

# ASX Announcement (UWL)

## UWL enters into Scheme Implementation Deed with Morrison / Brookfield Consortium

**14 April 2022:** Uniti Group Limited (**Uniti** or **Company**) (ASX:UWL) announces that it has entered into a scheme implementation deed (**SID**) with MBC BidCo Pty Ltd (**MBC**), an entity wholly owned by a consortium comprising The Morrison & Co Infrastructure Partnership, Commonwealth Superannuation Corporation and Brookfield Australia (together, the **Morrison/Brookfield Consortium**) to acquire 100% of Uniti by way of a scheme of arrangement (**Scheme**) for cash consideration of \$5.00 per Uniti share less the value of any dividends or distributions declared or paid after today.

### Key Highlights

- The cash price of \$5.00 per Uniti share implies an equity value, on a 100% fully diluted basis, of approximately \$3.62 billion and an enterprise value of approximately \$3.73 billion<sup>1</sup>, and represents:
  - a 58.7% premium to Uniti's undisturbed closing share price on 14 March 2022 of \$3.15 per Uniti share;
  - a 50.2% premium to the one-month volume weighted average price (**VWAP**) to 14 March 2022 of \$3.33 per Uniti share;
  - a 33.7% premium to the three-month VWAP to 14 March 2022 of \$3.74 per Uniti share; and
  - An implied acquisition EV/EBITDA multiple of approximately 27.6x Uniti's 12 months underlying EBITDA of ~\$135 million to 31 December 2021 and 25.7x Uniti's FY22F Consensus underlying EBITDA of \$145 million.
- Uniti's Board of Directors unanimously recommends that Uniti shareholders vote in favour of the Scheme in the absence of a Superior Proposal and subject to the Independent Expert concluding and continuing to conclude that the Scheme is in the best interests of Uniti shareholders.
- The Scheme provides for equity rollover for Uniti Managing Director & CEO, Michael Simmons, (alongside certain members of the senior executive team) (together **Rollover Shareholders**), who are entitled to elect to receive some or all of their Scheme Consideration as scrip consideration (being non-voting shares in the holding company of the acquiring entity) rather than cash consideration.

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<sup>1</sup> Implied equity value based on cash proposal of \$5.00 per Uniti share multiplied by 723.4 million diluted shares on issue. Enterprise value calculated as equity value plus net debt of \$110 million, adjusted for \$28.9 million paid in the Share-buy-back and also adjusted to reflect cash consideration of ~\$91 million payable on conversion of 43.6 million options and other convertible securities on issue.

- The Scheme is subject to certain conditions, including approval from Uniti shareholders and the Australian Foreign Investment Review Board which must be satisfied before it can be implemented.

## Overview

Uniti has entered into a SID with the Morrison/Brookfield Consortium under which the Morrison/Brookfield Consortium will acquire 100% of the issued share capital of Uniti for a cash price of \$5.00 per share by way of a Court-approved scheme of arrangement.

Uniti also intends to pay a fully franked special dividend on or before the Scheme implementation date (**Permitted Dividend**). There may be an opportunity for eligible shareholders, subject to their marginal tax rate, to receive a benefit from franking credits attached to any such Permitted Dividend. The amount payable under the Scheme will be reduced by the cash amount per share of any Permitted Dividend (but not the value of any franking credits). The declaration and payment of a Permitted Dividend remain at the discretion of the Uniti Board and will be subject to tax advice.<sup>2</sup>

## Uniti Directors Unanimously Recommend the Scheme

The Uniti Board unanimously recommends that Uniti shareholders vote in favour of the Scheme, and each director intends to vote all of the Uniti shares held or controlled by them in favour of the Scheme, in the absence of a Superior Proposal and subject to an Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Uniti shareholders.<sup>3</sup> Mr Simmons makes his recommendation and declares his intention to vote in favour of the Scheme (in each case as described above) in the context of his controlled shares being expected to form a different class (with any other Rollover Shareholders) for the purposes of the Scheme. Mr Simmons has entered into a voting and rollover agreement (see further details below).

The transaction is fully funded by debt and equity commitments and binding on the parties. It is subject to limited conditions described below.

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<sup>2</sup> Uniti intends to apply to the ATO for a class ruling on the treatment of the cash consideration and the Permitted Dividend in the hands of Australia resident shareholders.

<sup>3</sup> Mr Simmons has agreed to vote his Uniti shares in favour of the Scheme in the manner described in Annexure 2.

Uniti Independent Non-executive Chair, Graeme Barclay, noting that the Uniti Board including independent directors had considered and approved the proposed Scheme said, *"The Uniti Board is unanimous in its view that this transaction is in the best interests of Uniti shareholders. In making this assessment, the Board, including independent directors, has carefully considered a range of matters including its view of the intrinsic value of Uniti taking into account the company's current position and future prospects, and the certainty for shareholders of this all-cash offer. We believe this transaction is a very good outcome for Uniti's shareholders, and for stakeholders more broadly, including our customers, executives, employees and suppliers."*

Uniti Managing Director & CEO, Michael Simmons, said, *"The value placed on Uniti by the Morrison/Brookfield Consortium is a testament to the strength of the Uniti business we have built over the last 3 years since our listing on the ASX in February 2019. We have built a high quality business with long-term annuity earnings, generated from best-in-class fibre access networks and telecommunications technologies. We are immensely proud of the achievements of the Uniti team and believe that under its proposed new ownership, Uniti will continue to build upon its now established place as a successful, growing participant in the market for high speed, high quality, fibre access networks."*

## **Details of the Scheme Implementation Deed**

The implementation of the Scheme is subject to a limited number of conditions which include:

- Uniti shareholder approval;
- Court approval;
- Foreign Investment Review Board (**FIRB**) approval;
- No Material Adverse Change to Uniti;
- No Prescribed Occurrences; and
- The Independent Expert's Report concluding that the Scheme is in the best interests of Uniti shareholders.

The SID contains customary exclusivity provisions including no shop, no talk, due diligence restrictions, a notification obligation, as well as a matching right in favour of MBC. A break fee and a reverse break fee have also been agreed between Uniti and MBC.

The parties have also agreed certain provisions relating to the disclosure of 'Commercially Sensitive Information' to 'Competitors'<sup>4</sup> of Uniti in connection with Competing Proposals. Uniti is not permitted to provide 'Commercially Sensitive Information' to 'Competitors' until the matching right process in the SID has been followed and completed. Commercially Sensitive Information broadly includes information relating the identity of, and specific pricing information and contractual terms governing, Uniti's material customer and/or material developer contracts, arrangements or relationships, detailed information relating to Uniti's financial forecasts and growth strategies, potential M&A opportunities being considered by Uniti and information relating to Uniti's pricing strategies.

The Rollover Shareholders may elect to receive some or all of their Scheme Consideration as scrip consideration in the ultimate holding company of MBC under the Scheme, instead of the cash consideration. The Rollover Shareholders are required to make an election as to the percentage of their Uniti shares for which they wish to receive scrip consideration instead of cash consideration prior to the Scheme meeting. It is expected that the Rollover Shareholders will form a separate class of shareholders for the purposes of the Scheme and there will therefore be two scheme meetings – one for Rollover Shareholders only and the other for all other Uniti shareholders. In those circumstances, the Rollover Shareholders will not be permitted to vote at the Scheme meeting of all other Uniti shareholders but will be entitled to vote at their own Scheme meeting. Both Scheme meetings would need to pass a resolution approving the Scheme for the Scheme to become effective.

Full details of the conditions of the Scheme and other agreed terms are set out in the SID, a copy of which is attached to this ASX announcement as Annexure 1.

## **Voting and Rollover Agreement Material Terms**

The material terms of the voting and rollover agreement entered into between Mr Simmons and the Morrison/Brookfield Consortium are summarised in Annexure 2.

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<sup>4</sup> A Competitor broadly includes (i) carrier licence holders, statutory infrastructure providers and carriage service providers (together, **Telecommunications Business**); (ii) persons who control or hold 20% or more of the voting interest in any Telecommunications Business; (iii) any of the respective affiliates of any person described in (i) or (ii).

## **Indicative timetable and next steps**

A Scheme Booklet containing information relating to the Scheme, the Independent Expert's Report on whether the Independent Expert considers that the Scheme is in the best interests of Uniti shareholders, the reasons for the Uniti directors' unanimous recommendation and details of the Scheme meeting(s), is expected to be provided to Uniti shareholders in June 2022. Uniti shareholders will then have the opportunity to vote on the Scheme at the Court-convened Scheme meeting(s) of the relevant class of shareholders to which they belong, which are expected to be held in July 2022.

This announcement is authorised for release by the Board of Directors of Uniti Group Limited.

### **Further information**

For further information, contact as below:

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**Annexure 1 - Scheme Implementation Deed**

# Scheme Implementation Deed

Uniti Group Limited  
Target

MBC BidCo Pty Ltd  
Bidder

Clayton Utz  
Level 15 1 Bligh Street  
Sydney NSW 2000  
GPO Box 9806  
Sydney NSW 2001  
Tel +61 2 9353 4000  
Fax +61 2 8220 6700  
**[www.claytonutz.com](http://www.claytonutz.com)**

Our reference 20394/21454/13515/81021931

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# Scheme Implementation Deed

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**Date** 13 April 2022

**Parties** **Uniti Group Limited ACN 158 957 889** of Level 1, 44 Currie Street, Adelaide, South Australia 5000 (**Target**)  
**MBC BidCo Pty Ltd ACN 658 690 343** of Level 4, 126-130 Phillip Street, Sydney NSW 2000 (**Bidder**)

## Background

- A. The parties have proposed that Bidder will acquire all of the ordinary shares in Target by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders.
- B. Target has agreed to propose and, if approved, Target and Bidder have agreed to implement the scheme of arrangement on the terms and conditions of this deed.

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Definitions

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

**Adjusted Estimated Cash** means:

- (a) the amount of cash, cash equivalents and short term interest bearing deposits (where the terms "cash" and "cash equivalents" are as defined in the Australian Accounting Standards) of the Target Group as at the relevant date; *less*
- (b) the aggregate proceeds received by the Target Group pursuant to the Approved Disposal, to the extent the disposal has completed as at the relevant date; *less*
- (c) the aggregate proceeds received by the Target Group in connection with the vesting and exercise of the Employee Options and the Legacy Options in accordance with clause 5.7.

**Adjusted Estimated Debt** means:

- (a) the Financial Indebtedness of the Target Group as at the relevant date (expressed as a positive number); *less*
- (b) the aggregate amount of the Permitted Dividend (if any), to the extent paid as at the relevant date; *less*
- (c) the aggregate purchase price and transaction costs paid by the Target Group pursuant to the Proposed Acquisition, to the extent the acquisition has completed as at the relevant date and with prior approval from the Bidder; *less*

- (d) the aggregate amount of the Deferred Consideration paid by the Target Group, to the extent such amount has been paid as at the relevant date; *less*
- (e) third party transaction costs up to the limit set out in the Disclosure Letter, to the extent such amount has been paid at the relevant date; *less*
- (f) any other amounts agreed by the Bidder.

**Adjusted Net Debt** means an amount equal to the Adjusted Estimated Debt *less* the Adjusted Estimated Cash.

**Affiliate** means, in respect of a person (the primary person), a person:

- (a) Controlled directly or indirectly by the primary person;
- (b) Controlling directly or indirectly the primary person; or
- (c) who is Controlled, directly or indirectly, by a person or persons who Control the primary person,

where **Control** means, with respect to any person (other than an individual) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person whether through the ownership of voting securities, by agreement or otherwise, and for the avoidance of doubt, a general partner is deemed to Control a limited partnership of which it is the general partner and, solely for the purposes of this deed, a fund advised or managed directly or indirectly by a person will also be deemed to be Controlled by such person.

**Alternative D&O Policy** has the meaning given in clause 9.3(b)(iv).

**Alternative Insurers** has the meaning given in clause 9.3(b)(iv).

**Approved Disposal** has the meaning given in the Disclosure Letter.

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

**Associate** has the meaning set out in section 12 of the Corporations Act.

**ASX** means ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.

**Australian Accounting Standards** means:

- (a) the accounting standards required under the Corporations Act and issued by The Australian Accounting Standards Board, and
- (b) if no accounting standard applies under the Corporations Act in relation to an accounting practice, the standards acceptable to the Australian Accounting Standards Board (**AASB**) at the relevant time, including:
  - (i) Australian equivalents to IFRS (International Financial Reporting Standards);
  - (ii) other authoritative pronouncements of the AASB;
  - (iii) abstracts and interpretations issued by the AASB; and
  - (iv) to the extent not inconsistent with any of these, any other accounting principles, standards, practices and methods of valuation generally accepted in Australia.

**Bidder Counterproposal** has the meaning given in clause 11.7(a)(v).

**Bidder Group** means:

- (a) Bidder, TopCo and each of its Related Bodies Corporate;
- (b) each Consortium Member;
- (c) each Consortium Member's Related Bodies Corporate; and
- (d) each Consortium Member's Affiliates,

and a reference to a '**Bidder Group Member**' or a '**member of the Bidder Group**' is to any of them.

**Bidder Indemnified Parties** means each Bidder Group Member and their respective Related Persons.

**Bidder information** means information regarding the Bidder Group provided by or on behalf of Bidder to Target in writing for inclusion in the Scheme Booklet, being:

- (a) information about Bidder and each other Bidder Group Member, its business and interests and dealings in Target Shares and Bidder's intentions for Target and Target's employees and Bidder's funding; and
- (b) any other information required under the Corporations Act, Corporations Regulations or RG 60 to enable the Scheme Booklet to be prepared that the parties agree is 'Bidder Information' and that is identified in the Scheme Booklet as such.

**Bidder Representations and Warranties** means the representations and warranties of Bidder set out in Schedule 2.

**Break Fee** means \$35,000,000.

**Brookfield Infrastructure Fund IV** means:

- (a) Brookfield Infrastructure Fund IV-A, LP;
- (b) Brookfield Infrastructure Fund IV-B, LP;
- (c) Brookfield Infrastructure Fund IV-C, LP; and
- (d) Brookfield Infrastructure Fund IV (ER) SCSp.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Adelaide or Sydney, Australia.

**Capex Budget** means the Target Group's capex budget disclosed Data Room documents #03.01.02 and #03.04.03, provided that:

- (a) in respect of the 12 month period ending 30 June 2022, to the extent of any inconsistency between the Target Group's capex budget for per Port capex and WIP capex disclosed in Data Room document #03.01.02 and the corresponding categories in Data Room document #03.04.03, Data Room document #03.04.03 will prevail to the extent of the inconsistency; and
- (b) in respect of the 12 month period ending 30 June 2023, to the extent of any inconsistency between the Target Group's capex budget for per Port capex and WIP capex disclosed in Data Room document #03.01.02 and the corresponding

categories in Data Room document #03.04.03, Data Room document #03.04.03 will prevail to the extent of the inconsistency.

**Cash Consideration** means \$5.00 for each Target Share, subject to and as adjusted in accordance with clause 4.8.

**Change of Control Requirements** has the meaning given in clause 6.3.

**Claim** means any claim, demand, legal proceedings or cause of action, including a claim, demand, legal proceedings or cause of action:

- (a) based in contract (including breach of warranty);
- (b) based in tort (including misrepresentation or negligence);
- (c) under common law or equity; or
- (d) under statute (including the Australian Consumer Law, being Schedule 2 of the *Competition and Consumer Act 2010* (Cth) or Part VI of that Act, or like provision in any state or territory legislation),

in any way relating to this deed or the Transaction, and includes a claim, demand, legal proceeding or cause of action arising under an indemnity in this deed.

**Commercially Sensitive Information** means the commercially sensitive information of the Target Group as set out in the Disclosure Letter.

**Competing Proposal** means any offer, expression of interest, proposal, agreement, arrangement or transaction which, if entered into or completed, would result in a Third Party (either alone or together with any Associate):

- (a) directly or indirectly acquiring, or having a right to acquire, a Relevant Interest in a legal, beneficial or economic interest in, or control of, 20% or more of the Target Shares;
- (b) acquiring Control of Target;
- (c) directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a substantial part of Target's business or assets or the business or assets of the Target Group;
- (d) otherwise directly or indirectly acquiring or merging with Target; or
- (e) requiring Target to abandon, or otherwise fail to proceed with, the Transaction,

whether by way of takeover bid, members' or creditors' scheme of arrangement, reverse takeover, shareholder approved acquisition, capital reduction, buy-back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement recapitalisation, refinancing or other transaction or arrangement or combination thereof.

For the avoidance of doubt, each successive material modification or variation of any offer, expression of interest, proposal, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

**Competitor** means those competitors and potential competitors of the Target Group as set out in the Disclosure Letter.

**Condition Precedent** means each of the conditions set out in clause 3.1.

**Confidentiality Agreement** means each of:

- (a) the confidentiality agreement between the Target and Morrison & Co (Australia) Pty Ltd dated 13 March 2022; and
- (b) the confidentiality agreement between the Target and Brookfield Infrastructure Group (Australia) Pty Ltd dated 22 March 2022,

(as amended from time to time).

**Consortium Member** means:

- (a) Brookfield Infrastructure Fund IV;
- (b) The Morrison & Co Infrastructure Partnership Master Fund SCSp;
- (c) Commonwealth Superannuation Corporation in its capacity as trustee of the ARIA Investments Trust; and
- (d) any New Consortium Member permitted by clause 4.10.

**Control** has the meaning given in section 50AA of the Corporations Act.

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

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

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

**Data Room** means the online electronic data room established and maintained by or on behalf of Target through which the Bidder and its Related Persons have had access to information relating to the Target Group.

**Debt Commitment Letters** means the binding, credit-approved, executed commitment letters and accompanying term sheets from certain banks or other financial institutions addressed to Bidder and dated on or about the date of this deed.

**Debt Financing** means the financing commitments set out in Debt Commitment Letters.

**Deed Poll** means a deed poll to be entered into by Bidder substantially in the form of Attachment 3 under which Bidder and TopCo each covenants in favour of the Scheme Shareholders to perform their obligations under the Scheme.

**Deferred Consideration** means the deferred consideration payable by the Target in relation to, and in accordance with the terms of, the Telstra Velocity Transaction.

**Disclosure Letter** means a letter identified as such provided by Target to Bidder and countersigned by Bidder on or prior to entry into this deed.

**Disclosing Party** has the meaning given in clause 7.5(b)(i).

**Disclosure Materials** means:

- (a) the documents and information contained in the Target Data Room made available by Target to Bidder and its Related Persons prior to 12.00pm on 13 April 2022, the index of which has been initialled by, or on behalf of, the parties for identification;
- (b) written responses from Target and its Related Persons to requests for further information made by Bidder and its Related Persons via the Data Room prior to 12.00pm on 13 April 2022; and

(c) the Disclosure Letter.

**Dividend Funds** has the meaning given in clause 4.9(a).

**D&O Run-off Policy** has the meaning given in clause 9.3(b).

**EBITDA** means the underlying earnings (calculated on a consistent basis as in the Target Group's annual report in respect of the financial year ended 30 June 2021) before interest, tax, depreciation and amortisation.

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

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

**Election** means an election by a Relevant Shareholder to receive their Scheme Consideration partly in the form of Scrip Consideration and partly in the form of Cash Consideration, made in accordance with clause 4.4.

**Election Form** means a form issued by or on behalf of the Target for the purposes of a Relevant Shareholder making an Election in a form agreed to by Target and Bidder.

**Election Time** means 5.00pm on the third Business Day before the date of the Scheme Meetings, or such other date as is agreed in writing between Bidder and the Target.

**Employee Options** means the options to acquire Target Shares issued under the Target's employee share option plan and the Target's employee retention option plan as listed in Schedule 3.

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

**End Date** means the date that is 8 months from the date of this deed, or such other date as agreed in writing by Target and Bidder.

**Equity Commitment Letter** means the binding, executed commitment letter dated on or before the date of this deed and addressed to one or more Bidder Group Members and Target.

**Equity Financing** means the "Commitment" as defined in the Equity Commitment Letter.

**Exclusivity Period** means the period from and including the date of this deed to the earliest of:

- (a) the date of termination of this deed;
- (b) the End Date; and
- (c) the Effective Date.

**Existing Financing** means any existing financing agreement or arrangement for the provision of Financial Indebtedness by a third party to a member of the Target Group (including swap and derivative agreements or arrangements).

**Fairly Disclosed** means disclosed in sufficient detail to enable a reasonable and sophisticated recipient of the relevant information who is experienced in transactions similar to the Scheme to identify the nature and potential impact of the relevant fact, matter, circumstance or event.



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

**Financial Indebtedness** means any debt or other monetary liability (whether actual or contingent) in respect of (without double counting):

- (a) moneys borrowed or raised and debit balances at banks or financial institutions (including for the avoidance of doubt all interest and non-interest bearing loans or other financing liabilities or obligations, including overdrafts and any other liabilities in the nature of borrowed money (whether secured or unsecured));
- (b) any advance, loan, bill, bond, debenture, note or similar instrument;
- (c) guarantee or letter of credit;
- (d) swap, option, hedge, forward, futures or similar transaction;
- (e) any drawing, acceptance, endorsement, collecting or discounting arrangement;
- (f) any finance or capital lease to the extent required in accordance with Australian Accounting Standards to be treated as a borrowing;
- (g) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or service, but excluding the deferred consideration and migration capex in relation to the Telstra Velocity Transaction; or
- (h) obligation to deliver goods or provide services paid for in advance by any financier; or
- (i) any Dividend Funds made available to the Target under clause 4.9(a) of this deed.

**Financing Default** means any 'event of default' (however described), any 'review event' (however described) or any other 'termination event' (however described) under and for the purposes of any Existing Financing.

**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.

**Government Agency** means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.

**Implementation Date** the fifth Business Day after the Scheme Record Date, or such other date after the Scheme Record Date as the parties agree in writing or is ordered by the Court or required by ASX.

**Independent Expert** means the independent expert in respect of the Scheme appointed by Target to prepare the Independent Expert's Report.

**Independent Expert's Report** means the report to be issued by the Independent Expert in connection with the Scheme, such report to be included in or to accompany the Scheme Booklet, and including any subsequent, updated or supplementary report, setting out the Independent Expert's opinion whether or not the Transaction is in the best interests of Target Shareholders and the reasons for holding that opinion.

**Insolvency Event** means in relation to an entity:

- (a) the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity (other than where the order is set aside within 14 days);
- (b) a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;
- (c) the entity executing a deed of company arrangement;
- (d) the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;
- (e) the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation); or
- (f) the entity being deregistered as a company or otherwise dissolved,

or any other like event, matter or circumstance having a substantially similar effect occurring in relation to an entity in any jurisdiction.

**Legacy Options** means the options to acquire Target Shares (ASX Security Code: UWLAAB), granted by the Target on 29 June 2021 as listed in Schedule 3.

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

**Material Adverse Change** means any event, circumstance, occurrence or matter occurring after the date of this deed, or occurs before the date of this deed but is only announced, publicly disclosed or becomes known to Bidder after the date of this deed, which has resulted in, or is reasonably likely to result in, either individually or when aggregated with all such events, circumstances, occurrences or matters:

- (a) a diminution in the net assets of the Target Group by an amount equal to \$80,000,000 or more, as compared to what the Target Group's net assets could reasonably have expected to have been but for the relevant event, circumstance, occurrence or matter; or
- (b) the consolidated annual EBITDA of the Target Group being reduced (excluding reductions in one-off revenue (including construction revenue) or incurrence of one one-off costs or increases in one-off costs) by an amount equal to or more than 7.5% of the consolidated annual EBITDA of the Target Group, as compared to what the consolidated annual EBITDA of the Target Group could reasonably have expected to have been but for the relevant event, circumstance, occurrence or matter; or
- (c) the Adjusted Net Debt of the Target Group exceeding \$228 million,

in each case other than an event, circumstance, occurrence or matter:

- (d) that was Fairly Disclosed in:
  - (i) the Disclosure Materials;
  - (ii) an announcement made by Target or a Target Group Member to the ASX prior to the date of this deed; or
  - (iii) the Relevant Searches;

- (e) that was (including its impact) within the actual knowledge of the Bidder prior to the date of this deed (which does not include mere knowledge of the risk of an event, circumstance, occurrence or matter happening);
- (f) which Bidder has previously approved or requested in writing;
- (g) which relate to or are caused by the identity of any Bidder Group Member;
- (h) arising from changes in economic or business conditions (including changes to interest rates, exchange rates, commodity prices or markets (including domestic or international financial markets)), other than where such matters have a materially disproportionate effect on the Target Group as compared to other participants in the telecommunications sector;
- (i) arising from any change in law, regulation, generally accepted accounting standards or generally accepted accounting principles or the interpretation of any such standards or principles, or policy of a Government Agency, other than where such matters have a materially disproportionate effect on the Target Group as compared to other participants in the telecommunications sector;
- (j) arising out of the announcement, entry into or performance of obligations under, this deed, the Transaction or the Scheme (including the loss or adverse change in relation to contractual counterparties, creditors, joint venture partners and the like);
- (k) required or expressly permitted by this deed or the Scheme;
- (l) relating to third party costs and expenses incurred by the Target associated with the Transaction, including any fees payable to external advisers of the Target, to the extent such amounts are Fairly Disclosed in the Due Diligence Material;
- (m) arising from any act of terrorism, outbreak or escalation of war (whether or not declared) or major hostilities, an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, other natural disaster or adverse weather conditions or the like; or
- (n) arising from the COVID-19 virus (or any mutation, variation or derivative), including in connection with lockdowns, travel restrictions, quarantining, closures, social distancing and restrictions of and on activities, venues and gatherings or from any law, order, rule, recommendation, guidance or direction of any Government Agency in relation thereto,

provided that, notwithstanding any other provision of this deed, for the sole purposes of paragraph (b) above, paragraphs (d) to (n) above will not be construed as a reference to, or as including, any event, circumstance, occurrence or matter arising from the SBAS FAD Inquiry or the NBN SAU Review. For the avoidance of doubt, such event, circumstance, occurrence or matter arising from the SBAS FAD Inquiry or the NBN SAU Review (including their potential impact on the Target Group) will therefore be included and considered for the purposes of determining whether a Material Adverse Change has occurred solely under paragraph (b) above.

**Material Contract** has the meaning given in the Disclosure Letter.

**NBN SAU Review** means the ACCC's review of NBN Co Limited's Special Access Undertaking with the ACCC in relation to price terms and conditions (but for the avoidance of doubt, not non-price terms and conditions) relating to access to NBN Co Limited's fibre, fixed wireless and satellite networks and other related services as at the date of this deed.

**Permitted Dividend** has the meaning given in clause 4.8.

**Permitted Encumbrance** means any Encumbrance granted by any member of the Target Group in the ordinary course of business:

- (a) in respect of assets having a value not exceeding \$5 million;
- (b) under any retention of title, hire purchase or conditional sale arrangement or arrangement having similar effect in respect of goods supplied to the Target Group on the supplier's standard or usual terms (or terms more favourable to the Target Group) or arising by operation of law in the ordinary course of trading, so long as in case, the debt it secures is paid when due or contested in good faith and appropriately provisioned; or
- (c) which is permitted under the Debt Commitment Letter or the Debt Financing.

**Prescribed Occurrence** means other than:

- (a) other than in respect of paragraph (h), that was Fairly Disclosed in:
  - (i) the Disclosure Materials; or
  - (ii) an announcement made by Target or a Target Group Member to the ASX prior to the date of this deed;
- (b) which is required by any applicable law, regulation, or by a Government Agency;
- (c) other than in respect of paragraph (h), which is within the actual knowledge of Bidder before the date of this deed;
- (d) as required or expressly permitted to be done or procured by the Target Group in connection with this deed or the Scheme;
- (e) as agreed to, or requested, by Bidder in writing,

the occurrence of any of the following:

- (f) Target converting all or any of its securities (including the Target Shares) into a larger or smaller number;
- (g) Target resolving to reduce its share capital in any way;
- (h) Target commencing, continuing or implementing a buy-back (on-market or otherwise) of any of its shares, irrespective of whether such buy-back has been announced on the ASX, Fairly Disclosed in the Disclosure Materials or within the actual knowledge of Bidder prior to or as at the date of this deed;
- (i) a Target Group Member entering into a buy-back agreement or resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (j) a Target Group Member issuing shares (including Target Shares), or granting a performance right or an option over its shares, or agreeing to make such an issue or grant such a right or an option, other than:
  - (i) to a wholly-owned Subsidiary of Target; or
  - (ii) in connection with any action which is undertaken or which otherwise occurs in accordance with clause 5.7;
- (k) a Target Group Member issuing or agreeing to issue securities convertible into shares (including any issue or agreement to issue performance rights or options or debt securities);

- (l) a Target Group Member reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares, other than in connection with any action which is undertaken or which otherwise occurs in accordance with clause with clause 5.7;
- (m) a Target Group Member making any change to its constitution or constituent documents, other than where a Target Group Member that is not material in the context of the Target Group (taken as a whole) makes a change to its constitution that does not materially affect the Transaction or the Target Group (or its business);
- (n) a Target Group Member disposing, or agreeing to dispose, of the whole, or a substantial or material part, of its business or property (whether by way of a single transaction or series of related transactions);
- (o) a Target Group Member creating or granting an Encumbrance, or agreeing to create or grant an Encumbrance, in respect of the whole, or a substantial or material part, of the business, assets or property of the Target Group, other than a lien securing an obligation that is not yet due which arises by operation of law or legislation and other than a Permitted Encumbrance;
- (p) an Insolvency Event occurs in relation to a Target Group Member;
- (q) any member of the Target Group agrees to pay, declares, determines, pays or makes, or incurs a liability to pay or make, a dividend or any other form of distribution of profits or capital (whether in cash or in specie), other than:
  - (i) the declaration and payment by the Target of any Permitted Dividend in accordance with clause 4.8; or
  - (ii) the declaration and payment by any Subsidiary of the Target of a dividend, where the recipient of that dividend is Target or a wholly-owned Subsidiary of the Target.

**PPS Register** means the register established under the PPSA.

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

**Proposed Acquisition** has the meaning given in the Disclosure Letter.

**Proposed D&O Run-off Policy** has the meaning given in clause 9.3(b)(iv).

**Recommendation** has the meaning given to that term in clause 7.1(b).

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

**Regulatory Approval** means the approval set out in clause 3.1(a).

**Related Bodies Corporate** has the meaning set out in section 50 of the Corporations Act, provided that, where, for the purposes of this definition, references to Subsidiary in section 50 of the Corporations Act is amended as necessary such that:

- (a) a body corporate or a trust will also be taken to be a subsidiary of an entity if it is controlled by that entity (as defined in section 50AA of the Corporations Act);
- (b) a trust, partnership or fund may be a subsidiary, for the purpose of which a unit, partnership interest or other beneficial interest in the trust, partnership or fund will be regarded as a share (ignoring the operation of section 48(2) of the Corporations Act); and

- (c) an entity may be a subsidiary of a trust, partnership or fund if it would have been a subsidiary if that trust, partnership or fund were a body corporate.

**Related Person** means:

- (a) in respect of the Target:
- (i) a director, officer, employee of the Target or any its Related Bodies Corporate;
  - (ii) an adviser of the Target or any its Related Bodies Corporate (and each director, officer, employee or contractor of that adviser);
  - (iii) an agent or representative of the Target or any its Related Bodies Corporate; and
  - (iv) a Related Body Corporate of the Target;
- (b) in respect of the Bidder:
- (i) a director, officer, employee of the Bidder or any member of the Bidder Group;
  - (ii) an adviser of the Bidder or any member of the Bidder Group (and each director, officer, employee or contractor of that adviser);
  - (iii) a manager, agent or representative of the Bidder or any member of the Bidder Group (and each director, officer, employee or contractor of that manager, agent or representative); and
  - (iv) any member of the Bidder Group.

**Relevant Employee** has the meaning given in clause 6.1(a)(v)G.

**Relevant Interest** has the meaning given in sections 608 and 609 of the Corporations Act.

**Relevant Participant** means a Target Director other than a Relevant Shareholder.

**Relevant Person** has the meaning given in clause 6.2(e)(i).

**Relevant Shareholder** mean a Target Shareholder that is, or is an Affiliate of, an executive management team member of the Target Group agreed in writing between the Target and the Bidder on or prior to, or as soon as practicable following, the date of this deed.

**Relevant Searches** has the meaning given in clause 8.5(a)(iii).

**Reverse Break Fee** means \$35,000,000.

**RG 60** means Regulatory Guide 60 issued by ASIC in September 2020.

**SBAS** means any non-NBN superfast broadband Layer 2 bitstream service (including a lower speed service such as a 12Mbps service) supplied over a telecommunications network normally capable of supplying a 25Mbps service.

**SBAS FAD Inquiry** means the inquiry being undertaken by the ACCC as at the date of this deed in relation to a final access determination in relation to SBAS.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders, the form of which is attached as Attachment 2, subject

to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Bidder and Target.

**Scheme Booklet** means the scheme booklet to be prepared by Target in respect of the Scheme pursuant to section 412 of the Corporations Act and in accordance with the terms of this deed (including clause 5.2(a)) to be despatched to the Target Shareholders and which must include or be accompanied by:

- (a) a copy of the Scheme;
- (b) an explanatory statement complying with the requirements of the Corporations Act, the Corporations Regulations and RG 60;
- (c) the Independent Expert's Report;
- (d) a copy or summary of this deed;
- (e) a copy of the executed Deed Poll;
- (f) a notice of meeting; and
- (g) a proxy form(s).

**Scheme Consideration** means the Cash Consideration and, if applicable, Scrip Consideration to be provided to each Scheme Shareholder for the transfer to Bidder of each Scheme Share.

**Scheme Interest** has the meaning given in clause 7.1(c)(iv).

**Scheme Meeting** means the meetings of Target Shareholders ordered by the Court to be convened under subsection 411(1) of the Corporations Act to consider and vote on the Scheme and includes any meetings convened following any adjournment or postponement of that meetings.

**Scheme Record Date** means 7.00pm on the fifth Business Day after the Effective Date or such other time and date as the parties agree in writing.

**Scheme Shareholder** means a Target Shareholder as at the Scheme Record Date.

**Scheme Shares** means all Target Shares held by the Scheme Shareholders as at the Scheme Record Date.

**Scrip Consideration** means such number of TopCo Securities per Scheme Share as determined by the Bidder, to be determined on or prior to the First Court Date.

**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 the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

**Security Interest** means any mortgage, charge, pledge, lien, assignment or other security interest or any other arrangement (including a right of set off or combination) entered into for the purpose of conferring a priority, including any security interest as defined in section 51A of the Corporations Act or section 12(1) or (2) of the PPSA.

**Share Rights** means the rights to Target Shares issued under the Target's executive incentive plan as listed in Schedule 3.

**Subsidiary** has the meaning given in section 9 of the Corporations Act.

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

- (a) is reasonably capable of being completed in accordance with its terms; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to Target Shareholders than the Transaction (as the Transaction may be amended or varied following application of the matching right set out in clause 11.7),

taking into account all aspects of the Competing Proposal and the Transaction, including conditions, the identity, reputation and financial condition of the person making the proposal and all relevant legal, regulatory and financial matters (including the value and type of consideration, funding, any timing considerations, any conditions precedent, whether the person making the proposal holds an interest in, a competitor or a potential competitor of the Target or other matters affecting the probability of the proposal being completed).

**Takeovers Panel** means the Australian Takeovers Panel.

**Target Board** means the board of directors of Target.

**Target Director** means any director of Target comprising part of the Target Board.

**Target Equity Incentive** means the Share Rights, Legacy Options and Employee Options as listed in Schedule 3.

**Target Group** means Target and each of its Related Bodies Corporate, and a reference to a 'Target Group Member' or a 'member of the Target Group' is to Target or any of its Related Bodies Corporate.

**Target Indemnified Parties** means Target and its Related Bodies Corporate and Related Persons.

**Target Information** means information regarding the Target Group prepared by Target for inclusion in the Scheme Booklet, which for the avoidance of doubt comprises the entirety of the Scheme Booklet other than the Bidder Information, the Independent Expert's Report (or references to the Independent Expert's analysis or conclusions), any description of the taxation effect of the Transaction on Scheme Shareholders prepared by an external advisor to Target.

**Target Registry** means Boardroom Pty Limited of Level 12, 225 George St Sydney, NSW 2000.

**Target Representations and Warranties** means the representations and warranties of Target set out in Schedule 1.

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

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

**Target Share Register** means the register of members of Target maintained by the Target Registry in accordance with the Corporations Act.

**Tax** means any tax, levy, charge, impost, fee, deduction, goods and services tax, compulsory loan or withholding, stamp, transaction or registration duty or similar charge that is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of, any of the above.

**Telstra Agreement** has the meaning given in the Disclosure Letter.

**Telstra RSPMA** has the meaning given in the Disclosure Letter.



**Telstra Velocity Transaction** has the meaning given in the Disclosure Letter.

**Third Party** means a person other than Target, Bidder, the Target's Related Bodies Corporate, any Bidder Group Member or Bidder's Associates.

**Timetable** means the indicative timetable for the implementation of the Transaction set out in Attachment 1.

**TopCo** means MBC TopCo Pty Ltd ACN 658 690 101, the ultimate holding company of the Bidder.

**TopCo Securities** means non-voting securities in the capital of TopCo and **TopCo Security** means any one of them.

**Transaction** means the acquisition of the Scheme Shares by Bidder through implementation of the Scheme in accordance with the terms of this deed.

**Treasurer** means the Treasurer of the Commonwealth of Australia.

## 1.2 Interpretation

In this deed:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency, as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to this deed;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assignees;
- (j) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (k) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure;

- (l) no provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision;
- (m) a reference to a body (including an institute, association or authority), other than a party to this deed, whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) 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;
- (n) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;
- (o) a reference to any time, unless otherwise indicated, is to the time in Melbourne, Australia;
- (p) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (q) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (r) if an act prescribed under this deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (s) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this deed; and
- (t) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

### 1.3 Interpretation of inclusive expressions

Specifying anything in this deed after the words 'include' or 'for example' or similar expressions does not limit what else is included.

### 1.4 Business Day

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

### 1.5 Deed components

This deed includes any schedule.

### 1.6 Target knowledge, belief or awareness

- (a) If a representation or warranty is given so far as Target is "aware" or with a similar qualification as to awareness or knowledge, the awareness or knowledge of Target is limited to and deemed only to comprise the facts, matters and circumstances of the persons agreed between the parties in writing as at the date of this deed is actually aware as at the date of this deed, having made reasonable enquiries of each other and their direct reports. The knowledge, belief or awareness of any other person will not be imputed to the Target nor any other Target Group Member (except to the extent referred to in this clause 1.6).

- (b) Without limiting clause 9, none of those persons referred to in clause 1.6(a) will bear any personal liability in respect of the Target Representations and Warranties or otherwise under this deed, except where such person has engaged in wilful misconduct, wilful concealment or fraud.

## 1.7 Bidder knowledge, belief or awareness

- (a) In this deed, a reference to the knowledge, belief or awareness of Bidder or a Bidder Group Member's knowledge, belief or awareness is limited to the actual knowledge, belief or awareness as at the date of this deed of the persons agreed between the parties in writing as at the date of this deed:
- (i) having made reasonable enquiries of each other and of their direct reports; and
  - (ii) where each such person is deemed to have knowledge of all due diligence reports prepared prior to the date of this deed by or for the benefit of the Bidder Group or any debt or equity financier of the Bidder Group in respect of the Target Group in connection with the Transaction (including any such legal, financial, accounting, tax or compliance due diligence report).
- (b) The knowledge, belief or awareness of any person other than the persons referred to in clause 1.7(a) will not be imputed to Bidder nor any other Bidder Group Member (except to the extent referred to in clause 1.7(a)).
- (c) Without limiting clause 9, none of the persons referred to in clause 1.7(a) as being agreed between the parties in writing will bear any personal liability in respect of the Bidder Representations and Warranties or otherwise under this deed, except where such person has engaged in wilful misconduct, wilful concealment or fraud.

## 1.8 Best and reasonable endeavours

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

- (a) pay any money or to provide any financial compensation, or any other incentive to or for the benefit of any person in the form of an inducement or consideration except for payment of:
- (i) any applicable fee for the lodgement or filing of any relevant application with any Government Agency; or
  - (ii) immaterial expenses or costs, including costs of advisers,
- to procure the relevant thing (except, in each case, in circumstances that are commercially onerous or unreasonable in the context of this deed);
- (b) commence or defend any legal action or proceeding against any person; or
- (c) agree to commercially onerous or unreasonable conditions,

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

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## 2. Agreement to propose the Transaction

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

- (c) The parties agree to implement the Scheme on and subject to the terms and conditions of this deed.

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### 3. Conditions Precedent

#### 3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties in relation to implementation of the Scheme are not binding, until each of the following Conditions Precedent is satisfied or waived to the extent and in the manner set out in this clause 3.

- (a) **FIRB approval:** before 8.00 am on the Second Court Date one of the following has occurred:
- (i) Bidder has received a written notice under FATA, by or on behalf of the Treasurer, advising that the Commonwealth Government has no objections to the Transaction, either unconditionally or on terms that are acceptable to Bidder acting reasonably (subject to clause 3.2(e));
  - (ii) the Treasurer becomes precluded by the passage of time from making an order or decision under Part 3 of the FATA in relation to the Transaction and the Transaction is not prohibited by section 82 of the FATA; or
  - (iii) where an interim order is made under section 68 of the FATA in respect of the Transaction, the subsequent period for making an order or decision under Part 3 of the FATA elapses without the Treasurer making such an order or decision.
- (b) **Restraints:** no law, rule, regulation, restraining order, preliminary or permanent injunction or other preliminary or final decision, order or decree is made by an Australian court of competent jurisdiction or Government Agency, which restrains, prohibits or impedes implementation of the Scheme, unless such order or injunction has been disposed of to the reasonable satisfaction of Target and Bidder acting reasonably and in good faith, is in effect at 8.00am on the Second Court Date.
- (c) **Shareholder approval:** Target Shareholders agree to the Scheme at the Scheme Meeting by the requisite majorities under subparagraph 411(4)(a)(ii) of the Corporations Act.
- (d) **Independent Expert:** the Independent Expert:
- (i) issues an Independent Expert's Report which concludes that the Scheme is in the best interests of Target Shareholders; and
  - (ii) does not formally change its conclusion or withdraw its Independent Expert's Report before 8.00am on the Second Court Date.
- (e) **Court approval:** the Court approves the Scheme in accordance with paragraph 411(4)(b) of the Corporations Act.
- (f) **No Prescribed Occurrence:** no Prescribed Occurrence occurs between (and including) the date of this deed and 8.00am on the Second Court Date (subject to clause 3.2(i)).
- (g) **No Material Adverse Change:** no Material Adverse Change occurs between the date of this deed and 8:00am on the Second Court Date (subject to clause 3.2(i)).

### 3.2 Reasonable endeavours

- (a) Target must, to the extent it is within its power to do so, use reasonable endeavours to procure that the Conditions Precedent in clauses 3.1(f) (*No Prescribed Occurrence*) and 3.1(g) (*no Material Adverse Change*) are satisfied as soon as practicable after the date of this deed and continues to be satisfied at all times until the last time that the relevant clause provides that such Condition Precedent is to be satisfied.
- (b) Bidder must, to the extent it is within its power to do so, use reasonable endeavours to procure that the Condition Precedent in clause 3.1(a) (*FIRB approval*) is satisfied as soon as practicable after the date of this deed and continue to be satisfied at all times until the last time that the relevant clause provides that such Condition Precedent is to be satisfied.
- (c) Each party must, to the extent it is within their power to do so, use its reasonable endeavours to procure that:
- (i) each of the Conditions Precedent in clauses 3.1(c) (*Shareholder approval*), 3.1(d) (*Independent Expert*) and 3.1(e) (*Court Approval*) is satisfied by taking the steps required by under clause 5;
  - (ii) the Condition Precedent in clause 3.1(b) (*Restraints*) is not triggered; and
  - (iii) there is no occurrence within its control or the control of any of its Subsidiaries that would prevent any of the Conditions Precedent being or remaining satisfied.
- (d) Without limiting this clause 3.2, Bidder must:
- (i) to the extent to which it has not done so, promptly and in any event within 10 Business Days after the date of this deed apply for the Regulatory Approval and provide to Target a copy of the application;
  - (ii) take all steps reasonably required, and for which it is responsible for, under the Regulatory Approval process, including responding to requests for information from the relevant Government Agencies at the earliest practicable time;
  - (iii) keep Target reasonably informed of progress in relation to the Regulatory Approval (including in relation to any matters raised by, or conditions or other arrangements proposed by the relevant Government Agencies);
  - (iv) provide Target with all information reasonably requested by Target in connection with the application for, and progress of, the Regulatory Approval;
- provided that:
- (v) Bidder may withhold or redact information or documents from Target if and to the extent that they are either confidential to a third party or commercially sensitive and confidential to Bidder Group Member; and
  - (vi) Bidder is not required to disclose materially commercially sensitive information to Target.
- (e) Without limiting this clause 3.2, Bidder must offer, agree or accept any:

- (i) conditions or undertakings consistent with the form of tax conditions published by or on behalf of the Foreign Investment Review Board (**FIRB**) prior to the date of this deed in items 1 to 6 in section D of FIRB's guidance note 12 on 'Tax Conditions' (in the form last updated on 9 July 2021); and
- (ii) any other conditions of a kind customarily imposed by FIRB (prior to the date of this deed) on transactions of a similar nature involving similar assets to the assets of the Target Group, unless such conditions or undertakings would have a material impact on the business and/or operations of Target, or a material impact on the governance arrangements of the Target Group,

in each case, promptly and within a reasonable period of time after such conditions or undertakings are imposed, required or requested.

- (f) Target must provide Bidder with all information that Bidder reasonably requests in connection with an application for a Regulatory Approval, but is not required to disclose materially commercially sensitive information to Bidder.
- (g) For the avoidance of doubt, Target will not be in breach of its obligations to use reasonable endeavours under clause 3.2(a) and 3.2(c) to the extent that it takes an action or omits to take an action:
  - (i) as required or expressly permitted to be done or expressly permitted not to be done, by this deed;
  - (ii) in connection with an actual, proposed or potential Competing Proposal as permitted by clause 11;
  - (iii) which is Fairly Disclosed in the Disclosure Materials;
  - (iv) which has been publicly disclosed to ASX by Target prior to the date of this deed; or
  - (v) which has been consented to in writing by Bidder (such consent not to be unreasonably withheld or delayed).
- (h) In respect of the Condition Precedent in clause 3.1(b) (*Restraints*):
  - (i) Bidder and Target must each use their best endeavours to challenge or otherwise seek to release or overturn the applicable law, rule, regulation, restraining order, preliminary or permanent injunction or other preliminary or final decision, order or decree prior to 8.00am on the Second Court Date; and
  - (ii) if any restraint contemplated in the Condition Precedent in clause 3.1(b) (*Restraints*) is in effect at 5.00pm on the Business Day prior to the Second Court Date, Bidder and Target shall consult with each other (each acting reasonably and in good faith) to consider delaying the Second Court Date and, if applicable, extend the End Date in order to facilitate the satisfaction of the Condition Precedent in clause 3.1(b) (*Restraints*).
- (i) In respect of the Conditions Precedent in clause 3.1(f) (*No Prescribed Occurrence*) and clause 3.1(g) (*no Material Adverse Change*) if:
  - (i) a Prescribed Occurrence occurs between (and including) the date of this deed and 8.00am on the Second Court Date, the Condition Precedent in

clause 3.1(f) (*No Prescribed Occurrence*) will not be taken to have been breached or not satisfied; or

- (ii) a Material Adverse Change occurs between (and including) the date of this deed and 8.00am on the Second Court Date, the Condition Precedent in clause 3.1(g) (*no Material Adverse Change*) will not be taken to have been breached or not satisfied,

unless:

- (iii) either party has given, or should have given, written notice to the other party in accordance with clause 3.5, setting out the relevant circumstances of the breach; and
- (iv) Target has failed to remedy the breach within 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which such notice is given (or should have been given).

### 3.3 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a) (*FIRB approval*), 3.1(c) (*Shareholder approval*) and 3.1(e) (*Court approval*) cannot be waived.
- (b) The Conditions Precedent in clause 3.1(f) (*No Prescribed Occurrence*) and 3.1(g) (*no Material Adverse Change*) are for the sole benefit of Bidder and may only be waived by Bidder (in its absolute discretion) in writing.
- (c) The Conditions Precedent in clause 3.1(d) (*Independent Expert*) is for the sole benefit of Target and may only be waived by Target (in its absolute discretion) in writing.
- (d) The Condition Precedent in clause 3.1(b) (*Restraints*) is for the benefit of both Target and Bidder and may only be waived by written agreement between them.
- (e) Waiver of a breach or non-satisfaction in respect of one Condition Precedent does not constitute:
  - (i) a waiver of breach or non-satisfaction of any other Condition Precedent resulting from the same event; or
  - (ii) a waiver of breach or non-satisfaction of that Condition Precedent resulting from any other event.

### 3.4 Termination on failure of Conditions Precedent

- (a) If there is an event or occurrence that would, does or will prevent any of the Conditions Precedent being satisfied (including, for the avoidance of doubt, if Target Shareholders do not approve the Scheme at the Scheme Meeting by the requisite majorities), or if any of the Conditions Precedent become incapable of being satisfied, by the earlier of:
  - (i) the time and date specified in this deed for the satisfaction of that Condition Precedent; and
  - (ii) the End Date,
 or such Condition Precedent is otherwise not satisfied by that specified time and date or by the End Date (as applicable), and the breach or non-fulfilment of the relevant Condition Precedent that has occurred or would otherwise occur has not

been or cannot be waived in accordance with clause 3.3, or the Scheme has not otherwise become Effective on the End Date, then Target may give Bidder or Bidder may give Target written notice (**Consultation Notice**) requiring Target and Bidder to consult in good faith to:

- (iii) consider and, if agreed, determine, whether the Transaction may proceed by way of alternative means or methods, or whether, in the case of a breach of the Condition Precedent in clauses 3.1(f) (*No Prescribed Occurrence*) or 3.1(g) (*no Material Adverse Change*), the breach is still reasonably capable of being remedied before the expiry of the period in clause 3.2(i)(iv);
- (iv) 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, unless there is no reasonable prospect that the Condition Precedent will be satisfied before the End Date; or
- (v) consider extending and, if agreed, extend, the time and date specified in this deed for the satisfaction of that Condition Precedent and/or the End Date (as applicable),

respectively.

- (b) Subject to clauses 3.4(c) and 3.4(d), if Target and Bidder are unable to reach agreement under clause 3.4(a) within the earlier of 5 Business Days after the date on which the Consultation Notice is given and any shorter period ending at 5:00pm on the day before the Second Court Date, then, unless:
  - (i) the relevant Condition Precedent has been waived in accordance with clause 3.3; or
  - (ii) the party, or in the case of clause 3.3(d), each party, entitled to waive the relevant Condition Precedent in accordance with clause 3.3 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 Precedent from being satisfied, or would mean the relevant Condition Precedent would or will not otherwise be satisfied,

either Target or Bidder may terminate this deed without any liability to the other because of that termination (in which case, for the avoidance of doubt, clause 14.4 applies). For the avoidance of doubt, nothing in this clause 3.4(b) affects the obligation of the Target to pay the Break Fee if it is required to do so under clause 12, or the obligation of the Bidder to pay the Reverse Break Fee if it is required to do so under clause 13.

- (c) A party may not terminate this deed pursuant to clause 3.4(b) if:
  - (i) the relevant occurrence or event, the failure of the Condition Precedent to be satisfied, or the failure of the Scheme to become Effective, arises out of a breach of clauses 3.2 or 3.5 by that party, although in such circumstances the other party may still terminate this deed; or
  - (ii) the relevant Condition Precedent is stated in clause 3.3 to be for the sole benefit of the other party.
- (d) If the Condition Precedent in clause 3.1(c) (*Shareholder Approval*) is not satisfied only because of a failure to obtain the majority required by sub-subparagraph 411(4)(a)(ii)(A) of the Corporations Act, then either Target or Bidder may by written notice to the other within 5 Business Days after the date of the conclusion of the



Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that sub-subparagraph, provided the party has, in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable (including, but not limited to, because the relevant party considers (acting reasonably) that the splitting by one or more Target Shareholders of a holding of Target Shares into two or more parcels of Target Shares (whether or not it results in any change in beneficial ownership of the Target Shares) or some other abusive or improper conduct may have caused or contributed to the majority required by sub-subparagraph 411(4)(a)(ii)(A) of the Corporations Act not having been obtained). If such a notice is given, Target must make such submissions to the Court and file such evidence as counsel engaged by Target to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under sub-subparagraph 411(4)(a)(ii)(A) of the Act. If the Court's approval is given, the Condition Precedent in clause 3.1(c) (*Shareholder Approval*) is deemed to be satisfied for all purposes.

### **3.5 Certain notices relating to Conditions Precedent**

If a party becomes aware of:

- (a) the satisfaction of a Condition Precedent or of any material progress towards such satisfaction; or
- (b) the happening of an event or occurrence that would, does, will, or would reasonably be likely to:
  - (i) prevent a Condition Precedent being satisfied; or
  - (ii) mean that any Condition Precedent will not otherwise be satisfied,

before the time and date specified for its satisfaction (or being satisfied by the End Date, if no such time and date is specified) or such Condition Precedent is not otherwise satisfied by that time and date (including, for the avoidance of doubt, if Target Shareholders do not approve the Scheme at the Scheme Meeting by the requisite majorities),

it must promptly (and, in the case of clause 3.5(b), within 2 Business Days) advise the other party by notice in writing. For the avoidance of doubt, multiple notices may be required under this clause 3.5.

## **4. Transaction steps**

### **4.1 Scheme**

Target must propose the Scheme to Target Shareholders on and subject to the terms of this deed.

### **4.2 No amendment to the Scheme without consent**

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

### **4.3 Scheme Consideration**

- (a) If the Scheme becomes Effective, each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder in accordance with the terms of this deed and the Scheme.

- (b) Subject to the terms of the Scheme, Bidder undertakes and warrants to Target that, in consideration of the transfer to Bidder of each Target Share held by a Scheme Shareholder under the terms of the Scheme, on the Implementation Date, Bidder will accept that transfer and provide, or procure the provision, to each Scheme Shareholder the Scheme Consideration for each Scheme Share in accordance with the terms of this deed and the Scheme.

#### **4.4 Election procedure**

- (a) The Target must provide or procure the provision of an Election Form to each Relevant Shareholder, with the Scheme Booklet that is sent to them.
- (b) Subject to clauses 4.4(c), 4.4(d) and 4.4(e), each of the Relevant Shareholders will be entitled to make an Election. All Elections will take effect in accordance with the Scheme (provided that any Relevant Shareholder who makes an Election is also a Scheme Shareholder).
- (c) For an Election to be valid:
  - (i) the Relevant Shareholder must complete and sign the Election Form in accordance with the terms and conditions of the Election Form, the instructions in the Scheme Booklet, the Scheme and this clause 4.4; and
  - (ii) the Election Form must be received by the Target Registry at the address specified on the Election Form before the Election Time,unless Bidder and Target agree otherwise, in their absolute discretion.
- (d) If a Relevant Shareholder makes an Election, that Election will apply in respect of that percentage (as specified in the Election Form) of the Relevant Shareholder's entire registered holding of Target Shares at the Scheme Record Date, regardless of whether the Relevant Shareholder's holding at the Scheme Record Date is greater or less than the Relevant Shareholder's holding at the time it made its Election, unless Bidder and Target agree otherwise, in their absolute discretion.
- (e) A Relevant Shareholder who makes a valid Election may vary, withdraw or revoke that Election by lodging a replacement Election Form so that it is received by the Target Registry at the address specified on the Election Form before the Election Time. After the Election Time, a valid Election made by a Relevant Shareholder will be irrevocable unless Bidder and Target agree, in their absolute discretion, to the revocation of the Election.
- (f) The Election Form must include the relevant matters set out in the Scheme and must otherwise be in a form agreed by Bidder and Target in writing.

#### **4.5 Determination of Scheme Consideration**

- (a) If a Scheme Shareholder is not a Relevant Shareholder, then the Scheme Consideration applicable for that Scheme Shareholder is the Cash Consideration for each Scheme Share held by the Scheme Shareholder.
- (b) If a Scheme Shareholder is a Relevant Shareholder who has not made a valid Election before the Election Time, then the Scheme Consideration applicable for that Scheme Shareholder is the Cash Consideration per Scheme Share in respect of 100% of the Scheme Shares held by that Relevant Shareholder on the Scheme Record Date.
- (c) If a Scheme Shareholder is a Relevant Shareholder who has made a valid Election before the Election Time, then the Scheme Consideration applicable for that Scheme Shareholder for the Scheme Shares held by the Scheme Shareholder is:

- (i) the Scrip Consideration per Scheme Share in respect of the Scheme Shares held by the Relevant Shareholder for which the Relevant Shareholder has elected (in the Election Form) to receive the Scrip Consideration; *plus*
- (ii) the Cash Consideration per Scheme Share in respect of the Scheme Shares held by the Relevant Shareholder for which the Relevant Shareholder has elected (in the Election Form) to receive the Cash Consideration.

#### 4.6 TopCo Securities

Bidder undertakes in favour of Target (in its own right and on behalf of each Relevant Shareholder) that:

- (a) the TopCo Securities issued as Scrip Consideration will, on their issue, rank equally in all respects with all other TopCo Securities in the same class; and
- (b) on issue, each TopCo Securities will be fully paid and free from any Encumbrance.

#### 4.7 Fractional entitlements

Where the calculation of the Scheme Consideration to be issued to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent or a fractional entitlement to a TopCo Security, the fractional entitlement will:

- (a) in the case of TopCo Security, be rounded down to the nearest whole number of TopCo Security; and
- (b) in the case of Cash Consideration, be rounded up to the nearest whole cent.

#### 4.8 Distributions and dividends

- (a) The Bidder acknowledges and agrees that the Target may (in its absolute discretion) declare and pay a special dividend of an amount up to \$0.11 per Target Share (**Permitted Dividend**) to the Target Shareholders, provided that:
  - (i) the Permitted Dividend must be paid in cash;
  - (ii) the Permitted Dividend must be declared and paid no later than the Implementation Date;
  - (iii) the Target Group's franking account must not be in deficit at any time after the payment of the Permitted Dividend up to and including the Implementation Date;
  - (iv) Permitted Dividend does not breach the Benchmark Franking Rule of section 203-205 of the *Income Tax Assessment Act 1997* (Cth);
  - (v) the record date of the Permitted Dividend must be a date before the Scheme Record Date; and
  - (vi) the Permitted Dividend must comply with the Corporations Act.
- (b) In the event that the Target Shareholders become entitled to any dividends, distributions or return of capital in relation to each Target Share on or before the Implementation Date (including the Permitted Dividend), the Cash Consideration will be reduced by the cash amount of the relevant dividend, distribution or return of capital.

- (c) The Bidder agrees that it will provide the Target with all reasonable assistance requested by the Target as may be required in order to declare and pay any such Permitted Dividend in compliance with the Corporations Act and any applicable Tax laws including complying with its obligations under clause 4.9.
- (d) For the avoidance of doubt nothing in this clause 4.8 limits or otherwise affects the Target's obligations under clause 3.2(a) or the definition of Prescribed Occurrence.

#### 4.9 Funding of Permitted Dividend

- (a) Bidder agrees that, if Target decides to pay and pays a Permitted Dividend in accordance with clause 4.8(a), Bidder will, subject to (i) the Scheme becoming Effective; and (ii) the approval of Target Shareholders pursuant to section 260B of the Corporations Act unless the Target Board resolves that the relevant financial assistance does not materially prejudice the Target's ability to pay its creditors and is in the interests of the Target and its shareholders, either:
  - (i) provide an unsecured, interest free loan to Target in an amount equal to the aggregate cash amount of the Permitted Dividend, that is subordinated to Target's existing debt facilities; or
  - (ii) advance the Target the proportion of the Scheme Consideration equal to the aggregate cash amount of the Permitted Dividend,
 unless Bidder and Target agree otherwise, in their absolute discretion (**Dividend Funds**).
- (b) The Dividend Funds provided pursuant to clause 4.9(a) must be paid by Bidder to Target at least one Business Day prior to the payment for the Permitted Dividend on the Implementation Date.
- (c) Bidder's obligation to make the payment referred to in clause 4.9(b) will be satisfied by the payment of the relevant amount in immediately available funds to the account nominated by Target for the purpose of this clause.

#### 4.10 The Consortium

- (a) A new Consortium Member (**New Consortium Member**) may be added to the Consortium Members as at the date of this deed:
  - (i) if all of the Consent Conditions are satisfied in respect of the New Consortium Member; and
  - (ii) with the prior written consent of the Target, such consent not to be unreasonably withheld during the Consent Period. Without limiting the circumstances where it will be reasonable to withhold such consent, the Target may withhold its consent where, in good faith and after consulting with its legal advisers, it considers that the New Consortium Member would be likely to result in FIRB approval not being obtained, being obtained on conditions likely to be unacceptable to the Bidder or materially delayed, or otherwise materially delay the Transaction.
- (b) For the purposes of this clause 4.10:
  - (i) **Consent Conditions** means all of the following conditions:
    - A. the New Consortium Member is not a competitor or a potential competitor of the Target;

- B. the New Consortium Member enters into a binding equity commitment letter addressed to the Bidder and the Target in substantially the same form as other Equity Commitment Letters (in which case the total amounts committed under the Equity Commitment Letters and the new equity commitment letter must remain the same as the total amounts committed under the Equity Commitment Letters as at the date of this deed and the Equity Commitment Letters may be so amended);
  - C. the New Consortium Member solely relies on the due diligence reports prepared prior to the date of this deed by or for the benefit of the Bidder Group or any debt or equity financier of the Bidder Group in respect of the Target Group in connection with the Transaction (including any such legal, financial, accounting, tax or compliance due diligence report) and does not require any amendments to this deed, the Scheme or the Deed Poll; and
  - D. if reasonably requested by the Target, the New Consortium Member has provided evidence to the satisfaction of the Target (acting reasonably) of its financing standing and solvency;
- (ii) **Consent Period** means the period on and from the date of this deed to the date that is 20 Business Days after the date of this deed.
- (c) The parties acknowledge that the New Consortium Member will indirectly participate in the Transaction.

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## 5. Implementation

### 5.1 Timetable

- (a) Subject to clause 5.1(b), without limiting the parties' respective obligations under this clause 5, the parties must each use all reasonable endeavours to commit necessary resources (including management and the resources of external advisers) and ensure that their respective officers and advisers work in good faith and in a timely and cooperative fashion with the other party (including by attending meetings and by providing information) to produce the Scheme Booklet and implement the Scheme in accordance with the Timetable, subject to the terms and conditions of this deed.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 5.1(a) to the extent that such failure is due to circumstances and matters outside the party's control or due to Target taking or omitting to take any action in connection with an actual, proposed or potential Competing Proposal as permitted by clause 11.
- (c) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control, the parties will consult in good faith to agree any necessary extension to ensure such matters are completed within the shortest possible timeframe.

## 5.2 Target's obligations

Subject to any change of recommendation by the Target Board as permitted by clause 7.1, Target must take all necessary steps to implement the Scheme as soon as is reasonably practicable in accordance with the Timetable, including each of the following:

- (a) **(Preparation of Scheme Booklet)** subject to clauses 5.3(a) and 5.3(b), prepare and dispatch the Scheme Booklet in accordance with all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60 and the Listing Rules;
- (b) **(Target Board's recommendation)** include in the Scheme Booklet a statement by the Target Board:
  - (i) unanimously recommending that Target Shareholders vote in favour of the Scheme in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Target Shareholders; and
  - (ii) that each Target Director will (in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Target Shareholders) vote, or procure the voting of, any Target Shares held or controlled by them or held on their behalf at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting,

unless there has been a withdrawal, change, modification or qualification of recommendation permitted by clause 7.1;

- (c) **(Paragraph 411(17)(b) statement)** apply to ASIC for the production of:
  - (i) an indication of intent letter stating that it does not intend to appear before the Court on the First Court Date; and
  - (ii) a statement under paragraph 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (d) **(Court direction)** apply to the Court for orders pursuant to subsection 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;
- (e) **(Scheme Meeting)** convene the Scheme Meeting to seek Target Shareholders' agreement to the Scheme in accordance with the orders made by the Court pursuant to subsection 411(1) of the Corporations Act;
- (f) **(Court documents)** prepare and consult with Bidder in relation to the content of the documents required for the purpose of each of the Court hearings held for the purpose of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith comments on and suggested amendments to those documents from Bidder and its Related Persons;
- (g) **(Court approval)** (subject to all Conditions Precedent in clause 3.1, other than the Condition Precedent in clause 3.1(e) (*Court approval*), being satisfied or waived in accordance with this deed) apply to the Court for orders approving the Scheme as agreed to by the Target Shareholders at the Scheme Meeting;
- (h) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(e) (*Court approval*)) have been satisfied or waived in accordance with this deed.

A draft of such certificate must be provided by Target to Bidder by 4.00pm on the date that is 2 Business Days prior to the Second Court Date;

- (i) **(Lodge copy of Court order)** if the Court approves the Scheme, lodge with ASIC an office copy of the Court order in accordance with subsection 411(10) of the Corporations Act approving the Scheme by no later than the Business Day after the date on which the Court order was made (or such later date as agreed in writing by Bidder);
- (j) **(Transfer and registration)** if the Scheme becomes Effective and subject to Bidder having provided the Scheme Consideration in accordance with the Scheme and Deed Poll:
  - (i) execute, on behalf of Scheme Shareholders, instruments of transfer of Target Shares held by Scheme Shareholders to Bidder; and
  - (ii) register all transfers of Target Shares held by Scheme Shareholders to Bidder on the Implementation Date;
- (k) **(Consultation with Bidder in relation to Scheme Booklet)** consult with Bidder as to the content and presentation of the Scheme Booklet including:
  - (i) providing to Bidder drafts of the Scheme Booklet and the Independent Expert's Report (excluding the valuation section) for the purpose of enabling Bidder to review and comment on those draft documents, provided that, in relation to the Independent Expert's Report, Bidder's review is to be limited to a factual accuracy review;
  - (ii) taking all timely and reasonable comments made by Bidder into account in good faith when producing a revised draft of the Scheme Booklet;
  - (iii) providing to Bidder a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable Bidder to review the Regulator's Draft before the date of its submission; and
  - (iv) obtaining written consent from Bidder for the form and content in which the Bidder Information appears in the Scheme Booklet (such consent must not unreasonably withheld or delayed by Bidder);
- (l) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Target Information;
- (m) **(Lodgement of Regulator's Draft)** no later than 14 days before the First Court Date, provide the Regulator's Draft to ASIC for its review for the purposes of subsection 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to Bidder as soon as practicable thereafter;
- (n) **(ASIC and ASX review of Scheme Booklet)** keep Bidder informed of any material matters raised by ASIC or ASX in relation to the Scheme Booklet or the Transaction, and use reasonable endeavours to take into consideration any reasonable comments made by Bidder in relation to such matters raised by ASIC or ASX;
- (o) **(Representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (p) **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by them in connection with the

preparation of the Independent Expert's Report for inclusion in the Scheme Booklet (including any updates to such report) and any other materials to be prepared by them for inclusion in the Scheme Booklet (including any updates thereto);

- (q) **(Compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations;
- (r) **(Listing)** subject to clause 5.2(t), not do anything to cause Target Shares to cease being quoted on ASX or to become permanently suspended from quotation until at least one day after the implementation of the Transaction, unless Bidder has agreed in writing;
- (s) **(Update Scheme Booklet)** until the date of the Scheme Meeting, promptly update the Scheme Booklet with, or where appropriate otherwise inform the market by way of announcement of, any information that arises after the Scheme Booklet has been dispatched that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement. Target must consult with the Bidder as to the content and presentation of the updated or supplementary Scheme Booklet, or the market announcement, in the manner contemplated by clause 5.3(k);
- (t) **(Implementation)** if the Scheme becomes Effective:
  - (i) apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date; and
  - (ii) finalise and close the Target Share Register as at the Scheme Record Date, and determine entitlements to the Scheme Consideration, in accordance with the Scheme and the Deed Poll; and
- (u) **(Class Ruling)** seek a Class Ruling from the Commissioner of Taxation prior to the Effective Date for the purposes of Division 358 of Schedule 1 to the Taxation Administration Act 1953 (and procure that the Class Ruling is finalised and published as soon as reasonably practicable after the Implementation Date) in relation to the income tax consequences for Scheme Shareholders and Relevant Shareholders arising from the Scheme, including the treatment of any Permitted Dividend paid. The Target must provide the Bidder's tax advisors with a draft of the application for the Class Ruling and take all reasonable comments made by the Bidder's tax advisors into account in good faith prior to submitting the application to the Commissioner of Taxation. The Target must also keep the Bidder reasonably updated on the progress of the application and reasonably informed of any matters raised by the Australian Taxation Office in relation to the application.

### 5.3 Bidder's obligations

Bidder must take all necessary steps to implement the Scheme as soon as is reasonably practicable in accordance with the Timetable, including doing each of the following:

- (a) **(Bidder Information)** prepare and promptly provide to Target the Bidder Information for inclusion in the Scheme Booklet, including all information regarding the Bidder Group and the Scheme Consideration, required by all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60, applicable Takeovers Panel guidance notes and the Listing Rules, which will include, if requested by Target, a summary of the material terms of any proposed shareholders agreement or other relevant terms to be entered into by Relevant Shareholders in connection with the Scrip Consideration to the extent contained in or attached or referred to in an Election Form, and consent to the inclusion of that information in the Scheme Booklet (such consent must not be unreasonably withheld or delayed);



- (b) **(Review of Scheme Booklet)** review the drafts of the Scheme Booklet prepared by Target and provide comments on those drafts promptly and in good faith;
- (c) **(Independent Expert's Report)** provide any assistance or information reasonably requested by Target or by the Independent Expert in connection with the preparation of the Independent Expert's Report to be sent together with the Scheme Booklet (including any updates to such report) and any other materials to be prepared by the Independent Expert for inclusion in the Scheme Booklet (including any updates thereto);
- (d) **(Representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (e) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Bidder Information;
- (f) **(Deed Poll)** by no later than the Business Day prior to the First Court Date, execute and deliver to Target the Deed Poll;
- (g) **(Share transfer)** if the Scheme becomes Effective:
  - (i) accept a transfer of the Scheme Shares as contemplated by clause 4.3(b); and
  - (ii) execute instruments of transfer in respect of the Scheme Shares;
- (h) **(Scheme Consideration)** if the Scheme becomes Effective, provide the Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Scheme and the Deed Poll;
- (i) **(Certificate)** before the commencement of the hearing on the Second Court Date provide to Target for provision to the Court at that hearing a certificate (signed for and on behalf of Bidder) confirming whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(e)) have been satisfied or waived in accordance with this deed, a draft of which certificate must be provided by Bidder to Target by 4.00pm on the date that is 2 Business Days prior to the Second Court Date;
- (j) **(Financing)** Bidder must:
  - (i) at all times between the date of this deed and 8.00am on the Second Court Date, ensure it has a reasonable basis to expect that Bidder will have available to it sufficient cash amounts (whether from internal cash reserves or external funding) to satisfy Bidder's obligations to provide the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;
  - (ii) by 8.00am on the Second Court Date, ensure Bidder has available to it on an unconditional basis (other than conditions related to the Court approval or other procedural matters which, by their nature, can only be satisfied or performed after the Second Court Date) sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including debt and equity financing, or a combination of both) to satisfy Bidder's obligations to provide the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;
- (k) **(Update Bidder Information)** until the date of the Scheme Meeting, promptly provide to Target any information that arises after the Scheme Booklet has been

dispatched that is necessary to ensure that the Bidder Information contained in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement; and

- (l) **(Compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations.

## 5.4 Conduct of Court proceedings

In respect of Court proceedings under Part 5.1 of the Corporations Act:

- (a) Target and Bidder are entitled to separate representation at such Court proceedings;
- (b) this deed does not give Target or Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent; and
- (c) Target and Bidder must give all undertakings to the Court in such Court proceedings which are reasonably required to obtain Court approval and confirmation of the Transaction as contemplated by this deed.

## 5.5 Scheme Booklet content and responsibility statements

- (a) The Scheme Booklet will contain a responsibility statement to the effect that:
  - (i) Bidder is responsible for the Bidder Information contained in the Scheme Booklet;
  - (ii) Target is responsible for the Target Information contained in the Scheme Booklet; and
  - (iii) the Independent Expert is responsible for the Independent Expert's Report, and none of Target, Bidder or their respective directors or officers assumes any responsibility for the accuracy or completeness of the Independent Expert's Report.
- (b) If Target and Bidder disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If after 5 Business Days of consultation, Target and Bidder are unable to agree on the form or content of the Scheme Booklet:
  - (i) where the determination relates to Bidder Information, Bidder will make the final determination, acting reasonably, as to the form and content of the Bidder Information; and
  - (ii) in any other case, the final determination as to the form and content of the Scheme Booklet will be made by Target, acting reasonably, provided that, if the Bidder disagrees with such final form and content, the Target must include a statement to that effect in the Scheme Booklet.

## 5.6 Reconstitution of Target Board

Target must, as soon as practicable on the Implementation Date, after the Scheme Consideration has been paid by the Bidder in accordance with the Scheme, take all reasonable steps to:

- (a) cause the appointment of the nominees of Bidder to the Target Board subject to those persons being appointed having provided to Target duly executed consents to act as directors of the Target Board;

- (b) procure that all directors on the Target Board specified in writing by Bidder (not less than 3 Business Days before the Implementation Date):
  - (i) resign; and
  - (ii) unconditionally and irrevocably release Target Group from any claims they may have against Target Group; and
- (c) procure that all directors on the boards of Target's Subsidiaries specified in writing by Bidder (not less than 3 Business Days before the Implementation Date):
  - (i) resign or are removed; and
  - (ii) to the extent it reasonably can, unconditionally and irrevocably release Target and its Subsidiaries from any claims they may have against any of them,

and to cause the appointment of nominees of Bidder to those boards,

in each case subject to the requirements of the relevant company's constitution the Corporations Act and the Listing Rules.

## 5.7 Target Equity Incentives

- (a) Subject to any side letter between Target and Bidder entered into on or prior to the date of this deed, the Target confirms and Bidder acknowledges that subject to the Scheme becoming Effective, Target will take such action as is necessary to ensure that, prior to the Scheme Record Date, all Target Equity Incentives will vest in accordance with their terms and be exercised (if applicable), have any applicable restrictions removed (if applicable) and/or be cash settled, which actions may include:
  - (i) the Target Board accelerating the vesting of, or waiving any vesting conditions or vesting periods applying to, any or all Target Equity Incentives (subject to the proper exercise of the Target Board's discretion);
  - (ii) Target making all necessary applications to the ASX for waivers under the Listing Rules (if required);
  - (iii) Target issuing or procuring the issue or transfer of such number of Target Shares as required by the terms of the Target Equity Incentives before the Scheme Record Date so that the holders of Target Equity Incentives can participate as Scheme Shareholders in the Scheme and receive the Scheme Consideration; or
  - (iv) Target arranging for the cash settlement of applicable Target Equity Incentives.
- (b) The Target must notify the Bidder of the number of Target Shares that have or will be issued in accordance with clause 5.7(a) (if any), by no later than two Business Day before the Effective Date.
- (c) For the avoidance of doubt, the parties agree that the exercise of any discretion by the Target Board, or any other action, which is in accordance with this clause 5.7 will not be a Material Adverse Change or a Prescribed Occurrence or a breach of any provision of this deed, or give rise to any right to terminate this deed, and will be disregarded when assessing the operation of any other part of this deed.

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## 6. Conduct of business

### 6.1 Conduct of Target's business

- (a) Subject to clause 6.1(b), from the date of this deed up to and including the Implementation Date, Target must:
- (i) procure that each member of the Target Group conducts its business and operations in the ordinary and usual course and substantially consistent with the manner in which it is conducted in the 12 month period prior to the date of this deed and in accordance with all applicable laws, regulations and regulatory approvals in all material respects;
  - (ii) keep the Bidder reasonably informed of any material developments concerning the conduct of its business;
  - (iii) provide a copy to the Bidder, as soon as practicable after they are available, of:
    - A. monthly management accounts in the same form as disclosed in the Data Room at document number 03.08.01; and
    - B. all board papers of the Board, provided that the Target may redact any part of the relevant board papers which contain or constitute competitively sensitive or privileged information relating to the existing business or affairs of the Target;
  - (iv) maintain(s) (and, where necessary, use reasonable efforts to renew) the material policies of insurance held by the Target Group to insure any material risk of the Target Group that are in force as at the date of this deed and promptly notify Bidder if any renewal proposal is not accepted by the relevant insurer;
  - (v) ensure that no member of the Target Group (without the prior written consent of Bidder, such consent not to be unreasonably withheld or delayed):
    - A. **(acquisitions and disposals)** acquires, leases, licenses or disposes of any business, assets, property, entity or undertaking (whether by way of a single transaction or series of related transactions), the value of which exceeds \$5,000,000 (individually or in aggregate) other than the Approved Disposal in accordance with the terms of such disposal Fairly Disclosed in the Disclosure Material (and, for the avoidance of doubt, the Proposed Acquisition will require the consent of Bidder);
    - B. **(material contracts)** enters into any contract or commitment (or series of related contracts or commitments), or materially varies or terminates any contract or commitment (or series of related contracts or commitments) in existence at the date of this deed (excluding any contract or commitment in respect of Financial Indebtedness)
      - 1) requiring annual payments by the Target Group in excess of \$1,000,000; or
      - 2) that generates, or is expected to generate, in each case, \$5,000,000 or more in gross annual revenue for the Target Group;

- C. **(disputes)** commences, compromises, settles or offers to settle any legal proceedings, claim, investigation, arbitration or like proceeding (or series of related legal proceedings, claims, investigations, arbitrations or like proceedings), including any tax claims, investigation or dispute, where the claimed or settlement amount (or, in the case of a series of related legal proceedings, claims, investigations, arbitrations or like proceedings, aggregate claimed or settlement amount) is in excess of \$1,000,000, other than as claimant in respect of the collection of trade debts arising in the ordinary course of the Target Group's business;
- D. **(financing)** enters into any new contract or commitment (or series of related contracts or commitments), or materially varies or terminates any contract or commitment (or series of related contracts or commitments) in existence at the date of this deed, in respect of Financial Indebtedness, or otherwise incurring Financial Indebtedness, of an amount in excess of \$5 million (individually or in aggregate) other than in respect of any payment required by law;
- E. **(accounting)** changes any accounting method, practice or principle used by it, other than as a result of changes in generally accepted accounting standards or generally accepted accounting principles;
- F. **(employees)** enters into any new employment or service agreement (other than for the purposes of replacing an existing agreement or arrangement on a materially consistent basis), or materially varies or terminates any employment or service agreement in existence at the date of this deed with an individual in respect of which the total fixed remuneration is greater than \$250,000;
- G. **(remuneration, compensation and benefits):**
- 1) materially increases the remuneration, compensation or benefits of, or pays any bonus or issues any securities to, or otherwise materially varies the employment arrangements with: (A) any of its directors, officers or other members of the executive leadership team or any direct reports of such person (**Relevant Employee**); or (B) any employee where the aggregate cost of such increases, bonuses or issues of securities, or variations is greater than \$500,000;
  - 2) accelerates the rights of any of its Relevant Employees to compensation or benefits of any kind (other than any vesting of Target Equity Incentives granted by Target before the date of this deed in accordance with its terms); or
  - 3) pays or agrees to pay a Relevant Employee a termination payment (including a 'golden parachute'),  
  
other than:  
  
4) in the ordinary course of the Target Group's business;

- 5) the payment of bonuses to Relevant Employees as provided for in the short term, deferred or long term incentive plans, the employment terms or any other contractual entitlement of that Relevant Employee in existence as at the date of this deed and Fairly Disclosed in the Disclosure Materials, provided that the aggregate of the bonuses paid to such individuals are no greater than \$2 million (including, for the avoidance of doubt, any amounts under sub-paragraph 8) below);
  - 6) as provided for in Target's redundancy policy as at the date of this deed or an employment or services agreement in existence as at the date of this deed as Fairly Disclosed in the Disclosure Materials; or
  - 7) in connection with any action which is undertaken or which otherwise occurs in accordance with clause 5.7; and
  - 8) as provided for in any side letter between Target and Bidder on or prior to the date of this deed;
- H. **(Tax elections)** makes any material Tax elections or changes any material Tax methodologies applied by it in the 12 months prior to the date of this deed;
- I. **(related party transactions)** enters into, or resolves to enter into, a transaction with a related party of Target, including giving or agreeing to give a financial benefit to a related party (other than a related party that is a Target Group Member) as defined in section 228 of the Corporations Act;
- J. **(Third Party defaults)** waives any Third Party default where the financial impact of the waiver on the Target Group as a whole will, or is reasonably likely to be, in excess of \$100,000 (individually or in aggregate);
- K. **(Capex)** agreeing to incur or incurring capital expenditure of more than \$1,000,000 (individually or in aggregate), other than as set out in the Target Group's capex budget for the relevant period up to and including the End Date, as Fairly Disclosed in the Capex Budget; or
- L. **(authorisation)** authorises, agrees, commits or resolves to do any of the matters set out above, whether conditionally or otherwise.
- (b) Nothing in clause 6.1(a) restricts the ability of Target (or any Target Group Member) to take or not take any action:
- (i) which is required or expressly permitted by this deed or the Scheme;
  - (ii) which is within the actual knowledge of Bidder as at the date of this deed;
  - (iii) which has been agreed to by Bidder in writing (which agreement must not be unreasonably withheld or delayed) or requested by Bidder in writing;

- (iv) which is required by any applicable law, regulation, generally accepted accounting standards or generally accepted accounting principles, contract (but only to the extent such contract was entered into, and a copy of which was Fairly Disclosed in the Disclosure Materials) or by a Government Agency;
- (v) to reasonably and prudently respond to regulatory or legislative changes (including without limitation changes to subordinate legislation) affecting the business of Target or a Target Group Member to a material extent, provided that, to the extent reasonably practicable, Target has consulted with Bidder in good faith in respect of the proposal to take such action or not take such action (as applicable) and considers any reasonable comments or requests of Bidder in relation to such proposal in good faith;
- (vi) to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property, or a disease epidemic or pandemic, including the outbreak, escalation or any impact of, or recovery from, the Coronavirus or Covid-19 pandemic (or any mutation, variation or derivative thereof)), and including in connection with lockdowns, travel restrictions, quarantining, closures, social distancing and restrictions of and on activities, venues and gatherings, having regard to any applicable recommendations, guidance or directions of a Government Agency and provided that, to the extent reasonably practicable having regard to the nature of the relevant matter, Target has consulted with Bidder in good faith in respect of the proposal to take such action or not take such action (as applicable) and considers any reasonable comments or requests of Bidder in relation to such proposal in good faith;
- (vii) which is Fairly Disclosed in:
  - A. the Disclosure Materials;
  - B. an announcement made by Target or a Target Group Member to the ASX prior to the date of this deed; or
  - C. the Relevant Searches;
- (viii) in connection with a Competing Proposal to the extent permitted by clause 11.

## 6.2 Access to information and management

Between the date of this deed and the Implementation Date, Target must provide to Bidder reasonable access to information, premises and such senior executives of any Target Group Member as reasonably requested by Bidder and at mutually convenient times agreed by Target's chief executive officer (or his delegate), and provide Bidder reasonable co-operation, for the sole purpose of:

- (a) implementation of the Scheme;
- (b) Bidder developing and implementing plans for transition of the businesses of the Target Group to Bidder following implementation of the Scheme;
- (c) the Bidder obtaining an understanding of the operation of the Target Group's business, financial position, prospects, affairs and operations; and
- (d) any other purpose agreed in writing between the parties (each acting reasonably),

provided that:

- (e) nothing in this clause 6.2 will require Target to provide, or procure the provision of, information concerning or in connection with:
  - (i) any Target Director's, the Target Board's (or any sub-committee of the Target Board's) and management's (a **Relevant Person**) consideration of the Scheme or any proposal by Bidder at any time in relation to the acquisition of an interest in Target; or
  - (ii) any actual, proposed or potential Competing Proposal (including a Relevant Person's consideration of any actual, proposed or potential Competing Proposal),

provided that nothing in this clause 6.2(e) limits the obligations of Target under clause 11;
- (f) the provision of information pursuant to this clause 6.2 must not result in unreasonable disruptions to, or interference with, the Target Group's business and day to day operations it being noted that the business of the Target Group will need to continue to operate with requisite management attention;
- (g) Bidder must, and must procure that its representatives, each other Bidder Group Member and their respective representatives:
  - (i) keep all information obtained by it or them as a result of this clause 6.2 confidential in accordance with the terms of the Confidentiality Agreement;
  - (ii) provide Target with reasonable notice of any request for information or access; and
  - (iii) comply with the reasonable requirements of Target in relation to any access granted to personnel or premises; and
- (h) nothing in this clause 6.2:
  - (i) gives Bidder or any other Bidder Group Member any rights to undertake further due diligence investigations, or any rights as to the decision making of any Target Group Member or its business;
  - (ii) will require Target to provide, or procure the provision of, information concerning the Target Group's business that is, in the reasonable opinion of Target, commercially sensitive, including any specific pricing and margin information or customer details; and
  - (iii) will require Target to provide, or procure the provision of, information if to do so would or would be reasonably likely to:
    - A. breach any confidentiality obligation owed to a third party, applicable law, regulatory requirement, authorisation or court order; or
    - B. result in a waiver or loss of legal professional privilege.

### 6.3 Change of control provisions

As soon as practicable after the date of this deed, Target and Bidder must seek to identify any change of control or similar provisions in any material contract to which Target or another Target Group Member is party that would be triggered by the implementation of the Transaction (**Change of Control Requirements**). In respect of those contracts, the parties agree as follows:

- (a) Target and Bidder will, each acting reasonably, agree a proposed course of action to obtain any consents or waivers required in accordance with the terms of any identified Change of Control Requirements and then jointly initiate contact with the relevant counterparties and request that they provide any consents or waivers required. Bidder and its Related Persons must not contact any counterparties for this purpose without



Target being present or without Target's prior written consent (which is not to be unreasonably withheld or delayed).

- (b) Target must cooperate with, and provide reasonable assistance to, Bidder to obtain such consents or waivers as expeditiously as possible, including by promptly providing any information reasonably required by counterparties (but nothing in this clause requires Target to incur material external expense).
- (c) Bidder must take all action reasonably necessary to comply with any requirements of the counterparties that are reasonably required to obtain the relevant consent or waiver, including:
  - (i) providing any information required and entering into such form of guarantee or security as counterparties may reasonably require; and
  - (ii) making officers and employees available where necessary to meet with counterparties to deal with any issues arising in relation to the relevant consent or waiver,

provided that nothing in this clause 6.3 requires the Bidder to: (A) pay any money or to provide any financial compensation, or any other incentive to or for the benefit of the counterparty, other than as provided for in the relevant material contract; or (B) agree to any material changes to the terms of the material contract, in each case to obtain such consent or waiver.

- (d) Provided that Target has complied with this clause 6.3, a failure by a Target Group Member to obtain any third party consent or waiver in respect of a Change of Control Requirement will not, by itself, constitute a breach of this deed by Target and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.

#### 6.4 Existing financing arrangements

- (a) Between the date of this deed and the Implementation Date, Target must provide reasonable assistance requested by Bidder in connection with any repayment of the Target Group's Financial Indebtedness, or otherwise developing a financing strategy for the Target Group's business, that Bidder reasonably requires in connection with the Transaction, including:
  - (i) liaising with its creditors to obtain information on any of the Target Group's Financial Indebtedness or Security Interests granted by any of them;
  - (ii) providing Bidder with information reasonably requested by Bidder in relation to use of existing cash reserves of the Target Group for such purpose;
  - (iii) issuing repayment notices in relation to the Existing Financing; and
  - (iv) using reasonable endeavours to procure discharge of registrations on the PPS Register from secured parties in relation to any Security Interests granted by a Target Group Member in favour of that party.
- (b) Without limiting clause 6.4(a), Target must provide reasonable assistance requested by Bidder in connection with the orderly transition of any existing bank guarantee, letter of credit, performance bond or similar instrument issued to any person at the request or direction of any member of the Target Group (**Instrument**), including:
  - (i) providing details of existing Instruments to Bidder; and
  - (ii) communicating with and providing information to the issuers of the Instruments to facilitate the replacement, cash backing or other

arrangement for the transition of those Instruments in connection with the Transaction.

- (c) Bidder must promptly reimburse Target for all reasonable costs incurred by Target in connection with any cooperation provided under this clause 6.4 (including reasonable advisors' fees and expenses).
- (d) Between the date of this deed and the Implementation Date, the Target must, and must do all things reasonably within its power to procure that each member of the Target Group does, promptly notifies the Bidder if:
  - (i) it requests or grants a waiver or consent in respect of a material provision of Existing Financing, with reasonable detail of the reason for the request;
  - (ii) it becomes aware of a breach of Existing Financing or the occurrence of a Financing Default, together with reasonable information in relation to the Financing Default, event or circumstance giving rise to the breach or Financing Default; or
  - (iii) Target or any Subsidiary of Target enters into, unwinds or closes out any Financial Indebtedness in connection with derivative or similar transactions, including to manage exposure to the fluctuation in the rate or price of currency or interest rates.
- (e) Target must consult in good faith with the Bidder after the date on which a notice is given under clause 6.4(d) to consider and determine the steps that can be taken to avoid, remedy or cure (as the case may be) the relevant Financing Default, and use its best endeavours to avoid the occurrence of, or remedy or cure, any Financing Default.
- (f) The Target must notify the Bidder, no later than 10 Business Days prior to the Implementation Date, of the aggregate amount of cash and cash equivalents (where the terms "cash" and "cash equivalents" are as defined in the Australian Accounting Standards), and the Financial Indebtedness, of the Target Group and, as soon as possible thereafter, the Target and the Bidder must consult and negotiate in good faith to agree and implement steps for the Target Group to apply as much of its cash and cash equivalents as possible (except to the extent required for reasonable working capital requirements) to repay, extinguish, release or otherwise reduce the level of Financial Indebtedness of the Target Group prior to the Implementation Date.

## 6.5 Transaction Financing

- (a) Subject to confidentiality arrangements reasonably acceptable to Target, Target agrees to provide reasonable assistance in connection with the financing commitments set out in the Debt Commitment Letters and the arrangement or syndication of any debt financings by any member of the Bidder Group (**Transaction Financing**) as may be reasonably requested by Bidder in writing, including using reasonable endeavours to:
  - (i) promptly provide any reasonable, pertinent or customary information to the extent reasonably available to the Target Group and reasonably requested by Bidder;
  - (ii) provide any documentation and other information with respect to the Target Group required by financiers or bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, as required to satisfy the conditions of the Transaction Financing;

- (iii) make appropriate officers and employees available at mutually convenient times for participation in a reasonable number of meetings, due diligence sessions, presentations and sessions with ratings agencies and prospective financing sources;
- (iv) promptly provide Bidder and its financing sources (including providing any reasonably requested consent under the Confidentiality Agreement to such disclosure to the Bidder's proposed financing sources) with such financial and operating data and other information with respect to the Target Group as is reasonably requested by Bidder or the financiers in respect of the Transaction Financing;
- (v) cooperate and assist with the preparation of the offering document to be used in obtaining or syndicating the Transaction Financing;
- (vi) cooperate with marketing efforts of Bidder and its financing sources for all or any portion of the Transaction Financing (including by making available such senior executives of Target as reasonably requested by Bidder for conference calls, management presentation sessions, roadshows and similar meetings or presentations); and
- (vii) providing reasonable assistance to Bidder Group to satisfy any conditions and obligations of any financing to the extent it is within its reasonable control,

provided that no Target Group Member will be required to incur any liability in connection with any Transaction Financing (other than remuneration of its employees) prior to implementation of the Scheme that is not indemnified by Bidder.

- (b) Nothing in this clause 6.5 will require Target to do anything to the extent that it would:
  - (i) unreasonably interfere with the ongoing business or operations of Target (having regard to, among other things, the reasonableness of the notice given to Target of any requested assistance or cooperation);
  - (ii) cause any Condition Precedent to not be satisfied or otherwise cause a breach of this deed;
  - (iii) require the approval of shareholders of Target under section 260B of the Corporations Act or an equivalent or analogous restriction in any jurisdiction; or
  - (iv) require any Target Indemnified Party to execute prior to the Scheme becoming Effective any agreements, including any credit or other agreements, pledge or security documents or other certificates, legal opinions or documents in connection with any Debt Financing or Equity Financing.
- (c) Bidder must indemnify Target (in its own right and separately as trustee or nominee for each Target Indemnified Party) and each of the Target Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment, of whatever nature and however arising, suffered or incurred by any of them in connection with any Debt Financing and any information utilised in connection with any Debt Financing, in each case other than remuneration of its employees or to the extent any of the foregoing arises from the fraud or wilful misconduct of, or a breach of this deed by, Target or a Target Indemnified Party.
- (d) Bidder must promptly reimburse Target for all reasonable costs incurred by Target in connection with any cooperation provided under this clause 6.5 or otherwise in

connection with the Debt Commitment Letters (including reasonable advisors' fees and expenses), other than remuneration of its employees.

- (e) The Target must use all reasonable endeavours to facilitate liaison between the Bidder and existing financiers, noteholders, transactional banking and derivative instrument counterparties for the purposes of the Bidder notifying and discussing change of control procedures and post-acquisition financing related matters with those financiers and/or managing the repayment and in the case of transactional banking and ordinary course derivative transactions, at the request of the Bidder, continuation of those counterparties on or after the Implementation Date and the efficient termination (or continuation as the case may be) of their existing financing arrangements with the Target with effect from that time (including as to the release of any existing security held by those counterparties over the Target and/or its Subsidiaries).

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## 7. Recommendation and announcements

### 7.1 Target Board recommendation

- (a) The Target represents and warrants to the Bidder that, as at the date this deed, each Target Board member has confirmed that:
- (i) their recommendation in respect of the Scheme is that the Target Shareholders vote in favour of the Scheme; and
  - (ii) they intend to vote, or cause to be voted, all Target Shares that they hold or control in favour of the Scheme,
- in each case subject to:
- (iii) no Superior Proposal emerging; and
  - (iv) the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of the Target Shareholders.
- (b) Target must use its best endeavours to procure that, subject to clause 7.1(c) the Target Directors unanimously recommend that Target Shareholders vote in favour of the Scheme at the Scheme Meeting in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (or any update of, or any revision, amendment or supplement to, the Independent Expert's Report) that the Scheme is in the best interests of Target Shareholders (**Recommendation**) and that the Scheme Booklet include a statement by the Target Board to that effect.
- (c) Target must use its best endeavours to procure that the Target Board collectively, and the Target Directors individually, do not adversely change, withdraw, adversely modify or adversely qualify (including by making any public statement supporting, endorsing or recommending a Competing Proposal and/or to the effect that she or he no longer supports the Scheme), its or their Recommendation unless:
- (i) the Independent Expert concludes in the Independent Expert's Report (or any update of, or any revision, amendment or supplement to, that report) that the Scheme is not in the best interests of Target Shareholders;
  - (ii) Target has received a Competing Proposal and the Target Board has determined, after the procedure in clause 11.7 has been complied with, that the Competing Proposal constitutes a Superior Proposal;

- (iii) the adverse change, withdrawal, adverse modification or adverse qualification in a respect of a Target Director occurs because of a requirement by a court of competent jurisdiction or ASIC or the Takeovers Panel that the relevant Target Director abstains or withdraws from making a recommendation that Target Shareholders vote in favour of the Scheme after the date of this deed; or
  - (iv) in the case of a Recommendation by a Target Director who is a Relevant Shareholder, the Target Director may withdraw his or her Recommendation so as to not make any recommendation only to the extent that, after first obtaining advice from independent counsel, the Target Director reasonably determines that he or she has an interest in the Scheme that renders it inappropriate for him or her to make or maintain any such recommendation (**Scheme Interest**), and the Court would be unlikely to grant an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting or under section 411(4)(b) and 411(6) of the Corporations Act approving the Scheme, in each case solely as a result of the Scheme Interest.
- (d) For the purposes of clause 7.1(c), customary qualifications and explanations contained in the Scheme Booklet and any public announcements in relation to a Recommendation to the effect that the Recommendation is made:
- (i) in the absence of a Superior Proposal;
  - (ii) in respect of any public announcement issued before the issue of the Scheme Booklet, 'subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of Target Shareholders'; and
  - (iii) in respect of the Scheme Booklet and any public announcements issued at the time of or after the issue of the Scheme Booklet, 'subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Target Shareholders',
- will not be regarded as a failure to make, or an adverse change, withdrawal, adverse modification or adverse qualification of, a Recommendation.
- (e) Despite anything to the contrary in this clause 7.1 or elsewhere in this deed, a statement made by Target, the Target Board or any Target Director to the effect that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board or the completion of the matching right process set out in clause 11.7 shall not contravene this clause 7.1 or any other provision of this deed.

## 7.2 Scrip Consideration

Notwithstanding anything else in this clause 7 or elsewhere in this deed, the parties acknowledge and agree that:

- (a) each Target Director may, in their sole and absolute discretion:
  - (i) make the Recommendation only in respect of the Cash Consideration and make no recommendation in respect of the Scrip Consideration (as it applies to the Relevant Shareholders);
  - (ii) make no recommendation at all in relation to whether the Relevant Shareholders should make an Election to receive the Scrip Consideration under the Scheme; and

- (b) no Target Director will have failed to comply with this clause 7 (or any other provision of this document) where he or she does anything contemplated by clause 7.2(a) above.

### 7.3 Announcement of the Transaction

Immediately after the execution of this deed, Target must issue a public announcement in a form agreed in writing between Target and Bidder. Such announcement must include a unanimous Recommendation by the Target Board.

### 7.4 Public announcements

Subject to clauses 7.3 and 7.5, no material public announcement or public disclosure of or in relation to the Transaction or any other transaction the subject of this deed or the Scheme (**Proposed Public Announcement**) may be made by a Target Group Member or a Bidder Group Member other than in a form approved by each party in writing (such approval not to be unreasonably withheld or delayed). A party must provide the other party with a draft copy of any Proposed Public Announcement as soon as reasonably practicable before it is proposed that such Proposed Public Announcement is made, and must give the other party a reasonable opportunity to comment on the form and content of the draft Proposed Public Announcement and must take into account all reasonable comments from that party on the draft. For the avoidance of doubt, this clause 7.4 does not apply to any announcement or disclosure in connection with an actual, proposed or potential Competing Proposal.

### 7.5 Required disclosure

- (a) Despite any provision of the Confidentiality Agreement, where a party is required by applicable law or the Listing Rules to make any announcement or to make any disclosure in connection with the Transaction, or any other transaction the subject of this deed or the Scheme, it may do so despite clause 7.4.
- (b) Despite any provision of the Confidentiality Agreement, before any disclosure is made in reliance on clause 7.5(a), to the extent reasonably practicable and permitted by the relevant law:
- (i) the party required to make the disclosure (**Disclosing Party**) must use best endeavours to notify the other party as soon as reasonably practicable after it becomes aware that disclosure is required; and
  - (ii) the Disclosing Party must use best endeavours to give the other party an opportunity to comment on the proposed form of the disclosure and amend any factual inaccuracy, and consider in good faith any other comments of the other party on the form of the disclosure,

other than where such disclosure relates to, or is in connection with, an actual, potential or proposed Competing Proposal.

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## 8. Representations, warranties and indemnities

### 8.1 Target's representations and warranties

Subject to clause 8.5, Target represents and warrants to Bidder (in its own right and separately as trustee or nominee for each of the other Bidder Indemnified Parties) that each of the Target Representations and Warranties is true and correct.

### 8.2 Target's indemnity

Subject to clause 8.5, Target agrees with Bidder (in its own right and separately as trustee or nominee for each Bidder Indemnified Party) to indemnify Bidder and each of the Bidder

Indemnified Parties from, and must pay on demand the amount of, any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Bidder or any of the other Bidder Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Target Representations and Warranties.

### 8.3 Bidder's representations and warranties

Bidder represents and warrants to Target (in its own right and separately as trustee or nominee for each of the other Target Indemnified Parties) that each of the Bidder Representations and Warranties is true and correct.

### 8.4 Bidder's indemnity

Bidder agrees with Target (in its own right and separately as trustee or nominee for each of the other Target Indemnified Parties) to indemnify Target and each of the Target Indemnified Parties against, and must pay on demand the amount of, any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Target or any of the other Target Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Bidder Representations and Warranties.

### 8.5 Qualifications on Target's representations, warranties and indemnities

The Target Representations and Warranties made or given in clause 8.1 and the indemnity in clause 8.2, are each subject to matters that:

- (a) have been Fairly Disclosed in:
  - (i) the Disclosure Materials;
  - (ii) an announcement made by Target or a Target Group Member to the ASX prior to the date of this deed;
  - (iii) a publicly available document lodged by Target or a Target Group Member with the following Government Agencies (which would be disclosed in a search of that Government Agency's records that are open to public inspection as at the following dates):
    - A. ASIC on 18 March 2022;
    - B. PPS Register on 23 March 2022;
    - C. the High Court of Australia, Federal Court of Australia and the Supreme Courts of each state and territory in Australia on between 12 March and 31 March 2022;
    - D. IP Australia on 23 March 2022; and
    - E. Australian Communications and Media Authority on 24 March 2022,

(together, the **Relevant Searches**);
- (b) are required or expressly permitted by this deed or the Scheme;
- (c) are required by any applicable law, regulation, or by a Government Agency; or
- (d) are within the actual knowledge of the Bidder as at the date of this deed.

## 8.6 Survival of representations and warranties

Each representation and warranty made or given in clauses 8.1 and 8.3:

- (a) is severable;
- (b) survives the termination of this deed; and
- (c) is given with the intention that liability under it is not confined to breaches that are discovered before the date of termination of this deed.

## 8.7 Survival of indemnities

Each indemnity in this deed (including those in clauses 8.2 and 8.4):

- (a) is severable;
- (b) is a continuing obligation;
- (c) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and
- (d) survives the termination of this deed.

## 8.8 Timing of representations and warranties

Each representation and warranty made or given under clauses 8.1 or 8.3 is given at the date of this deed and repeated continuously thereafter until 8.00am on the Second Court Date, unless that representation or warranty is expressed to be given at a particular time, in which case it is given at that time.

## 8.9 Notification obligations

- (a) Target must notify Bidder in writing as soon reasonably practicable after Target becomes aware of any fact, matter or circumstance that has resulted in, or might reasonably be expected to result in, a breach of a Target Representation and Warranty. A notice provided by Target to Bidder under this clause must contain reasonable details of the relevant fact, matter or circumstance that resulted in, or might reasonably be expected to result in, a breach of a Target Representation and Warranty.
- (b) Bidder must notify Target in writing as soon reasonably practicable after Bidder becomes aware of any fact, matter or circumstance that has resulted in, or might reasonably be expected to result in, a breach of a Bidder Representation and Warranty. A notice provided by Bidder to Target under this clause must contain reasonable details of the relevant fact, matter or circumstance that resulted in, or might reasonably be expected to result in, a breach of a Bidder Representation and Warranty.

## 8.10 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it, are expressly excluded.



- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

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## 9. Releases of directors and officers

### 9.1 Target and Target Directors and officers

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

- (i) Target's execution or delivery of this deed;
- (ii) any breach of any representations, covenants, warranties and obligations of Target or any other Target Group Member in this deed;
- (iii) the implementation of the Scheme;
- (iv) any disclosures containing any statement which is false or misleading whether in content or by omission in connection with the Scheme; or
- (v) any failure to provide information in connection with the Scheme,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 9.1(a) limits Bidder's rights to terminate this deed under clause 14.3(a) or its rights under clause 12.

- (b) This clause 9.1 is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Target receives and holds the benefit of this clause 9.1 to the extent it relates to each Target Indemnified Party as trustee or nominee for each of them.

### 9.2 Bidder and Bidder directors and officers

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

- (i) Bidder's execution or delivery of this deed;
- (ii) any breach of any representations, covenants, warranties and obligations of Bidder or any other Bidder Group Member in this deed;
- (iii) the implementation of the Scheme;
- (iv) any disclosure containing any statement which is false or misleading whether in content or by omission in connection with the Scheme; or
- (v) any failure to provide information in connection with the Scheme,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance

of doubt, nothing in this clause 9.2(a) limits Target's rights to terminate this deed under clause 14.3(b) or its rights under clause 13.

- (b) This clause 9.2 is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Bidder receives and holds the benefit of this clause 9.2 to the extent it relates to each Bidder Indemnified Party as trustee or nominee for each of them.

### 9.3 Deeds of indemnity and insurance

- (a) Subject to the Scheme becoming Effective and the Transaction completing, Bidder undertakes in favour of Target and each other Target Indemnified Party that it will:
  - (i) for a period of seven years from the Implementation Date, ensure that the constitutions of Target and each other Target Group Member continue to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a Target Group Member; and
  - (ii) procure that Target and each other Target Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and, without limiting the foregoing, ensure that directors' and officers' run-off insurance cover placed pursuant to clause 9.3(b) below is maintained for a period of seven years from the retirement date of each applicable director and officer and not take any action which would prejudice or adversely affect any directors' and officers' run-off insurance cover taken out in accordance with clause 9.3(b).
- (b) Bidder acknowledges that, notwithstanding any other provision of this deed, Target may, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to such seven year period referred to in 9.3(a)(ii) (**D&O Run-off Policy**), and that any actions to facilitate that insurance or in connection with such insurance will not, by themselves, be a Prescribed Occurrence or a breach of any provision of this deed, or give rise to any right to terminate this deed, and will be disregarded when assessing the operation of any other part of this deed, provided that:
  - (i) Target must use reasonable endeavours to obtain the most attractive commercial terms for the D&O Run-off Policy from a reputable insurer;
  - (ii) Target keeps Bidder informed of progress in relation to the D&O Run-off Policy and consults reasonably and in good faith with the Bidder in relation to the applicable D&O Run-off Policy prior to securing the relevant policy;
  - (iii) the scope and amount of the cover of the D&O Run-off Policy is on the same terms, or terms that are reasonably the same in all material respects, as the existing insurance policies in place for the directors and officers of Target as at the date of this deed (it being acknowledged that the market for cover is dynamic and reasonable regard is to be had to the extent to which the level and type of cover in place under the existing policies is available for the extended run-off); and
  - (iv) Target must obtain and provide to the Bidder a quote from reputable insurers for a D&O Run-off Policy sourced in accordance with (and which would comply with) clauses 9.3(b)(i) to 9.3(b)(iii) no later than 30

Business Days following the date of this deed and, if requested in writing by Bidder (and provided there is a reasonable period to obtain an alternative quote and enter into the D&O Run-off Policy before the date of the Scheme Meeting), Target will, before entering into the Proposed D&O Run-off Policy (as defined below) obtain a quote from reputable insurers nominated in writing by Bidder (**Alternative Insurers**) for a D&O Run-off Policy sourced in accordance with (and which would comply with) clauses 9.3(b)(i) to 9.3(b)(iii) (**Alternative D&O Policy**), which is on the same terms, or terms that are the same in all material respects, as the D&O Run-off Policy which is proposed to be entered into by Target (**Proposed D&O Run-off Policy**) (which was sourced in accordance with (and which would comply with) clauses 9.3(b)(i) to 9.3(b)(iii)) and if:

- A. the estimated total costs under that Alternative D&O Run-off Policy are equal to or greater than the estimated total costs under the Proposed D&O Run-off Policy;
- B. the Alternative Insurers decline to participate or provide a quote; or
- C. the Alternative Insurers fail to provide a quote within a period of time that would allow the policy to be entered into before the date of the Scheme Meeting,

then Target will proceed to enter into the Proposed D&O Run-off Policy. However, if the estimated total costs under the Alternative D&O Run-off Policy are less than the estimated total costs under the Proposed D&O Run-off Policy and there is a reasonable period for Target to enter into the Alternative D&O Run-off Policy before the date of the Scheme Meeting, Target Board must consider (acting reasonably, in good faith and considering the terms of cover that would be provided by the Alternative Insurers) the Alternative D&O Run-off Policy, unless Bidder agrees otherwise in writing.

- (c) The undertakings contained in clause 9.3(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (d) Target receives and holds the benefit of clause 9.3(a), to the extent it relates to the other Target Indemnified Parties, as trustee or nominee for them.

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## 10. Confidentiality

### 10.1 Confidentiality Agreement

Target and Bidder acknowledge and agree that the relevant parties continue to be bound by the Confidentiality Agreement after the date of this deed. To the extent of any inconsistency between the Confidentiality Agreement and this deed, the terms of this deed shall prevail.

### 10.2 Survival of obligations

The rights and obligations of the parties under the Confidentiality Agreement survive termination of this deed (for so long as the Confidentiality Agreement binds that party in accordance with its terms).

### 10.3 Disclosure on termination of agreement

The parties agree that, if this deed is terminated under clause 14, any party may disclose:

- (a) the fact that this deed has been terminated, where such disclosure is required by the Listing Rules or is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed; and
- (b) the fact that this deed has been terminated to ASIC.

## **11. Exclusivity**

### **11.1 Cease discussions**

Target must cease any discussions or negotiations existing as at the date of this deed relating to a Competing Proposal.

### **11.2 No shop**

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

- (a) solicits, invites, encourages or initiates any Competing Proposal, or any enquiries, expressions of interest, offers, proposals, negotiations or discussions in connection with, with a view to obtaining, or that may be reasonably expected to encourage or lead to, a Competing Proposal or
- (b) communicates any intention to do any of these things.

### **11.3 No talk**

Subject to clause 11.5, during the Exclusivity Period, Target must not, and must ensure that each of its Related Persons does not, directly or indirectly:

- (a) enter into, participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person which would reasonably be expected to lead to the making of, a Competing Proposal;
- (b) negotiate, accept or enter into any agreement, arrangement or understanding regarding, or which would reasonably be expected to lead to the making of, a Competing Proposal; or
- (c) communicate any intention to do any of these things,

even if the relevant Competing Proposal was not directly or indirectly solicited, invited, encouraged, facilitated or initiated by Target, any other Target Group Member, or a Related Person of a Target Group Member or the relevant person has publicly announced the Competing Proposal.

### **11.4 No due diligence**

Subject to clause 11.5, during the Exclusivity Period, Target must not, and must ensure that each of its Related Persons does not, directly or indirectly:

- (a) disclose or otherwise make available any non-public information about the business, assets or affairs of the Target Group or provide access to any Target officers or employees to a Third Party (other than a Government Agency) in connection with, with a view to obtaining, or which would reasonably be expected to lead to receipt, formulation, development, finalisation or announcement of, a Competing Proposal (including providing such information for the purposes of the conduct of due diligence investigations in respect of the Target Group) whether by that Third Party or another person; or

- (b) communicate any intention to do any of these things,

even if the relevant Competing Proposal was not directly or indirectly solicited, invited, encouraged, facilitated or initiated by Target, any other Target Group Member, or a Related Person of a Target Group Member or the relevant person has publicly announced the Competing Proposal and provided that nothing in this clause 11.4 prevents or restricts Target or any of its Related Persons and Related Bodies Corporate or the Related Persons of those Related Bodies Corporate from responding to a Third Party in respect of an enquiry, expression of interest, offer or proposal by that Third Party to make, or which may reasonably be expected to encourage or lead to the making of, any actual, proposed or potential Competing Proposal to merely (A) acknowledge receipt and/or (B) advise that Third Party that Target is bound by the provisions of this clause 11.4 and is only able to engage in negotiations, discussions or other communications if the fiduciary out in clause 11.5 applies.

## 11.5 Fiduciary exception

Clauses 11.3 and 11.4 do not prohibit any action or inaction by Target, any Target Group Member, or any of their respective Related Persons in relation to a bona fide, actual, proposed or potential Competing Proposal if the Target Board, acting in good faith, has determined:

- (a) after consultation with Target's financial advisors, that the Competing Proposal could reasonably be expected to lead to a Superior Proposal; and
- (b) after receiving advice from Target's reputable external Australian legal advisers specialising in the area of corporate law, that compliance with clauses 11.3 or 11.4 (as applicable) would, or would be reasonably likely to, constitute a breach of any of the fiduciary or statutory duties of any member of the Target Board,

provided that the Competing Proposal was not brought about by, or in respect of which there has not been, a breach of clause 11.2.

## 11.6 Notification of approaches

- (a) During the Exclusivity Period, Target must as soon as reasonably practicable (and in any event within 24 hours) notify Bidder in writing if it, or any of its Related Persons, becomes aware of any:
- (i) receipt of, negotiations, discussions or other communications, or approach or inquiry, in relation to or which could reasonably be expected to lead to, a Competing Proposal;
- (ii) approach or proposal made to Target or any of its Related Persons, in connection with, in respect of any exploration or completion of, or which could reasonably be expected to lead to, a Competing Proposal; or
- (iii) request made by a Third Party for, or provision by Target or any of its Related Persons of, any material non-public information concerning the business or operations of Target or the Target Group by or to any Third Party (other than a Government Agency) in connection with a Competing Proposal or such Third Party formulating, developing or finalising, or assisting in the formation, development or finalisation of a Competing Proposal,

in each case, whether direct or indirect, solicited or unsolicited, and in writing or otherwise. For the avoidance of doubt, any of the acts described in clauses 11.6(a)(i) to 11.6(a)(iii) may only be taken by Target or its Related Persons if permitted by clause 11.5.

- (b) A notification given under clause 11.6(a) must include all material terms and conditions of the Competing Proposal, including as to value and price, and details of, the identity of the proposed bidder or acquirer, form of consideration, proposed

deal protection provisions, any break or reimbursement fee, proposed timing and conditions precedent, to the extent known by Target or its Related Persons.

## 11.7 Matching right

- (a) Without limiting clause 11.2, during the Exclusivity Period, Target must, and must procure each of the Target Group Members:
- (i) do not enter into a legally binding agreement, arrangement or understanding pursuant to which it agrees to undertake or implement or otherwise give effect to actual, proposed or potential Competing Proposal (and, for the avoidance of doubt, this does not include Target entering into a confidentiality agreement or like agreement in relation to an actual, proposed or potential Competing Proposal that only provides for, subject to clause 14.2. the provision of information, conduct of due diligence and other matters commonly found in a confidentiality agreement); or
  - (ii) use its best endeavours to procure that no Target Director withdraws, adversely changes, adversely modifies or adversely qualifies their Recommendation, publicly recommends any actual, proposed or potential Competing Proposal or otherwise publicly supports, recommends or endorses any actual, proposed or potential Competing Proposal;
- unless:
- (iii) the Target Board acting in good faith and in order to satisfy what the Target Directors consider to be their statutory or fiduciary duties determines that the Competing Proposal would be or would be likely to be a Superior Proposal;
  - (iv) Target has provided Bidder with a notice stating that it is given for the purposes of this clause 11.7 and setting out all material terms and conditions of the Competing Proposal, including price and the identity of the Third Party making the actual, proposed or potential Competing Proposal, form of consideration, proposed deal protection provisions, any break or reimbursement fee, proposed timing and conditions precedent (in each case, to the extent known);
  - (v) Target has given Bidder at least five Business Days after the date of the provision of the information referred to in clause 11.7(a)(iv) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal (**Bidder Counterproposal**); and
  - (vi) Bidder has not announced or otherwise formally proposed to Target a Bidder Counterproposal by the expiry of the five Business Day period in clause 11.7(a)(v) that the Target Board acting in good faith determines would provide a superior outcome to the Target Shareholders (as a whole) than the terms of the Competing Proposal, taking into account all terms and conditions and other aspects of:
    - A. the Bidder Counterproposal (including the value and type of consideration, funding, any timing considerations, any conditions precedent or other matters affecting the probability of the Bidder Counterproposal being completed compared to the Competing Proposal or other relevant matters); and
    - B. the Competing Proposal.

- (b) If, in accordance with clause 11.7(a)(vi), Bidder provides to Target a Bidder Counterproposal, Target must procure that the Target Board considers the Bidder Counterproposal and determines whether, acting reasonably and in good faith, the Bidder Counterproposal would provide an equivalent or superior outcome to Target Shareholders as a whole compared with the Competing Proposal. Following that determination, Target must:
- (i) procure that the Target Board promptly, and in any event within 48 hours, notifies Bidder of the determination in writing, stating reasons for that determination; and
  - (ii) if the determination is that the Bidder Counterproposal would provide an equivalent or superior outcome to Target Shareholders as a whole compared with the Competing Proposal, then Target and Bidder must use their best endeavours to agree the transaction documentation required to implement the Bidder Counterproposal as soon as reasonably practicable.
- (c) For the purpose of this clause 11.7:
- (i) each new Competing Proposal or successive material variation or amendment to a Competing Proposal will constitute a new Competing Proposal; and
  - (ii) for the avoidance of doubt, the process set out in this clause 11.7 must again be followed in respect of each new Competing Proposal or successive material variation or amendment to a Competing Proposal prior to Target or the Target Board taking any of the actions referred to in clauses 11.7(a)(i) or 11.7(a)(ii).
- (d) Despite any other provision in this deed, a statement by Target, Target Board or any Target Director to the effect that:
- (i) the Target Board has determined that a Competing Proposal is or may be a Superior Proposal and has commenced the matching right process set out in this clause 11.7; or
  - (ii) Target Shareholders should take no action pending the completion of the matching right process set out in this clause 11.7,
- does not of itself:
- (iii) constitute an adverse change, withdrawal, adverse modification or adverse qualification of the Recommendation by the Target Directors or an endorsement of a Competing Proposal;
  - (iv) contravene this deed;
  - (v) give rise to an obligation to pay the Break Fee under clause 12.2; or
  - (vi) give rise to a termination right under clause 14.1.

## 11.8 Compliance with law

- (a) If it is finally determined by a court of competent jurisdiction, or the Takeovers Panel, that the agreement by the parties under this clause 11 or any part of it:
- (i) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the Target Board;

- (ii) constituted, or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the Corporations Act; or
- (iii) was, or is, or would be, unlawful for any other reason,

then, to that extent (and only to that extent) Target will not be obliged to comply with that provision of clause 11.

- (b) The parties must not make or cause to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 11.8.

## 11.9 Usual provision of information

Nothing in this clause 11 prevents Target from:

- (a) providing any information to its Related Persons;
- (b) providing any information to any Government Agency;
- (c) providing any information required to be provided by any applicable law, including to satisfy its obligations under the Listing Rules or to any Government Agency;
- (d) providing any information to its auditors, clients, financiers, joint venturers, suppliers, contractual counterparties or shareholders in the ordinary course of business;
- (e) making presentations to, or responding to enquiries from, brokers, portfolio investors, analysts and institutional investors, and engaging with financiers and potential financiers, in the ordinary course in relation to its business generally; or
- (f) promoting the merits of the Transaction.

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## 12. Break Fee

### 12.1 Background to Break Fee

- (a) Each party acknowledges that, if they enter into this deed and the Scheme is subsequently not implemented, Bidder will incur significant costs, including those set out in clause 12.4.
- (b) In these circumstances, the parties have agreed that provision be made for the payment outlined in clauses 12.2, without which Bidder would not have entered into this deed or otherwise agreed to implement the Scheme.
- (c) Target and the Target Board believe, having taken advice from its external legal adviser, that the implementation of the Scheme will provide benefits to it and its shareholders, and that it is reasonable that Target agree to the Break Fee in accordance with this clause 12 in order to secure Bidder's participation in the Transaction.

### 12.2 Break Fee triggers

Subject to clauses 12.5, 12.6 and 12.9, Target must pay the Break Fee to Bidder if:

- (a) during the Exclusivity Period, any Target Director:
  - (i) fails to recommend the Scheme in the manner described in clause 7.1(b);
  - (ii) withdraws, adversely changes, adversely modifies or adversely qualifies their Recommendation; or



- (iii) indicates they no longer recommend the Transaction or recommends, supports or endorses a Competing Proposal,

in each case provided that Bidder has terminated this deed in accordance with clause 14, and other than in circumstances where:

- (iv) the Independent Expert concludes in the Independent Expert's Report (or any update of, or revision, amendment or supplement to, that report) that the Scheme is not in the best interests of Target Shareholders (except where the sole or dominant reason for that conclusion is the existence, announcement or publication of a Competing Proposal (including, but not limited to, a Superior Proposal));
- (v) the failure to recommend, or the adverse change, withdrawal, adverse modification or adverse qualification of a recommendation to vote in favour of the Scheme occurs because of a requirement by a court of competent jurisdiction or ASIC or the Takeovers Panel that one or more Target Directors abstain or withdraw from making a recommendation that Target Shareholders vote in favour of the Scheme after the date of this deed;
- (vi) the failure to recommend, or the adverse change, withdrawal, adverse modification or adverse qualification of a recommendation to vote in favour of the Scheme occurs in the circumstances contemplated in clause 7.1(c)(iv); or
- (vii) Target is entitled to terminated this deed pursuant to clause 14.1(a)(i) or 14.3(b) and has given the appropriate termination notice to the Bidder,

provided that, for the avoidance of doubt, a statement made by Target, the Target Board or any Target Director to the effect that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board or the completion of the matching right process set out in clause 11.7 will not, by itself, require Target to pay the Break Fee to Bidder;

- (b) at any time before the End Date or, if earlier, the date this deed is terminated under clause 14, a Competing Proposal of any kind is announced (whether or not such proposal is stated to be subject to any pre-conditions) and, within 12 months of the date of such announcement, a Third Party (either alone or together with any Associate):
  - (i) completes a Competing Proposal of the kind referred to in any of paragraphs (b), (c) and (d) of the definition of Competing Proposal; or
  - (ii) otherwise acquires a Relevant Interest in, or becomes the holder of, or otherwise acquires, directly or indirectly, 50% or more of Target Shares and that acquisition is unconditional; or
- (c) Bidder has terminated this deed pursuant to clauses 14.1(a)(i) or 14.3(a) and the Transaction does not complete.

### 12.3 Timing of payment of Break Fee

- (a) A demand by Bidder for payment of the Break Fee under clause 12.2 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment and termination of this deed;
  - (iii) state the circumstances which give rise to the demand; and

- (iv) nominate an account into which Target is to pay the Break Fee.
- (b) Target must pay the Break Fee into the account nominated by Bidder, without set-off or withholding, within 15 Business Days after receiving a demand for payment under clause 12.3(a) where Bidder is entitled under clause 12.2 to the Break Fee.

## 12.4 Basis of Break Fee

Target and Bidder acknowledge and agree that the amount of the Break Fee has been calculated to reimburse Bidder for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
- (b) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
- (c) costs of management and directors' time in planning and implementing the Transaction;
- (d) out of pocket expenses incurred by Bidder and Bidder's employees, advisers and agents in planning and implementing the Transaction;
- (e) any damage to the Bidder's reputation associated with a failed transaction and the implications of that damages to the Bidder's business,

in each case, incurred by Bidder directly or indirectly as a result of having entered into this deed and pursuing the Transaction, and Target and Bidder agree that:

- (f) the costs actually incurred by Bidder will be of such a nature that they cannot all be accurately ascertained; and
- (g) the Break Fee is a genuine and reasonable pre-estimate of those costs.

## 12.5 Compliance with law

- (a) This clause 12 does not impose an obligation on Target to pay the Break Fee to the extent (and only to the extent) that the obligation to pay the Break Fee:
  - (i) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
  - (ii) is determined to be unenforceable or unlawful by a court,
 and Bidder will refund to Target within 10 Business Days any amount in excess of its obligation under this clause that Target has already paid to Bidder when that declaration or determination is made (unless otherwise required by the Takeovers Panel or a court).
- (b) For the avoidance of doubt, any part of the Break Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by Target.
- (c) The parties must not make or cause to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 12.5(a).

## 12.6 Break Fee payable only once

Where the Break Fee becomes payable to Bidder under clause 12.2 and is actually paid to Bidder, Bidder cannot make any claim against Target for payment of any subsequent Break Fee.

## 12.7 Other Claims

Despite anything to the contrary in this deed, the maximum aggregate liability of Target for any claims under or in connection with this deed is the Break Fee and in no event will the aggregate liability of Target for Claims under this deed and in connection with the Transaction or the Scheme exceed the Break Fee other than in the case of fraud or wilful default.

## 12.8 Exclusive remedy

Where the Break Fee is paid to Bidder under this deed (or would be payable if a demand was made), Bidder cannot make any further Claim against Target or the Target Indemnified Parties other than in the case of fraud or wilful default.

## 12.9 No Break Fee if Scheme Effective

Despite anything to the contrary in this deed, the Break Fee will not be payable to Bidder if:

- (a) the Scheme becomes Effective; or
- (b) at the time that the Break Fee becomes payable under clause 12.2, Target was entitled to terminate this deed under clauses 14.1(a)(i) or 14.3(b) and has given the appropriate termination notice to Bidder,

notwithstanding the occurrence of any event in clause 12.2 and, if this clause 12.9 applies, any amount or part of the Break Fee has already been paid to Bidder must be refunded by Bidder:

- (c) where clause 12.9(a) applies, within 5 Business Days after the Scheme becomes Effective; or
- (d) where clause 12.9(b) applies, within 5 Business Days after the date Target notifies Bidder that, at the time that the Break Fee became payable under clause 12.2, Target was entitled to terminate this deed under clauses 14.1(a)(i) or 14.3(b).

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## 13. Reverse Break Fee

### 13.1 Background to Reverse Break Fee

- (a) Target and Bidder acknowledge that, if they enter into this deed and the Transaction is subsequently not implemented, Target will incur significant costs, including those set out in clause 13.4.
- (b) In the circumstances referred to in clause 13.1(a), Target has requested that provision be made for the payments outlined in clause 13.3, without which Target would not have entered into this deed or otherwise agreed to implement the Scheme.
- (c) Bidder believes, having taken advice from its external legal adviser, that the implementation of the Scheme will provide benefits to Bidder and that it is appropriate for Bidder to agree to the payments referred to in clause 13.3 in order to secure Target's participation in the Transaction.

- (d) Bidder and Target must not make or cause or permit to be made any application to the Takeovers Panel or a court for or in relation to a declaration or determination that the Reverse Break Fee is invalid or unenforceable.

### 13.2 Reverse Break Fee triggers

Subject to clause 13.5 and 13.7, Bidder must pay the Reverse Break Fee to Target if Target has terminated this deed pursuant to clauses 14.1(a)(i) or 14.3(b) and the Transaction does not complete.

### 13.3 Payment of Reverse Break Fee

- (a) A demand by Target for payment of the Reverse Break Fee under clause 13.2 must:
- (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account in the name of Target into which Bidder is to pay the Reverse Break Fee.
- (b) Bidder must pay the Reverse Break Fee into the account nominated by Target, without set-off or withholding, within 15 Business Days after receiving a demand for payment under clause 13.3(a) where Target is entitled under clause 13.2 to the Reverse Break Fee.

### 13.4 Basis of Reverse Break Fee

Bidder and Target acknowledge and agree that the amount of the Reverse Break Fee has been calculated to reimburse Target for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
- (b) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
- (c) costs of management and directors' time in planning and implementing the Transaction;
- (d) out of pocket expenses incurred by Target and Target's employees, advisers and agents in planning and implementing the Transaction; and
- (e) damage to Target's reputation associated with a failed transaction and the implications of that damage to Target's business,

in each case, incurred by Target directly or indirectly as a result of having entered into this deed and pursuing the Transaction, and Target and Bidder agree that:

- (f) the costs actually incurred by Target will be of such a nature that they cannot all be accurately ascertained; and
- (g) the Reverse Break Fee is a genuine and reasonable pre-estimate of those costs.

### 13.5 Reverse Break Fee payable only once

Where the Reverse Break Fee becomes payable to Target under clause 13.2 and is actually paid to Target, Target cannot make any claim against Bidder for payment of any subsequent Reverse Break Fee.

### 13.6 Other Claims

Subject to clause 13.7, the maximum aggregate liability of Bidder for any claims under or in connection with this deed is the Reverse Break Fee and in no event will the aggregate liability of Bidder for Claims under this deed and in connection with the Transaction or the Scheme exceed the Reverse Break Fee other than in the case of fraud or wilful default.

### 13.7 Claims under the Deed Poll and Equity Commitment Letter

In the event that the Scheme becomes Effective, nothing in clause 13.6 or otherwise in this deed will limit (i) Bidder's obligation to pay the Scheme Consideration under and in accordance with clause 4.3 of this deed and the Deed Poll; or (ii) the Equity Financing under and in accordance with the Equity Commitment Letter.

### 13.8 No Reverse Break Fee

Despite anything to the contrary in this deed, the Reverse Break Fee will not be payable to the Target if:

- (a) the Scheme becomes Effective; or
- (b) at the time that the Reverse Break Fee becomes payable under clause 13.2, Bidder was entitled to terminate this deed under clauses 14.1(a)(i) or 14.3(a) and has given the appropriate termination notice to the Target,

notwithstanding the occurrence of any event in clause 13.2 and, if this clause 13.8 applies, any amount or part of the Reverse Break Fee has already been paid to Target must be refunded by Target:

- (c) where clause 13.8(a) applies, within 5 Business Days after the Scheme becomes Effective; or
- (d) where clause 13.8(b) applies, within 5 Business Days after the date Bidder notifies the Target that, at the time that the Reverse Break Fee became payable under clause 13.2, Bidder was entitled to terminate this deed under clauses 14.1(a)(i) or 14.3(a).

### 13.9 Compliance with law

- (a) This clause 13 does not impose an obligation on Bidder to pay the Reverse Break Fee to the extent (and only to the extent) that the obligation to pay the Reverse Break Fee:

- (1) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
- (2) is determined to be unenforceable or unlawful by a court,

and Target will refund to Bidder within 10 Business Days any amount in excess of its obligation under this clause that Bidder has already paid to Target when that declaration or determination is made (unless otherwise required by the Takeovers Panel or a court).

- (b) For the avoidance of doubt, any part of the Reverse Break Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by Bidder.
- (c) The parties must not make or cause to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 13.9(a).

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## 14. Termination

### 14.1 Termination for material breach

- (a) Either Target or Bidder may terminate this deed by written notice to the other party:
  - (i) other than in respect of a breach of either a Bidder Representation and Warranty or a Target Representation and Warranty (which are dealt with in clause 14.3), at any time before 8.00am on the Second Court Date if the other party has materially breached this deed (and the relevant breach is material when taken in the context of the Scheme as a whole, which will include any breach by the Target of clause 14.2), the party entitled to terminate has given written notice to the party in breach of this deed setting out the relevant circumstances and stating an intention to terminate this deed, and the other party has failed to remedy the breach within five Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given (in which case termination under this clause 14.1(a)(i) will take effect at the expiry of that period);
  - (ii) in the circumstances set out in, and in accordance with, clause 3.4;
  - (iii) if Target Shareholders have not agreed to the Scheme at the Scheme Meeting by the requisite majorities and notice is not given under clause 3.4(d); or
  - (iv) if the Effective Date for the Scheme has not occurred, or will not occur, on or before the End Date.
- (b) Bidder may terminate this deed by written notice to Target until 8.00am on the Second Court Date if any Target Director:
  - (i) fails to recommend the Scheme in the manner described in clause 7.1(b);
  - (ii) withdraw, adversely change, adversely modify or adversely qualify their Recommendation; or
  - (iii) make a public statement:
    - A. to the effect that they no longer support the Scheme; or
    - B. indicating that they no longer recommend the Transaction or recommend, support or endorse a Competing Proposal (but excluding a statement to the effect that no action should be taken by Target Shareholders pending assessment of a Competing Proposal by the Target Board or the completion of the matching right process set out in clause 11.7).
- (c) Target may terminate this deed by written notice to Bidder at any time before 8.00am on the Second Court Date if, a majority of the Target Directors:

- (i) fails to recommend the Scheme in the manner described in clause 7.1(b);
- (ii) withdraw, adversely change or adversely modify or adversely qualify their Recommendation; or
- (iii) makes a public statement indicating that they no longer recommend the Transaction or recommend a Competing Proposal (but excluding a statement that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board or the completion of the matching right process set out in clause 11.7) in accordance with this deed,

provided that, if required to do so under clause 12, the Target has paid the Break Fee in accordance with clause 12.

- (d) A failure to recommend or withdrawal of a recommendation due to a court or Government Agency requirement or request that a Target Director abstains from making a recommendation will be disregarded under clauses 14.1(b) and 14.1(c) (including for the avoidance of doubt, in the circumstances contemplated in clause 7.1(c)(iv)).

## 14.2 Provision of Commercially Sensitive Information

During the Exclusivity Period, the Target must not, and must procure that its Related Persons do not, directly or indirectly, disclose or otherwise provide or make available any Commercially Sensitive Information of the Target Group to a Third Party in connection with, or with a view to obtaining, a Competing Proposal, unless:

- (a) permitted by clause 11.5; and
- (b) in the event that the relevant Third Party is a Competitor, no Commercially Sensitive Information of the Target Group is provided to such Third Party until after:
  - (i) the matching right process set out in clause 11.7 has been followed and completed in respect of any Competing Proposal of the relevant Third Party (including in respect of each new successive material variation or amendment under clause 11.7(c)); and
  - (ii) clause 11.7(a)(vi) applies.

## 14.3 Termination for breach of representations and warranties

- (a) Bidder may, at any time prior to 8.00am on the Second Court Date, terminate this deed for a material breach of a Target Representation and Warranty only if:
  - (i) Bidder has given written notice to Target setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
  - (ii) the relevant breach continues to exist five Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 14.3(a)(i); and
  - (iii) the relevant breach is material in the context of the Scheme taken as a whole.

- (b) Target may, at any time before 8.00am on the Second Court Date, terminate this deed for breach of a Bidder Representation and Warranty only if:
- (i) Target has given written notice to Bidder setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse; and
  - (ii) the relevant breach continues to exist five Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 14.3(b)(i); and
  - (iii) the relevant breach is material in the context of the Scheme taken as a whole (other than in respect of Bidder Representation and Warranty in clauses (n) (*Equity Commitment Letters*), (o) (*Debt Commitment Letters*), (p) (*Obtaining financing under Debt Commitment Letters*), (q) (*Sufficient cash amounts - reasonable expectation as at the date of this deed*), (r) (*Sufficient cash amounts - unconditional at Second Court Date*) and (s) (*Sufficient cash amounts - available on Implementation Date*) of Schedule 2, any breach of which will enable Target to terminate this deed provided Target otherwise complies with this clause 14.3(b)).
- (c) This deed is terminable if agreed to in writing by Bidder and Target.

#### **14.4 Effect of termination**

If this deed is terminated by either party under clauses 3.4, 14.1 or 14.3:

- (a) each party will be released from its obligations under this deed, except that this clause 14.4, and clauses 1, 8.5 - 8.9, 9.1, 9.2, 10, 12, 13, 15, 16, 17 (except clause 17.7) and 18, will survive termination and remain in force;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this deed (including in respect of the breach giving rise to termination, if applicable) or that otherwise accrued before termination of this deed; and
- (c) in all other respects (but, for the avoidance of doubt, subject to clause 14.4(a)), all future obligations of the parties under this deed will immediately terminate and be of no further force and effect including any further obligations in respect of the Scheme.

#### **14.5 Termination**

Where a party has a right to terminate this deed, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this deed and the provision under which it is terminating this deed and otherwise complies with the requirements of the relevant clause of this deed.

#### **14.6 No other termination**

Neither party may terminate or rescind this deed, except as permitted under clauses 3.4, 14.1 or 14.3.

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## **15. Notices**

### **15.1 How notice to be given**

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



- (a) must be given to a party:
- (i) by hand delivery, courier service, prepaid express post or email; and
  - (ii) using the address or other details for the party set out in the below table (or as otherwise notified by that party to each other party from time to time under this clause 15):

Party name	Attention	Address	Email address
<b>Target</b>	Ashe-Lee Jegathesan, Chief Corporate Services Officer & Company Secretary  With a copy to Clayton Utz: Rory Moriarty, Kimberley Grellinger and Katherine Silvers	Level 1, 44 Currie Street, Adelaide, South Australia 5000  Level 15, 1 Bligh Street, Sydney NSW 2000	ashe-lee.jegathesan@unitigrouplimited.com  rmoriarty@claytonutz.com; kgrellinger@claytonutz.com; ksilvers@claytonutz.com
<b>Bidder</b>	Head of Legal at (Morrison & Co), Udhay Mathialagan and Michael Ryan  With a copy to Allens (which by itself does not constitute a Notice): Tom Story and Emin Altiparmak	Level 28, 126 Phillip St, Sydney NSW 2000  Level 28, 126 Phillip St, Sydney NSW 2000	<a href="mailto:legal@hrlmorrison.com">legal@hrlmorrison.com</a> ; <a href="mailto:Udhay.Mathialagan@brookfield.com">Udhay.Mathialagan@brookfield.com</a> ; <a href="mailto:Michael.Ryan@brookfield.com">Michael.Ryan@brookfield.com</a>  <a href="mailto:Tom.Story@allens.com.au">Tom.Story@allens.com.au</a> ; <a href="mailto:Emin.Altiparmak@allens.com.au">Emin.Altiparmak@allens.com.au</a>

- (b) must be in legible writing and in English;
- (c) (in the case of communications other than email) must be signed by the sending party or by a person duly authorised by the sending party;
- (d) (in the case of email) must:
  - (i) state the name of the sending party or a person duly authorised by the sending party and state that the email is a communication under or in connection with this deed; and
  - (ii) if the email contains attachments, ensure the attachments are in PDF or other non-modifiable format the receiving party can open, view and download at no additional cost,

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

## 15.2 When notice taken to be received

Without limiting the ability of a party to prove that a notice has been given and received at an earlier time, each communication (including each notice, consent, approval, request and demand) under or in connection with this deed is taken to be given by the sender and received by the recipient:

- (a) (in the case of delivery by hand or courier service) on delivery;
- (b) (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;
- (c) (in the case of prepaid express post sent to an address in another country) on the fourth Business Day after the date of posting;
- (d) (in the case of email, whether or not containing attachments) the earlier of:
  - (i) the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the party sending the email receives an automated message that the email has not been delivered;
  - (ii) receipt by the sender of an automated message confirming delivery; and
  - (iii) the time of receipt as acknowledged by the recipient (either orally or in writing),

provided that:

- (e) the communication will be taken to be so given by the sender and received by the recipient regardless of whether:
  - (i) the recipient is absent from the place at which the communication is delivered or sent;
  - (ii) the communication is returned unclaimed; and
  - (iii) (in the case of email) the email or any of its attachments is opened by the recipient;
- (f) if the communication specifies a later time as the time of delivery then that later time will be taken to be the time of delivery of the communication; and
- (g) if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is delivered or sent).

## 15.3 Notices sent by more than one method of communication

If a communication delivered or sent under this clause 15 is delivered or sent by more than one method, the communication is taken to be given by the sender and received by the recipient whenever it is taken to be first received in accordance with clause 15.2.

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## 16. GST

### 16.1 Interpretation

- (a) Except where the context suggests otherwise, and subject to clause 16.1(b), terms used in this clause have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) A reference to an input tax credit entitlement of an entity includes an input tax credit for an acquisition made by that entity but to which the representative member of any GST group to which that entity may belong is entitled. A reference to the GST payable by an entity includes GST payable by the representative member of any GST group to which that entity may belong.
- (c) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (d) Any consideration for a supply that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to that supply for the purpose of this clause.

### 16.2 Reimbursements and similar payments

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

### 16.3 GST payable

- (a) If GST is payable by a party (**Supplier**) in relation to a taxable supply the Supplier has made under or in connection with this agreement, then the party (**Recipient**) that is required to provide consideration for that supply must, subject to clause 16.1(d), pay an additional amount to the Supplier equal to the amount of that GST at the same times as other consideration is to be provided for that supply.
- (b) No payment of any amount pursuant to clause 16.3(a) is required until the Supplier has provided a valid tax invoice to the Recipient.
- (c) Where additional amounts are payable between parties to this agreement pursuant to clause 16.3(a), amounts so payable, to the extent they are equivalent in amount, shall be set off against each other as if paid and each party shall be obliged only to provide the tax invoice referred to in clause 16.3(b) no later than the time at which any consideration is to be first provided for that supply.
- (d) If the GST payable in relation to a supply made under or in connection with this agreement varies from the additional amount paid by the Recipient under clause 16.3(a) then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 16.3(a). Where there is an adjustment event, the Supplier must promptly issue an adjustment note to the Recipient.

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## 17. General

### 17.1 Entire agreement

This deed (including the documents in the attachments to it), the Confidentiality Agreement and any other document agreed by the parties in writing for the purposes of this clause 17.1 (each a **Relevant Document** and together the **Relevant Documents**) state all the express terms agreed by the parties in respect of their subject matter. The Relevant Documents set out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersede all prior Conduct, discussions and negotiations in respect of their subject matter. Without limiting clause 8.10, no party has relied on or is relying on any other Conduct in entering into this deed and completing the transactions contemplated by it.

### 17.2 No merger

The rights and obligations of the parties do not merge on completion of any transaction contemplated by this deed. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

### 17.3 Severance

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

### 17.4 Waivers

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

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

### 17.5 Amendments

A variation of any term of this deed must be in writing and signed by the parties.

### 17.6 Assignment of rights

- (a) Except as provided in clause 17.6(b), a party may not assign, novate, declare a trust over or otherwise transfer or deal with any of its rights or obligations under this deed without the prior written consent of the other party or as expressly provided in this deed.
- (b) Notwithstanding any other provision of this deed, Bidder's rights under this deed may be encumbered by way of security (whether by charge, mortgage or otherwise) for the benefit of each financial institution or group of financial institutions, bank or other provider of finance, including any agent or trustee acting on behalf of the foregoing in connection with the Debt Financing.

- (c) A breach of clause 17.6(a) by a party shall be deemed to be a material breach for the purposes of clause 14.1(a)(i).
- (d) Clause 17.6(c) does not affect the construction of any other part of this deed.

### **17.7 Further acts and documents**

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

### **17.8 Stamp duty**

Bidder:

- (a) must pay all stamp duties and any fines and penalties with respect to stamp duty in respect of this deed or the Scheme or the steps to be taken under this deed or the Scheme; and
- (b) indemnifies Target against any liability arising from its failure to comply with clause 17.8(a).

### **17.9 Costs and expenses**

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution, delivery and performance of this deed and the proposed, attempted or actual implementation of this deed and the Transaction.

### **17.10 Counterparts**

This deed may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

### **17.11 Relationship of the parties**

- (a) Nothing in this deed gives a party authority to bind any other party in any way.
- (b) Nothing in this deed imposes any fiduciary duties on a party in relation to any other party.

### **17.12 Remedies cumulative**

Except as provided in this deed and permitted by law, the rights, powers and remedies provided in this deed are cumulative with, and not exclusive of, the rights, powers and remedies provided by law independently of this deed.

### **17.13 Exercise of rights**

- (a) Unless expressly required by the terms of this deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.

## 17.14 Withholding

- (a) If the Bidder is required by Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (**Subdivision 14-D**) to pay amounts to the Commissioner of Taxation in respect of the acquisition of Target Shares from certain Scheme Shareholders, the Bidder is permitted to deduct the relevant amounts from the payment of the Scheme Consideration to those Scheme Shareholders, and remit such amounts to the Commissioner of Taxation. The aggregate sum payable to Scheme Shareholders shall not be increased to reflect the deduction and the net aggregate sum payable to those Scheme Shareholders shall be taken to be in full and final satisfaction of the amounts owing to those Scheme Shareholders.
- (b) The Target agrees that the Bidder may approach the ATO to obtain clarification as to the application of Subdivision 14-D to the Transaction and will provide all information and assistance that the Bidder reasonably requires in making that approach. The Bidder agrees:
- (i) to provide the Target a reasonable opportunity to review the form and content of all materials to be provided to the ATO, to take into account the Target's reasonable comments on those documents and more generally in relation to the Bidder's engagement with the ATO in connection with the application of Subdivision 14-D to the Transaction; and
  - (ii) not to contact any Target Shareholders in connection with the application of Subdivision 14-D to the Transaction without the Target's prior written consent.
- (c) Bidder and Target will use all reasonable endeavours to obtain clearance from the ATO (**Withholding Clearance**) such that withholding is not required under Subdivision 14-D. Target will provide all reasonably requested information in connection with the Withholding Clearance within a reasonable timeframe, having regard to the nature of the request.
- (d) Bidder must pay any amount to the ATO in the time permitted by law and, if requested in writing by the relevant Scheme Shareholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Scheme Shareholder.

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## 18. Governing law, jurisdiction and service of process

### 18.1 Governing law

This agreement is governed by the law applying in Victoria, Australia.

### 18.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Victoria, Australia the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 18.2(a).



## Schedule 1 - Target Representations and Warranties

Target represents and warrants to Bidder that:

- (a) **(Target Information)** the Target Information contained in the Scheme Booklet, as at the date the Scheme Booklet is dispatched to Target Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (b) **(Basis of Target Information)** the Target Information:
  - (i) will be prepared and included in the Scheme Booklet in good faith and on the understanding that Bidder and each other Bidder Indemnified Party will rely on that information for the purpose of determining to proceed with the Transaction; and
  - (ii) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules,

and all information provided by Target to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;

- (c) **(New information)** it will, as a continuing obligation (but in respect of the Bidder Information, only to the extent that Bidder provides Target with updates to the Bidder Information), ensure that the Scheme Booklet is updated to include all further or new information which arises after the Scheme Booklet has been dispatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive in any material respect (including by way of omission);
- (d) **(Validly existing)** it is a validly existing corporation registered under the laws of its place of incorporation;
- (e) **(Authority)** the execution and delivery of this deed has been properly authorised by all necessary corporate action of Target and Target has taken or will take all necessary corporate action to authorise the performance by Target of this deed and the transactions contemplated by this deed;
- (f) **(Power)** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (g) **(No default)** this deed does not conflict with or result in the breach of or a default under:
  - (i) any provision of Target's constitution; or
  - (ii) any material contract or any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other Target Group Member is bound,

and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;

- (h) **(Deed binding)** this deed is a valid and binding obligation of Target, enforceable in accordance with its terms;



- (i) **(Continuous disclosure)** Target has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and, other than for this Transaction, as at the date of this deed it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure;
- (j) **(Capital structure)** its capital structure, including all issued securities as at the date of this deed, is as set out in Schedule 3 and it has not issued or granted (or agreed to issue or grant) any other securities, options, warrants, share rights, performance rights or other instruments which are still outstanding and may convert into Target Shares other than as set out in Schedule 3 and it is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any Target Shares, options, warrants, share rights, performance rights or other securities or instruments in Target;
- (k) **(Insolvency Event or regulatory action)** no Insolvency Event has occurred in relation to it or another Target Group Member, nor, as far as Target is aware, has any regulatory action of any nature been taken that would prevent or restrict its ability to fulfil its obligations under this deed;
- (l) **(Disclosure Materials)** it has collated and prepared all of the Disclosure Materials in good faith for the purposes of a due diligence process and in this context, as far as Target is aware, the Disclosure Materials have been collated with all reasonable care and skill and are accurate in all material respects and not materially misleading or false (including by omission). The Target has not knowingly withheld or omitted information from disclosure to the Bidder which could reasonably be expected to be material to the Bidder's evaluation of the Target Group and the merits of the Transaction. For the avoidance of doubt, Target makes no representation or warranty whatsoever:
  - (i) in relation to any information, document, representation, statement, view or opinion to the extent that it contains or expresses a forecast, prediction or projection or is otherwise forward looking at the date of this deed; or
  - (ii) as to the adequacy or sufficiency of the Disclosure Materials for the purpose of Bidder acquiring the Scheme Shares or for Bidder's funding of that acquisitions, which are matters of which Bidder has to satisfy itself.
- (m) **(No material breach of laws)** So far as Target is aware, each member of the Target Group has complied in all material respects with all Australian or foreign laws and regulations applicable to them or orders of Australian or foreign Government Agencies having jurisdiction over it.
- (n) **(Material licences and authorisations)** So far as Target is aware, the Target Group has all material licences, permits and franchises necessary for it to conduct its activities as they are conducted as at the date of this deed.
- (o) **(Regulatory approvals)** So far as Target is aware, no approval from any Government Agency is required to be obtained by Target in order to execute and perform this deed, other than, for the avoidance of doubt, approvals from ASIC, ASX and the Court, as contemplated by this deed.
- (p) **(Financial Statements)**
  - (i) So far as Target is aware, as at the date of this deed, there has not been any event, circumstance, matter, event, change, effect or development that would require the Target to restate its financial statements as disclosed to ASX; and

- (ii) So far as Target is aware, as at the date of this deed the Target's financial statements for the financial year ended 30 June 2021 and the half year ended 31 December 2021:
  - A. comply with applicable statutory requirements and were prepared in accordance with the Corporations Act, applicable accounting standards and all other applicable laws and regulations; and
  - B. give a true and fair view of the financial position and the assets and liabilities of the Target Group.
- (a) **(no indebtedness)** So far as Target is aware, no Target Group Member has any indebtedness or liabilities required under the Australian Accounting Standards to be reflected on balance sheet or the notes thereto, other than those (i) specifically reflected in, fully reserved against or otherwise described in the Target's audited financial statements as disclosed to ASX or the notes thereto; (ii) incurred under this deed or in connection with the Scheme; or (iii) Fairly Disclosed in the Due Diligence Material.
- (b) **(Material contracts)**
  - (i) so far as Target is aware, each Material Contract and Telstra Agreement remains on-foot and is in full force and effect;
  - (ii) there has been no termination, or purported termination, of any Material Contract or Telstra Agreement (other than, in the case of the RSP Heads of Agreement (as that term is defined in the Disclosure Letter), where such agreement has been replaced by the Telstra RSPMA); and
  - (iii) where the Telstra RSPMA is entered into after the date of this deed, there has been no termination, or purported termination, of such Telstra RSPMA.

## Schedule 2 - Bidder Representations and Warranties

Bidder represents and warrants to Target (in its own right and separately as trustee or nominee for each of the other Target Indemnified Parties) that:

- (a) **(Bidder Information)** the Bidder Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is dispatched to Target Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (b) **(Basis of Bidder Information)** the Bidder Information:
- (i) will be provided to Target in good faith and on the understanding that Target and each other Target Indemnified Party will rely on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme; and
  - (ii) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules,
- and all information provided by Bidder to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (c) **(New information)** it will, as a continuing obligation, provide to Target all further or new information which arises after the Scheme Booklet has been dispatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information is not misleading or deceptive (including by way of omission);
- (d) **(Validly existing)** it is a validly existing corporation registered under the laws of its place of incorporation;
- (e) **(Authority)** the execution and delivery of this deed has been properly authorised by all necessary corporate action of Bidder, and Bidder has taken or will take all necessary corporate action to authorise the performance of this deed and to carry out the transactions contemplated by this deed;
- (f) **(Power)** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (g) **(No default)** this deed does not conflict with or result in the breach of or a default under:
- (i) any provision of Bidder's constitution or other constituent documents; or
  - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other Bidder Group Member is bound,
- and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;
- (h) **(Deed binding)** this deed is a valid and binding obligation of Bidder, enforceable in accordance with its terms;

- (i) **(Bidder)** the Bidder is wholly-owned and 100% controlled (within the meaning of section 50AA of the Corporations Act) by the Consortium Members;
- (j) **(Insolvency Event or regulatory action)** no Insolvency Event has occurred in relation to it or another Bidder Group Member, nor has any regulatory action of any nature been taken that would reasonably be likely to prevent or restrict its ability to fulfil its obligations under this deed, under the Deed Poll or under the Scheme;
- (k) **(Other dealings)** no Bidder Group Member has any agreement, arrangement or understanding (whether written or oral) with any Target Shareholder under which that Target Shareholder (or an Associate of that Target Shareholder) would be entitled to receive any collateral benefit in relation to the Scheme or the Transaction, or under which the Target Shareholder has agreed to vote in favour of the Scheme (or against any Competing Proposal);
- (l) **(Dealings with officers and employees)** other than agreements with Relevant Shareholders in respect of the Scrip Consideration, no Bidder Group Member has any agreement, arrangement or understanding with any director, officer or employee of any Target Group Member relating in any way to the Transaction or the operation of Target's business after implementation of the Scheme;
- (m) **(No regulatory approvals)** it does not require any approval, consent, clearance, waiver, ruling, relief, confirmation, exemption, declaration or notice from any Government Agency in order to execute and perform this deed, other than the Regulatory Approval;
- (n) **(Equity Commitment Letters)**
  - (i) the Bidder has disclosed a true and complete copy of the Equity Commitment Letters to Target;
  - (ii) the Equity Commitment Letter has been duly executed by the parties thereto and constitute legally binding obligations of those parties that are enforceable in accordance with their respective terms;
  - (iii) each Equity Commitment Letter has not been:
    - C. terminated or rescinded, and the Bidder is not in default thereunder: or
    - D. amended in any respect which will, or is reasonably likely to, prejudice the Bidder's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll and any Reverse Break Fee in accordance with this deed;
  - (iv) without the prior written consent of Target, Bidder will not and must procure that each other Bidder Group Member does not:
    - A. terminate any of the Equity Commitment Letters;
    - B. replace, amend, or agree to amend, any Equity Commitment Letter;
    - C. waive, or agree to waive, any of its rights under any Equity Commitment Letter; and
    - D. agree or consent to any novation, assignment or transfer or any counterparty's obligation under any Equity Commitment Letter,

where, in respect of paragraphs B to D above, to do so will, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme consideration in accordance with this deed, the Scheme and the Deed Poll and any Reverse Break Fee in accordance with this deed; and

- (v) Bidder will enforce its rights under the Equity Commitment Letters to the extent that failure to do so is reasonably likely to prejudice Bidder's ability to pay any amount in accordance with this deed and the Deed Poll;

(o) **(Debt Commitment Letters)**

- (i) the Bidder has disclosed a true and complete copy of the Debt Commitment Letters to Target or its legal advisers subject to redactions for commercially sensitive information;
- (ii) each Debt Commitment Letter has been duly executed by the relevant Bidder Group Member and constitute legally binding obligations of the Bidder Group Member that are enforceable in accordance with their respective terms;
- (iii) so far as the Bidder is aware, each Debt Commitment Letter has been duly executed by the parties thereto (other than any Bidder Group Member) and constitute legally binding obligations of those parties that are enforceable in accordance with their respective terms;
- (iv) each Debt Commitment Letter has not been:
  - A. terminated or rescinded, and the Bidder is not in default thereunder: or
  - B. amended in any respect, where to do so will, or is reasonably likely to, prejudice the Bidder's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll and any Reverse Break Fee in accordance with this deed;
- (v) without the prior written consent of Target, Bidder will not and must procure that each other Bidder Group Member does not:
  - A. terminate any of the Debt Commitment Letters;
  - B. replace, amend, or agree to amend, any Debt Commitment Letter;
  - C. waive, or agree to waive, any of its rights under any Debt Commitment Letter; and
  - D. agree or consent to any novation, assignment or transfer or any counterparty's obligation under any Debt Commitment Letter,

where, in respect of paragraphs B to D above, to do so will, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed, the Scheme and the Deed Poll and any Reverse Break Fee in accordance with this deed; and

- (vi) Bidder will enforce its rights under the Debt Commitment Letters to the extent that failure to do so is reasonably likely to prejudice Bidder's ability to pay any amount in accordance with this deed and the Deed Poll;

- (p) **(Obtaining financing under Debt Commitment Letters)** as a continuing obligation, Bidder must use reasonable endeavours (including enforcing its rights under the Debt Commitment Letters) to obtain the proceeds of the Debt Financing on the terms and conditions described in the Debt Commitment Letters on or prior to the Implementation Date, including by using reasonable endeavours to:
- (i) maintain in effect the Debt Commitment Letters (except to the extent replaced by definitive agreements);
  - (ii) negotiate definitive agreements with respect to the Debt Financing on other terms which do not:
    - A. reduce the aggregate amount of the Debt Financing below an amount necessary (when combined with the equity amounts) to fund any amount payable by Bidder in accordance with this deed and the Deed Poll; or
    - B. expand upon the conditions precedent to include any conditions precedent beyond the control of the Bidder or its investors to the Debt Financing as set forth in the Debt Commitment Letters in effect as at the date of this deed in any material respect (other than conditions precedent that have already been satisfied at the time they are so added),

where, to do so will, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed, the Scheme and the Deed Poll and any Reverse Break Fee in accordance with this deed; and
  - (iii) satisfy on a timely basis all conditions precedent to funding of the Debt Financing;
- (q) **(Sufficient cash amounts – reasonable expectation at date of this deed)** at all times between the date of this deed and 8.00am on the Second Court Date Bidder has a reasonable basis to expect that it will have available to it sufficient cash amounts (whether from internal cash resources or external funding arrangements, including debt and equity financing, or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;
- (r) **(Sufficient cash amounts – unconditional at Second Court Date)** by 8.00am on the Second Court Date, Bidder will have available to it on an unconditional basis (other than conditions related to Court approval or other procedural matters which, by nature, can only be satisfied or performed after the Second Court Date) sufficient cash amounts (whether from internal cash resources or external funding arrangements, including debt and equity financing, or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;
- (s) **(Sufficient cash amounts – available on Implementation Date)** Bidder will have available to it on the Implementation Date sufficient cash amounts (whether from internal cash resources or external funding (including debt and equity financing) arrangements or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;
- (t) **(No other financing arrangements)** no Bidder Group Member nor any Associate of a Bidder Group Member is or will be a party to any agreement, arrangement or understanding (whether written or oral) with a debt financier or equity financier in connection with the Transaction other than in connection with a Debt Commitment Letter or Equity Commitment Letter (respectively), and Bidder has fully disclosed to

Target all agreements, arrangements or understandings (whether written or oral) with any debt financier or equity financier in connection with the Transaction; and

- (u) **(Dealings in Target securities)** as at the date of this deed:
- (i) Bidder and its Affiliates do not have a Relevant Interest in any Target Shares, and neither Bidder nor any Affiliate of Bidder has a Relevant Interest in, or a right to acquire, any other Target Shares (whether issued or not or held by Bidder or not); and
  - (ii) Bidder and each of its Affiliate have not entered into any agreement or arrangement that confers rights the economic effect of which is equivalent or substantially equivalent to holding, acquiring, or disposing of securities in Target or any of its Affiliates or of any assets of Target or any of its Affiliates (including cash-settled derivative contract, contracts for difference or other derivative contracts).

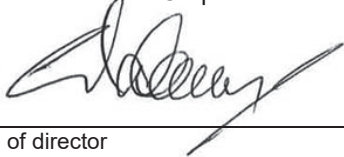
**Schedule 3 - Capital structure**

<b>Security</b>	<b>Total number on issue</b>
Target Shares	679,836,786
Target Equity Incentives	2,026,121 Share Rights 297,805 Legacy Options 41,260,665 Employee Options



**Executed** as a deed.

**Executed by Uniti Group Limited** in accordance with section 127 of the Corporations Act 2001 (Cth):



\_\_\_\_\_  
Signature of director

Graeme Rodger Crawford Barclay

\_\_\_\_\_  
Full name of director who states that they are a director of **Uniti Group Limited**




\_\_\_\_\_  
Signature of ~~company secretary~~/director

Kathryn Joy Gramp

\_\_\_\_\_  
Full name of company secretary/director who states that they are a ~~company secretary~~/director of **Uniti Group Limited**

**Executed by MBC BidCo Pty Ltd** in accordance with section 127 of the Corporations Act 2001 (Cth):

DocuSigned by:  


9E954085-22FB-43D7-A372-0228DB753D7C  
Signature of director

**GEOFFREY JOHN HUTCHINSON**

Full name of director who states that they are a director of **MBC BidCo Pty Ltd**



Signature of ~~company secretary~~ director

**FELIX CHIH-WAI CHAN**

Full name of company secretary/director who states that they are a company secretary/director of **MBC BidCo Pty Ltd**

**Attachment 1 - Indicative Timetable**

<b>Event</b>	<b>Date</b>
Announcement and signing of scheme implementation deed	13 April 2022
Scheme Booklet provided to ASIC in draft	Mid to late May 2022
First Court Hearing	June 2022
Scheme Meeting	June / July 2022
Second Court Hearing	July 2022
Effective Date	July / Early August 2022
Scheme Record Date	July / Early August 2022
Implementation Date	July / Early August 2022

**Attachment 2 - Scheme of Arrangement**

# Scheme of arrangement made under section 411 of the Corporations Act 2001 (Cth)

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## Date

**Parties**                    **Uniti Group Limited ACN 158 957 889** of Level 1, 44 Currie Street, Adelaide, South Australia 5000 (**Target**)

Each holder of Target Shares recorded in the Target Share Register on the Scheme Record Date.

## Background

- A. Target and Bidder have entered into the Implementation Deed, pursuant to which, amongst other things, Target agreed to propose this Scheme to Target Shareholders and each of Target and Bidder agreed to take certain steps to give effect to this Scheme and the Deed Poll.
- B. If the Scheme becomes Effective, Bidder will provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with the provisions of this Scheme and the Deed Poll, Bidder will acquire all Scheme Shares and all of the rights and entitlements attaching to them as at the Implementation Date and Target will enter Bidder in Target Share Register as the holder of the Scheme Shares.

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Definitions

Unless the context requires otherwise, in this Scheme:

**Affiliate** means, in respect of a person (the primary person), a person:

- (a) Controlled directly or indirectly by the primary person;
- (b) Controlling directly or indirectly the primary person; or
- (c) who is Controlled, directly or indirectly, by a person or persons who Control the primary person,

where **Control** means, with respect to any person (other than an individual) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person whether through the ownership of voting securities, by agreement or otherwise, and for the avoidance of doubt, a general partner is deemed to Control a limited partnership of which it is the general partner and, solely for the purposes of this deed, a fund advised or managed directly or indirectly by a person will also be deemed to be Controlled by such person.

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

**ASX** means ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.

**Bidder** means MBC Bidco Pty Ltd ACN 658 690 343.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Adelaide or Sydney, Australia.

**Cash Consideration** means \$5.00 for each Target Share, subject to and as adjusted in accordance with clause 4.8 of the Implementation Deed.

**CHES** means the Clearing House Electronic Subregister System for the electronic transfer of securities, operated by ASX Settlement Pty Limited and ASX Clear Pty Limited.

**CHES Holding** has the meaning given in the Settlement Rules.

**Condition** means each condition specified in clause 3.1 of the Implementation Deed.

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

**Court** means the Victoria Registry of 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 a deed poll to be entered into by Bidder and TopCo substantially in the form of Attachment 3 to the Implementation Deed under which Bidder and TopCo covenant in favour of the Scheme Shareholders to perform their obligations under the Scheme.

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

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

**Election** means an election by a Relevant Shareholder to receive their Scheme Consideration partly in the form of Scrip Consideration and partly in the form of Cash Consideration, made in accordance with clause 4.4 of the Implementation Deed.

**Election Form** means a form issued by or on behalf of the Target for the purposes of a Relevant Shareholder making an Election in a form agreed to by Target and Bidder.

**Election Time** means 5.00pm on the third Business Day before the date of the Scheme Meetings, or such other date as is agreed in writing between Bidder and Target.

**Employee Options** means the options to acquire Target Shares issued under the Target's employee share option plan and the Target's employee retention option plan as listed in Schedule 3 of the Implementation Deed.

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

**End Date** means the date that is 8 months from the date of the Implementation Deed, or such other date as agreed in writing by Target and Bidder.

**Government Agency** means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.

**Implementation Date** means the fifth Business Day after the Scheme Record Date, or such other date after the Scheme Record Date as the parties agree in writing or is ordered by the Court or required by ASX.

**Implementation Deed** means the scheme implementation deed between Target and Bidder dated [●] 2022.

**Issuer Sponsored Holding** has the meaning given in the Settlement Rules.

**Legacy Options** means the options to acquire Target Shares (ASX Security Code: UWLAAB), granted by the Target on 29 June 2021 as listed in Schedule 3 of the Implementation Deed.

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

**Marketable Parcel** has the meaning given to that term in the Listing Rules.

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

**Registered Addresses** means in relation to a Scheme Shareholder, the address of the Scheme Shareholder as recorded in Target Share Register.

**Related Bodies Corporate** has the meaning set out in section 50 of the Corporations Act, provided that, where, for the purposes of this definition, the reference to 'subsidiary' in section 50 of the Corporations Act is amended as necessary such that:

- (a) a body corporate or a trust will also be taken to be a subsidiary of an entity if it is controlled by that entity (as defined in section 50AA of the Corporations Act);
- (b) a trust, partnership or fund may be a subsidiary, for the purpose of which a unit, partnership interest or other beneficial interest in the trust, partnership or fund will be regarded as a share (ignoring the operation of section 48(2) of the Corporations Act); and
- (c) an entity may be a subsidiary of a trust, partnership or fund if it would have been a subsidiary if that trust, partnership or fund were a body corporate.

**Relevant Shareholder** means a Target Shareholder that is, or is an Affiliate of, an executive management team member of the Target Group agreed in writing between Target and Bidder on or prior to, or as soon as practicable following, the date of the Implementation Deed.

**Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders under which all of the Scheme Shares will be transferred to Bidder and the Scheme Shareholders will be entitled to receive the Scheme Consideration, together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by Bidder and Target.

**Scheme Consideration** means the Cash Consideration and, if applicable, Scrip Consideration to be provided to each Scheme Shareholder for the transfer to Bidder of each Scheme Share.

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

**Scheme Record Date** means 7.00 pm on the date which is 5 Business Days after the Effective Date or such other time and date agreed in writing between Bidder and Target.

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

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

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

**Scrip Consideration** means  TopCo Security per Scheme Share.

**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 day on which the adjourned application is heard.

**Security Interest** means any mortgage, charge, pledge, lien, assignment or other security interest or any other arrangement (including a right of set off or combination) entered into for the purpose of conferring a priority, including any security interest as defined in section 51A of the Corporations Act or in the PPSA.

**Settlement Rules** means the ASX Settlement Operating Rules, being the official operating rules of the settlement facility provided by ASX Settlement Pty Ltd.

**Share Rights** means the rights to Target Shares issued under the Target's executive incentive plan as listed in Schedule 3 of the Implementation Deed.

**Target Equity Incentive** means the Share Rights, Legacy Options and Employee Options.

**Target Registry** means Boardroom Pty Limited of Level 12, 225 George St Sydney, NSW 2000.

**Target Share Register** means the register of members of Target maintained by or on behalf of Target in accordance with the Corporations Act.

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

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

**TopCo** means MBC TopCo Pty Ltd ACN 658 690 101, the ultimate holding company of the Bidder.

**TopCo Securities** means non-voting securities in the capital of TopCo and **TopCo Security** means any one of them.

**Trust Account** means an Australian dollar denominated trust account which attracts interest at a commercial rate and is operated by or on behalf of Target as trustee for the Scheme Shareholders (except that any interest on the amount deposited, less bank fees and other charges, will accrue for the benefit of Bidder), details of which Target must notify to Bidder no later than 5 Business Days before the Implementation Date.

**Unclaimed Money Legislation** has the meaning given in clause 5.8(c).

## 1.2 Business Day

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



### 1.3 Listing rules are law

A Listing Rule or business rule of a financial market or securities exchange will be regarded as a law for the purposes of this Scheme.

### 1.4 Interpretation

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

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

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## **2. Preliminary matters**

### **2.1 Target**

- (a) Target is a public company limited by shares, incorporated in Australia and registered in the State of South Australia, Australia.
- (b) Target is admitted to the official list of ASX and Target Shares are officially quoted on the ASX.
- (c) As at the date of the Implementation Deed, 679,836,786 Target Shares were on issue.

### **2.2 Bidder**

Bidder is a proprietary company limited by shares, incorporated and registered in Victoria, Australia.

### **2.3 Implementation Deed**

Bidder and Target have agreed, by executing the Implementation Deed, to implement this Scheme (among other things).

### **2.4 Deed Poll**

The Scheme attributes actions to Bidder and TopCo but does not itself impose an obligation on either or both of them to perform any of those actions. Bidder and TopCo have agreed, by executing the Deed Poll, to perform the obligations attributed to them under this Scheme, including the obligation to provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with the terms of the Scheme.

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## **3. Conditions precedent**

### **3.1 Conditions**

- (a) The Scheme is conditional on and will have no force or effect (and will not become Effective) unless and until each of the following conditions precedent is satisfied:
  - (i) all of the Conditions in clause 3.1 of the Implementation Deed (other than the Condition in clause 3.1(e) of the Implementation Deed relating to Court approval of this Scheme) are satisfied or waived in accordance with the terms of the Implementation Deed by 8.00am on the Second Court Date;
  - (ii) neither the Implementation Deed nor Deed Poll is terminated in accordance with their terms before 8.00am on the Second Court Date;
  - (iii) this Scheme is approved by the Court under section 411(4)(b) of the Corporations Act, including with such alterations or other conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Target and Bidder (each acting reasonably);
  - (iv) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and agreed to by Target and Bidder (each acting reasonably) are satisfied or waived; and
  - (v) the orders of the Court made under section 411(4)(b) of the Corporations Act (and if applicable, section 411(6) of the Corporations Act) approving

this Scheme coming into effect pursuant to section 411(10) of the Corporations Act on or before the End Date (or any later date Target and Bidder agree in writing).

### **3.2 Certificate**

- (a) Target and Bidder must provide to the Court on the Second Court Date a certificate (signed for and on behalf of Target and Bidder respectively), or such other evidence as the Court may require or request, confirming (in respect of matters within their knowledge) whether or not as at 8.00am on the Second Court Date the conditions in clauses 3.1(a)(i) and 3.1(a)(ii) have been satisfied or waived in accordance with the Implementation Deed.
- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent were satisfied, waived or taken to be waived.

### **3.3 End Date**

Without limiting any rights under the Implementation Deed, this Scheme will lapse and be of no further force or effect if:

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

unless Target and Bidder otherwise agree in writing (and, if required, as approved by the Court).

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## **4. Implementation of this Scheme**

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

For the purposes of section 411(10) of the Corporations Act, Target must lodge with ASIC an office copy of the orders made by the Court under section 411(4)(b) of the Corporations Act approving this Scheme as soon as possible following such approval and, in any event, by no later than 5.00pm on the Business Day following the day on which the Court approves this Scheme (or such later date as is agreed between Target and Bidder in writing).

### **4.2 Consequences of this Scheme becoming Effective**

If this Scheme becomes Effective:

- (a) in consideration for the transfer of each Scheme Share to Bidder, Bidder will provide or procure the provision of the Cash Consideration to Scheme Shareholders in accordance with clause 5.4(a) and the Deed Poll and, if applicable, TopCo will issue the Scrip Consideration in accordance with clause 5.5 and the Deed Poll;
- (b) all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to Bidder; and
- (c) Target will enter the name and address of Bidder in the Target Share Register in respect of all the Scheme Shares.

### **4.3 Transfer of Scheme Shares**

On the Implementation Date:

- (a) subject to Bidder providing or procuring the provision of the Scheme Consideration in the manner contemplated by clause 5.4(a) and the Deed Poll, and, if applicable, TopCo issuing the Scrip Consideration in accordance with clause 5.5 and the Deed Poll, the Scheme Shares, together with all rights and entitlements attaching to them 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 its officers as agent and attorney of the Scheme Shareholders under clause 8.5) by:
  - (i) Target delivering to Bidder a duly completed and executed Scheme Transfer to transfer all of the Scheme Shares to Bidder, executed on behalf of the Scheme Shareholders by Target as their agent and attorney; and
  - (ii) Bidder duly executing such Scheme Transfer and delivering the executed and, if necessary, stamped, Scheme Transfer to Target for registration; and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.3(a)(ii), but subject to stamping of the Scheme Transfer (if necessary), 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.

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## **5. Scheme Consideration**

### **5.1 Entitlement to Scheme Consideration**

Subject to the terms of this Scheme, on the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, each Scheme Shareholder will be entitled to the Scheme Consideration for each Scheme Share held by that Scheme Shareholder in accordance with this clause 5 and the Deed Poll.

### **5.2 Election procedure**

- (a) The Target must provide or procure the provision of an Election Form to each Relevant Shareholder, with the Scheme Booklet that is sent to them.
- (b) Subject to clauses 5.2(c), 5.2(d) and 5.2(e), each of the Relevant Shareholders will be entitled to make an Election. All Elections will take effect in accordance with the Scheme (provided that any Relevant Shareholder who makes an Election is also a Scheme Shareholder).
- (c) For an Election to be valid:
  - (i) the Relevant Shareholder must complete and sign the Election Form in accordance with the terms and conditions of the Election Form, the instructions in the Scheme Booklet, the Scheme and this clause 5.2; and
  - (ii) the Election Form must be received by the Target Registry at the address specified on the Election Form before the Election Time,unless Bidder and Target agree otherwise, in their absolute discretion.
- (d) If a Relevant Shareholder makes an Election, that Election will apply in respect of that percentage (as specified in the Election Form) of the Relevant Shareholder's entire registered holding of Target Shares at the Scheme Record Date, regardless of whether the Relevant Shareholder's holding at the Scheme Record Date is greater or less than the Relevant Shareholder's holding at the time it made its Election, unless Bidder and Target agree otherwise, in their absolute discretion.

- (e) A Relevant Shareholder who makes a valid Election may vary, withdraw or revoke that Election by lodging a replacement Election Form so that it is received by the Target Registry at the address specified on the Election Form before the Election Time. After the Election Time, a valid Election made by a Relevant Shareholder will be irrevocable unless Bidder and Target agree, in their absolute discretion, to the revocation of the Election.
- (f) The Election Form must include the relevant matters set out in the Scheme and must otherwise be in a form agreed by Bidder and Target in writing.

### **5.3 Determination of Scheme Consideration**

- (a) If a Scheme Shareholder is not a Relevant Shareholder, then the Scheme Consideration applicable for that Scheme Shareholder is the Cash Consideration for each Scheme Share held by the Scheme Shareholder.
- (b) If a Scheme Shareholder is a Relevant Shareholder who has not made a valid Election before the Election Time, then the Scheme Consideration applicable for that Scheme Shareholder is the Cash Consideration per Scheme Share in respect of 100% of the Scheme Shares held by the Relevant Shareholder on the Record Date.
- (c) If the Scheme Shareholder is a Relevant Shareholder who has made a valid Election before the Election Time, then the Scheme Consideration applicable for that Scheme Shareholder for the Scheme Shares held by the Scheme Shareholder is:
  - (i) the Scrip Consideration per Scheme Share in respect of the Scheme Shares held by the Relevant Shareholder for which the Relevant Shareholder has elected (in the Election Form) to receive the Scrip Consideration; *plus*
  - (ii) the Cash Consideration per Scheme Share in respect of the Scheme Shares held by the Relevant Shareholder for which the Relevant Shareholder has elected (in the Election Form) to receive the Cash Consideration.

### **5.4 Provision of Cash Consideration**

- (a) The obligation of Bidder to provide, or procure the provision of, the Cash Consideration to Scheme Shareholders in accordance with this Scheme and the Deed Poll will be satisfied by Bidder by depositing, or procuring the deposit, into the Trust Account, of an amount in cleared funds equal to the aggregate amount of the Cash Consideration payable to all Scheme Shareholders by no later than one Business Day before the Implementation Date to be held by or on behalf of Target on trust for the purpose of paying the Cash Consideration to Scheme Shareholders who are entitled to receive it pursuant to clause 5.4(b) (provided that any interest on the amount so deposited, less bank fees and other charges, will accrue for the benefit of Bidder).
- (b) Subject to Bidder complying with its obligations under clause 5.4(a), Target must on the Implementation Date pay, or procure the payment, from the Trust Account to each Scheme Shareholder an amount equal to the applicable amount of Cash Consideration that the Scheme Shareholder is entitled to pursuant to clause 5.3 in respect of each Scheme Share held by that Scheme Shareholder as set out in the Target Share Register on the Scheme Record Date.
- (c) Target's obligations under clause 5.4(b) will be satisfied by Target (in its absolute discretion, and despite any election referred to in clause 5.4(c)(i) or authority referred to in 5.4(c)(ii) made or given by the Scheme Shareholder):

- (i) where a Scheme Shareholder has, before the Scheme Record Date, made an election in accordance with the requirements of the Target Registry to receive dividend payments from Target by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount to that Scheme Shareholder in Australian currency by electronic means in accordance with that election;
- (ii) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Shareholder by an appropriate authority from the Scheme Shareholder to Target; or
- (iii) dispatching, or procuring the dispatch of, a cheque in Australian currency for the relevant amount to that Scheme Shareholder by prepaid post to the Registered Address of that Scheme Shareholder (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with clause 5.5).

## **5.5 Provision of Scrip Consideration**

- (a) TopCo must, by no later than 12:00 noon (or such later time as Bidder and Target may agree in writing) on the Implementation Date:
  - (i) issue the number of TopCo Securities to each Scheme Shareholder that is a Relevant Shareholder in accordance with clause 5.3; and
  - (ii) procure that the name and address of such Scheme Shareholder is entered in TopCo's register of members as the holder of those TopCo Securities (and in relation to TopCo Securities issued to such Scheme Shareholder, having the same holding name and address and other details as recorded in the Target Register as at the Scheme Record Date).
- (b) A Scheme Shareholder that is a Relevant Shareholder that is entitled to be issued TopCo Securities under this Scheme may, in the Election Form, direct that the TopCo Securities to which they are entitled be issued to a Related Body Corporate of the Scheme Shareholder (in which case such Related Body Corporate's name and details will be entered into TopCo's register of members).
- (c) On the Implementation Date, TopCo must send or procure the sending of a certificate to each Scheme Shareholder to whom TopCo Securities are issued under this Scheme, reflecting the issue of such TopCo Securities.

## **5.6 Joint holders**

In the case of Scheme Shares held in joint names:

- (a) subject to clause 5.4(c), any cheque required to be sent under this Scheme will be made payable to the joint holders and sent at the sole discretion of Target, either to the holder whose name appears first in the Target Share Register as at the Scheme Record Date or to the joint holders (unless the joint holders have nominated a bank account under clause 5.4(c)(i) or 5.4(c)(ii), in which case the amount must be deposited directly to the nominated bank account of the joint holders); and
- (b) any other document required to be sent under this Scheme will be forwarded at the sole discretion of Target, either to the holder whose name appears first in Target Share Register as at the Scheme Record Date or to the joint holders.

## 5.7 Fractional entitlements and share splitting or division

- (a) Where the calculation of the Scheme Consideration to be provided to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, or a fractional entitlement to a TopCo Security, the fractional entitlement will:
- (i) in the case of TopCo Security, be rounded down to the nearest whole number of TopCo Security; and
  - (ii) in the case of Cash Consideration, be rounded up to the nearest whole cent.
- (b) If Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 5.7(a)) have, before the Scheme Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, then Bidder may direct Target to give notice to those Scheme Shareholders:
- (i) setting out their names and registered addresses as shown in the Target Share Register;
  - (ii) stating that opinion; and
  - (iii) attributing to one of them specifically identified in the notice of the Scheme Shares held by all of them

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares will, for the purposes of the provisions of the Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the provisions of the Scheme, be taken to hold no Scheme Shares. Bidder and TopCo, in complying with the provisions of the Scheme relating to them in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares, will be taken to have satisfied and discharged their obligations to the other Scheme Shareholders named in the notice under the terms of the Scheme.

## 5.8 Unclaimed monies

- (a) Target may cancel a cheque issued under 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 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Target (or the Target Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), a cheque that was previously cancelled under clause 5.8(a) must be reissued by Target.
- (c) The *Unclaimed Money Act 2008* (Vic) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of *Unclaimed Money Act 2008* (Vic)).

- (d) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Bidder.

## **5.9 TopCo Securities**

Each TopCo Security issued as Scrip Consideration will, on issue:

- (a) rank equally in all respects with all other TopCo Securities in the same class; and
- (b) be fully paid and free from any Encumbrance and third party rights or interests of any kind, whether legal or otherwise.

## **5.10 Treatment of surplus amounts**

To the extent that there is a surplus in the amount held by Target as the trustee for the Scheme Shareholders in the Trust Account, that surplus will, at the election of Bidder, either remain with Target or be paid by Target as trustee for the Scheme Shareholders to Bidder following the satisfaction of Target's obligation as the trustee for the Scheme Shareholders under clause 5.4.

## **5.11 Amounts to be withheld or retained**

- (a) If written notice is given to Target (or the Target Registry) or Bidder of an order or direction made by a court of competent jurisdiction or another Government Agency that:
  - (i) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which amount would otherwise be payable or required to be issued to that Scheme Shareholder by Target in accordance with clause 5, then Target will be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
  - (ii) prevents Target from providing consideration to any particular Scheme Shareholder in accordance with this clause 5, or the payment or issuance of such consideration is otherwise prohibited by applicable law, Target will be entitled to (as applicable):
    - A. retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration; and
    - B. direct TopCo not to issue, or to issue to a trustee or nominee, any Scrip Consideration that Scheme Shareholder would otherwise be entitled to under clause 5.1,until such time as the provision of Scheme Consideration in accordance with this clause 5.11(a)(ii) is permitted by that (or another) order or direction or otherwise by law.
- (b) To the extent that amounts are so deducted or withheld in accordance with clause 5.11(a), such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the person in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted as required.



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## **6. Dealings in Target Shares**

### **6.1 Determination of Scheme Shareholders**

To establish the identity of the Scheme Shareholders, 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 to be effected using CHESSE, the transferee is registered in the Target Share Register as the holder of the relevant Target Shares before the Scheme Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in respect of those dealings, or valid requests in respect of other alterations, are received before the Scheme Record Date at the place where the Target Share Register is kept,

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

### **6.2 Target Share Register**

- (a) For the purposes of determining entitlements to the Scheme Consideration, Target must maintain the Target Share Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been provided to the Scheme Shareholders in accordance with clauses 5.4(b), 5.4(c) and 5.5. The Target Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (b) Target must register, or cause to be registered, valid registrable transmission applications or transfers of the Scheme Shares that are received in accordance with clause 6.1(b) by no later than the Scheme Record Date (provided that for the avoidance of doubt nothing in this clause 6.2(b) requires Target to register a transfer that would result in a Target Shareholder holding a parcel of Target Shares that is less than a Marketable Parcel).
- (c) Target will not accept for registration or recognise for any purpose any transmission application or transfer in respect of Target Shares received after the Scheme Record Date, other than to Bidder in accordance with this Scheme and any subsequent transfer by Bidder or its successors in title.
- (d) If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that holder) must not dispose of or otherwise deal with, or purport or agree to dispose of or otherwise deal with, any Scheme Shares or any interest in them on or after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and Target shall be entitled to disregard any such disposal, purported disposal, agreement or other dealing.

### **6.3 Information made available to Bidder**

As soon as possible after the Scheme Record Date and in any event within 2 Business Days after the Scheme 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 as at the Scheme Record Date are available to Bidder in the form Bidder reasonably requires.

## **6.4 Effect of share certificates and holding statements**

- (a) Each entry which is current on the Target Share Register as at the Scheme Record Date is the sole evidence of entitlement to the Scheme Consideration in respect of the Target Shares relating to that entry.
- (b) All certificates and statements of holding for Target Shares (other than statements of holding in favour of Bidder and its successors in title) will cease to have effect after the Scheme Record Date as documents of title (or evidence thereof) in respect of those shares and, as from that date, each entry current at that date on the Target Share Register (other than entries in respect of Bidder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Target Shares relating to that entry.

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## **7. Quotation of Target Shares**

### **7.1 Suspension of trading**

Subject to the Scheme becoming Effective, Target will apply to the ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date.

### **7.2 Removal of Target from official list of ASX**

On a date after the Implementation Date to be determined by Bidder, Target will apply:

- (a) for termination of the official quotation of Target Shares on the ASX; and
- (b) to have itself removed from the official list of ASX.

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## **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:

- (a) Target may, by its counsel or solicitors, consent on behalf of all persons concerned to those alterations or conditions to which Bidder has consented; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which Target, by its counsel or solicitors, has consented to in accordance with clause 8.1(a).

### **8.2 Binding effect of the scheme**

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

### **8.3 Agreement of Scheme Shareholders**

- (a) Each Scheme Shareholder:
  - (i) irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares, in accordance with terms of this Scheme;
  - (ii) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;

- (iii) agrees to, on the direction of Bidder, destroy any share certificates or holding statements relating to their Scheme Shares;
- (iv) agrees that after the transfer of the Scheme Shares to Bidder, any share certificate relating to the Scheme Shares will not constitute evidence of title to those Scheme Shares;
- (v) who holds their Target Shares in a CHES Holding agrees to the conversion of those Scheme Shares to an Issuer Sponsored Holding and irrevocably authorises Target to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion;
- (vi) acknowledges and agrees that this Scheme binds Target and all Scheme Shareholders (including those who did not attend the Scheme Meeting, those who did not vote at that Scheme Meeting, or voted against this Scheme at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Target to the extent of any inconsistency; and
- (vii) irrevocably consents to Bidder and Target doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of this Scheme,

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

- (b) Each Scheme Shareholder that is a Relevant Shareholder that is issued TopCo Securities under this Scheme agrees to become a shareholder of TopCo in respect of those TopCo Securities and to be bound by the TopCo constitution and each other agreement governing the TopCo Securities or TopCo, in each case substantially in the form provided to each Relevant Shareholder with the Election Form or such later time as agreed with the Relevant Shareholder(s).

#### **8.4 Warranties by Scheme Shareholders**

- (a) Each Scheme Shareholder is deemed 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:
  - (i) all Scheme Shares held by that Scheme Shareholder, together all rights and entitlements attaching to those Scheme Shares, which are transferred to Bidder under this Scheme will, at the time of transfer to Bidder, be:
    - A. fully paid;
    - B. free from all Encumbrances and third party rights or interests of any kind, whether legal or otherwise; and
    - C. free from all restrictions on transfer of any kind;
  - (ii) it has full power and capacity to sell and to transfer their Scheme Shares, together with all rights and entitlements attaching to their Scheme Shares, to Bidder; and
  - (iii) it has no existing right to be issued any Target Shares, Target Equity Incentive, or any other Target equity securities.

- (b) Target undertakes that it will provide the warranty in clause 8.4(a) to Bidder as agent and attorney for each Scheme Shareholder.

## **8.5 Authority given to Target**

Upon this Scheme becoming Effective, each Scheme Shareholder without the need for any further act:

- (a) irrevocably appoints Target and each of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purpose of:
  - (i) enforcing the Deed Poll against Bidder and TopCo;
  - (ii) doing and/or executing all acts, matters, things and documents necessary, desirable, incidental or expedient to give full effect to this Scheme and the transactions contemplated by it, including executing and delivering the Scheme Transfer,and Target accepts such appointment; and
- (b) will be deemed to have authorised Target to do and execute all acts, matters, things and documents on the part of each Scheme Shareholder necessary, desirable, incidental or expedient to give full effect to this Scheme and the transactions contemplated by it, including executing and delivering the Scheme Transfer as agent and attorney of each Scheme Shareholder.

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 Appointment of sole proxy**

Immediately upon the provision of the Scheme Consideration to the Scheme Shareholders 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 irrevocably appointed Bidder as its attorney and agent (and directed Bidder in such capacity) to appoint any director, officer, secretary or agent nominated by Bidder as its sole proxy and, where applicable, corporate representative to attend shareholders' meetings of Target, exercise the votes attaching to the Scheme Shares registered in their name and sign any Target shareholders' resolution or document whether in person, by proxy or by corporate representative;
- (b) must not attend or vote at any of those meetings or sign or vote on any resolutions, whether in person, by proxy or by corporate representative, other than as pursuant to clause 8.6(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 8.6(a), Bidder and any director, officer, secretary or agent nominated by Bidder under clause 8.6(a) may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

## **8.7 Title to Target 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 will, at the time of transfer of them to Bidder, vest in Bidder:
  - (i) free from all Encumbrances and third party rights or interests of any kind, whether legal or otherwise; and
  - (ii) free from all restrictions of transfer of any kind.
- (b) Upon the Scheme Consideration being provided to the Scheme Shareholders and until Target registers Bidder as the holder of all Scheme Shares in the Target Share Register, Bidder will be beneficially entitled to all of the Scheme Shares. Bidder's entitlement to be registered in the Target Share Register as the holder of the Scheme Shares arises on the Implementation Date in accordance with clause 4.3.

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## **9. General**

### **9.1 Stamp duties**

Bidder:

- (a) must pay all stamp duties (if any) and any related fines and penalties in respect of the transfer of the Scheme Shares to Bidder pursuant to this Scheme or the Deed Poll and is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause; and
- (b) indemnifies each Scheme Shareholder against any liability from a failure to comply with clause 9.1(a).

### **9.2 Consent**

Each of the Scheme Shareholders consents to Target doing all things necessary or incidental to, or to give effect 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 the office of the Target Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Target Shareholder may not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

### **9.4 Further acts and documents**

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

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

Each Scheme Shareholders agrees that neither Target or Bidder, nor any of their respective directors, officers, secretaries, employees or Related Bodies Corporate, will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

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## **10. Governing law and jurisdiction**

### **10.1 Governing law**

This Scheme is governed by the law applying in Victoria, Australia.

### **10.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non exclusive jurisdiction of the courts of Victoria, Australia the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 10.2(a).

**Attachment 3 - Deed Poll**

## Deed poll dated

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**By** MBC Bidco Pty Ltd ACN 658 690 343 (**Bidder**)

MBC TopCo Pty Ltd ACN 658 690 101 (**TopCo**)

**In favour of** Each person registered as a holder of fully paid ordinary shares in the capital Uniti Group Limited ACN 158 957 889 (**Target**) in the Target Share Register as at the Scheme Record Date (**Scheme Shareholders**)

### Background

- A. Target and Bidder have entered into the Implementation Deed, pursuant to which, subject to the satisfaction or waiver of certain conditions precedent, amongst other things, Bidder:
- (i) is to pay the Scheme Consideration to each Scheme Shareholder and acquire all Scheme Shares held by Scheme Shareholders under the Scheme; and
  - (ii) agreed to enter into this deed poll.
- B. Bidder and TopCo are each making this deed poll for the purposes of covenanting in favour of the Scheme Shareholders to perform the actions and obligations attributed to Bidder and TopCo under the Implementation Deed and the Scheme.

### It is declared as follows

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## 1. Definitions and interpretation

### 1.1 Definitions

Unless the context requires otherwise, in this deed poll:

**Implementation Deed** means the scheme implementation deed between Target and Bidder dated [●] 2022.

**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.

**Scheme** means the proposed members' scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders under which all of the Scheme Shares will be transferred to Bidder and the Scheme Shareholders will be entitled to receive the Scheme Consideration, in substantially the same form as set out in Attachment 2 to the Implementation Deed, subject to any alterations or conditions made or required by Court under section 411(6) of the Corporations Act and agreed to by Bidder and Target in writing.

**Subsidiary** has the meaning given in section 9 of the Corporations Act.

### 1.2 Terms defined in the Scheme

Capitalised words and phrases used but not defined in this deed poll have the meaning given to them in the Scheme, unless the context requires otherwise.



### 1.3 Interpretation

The provisions of clauses 1.2, 1.3 and 1.4 of the Scheme form part of this deed poll as if set out in full in this deed poll, except that references to "Scheme" in those clauses will be taken to be references to "deed poll".

### 1.4 Nature of this deed poll

Bidder and TopCo each acknowledge and agree that:

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

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## 2. Condition Precedent

### 2.1 Condition

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

### 2.2 Termination

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

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

unless Target and Bidder otherwise agree in writing (and, if required, as approved by the Court).

### 2.3 Consequences of termination

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

- (a) each of Bidder and TopCo are released from its obligations to further perform this deed poll except those obligations under clause 7.5; and
- (b) each Scheme Shareholder retains the rights it has against Bidder and TopCo in respect of any breach of this deed poll which occurs before it was terminated.

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## 3. Scheme Obligations

### 3.1 Undertaking to be bound by the Scheme

Subject to clause 2, each of Bidder and TopCo covenants in favour of each Scheme Shareholder that it will be bound by the terms of the Scheme as if it were a party to the Scheme and undertakes to perform all obligations and actions attributed to it under the Scheme, subject to and in accordance with the Scheme.

### 3.2 Undertaking to pay Scheme Consideration

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

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

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

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## 4. Warranties

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

- (a) it is a company properly incorporated and validly existing under the laws of its place of incorporation;
- (b) it has the legal right and full corporate power to execute, deliver and 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 constitutes (or will when executed constitute) valid legal and binding obligations on it and is enforceable against it in accordance with its terms;
- (e) this deed poll does not conflict with or result in a breach of or default under:
  - (i) its constitution or equivalent constituent documents; or
  - (ii) any writ, order or injunction, judgment, law, rule, obligation or regulation to which it is a party or by which it is bound.

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## 5. Continuing obligations

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

- (a) the time at which Bidder and TopCo have fully performed their respective obligations under this deed poll; and
- (b) the termination of this deed poll under clause 2.

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## 6. Notices

### 6.1 How notice to be given

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

- (a) must be given to a party:

- (i) by hand delivery, courier service, prepaid express post or email; and
- (ii) using the address or other details for the party set out in the below table (or as otherwise notified by that party to each other party from time to time under this clause 6):

<b>Party name</b>	<b>Attention</b>	<b>Address</b>	<b>Email address</b>
<b>Target</b>	<p>Ashe-Lee Jegathesan, Chief Corporate Services Officer &amp; Company Secretary</p> <p>With a copy to Clayton Utz: Rory Moriarty, Kimberley Grellinger and Katherine Silvers</p>	<p>Level 1, 44 Currie Street, Adelaide, South Australia 5000</p> <p>Level 15, 1 Bligh Street, Sydney NSW 2000</p>	<p>ashe-lee.jegathesan@unitigrouplimited.com</p> <p>rmorearty@claytonutz.com; kgrellinger@claytonutz.com; ksilvers@claytonutz.com</p>
<b>Bidder and TopCo</b>	<p>Head of Legal at (Morrison &amp; Co)</p> <p>Udhay Mathialagan; Michael Ryan</p> <p>With a copy to Allens:  Tom Story; Emin Altiparmak</p>	<p>Level 28, 126 Phillip St, Sydney NSW 2000</p> <p>Level 28, 126 Phillip St, Sydney NSW 2000</p>	<p>legal@hrlmorrison.com</p> <p><a href="mailto:Udhay.Mathialagan@brookfield.com">Udhay.Mathialagan@brookfield.com</a>; <a href="mailto:Michael.Ryan@brookfield.com">Michael.Ryan@brookfield.com</a></p> <p>Tom.Story@allens.com.au; Emin.Altiparmak@allens.com.au</p>

- (b) must be in legible writing and in English;
- (c) (in the case of communications other than email) must be signed by the sending party or by a person duly authorised by the sending party;
- (d) (in the case of email) must:
  - (i) state the name of the sending party or a person duly authorised by the sending party and state that the email is a communication under or in connection with this deed poll; and
  - (ii) if the email contains attachments, ensure the attachments are in PDF or other non-modifiable format the receiving party can open, view and download at no additional cost,

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

## 6.2 When notice taken to be received

Without limiting the ability of a party to prove that a notice has been given and received at an earlier time, each communication (including each notice, consent, approval, request and demand) under or in connection with this deed is taken to be given by the sender and received by the recipient:

- (a) (in the case of delivery by hand or courier service) on delivery;
- (b) (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;
- (c) (in the case of prepaid express post sent to an address in another country) on the fourth Business Day after the date of posting;
- (d) (in the case of email, whether or not containing attachments) the earlier of:
  - (i) the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the party sending the email receives an automated message that the email has not been delivered;
  - (ii) receipt by the sender of an automated message confirming delivery; and
  - (iii) the time of receipt as acknowledged by the recipient (either orally or in writing),

provided that:

- (e) the communication will be taken to be so given by the sender and received by the recipient regardless of whether:
  - (i) the recipient is absent from the place at which the communication is delivered or sent;
  - (ii) the communication is returned unclaimed; and
  - (iii) (in the case of email) the email or any of its attachments is opened by the recipient;
- (f) if the communication specifies a later time as the time of delivery then that later time will be taken to be the time of delivery of the communication; and
- (g) if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is delivered or sent).

## 6.3 Notices sent by more than one method of communication

If a communication delivered or sent under this clause 6 is delivered or sent by more than one method, the communication is taken to be given by the sender and received by the recipient whenever it is taken to be first received in accordance with clause 6.2.

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## **7. General**

### **7.1 Amendments**

This deed poll may only be amended by another deed poll entered into by Bidder and TopCo and then only:

- (a) if before the First Court Date, if the amendment is agreed to by Target, Bidder and TopCo in writing (and such agreement may be given or withheld without reference to or approval by any Scheme Shareholder); and
- (b) if on or after the First Court Date, if the amendment is agreed to by Target, Bidder and TopCo in writing (and such agreement may be given or withheld without reference to or approval by any Scheme Shareholder), and the Court indicates that the amendment would not preclude approval of the Scheme.

### **7.2 Assignment**

- (a) The rights of each Scheme Shareholder under this deed poll are personal and cannot be assigned, novated, transferred or otherwise dealt with without the prior written consent of the Bidder and TopCo.
- (b) Any purported assignment, novation, transfer or other dealing in contravention of clause 7.2(a) of this deed poll is invalid.

### **7.3 Cumulative rights**

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

### **7.4 Waiver**

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

### **7.5 Stamp Duty**

Bidder:

- (a) must pay all stamp duties and any related fines and penalties on or in connection with the Scheme and this deed poll and the transfer by the Scheme Shareholders of the Scheme Shares to Bidder pursuant to the Scheme; and
- (b) indemnifies each Scheme Shareholder against any liability from a failure to comply with clause 7.5(a) of this deed poll.

## **7.6 Further assurances**

Each of Bidder and TopCo 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.

## **7.7 Counterparts**

This deed poll maybe executed in counterparts, all of which taken together constitute one document.

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# **8. Governing law and jurisdiction**

## **8.1 Governing law**

This deed poll is governed by the law applying in Victoria, Australia.

## **8.2 Jurisdiction**

Each of Bidder and TopCo irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Victoria, Australia the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed poll; and
- (b) waive any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8.2(a).

**Executed and delivered as a deed poll.**

**Executed** by **MBC BidCo Pty Ltd** in accordance with section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of director who states that they are a director of **MBC BidCo Pty Ltd**

\_\_\_\_\_  
Full name of company secretary/director who states that they are a company secretary/director of **MBC BidCo Pty Ltd**

**Executed** by **MBC TopCo Pty Ltd** in accordance with section 127 of the Corporations Act 2001 (Cth):

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Signature of director

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Full name of director who states that they are a director of **MBC TopCo Pty Ltd**

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Signature of company secretary/director

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Full name of company secretary/director who states that they are a company secretary/director of **MBC TopCo Pty Ltd**



## **Annexure 2**

### **Standstill and other dealings**

Mr Michael Simmons (**Rollover Shareholder**) must not:

- (a) sell or otherwise dispose of any Uniti shares;
- (b) acquire Uniti shares after the date of the rollover agreement (other than in connection with the exercise or vesting of any Target Equity Incentives held by the Rollover Shareholder);
- (c) enter into any derivative, swap or synthetic arrangements in respect of Uniti shares

### **Voting and rollover commitment**

The Rollover Shareholder agrees that it will:

- (a) vote all its Uniti shares in favour of the Scheme; and
- (b) elect to receive, pursuant to the Scheme (including in accordance with the requirements for such elections in the Scheme):
  - (i) the scrip consideration in respect of 2,000,000 Uniti shares<sup>5</sup>; and
  - (ii) the cash consideration in respect of the remainder of the remaining Uniti shares that it owns or controls.

### **Withdrawal and termination**

The rollover agreement terminates at the earlier of:

- (a) implementation of the Scheme;
- (b) 1 year after the date of the rollover agreement; and
- (c) provided Uniti has complied with its obligations under clause 11 (*Exclusivity*) of the SID, the date on which the Uniti Directors recommend a Superior Proposal in accordance with the SID.

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<sup>5</sup> Represents approximately 0.28% of the fully diluted shares in Uniti.