment, or the waiver by Bidder, on or before the Sunset Date, of the conditions set out in Schedule 3, each of which is for the exclusive benefit of Bidder and may be waived by Bidder alone, at any time, in whole or in part, in its sole and absolute discretion.

4.4 Reasonable Endeavours

Each party must use its reasonable endeavours to procure that each of the conditions referred to in this clause that require to be satisfied are satisfied as expeditiously as possible and in any event before the Sunset Date, including providing all reasonable assistance to the other party as is necessary to satisfy such conditions, including:

- (a) responding to requests for information from the other party as soon as practicable; and
- (b) so far as it is able, allowing the other party and its Representatives the opportunity to be present at any meetings with any Regulatory Authority, with respect to the Scheme.

4.5 Notification

Each party must promptly notify the other party if it becomes aware:

- (a) that any condition referred to in this clause 4 has been satisfied; or
- (b) of any change or event causing, or that would be reasonably likely to cause a breach or the non-fulfilment of any of the conditions referred to in this clause.

4.6 Satisfaction, Waiver and Release of Conditions

- (a) Any waiver of the conditions permitted under this clause must take place prior to 8.00 am on the Second Court Date to be effective.
- (b) Upon the issuance of a certificate by each of Target in accordance with clause 3.2(f)(ii) and Bidder in accordance with clause 3.3(e) certifying that the conditions precedent have been satisfied, waived or released, the conditions provided for in this clause 4 shall be deemed conclusively to have been satisfied, waived or released.

(c) If:

- (i) there is an event or occurrence that would, or does, prevent any of the conditions being satisfied;
- (ii) there is an event or occurrence that would, or does, prevent any of the conditions being satisfied by the time and date specified in this Agreement for the satisfaction of that condition or such condition is otherwise not satisfied by that time and date; or
- (iii) it becomes more likely than not that the Scheme will not become Effective on or before the Sunset Date,

Bidder and Target must consult in good faith to:

- (iv) consider, and if agreed, determine whether the Transaction may proceed by way of alternative means or methods;
- (v) consider changing and, if agreed, change, the date of the application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed to in writing by Bidder and Target (being a date no later than 5 Business Days before the Sunset Date); or
- (vi) consider extending and, if agreed, extend the relevant date or Sunset Date, respectively.

(d) If Bidder and Target are unable to reach agreement under clause 4.6(c):

- (i) in the case of an event or occurrence contemplated by clause 4.6(c)(i), within 5 Business Days after the date on which the notice under clause 4.5(b) is given;
 - (ii) in the case of an event or occurrence, or otherwise in the circumstances, contemplated by clause 4.6(c)(ii), by 5 Business Days before the time and date specified in this Agreement for the satisfaction of the relevant condition; or
 - (iii) in the case of the circumstances contemplated by clause 4.6(c)(iii), by the Sunset Date, then, unless:
 - (iv) the relevant condition has been waived in accordance with clause 4.6(a); or
 - (v) the party entitled to waive the relevant condition in accordance with clause 4.6(a) confirms in writing to the other party that it will not rely on the event or occurrence that would or does prevent the relevant condition from being satisfied,
- either Bidder or Target, may terminate this Agreement without any liability to the other party pursuant to clause 13.3(a) or clause 13.4(a) (as applicable).

5 SCHEME CONSIDERATION

5.1 Bidder undertakings in relation to Scheme Consideration

Bidder undertakes to Target (in the Target's own right and separately as trustee for each of the Scheme Shareholders) that, if the Scheme becomes Effective, in consideration for the transfer to Bidder of Scheme Shares held by Scheme Shareholders under the term of the Scheme, the Bidder will:

- (a) accept that transfer;
- (b) provide, or procure the provision, to each Scheme Shareholder the Scheme Consideration in accordance with:
 - (i) subject to any Election made by that Scheme Shareholder as contemplated by clause 5.2 and clause 5.3;
 - (ii) clause 5.4 and clause 5.5; and
 - (iii) the terms of the Scheme;
- (c) by no later than the Business Day before the Implementation Date, pay, or procure payment of, to a trust account operated by or on behalf of Target, to be held on trust for Scheme Shareholders, an amount in cleared funds equal to the Aggregate Cash Consideration less any Withheld Tax Amounts; and
- (d) on the Implementation Date, procure the allotment of the Aggregate Scrip Consideration to applicable Scheme Shareholders,

in each case in accordance with the terms of the Scheme.

5.2 Election Mechanism

- (a) Each Target Shareholder (other than Ineligible Foreign Shareholders) will be entitled to make an Election. All Elections take effect in accordance with the Scheme to the extent any Target Shareholder who makes an Election qualifies as a Scheme Shareholder.
- (b) Target must ensure that the Explanatory Memorandum is accompanied by an Election Form.
- (c) The Election Form must state to the effect that:
 - (i) subject to clause 5.2(c)(iv), an Election must be made in accordance with the terms and conditions stated on the Election Form for it to be valid and must be completed and returned in writing to the address specified on the Election Form before the Election Date;
 - (ii) an Election will apply to all the Target Shares of the Target Shareholder as at the Election Date and, subject to clause 5.2(c)(iv), a Target Shareholder must only make one Election in relation to a particular holding;
 - (iii) once made, an Election may be varied, waived or revoked before the Election Date by notice in writing to the Target; and
 - (iv) in the manner considered appropriate by Bidder and Target (acting reasonably), a Target Shareholder who holds one or more parcels of Target Shares as trustee or nominee for, or otherwise on account of, another person, may make separate Elections in relation to each of those parcels of Target Shares (subject to providing to Bidder and Target any substantiating information they reasonably require), and if it does so will be treated as a separate Target Shareholder in respect of each such parcel in respect of which a separate Election is made (and in respect of any balance of its holding), provided that if, at the Election Date, it holds fewer Target Shares than it held at the time it made the Election, then, unless, it has at the time of any sale of Target Shares notified the Target whether the Target Shares sold relate to any such separate Election (and if so, which separate Election the Target Shares sold relate to), it will be treated as not having made a valid Election in respect of any of its Target Shares (or will be treated in any other manner that Bidder and the Target agrees is fair to the Target Shareholder in all the circumstances acting reasonably).
- (d) The Target must ensure that, to the extent reasonably practicable, persons who acquire Target Shares after the date of the dispatch of the Explanatory Memorandum and until the Election Date are sent an Election Form upon these persons requesting one from the Target.
- (e) In order to facilitate the issue of the Scrip Consideration (if applicable), the Target must provide, or procure the provision, to Bidder, details of any Election made by Target a Shareholder, on the Business Day after the Election Date, including the name and address of each Target Shareholder who has made a valid Election and the number of New Bidder Shares that Bidder must issue to that Target Shareholder to meet its obligation under the Scheme in accordance with that Target Shareholder's Election.
- (f) The parties agree that the terms and conditions that will be stated on the Election Form will include the following:

- (i) Ineligible Foreign Shareholders may not make an Election and that any purported Election by such persons will be of no effect;
- (ii) if a Target Shareholder does not make a valid Election, that Target Shareholder will receive Consideration Option 1 in respect of the Scheme Shares held by that Target Shareholder; and
- (iii) Target Shareholders who make a valid Election agree to become members of Bidder from the Implementation Date and become bound by the Bidder Constitution, pursuant to the Scheme,

And such other terms and conditions as Bidder reasonably requires to be stated on the Election Form.

5.3 Default Election

If a Target Shareholder (other than an Ineligible Foreign Shareholder) does not make a valid Election, that Target Shareholder will be deemed to have elected Election Option 1.

5.4 Scrip Consideration

If a Target Shareholder makes a valid Election:

- (a) the Target Shareholder will be entitled to receive the Scheme Consideration relevant to their Election (subject to the terms of the Scheme); and
- (b) if the number of New Bidder Shares to which that Target Shareholder is entitled is not a whole number:
 - (i) where the entitlement is to half of a New Bidder Share or more, the number of New Bidder Share will be rounded up to the nearest whole number; and
 - (ii) where the entitlement is to less than half of a New Bidder Share, the number of New Bidder Share will be rounded down to the nearest whole number.

5.5 Cash Cap

- (a) If a Target Shareholder has validly made an Election to receive Election Option 1, that Target Shareholder will be entitled to receive for each Scheme Share held by that Target Shareholder at the Record Date:
 - (i) if the Election Cash Consideration is equal to, or less than, the Cash Cap, Consideration Option 1; or
 - (ii) if the Election Cash Consideration is greater than the Cash Cap:
 - (A) an amount of cash per Scheme Share calculated as follows:

$$A \div B$$

Where:

A = the Cash Cap;

B = the total number of Scheme Shares held at the Record Date by all Scheme Shareholders who validly elect Consideration Option 1; plus

(B) a number of New Bidder Shares per Scheme Share calculated as follows:

$$(\$0.48 - X) \div B$$

Where:

X = the amount of cash per Scheme Share provided under clause 5.5(a)(ii)(A); and

B = \$0.09

5.6 Ineligible Foreign Shareholders

If a Target Shareholder is an Ineligible Foreign Shareholder that Target Shareholder will be entitled to receive All Cash Consideration for the Scheme Shares held by that Target Shareholder.

5.7 Exercise, transfer or cancellation of Options in Target

- (a) The parties must use reasonable endeavours to procure that, as soon as practicable after the date of this Agreement (subject to compliance with applicable laws and stock exchange rules, as modified or waived by ASIC or ASX respectively), each holder of Options in Target either:
 - (i) exercises its Options in Target by no later than 2 Business Days prior to the record date for determining a Target Shareholder's right to vote at the Scheme Meeting, upon which Target must enter each holder of Options in Target that exercises its Options in Target onto the Target Share Register prior to 8am on the Second Court Date, such that such holder of Options in Target can participate in the Scheme as a Scheme Shareholder or trade its Target Shares, at its discretion; or
 - (ii) enters into a deed with a third party to sell its Options, at any price, to a third party (**Option Sale Deed**) prior to the Second Court Date provided that:
 - (A) such third party has an obligation under the Option Sale Deed to exercise the Options immediately after it has acquired the Options;
 - (B) Bidder is notified of the identity of such third party; and
 - (C) Bidder is provided with a draft of the Option Sale Deed and the terms (excluding price) of the Option Sale Deed are acceptable to the Bidder (acting reasonably), including the proposal for the repayment of any loan provided to the holder by the Target in connection with the Options.
 - (iii) subject to being permitted by applicable laws and regulations to do so (including any waiver to be obtained from ASX), enters into a deed with Target prior to the Second Court Date, in a form acceptable to Bidder (acting reasonably), under which:

- (A) the holder agrees to the cancellation of all of their Options in Target, with such transfer to be subject to the Scheme becoming Effective and to take effect on the Implementation Date;
- (B) Target agrees to provide, or to procure the provision of, consideration equal to the difference between \$0.51 per Scheme Share and the exercise price of the Options, being \$0.27 per Option, less the amount of any loan provided to the holder by the Target in connection with the Options, on the Implementation Date; and
- (C) Target agrees to use reasonable endeavours to facilitate the cancellation of Options in Target (including, if required the Target Board making any necessary lawful amendment, consent or determination for the purposes of the relevant terms and conditions upon which the Options were issued and using its reasonable endeavours to procure the grant of any necessary waivers by ASX).

Unless otherwise agreed in writing by Bidder, Target must, and must ensure that all members of the Target Group, refrain from conferring, or agreeing to confer, any benefits (whether by cash payment, the issue of awards, exercise of discretion, the issue of Target Shares or other securities or otherwise) beyond those already conferred prior to the date of this Agreement under, or in relation to, any incentive plan or award under an incentive plan.

6 DISTRIBUTIONS

6.1 Dividend Payment subject to the Completion of the Transaction

Conditional on the Scheme becoming Effective, Target will declare and pay a fully franked dividend of \$0.03 per Scheme Share to Target Shareholders immediately prior to the Implementation Date.

6.2 No effect of Distributions on Scheme Consideration

The Scheme Consideration will not be affected by any Distributions made by Target.

6.3 Notice of Distributions

Target will provide Bidder with a written notice specifying the timing and amount of all Distributions not later than fourteen days prior to making any such Distribution specifying the amount, manner and proposed Distribution Date of any such Distribution, which must be after the Effective Date.

7 RIGHTS ISSUES

7.1 ASX Waiver

Target will seek from the ASX a waiver from ASX Listing Rule 7.9 Exception 2 to the extent necessary to permit Target to undertake a non-underwritten 3 for 20 pro-rata non-renounceable rights issue to Target Shareholders, with the ability for existing Target Shareholders to apply for additional Target Shares under a shortfall facility to be offered in conjunction with the rights issue (but with no subsequent placement by, or on behalf of, the Target Board of any Target Shares not subscribed for by existing Target Shareholders under the rights issue or the shortfall facility) at an issue price of \$0.48 to raise up to \$14,525,300.64 (**Target Rights Issue**).

7.2 Simultaneous Rights Issues

- (a) Target will undertake the Target Rights Issue in accordance with the Timetable.
- (b) Bidder will undertake a non-underwritten 1 for 6 non-renounceable rights issue at an issue price of \$0.09 to raise up to \$20,197,068 (**Bidder Rights Issue**).
- (c) Bidder agrees, acknowledges and consents to the Target Rights Issue being undertaken in accordance with clause 7.2(a) and generally in accordance with the Timetable.
- (d) Target agrees, acknowledges and consents to the Bidder Rights Issue being undertaken in accordance with clause 7.2(b).

8 REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of Target

Target:

- (a) represents and warrants to Bidder that each of the matters and statements set out in Schedule 5 is true and correct as at the following times (unless expressed to be given at a particular time):
 - (i) as at the date of this Agreement; and
 - (ii) at all times up to the Implementation Date; and
- (b) acknowledges that Bidder is relying on such representations and warranties in entering into this Agreement and consummating the Transaction.

8.2 Representations and Warranties of Bidder

Bidder:

- (a) represents and warrants to Target that each of the matters and statements set out in Schedule 6 is true and correct as at the following times (unless expressed to be given at a particular time):
 - (i) as at the date of this Agreement; and
 - (ii) at all times up to the Implementation Date; and
- (b) acknowledges that Target is relying on such representations and warranties in entering into this Agreement and consummating the Transaction.

8.3 No other Warranties or Reliance

Each party acknowledges and confirms that:

- (a) no other party nor any person acting on behalf of that party has made any warranty, representation or other inducement to it to enter into this Agreement, and

- (b) it does not enter into this Agreement in reliance on any warranty, representation or other inducement by or on behalf of the other party, except for any warranty referred to in this clause and the relevant declaration in clause 11.1.

8.4 Survival of Representations, Warranties and Covenants

The representations, warranties and covenants of Target and Bidder contained in this Agreement or in any instrument delivered pursuant to this Agreement:

- (a) is severable;
- (b) survives termination of this Agreement; but
- (c) shall merge upon, and shall not survive, the Implementation Date provided that this clause 8.4 shall not limit any covenant or agreement of the parties, which by its terms contemplates performance after the Implementation Date.

9 CO-OPERATION

9.1 General

Each of Target and Bidder shall use all reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all other acts and things necessary or desirable to permit the completion of the Transaction in accordance with this Agreement, the Scheme and applicable Laws, and to cooperate with each other in connection therewith, including using all reasonable efforts to:

- (a) provide notice to, and obtain all waivers, consents, permits, licenses, authorisations, orders, approvals and releases necessary or desirable to complete the Transaction from, Agencies and other persons, including parties to agreements, understandings or other documents, to which each of Target and Bidder is party, or by which it, or its Property and assets, are bound or affected (including loan agreements, shareholder agreements, leases, pledges, guarantees and security), the failure of which to provide or obtain would prevent the completion of the Transaction or which, individually or in aggregate, could reasonably be expected to be Materially Adverse to Target or Bidder;
- (b) obtain the Interim Order and the approval of Target Shareholders at the Scheme Meeting at the earliest practicable date, in accordance with the Interim Order and applicable Laws;
- (c) effect or cause to be effected all registrations and filings and submissions of information necessary or desirable to complete the Transaction or requested of it by any Regulatory Authority, the failure of which could reasonably be expected to prevent the completion of the Transaction or could reasonably be expected to be Materially Adverse to Target or Bidder; and
- (d) keep the other parties reasonably informed as to the status of any matters contemplated by this clause 9.1, including providing the other parties with copies of all related correspondence, applications and notifications.

9.2 Representation at Court Hearings

- (a) Bidder and Target agree:

- (i) to arrange for its respective solicitors and/or counsel to be present at each Court hearing which relates to the Scheme for the purpose of ensuring that any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme to which Bidder consents is not unnecessarily delayed; and
 - (ii) to the extent that leave of the Court is required for Bidder to be represented at those Court hearings, apply for that leave, at its cost.
- (b) Target agrees to consent to Bidder being represented by counsel at any Court proceedings in respect of the Scheme.
- (c) Nothing in this Agreement gives any party any right or power to make undertakings to the Court on behalf of the other party without that party's consent.
- (d) Each party agrees to give all undertakings to the Court in all Court proceedings in respect of the Scheme which it is reasonably required by the Court to give (on an individual basis) in order to obtain Court approval of the Scheme.

9.3 Conduct of appeals

If the Court refuses to grant the Interim Order or the Final Order, the parties must consult with each other in good faith to determine whether or not to appeal the Court's decision. If, in the opinion of senior counsel obtained by either party within 5 Business Days of the Court's decision, there are reasonable prospects of successfully appealing the Court's decision:

- (a) Target must appeal the Court's decision; and
- (b) the parties must agree in good faith an extension of the Sunset Date by a period of not more than three months to account for the period for determination of the appeal on an expedited basis.

For the avoidance of doubt, Target may, but is not required to, seek an expedited hearing of any appeal.

9.4 Defence of Proceedings

- (a) Each of Target and Bidder shall use all reasonable efforts to defend, or shall cause to be defended, any lawsuits or other legal proceedings brought against it or their respective directors, officers or shareholders challenging this Agreement or the completion of the Transaction. In relation to those matters each of Target and Bidder shall bear their own respective costs.
- (b) Neither Target nor Bidder shall settle or compromise any claim brought in connection with the Transaction, without the prior written consent of the other party, such consent not to be unreasonably withheld.

9.5 Registrar and Transfer Agent

Target shall instruct the registrar and transfer agent for Target Shares to furnish to Bidder (and such persons as it may designate) all information reasonably requested by Bidder about the Target Shareholders in order to assist Bidder to identify the Scheme Shareholders to facilitate the provision by, or on behalf of, Bidder of the Scheme Consideration at such times as it may request such information and provide to Bidder (and such persons as it may designate) such other assistance as it may request in connection with the Transaction.

9.6 Duty to Inform

Each of Target and Bidder shall keep the other party apprised of the status of matters relating to the completion of the Transaction and work cooperatively in connection with obtaining the requisite Regulatory Approvals, including:

- (a) promptly notifying the other party of, and if in writing promptly furnishing the other party with copies of, any communications from or with any Regulatory Authority with respect to the Transaction;
- (b) permitting the other party to review in advance, and consider in good faith the view of each party in connection with, any proposed communication with any Regulatory Authority in connection with proceedings under or relating to any applicable Laws; and
- (c) not agreeing to participate in any meeting or discussion with any Regulatory Authority in connection with proceedings under or relating to any applicable Laws unless it consults with the other party in advance, and, to the extent permitted by such Regulatory Authority, give the other party the opportunity to attend and participate by phone or otherwise.

9.7 Board Recommendations and intentions

- (a) Subject to clause 9.7(d), Target must procure that the Target Board (in all public statements relating to the Transaction and in the Target Scheme Document) recommends unanimously that Target Shareholders vote in favour of the Scheme, in the absence of a Superior Proposal and subject to the receipt of a Favourable Independent Expert's Report.
- (b) Target confirms that at the date of this Agreement, each Target director will provide the recommendation set out in clause 9.7(a).
- (c) Target agrees to procure that each Target director votes the Target Shares which he or she owns, or in respect of which he or she controls the voting rights, in accordance with their recommendations to Target Shareholders in respect of the Scheme.
- (d) Clause 9.7(a) ceases to apply if:
 - (i) there is a Superior Proposal; or
 - (ii) the Independent Expert does not provide a Favourable Independent Expert's Report, and Target is in compliance with its obligations under clause 12.

10 CONDUCT OF BUSINESS

10.1 Conduct of Business by Target

Subject to clause 10.3, prior to the Implementation Date, unless Bidder otherwise agrees in writing (such agreement not to be unreasonably withheld) or as otherwise expressly contemplated or permitted by this Agreement, Target shall conduct its business only in, and not take any action except in, the ordinary course of business.

10.2 Specific Target Covenants

Subject to clause 10.3 and without limiting the generality of clause 10.1 unless:

- (a) Bidder otherwise consents to such action in writing; or
- (b) such action is otherwise expressly contemplated or permitted by this Agreement; or
- (c) such action is provided for in the Operating Budget; or
- (d) such action or entry into of a contract has been disclosed to Bidder prior to the date of this Agreement,

Target shall:

- (e) not do nor permit to occur any of the following (directly or indirectly) with respect to any Target Group entity (where "it" is a reference to each Target Group entity):
 - (i) issue, grant any option over, sell, transfer, pledge, lease, dispose of, encumber or agree to issue, grant any option over, sell, pledge, lease, dispose of or encumber any shares or other securities entitling the holder to rights in respect of shares or the securities or assets of any Target Group entity, other than pursuant to rights to acquire any Target Shares existing at the date of this Agreement including Target Shares issued upon the valid exercise of the Options in Target or as disclosed to Bidder prior to the date of this Agreement and the issuance of securities pursuant to clause 7;
 - (ii) amend or propose to amend its constitution;
 - (iii) declare or make any dividend or other distribution (in cash, securities or other property) in respect of any of its securities except for any Distribution made pursuant to clause 6;
 - (iv) redeem, purchase, buy-back or offer to purchase or buy-back any of its shares or securities (including Options), or enter into any agreement, understanding or arrangement with respect to the voting, registration, repurchase or buy-back of its shares or other securities except for any buy-back contemplated under this Agreement;
 - (v) adjust, split, combine, reduce or reclassify its share capital or securities or merge or consolidate its securities or shares;
 - (vi) enter into a joint venture or partnership in respect of any asset or undertaking with any person;
 - (vii) other than by way of the enforcement of any security interest in the ordinary course of business, acquire or agree to acquire (by purchase, amalgamation, merger or otherwise) any property or assets that individually exceeds \$500,000 or, in aggregate, exceed \$1,000,000;
 - (viii) make, or commit to make, any capital expenditure that individually exceeds \$500,000;

- (ix) terminate or amend in a material manner any Material Contract, incur, create, assume, give a commitment to incur, guarantee or otherwise become liable or responsible for indebtedness for borrowed money;
 - (x) other than in the ordinary course of business and consistent with past practice, create, or agree to create, any mortgage, charge, lien or other encumbrance over the whole or a substantial part of its business or property;
 - (xi) settle or compromise any suit, claim, action, proceeding, hearing, notice of violation, demand letter or investigation involving the possible payment or receipt of amounts that exceed, in aggregate, \$100,000, not being a suit, claim, action, proceeding, hearing or demand letter filed, issued or made by Bidder or any of its Related Entities; and
 - (xii) create, or agree to create, issue any securities under, or become liable for any obligations under, an employee incentive scheme (including the Target's Rights Plan), or pay or provide, or agree to pay or provide, any bonuses or benefits to any employee or director that such employee or director is not entitled to as at the date of this Agreement.
- (f) use all reasonable efforts to cause the current Target insurance (or re-insurance) policies not to be cancelled or terminated or any other coverage under those policies to lapse, unless simultaneously with such termination, cancellation or lapse, replacement policies underwritten by insurance and reinsurance companies of nationally recognised standing providing coverage equal to or greater than the coverage under the cancelled, terminated or lapsed policies for substantially similar premiums are in full force and effect; and

in the event that Bidder and Target fail to agree on Target's proposal to carry out any activity to which this clause applies, the parties shall refer the matter for resolution in accordance with clause 14.

10.3 Exceptions

Nothing in clauses 10.1 and 10.2 shall prevent Target from doing any matter or thing for the purpose of or in connection with the following:

- (a) issuing securities or making payments as detailed in Part 2 of Schedule 4 or to ensure that by the Record Date there are no Options on issue as at the Implementation Date.
- (b) issuing securities in accordance with clause 7 and any shortfall or underwriting of the Rights Issues as contemplated by clause 7 (subject to any required waivers being obtained from ASX).

10.4 Conduct of Business by Bidder

- (a) Subject to clause 10.5, prior to the Implementation Date, unless Target otherwise agrees in writing (such agreement not to be unreasonably withheld) or as otherwise expressly contemplated or permitted by this Agreement, Bidder shall conduct its business only in, and not take any action except in, the ordinary course of business.
- (b) Subject to clause 10.5 and without limiting the generality of clause 10.4(a), Bidder shall not do nor permit to occur any of the following (directly or indirectly) with respect to any Bidder Group entity (where "it" is a reference to each Bidder Group entity):

- (i) issue, grant any option over, sell, transfer, pledge, lease, dispose of, encumber or agree to issue, grant any option over, sell, pledge, lease, dispose of or encumber any shares or other securities entitling the holder to rights in respect of shares or the securities or assets of any Bidder Group entity, other than pursuant to rights to acquire any Bidder Shares existing at the date of this Agreement including Bidder Shares issued upon the valid exercise of Options in Bidder or as disclosed to Target prior to the date of this Agreement and the issuance of securities pursuant to clause 7;
- (ii) amend or propose to amend its constitution;
- (iii) declare or make any dividend or other distribution (in cash, securities or other property) in respect of any of its securities;
- (iv) redeem, purchase, buy-back or offer to purchase or buy-back any of its shares or securities (including Options), or enter into any agreement, understanding or arrangement with respect to the voting, registration, repurchase or buy-back of its shares or other securities except for any buy-back contemplated under this Agreement;
- (v) adjust, split, combine, reduce or reclassify its share capital or securities or merge or consolidate its securities or shares;
- (vi) enter into a joint venture or partnership in respect of any asset or undertaking with any person;
- (vii) other than by way of the enforcement of any security interest in the ordinary course of business, acquire or agree to acquire (by purchase, amalgamation, merger or otherwise) any property or assets that individually exceeds \$500,000 or, in aggregate, exceed \$1,000,000;
- (viii) make, or commit to make, any capital expenditure that individually exceeds \$500,000;
- (ix) terminate or amend in a material manner any Material Contract, incur, create, assume, give a commitment to incur, guarantee or otherwise become liable or responsible for indebtedness for borrowed money;
- (x) other than in the ordinary course of business and consistent with past practice, create, or agree to create, any mortgage, charge, lien or other encumbrance over the whole or a substantial part of its business or property;
- (xi) settle or compromise any suit, claim, action, proceeding, hearing, notice of violation, demand letter or investigation involving the possible payment or receipt of amounts that exceed, in aggregate, \$100,000, not being a suit, claim, action, proceeding, hearing or demand letter filed, issued or made by Bidder or any of its Related Entities; and
- (xii) create, or agree to create, issue any securities under, or become liable for any obligations under, an employee incentive scheme or pay or provide, or agree to pay or provide, any bonuses or benefits to any employee or director that such employee or director is not entitled to as at the date of this Agreement.

10.5 Exceptions

Nothing in clause 10.4 shall prevent Bidder from doing any matter or thing for the purpose of or in connection with the following:

- (a) such action is otherwise expressly contemplated or permitted by this Agreement; or
- (b) such action arises from a pre-existing obligation or right of Bidder or a member of the Bidder Group prior to the date of this Agreement; or
- (c) with the consent of the Target; or
- (d) issuing securities in accordance with clause 7 and any shortfall or underwriting of the Bidder's Rights Issue as contemplated by clause 7.

11 BREAK FEE

11.1 Declarations

Clauses 11.2 and 11.3 have been included at the request of Bidder and Target respectively on the basis that they will incur significant costs with respect to implementing the Transaction and they would not have entered into this Agreement and would not have entered into and continued negotiations and conducted Due Diligence leading up to this Agreement had they not each had a reasonable expectation that the other would agree to enter into a clause of this kind. Each party confirms that it has received legal advice on this document and the operation of this clause.

11.2 Break Fee – Target

Subject to clauses 11.4 and 11.5, Target agrees to make the following payments to Bidder if, at any time after the date of this Agreement:

- (a) the Target Board announces, recommends or proceeds with an Acquisition Proposal, and the Acquisition Proposal is implemented, other than in circumstances where the Transaction is also implemented; or
- (b) any director of Target or the Target Board as a whole makes a public statement after the date of this Agreement or makes a statement in the Target Scheme Document:
 - (i) withdrawing or adversely changing or modifying his, her or their recommendation that Target Shareholders vote in favour of the Scheme;
 - (ii) recommending that Target Shareholders vote against the Scheme;
 - (iii) that he or she or any director of Target will not or intends not to vote (or procure the voting of) all Target Shares which he or she or the relevant director owns or in respect of which he or she or the relevant director controls the voting rights in favour of the Scheme; or
 - (iv) that he or she or any director of Target will or intends to vote against the Scheme in respect of the Target Shares which he or she owns or in respect of which he or she controls the voting rights,

other than in circumstances where the Transaction is implemented or where the Independent Expert does not provide a Favourable Independent Expert's Report (other than where a Superior Proposal has been proposed or announced before the Independent Expert's Report is issued which the Independent Expert may reasonably regard to be on more favourable terms than the Transaction), then Target will pay Bidder \$1,000,000 (plus GST); or

- (c) Bidder validly terminates this Agreement in accordance with clause 13.4(b) other than any termination due to breach of clause 12.8 or there is a breach or non-fulfilment of the condition at paragraph (b) and paragraph (c) of Schedule 3 by Target, then Target will pay Bidder \$500,000 (plus GST).

11.3 Break Fee – Bidder

Subject to clauses 11.4 and 11.5, Bidder agrees to make the following payments to Target if, at any time after the date of this Agreement:

- (a) the Bidder Board announces, recommends or enters into a Competing Proposal, and the Competing Proposal is implemented, then Bidder will pay Target \$1,000,000 (plus GST), other than in circumstances where the Transaction is also implemented; or
- (b) Target validly terminates this Agreement in accordance with clause 13.3(b) (other than in a circumstance where the termination event being relied upon by the Target results from a prior breach by Target of its obligations under clause 12.1) or there is a breach or non-fulfilment of the condition at paragraph (b) and paragraph (c) of Schedule 2 by the Bidder, then Bidder will pay Target \$500,000 (plus GST).

11.4 No payment if Scheme becomes Effective or Target fails to obtain the Target Shareholder Approval

- (a) A Break Fee will not be payable under clauses 11.2 and 11.3 if the Scheme becomes Effective. If a Break Fee has been paid before the Scheme becomes Effective, it must be refunded to the paying party immediately.
- (b) For the avoidance of doubt, in no circumstances will a Break Fee be payable only as a result of Target failing to obtain the Target Shareholder Approval.

11.5 Compliance with law

If it is finally determined by the Takeovers Panel or a court (following the exhaustion of all reasonable avenues of appeal) that all or any part of a Break Fee required to be paid under clauses 11.2 and 11.3 (**Impugned Amount**):

- (a) is unlawful;
 - (b) involves a breach of directors' duties; or
 - (c) constitutes 'unacceptable circumstances' within the meaning of the Corporations Act,
- then:
- (d) the requirement to pay the Break Fee does not apply to the extent of the Impugned Amount; and

- (e) if a party has received the Impugned Amount, it must refund it within 10 Business Days of the final determination being made to the other party.

The parties must not make or cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 11.5.

11.6 Payment

Any payment of a Break Fee required to be paid under this clause 11 must be made within 5 Business Days of receipt of a tax invoice requiring payment of the Break Fee from the relevant party. The demand may only be made after the occurrence of an event referred to in clause 11.2 or 10.3, as the case may be.

11.7 Liability for Breach

- (a) Despite any other provision of this Agreement, if Target becomes liable to pay the Break Fee under clause 11.2 to Bidder, Target will, upon making payment, have no further liability to Bidder or any other person under or in connection with a breach of this Agreement. Nothing in clause 11.7(a) extinguishes or limits the liability of Target for any breach of this Agreement arising from criminal acts or fraud by Target or any of its Representatives; and
- (b) Despite any other provisions of this Agreement, if Bidder becomes liable to pay the Break Fee under clause 11.3 to Target, Bidder will, upon making payment, have no further liability to Target or any other person under or in connection with a breach of this Agreement. Nothing in this clause 11.7(b) extinguishes or limits the liability of Bidder for any breach of this Agreement arising from criminal acts or fraud by Bidder or any of its Representatives.

12 ALTERNATIVE TRANSACTIONS

12.1 Non-Solicitation and adverse acts - Target

- (a) Subject to clause 12.2, Target shall not directly or indirectly, including through any of its Representatives or otherwise, during the term of this Agreement:
 - (i) solicit, initiate, invite or facilitate (including by way of furnishing non-public information) any Acquisition Proposal or any inquiries, negotiations, discussions, expressions of interest, proposals or offers regarding or in relation to, or which may reasonably be expected to encourage or lead to, an Acquisition Proposal;
 - (ii) participate in, or continue, any discussions or negotiations regarding or in relation to any Acquisition Proposal, or which would reasonably be expected to encourage or lead to the making of, an actual proposed or potential Acquisition Proposal;
 - (iii) approve or recommend any Acquisition Proposal;
 - (iv) negotiate, accept or enter into any agreement, arrangement or understanding related to any Acquisition Proposal or a potential Acquisition Proposal;
 - (v) do anything that may reasonably be expected to encourage or lead to an Acquisition Proposal or a potential Acquisition Proposal, including disclose, provide or make available any material non-public information related to Target to a third party; or

- (vi) communicate an intention to do any of the foregoing things.
- (b) In addition, Target shall, during the term of this Agreement:
 - (i) immediately cease and cause to be terminated any existing discussions or negotiations, directly or indirectly, with any person with respect to any Acquisition Proposal; and
 - (ii) not, directly or indirectly, waive or vary any terms or conditions of any confidentiality or standstill agreement that it has, as of the date hereof, entered into with any person who may be considering any Acquisition Proposal and shall immediately request the return (or the deletion from retrieval systems and data bases or the destruction) of all information provided by Target or any of its Representatives to any such person.

12.2 Permitted Actions - Target

Notwithstanding anything in this Agreement, nothing in clause 12.1 shall prevent the Target Board from:

- (a) complying with its obligations under applicable Laws to prepare and deliver a target's statement in response to a takeover bid that did not result from a breach of clause 12.1;
- (b) taking any action or inaction including without limitation considering, participating in discussions or negotiations in respect of, entering into confidentiality agreements and providing information in connection with, or recommending and approving, an unsolicited bona fide written Acquisition Proposal that did not result from a breach of clause 12.1, provided that the Target Board determines, acting in good faith after receiving written advice from its external legal advisers, that:
 - (i) the Acquisition Proposal constitutes, or would reasonably be expected to constitute, a Superior Proposal; and
 - (ii) compliance with clause 12.1 would constitute or be likely to constitute a breach of the fiduciary or statutory duties of the directors of Target.

12.3 Access to Information

- (a) If, during the term of this Agreement, Target or any of its Representatives receives a request for information from a person that has made an unsolicited bona fide written Acquisition Proposal that did not result from a breach of clause 12.1, then, and only in such case, the Target Board may, subject to the execution by such person of a confidentiality agreement containing terms at least as favourable to Target as those contained in this Agreement and the Confidentiality Deed, provide such person with access to information regarding Target. For the avoidance of doubt, any such provision of information to such person may only be undertaken if permitted by clause 12.2(b).
- (b) Target must, as soon as possible, provide Bidder with:
 - (i) in the case of written materials, a copy of; and
 - (ii) in any other case, a written statement of,

any non-public information about the business or affairs of Target or the Target Group disclosed or otherwise provided pursuant to clause 12.3(a) that has not previously been provided to Bidder in addition to the information to be provided pursuant to clause 12.4.

12.4 Notification by Target of approaches

- (a) During the term of this Agreement, Target must notify Bidder promptly (and in any event within two Business Days) in writing if it, or any of its Representatives becomes aware of any:
 - (i) inquiry, expression of interest, offer or proposal (or update to a previous proposal), whether written or otherwise, made to Target or its Representatives in connection with, or in respect of any exploration or consummation of, an Acquisition Proposal or a proposed or potential Acquisition Proposal, whether unsolicited or otherwise and whether a Superior Proposal or not; or
 - (ii) provision by Target or its Representatives of any information relating to Target or any of its subsidiaries or any of their businesses or operations to any person in connection with or for the purposes of an Acquisition Proposal or a proposed or potential Acquisition Proposal, whether unsolicited or otherwise and whether a Superior Proposal or not.
- (b) A notice required to be provided under clause 12.4(a) must include the material terms of the proposal, including, if known, the proposed price (or implied value of proposed non-cash consideration), conditions, timing and break fee (if any), and, subject to clause 12.2(b), details of the person making the proposal.

12.5 Matching right

Without limiting clause 12.1, during the term of this Agreement, 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 or potential Acquisition 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 or potential Acquisition 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 Acquisition Proposal is a Superior Proposal;
 - (d) Target has provided Bidder with the information required under clause 12.4;
 - (e) Target has given Bidder at least 5 Business Days after the date of the provision of the information referred to in clause 12.5(d) to provide a matching or superior proposal to the terms of the actual, proposed or potential competing Acquisition Proposal; and
 - (f) Bidder has not announced a matching or superior proposal to the terms of the actual, proposed or potential Acquisition Proposal by the expiry of the 5 Business Day period referred to in clause 12.5(e).

12.6 Bidder counterproposal

If Bidder proposes to Target, or announces amendments to the Scheme or a new proposal that constitute a matching or superior proposal to the terms of the actual or potential competing Acquisition Proposal (**Bidder Counterproposal**) by the expiry of the 5 Business Day period referred to in clause 12.5(e), Target must procure that the Target Board considers the Bidder Counterproposal and if the Target Board determines, acting in good faith, that the Bidder Counterproposal would provide an equivalent or superior outcome for Target Shareholders as a whole compared with the competing Acquisition Proposal, taking into account all of the terms and conditions of the Bidder Counterproposal, then:

- (a) Target and Bidder must use their best endeavours to agree the amendments to this document and, if applicable, the Scheme, Deed Poll and any other relevant documents that are reasonably necessary to reflect the Bidder Counterproposal and to implement the Bidder Counterproposal, in each case as soon as reasonably practicable;
- (b) Target must use its best endeavours to procure that each of the directors of Target continues to recommend the Scheme (as modified by the Bidder Counterproposal) to Target Shareholders.

12.7 Matching rights continue

- (a) Any material modification to any Acquisition Proposal (which will include any modification relating to the price or value of any competing Acquisition Proposal) will be taken to make that proposal a new Acquisition Proposal in respect of which Target must comply with its obligations under clause 12.5.
- (b) The exercise of rights by the Bidder under clause 12.5 and clause 12.6 does not limit in any way the Bidder's rights to claim a break fee under clause 11.2.

12.8 Non-solicitation and adverse acts - Bidder

- (a) Subject to clause 12.9, Bidder shall not directly or indirectly, including through any of its Representatives or otherwise, during the term of this Agreement:
 - (i) solicit, initiate, invite or facilitate (including by way of furnishing non-public information) any Competing Proposal or any inquiries, negotiations, discussions, expressions of interest, proposals or offers regarding or in relation to, or which may reasonably be expected to encourage or lead to, a Competing Proposal;
 - (ii) participate in, or continue, any discussions or negotiations regarding or in relation to any Competing Proposal, or which would reasonably be expected to encourage or lead to the making of, an actual proposed or potential Competing Proposal;
 - (iii) approve or recommend any Competing Proposal;
 - (iv) negotiate, accept or enter into any agreement, arrangement or understanding related to any Competing Proposal or a potential Competing Proposal;
 - (v) do anything that may reasonably be expected to encourage or lead to a Competing Proposal or a potential Competing Proposal, including disclose, provide or make available any material non-public information related to Bidder to a third party; or

- (vi) communicate an intention to do any of the foregoing things.
- (b) In addition, Bidder shall, during the term of this Agreement:
 - (i) immediately cease and cause to be terminated any existing discussions or negotiations, directly or indirectly, with any person with respect to any Competing Proposal; and
 - (ii) not, directly or indirectly, waive or vary any terms or conditions of any confidentiality or standstill agreement that it has, as of the date hereof, entered into with any person who may be considering any Competing Proposal and shall immediately request the return (or the deletion from retrieval systems and data bases or the destruction) of all information provided by Bidder or any of its Representatives to any such person.

12.9 Permitted Actions - Bidder

Notwithstanding anything in this Agreement, nothing in clause 12.8 shall prevent the Bidder Board from:

- (a) complying with its obligations under applicable Laws to prepare and deliver a target's statement in response to a takeover bid that did not result from a breach of clause 12.8;
- (b) taking any action or inaction including without limitation considering, participating in discussions or negotiations in respect of, entering into confidentiality agreements and providing information in connection with, or recommending and approving, an unsolicited bona fide written Competing Proposal that did not result from a breach of clause 12.8, provided that the Bidder Board determines, acting in good faith after receiving written advice from its external legal advisers, that:
 - (i) the Competing Proposal constitutes, or would reasonably be expected to constitute, a Bidder Superior Proposal; and
 - (ii) compliance with clause 12.8 would constitute or be likely to constitute a breach of the fiduciary or statutory duties of the directors of Bidder.

12.10 Compliance with law

If it is finally determined by the Takeovers Panel or a court (following the exhaustion of all reasonable avenues of appeal) that the agreement under this clause 12:

- (a) is unlawful;
- (b) involves a breach of directors' duties; or
- (c) constitutes 'unacceptable circumstances' within the meaning of the Corporations Act,

then, to that extent (and only to that extent) that party will not be obliged to comply with that provision of clause 12.

13 TERMINATION OF AGREEMENT

13.1 Termination

The rights and obligations of the parties pursuant to this Agreement, other than pursuant to clauses 11, 13, 17 and 18 (all of which such clauses survive termination of this Agreement), may be terminated in accordance with this clause 13.

13.2 Mutual Agreement

Subject to clause 13.1, this Agreement may be terminated by mutual agreement in writing executed by Target and Bidder (for avoidance of doubt, without further action on the part of Target Shareholders if termination occurs after the holding of the Scheme Meeting).

13.3 By Target

Subject to clause 13.1, this Agreement may be terminated by Target:

- (a) either:
 - (i) after the Sunset Date, if:
 - (A) any of the conditions provided in clause 4.1 have not been satisfied or waived (if applicable) by Target and Bidder on or before the Sunset Date; or
 - (B) any of the conditions provided in clause 4.2 have not been satisfied or waived by Target on or before the Sunset Date,
 - (ii) on or before the Sunset Date, if it becomes clear that any of the conditions provided in clause 4.1 or 4.2 cannot be satisfied on or before the Sunset Date, provided that Target is not in material breach of any covenant required to be performed by it pursuant to this Agreement and no representation or warranty made by Target is untrue in any material respect;
- (b) by giving notice in writing to Bidder at any time before 8.00 am on the Second Court Date if:
 - (i) Bidder is in material breach of any term or warranty of this Agreement; and
 - (ii) Target has given Bidder a written notice:
 - (A) setting out details of the breach and requiring it to be remedied; and
 - (B) stating its intention to terminate if the breach is not remedied; and
 - (iii) the breach is unable to be remedied or continues on the date which is seven days (or any shorter period ending at 5.00 pm on the day before the Second Court Date) from the date the notice is given by Target; or
- (c) if the Bidder Board announces, recommends, or enters into a Competing Proposal which is not a Bidder Superior Proposal;

- (d) if ASX refuses to grant, or informs one or both of Target and Bidder that ASX will refuse to grant official quotation on the ASX of any or all of the New Bidder Shares;
- (e) if Target or the Target Board accepts, approves, recommends or enters into a legally binding agreement, understanding or arrangement to implement a Superior Proposal in accordance with clause 12.2(b), or if the Target Board withdraws its recommendation of the Scheme, in the circumstances set out clause 9.7(d), in each case where Target is not in breach of its obligations under clause 12.1; or
- (f) if it is determined by the Takeovers Panel or a court of competent jurisdiction that the Transaction is unlawful, involves a breach of Target directors' duties or constitutes unacceptable circumstances for the purposes of Subdivision B of Part 6.10 of the Corporations Act which are not rectified in accordance with any requirement of the Takeovers Panel, notwithstanding the parties' using all reasonable endeavours to rectify such circumstances, (in circumstances where Target has not applied to the Takeovers Panel or the court for the relevant decision or order, and has not supported any such application).

13.4 By Bidder

Subject to clause 13.1, this Agreement may be terminated by Bidder:

- (a) either:
 - (i) after the Sunset Date, if:
 - (A) any of the conditions provided in clause 4.1 have not been satisfied or waived (if applicable) by Target and Bidder on or before the Sunset Date; or
 - (B) any of the conditions provided in clause 4.3 have not been satisfied or waived by Bidder on or before the Sunset Date,
 - (ii) on or before the Sunset Date, if it becomes clear that any of the conditions provided in clause 4.1 or 4.3 cannot be satisfied on or before the Sunset Date, provided that Bidder is not in material breach of any covenant required to be performed by it pursuant to this Agreement and no representation or warranty made by Bidder is untrue in any material respect;
- (b) by giving notice in writing to Target at any time before 8.00 am on the Second Court Date if:
 - (i) Target is in material breach of any term or warranty of this Agreement (provided that a failure by Target to perform its obligations under clauses 3.2(c) or 3.2(d) within the four week period specified despite using all reasonable endeavours to do so shall not entitle Bidder to terminate this Agreement); and
 - (ii) Bidder has given Target a written notice;
 - (A) setting out details of the breach and requiring it to be remedied; and
 - (B) stating its intention to terminate if the breach is not remedied; and

- (iii) the breach is unable to be remedied or continues on the date which is seven days (or any shorter period ending at 5.00 pm on the day before the Second Court Date) from the date the notice is given by Bidder;
- (c) at any time if any director on the Target Board approves, recommends, accepts or, enters into any agreement, undertaking or arrangement in respect of an Acquisition Proposal which is not a Superior Proposal;
- (d) at any time if the Scheme Meeting is cancelled except as expressly contemplated by this Agreement or agreed to by the Bidder in writing;
- (e) if Bidder or the Bidder Board accepts, approves, recommends or enters into a legally binding agreement, understanding or arrangement to implement a Bidder Superior Proposal in accordance with clause 12.9(b) where Bidder is not in breach of its obligations under clause 12.8.
- (f) if ASX refuses to grant, or informs one or both of Target and Bidder that ASX will refuse to grant official quotation on the ASX of any or all of the New Bidder Shares; or
- (g) if it is determined by the Takeovers Panel or a court of competent jurisdiction that the Transaction is unlawful, involves a breach of Bidder directors' duties or the Bidder directors' duties or constitutes unacceptable circumstances for the purposes of Subdivision B of Part 6.10 of the Corporations Act which are not rectified in accordance with any requirement of the Takeovers Panel, notwithstanding the parties' using all reasonable endeavours to rectify such circumstances, (in circumstances where Bidder has not applied to the Takeovers Panel or the court for the relevant decision or order, and has not supported any such application).

13.5 Automatic Termination

This Agreement will terminate automatically without the need for action by any party in the event that:

- (a) the Target Shareholders fail to approve the Scheme by the requisite majorities at the Scheme Meeting;
- (b) the Court refuses to grant the Interim Order and either:
 - (i) the parties fail to agree to conduct an appeal under clause 9.3 within 5 Business Days of the Court's decision; or
 - (ii) the parties agree to lodge an appeal under clause 9.3 but the appeal is unsuccessful; or
- (c) the Scheme does not become Effective on or before the Sunset Date.

13.6 Precondition for Termination for Failure of Condition Precedent

- (a) Neither Target nor Bidder may seek to rely upon any conditions precedent in clauses 4.1, 4.2 or 4.3 or exercise any termination right arising therefrom under clause 13.3(a) or 13.4(a), unless forthwith and in any event prior to the filing of the application for the Final Order, Target or Bidder, as the case may be, has delivered a written notice to the other party specifying in reasonable detail all breaches of covenants, representations and warranties or other matters which Target or Bidder, as the case may be, are asserting as the basis for the non-fulfilment of the applicable condition precedent or the exercise of the termination right, as the case may be.

- (b) If a notice is delivered by a party in accordance with clause 13.6(a), provided that Target or Bidder, as the case may be, is proceeding diligently to cure such matter, if such matter is susceptible of being cured (for avoidance of doubt, except by way of disclosure in the case of representations and warranties), the other party may not terminate this Agreement as a result of such matter until the later of the Sunset Date and the expiration of a period of 15 Business Days from such notice (**Termination Period**) and if such notice has been delivered:

- (i) prior to the date of the Scheme Meeting, such meeting shall, unless the parties agree otherwise, be postponed or adjourned until the expiry of the Termination Period; and
 - (ii) prior to the filing of the application for the Final Order, such application shall not be filed until the expiry of such period, and

for avoidance of doubt, if such matter is cured within the Termination Period this Agreement may not be terminated as a result of the cured breach.

13.7 Bidder Breach of Payment Obligations

- (a) Bidder acknowledges that any breach or threatened breach of clause 5.1 may cause Target immediate and irreparable harm for which damages alone may not be an adequate remedy.
- (b) Bidder agrees that Target may commence proceedings to compel specific performance of Bidder's obligations under clause 5.1.

13.8 Effect of Termination

Subject to clause 11.7, termination of this Agreement pursuant to this clause does not affect any accrued rights of any party arising from any breach of this Agreement prior to termination.

14 EXPERT DETERMINATION

14.1 Application

The parties shall refer the following matters in dispute for resolution by the Expert any activity proposed to be conducted by Target to which clause 10.2 applies which is not consented to by Bidder.

14.2 Definitions

In this clause 14, Expert means a registered company auditor with ASIC with not less than 10 years audit experience who is:

- (a) a partner or senior employee of an independent firm of chartered accountants; and
- (b) appointed by mutual agreement of parties or, failing agreement, at the request of a party, who is nominated by the President of the Law Society in New South Wales.

14.3 Basis for Expert's determinations

The Expert must make his or her determination(s) of the matter(s) in dispute on the following basis:

- (a) the Expert must:

- (i) be appointed and act as an expert and not as an arbitrator;
 - (ii) be instructed to make his or her determination(s) after taking into account any submissions made by the parties in accordance with clause 14.3(c)(i);
 - (iii) be requested to make his or her determination(s) as soon as practicable (but in any event within 10 Business Days) after his or her appointment; and
 - (iv) allocate the Expert's costs (and any costs of the Expert's firm) between the parties in such proportions as the Expert in his or her absolute discretion considers fair, having regard to the matter(s) in dispute and the Expert's determination of that (those) matter(s);
- (b) Target must provide to the Expert all relevant business records and other information in its possession or control that the Expert requires or requests to make the Expert's determination(s);
- (c) the parties:
 - (i) may make written submissions to the Expert in relation to the matter(s) in dispute within 5 Business Days of the Expert's appointment;
 - (ii) must pay the costs of the Expert (and the Expert's firm) in the proportions that the Expert determines in accordance with clause 14.3(a)(iv); and
- (d) the decision of the Expert is conclusive and binding on the parties in the absence of manifest error.

15 DISPUTE RESOLUTION

15.1 Disputes

Subject to clause 14.1, this provision shall apply to any dispute or difference (**dispute**) arising between the parties in relation to:

- (a) this Agreement or its interpretation;
- (b) any right or liability of any party under this Agreement;
- (c) the performance of any action by any party under or arising out of this Agreement, whether prior or subsequent to its termination.

15.2 Dispute Negotiation

- (a) A party shall not refer a dispute to arbitration under this Agreement, unless that party has complied with this provision.
- (b) A party claiming that a dispute has arisen shall notify the other party specifying details of the dispute.
- (c) Each party shall refer a dispute to an authorised officer for consideration and use its best efforts to resolve the dispute through negotiation within 5 Business Days following the dispute notification or longer period agreed between the parties.

- (d) Each party shall refer the dispute to its chief executive officer, in the event that the authorised officers of the parties fail to resolve the dispute within the specified period.
- (e) Each party shall follow reference to its chief executive officer use its best efforts to resolve the dispute by agreement or through an agreed mediation procedure.
- (f) A party in compliance with this provision may terminate the dispute resolution process by notice to the other party at any time after 5 Business Days following reference of the dispute to its chief executive officer.
- (g) A party shall not be required to comply with this provision in relation to any dispute where the other party is in default under this provision in relation to that dispute.

15.3 Arbitration

- (a) Each party shall submit any dispute which remains unresolved following the negotiation process specified in this provision to arbitration under the Rules for the Conduct of Commercial Arbitration of the Institute of Arbitrators of Australia applicable at the time of submission.
- (b) Each party shall be entitled to legal representation at any arbitration.

15.4 Urgent Relief

A party may at any time apply to a court of competent jurisdiction for any equitable or other remedy for reasons of urgency, despite anything contained in this provision.

16 AMENDMENTS

- (a) This Agreement, including the Scheme, may be amended by written agreement of the parties at any time before or after the Scheme Meeting, but not later than the Effective Date and any such amendment may, subject to applicable Laws or the Interim Order, without limitation:
 - (i) amend the Scheme to the extent that technical amendments are proposed by Scheme Counsel (it being understood that Bidder will act in good faith and agree to technical amendments which do not affect the commercial or economic substance of this Agreement);
 - (ii) change the time for performance of any of the obligations or acts of the parties;
 - (iii) waive any inaccuracies in or modify any representation contained in this Agreement or any document to be delivered pursuant to this Agreement;
 - (iv) waive compliance with or modify any of the covenants contained in this Agreement or waive or modify performance of any of the obligations of the parties; and/or
 - (v) waive compliance with or modify any condition precedent referred to in clause 4 of this Agreement.
- (b) If Target or Bidder, as the case may be, proposes any amendment or amendments to this Agreement or the Scheme, the other party shall consider such amendment and if it and its security

holders are not prejudiced by reason of any such amendment, it will cooperate so that such amendment can be effected subject to applicable Laws and the rights of its security holders.

- (c) Target and Bidder shall use all reasonable efforts to obtain the approvals of the Court, Target Shareholders and Bidder's shareholders in respect of any amendments to this Agreement, including the Scheme, to the extent required by applicable Laws.

17 CONFIDENTIALITY AND PUBLIC DISCLOSURE

- (a) Target and Bidder shall consult with each other as to the general nature of any news releases or public statements with respect to this Agreement, the Rights Issues or the Transaction and shall use their respective efforts not to issue any news releases or public statements inconsistent with the results of such consultations.
- (b) Subject to applicable Laws:
 - (i) each party shall use its efforts to enable the other party to review and comment on all such news releases and public statements prior to the release thereof; and
 - (ii) Target and Bidder shall consult with each other in preparing and making any filings and communications in connection with any Regulatory Approvals and in seeking any third-party consents contemplated in clause 9.1.
- (c) The parties agree to comply with the Confidentiality Deed in accordance with its terms.

18 COSTS

Each party shall pay its own costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any notice given or made; and
- (b) the performance of any action by that party in compliance with any liability arising,

under this Agreement, or any agreement or document executed or effected under this Agreement, unless this Agreement provides otherwise.

19 DUTIES

19.1 Payment

Bidder shall promptly within the initial applicable period prescribed by law pay any duty payable in relation to the execution, performance and registration of this Agreement, the Scheme or the Deed Poll.

19.2 Indemnity

Bidder shall indemnify Target against any loss incurred by Target in relation to any duty specified in this provision, whether through default by Bidder under this provision or otherwise.

20 ASSIGNMENT

A party shall not transfer any right or liability under this Agreement without the prior written consent of each other party, except as may arise, in accordance with its terms, under any mortgage charge or encumbrance existing at the date of this Agreement.

21 GST

- (a) Unless otherwise expressly stated, all amounts payable under this Agreement are expressed to be exclusive of GST. If GST is payable on a Taxable Supply made under or in connection with this Agreement, the recipient of the supply must pay the supplier an additional amount equal to the GST payable on that supply provided that the supplier first issues a tax invoice for that supply.
- (b) Without limiting clause 21(a), if an amount payable under this Agreement is calculated by reference to a liability incurred by a party, then the amount of the liability must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of the acquisition of the supply to which that liability relates. A party will be assumed to be entitled to a full Input Tax Credit unless it demonstrates that its entitlement is otherwise prior to the date on which payment must be made.
- (c) Words and expressions used in this clause 21 have the same meaning as in *A New Tax System (Goods and Services) Tax Act 1999* (Cth). The term GST, wherever used in this Agreement, has the meaning given in *A New Tax System (Goods and Services) Tax Act 1999* (Cth).

22 NOTICES

22.1 Notification of Particular Events

Each party shall give prompt notice to the other party of:

- (a) the occurrence or failure to occur of any event that causes, or could reasonably be expected to cause, any representation or warranty on its part contained in this Agreement to be untrue or inaccurate; and
- (b) any material breach of its obligations under this Agreement;

provided that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under this Agreement.

22.2 Service Method

Any notice may be served by delivery in person or by post or transmission by facsimile (provided such transmission is recorded as being transmitted successfully) to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender.

22.3 Receipt

Any notice shall be effective for the purposes of this Agreement upon (i) delivery to the recipient, or (ii) production to the sender of a facsimile transmittal confirmation report or (iii) confirmation of receipt to the sender of an email, prior to 5,00 pm local time on a Business Day in the place in or to which the written notice is delivered or sent or otherwise at 9.00 am on the next Business Day following delivery or receipt.

22.4 Notice Details

Any notice or other communications despatched to a party pursuant to this clause must be addressed as follows:

- (a) in the case of Target, to the following address or fax number:

Name: CML Group Limited

Address: Level 1/201 Miller Street, North Sydney NSW 2060

Email: danielr@cml-group.com.au

For the attention of: Daniel Riley

Copy to:

Name: Automic Legal Pty Ltd

Address: Level 5/126 Phillip Street, Sydney NSW 2000

Email: andrew.whitten@automicgroup.com.au

For the attention of: Andrew Whitten

- (b) in the case of Bidder, to the following address or fax number:

Name: Consolidated Operations Group Limited

Address: Level 1, 72 Archer Street, Chatswood NSW

Email: andrew.bennett@coglimited.com.au

For the attention of: Andrew Bennett

Copy to:

Name: Mills Oakley

Address: Level 7, 151 Clarence Street, Sydney NSW 2000

Email: ilaughland@millsoakley.com.au

or at such other address as the party to which such notice or other communication is to be given has last notified the party giving the same in the manner provided in this clause 22 and, if so given, the same shall be deemed to have been received on the date of such delivery or sending.

23 GOVERNING LAW AND JURISDICTION

23.1 Governing Law

This Agreement shall be governed by and construed under the law of the State of New South Wales.

23.2 Jurisdiction

Any legal action in relation to this Agreement against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.

23.3 Submission

Each party by execution of this Agreement irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

24 GENERAL PROVISION

24.1 Binding Effect

This Agreement, including the Scheme, shall be binding upon and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

24.2 Representatives

Each of Target and Bidder shall ensure that its Representatives (other than persons who are insiders only as a result of their shareholdings) are aware of the provisions of this Agreement, and each of Target and Bidder shall be responsible for any breach of those provisions by any of those persons, respectively.

24.3 Injunctive Relief

The parties agree that the remedy at law for any breach of the provisions of this Agreement will be inadequate and that the party that is not in breach, on any application to a court, shall be entitled to temporary and permanent injunctive relief, specific performance and any other equitable relief against the party or parties in breach of the provisions of this Agreement.

24.4 Amendments

Any amendment of this Agreement shall have no force or effect, unless effected by a document executed by the parties.

24.5 Third Parties

This Agreement shall confer rights only upon a person expressed to be a party, and not upon any other person.

24.6 Pre-Contractual Negotiation

This Agreement and the Confidentiality Deed:

- (a) express and incorporate the entire agreement between the parties in relation to their subject-matter, and all the terms of that agreement; and
- (b) supersede and exclude any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject-matter or any term of that agreement.

24.7 Further Assurance

Each party shall, at the request of the other party, but without further consideration, execute any document and perform any action necessary to give full effect to this Agreement, whether prior or subsequent to performance of this Agreement.

24.8 Continuing Performance

- (a) The provisions of this Agreement shall not merge with any action performed or document executed by any party for the purposes of performance of this Agreement.
- (b) Any representation in this Agreement shall survive the execution of any document for the purposes of, and continue subsequent to, performance of this Agreement.

24.9 Waivers

- (a) Each party may waive or consent to the modification of, in whole or in part, any inaccuracy of any representation or warranty made to it under this Agreement or in any document to be delivered pursuant to this Agreement and may waive, or consent to the modification of any of the obligations contained in this Agreement for its benefit or waive or consent to the modification of any of the obligations of the other party.
- (b) Any waiver or consent to the modification of any of the provisions of this Agreement, to be effective, must be in writing executed by the party granting such waiver or consent.
- (c) Any failure or delay by any party to exercise any right under this Agreement shall not operate as a waiver and the single or partial exercise of any right by that party shall not preclude any other or further exercise of that or any other right by that party,

24.10 Remedies

The rights of a party under this Agreement are cumulative and not exclusive of any rights provided by law.

24.11 Severability

- (a) If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule or Law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transaction is not affected in any manner Materially Adverse to any party.
- (b) Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the Transaction are fulfilled to the maximum extent possible.

24.12 Counterparts

This Agreement may be executed in any number of counterparts (by facsimile or otherwise), all of which taken together shall be deemed to constitute one and the same document.

SCHEDULE 1 – MUTUAL CONDITIONS

These are the conditions referred to in clause 4.1:

- (a) the Scheme having been approved by the Target Shareholders at the Scheme Meeting in accordance with the Interim Order and applicable Laws;
- (b) all consents, approvals, waivers, relief, exemptions or other action required of any Regulatory Authority (including any Regulatory Approvals) or other third party (including any financier of the Target) in connection with, required as a result of, or required to permit, the announcement or consummation of the Transaction having been obtained or received, and remaining in full force and effect, on terms that are not Materially Adverse to either Target or Bidder before 8.00 am on the Second Court Date;
- (c) there being no:
 - (i) injunction, order, judgment or decree issued by any Court, the Takeovers Panel or any body of competent jurisdiction being in effect at 8.00 am on the Second Court Date;
 - (ii) proceeding of a judicial or administrative nature or otherwise being brought by or before any Regulatory Authority in progress at 8.00 am on the Second Court Date that, if successful, or
 - (iii) Law being proposed, enacted, promulgated or applied at any time prior to the Second Court Date, that:
 - (iv) prevents, or if enforced would prevent or would reasonably be expected to preclude completion of, or materially impair the benefits to be realised from, the Transaction in accordance with the terms of this Agreement; or
 - (v) would be Materially Adverse to either Target or Bidder,unless such injunction, order, judgment, decree proceeding, action, investigation or law has been disposed of to the satisfaction of Bidder and Target (each acting reasonably), or is otherwise no longer effective or enforceable, by 8.00am on the Second Court Date;
- (d) the Independent Expert issues a Favourable Independent Expert's Report before the time that the Target Scheme Document is registered by ASIC;
- (e) the Court approves the Scheme in accordance with paragraph 411(4)(b) of the Corporations Act; and
- (f) prior to the First Court Date the Bidder has sufficient funds or legally binding financial commitments in place to be in a position to provide clear funds to pay the Aggregate Cash Consideration up to the Cash Cap as and when required under the terms of the Deed Poll.

SCHEDULE 2 – CONDITIONS IN FAVOUR OF TARGET`

These are the conditions referred to in clause 4.2:

- (a) Bidder providing to Target a certified extract of a resolution of the Bidder Board evidencing that all necessary corporate action has been taken by Bidder to authorise the execution and delivery of this Agreement and the performance of Bidder's obligations under this Agreement;
- (b) no Prescribed Event in relation to the Bidder occurring at any time during the period commencing on the date of this Agreement and ending on the Second Court Date;
- (c) the representations and warranties of Bidder under this Agreement being true and correct in all material respects (except where already qualified as to materiality or the absence of a Materially Adverse effect), on the date of this Agreement and on the Second Court Date as if made on and as of such dates (except to the extent such representations and warranties are made solely in respect of an earlier date, in which event such representations and warranties shall be true and correct to such extent as of such earlier date, or except as affected by the Transaction), and Target receiving a certificate from Bidder addressed to Target and dated the Second Court Date, signed on behalf of Bidder by a senior officer of Bidder (on Bidder's behalf and without personal liability) confirming the same as at the Second Court Date.

SCHEDULE 3 – CONDITIONS IN FAVOUR OF BIDDER

These are the conditions referred to in clause 4.3:

- (a) Target providing to Bidder a certified extract of a resolution of the board of Target evidencing that all necessary corporate action has been taken by Target to authorise the execution and delivery of this Agreement and the performance of Target's obligations under this Agreement;
- (b) no Prescribed Event in relation to the Target occurring at any time during the period commencing on the date of this Agreement and ending on the Second Court Date;
- (c) the representations and warranties of Target under this Agreement being true and correct in all material respects (except where already qualified as to materiality or the absence of a Materially Adverse effect), on the date of this Agreement and on the Second Court Date as if made on and as of such dates (except to the extent such representations and warranties are made solely in respect of an earlier date, in which event such representations and warranties shall be true and correct to such extent as of such earlier date, or except as affected by the Transaction), and Bidder having received a certificate of Target addressed to Bidder and dated the Second Court Date, signed on behalf of Target by a senior officer of Target (on Target's behalf and without personal liability) confirming the same as at the Second Court Date;
- (d) each holder of Options in Target:
 - (i) exercises all of the Options in Target registered in their name and the Target Shares issued upon such exercise are entered into the Target Share Register prior to 8am on the Second Court Date;
 - (ii) enters into a deed with a third party regarding the Options in Target held by them pursuant to clause 5.7(a)(ii) prior to 8am on the Second Court Date; or
 - (iii) enters into a deed with the Target regarding the Options in Target held by them pursuant to clause 5.7(a)(iii) prior to 8am on the Second Court Date.
- (e) Westpac Banking Corporation (**Westpac**) providing to Target (or the relevant member of the Target Group) all necessary consents, approvals, exemptions or waivers in a form satisfactory to the Bidder (acting reasonably) under each of:
 - (i) the Classic Receivables Finance Trust Series, to which Westpac Banking Corporation is the Senior Funder and Senior Revolving Facility Provider and where Alceon Group Pty Ltd is the Mezzanine Funder (**CRFT Facility**); and
 - (ii) the Classic Equipment Finance Trust Series, to which Westpac Banking Corporation is the Senior Funder and where Alceon Group Pty Ltd is a Senior Mezzanine Funder (**CEFT Facility**),

such that Westpac will not take any adverse action under each of the CRFT Facility and the CEFT Facility as a result of the implementation of the Transaction.

SCHEDULE 4 – TARGET SECURITIES

Part 1 – issued securities of Target

201,740,293 fully paid ordinary shares

Part 2 – options and other securities of Target to be issued

Up to 10,000,000 Shares in aggregate to be issued to Mr. Daniel Riley pursuant to the Option Agreement dated on 17th of March 2017 with an issue price of \$0.27 and expiry date of 9th March 2022.

SCHEDULE 5 – REPRESENTATIONS AND WARRANTIES OF TARGET

In this Schedule 5, a reference to "Target Group" is a reference to each entity within the Target Group as well as a reference to all entities within the Target Group. Subject to any full and fair disclosure to the contrary in the Target Data Room Materials, Target represents and warrants to Bidder as follows:

1 CORPORATE STRUCTURE, DUE INCORPORATION AND CORPORATE POWER

- 1.1 Target is a corporation duly incorporated or established, and validly existing under the laws of the jurisdiction in which it was incorporated and has the requisite legal power and authority to own its assets and conduct its business activities as currently owned and conducted.
- 1.2 Target has procured all material licences, consents and approvals required for its business in each jurisdiction in which it operates.
- 1.3 Target has made available a complete and correct copy of its constitution for review by Bidder, as amended to the date of this Agreement.
- 1.4 Target is not in violation of any material provision of its constitution

2 TARGET SECURITIES AND OPTIONS

- 2.1 The issued securities of Target are as set out in Part 1 of Schedule 4.
- 2.2 All securities issued by Target have been validly issued and are fully paid.
- 2.3 Except as set out in Part 2 of Schedule 4, Target is not under any liability to issue or allot, nor has it granted any person any right or option to require or call for the issue or allotment of any securities.
- 2.4 There are no bonds, debentures, notes or other indebtedness of Target conferring the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which shareholders of Target must vote on issue.
- 2.5 Except as set out in Part 2 of Schedule 4, Target does not have any outstanding Options or other securities or instruments in Target that are convertible into shares in Target.
- 2.6 As at the date of this Agreement, Target does not have any outstanding contractual obligations or other requirements to repurchase, redeem or otherwise acquire any of its own securities, or provide funds to or make any investment (in the form of a loan, capital contribution or otherwise) in any other person.

3 AUTHORITY AND NON-CONTRAVENTION

- 3.1 Target has all requisite power and authority to enter into this Agreement and, subject to the Target Shareholder Approval, to perform its obligations under this Agreement, including consummating the Transaction.
- 3.2 The execution and delivery of this Agreement by Target and the performance by Target of its obligations under this Agreement, including consummation of the Transaction, have been duly authorised by all necessary corporate action on the part of Target, subject to the Target Shareholder Approval.

- 3.3 This Agreement has been duly executed and delivered by Target and constitutes a valid and binding obligation of Target, enforceable by Bidder against Target in accordance with its terms, subject to the availability of equitable remedies and the enforcement of creditors' rights generally.
- 3.4 The execution and delivery of this Agreement does not, and the consummation of the Transaction and compliance with the provisions of this Agreement will not, contravene, or result in the creation of any Security upon any of the properties or assets of Target under:
- (a) its constitution;
 - (b) its Material Contracts; or
 - (c) any Law applicable to the Target Group or its property and assets.
- 3.5 No consent, approval, order or authorisation of, or registration, declaration or filing with, any Regulatory Authority, is required by or with respect to Target in connection with the execution and delivery of this Agreement by Target or the consummation by Target of the Transaction, except for:
- (a) the filing with the applicable Agencies of the Target Scheme Document and related documents;
 - (b) any approvals required by the Interim Order and the Final Order; and
 - (c) filings with ASIC under the Corporations Act.
- 3.6 The Target Group possesses all required material Permits and:
- (a) all such material Permits are validly held by the Target Group, and the Target Group has complied in all respects with all terms and conditions thereof;
 - (b) none of such material Permits will be subject to suspension, modification, revocation or non-renewal as a result of the execution and delivery of this Agreement or the consummation of the Transaction; and
 - (c) the Target Group has not received any written notice, notice of violation or probable violation, notice of revocation or other written communication from or on behalf of any Regulatory Authority, alleging:
 - (i) any violation of such material Permit, or
 - (ii) that the Target Group requires any additional material Permit.

4 CONTINUOUS DISCLOSURE

- 4.1 Target has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1 and, as at the date of this Agreement, there is no information that Target is withholding from the market pursuant to a carve-out under ASX Listing Rule 3.1A.

5 TARGET SCHEME DOCUMENT

- (a) At the date the Target Scheme Document is despatched to Target Shareholders, the information contained in the Target Scheme Document is true and correct in all material respects, complies

with all applicable Laws and does not contain any statement which is misleading or deceptive in any material respect (whether by omission or otherwise) with any statement of belief or opinion having been formed on a reasonable basis. The information contained in the Target Scheme Document will be prepared and included in the Target Scheme Document in good faith and on the understanding that Bidder will rely on that information for the purpose of determining to proceed with the Transaction.

- (b) Target will, as a continuing obligation (but in respect of Bidder information in the Target Scheme Document, only to the extent that Bidder provides Target with updates to the Bidder information), ensure that the Target Scheme Document is updated or supplemented to include all further new information which arises after the Target Scheme Document has been despatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Target Scheme Document is not misleading or deceptive (including by way of omission).

6 INDEPENDENT EXPERT REPORT

Any information that Target provides to the Independent Expert pursuant to clause 3.2(a) is accurate in all material respects and not misleading, and it has not omitted any information required to make the information provided to the Independent Expert not misleading.

7 DISCLOSURE

To the knowledge, belief or awareness of Target, the Target Group has not failed to disclose to Bidder any information known to Target regarding any event or circumstance affecting the Target Group or any action taken or failed to be taken by any member of Target Group that is Materially Adverse to Target and all information it has provided to Bidder is accurate in all material respects and not misleading, and it has not omitted any information required to make the information provided to the Bidder not misleading.

8 RESTRICTIONS ON BUSINESS ACTIVITIES

There is no agreement, judgment, injunction, order or decree binding upon the Target Group that has, or could reasonably be expected to have, the effect of prohibiting, restricting or impairing any business practice of the Target Group, any acquisition of property and assets by the Target Group or the conduct of business by the Target Group as currently conducted (including after the consummation of the Transaction) other than such agreements, judgments, injunctions, orders or decrees which are not, individually or in aggregate, Materially Adverse to Target. To the best of its knowledge and belief after making due inquiries, each member of the Target Group has complied in all material respects with all applicable Laws and have all material licences, authorisations and permits necessary for them to conduct the business of the Target Group as presently conducted.

9 TITLE

9.1 The Target Group is in exclusive possession, occupation and quiet enjoyment of all Properties.

9.2 With respect to any Properties that are leased by the Target Group,

- (a) the Target Group has not received any notice of default of any of the terms or provisions of the leases applicable thereto;

- (b) the execution, delivery and performance of this Agreement by Target, and the consummation of the Transaction, will not cause a default or termination, or give rise to the right of termination, or rights of first refusal or other pre-emptive rights under any of the leases;
- (c) the leases are valid and are in good standing; and
- (d) Target has no knowledge of any act or omission or any condition on such properties which could be considered or construed as a default under any of the leases.

There are no pending or, to Target's knowledge, threatened suits, claims, actions, proceedings or investigations in respect of any Properties (whether leased or owned by the Target Group).

10 LITIGATION

- 10.1 There is no suit, action or proceeding pending or, to the knowledge of Target, threatened against the Target Group that, individually or in aggregate, if adversely determined, would reasonably be expected to have a Materially Adverse effect on Target.
- 10.2 There is not any judgment, decree, injunction, rule or order of any Regulatory Authority or arbitrator outstanding against the Target Group having, or which would reasonably be expected to have, any Materially Adverse effect on Target.
- 10.3 As of the date of this Agreement, there is no suit, action, proceeding pending or, to the knowledge of Target, threatened, against the Target Group that, individually or in aggregate, if adversely determined, would reasonably be expected to prevent or delay in any material respect the consummation of the Transaction.

11 NO INSOLVENCY EVENT

- 11.1 No Target Group entity is affected by or is the subject of an Insolvency Event.

12 CASH RESERVES

Target has, and will have at all times up to the Implementation Date, sufficient net assets and cash reserves to declare and pay a fully franked dividend of \$0.03 per Scheme Share to Target Shareholders and to pay any consideration due to the holders of Options for the cancellation of their Options.

13 DETERMINATION BY THE BOARD

The board of directors of Target, by the unanimous vote of its directors, has determined and resolved:

- (a) that the entering into of this Agreement, the performance by Target of its obligations hereunder and the consummation of the Transaction are in the best interests of Target; and
- (b) to approve the Transaction and this Agreement.

SCHEDULE 6 – REPRESENTATIONS AND WARRANTIES OF BIDDER

Subject to any full and fair disclosure to the contrary in the Bidder Data Room Materials, Bidder represents and warrants to Target as follows:

1 CORPORATE STRUCTURE, DUE INCORPORATION AND CORPORATE POWER

- 1.1 Bidder is a corporation duly incorporated or established, and validly existing under the laws of the jurisdiction in which it was incorporated and has the requisite legal power and authority to own its assets and conduct its business activities as currently owned and conducted.
- 1.2 Bidder has procured all licences, consents and approvals required for its business in each jurisdiction in which it operates.
- 1.3 Bidder has made available a complete and correct copy of its constitution for review by Target, as amended to the date of this Agreement.
- 1.4 Bidder is not in violation of any provision of its constitution.

2 AUTHORITY AND NON-CONTRAVENTION

- 2.1 Bidder has all requisite power and authority to enter into this Agreement and to perform its obligations under this Agreement, including consummating the Transaction.
- 2.2 The execution and delivery of this Agreement by Bidder and the performance by Bidder of its obligations under this Agreement, including consummation of the Transaction, have been duly authorised by all necessary corporate action on the part of Bidder.
- 2.3 This Agreement has been duly executed and delivered by Bidder and constitutes a valid and binding obligation of Bidder, enforceable by Target against Bidder in accordance with its terms, subject to the availability of equitable remedies and the enforcement of creditors' rights generally.
- 2.4 The execution and delivery of this Agreement does not, and the consummation of the Transaction and compliance with the provisions of this Agreement will not, contravene, or result in the imposition of any additional obligation under, or result in the creation of any Security upon any of the properties or assets of Bidder under:
 - (a) its constitution;
 - (b) its Contracts; or
 - (c) any Law applicable to Bidder or its property and assets.
- 2.5 No consent, approval, order or authorisation of, or registration, declaration or filing with, any Regulatory Authority, is required by or with respect to Bidder in connection with the execution and delivery of this Agreement by Bidder or the consummation by the Bidder of the Transaction, except for:
 - (a) any approvals required by the Interim Order and the Final Order; and
 - (b) filings with ASIC under the Corporations Act.

2.6 The Bidder Group possesses all required material Permits and:

- (a) all such material Permits are validly held by the Bidder Group, and the Bidder Group has complied in all respects with all terms and conditions thereof;
- (b) none of such material Permits will be subject to suspension, modification, revocation or non-renewal as a result of the execution and delivery of this Agreement or the consummation of the Transaction; and
- (c) the Bidder Group has not received any written notice, notice of violation or probable violation, notice of revocation or other written communication from or on behalf of any Regulatory Authority, alleging:
 - (i) any violation of such material Permit, or
 - (ii) that the Bidder Group requires any additional material Permit.

3 CONTINUOUS DISCLOSURE

3.1 Bidder has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1 and, as at the date of this Agreement, there is no information that Bidder is withholding from the market pursuant to a carve-out under ASX Listing Rule 3.1A.

4 TARGET SCHEME DOCUMENT

- (a) Bidder will provide to Target input into the presentation and content of the Target Scheme Document in good faith and any such information provided for inclusion in the Target Scheme Document is true and correct in all material respects, complies with all applicable Laws and does not contain any statement which is misleading or deceptive in any material respect (whether by omission or otherwise) with any statement of belief or opinion having been formed on a reasonable basis. The Bidder information contained in the Target Scheme Document will be included in the Target Scheme Document in good faith and on the understanding that Target will rely on that information for the purpose of determining to proceed with the Transaction.
- (b) Bidder will, as a continuing obligation, ensure that it provides to the Target all further new information in relation to Bidder which arises after the Target Scheme Document has been despatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Bidder information in the Target Scheme Document is not misleading or deceptive (including by way of omission).

5 INDEPENDENT EXPERT REPORT

Any information that Bidder provides to the Independent Expert pursuant to clause 3.3(a) is accurate in all material respects and not misleading, and it has not omitted any information required to make the information provided to the Independent Expert not misleading.

6 DISCLOSURE

To the knowledge, belief or awareness of Bidder, the Bidder Group has not failed to disclose to Target any information known to Bidder regarding any event or circumstance affecting the Bidder Group or any action taken or failed to be taken by any member of Bidder Group that is Materially Adverse to Bidder and all

information it has provided to Target is accurate in all material respects and not misleading, and it has not omitted any information required to make the information provided to Target not misleading.

7 RESTRICTIONS ON BUSINESS ACTIVITIES

There is no agreement, judgment, injunction, order or decree binding upon the Bidder Group that has, or could reasonably be expected to have, the effect of prohibiting, restricting or impairing any business practice of the Bidder Group, any acquisition of property and assets by the Bidder Group or the conduct of business by the Bidder Group as currently conducted (including after the consummation of the Transaction) other than such agreements, judgments, injunctions, orders or decrees which are not, individually or in aggregate, Materially Adverse to Bidder. To the best of its knowledge and belief after making due inquiries, each member of the Bidder Group has complied in all material respects with all applicable Laws and have all material licences, authorisations and permits necessary for them to conduct the business of the Bidder Group as presently conducted.

8 NEW BIDDER SHARES

The New Bidder Shares to be issued in accordance with clause 5.1(b) and the terms of the Scheme will be duly authorised and validly issued and transferred, fully paid and free of all security interests and third party rights and will rank equally with all other Bidder Shares then on issue.

9 LITIGATION

- 9.1 There is no suit, action or proceeding pending or, to the knowledge of Bidder, threatened against the Bidder Group that, individually or in aggregate, if adversely determined, would reasonably be expected to have a Materially Adverse effect on Bidder.
- 9.2 There is not any judgment, decree, injunction, rule or order of any Regulatory Authority or arbitrator outstanding against the Bidder Group having, or which would reasonably be expected to have, any Materially Adverse effect on Bidder.
- 9.3 As of the date of this Agreement, there is no suit, action, proceeding pending or, to the knowledge of Bidder, threatened, against the Bidder Group that, individually or in aggregate, if adversely determined, would reasonably be expected to prevent or delay in any material respect the consummation of the Transaction.

10 NO INSOLVENCY EVENT

- 10.1 No Target Group entity is affected by or is the subject of an Insolvency Event.

11 DETERMINATION BY THE BOARD

The board of directors of Bidder, by the unanimous vote of its directors, has determined and resolved:

- (a) that the entering into of this Agreement, the performance by Bidder of its obligations hereunder and the consummation of the Transaction are in the best interests of Bidder; and
- (b) to approve the Transaction and this Agreement.

SCHEDULE 7 – INDICATIVE TIMETABLE

Date	Event
13 November 2019	Announcement of SIA (immediately after signing).
13 November 2019	Announcement of Target Rights Issue prior to commencement of trading.
15 November 2019	Target Rights Issue Ex Date.
18 November 2019	Target Rights Issue Record Date.
20 November 2019	Offer Opens - Dispatch Target Rights Issue Offer Booklet.
29 November 2019	Offer Closes - Target Rights Issue.
2 December 2019	Shares quoted on a deferred settlement basis.
3 December 2019	Announcement of shortfall.
5 November 2019	Target Rights Issue Shares issued.
6 December 2019	Commencement of trading of shares issued under Target Rights Issue.
5 December 2019	Draft Booklet provided to ASIC for review (minimum 14 days required for review).
6 December 2019	File Court application.
19 December 2019	ASIC review of Booklet complete.
20 December 2019	First Court hearing.
20 December 2019	Print and Dispatch of Booklet to Target shareholders.
29 January 2020	Scheme meeting of Target shareholders.
3 February 2020	Second Court hearing.
4 February 2020	Scheme Effective Date.
4 February 2020	Expected last day of trading in Target shares on ASX. Target intends to apply to ASX for Target Shares to be suspended from trading on ASX from close of trading on the Effective Date.
6 February 2020	Election Date
11 February 2020	Scheme Record Date.
18 February 2020	Scheme Implementation Date.

SCHEDULE 8 – SCHEME OF ARRANGEMENT

SCHEME OF ARRANGEMENT

CML Group Limited
ABN 88 098 952 277

Scheme Shareholders



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

PARTIES

- A **CML GROUP LIMITED** ABN 88 098 952 277 of Level 11, 201 Miller Street, North Sydney NSW 2060 (**Target**); and
- B **SCHEME SHAREHOLDERS** being each person who is registered as the holder of Target Shares recorded in the Target Share Register as at the Record Date (each a **Scheme Shareholder**, together the **Scheme Shareholders**)

RECITALS

- 1 Target is a public company limited by shares, incorporated in Australia and registered in New South Wales, and is admitted to the official list of the ASX.
- 2 Bidder is a public company limited by shares, incorporated in Australia and registered in New South Wales. Bidder is admitted to the official list of the ASX and its shares are officially quoted on the stock market conducted by ASX.
- 3 On 13 November 2019, Target and Bidder entered into the Implementation Agreement pursuant to which, amongst other things, Target has agreed to propose this Scheme to the Target Shareholders, and each of Target and Bidder have agreed to take certain steps to give effect to the Scheme.
- 4 As at the date of the Implementation Agreement:
 - (a) there were on issue 201,740,293 Target Shares, which are officially quoted on the stock market conducted by ASX;
 - (b) it is anticipated that Target will undertake a non-renounceable rights issue at an issue price of \$0.48 to raise up to \$14,525,300.64 in accordance with clause 7.2 of the Implementation Agreement, such that up to an additional 30,261,043 Target Shares will be issued prior to the Scheme becoming Effective; and
 - (c) it is anticipated that the Target Options may be exercised, in which event up to a further additional 10,000,000 Target Shares will be issued prior to the Scheme becoming Effective.
- 5 If this Scheme becomes Effective:
 - (a) in consideration for the transfer of each Scheme Share to Bidder, Bidder must provide, or procure the provision of, the Scheme Consideration to the Scheme Shareholders in accordance with, and subject to, the terms of this Scheme and the Deed Poll;
 - (b) all of the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, must be transferred to Bidder and Target will enter the name of Bidder in the Target Share Register in respect of the Scheme Shares; and

- (c) it will bind Target and all Scheme Shareholders, including those who did not attend the Scheme Meeting to vote on this Scheme, did not vote at the Scheme Meeting, or voted against this Scheme at the Scheme Meeting.

- 6 Target and Bidder have agreed, subject to the terms and conditions set out in the Implementation Agreement, to implement this Scheme.
- 7 The Scheme attributes actions to Bidder but does not of itself impose obligations on Bidder to perform those actions. Bidder has agreed, by executing the Deed Poll, to perform the actions attributed to it under this Scheme, including Bidder providing, or procuring the provision of, the Scheme Consideration to the Scheme Shareholders subject to the terms of the Deed Poll.

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

The meanings of the terms used in this Scheme are set out below.

ACCC means the Australian Competition and Consumer Commission.

Aggregate Cash Consideration means the aggregate of the Cash Consideration payable to Scheme Shareholders under the Scheme (taking into account all valid Elections made by the Election Date and the terms of the Scheme).

Aggregate Scrip Consideration means the aggregate number of New Bidder Shares payable to Scheme Shareholders under the Scheme (taking into account all valid Elections made by the Election Date and the terms of the Scheme).

All Cash Consideration means \$0.48 per Scheme Share.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market that it operates.

APRA means the Australian Prudential Regulation Authority.

AUSTRAC means the Australian Transaction Reports and Analysis Centre.

Bidder means Consolidated Operations Group Limited (ABN 58 100 854 788).

Bidder Group means Bidder and its Subsidiaries (and a reference to the “Bidder Group” is a reference to each entity within the Bidder Group as well as a reference to all such entities).

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

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

Business Day has the meaning given to that expression in the Listing Rules.

Cash Cap means A\$20,000,000 less the aggregate amount of the All Cash Consideration.

Cash Consideration means such amount of cash as described in Consideration Option 1 or All Cash Consideration.

CHESS means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Limited (ABN 49 008 504 532).

Consideration Option 1 means:

- (a) \$0.24 per Scheme Share; plus
- (b) 2.7 New Bidder Shares per Scheme Share.

Consideration Option 2 means 5.4 New Bidder Shares per Scheme Share.

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

Court means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Target and Bidder.

Deed Poll means the deed poll executed by Bidder under which Bidder has covenanted in favour of the Scheme Shareholders to perform the obligations attributed to it under this Scheme.

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

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

Election means an Election Option 1 or an Election Option 2.

Election Cash Consideration means the aggregate cash consideration elected by Scheme Shareholders under Election Option 1.

Election Date mean 7.00 pm on the date which is at least three Business Days prior to the Record Date or such other date as agreed between Bidder and Target in writing.

Election Form means the form of election under which a Target Shareholder is offered the opportunity to make an Election, in a form agreed with Bidder (acting reasonably).

Election Option 1 means an election by a Scheme Shareholder to receive the Consideration Option 1 for the Scheme Shares held by that Scheme Shareholder.

Election Option 2 means an election by a Scheme Shareholder to receive the Consideration Option 2 for the Scheme Shares held by that Scheme Shareholder.

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

Implementation Date means the fifth Business Day after the Record Date, or such other date as agreed in writing by Bidder and Target.

Implementation Agreement means the scheme implementation agreement dated 13 November 2019 between Target and Bidder relating to the implementation of this Scheme.

Ineligible Foreign Shareholder means a Scheme Shareholder whose address shown in the Target Share Register at 7.00 pm on the Record Date is a place outside Australia and New Zealand and their external territories unless Bidder determines that it is lawful and not unduly onerous or impracticable to issue that Scheme Shareholder with New Bidder Shares when the Scheme becomes Effective.

Listing Rules means the official listing rules of ASX.

New Bidder Share means a fully paid ordinary share in Bidder to be issued to a Scheme Shareholder under this Scheme.

Record Date means 7.00 pm Sydney time on the fifth Business Day after the Effective Date or such other time and date agreed in writing between Target and Bidder.

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

Regulatory Authority includes, in any jurisdiction:

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

and includes ASX, ACCC, ASIC, the Takeovers Panel, APRA and AUSTRAC.

Scheme means this scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders in respect of all Scheme Shares, subject to any alterations or conditions as agreed between Bidder and Target in writing or made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Target and Bidder.

Scheme Consideration means (depending on the Election and subject to the terms of this Scheme):

- (a) All Cash Consideration;
- (b) Consideration Option 1; or
- (c) Consideration Option 2.

Scheme Meeting means the meeting of Target Shareholders ordered by the Court to be convened under subsection 411(1) of the Corporations Act in relation to this Scheme and includes any adjournment or postponement of that meeting.

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

Scheme Shareholder means each person who is registered on the Target Share Register as a holder of Scheme Shares as at the Record Date.

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

Scrip Consideration means such number of New Bidder Shares as described in Consideration Option 1 or Consideration Option 2.

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

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

Sunset Date means 30 April 2020, or such later date as may be agreed in writing by Bidder and Target.

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

Target Group means Target and its Subsidiaries (and a reference to the “Target Group” is a reference to each entity within the Target Group as well as a reference to all such entities).

Target Options means the 10,000,000 options granted by Target on 17 March 2017 exercisable at \$0.27 each to subscribe for Target Shares.

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

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

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

Target Share Registry means Computershare Investor Services Pty Ltd (ABN 48 078 279 277) or any replacement share registry services provider to Target.

Taxes means, with respect to a person, all income taxes (including any tax on or based upon net income, gross income, income as specially defined, earnings profits or selected items of income, earnings or profits) and all capital taxes, gross receipts taxes, environmental taxes, sales taxes, use taxes, ad valorem taxes, value added taxes, transfer taxes, franchise taxes, license taxes, withholding taxes or other withholding

obligations, payroll taxes, employment taxes, pension plan premiums, excise, severance, social security premiums, workers' compensation premiums, unemployment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, property taxes, windfall profits taxes, alternative or add on minimum taxes, goods and services tax, customs duties or other taxes of any kind whatsoever, together with any interest and any penalties or additional amounts imposed by any taxing authority (domestic or foreign) on such person or for which such person is responsible, and any interest, penalties, additional taxes, additions to tax or other amounts imposed with respect to the foregoing.

Withheld Tax Amounts means any such amount of Taxes which the Australian Taxation Office requires any Bidder Group entity, by written notice(s) pursuant to section 255 of the *Income Tax Assessment Act 1936* (Cth) which is or are received by any Target Group entity on the Implementation Date (for the purposes of clause 4.1(c) or clause 5.1(a)) to pay to the Australian Taxation Office in respect of any Scheme Shareholder.

1.2 Interpretation

In this Scheme:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Scheme;
- (b) mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included; and
- (c) the following rules apply unless the context requires otherwise:
 - (i) the singular includes the plural and the plural includes the singular;
 - (ii) words of any gender include all genders;
 - (iii) other parts of speech and grammatical forms of a word or phrase defined in this Scheme have a corresponding meaning;
 - (iv) a reference to a person includes any corporation, trust, partnership, unincorporated body or other entity and any Regulatory Authority (whether or not it comprises a separate legal entity) as well as an individual;
 - (v) a reference to a clause, party, part, schedule, attachment or exhibit is a reference to a clause or part of, and a party, schedule, attachment or exhibit to, this Scheme;
 - (vi) a reference to any legislation or to a provision of legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
 - (vii) a reference to an agreement or document (including this Scheme) includes all amendments or supplements to, or replacements or novations of, that agreement or document, except to the extent prohibited by this document or that other agreement or document;
 - (viii) a reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible and tangible form;

- (ix) a reference to '\$', 'A\$' or 'dollar' is to Australian currency;
- (x) a reference to any time is a reference to that time in Sydney, Australia;
- (xi) a word or expression defined in or for the purposes of the Corporations Act has the same meaning when used in this Scheme;
- (xii) a reference to a party to a document includes that party's executors, administrators, successors, permitted substitutes and permitted assigns (and, where applicable, the person's legal representatives);
- (xiii) no provision of this Scheme will be construed adversely to a party because that party was responsible for the preparation of this Scheme or that provision; and
- (xiv) a reference to a body, other than a party to this Scheme (including an institute, association or authority), whether statutory or not:
 - (A) which ceases to exist; or
 - (B) whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

1.3 Business Day

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

2 CONDITIONS PRECEDENT

2.1 Conditions precedent to this Scheme

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

- (a) all the conditions precedent in clause 4 of the Implementation Agreement (other than the condition precedent in paragraph (e) of Schedule 1 of the Implementation Agreement) having been satisfied or waived in accordance with the terms of the Implementation Agreement by 8.00am on the Second Court Date or such other time specified in that condition precedent;
- (b) neither the Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms before 8.00am on the Second Court Date;
- (c) approval of this Scheme by the Court under paragraph 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Bidder and Target;

- (d) such other conditions made or required by the Court under subsection 411(6) of the Corporations Act in relation to this Scheme and agreed to by Bidder and Target having been satisfied or waived; and
- (e) the orders of the Court made under paragraph 411(4)(b) (and, if applicable, subsection 411(6)) of the Corporations Act approving this Scheme coming into effect, pursuant to subsection 411(10) of the Corporations Act, on or before the Sunset Date.

2.2 Certificate

- (a) Each of Target and Bidder will provide to the Court on or before the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not:
 - (i) the conditions precedent in clause 4 of the Implementation Agreement (other than the condition precedent in paragraph (e) of the Schedule 1 of the Implementation Agreement) have been satisfied or waived as at 8.00am on the Second Court Date; and
 - (ii) the condition in clause 2.1(b) of this Scheme has been satisfied as at 8.00am on the Second Court Date.
- (b) The certificates referred to in clause 2.2(a) constitute conclusive evidence that the relevant conditions precedent were satisfied, waived or taken to be waived in accordance with, in the case of clause 2.2(a)(i), the terms of the Implementation Agreement, and in the case of clause 2.2(a)(ii), the terms of the Scheme.

2.3 Sunset Date

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

- (a) the Effective Date does not occur on or before the Sunset Date; or
 - (b) the Implementation Agreement or the Deed Poll is terminated in accordance with its terms,
- unless Target and Bidder otherwise agree in writing.

3 IMPLEMENTATION

3.1 Lodgement of Court orders with ASIC

Target must lodge with ASIC, in accordance with subsection 411(10) of the Corporations Act, an office copy of the Court order approving this Scheme as soon as possible, and in any event by 5:00pm on the first Business Day after the day on which the Court approves this Scheme.

3.2 Transfer of Scheme Shares

Subject to the Scheme becoming Effective, on the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 5 and Bidder having provided Target with written confirmation of that having occurred, the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, must be transferred to Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by Target or any of its directors, officers and secretaries as attorney and agent for Scheme Shareholders under clause 8.5), by:
 - (i) Target delivering to Bidder a duly completed Scheme Transfer, executed on behalf of the Scheme Shareholders by Target as attorney and agent of each Scheme Shareholder, to transfer all the Scheme Shares to Bidder; and
 - (ii) Bidder duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to Target for registration; and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 3.2(a)(ii), but subject to the stamping of the Scheme Transfer (if required), Target must enter, or procure the entry of, the name of Bidder in the Target Share Register in respect of all the Scheme Shares transferred to Bidder in accordance with this Scheme.

4 SCHEME CONSIDERATION

4.1 Bidder undertakings in relation to Scheme Consideration

Bidder undertakes to Target (in the Target's own right and separately as trustee for each of the Scheme Shareholders) that, if the Scheme becomes Effective, in consideration for the transfer to Bidder of Scheme Shares held by Scheme Shareholders under the term of the Scheme, the Bidder will on the Implementation Date:

- (a) accept that transfer;
- (b) provide, or procure the provision, to each Scheme Shareholder of the Scheme Consideration for each Scheme Share held by that Scheme Shareholder on the Record Date subject to, and in accordance with:
 - (i) any Election made by that Scheme Shareholder as contemplated by clauses 4.2 and 4.3;
 - (ii) clauses 4.4, 4.5 and 4.6; and
 - (iii) the terms of the Scheme;
- (c) by no later than the Business Day before the Implementation Date, pay, or procure payment of, to a trust account operated by or on behalf of Target, to be held on trust for Scheme Shareholders, an amount in cleared funds equal to the Aggregate Cash Consideration less any Withheld Tax Amounts; and
- (d) on the Implementation Date, procure the allotment of the Aggregate Scrip Consideration to applicable Scheme Shareholders,

in each case in accordance with the terms of the Scheme.

4.2 Election Mechanism

- (a) Each Target Shareholder (other than Ineligible Foreign Shareholders) will be entitled to make an Election. All Elections take effect in accordance with the Scheme to the extent any Target Shareholder who makes an Election qualifies as a Scheme Shareholder.
- (b) Target must ensure that the Explanatory Memorandum is accompanied by an Election Form.
- (c) The Election Form must state to the effect that:
 - (i) subject to clause 4.2(c)(iv), an Election must be made in accordance with the terms and conditions stated on the Election Form for it to be valid and must be completed and returned in writing to the address specified on the Election Form before the Election Date;
 - (ii) an Election will apply to all the Target Shares of the Target Shareholder as at the Election Date and, subject to clause 4.2(c)(iv), a Target Shareholder must only make one Election in relation to a particular holding;
 - (iii) once made, an Election may be varied, waived or revoked before the Election Date by notice in writing to the Target; and
 - (iv) in the manner considered appropriate by Bidder and Target (acting reasonably), a Target Shareholder who holds one or more parcels of Target Shares as trustee or nominee for, or otherwise on account of, another person, may make separate Elections in relation to each of those parcels of Target Shares (subject to providing to Bidder and Target any substantiating information they reasonably require), and if it does so will be treated as a separate Target Shareholder in respect of each such parcel in respect of which a separate Election is made (and in respect of any balance of its holding), provided that if, at the Election Date, it holds fewer Target Shares than it held at the time it made the Election, then, unless, it has at the time of any sale of Target Shares notified the Target whether the Target Shares sold relate to any such separate Election (and if so, which separate Election the Target Shares sold relate to), it will be treated as not having made a valid Election in respect of any of its Target Shares (or will be treated in any other manner that Bidder and the Target agrees is fair to the Target Shareholder in all the circumstances acting reasonably).
- (d) The Target must ensure that, to the extent reasonably practicable, persons who acquire Target Shares after the date of the dispatch of the Explanatory Memorandum and until the Election Date are sent an Election Form upon these persons requesting one from the Target.
- (e) In order to facilitate the issue of the Scrip Consideration (if applicable), the Target must provide, or procure the provision, to Bidder, details of any Election made by a Target Shareholder, on the Business Day after the Election Date, including the name and address of each Target Shareholder who has made a valid Election and the number of New Bidder Shares that Bidder must issue to that Target Shareholder to meet its obligation under the Scheme in accordance with that Target Shareholder's Election.

- (f) The parties agree that the terms and conditions that will be stated on the Election Form will include the following:
 - (i) Ineligible Foreign Shareholders may not make an Election and that any purported Election by such persons will be of no effect;
 - (ii) if a Target Shareholder does not make a valid Election, that Target Shareholder will receive Consideration Option 1 in respect of the Scheme Shares held by that Target Shareholder; and
 - (iii) Target Shareholders who make a valid Election agree to become members of Bidder from the Implementation Date and become bound by the Bidder constitution, pursuant to the Scheme,
- and such other terms and conditions as Bidder reasonably requires to be stated on the Election Form.

4.3 Default Election

If a Target Shareholder (other than an Ineligible Foreign Shareholder) does not make a valid Election, that Target Shareholder will be deemed to have elected Election Option 1.

4.4 Scrip Consideration

If a Target Shareholder makes a valid Election:

- (a) the Target Shareholder will be entitled to receive the Scheme Consideration relevant to their Election (subject to the terms of the Scheme); and
- (b) if the number of New Bidder Shares to which that Target Shareholder is entitled is not a whole number:
 - (i) where the entitlement is to half of a New Bidder Share or more, the number of New Bidder Shares will be rounded up to the nearest whole number; and
 - (ii) where the entitlement is to less than half of a New Bidder Share, the number of New Bidder Shares will be rounded down to the nearest whole number.

4.5 Cash Cap

- (a) If a Target Shareholder has validly made an Election to receive Election Option 1, that Target Shareholder will be entitled to receive for each Scheme Share held by that Target Shareholder at the Record Date:
 - (i) if the Election Cash Consideration is equal to, or less than, the Cash Cap, Consideration Option 1; or
 - (ii) if the Election Cash Consideration is greater than the Cash Cap:

(A) an amount of cash per Scheme Share calculated as follows:

$$A \div B$$

Where:

A = the Cash Cap;

B = the total number of Scheme Shares held at the Record Date by all Scheme Shareholders who validly elect Consideration Option 1; plus

(B) a number of New Bidder Shares per Scheme Share calculated as follows:

$$(\$0.48 - X) \div B$$

Where:

X = the amount of cash per Scheme Share provided under clause 4.5(a)(ii)(A) ; and

B = \$0.09

4.6 Ineligible Foreign Shareholders

If a Target Shareholder is an Ineligible Foreign Shareholder that Target Shareholder will be entitled to receive All Cash Consideration for the Scheme Shares held by that Target Shareholder.

5 PROVISION OF SCHEME CONSIDERATION

5.1 Provision of Aggregate Cash Consideration

- (a) Bidder must, by no later than the Business Day before the Implementation Date, deposit in cleared funds an amount equal to the Aggregate Cash Consideration less any Withheld Tax Amount payable to the Scheme Shareholders in an Australian dollar denominated trust account operated by Target or the Target Share Registry as trustee for the Scheme Shareholders and notified to Bidder at least 3 Business Days prior to the Implementation Date provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Bidder's account.
- (b) On the Implementation Date, subject to funds having been deposited in accordance with clause 5.1(a), Target must pay or procure the payment, from the trust account referred to in clause 5.1(a), to each Scheme Shareholder of the cash component of the Scheme Consideration to which that Scheme Shareholder is entitled under this Scheme in accordance with that Scheme Shareholder's Election (or in the case of Ineligible Foreign Shareholders, in accordance with clause 4.6 of this Scheme).
- (c) To the extent that, following satisfaction of Target's obligations under clause 5.1(b), there is a surplus in the amount held by Target or the Target Share Registry as trustee for the Scheme Shareholders in the trust account referred to in that clause, that surplus shall be paid by Target to Bidder.

5.2 Provision of Aggregate Scrip Consideration

- (a) Subject to clauses 4.2, 4.3, 4.5, 4.6 and 5.5(b), Bidder must:
 - (i) on the Implementation Date, allot and issue the Aggregate Scrip Consideration to a Scheme Shareholder in accordance with that Scheme Shareholder's Election and procure that the name and address of each Scheme Shareholder is entered in the Bidder Share Register in respect of those New Bidder Shares; and
 - (ii) procure that on or before the date that is 10 Business Days after the Implementation Date, a share certificate or holding statement (or equivalent document) is sent to the Registered Address of each Scheme Shareholder representing the number of New Bidder Shares issued to the Scheme Shareholder pursuant to the Scheme.

5.3 Joint holders

In the case of Scheme Shares held in joint names:

- (a) the Scheme Consideration is payable to the joint holders of such Scheme Shares and any cheque required to be sent under this Scheme will be made payable to those joint holders and sent to either, at the sole discretion of Target, the holder whose name appears first in the Target Share Register as at the Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of Target, the holder whose name appears first in the Target Share Register as at the Record Date or to the joint holders.

5.4 Unclaimed monies

- (a) Target may cancel a cheque issued under this clause 5 if the cheque:
 - (i) is returned to Target; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Target (or Target Share Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), Target must reissue a cheque that was previously cancelled under clause 5.4(a).
- (c) The *Unclaimed Money Act* 1995 (NSW) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' as defined in section 7 of the *Unclaimed Money Act* 1995 (NSW).

5.5 Orders of the Court or Regulatory Authority

If a written notice is given to Target (or the Target Share Registry) of an order or direction made by the Court or by any other Regulatory Authority that:

- (a) requires the Scheme Consideration to be provided to a third party in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be provided to that Scheme Shareholder by Target in accordance with this clause 5, then Target will be entitled to provide the Scheme Consideration in accordance with that order or direction; or
- (b) prevents Target from providing consideration to any particular Scheme Shareholder in accordance with this clause 5, or the provision is otherwise prohibited by applicable law, Target shall be entitled to:
 - (i) retain an amount, in Australian dollars, equal to the amount of Cash Consideration payable to that Scheme Shareholder in accordance with this clause 5;
 - (ii) direct Bidder not to issue, or to issue to a trustee or nominee, such number of New Bidder Shares that the Scheme Shareholder would otherwise be entitled to in accordance with this clause 5,until such time as provision of the Scheme Consideration in accordance with this clause 5 is permitted by that order or direction or otherwise by law.

5.6 Status of New Bidder Shares

Subject to this Scheme becoming Effective, Bidder must:

- (a) issue the New Bidder Shares required to be issued by it under this Scheme on terms such that each such New Bidder Share will, from the date of its issue, rank equally in all respects with each existing Bidder Share;
- (b) ensure that each such New Bidder Share is duly and validly issued in accordance with all applicable laws and Bidder's constitution, fully paid and free from any mortgage, charge, lien, encumbrance or other security interest (except for any lien arising under Bidder's constitution); and
- (c) use all reasonable endeavours to ensure that such New Bidder Shares are, from the Business Day following the Effective Date (or such later date as ASX requires), approved for official quotation on ASX, and that trading in the New Bidder Shares on the ASX commences on the Business Day after the Effective Date on a deferred settlement basis, and then on an ordinary settlement basis on and from the Business Day after the Implementation Day.

6 DEALINGS IN TARGET SHARES

6.1 Determination of Scheme Shareholders

For the purposes of determining who is a Scheme Shareholder, dealings in Target Shares or other alterations to the Target Share Register will only be recognised if:

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

- (b) in all other cases, share transfer forms in registrable form or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received by 5:00pm on the Record Date at the place where the Target Share Register is kept,

and Target must not accept for registration, nor recognise for any purpose, any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, other than a transfer to Bidder in accordance with this Scheme and any subsequent transfer by Bidder or its successors in title.

6.2 Register

- (a) Target must register any registrable transfers or transmission applications received in accordance with clause 6.1(b) by the Record Date.
- (b) If this Scheme becomes Effective, each Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them after the Record Date, and any attempt to do so will have no effect and Target shall be entitled to disregard any such disposal, purported disposal or agreement.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Target must maintain, or cause the Target Share Registry to maintain, the Target Share Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The Target Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for Target Shares (other than statements of holding in favour of Bidder and any of its successors in title) will cease to have effect after the Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Target Share Register (other than entries on the Target Share Register in respect of Bidder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of Target Shares relating to that entry.
- (e) As soon as possible on or after the Record Date, and in any event within one Business Day after the Record Date, Target will ensure that details of the names, Registered Addresses and holdings of Target Shares for each Scheme Shareholder as shown in the Target Share Register are available to Bidder in the form that Bidder reasonably requires.

7 QUOTATION OF TARGET SHARES

- (a) Target must apply to ASX to suspend trading on the ASX in Target Shares with effect from the close of trading on the Effective Date, or such other time as agreed between Bidder and Target, on the one hand, and ASX, on the other hand.
- (b) On a date after the Implementation Date to be determined by Bidder, Target must apply:
 - (i) for termination of the official quotation of Target Shares on the ASX; and
 - (ii) to have itself removed from the official list of the ASX.

8 GENERAL SCHEME PROVISIONS

8.1 Consent to amendments to this Scheme

If the Court proposes to approve this Scheme subject to any alterations or conditions under section 411(6) of the Corporations Act:

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

8.2 Scheme Shareholders' agreements and warranties

- (a) Each Scheme Shareholder:
 - (i) agrees to the transfer of their Target Shares together with all rights and entitlements attaching to those Target Shares in accordance with this Scheme;
 - (ii) agrees to the variation, cancellation or modification of the rights attached to their Target Shares constituted by or resulting from this Scheme;
 - (iii) acknowledges that this Scheme binds Target and all Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on this Scheme, did not vote at the Scheme Meeting, or voted against this Scheme at the Scheme Meeting);
 - (iv) to the extent applicable, agrees to become a holder of New Bidder Shares and to have its name entered in the Bidder Share Register, and accepts the New Bidder Shares issued to it under the Scheme on the terms and conditions of the Bidder's constitution, without the need for any further act by the Scheme Shareholder; and
 - (v) consents to Target doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to this Scheme and the transactions contemplated by it.
- (b) Each Scheme Shareholder is taken to have warranted to Target and Bidder on the Implementation Date, and appointed and authorised Target as its attorney and agent to warrant to Bidder on the Implementation Date, that all their Target Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme will, at the date of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Target Shares to Bidder together with any rights and entitlements attaching to those shares. Target undertakes that it will provide such warranty to Bidder as agent and attorney of each Scheme Shareholder.

8.3 Title to and rights in Scheme Shares

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

8.4 Appointment of sole proxy

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

- (a) is deemed to have appointed Bidder as attorney and agent (and directed Bidder in each such capacity) to appoint any director, officer, secretary or agent nominated by Bidder as its sole proxy and, where applicable or appropriate, its corporate representative to attend shareholders' meetings of Target, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution of Target;
- (b) must not attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.4(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 8.4(a), Bidder and any director, officer, secretary or agent nominated by Bidder under clause 8.4(a) may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

8.5 Authority given to Target

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

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

and Target accepts each such appointment. Target as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.5 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

8.6 Binding effect of Scheme

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

9 GENERAL

9.1 Stamp duty

Bidder will:

- (a) pay all stamp duty and any related fines and penalties in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under this Scheme and the Deed Poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 9.1(a).

9.2 Consent

Each of the Scheme Shareholders consents to Target doing all things necessary for or incidental to the implementation of this Scheme, whether on behalf of the Scheme Shareholders, Target or otherwise.

9.3 Notices

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

9.4 Governing law

- (a) This Scheme is governed by the laws in force in New South Wales, Australia.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Scheme. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

9.5 Further action

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

9.6 Inconsistencies

This Scheme binds Target and all Scheme Shareholders, and to the extent of any inconsistency, overrides the Target's constitution.

9.7 No liability when acting in good faith

Each Scheme Shareholder agrees that none of Target, Bidder nor any director, officer, secretary or employee of any of those entities shall be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

SCHEDULE 9 – DEED POLL

DEED POLL

Consolidated Operations Group Limited



This deed poll is made 2019

PARTIES

A **CONSOLIDATED OPERATIONS GROUP LIMITED** ABN 58 100 854 788 of Level 1, 72 Archer Street Chatswood NSW 2067 (**Bidder**);

in favour of

Each person registered as a holder of fully paid ordinary shares in CML Group Limited ABN 88 098 952 277 (**Target**) in the Share Register as at the Scheme Record Date.

RECITALS

- 1 Target and Bidder have entered into the Implementation Agreement.
- 2 Under the Implementation Agreement, Target has agreed to propose the Scheme in accordance with the Implementation Agreement.
- 3 In accordance with the Implementation Agreement, Bidder is executing this deed poll for the purpose of covenanting in favour of the Scheme Shareholders that it will perform the obligations contemplated of it under the Scheme.

This deed poll provides as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

- (a) In this deed poll:

First Court Date means the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Scheme Meeting to consider the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application or appeal is heard;

Implementation Agreement means the scheme implementation agreement between Target and Bidder dated 13 November 2019 relating to the implementation of the Scheme; and

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders, a copy of which is set out in the Schedule to this deed poll, subject to any alterations or conditions as agreed between Bidder and Target in writing or made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Bidder and Target.

- (b) Unless the context otherwise requires, terms defined in the Scheme have the same meaning when used in this deed poll.

1.2 Interpretation

Clause 1.2 of the Scheme applies to the interpretation of this deed poll, except that references to 'this Scheme' are to be read as references to 'this deed poll'.

1.3 Nature of deed poll

Bidder acknowledges that:

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

2 CONDITIONS TO OBLIGATIONS AND TERMINATION

2.1 Conditions

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

2.2 Termination

The obligations of Bidder under this deed poll to the Scheme Shareholders will automatically terminate and the terms of this deed poll will be of no force or effect if:

- (a) the Implementation Agreement is terminated in accordance with its terms; or
- (b) the Scheme does not become Effective on or before the Sunset Date, unless Bidder and Target otherwise agree in writing.

2.3 Consequences of termination

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

- (a) Bidder is released from its obligations under this deed poll, except those obligations under clause 7.1; and
- (b) each Scheme Shareholder retains any rights, powers or remedies that it has against Bidder in respect of any breach of this deed poll which occurred before it was terminated.

3 SCHEME OBLIGATIONS

3.1 Subject to clause 2, Bidder undertakes in favour of each Scheme Shareholder to:

- (a) provide, or procure the provision of, the Scheme Consideration in accordance with the terms of the Scheme; and
- (b) undertake all other actions, and give each acknowledgement, representation and warranty (if any), attributed to it under the Scheme,

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

3.2 Bidder covenants in favour of each Scheme Shareholder that the New Bidder Shares which are issued to each Scheme Shareholder in accordance with the Scheme will:

- (a) rank equally with all existing Bidder Shares (from the date of issue of the New Bidder Shares); and
- (b) be issued fully paid and free from any mortgage, charge, lien, encumbrance or other security interest.

4 WARRANTIES

4.1 Bidder represents and warrants in favour of each Scheme Shareholder, in respect of itself, that:

- (a) it is a public company validly existing under the laws of Australia;
- (b) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) this deed poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (e) the execution and performance by it of this deed poll and each transaction contemplated by this deed poll did not and will not violate in any respect a provision of:
 - (i) a law, judgment, ruling, order or decree binding on it; or
 - (ii) its constitution or other constituent documents.

5 CONTINUING OBLIGATIONS

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

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

6 NOTICES

6.1 Form of Notice

A notice or other communication in respect of this deed poll (**Notice**) must be:

- (a) in writing and in English and signed by or on behalf of the sender; and
- (b) addressed to Bidder in accordance with the details set out below (or any alternative details nominated by Bidder in writing).

Party	Address	Addressee	Email	Fax Number
Consolidated Operations Group Limited	Level 1, 72 Archer Street, Chatswood NSW	Chief Executive Officer	andrew.bennett@coglimited.com.au	n/a
Copied to: Mills Oakley	Level 7, Barrack Place, 151 Clarence Street, Sydney NSW 2000	Iain Laughland	ilaughland@millsoakley.com.au	n/a

6.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9:00am and 5:00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address.
By email to the nominated email address	The earliest to occur of: (i) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email; (ii) the time that the email is first opened or read by the intended recipient, or an

	employee or officer of the intended recipient; and (iii) two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that two-hour period, an automated message that the email has not been delivered.
By fax to the nominated fax number	On receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages and the correct destination fax number or name of the intended recipient and indicating that the transmission has been made without error.

7 GENERAL

7.1 Stamp duty

- (a) Bidder must pay all stamp duty and any related fines and penalties in respect of the Scheme and this deed poll, the performance of this deed poll and each transaction effected by or made under the Scheme and this deed poll.
- (b) Bidder must indemnify each Scheme Shareholder against any liability arising from any failure to comply with clause 7.1(a).

7.2 Governing law and jurisdiction

- (a) This deed poll is governed by the law in force in New South Wales, Australia.
- (b) Bidder irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed poll. Bidder irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

7.3 No Waiver

No failure to exercise nor any delay in exercising any right, power or remedy under this deed poll operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver of any right, power or remedy on one or more occasions does not operate as a waiver of that right, power or remedy on any other occasion, or of any other right, power or remedy. A waiver is not valid or binding on the person granting that waiver unless made in writing.

7.4 Variation

A provision of this deed poll may not be varied unless the variation is agreed to by Bidder and:

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

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

7.5 Cumulative rights

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

7.6 Assignment

- (a) The rights and obligations created by this deed poll are personal to Bidder and each Scheme Shareholder and must not be dealt with at law or in equity without the prior written consent of Bidder.
- (b) Any purported dealing in contravention of clause 7.6(a) is invalid.

7.7 Further action

Bidder must, at its own expense, do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.

SCHEDULE 1 – SCHEME

EXECUTED AS A DEED POLL

EXECUTED by **CONSOLIDATED OPERATIONS**)
GROUP LIMITED ABN 58 100 854 788 in)
accordance with section 127 of the Corporations)
Act 2001:

Signature of Director

Signature of Director/Secretary

Print Name

Print Name

EXECUTED AS AN AGREEMENT:

EXECUTED by CML Group Limited ACN 098 952)
277 in accordance with section 127 of the)
Corporations Act 2001:)

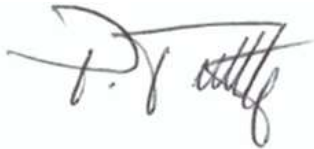
Signature of Director

Signature of Director/Secretary

Print Name

Print Name

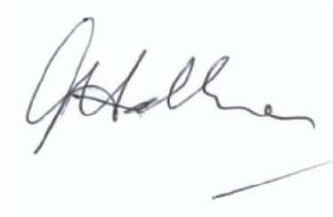
EXECUTED by Consolidated Operations Group)
Limited ACN 100 854 788 in accordance with)
section 127 of the Corporations Act 2001:)



Signature of Director

PATRICK TUTTLE

Print Name



Signature of Director/Secretary

BRUCE HATCHMAN

Print Name

EXECUTED AS AN AGREEMENT:

EXECUTED by CML Group Limited ACN 098 952)
277 in accordance with section 127 of the)
Corporations Act 2001:)



Signature of Director

Daniel Riley
Print Name



Signature of Director/Secretary

Jung-Min Shin
Print Name

EXECUTED by Consolidated Operations Group)
Limited ACN 100 854 788 in accordance with)
section 127 of the Corporations Act 2001:)

Signature of Director

Print Name

Signature of Director/Secretary

Print Name