



ASX: IHR Release

29th March 2023

Transaction Implementation Deed with TAG

intelliHR Limited (**'intelliHR'** or **'Company'**) (ASX: IHR/Company) refers to its announcement on 29 March 2023 **"IHR enters into Transaction Implementation Deed with TAG"** and now encloses the Transaction Implementation Deed referred to in that announcement.

Authorised for release by the Independent Board Committee

Further Information

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About ASX:IHR

intelliHR is the intelligent people platform that empowers global leaders to make more intelligent people decisions. Helping them create an inclusive, engaging, performing, and aligned working culture. The intelliHR platform is the cloud-based way to drive employee engagement, performance and retention, in today's hybrid working world. Easily implemented, employing best-of-breed integrations, with powerful data at its core, intelliHR is the HR software choice for 330+ progressive organisations and over 84,000 users across 20 countries. For more information, visit www.intellihr.com

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Access Workspace Pty Limited

Transaction Implementation Deed

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This Deed is made on 29 March 2023

Parties

- 1 **IntelliHR Limited** (ACN 600 548 516) of Level 28, 345 Queen Street, Brisbane QLD 4000 (*Target*).
- 2 **Access Workspace Pty Limited** (ACN 636 482 383) of Level 11, 821 Pacific Highway, Chatswood NSW 2067 (*Bidder*).

Recitals

- A Bidder proposes to acquire all of the Target Shares by means of:
- a scheme of arrangement under Part 5.1 of the Corporations Act between Target and its shareholders; or
 - if the Scheme does not become Effective, a takeover bid under Chapter 6 of the Corporations Act.
- B Target and Bidder have agreed to propose the Scheme and the Takeover Bid to Target Shareholders on the terms and conditions set out in this deed.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

ACCC means the Australian Competition and Consumer Commission.

Accelerated Performance Rights means:

- (a) 8,000,000 Target Performance Rights issued to Matthew Donovan;
- (b) 297,030 Target Performance Rights issued to Gemma Murdoch;
- (c) 304,455 Target Performance Rights issued to Kate Charge;
- (d) 284,653 Target Performance Rights issued to Lyndon Moore;
- (e) 756,326 Target Performance Rights issued to Glenn Donaldson;
- (f) 268,839 Target Performance Rights issued to Sam Wolski; and
- (g) 643,564 Target Performance Rights issued to Andrew Smith.

Acceptance Form means the acceptance form that will be enclosed with the Bidder's Statement.

Accounting Principles means generally accepted Australian accounting standards and practices.

Accounting Standards means the requirements of the Corporations Act about the preparation and contents of financial reports, the accounting standards and any authoritative interpretations issued by the Australian Accounting Standards Board.

Adviser means, in relation to an entity, a financial, corporate, legal, or other expert adviser or consultant, who provides advisory or consultancy services in a professional capacity in the ordinary course of its business and has been engaged in that capacity in connection with the Transaction by the entity.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in sections 12 and 15 of the Corporations Act.

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

Bidder Counter Proposal has the meaning given in clause 13.7(a)(iv).

Bidder Group means the Bidder and each of its Related Bodies Corporate.

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

Bidder Information means:

- (a) all information regarding the Bidder or the Bidder Group as is provided by the Bidder to the Target in writing for inclusion in the Scheme Booklet, including information regarding the Bidder or the Bidder Group that is required to be included in the Scheme Booklet by:
 - (i) the Corporations Act and the *Corporations Regulations 2001* (Cth);
 - (ii) ASIC policy (including the Regulatory Guides); and
 - (iii) all other applicable laws; and
- (b) any other information that the Target and the Bidder agree is Bidder Information, but excluding the Target Information, the Independent Expert's Report and any statement on the letterhead of the Target's tax adviser of the Tax consequences of the Scheme and related matters for Target Shareholders, as may be included in the Scheme Booklet. For the avoidance of doubt, the Bidder Information includes all information that would be required under section 636 of the Corporations Act to be included in a bidder's statement if the Bidder was offering the Scheme Consideration as consideration under a takeover bid.

Bidder Party means any member of the Bidder Group or any officer, employee, or Adviser of any of them.

Bidder Prescribed Occurrence means the occurrence of an Insolvency Event in relation to the Bidder.

Bidder Representation and Warranty means a representation and warranty of Bidder set out in Schedule 2.

Bidder's Statement means the bidder's statement of Bidder in relation to the Takeover Bid.

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

Break Fee means the amount of \$747,980.

Business Day means a day that is not a Saturday, Sunday, bank holiday or public holiday in Sydney, New South Wales, Brisbane, Queensland and London, United Kingdom.

CGT Withholding Amount has the meaning given in clause 5.5.

Claim means, in relation to a person, a demand, claim, action or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future, or contingent.

Competing Proposal means a transaction or arrangement, or any proposal, offer or expression of interest in relation to a transaction or arrangement:

- (a) pursuant to which a Third Party will (either alone or together with an Associate), if the transaction or arrangement is entered into or completed:

- (i) acquire (whether directly or indirectly) or become the holder of a legal, beneficial and/or economic interest in, all or a substantial part of the business or assets of the Target Group taken as a whole;
 - (ii) acquire a Relevant Interest in, or otherwise acquire or have a right to acquire a legal, beneficial and/or economic interest in, 20% or more of the shares or other securities of the Target or any other member of the Target Group; or
 - (iii) acquire Control of the Target or any other member of the Target Group or otherwise acquire or merge with any member of the Target Group; or
- (b) which would cause the Target or the Bidder not to proceed with the Transaction or as a result of which the Transaction otherwise would not proceed,

whether by way of takeover bid, scheme of arrangement, shareholder approved transaction, capital reduction or buy-back, sale or purchase of shares or assets, joint venture, dual-listed company structure (or other synthetic merger), or other transaction or arrangement.

Condition means each of the Scheme Conditions and the Takeover Bid Conditions.

Confidentiality Deed means the confidentiality deed dated 15 March 2023 between the Target and the Bidder.

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

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

Court means the Supreme Court of Victoria, or such other court of competent jurisdiction agreed to in writing between the parties.

Data Room means the online data room located at <https://drive.google.com/drive/folders/1mALgOOx8VzEXwdGZF2zIZjFZSN4KZ96I>, the index of which has been provided by the Target to the Bidder prior to the date of this deed.

Decision Time means 5:00 pm on the Business Day before the Second Court Date.

Deed Poll means a deed poll to be executed by the Bidder in favour of the Scheme Shareholders, substantially in the form set out in Annexure 2 or in such other form as the Target and the Bidder agree in writing.

Delivery Time means 8:00 am on the Second Court Date.

Disclosed means fairly disclosed:

- (a) by the Target to the Bidder prior to the date of this deed in the Due Diligence Materials or the Disclosure Letter; or
- (b) in documents that were publicly available prior to the date of this deed, including from any announcement made by the Target on ASX or public filings of the Target with ASIC.

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

Due Diligence Materials means:

- (a) all information and documents provided to the Bidder by or on behalf of the Target, either in the Data Room or otherwise, prior to the date of this deed; and
- (b) the questions raised by the Bidder during the due diligence process and the responses (both written and verbal) to those questions given by or on behalf of the Target prior to the date of this deed.

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

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

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

End Date means 30 August 2023 or such other date agreed in writing between the Target and the Bidder.

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

- (a) the End Date;
- (b) the date on which this deed is terminated; and
- (c) the Implementation Date.

FIRB means the Foreign Investment Review Board.

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

GST means goods and services tax, or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Law has the same meaning as in the GST Act.

Implementation Date means the date that is 5 Business Days after the Scheme Record Date or such other date as the Target and the Bidder agree in writing or as ordered by the Court.

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

Independent Expert's Report means a report (including any written updates to such report) of the Independent Expert stating whether, in its opinion:

- (a) the Scheme is in the best interests of Target Shareholders; and
- (b) the Takeover Bid is fair and reasonable.

Insolvency Event means, in the case of any entity:

- (a) the entity resolving that it be wound up or the making of an application or order for the winding up or dissolution of the entity, other than where the application or order (as the case may be) is set aside within 14 days;
- (b) a liquidator or provisional liquidator of the entity being appointed;
- (c) a court making an order for the winding up of the entity or the entity being deregistered as a company or dissolved;
- (d) an administrator of the entity being appointed;
- (e) the entity being or becoming unable to pay its debts when they fall due or is unable to pay its debts within the meaning of the Corporations Act;

- (f) the entity executing a deed of company arrangement;
- (g) a receiver, or a receiver and manager, being appointed in relation to the entity, or a substantial part, of the property, business or assets of the entity;
- (h) the entity ceases, or threatens to cease, to carry on substantially all the business conducted by it as at the date of this deed; or
- (i) something having a substantially similar effect to (a) to (g) happens in connection with that entity under the laws of any jurisdiction.

Listing Rules means the official listing rules of ASX.

Loan Agreement means the loan agreement to be entered into between Bidder and Target on or around the date of this deed.

Material Contracts means each contract contained in the folder entitled 'Legal' in the Data Room or otherwise Disclosed in the Target Due Diligence Materials as being a material contract to the Target Group.

Offer has the meaning given in clause 2.3(a).

Offer Period means the period that the Offer is open for acceptance.

Register Date means the date and time identified as the "Register Date" in the Timetable, which will be the relevant date and time that will be set by Bidder for the purposes of section 633(2) of the Corporations Act.

Regulatory Authority means any foreign or Australian:

- (a) government, department, or minister or agency of any government;
- (b) governmental, semi-governmental, administrative, fiscal, monetary or judicial body;
- (c) minister of the Crown in right of the Commonwealth of Australia or any state or territory; and
- (d) authority, agency, tribunal, commission or similar entity having powers or jurisdiction under any law (including Tax Law), regulation or the Listing Rules of any recognised stock or securities exchange,
- (e) and includes ASX, ASIC, FIRB, the ACCC and the Takeovers Panel.

Regulator's Draft has the meaning in clause 5.6(h).

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

Regulatory Review Period means the period from the date on which the Target provides the Regulator's Draft to ASIC in accordance with clause 5.6(h) to the date on which ASIC provides a letter for production on the First Court Date.

Related Body Corporate has the meaning given to that term in section 50 of the Corporations Act.

Related Entity of a party means another entity which is:

- (a) a Related Body Corporate of the first entity;
- (b) in any consolidated entity (as defined in section 9 of the Corporations Act) which contains the first entity;
- (c) in relation to the Bidder, includes any of its general partners, managing members, management or advisory company and other fund or fund entities managed by its management or advisory company;

- (d) any trust of which the first entity or an entity described in paragraph (a), (b) or (c) above is a trustee.

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

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

Reverse Break Fee is an amount equal to the Break Fee.

Right means all rights or benefits attaching to, or arising from, Target Shares directly or indirectly after the date of this deed, including but not limited to, all dividends or other distributions, other than voting rights attaching to Target Shares during the period commencing on the date of this deed and expiring at the later of the end of the Scheme Meeting and the day after the date on which all of the Takeover Bid Conditions have been satisfied or waived.

Rollover Performance Rights means:

- (a) 2,347,108 Target Performance Rights issued to Matthew Donovan;
- (b) 1,512,651 Target Performance Rights issued to Glenn Donaldson;
- (c) 537,679 Target Performance Rights issued to Sam Wolski; and
- (d) 1,287,129 Target Performance Rights issued to Andrew Smith.

Scheme means a scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders substantially in the form set out in Annexure 1 or in such other form as the Target and the Bidder agree in writing, subject to any alterations or conditions made or required by the Court.

Scheme Booklet means the Scheme Booklet to be prepared by the Target pursuant to section 412 of the Corporations Act in respect of the Scheme in accordance with the terms of this deed for despatch to Target Shareholders.

Scheme Conditions means the conditions set out in clause 3.1 and **Scheme Condition** means any one of them.

Scheme Consideration means the amount of cash which a Scheme Shareholder is entitled to receive under the Scheme, being \$0.22 per Scheme Share.

Scheme Meeting means the meeting of Target Shareholders to be convened pursuant to section 411(1) of the Corporations Act to consider and, if thought fit, to approve the Scheme, and includes any meeting convened following any adjournment or postponement of that meeting.

Scheme Recommendation has the meaning given in clause 9(a)(i).

Scheme Record Date means 5:00 pm on the date that is 5 Business Days after the Effective Date or such other time and date agreed in writing between the Target and the Bidder.

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

Scheme Shareholder means a person registered in the Target Share Register as the holder of one or more Scheme Shares at the Scheme Record Date.

Scheme Transaction means the proposed acquisition by Bidder, in accordance with the terms and conditions of this deed, of all of the Target Shares through the implementation of the Scheme.

Scheme Voting Intention has the meaning given in clause 9(a)(ii).

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

hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

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

Senior Managers means, Matthew Donovan (CEO), Suzanne Yeates (CFO), Andrew Smith (CTO) and Glenn Donaldson (CPO), (each a **Senior Manager**).

Superior Proposal means a bona fide, written Competing Proposal which is received by the Target and which the Target Board determines, acting in good faith and in order to satisfy what the Target Board considers to be its fiduciary or statutory duties (after having obtained written advice from the Target's external legal adviser and financial advisers):

- (a) is reasonably capable of being valued and implemented taking into account all aspects of the Competing Proposal, including its conditions, the identity, reputation and financial condition of the person making such proposal, and all other relevant legal, regulatory and financial matters; and
- (b) would, if completed in accordance with its terms, be more favourable to the Target's shareholders than the latest proposal provided by the Bidder or any of its Related Entities, taking into account all aspects of the Competing Proposal and the latest proposal provided by the Bidder or its Related Entity to the Target, including the identity, reputation and financial condition of the person making such proposal, legal, regulatory and financial matters, certainty and any other matters affecting the probability of the relevant proposal being completed in accordance with its terms.

TAA means the *Taxation Administration Act 1953* (Cth).

Takeover Acceptance Intention has the meaning given in clause 9(b)(ii).

Takeover Bid means a takeover bid by Bidder for the Target Shares that satisfies the requirements in clause 2.3.

Takeover Bid Conditions means the conditions to the Takeover Bid set out in clause 7 of Schedule 1.

Takeover Bid Consideration means:

- (a) A\$0.215 per Target Share in the event that the Bidder receives acceptances under the Takeover Bid of at least 75% of Target Shareholders (on a fully diluted basis); or
- (b) A\$0.21 per Target Share in the event that the Bidder receives acceptances under the Takeover Bid of at least 50.1% of Target Shareholders (on a fully diluted basis).

Takeover Bid Terms means the terms and conditions of the Takeover Bid set out in Schedule 1.

Takeover Bid Transaction means the acquisition of Target Shares by Bidder under the Takeover Bid.

Takeover Recommendation has the meaning given in clause 9(b)(i).

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

Target Board means the board of directors of Target.

Target Employee Share Option Plan means the Target's Employee Share Option Plan which was approved by Target Shareholders on 15 November 2019 and on 30 November 2021.

Target Group means the Target and each of its Related Bodies Corporate.

Target Options means options in respect of Target Shares issued pursuant to the Target Employee Share Option Plan.

Target Party means any member of the Target Group or any officer, employee, or Adviser of any member of the Target Group.

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

Target Performance Rights Plan means the Target's Performance Rights Plan adopted on 9 November 2017 which was approved by Shareholders on 15 November 2019 and on 24 November 2022.

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

- (a) a member of the Target Group converting all or any of its securities into a larger or smaller number of securities;
- (b) a member of the Target Group resolving to reduce its share capital in any way or resolving to re-classify, combine, split, redeem or re-purchase directly or indirectly any of its shares;
- (c) a member of the Target Group:
 - (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act,
(except as contemplated under clause 7);
- (d) a member of the Target Group issuing shares, or granting an option or a performance right over its shares or agreeing to make such an issue or grant such an option or a performance right (other than the issue of Target Shares upon the exercise or conversion of options or Target Performance Rights in accordance with clause 7.2);
- (e) a member of the Target Group issuing, or agreeing to issue, convertible notes or any other security convertible into shares (other than as permitted under paragraph (d) above);
- (f) the Target agreeing to pay, declaring or paying a dividend or any other form of distribution of profits or return of capital to its members (whether in cash or in specie);
- (g) the Target or any other member of the Target Group disposing of the whole, or a substantial or material part of the business or property of the Target Group (taken as a whole);
- (h) the Target or any other member of the Target Group creating, or agreeing to create, any Encumbrance over any of its business, assets or property other than in the ordinary course of business;
- (i) a member of the Target Group acquiring, or agreeing to acquire, any securities, business, assets, interest in a joint venture, entity or undertaking, the value of which, in aggregate, exceeds \$100,000;
- (j) a member of the Target Group adopts a new constitution or makes any change to or repeals its constitution;
- (k) a member of the Target Group enters into or resolves to enter into a transaction with any related party of the Target which would require shareholder approval under Chapter 2E of the Corporations Act or under Chapter 10 of the Listing Rules;
- (l) a member of the Target Group resolves to be wound up; or

- (m) an Insolvency Event occurring in relation to a member of the Target Group, other than an event:
- (n) required by law or a Regulatory Authority;
- (o) contemplated or required to be done by the Target under the Transaction Documents (or reasonably necessary to the foregoing);
- (p) where the Target has first notified the Bidder in writing in relation to the matter and the Bidder has, acting reasonably, approved the proposed matter; or
- (q) that has been Disclosed by the Target prior to the date of this deed.

Target Representation and Warranty means a representation and warranty of Target set out in Schedule 3.

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

Target Shareholder each person registered in the Target Share Register as the holder of one or more Target Shares.

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

Target's Statement means the target's statement of Target in relation to the Takeover Bid.

Tax means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax, impost or withholding obligation of whatever nature, whether direct or indirect, by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges in any country or jurisdiction.

Tax Law means any law relating to Tax.

Third Party means a person other than the Target or any member of the Bidder Group.

Timetable means the indicative timetable for the implementation of the Transactions set out in Schedule 4.

Transaction Booklet has the meaning given in clause 2.4(a).

Transaction Documents means:

- (a) this deed;
- (b) the Scheme;
- (c) the Deed Poll; and
- (d) the Loan Agreement.

Transactions means the Scheme Transaction and the Takeover Bid Transaction (each a **Transaction**).

Trust Account means an Australian dollar denominated trust account operated by or on behalf of the Target as trustee for the Scheme Shareholders, as nominated by the Target and notified to the Bidder at least 5 Business Days prior to the Implementation Date, being the account into which the Bidder will deposit an amount equal to the total Scheme Consideration in accordance with clause 5.3.

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

Voting Power has the meaning given to that term in section 610 of the Corporations Act.

1.2 Interpretations

In this deed, unless provided otherwise:

- (a) a reference to:
 - (i) the singular includes the plural and vice versa;
 - (ii) a gender includes all genders;
 - (iii) a person includes an individual, corporation or other body corporate, partnership, trust, joint venture, unincorporated body, Regulatory Authority or other entity, whether or not it is a separate legal entity;
 - (iv) a clause, schedule or annexure is a reference to a clause, schedule or annexure of this deed;
 - (v) this deed includes any schedule or annexure to it;
 - (vi) a party includes that party's successors, permitted substitutes and permitted assigns;
 - (vii) dollars or \$ is a reference to Australian dollars;
 - (viii) this deed or another document includes that document as amended, supplemented, novated or replaced from time to time;
 - (ix) legislation or a provision of legislation includes all regulations, orders or instruments issued under that legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or codification of it;
 - (x) subsidiary, holding company, related body corporate, relative and substantial holding has the same meaning as in the Corporations Act;
 - (xi) a day, month, quarter or year means a calendar day, calendar month, calendar quarter or calendar year respectively;
 - (xii) time is to the time in Sydney, Australia; and
 - (xiii) writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible or tangible form (and includes communication by email);
- (b) where a word or expression is defined or given meaning, another grammatical form has a corresponding meaning;
- (c) any recital, heading or table of contents is for convenience only and does not affect the interpretation of this deed;
- (d) a provision of this deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this deed or the inclusion of the provision in this deed;
- (e) where an act would be required to be done, or a time limit or period would expire, on a day which is not a Business Day, the act must be done, or the limit or period will expire, on the following Business Day;
- (f) if a period of time is specified from or after a given day, the period is to be calculated exclusive of that day;
- (g) any phrase introduced by the terms '**including**', '**include**', '**in particular**' or any similar expression must be construed as illustrative and will not limit the sense of the words preceding those terms; and
- (h) references to 'the parties' are to the parties to this deed and include their respective permitted successors in title and permitted assignees.

1.3 Knowledge and awareness of the Target

A reference in this deed to the knowledge or awareness of the Target in relation to a matter is a reference to:

- (a) the actual knowledge of any Senior Manager of the relevant matter at the relevant time; and
- (b) the knowledge that each Senior Manager would have had of the relevant matter if it had made reasonable enquiries in relation to that matter, including if it had made reasonable enquiries of each other Senior Manager.

1.4 Reasonable endeavours

Any provision of this deed that requires a party to use reasonable endeavours or all reasonable endeavours, or to take all steps reasonably necessary, to ensure that something is performed or occurs or does not occur, but does not include any obligation:

- (a) to procure absolutely that that thing is done or happens;
- (b) to pay any money or to provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person:
 - (i) in the form of an inducement or consideration to a Third Party; or
 - (ii) in circumstances that are commercially onerous or unreasonable in the context of this deed,

except for payment of any applicable fee for the lodgement or filing of any relevant application with any Regulatory Authority or immaterial costs to procure that the thing is performed or occurs or does not occur;

- (c) to agree to commercially onerous or unreasonable terms;
- (d) to commence any legal action or proceeding against any person; or
- (e) to engage in any action or fail to engage in any action which such person reasonably determines in its good faith business judgment is not advisable for its business considering the totality of the facts.

2 Agreement to proceed with the Transactions

2.1 Overview

On and subject to the terms of this deed:

- (a) Bidder proposes to acquire all of the Target Shares under the Scheme pursuant to which Target Shareholders will receive the Scheme Consideration per Target Share; and
- (b) simultaneously, Bidder will make the Takeover Bid for all of the Target Shares at the Takeover Bid Consideration per Target Share, which will be conditional on, amongst other matters, the Scheme not becoming Effective.

2.2 Proposal of the Scheme

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

2.3 Takeover Bid

Bidder must:

- (a) make offers pursuant to an off-market takeover bid under Chapter 6 of the Corporations Act to acquire all of the Target Shares on terms and conditions no less favourable to Target Shareholders than the Takeover Bid Terms (together, the **Offers**, and each, an **Offer**); and
- (b) without limiting clause 2.3(a), publicly announce on the date of this deed a proposal to make the Takeover Bid constituted by the despatch of the Offers, in accordance with clause 12.4.

2.4 Despatch of Transaction Booklet

- (a) Each party agrees to use reasonable endeavours to mail as one single combined document the Scheme Booklet, Bidder's Statement and Target's Statement (**Transaction Booklet**) to Target Shareholders in accordance with the Timetable.
- (b) Target agrees, and the Target Board has consented, to the Offers and accompanying documents being sent by Bidder under the Takeover Bid under item 6 of section 633(1) of the Corporations Act to the Target Shareholders when the documents are mailed as a single combined document as contemplated by clause 2.4(a).

3 Conditions precedent

3.1 Scheme Conditions

Subject to this clause 3.1, the Scheme will not become Effective and the respective obligations of the parties to complete the implementation of the Scheme are not binding until each of the following Scheme Conditions are either satisfied or waived in accordance with clause 3.5:

3.2 Scheme Conditions for the benefit of all parties

- (a) (**Scheme shareholder approval**) Scheme Shareholders approve the Scheme by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
- (b) (**Court approval of Scheme**) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act; and
- (c) (**No restraint**) no temporary restraining order, preliminary or permanent injunction or other temporary, preliminary or final order issued by any court of competent jurisdiction, no preliminary or final decision, determination, notice of objection, or order issued by any Regulatory Authority or any other legal restraint preventing, restraining, prohibiting or materially adversely affecting any of the transactions contemplated by this deed is in effect at the Delivery Time.

3.3 Scheme Conditions for the benefit of the Target

- (a) (**Independent Expert's Report**) The Independent Expert's Report concludes that the Scheme is in the best interests of Target Shareholders on or before the date on which the Scheme Booklet is registered by ASIC under the Corporations Act and the Independent Expert does not change or withdraw that conclusion prior to the Delivery Time;
- (b) (**Bidder Warranties**) the Bidder Warranties are true and correct in all material respects at all times between the date of this deed and as at the Delivery Time, except where expressed to be operative at another time; and
- (c) (**No Bidder Prescribed Occurrence**) no Bidder Prescribed Occurrence occurs between the date of this deed and the Delivery Time.

3.4 Scheme Conditions for the benefit of the Bidder

- (a) **(No Target Prescribed Occurrence)** no Target Prescribed Occurrence occurs between the date of this deed and the Delivery Time; and
- (b) **(Target Warranties)** the Target Warranties are true and correct in all material respects at all times between the date of this deed and as at the Delivery Time, except where expressed to be operative at another time.

3.5 Benefit and waiver of Scheme Conditions

- (a) The Scheme Conditions in clauses 3.2(a) to 3.2(c) are for the benefit of each of the parties. Any breach or non-fulfilment of any of the Scheme Conditions in clauses 3.2(a) to 3.2(b) cannot be waived. Any breach or non-fulfilment of the Scheme Condition in clause 3.2(c) may only be waived with the written consent of the Target and the Bidder.
- (b) The Scheme Conditions in clauses 3.3(a) to 3.3(c) are for the sole benefit of the Target, and any breach or non-fulfilment of any of those Scheme Conditions may only be waived by the Target giving its written consent.
- (c) The Scheme Conditions in clauses 3.4(a) and 3.4(b) are for the sole benefit of the Bidder, and any breach or non-fulfilment of any of those Scheme Conditions may only be waived by the Bidder giving its written consent.
- (d) A party entitled to waive the breach or non-fulfilment of a Scheme Condition pursuant to this clause 3.5 may do so in its absolute discretion and, subject to the other party agreeing to abide by the conditions, may do so subject to conditions.
- (e) If a party waives the breach or non-fulfilment of a Scheme Condition in accordance with this clause 3.5, that waiver will preclude it from suing the other party for any breach of this deed constituted by the event which gave rise to the breach or non-fulfilment of the Scheme Condition.
- (f) A waiver of a breach or non-fulfilment in respect of one Scheme Condition does not constitute:
 - (i) a waiver of breach or non-fulfilment of any other Scheme Condition resulting from the same events or circumstances; or
 - (ii) a waiver of breach or non-fulfilment of that Scheme Condition resulting from any other events or circumstances.

3.6 Reasonable endeavours and notification

- (a) Without prejudice to any other obligations of the parties under this deed, but subject to the other provisions of this deed:
 - (i) each of the parties must use all reasonable endeavours to satisfy, or procure the satisfaction of, the Scheme Condition in clause 3.2(c); and
 - (ii) the Target must use all reasonable endeavours to satisfy, or procure the satisfaction of, the Scheme Conditions in clauses 3.2(a), 3.2(b), 3.3(a), 3.4(a) and 3.4(b),
as soon as practicable after the date of this deed and in any event with a view to the Effective Date occurring on or before the End Date.
- (b) Without prejudice to any other obligations of the parties under this deed, no party will take any action that will or is likely to materially hinder or prevent the satisfaction of any Scheme Condition, except to the extent that such action is required to be done or

procured pursuant to, or is otherwise permitted by, this deed, the Scheme or the Takeover Bid, or is required by law.

- (c) The parties must:
- (i) promptly inform each other of a failure to satisfy a Scheme Condition or of any circumstance which may result in any of the Scheme Conditions not being satisfied or capable of being satisfied;
 - (ii) promptly inform each other of the happening of any fact, matter, change, event, circumstance or occurrence that does, will or would reasonably be likely to prevent a Scheme Condition from being satisfied or mean that any Condition will not otherwise be satisfied before the End Date;
 - (iii) promptly advise each other in writing of the satisfaction of a Scheme Condition;
 - (iv) each give the Court on the Second Court Date a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its own knowledge) whether or not all of the Scheme Conditions in clause 3.1 (other than the Scheme Condition in clause 3.2(b)) have been satisfied or waived in accordance with this deed; and
 - (v) give each other a draft of the certificate or other evidence to be provided by it under clause 3.6(c)(iv) by 5pm on the day that is two Business Days prior to the Second Court Date, and must provide to each other on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

3.7 Scheme Condition not satisfied or waived

- (a) If:
- (i) any Scheme Condition has not been fulfilled or waived in accordance with clause 3.5 by the time or date specified in clause 3.1 for satisfaction of the Scheme Condition; or
 - (ii) there is an act, omission, event, occurrence or circumstance which will prevent a Scheme Condition from being satisfied by the time or date specified in clause 3.1 for its satisfaction or, if no time or date is specified, by the End Date (and the non-fulfilment of the Scheme Condition which would otherwise occur has not already been waived in accordance with this deed),
- either the Bidder or the Target may serve notice on the other of them and then the Target and the Bidder will consult in good faith with a view to determining whether:
- (iii) the Scheme may proceed by way of alternative means or methods;
 - (iv) to extend the relevant time or date for satisfaction of the Scheme Condition;
 - (v) to adjourn or change the date of an application to the Court; or
 - (vi) to extend the End Date.
- (b) If the Target and the Bidder are unable to reach agreement under clause 3.7(a) within five Business Days following the delivery of the notice (or any shorter period ending at 5pm on the day before the Second Court Date), either of them may terminate this deed by notice in writing to the other, provided that:
- (i) there has been no failure by that party to comply with its obligations under this deed, where that failure directly and materially contributed to the Scheme Condition to which the notice relates becoming incapable of satisfaction, or being breached or not fulfilled before the End Date; and

- (ii) the relevant Scheme Condition is for its benefit (whether solely or jointly with another party).

For the avoidance of doubt, nothing in this clause 3.7(b) affects the obligation of the Target to pay the Break Fee, if it is required to do so under clause 14.

4 Disclosure Documents

4.1 Definitions

In this clause 4, the following definitions apply:

Primary Party means:

- (a) in the case of the Scheme Booklet and the Target's Statement as incorporated in the Transaction Booklet, Target; and
- (b) in the case of the Bidder's Statement as incorporated in the Transaction Booklet, Bidder.

Relevant Document means each of the Scheme Booklet, the Target's Statement and the Bidder's Statement as incorporated in the Transaction Booklet.

Secondary Party means:

- (a) in the case of the Scheme Booklet and the Target's Statement as incorporated in the Transaction Booklet, Bidder; and
- (b) in the case of the Bidder's Statement as incorporated in the Transaction Booklet, Target.

Secondary Party Information means, in relation to a Relevant Document, information regarding the Secondary Party provided by the Secondary Party or its Representatives to the Primary Party for inclusion in the Relevant Document, being:

- (a) information about the Secondary Party, its Related Bodies Corporate, assets, businesses and interests, and dealings in Target Shares, its intentions for Target's employees and the implications of each of those matters for the Target Group (in the case of Bidder); and
- (b) any other information required under the Corporations Act, ASIC Regulatory Guide 60 or the Listing Rules (as applicable) to enable the Relevant Document to be prepared, which the parties agree is "Secondary Party Information" in relation to the Relevant Document and is identified in the Relevant Document as such.

4.2 Primary Party's Obligations

The Primary Party in respect of each Relevant Document must:

- (a) **(preparation)** prepare the Relevant Document in compliance with all applicable laws, including the Corporations Act, ASIC Regulatory Guide 60 and the Listing Rules;
- (b) **(consultation with the Secondary Party)** make available to the Secondary Party drafts of the Relevant Document, consult with the Secondary Party in relation to the content of those drafts, and consider in good faith and acting reasonably, for the purpose of amending those drafts, comments from the Secondary Party on those drafts (noting that any review of the Independent Expert's Report by Bidder is limited to review for factual accuracy of those parts that include information relating to Bidder);
- (c) **(verification)** take reasonable verification processes in relation to the information contained in the Relevant Document (other than the Secondary Party Information and the Independent Expert's Report) so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise);

- (d) **(approval of the Secondary Party Information)** seek approval from the Secondary Party on the form and context in which the Secondary Party Information appears in the Relevant Document, which approval the Secondary Party must not unreasonably withhold or delay, and the Primary Party must not lodge the Relevant Document with ASIC until such approval is obtained from (or unreasonably withheld by) the Secondary Party;
- (e) **(updating information)** as a continuing obligation:
 - (i) provide to the Secondary Party any information that arises after the Relevant Document has been despatched and until, in the case of the Scheme Booklet, the date of the Scheme Meeting and, in the case of the Target's Statement or the Bidder's Statement, the end of the Offer Period, that may be necessary to ensure that the Relevant Document, in relation to the information for which the Primary Party is responsible in accordance with clause 4.5, continues to comply with the Corporations Act, ASIC Regulatory Guide 60 and the Listing Rules; and
 - (ii) ensure that the Relevant Document (but in respect of the information for which the Secondary Party will be described as responsible in that Relevant Document in accordance with clause 4.5, subject to the Secondary Party complying with its obligations to update such information) will be updated by all such further or new information which may arise after the Transaction Booklet has been despatched until the Scheme Meeting or end of the Offer Period (as applicable) which is necessary to ensure that Relevant Document continues to comply with the Corporations Act, ASIC Regulatory Guide 60 and the Listing Rules.

4.3 Secondary Party's obligations

The Secondary Party in respect of each Relevant Document must:

- (a) **(Secondary Party Information)** provide to the Primary Party all Secondary Party Information for inclusion in the Relevant Document and consult with the Primary Party as to the content and presentation of the Secondary Party Information in the Relevant Document and (in good faith) take into account any comments on drafts of the Secondary Party Information provided by or on behalf of the Primary Party;
- (b) **(verification)** take reasonable verification processes in relation to the Secondary Party Information contained in the Relevant Document so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (c) **(confirmation of Secondary Party Information)** promptly after the Primary Party requests that it does so, confirm in writing to the Primary Party that:
 - (i) it consents to the inclusion of the Secondary Party Information in the Relevant Document, in the form and context in which the Secondary Party Information appears; and
 - (ii) the Secondary Party Information in the Relevant Document is not misleading or deceptive in any material respect (whether by omission or otherwise), and the inclusion of such Secondary Party Information, in that form and context, has been approved by the board of the Secondary Party; and
- (d) **(update Secondary Party Information)** promptly advise the Primary Party in writing if it becomes aware:
 - (i) of information which should have been but was not included in the Secondary Party Information in the Relevant Document (including if known at the time), and promptly provide the Primary Party with the omitted information; or

- (ii) that the Secondary Party Information in the Relevant Document is misleading or deceptive in any material respect (whether by omission or otherwise), and promptly provide the Primary Party with any information required to correct the misleading or deceptive statements.

4.4 Independent Expert's Report

Bidder must promptly provide any assistance or information reasonably requested by the Independent Expert in connection with the Independent Expert's Report.

4.5 Responsibility statements

The parties agree that the Transaction Booklet will include a responsibility statement to the effect that:

- (a) the Primary Party is responsible for the content of the Relevant Document (other than, to the maximum extent permitted by law, the Secondary Party Information, the Independent Expert's Report or any other report or letter issued to the Primary Party by a third party) and that neither the Secondary Party nor its Representatives assume any responsibility for the accuracy or completeness of the Relevant Document other than Secondary Party Information; and
- (b) the Secondary Party is responsible for the Secondary Party Information (and no other part of the Relevant Document) and that neither the Primary Party nor its Representatives assume any responsibility for the accuracy or completeness of the Secondary Party Information.

4.6 Disagreement on content

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

- (a) if the disagreement relates to the form or content of any information appearing in the Relevant Document other than the Secondary Party Information, the Primary Party will, acting in good faith, decide the final form or content of the disputed part of the Relevant Document; and
- (b) if the disagreement relates to the form or content of the Secondary Party Information, the Primary Party will make such amendments to the form or content of the disputed part of the Secondary Party Information as the Secondary Party reasonably requires.

5 Steps relevant to the Scheme

5.1 General obligations

- (a) Without limiting the parties' respective obligations under this deed, 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 providing information) to produce the Scheme Booklet and implement the Scheme substantially 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 (a) to the extent that such failure is due to circumstances and matters outside the party's control (including for the avoidance of doubt, any delays

caused by a Regulatory Authority) or is otherwise due to that party taking an action expressly permitted by this Deed.

- (c) 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 (including for the avoidance of doubt, any delays caused by a Regulatory Authority), the parties will consult in good faith to agree to any necessary extension to ensure such matters are completed within the shortest possible timeframe.

5.2 Scheme

Target must propose a scheme of arrangement under which:

- (a) all the Scheme Shares will be transferred to Bidder; and
- (b) the Scheme Shareholders will be entitled to receive the Scheme Consideration, subject to the Scheme becoming Effective on the Implementation Date.

5.3 Obligations in respect of the Scheme Consideration

The Bidder agrees in favour of the Target (in the Target's own right and separately as trustee for each Scheme Shareholder) that, if the Scheme becomes Effective, in consideration of the transfer to the Bidder of each Scheme Share under the Scheme, the Bidder will deposit an amount equal to the total Scheme Consideration in cleared funds into the Trust Account by no later than the Business Day before the Implementation Date, and on the Implementation Date will:

- (a) accept that transfer and execute any instruments of transfer required to effect it; and
- (b) provide, or procure the provision of, the Scheme Consideration to each Scheme Shareholder for Scheme Shares in accordance with the terms of this deed and the Scheme.

5.4 Fractional entitlements and share splitting or division

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Scheme Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration results in a fractional entitlement to a cent, then the entitlement of that Scheme Shareholder must be rounded up or down to the nearest cent (with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole cent and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole cent).
- (b) If the Target is of the opinion (acting in good faith) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 5.4(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, the Target may 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 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 of the specified Scheme Shares will, for the

purposes of the other 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 other provisions of the Scheme, be taken to hold no Scheme Shares.

5.5 CGT Withholding Amount

Notwithstanding any other provision of this deed, if the Bidder determines (acting reasonably and in good faith) that an amount is required to be withheld under Subdivision 14-D of Schedule of the TAA from the Scheme Consideration payable to a Scheme Shareholder, the Bidder:

- (a) may withhold and remit to the Australian Taxation Office a portion of the Scheme Consideration payable to that Scheme Shareholder (**CGT Withholding Amount**); and
- (b) is taken to have paid the CGT Withholding Amount to the Scheme Shareholder for the purposes of this deed and the Scheme,

provided that:

- (c) the Bidder has, at least 10 Business Days prior to the Implementation Date, given the Target notice in writing and information which is to the Target's satisfaction (acting reasonably), which identifies the reasons as to why a liability arises under Subdivision 14-D of Schedule of the TAA, and the basis of the calculation of the CGT Withholding Amount; and
- (d) the Target has not, at least 5 Business Days prior to the Implementation Date, given information to the Bidder which demonstrates (to the Bidder's satisfaction, acting reasonably) that the CGT Withholding Amount should be nil.

5.6 Target's obligations

Subject to any change of recommendation by the Target Board as permitted by clause 9, the Target must use its reasonable endeavours to implement the Scheme substantially in accordance with the Timetable and, in particular, the Target must:

- (a) (**Scheme Booklet**) as soon as reasonably practicable after the date of this deed, prepare the Scheme Booklet (excluding the Bidder Information and the Independent Expert's Report) in accordance with all applicable laws, Regulatory Guide 60, applicable Takeovers Panel guidance notes and the Listing Rules;
- (b) (**Consult with the Bidder in relation to the Scheme Booklet**) consult with the Bidder as to the content and presentation of the Scheme Booklet (provided that the Target has ultimate discretion with respect to the preparation, content and presentation of the Scheme Booklet other than as expressly provided in this deed) including:
 - (i) allowing the Bidder and its Representatives a reasonable opportunity to review and make comments on drafts of the Scheme Booklet;
 - (ii) taking any reasonable comments made by the Bidder into account in good faith when producing revised drafts of the Scheme Booklet; and
 - (iii) obtaining the Bidder's written consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet) such consent not to be unreasonably withheld or delayed;
- (c) (**Independent Expert**) promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in

connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet;

- (d) **(Provide draft Independent Expert's Report to the Bidder)** provide a copy of the final draft of the Independent Expert's Report to the Bidder no later than two Business Days prior to provision of the Regulator's Draft to ASIC and take into account any reasonable comments and suggested amendments from the Bidder on the Independent Expert's Report;
- (e) **(Director's Recommendation)** state in the Scheme Booklet and the Target Announcement (on the basis of statements made to the Target by each director of the Target) the Recommendation and Scheme Voting Intention of each of the directors of the Target in accordance with clause 9;
- (f) **(Director's votes)** use its reasonable endeavours to procure that each director of the Target:
 - (i) confirms their intention to vote any Scheme Shares in which they have a Relevant Interest in favour of the Scheme and any other resolution submitted to the Target Shareholders for their approval in connection with the Scheme, provided that the director has not changed or in any way qualified their Recommendation or Scheme Voting Intention in accordance with clause 9;
 - (ii) votes any Scheme Shares in which they have a Relevant Interest in favour of the Scheme and any other resolution submitted to Target Shareholders for their approval in connection with the Scheme, provided that the director has not changed or in any way qualified their Recommendation or Scheme Voting Intention in accordance with clause 9; and
 - (iii) does not change that Scheme Voting Intention, unless:
 - (A) a Superior Proposal is made; or
 - (B) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of the Target Shareholders;
- (g) **(Approval of draft Scheme Booklet)** procure that a meeting of the Target Board is convened to approve the draft Scheme Booklet to be provided to ASIC for its review;
- (h) **(ASIC review)** as soon as reasonably practicable and no later than 14 days before the First Court Date, provide an advanced draft of the Scheme Booklet (**Regulator's Draft**) to ASIC, for its review and approval for the purposes of section 411(2) of the Corporations Act and:
 - (i) liaise with ASIC as necessary and to the extent reasonably practicable during the Regulatory Review Period; and
 - (ii) promptly notify, and consult with, the Bidder in relation to any matters raised by ASIC or ASX in connection with the Scheme Booklet or the Scheme and use reasonable endeavours to co-operate and consult with the Bidder and take into consideration comments made by the Bidder in relation to, or to resolve any such matters;
- (i) **(Section 411(17)(b) statement)** apply to ASIC for the production of:
 - (i) a letter stating that ASIC does not intend to appear before the Court on the First Court Date; and
 - (ii) a letter stating that, pursuant to section 411(17)(b) of the Corporations Act, ASIC has no objection to the Scheme;

- (j) **(Court documents)** consult with the Bidder in relation to the content of the documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme in (including originating processes, affidavits, submission and draft minutes of Court orders) and consider in good faith comments on, and suggested amendments to, those documents from the Bidder and its Representatives;
- (k) **(Representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of the Scheme, at which, through its counsel and, if requested by the Court, the Target will undertake to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme;
- (l) **(First Court Date)** lodge all documents with the Court and take all other reasonable steps to ensure that an application is heard by the Court for an order under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meeting;
- (m) **(Approval of Scheme Booklet)** procure that a meeting of the Target Board is convened to approve the Scheme Booklet for registration with ASIC and despatch to Target Shareholders;
- (n) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report);
- (o) **(Register Scheme Booklet)** request that ASIC registers the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (p) **(Compliance with Court orders)** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to Target Shareholders and convening and holding the Scheme Meeting, provided that, before despatch, the Target must obtain the written consent of the Bidder to the inclusion of the Bidder's Information in the Scheme Booklet, in the form and the context in which it appears (such consent not to be unreasonably withheld or delayed);
- (q) **(Update Scheme Booklet)** if it becomes aware of information after the date of despatch of the Scheme Booklet, which is required to be disclosed to Target Shareholders under any applicable law, as expeditiously as practicable:
 - (i) notify the Bidder of this fact;
 - (ii) inform Target Shareholders of the information in an appropriate and timely manner, and in accordance with applicable law; and
 - (iii) provide the Bidder with drafts of any documents that it proposes to issue to Target Shareholders under paragraph (q)(ii) above and, to the extent reasonably practicable, consult with the Bidder as to the content of those drafts and (acting reasonably and in good faith) take into account any comments from the Bidder and its Representatives on those drafts;
- (r) **(ASX listing)** use its reasonable endeavours to ensure that the Target continues to be admitted to ASX, and that Target Shares continue to be quoted for trading (and not permanently suspended) on ASX, until the close of business on the Business Day immediately following the Implementation Date;
- (s) **(Suspension)** if the Scheme becomes Effective, apply to ASX to have trading in Target Shares suspended from the close of trading on the Effective Date;

- (t) **(Court approval application)** if the resolution submitted to the Scheme Meeting in relation to the Scheme is passed by the requisite majorities required under section 411(4)(a)(ii) of the Corporations Act and subject to all other Conditions (other than the Condition in clause 3.2(b)) being satisfied or waived in accordance with this deed, apply to the Court for orders approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (u) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.2(b)) have been satisfied or waived in accordance with this deed and provide a draft of that certificate to the Bidder by 5:00 pm on the Business Day prior to the Second Court Date;
- (v) **(Implementation of Scheme)** if the Scheme is approved by the Court:
 - (i) lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act before 5:00 pm on the Business Day following the day of receipt of such office copy (or such other date as is agreed between the Target and the Bidder in writing);
 - (ii) close the Target Share Register as at the Scheme Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme;
 - (iii) provide to the Bidder all information about the Scheme Shareholders that the Bidder reasonably requires in order for the Bidder to provide, or procure the provision of, the Scheme Consideration in accordance with the Scheme; and
 - (iv) subject to the Bidder satisfying its obligations under clause 5.3(b), on the Implementation Date (or as soon as practicable thereafter):
 - (A) on behalf of the Scheme Shareholders, execute proper instruments of transfer and effect the transfer of Scheme Shares to the Bidder in accordance with the Scheme; and
 - (B) register all transfers of Scheme Shares to the Bidder in accordance with the Scheme;
- (w) **(Compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations;
- (x) **(Other things)** promptly do all other things contemplated by or reasonably necessary to give effect to the Scheme and, if the Scheme is approved by the Court, the orders of the Court approving the Scheme; and
- (y) **(promote merits of the Transaction)** participate in efforts reasonably requested by the Bidder to promote the merits of the Transaction and the Scheme Consideration, including:
 - (i) meeting with key Target Shareholders at the reasonable request of the Bidder; and
 - (ii) providing the Bidder with such information and assistance as the Bidder reasonably requests to enable it to promote the merits of the Transaction.

5.7 Appointment of directors

On the Implementation Date, and subject to the Bidder having provided the Scheme Consideration in accordance with clause 5, the Target must:

- (a) cause the appointment to the Target Board of such persons as nominated by the Bidder in writing to the Target, subject to those persons being appointed having provided to the Target a duly signed consent to act as a director of the Target Board; and
- (b) procure that the directors of the Target Board which the Bidder nominates resign from the Target Board.
- (c) Subject to clause 5.7(d), no later than two Business Days after the later of:
 - (i) the Offer being declared or becoming unconditional; and
 - (ii) Bidder acquiring a relevant interest in at least 50.1% of the Target Shares,and subject to receipt by Target of signed consents to act, Target must:
 - (iii) take all actions necessary to appoint the persons nominated by Bidder as new directors of Target or any other member of the Target Group;
 - (iv) procure that any existing Target directors nominated by Bidder resign from the board of Target; and
 - (v) procure that any existing directors of any member of the Target Group (other than Target), as nominated by Bidder, resign as directors of the relevant member of the Target Group,so that:
 - (vi) those persons nominated by Bidder to be appointed as directors of Target comprise a majority of the directors of Target; and
 - (vii) those persons nominated by Bidder to be appointed as directors of other members of the Target Group comprise a majority of the directors of each such member of the Target Group.
- (d) After appointments are made under clause 5.7(c), Bidder must procure that its nominees on the Target Board do not participate in any discussions or decisions of that board which relate to the Takeover Bid during the Offer Period.

5.8 Bidder's obligations

Subject to the terms and conditions of this deed, the Bidder must take all reasonably necessary steps to assist the Target to propose and implement the Scheme as soon as is reasonably practicable and use all reasonable endeavours to do so in accordance with the Timetable, including the Bidder taking each of the following steps:

- (a) **(Draft of the Bidder Information)** provide to the Target a draft of the Bidder Information as soon as reasonably practicable after the date of this deed and consult with the Target in relation to the content of drafts of the Bidder Information and (acting reasonably and in good faith) take into account any comments from the Target and its Representatives on those drafts;
- (b) **(Final form of the Bidder Information)** provide to the Target the Bidder Information in a form appropriate for inclusion in the Scheme Booklet;
- (c) **(Review Scheme Booklet)** review the drafts of the Scheme Booklet provided by the Target and provide comments on those drafts as soon as reasonably practicable and in good faith;
- (d) **(Independent Expert)** promptly provide all assistance and information reasonably requested by the Target or the Independent Expert to enable it to prepare its report for inclusion in the Scheme Booklet;

- (e) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Bidder Information and provide to the Target all evidence of such processes as may be reasonably requested;
- (f) **(Reasonable assistance)** provide all assistance and information reasonably requested by the Target or its Representatives in connection with:
 - (i) the preparation of the Scheme Booklet (including any supplemental disclosure to Target Shareholders) and any documents required to be filed with the Court in respect of the Scheme; and
 - (ii) the Target in applying for any regulatory modifications or waivers determined appropriate or necessary by the Target (and provide any necessary consents in relation to such applications);
- (g) **(Liaise with ASIC)** provide all reasonable assistance requested by the Target to assist the Target to resolve any matters raised by ASIC regarding the Scheme Booklet or the Scheme;
- (h) **(Approval of the Bidder Information)** as soon as reasonably practicable after receipt from the Target of the draft of the Scheme Booklet, and in any event before a draft of the Scheme Booklet is lodged with ASIC and if required by the Target again before the Scheme Booklet is despatched to Target Shareholders, confirm in writing to the Target that:
 - (i) the Bidder consents to the inclusion of the Bidder Information in the Scheme Booklet (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet), such consent not to be unreasonably withheld or delayed; and
 - (ii) the Bidder Information in the form and context in which it appears in the draft of the Scheme Booklet is not misleading or deceptive, does not contain any omission and is in a form appropriate for despatch to Target Shareholders (subject to the approval of the Court);
- (i) **(Keep the Target informed)** promptly inform the Target if it becomes aware after the despatch of the Scheme Booklet that the Bidder Information in the form and context in which it appears in the Scheme Booklet is or has become misleading or deceptive in any material respect or contains any omission (including any information required to be disclosed under any applicable law), and provide such further or new information as is required to ensure that such information is no longer misleading or deceptive in any material respect or contains any material omission;
- (j) **(Deed Poll)** by the Business Day prior to the First Court Date, enter into the Deed Poll and deliver the executed Deed Poll to the Target;
- (k) **(Representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of the Scheme, at which, through its counsel and, if requested by the Court, the Bidder will undertake to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme;
- (l) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Bidder Information;
- (m) **(Certificate)** before the commencement of the hearing on the Second Court Date provide to the Target for provision to the Court at that hearing a certificate (signed for and on behalf of Bidder) confirming (in respect of matters within its knowledge) whether or not

the Conditions (other than the Condition in clause 3.2(b)) have been satisfied or waived in accordance with this deed and provide a draft of that certificate to the Target by 5:00 pm at least 2 Business Days prior to the Second Court Date;

- (n) **(Scheme Consideration)** if the Scheme becomes Effective, provide, or procure the provision of, the Scheme Consideration on the Implementation Date in accordance with clause 5 and the terms of the Scheme and the Deed Poll;
- (o) **(Promote merits of Transaction)** participate in efforts reasonably requested by the Target to promote the merits of the Transaction and the Scheme Consideration, including meeting with key employees of the Target and key Target Shareholders at the request of the Target;
- (p) **(Compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations;
- (q) **(Share transfer)** if the Scheme becomes Effective:
 - (i) Bidder must accept a transfer of the Scheme Shares as contemplated by clause 5.3; and
 - (ii) Bidder must execute instruments of transfer in respect of the Scheme Shares;
- (r) **(Assistance)** up to and including the Implementation Date and subject to obligations of confidentiality owed to Third Parties and undertakings to Regulatory Authorities, provide the Target with all reasonable assistance and reasonable access during normal business hours to information and personnel of Bidder Group that Target reasonably requests for the purpose of preparation of the Scheme Booklet and implementation of the Transaction; and
- (s) **(Other things necessary)** promptly do all other things contemplated by or reasonably necessary to give effect to the Scheme and, if the Scheme is approved by the Court, the orders of the Court approving the Scheme.

5.9 Certificates in relation to the Scheme Conditions

- (a) On the Second Court Date each party must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8:00am on the Second Court Date the Scheme Conditions have been satisfied or waived in accordance with this deed.
- (b) Each party must provide to the other party a draft of the certificate to be provided by it pursuant to clause 5.9(a) by 5:00pm on the day that is two Business Days prior to the Second Court Date, and must provide to the other party on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

5.10 Appeal process

If the Court refuses to make any orders convening the Scheme Meeting or approving the Scheme:

- (a) Target and Bidder must consult with each other in good faith as to whether to appeal the Court's decision; and
- (b) Target must appeal the Court's decision (unless the parties agree otherwise, or an independent senior counsel of the Victoria bar advises that, in their view, an appeal would have no reasonable prospect of success before the End Date).

6 Facilitating the Takeover Bid

6.1 Promoting the Takeover Bid

During the Offer Period:

- (a) in the absence of a Superior Proposal that is recommended by the Target Board in accordance with clause 9, and subject to the Independent Expert opining that the Takeover Bid is fair and reasonable, the Target Board will support the Takeover Bid and participate in efforts reasonably required by Bidder to promote the terms of the Takeover Bid; and
- (b) Bidder will participate in efforts reasonably requested by Target to promote the merits of the Takeover Bid and the Takeover Bid Consideration, including, where requested by Target, meeting with key Target Shareholders.

6.2 Independent Expert

Each party will provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Target's Statement.

6.3 Share Register

From the date of this deed until the end of the Offer Period, Target must comply with any reasonable request of Bidder:

- (a) for an up-to-date copy of the register of Target Shareholders;
- (b) for information that is required to be maintained in accordance with section 672DA of the Corporations Act; and
- (c) to give directions to Target Shareholders under Part 6C.2 of the Corporations Act.

6.4 ASX Listing

Target must take all reasonable steps to maintain Target's listing on ASX, notwithstanding any suspension of the quotation of the Target Shares, up to and including the date Bidder compulsorily acquires any Target Shares it does not already own under Chapter 6A of the Corporations Act, including making appropriate applications to ASX and ASIC.

7 Treatment of Target Options and Target Performance Rights

7.1 Target Options

By no later than the first to occur of 8.00am on the Scheme Record Date and the end of the Offer Period, Target must put in place arrangements so that all Target Options will lapse or otherwise be cancelled or terminated (without any cost or liability) before the Scheme Record Date or the end of the Offer Period (as applicable), in each case subject to:

- (a) the Scheme becoming Effective; or
- (b) the Offer being declared or becoming unconditional and Bidder acquiring a relevant interest in at least 50.1% of the Target Shares (on a fully diluted basis).

7.2 Target Performance Rights

By no later than the first to occur of 8.00am on the Scheme Record Date and the end of the Offer Period, Target must:

- (a) put in place arrangements so that the Accelerated Performance Rights will vest in accordance with their terms (and will result in an issue of Target Shares) prior to the

Scheme Record Date or the end of the Offer Period (as applicable), so that the holders can either:

- (i) participate in the Scheme as Scheme Shareholders and receive the Scheme Consideration in respect of those Scheme Shares; or
 - (ii) participate in the Takeover Bid as Target Shareholders and, if applicable, receive the Takeover Bid Consideration in respect of those Target Shares;
- (b) procure that the Rollover Performance Rights:
- (i) do not vest on or prior to the Implementation Date or the end of the Offer Period (as applicable and including as a result of a 'Change of Control Trigger Event' as that term is defined in the Target Performance Rights Plan); and
 - (ii) will remain in place following the Implementation Date or the end of the Offer Period (as applicable); and
- (c) put in place arrangements so that the balance of the Target Performance Rights outstanding as at the date of this deed will lapse or otherwise be cancelled or terminated (without any cost or liability) prior to the Scheme Record Date and the end of the Offer Period (whichever is first to occur),

in each case, with such arrangements being subject to:

- (d) the Scheme becoming Effective; or
- (e) the Offer being declared or becoming unconditional and Bidder acquiring a relevant interest in at least 50.1% of the Target Shares (on a fully diluted basis).

8 Conduct of business

8.1 Conduct of the Target's business

- (a) From the date of this deed up to and including the Implementation Date and close of the Offer Period (whichever is later):
- (i) the Target must use, and procure that each member of the Target Group uses, reasonable endeavours to ensure that the business and operations of the Target Group are conducted:
 - (A) in the ordinary course, in substantially the same manner as previously conducted in the 12 month period prior to the date of this deed; and
 - (B) in accordance in all material respects with its legal and contractual obligations;
 - (ii) the Target must not enter into any line of business or other activities in which it has not engaged as at the date of this deed;
 - (iii) the Target must keep the Bidder informed of any material developments concerning the conduct of its business;
 - (iv) the Target must use, and procure that each member of the Target Group uses, reasonable endeavours to:
 - (A) preserve its current business organisation, including keeping available the services of its senior officers and employees;
 - (B) preserve its relationships with material customers and suppliers and others having material business dealings with it; and

- (C) maintain the conditions of its business and assets, including maintaining at least its current level of insurance (provided such level of insurance continues to be generally on commercially reasonable terms);
 - (v) the Target must use, and procure that each member of the Target Group uses, reasonable endeavours to ensure that a Target Prescribed Occurrence does not occur or is rectified to the reasonable satisfaction of the Bidder prior to the Decision Time;
 - (vi) the Target must not waive any breach by any counterparty to any such contract, where waiver of such breach would, or would be reasonably likely to, result in a material reduction to the earnings of the Target Group;
 - (vii) the Target must ensure that there is no material decrease in the amount of cash in the Target Group other than in the ordinary course of business, consistent with budgets and projections Disclosed prior to the date of this deed;
 - (viii) comply in all material respects with all material contracts to which a member of the Target Group is a party, and with all laws, authorisations and licences applicable to each member of the Target Group;
 - (ix) maintain such policies of insurance as are appropriate to the Target Group's operations, property and assets, in such amounts and against such risks as are customarily carried and insured by owners of the comparable businesses and assets, provided that there is no obligation on the Target to procure insurance in addition to what was Disclosed prior to the date of this deed; and
 - (x) keep the Bidder informed of any current, pending or threatened Tax of duty audits, reviews or investigation or tax demands relating to any member of the Target Group, and procure that no member of the Target Group settles, compromises or otherwise deals with such audits, reviews or investigations or tax demands without the prior written consent of the Bidder (which must not be unreasonably withheld or delayed).
- (b) From the date of this deed up to and including the Implementation Date, the Target must not, and must procure that each other member of the Target Group does not:
- (i) acquire or agree to acquire any securities, business, entity or undertaking in a single or series of related transactions, the value of which is material to the Target Group as a whole;
 - (ii) dispose or agree to dispose of any securities, business, entity or undertaking in a single or series of related transactions, the value of which is material to the Target Group as a whole;
 - (iii) defer the purchase price or other payment in relation to the acquisition of any asset or service of greater than \$50,000;
 - (iv) pay, discharge or satisfy any liability under a contract, arrangement or understanding to the Target Group of more than \$50,000, other than in accordance with its terms or in the ordinary course of business;
 - (v) either:
 - (A) enter into or offer to enter into a new employment contract with a potential employee of the Target Group;
 - (B) make any material change to the terms of employment of any employee;or

- (C) terminate an employment contract with an existing employee of the Target Group (other than for cause),
- in each case in respect of which the base salary payable to that existing or potential employee is in excess of \$125,000;
- (vi) other than in the ordinary course of business and consistent with past practice, increase the remuneration (including any short term incentive or long term incentives) of or the benefits (including with regard to superannuation benefits) provided to or pay any bonus or issue any incentive options to, any key employee;
 - (vii) amend the terms of any option plan, performance right plan, incentive plan or share plan;
 - (viii) pay any of its director or key employees a termination or retention payment;
 - (ix) create, or agree to create, issue any securities under, or become liable for obligations under, or provide, or agree to pay or provide, any bonuses or benefits to any employee or officer that such employee or officer is not entitled to as at the date of this deed;
 - (x) commence, threaten in writing, settle or compromise any legal proceeding, claim, investigation, arbitration or other like proceeding against a member of the Target Group involving the possible payment or receipt of amounts greater than \$50,000;
 - (xi) commit to any capital expenditure in excess of \$50,000 whether in one transaction or a series of related transactions;
 - (xii) enter into a loan, advance or financing arrangement (other than with another member of the Target Group or to any client under the Target Group's generally available lending facilities in the ordinary course of business) as lender or as reasonably required to fund the operations of the Target Group up to the Implementation Date;
 - (xiii) guarantee or indemnify the obligations of any other person other than a member of the Target Group other than in the ordinary course of business;
 - (xiv) alter in any material respect any accounting policy of any member of the Target Group other than a change required by the Accounting Principles;
 - (xv) amend in any material respects or terminate any existing shareholders agreement, joint venture agreement or other similar investor agreements or arrangements, or enter into any shareholders agreement, joint venture agreement or other similar investor agreements or arrangements;
 - (xvi) cease, or threaten to cease, to carry on a substantial part of its business; or
 - (xvii) agree to do any of the matters set out above.
- (c) Nothing in this clause restricts the ability of the Target or any member of the Target Group to take any action:
- (i) expressly permitted or required to be done by the Target under the Transaction Documents;
 - (ii) where the Target has first notified the Bidder in writing in relation to the matter and the Bidder has, acting reasonably, approved the proposed matter;
 - (iii) that has been Disclosed by the Target prior to the date of this deed;

- (iv) required by law or by a Regulatory Authority, or otherwise arising as a result of any court or Regulatory Authority order, injunction or undertaking or as required to meet contractual obligations;
- (v) 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) provided that, to the extent reasonably practicable having regard to the nature of the relevant emergency or disaster, Target has consulted with Bidder in good faith in respect of the proposal to take such action or not take such action (as applicable); or
- (vi) in connection with a Competing Proposal where permitted by clause 13.

8.2 Access and information

Between the date of this deed and the Implementation Date or the end of the Offer Period (whichever is later), the Target must:

- (a) procure that at least two members of the Target's senior management team meet with Representatives of the Bidder on a fortnightly basis to assist with, among other things:
 - (i) keeping the Bidder fully informed of the matters contemplated by clauses 8.2(c) and 8.3 below; and
 - (ii) providing the Bidder with access to the people it has requested under clause 8.2(c) below;
- (b) provide the Bidder with copies of the following materials, promptly following the relevant meeting at which the relevant materials are considered:
 - (i) the minutes of the Target Board between the date of this deed and the Implementation Date or the end of the Offer Period (whichever is later); and
 - (ii) any reports of the Chief Executive Officer and the Chief Financial Officer provided to the Target Board,provided that the Target has no obligation under this clause to provide the Bidder with, and may redact or withhold in its entirety, any information about, or otherwise in connection with:
 - (iii) the Target Board's consideration of the Transaction, any advice provided to the Target Board in connection with the Transaction; or
 - (iv) any Competing Proposal except as otherwise provided in this deed;
- (c) provide the Bidder and its Representative with reasonable, non-disruptive access during normal business hours and on reasonable notice to the Target's officers and advisers (it being noted that the business of the Target will need to continue to operate with requisite management attention) which the Bidder reasonably requires for the purposes of:
 - (i) keeping the Bidder informed of material developments relating to the Target Group including the Target Group's financial position (including its cash flow and working capital position), trading and operational performance;
 - (ii) implementing the Transactions;
 - (iii) preparing for and carrying on the business of the Target Group following implementation of the Transactions; and
 - (iv) any other purpose agreed to by the parties,

provided in every case that such access, in the reasonable opinion of the Target, does not place an unreasonable burden on the ability of the Target to operate its business or which would significantly disrupt the usual and ordinary course of the Target Group's business and operations, and provided that nothing in this clause 8.2 requires the Target to provide the Bidder with any information that:

- (v) gives Bidder or any other Bidder Group member any rights as to the decision making of any Target Group member or its business;
- (vi) will require the Target to provide, or procure the provision of, information concerning the Target Group's business that is, in the reasonable opinion of the Target, commercially sensitive, including any specific pricing and margin information or customer details; and
- (vii) will require the 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 (provided that the Target must use reasonable endeavours to seek consent to the disclosure from such third party), applicable law, regulatory requirement, authorisation or court order; or
 - (B) result in a waiver or loss of legal professional privilege.

8.3 Business updates

From the date of this deed up to and including the Implementation Date or the end of the Offer Period (whichever is later), the Target must use reasonable endeavours to notify the Bidder in writing of any of the following matters of which the Target becomes aware:

- (a) material developments in relation to discussions with potential new customers or existing customers in relation to extensions of existing contracts;
- (b) proposed or potential changes to the composition of the Target's executive management team; and
- (c) any material breach of this deed by the Target,

provided that the above are subject to the same qualifications as are set out in paragraphs 8.2(c)(v) to 8.2(c)(vii).

8.4 Counterparty consents

The Target and the Bidder will cooperate with each other in good faith, and will take all actions reasonably required, to seek to identify and obtain all counterparty consents (including counterparties to the Material Contracts) which are necessary or desirable to be sought in connection with the Transactions.

8.5 Directors' and officers' insurance and indemnities

- (a) Subject to:
 - (i) the Scheme becoming Effective; or
 - (ii) the Bidder acquiring a relevant interest in at least 50.1% of the Target Shares (on a fully diluted basis) and the Offer becoming or being declared unconditional,Bidder undertakes in favour of Target and each other person who is a director or officer of a member of the Target Group that it will:
 - (iii) for a period of seven years from the first of the events in either clause 8.5(a)(i) or 8.5(a)(ii) occurring or until a company ceases to be part of the Target Group

- (whichever is earlier), ensure that the constitutions of Target and the relevant organizational documents of each other member of the Target Group continues to contain such rules as are contained in those constitutions or relevant organizational documents at the date of this deed that provide for each company to indemnify each of its current and previous 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 member of the Target Group; and
- (iv) procure that each member of the Target Group 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 for such directors and officers is maintained, for a period of seven years from the retirement date of each director and officer.
- (b) Bidder acknowledges that, subject to the next sentence and notwithstanding any other provision of this deed, Target may, prior to the event in either clause 8.5(a)(i) or 8.5(a)(ii) occurring, enter into arrangements to secure directors' and officers' run-off insurance for up to such seven-year period, and that any actions to facilitate that insurance or in connection therewith will not be a Target Prescribed Occurrence or breach any provision of this deed, provided that, the cost of such directors' and officers' run-off insurance shall not exceed 300% of the annual premium currently payable by the Target Group in respect to any such current directors' and officers' insurance policy. Before entering into any contract of insurance, Target must first present to Bidder a quotation for such insurance policy, and Bidder must first approve such quotation (acting reasonably and expeditiously) before Target may enter into a contract of insurance, provided that, if the terms of the quotation for such insurance policy are substantially the same as the terms disclosed to Bidder in writing before the execution of this deed, Bidder must not withhold its approval.
- (c) The undertakings contained in clause 8.5(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (d) Target receives and holds the benefit of clause 8.5(a), to the extent it relates to the other Target Parties, as trustee for them.
- (e) The undertakings contained in clause 8.5(a) are given until the earlier of the end of the relevant period specified in clause 8.5(a) or the relevant member of the Target Group ceasing to be part of the Target Group.

9 Target Board Recommendation

- (a) Subject to clause 9(c), Target must procure that:
- (i) the Target Board unanimously recommends that, in the absence of a Superior Proposal, and subject to the Independent Expert concluding (and continuing to conclude) in the Independent Expert's Report that the Scheme is in the best interests of Target Shareholders and not publicly changing or withdrawing that conclusion, Target Shareholders vote in favour of the Scheme at the Scheme Meeting (**Scheme Recommendation**); and
- (ii) the Target Board announces the intention of each director to cause all Target Shares held or controlled by him or her to be voted in favour of the resolution to approve the Scheme at the Scheme Meeting, in the absence of a Superior Proposal, and subject to the Independent Expert concluding (and continuing to conclude) in the Independent Expert's Report that the Scheme is in the best

interests of Target Shareholders and not publicly changing or withdrawing that conclusion (***Scheme Voting Intention***).

- (b) Subject to clause 9(c), Target must procure:
- (i) that the Target Board unanimously recommends, in the absence of a Superior Proposal, and subject to the Independent Expert concluding (and continuing to conclude) in the Independent Expert's Report that the Offer is fair and reasonable and not publicly changing or withdrawing that conclusion, Target Shareholders accept the Offer to be made to them under the Takeover Bid (***Takeover Recommendation***); and
 - (ii) the Target Board announces the intention of each director to cause all Target Shares held or controlled by him or her to be accepted into the Offer to be made to them under the Takeover Bid, in the absence of a Superior Proposal, and subject to the Independent Expert concluding (and continuing to conclude) in the Independent Expert's Report that the Offer is fair and reasonable and not publicly changing or withdrawing that conclusion (***Takeover Acceptance Intention***).
- (c) Target must ensure that no director of Target:
- (i) changes, withdraws or modifies his or her Scheme Recommendation, Scheme Voting Intention, Takeover Recommendation or Takeover Acceptance Intention; or
 - (ii) makes any public statement or recommendation that is inconsistent with his or her Scheme Recommendation, Scheme Voting Intention, Takeover Recommendation or Takeover Acceptance Intention,
- in each case except where:
- (iii) Target receives a Competing Proposal and the Target Board determines, after Target has fully complied with all of its obligations under clause 13, that the Competing Proposal constitutes a Superior Proposal; or
 - (iv) the Independent Expert concludes in the Independent Expert's Report that:
 - (A) in respect of the Scheme Recommendation and Scheme Voting Intention, the Scheme is not in the best interests of Target Shareholders; or
 - (B) in respect of the Takeover Recommendation and Takeover Acceptance Intention, the Takeover Bid is not fair and not reasonable to Target Shareholders.
- (d) Despite anything to the contrary in this clause 9, 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 Target shall not contravene this clause 9.

10 Representations, warranties and indemnities

10.1 Representations and warranties by the Bidder

The Bidder represents and warrants to the Target that each of the Bidder Warranties is true and correct in all material respects:

- (a) as at the date of this deed;
- (b) as at the Implementation Date; and
- (c) at all times during the Offer Period,

unless the relevant Bidder Warranty is expressed to be given only at a particular time in which case it is given as at that time.

10.2 Bidder's indemnity

Subject to clause 10.3, the Bidder agrees with the Target (in its own right and separately as trustee or nominee for each of the Target Parties) to indemnify the Target and each of the Target Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that the Target or any of the Target Parties suffers, incurs or is liable for arising out of any breach of any of the Bidder Warranties.

10.3 Qualification of the Bidder Warranties and the indemnity

The Bidder Warranties and the indemnity under clause 10.2 are subject to facts, matters, circumstances and acts which:

- (a) are or have been expressly required to be done by the Bidder under the Transaction Documents;
- (b) are required by any applicable law, regulation or by a Regulatory Authority; or
- (c) were within the knowledge of the Target or its Representatives as at the date of this deed; or
- (d) were fairly disclosed to the Target in writing prior to the date of this deed.

10.4 Representations and warranties by the Target

The Target represents and warrants to the Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) that each of the Target Warranties is true and correct in all material respects:

- (a) as at the date of this deed;
- (b) as at the Implementation Date; and
- (c) at all times during the Offer Period,

unless the relevant Target Warranty is expressed to be given only at a particular time in which case it is given as at that time.

10.5 Target indemnity

Subject to clause 10.6, the Target agrees with the Bidder (in its own right and separately as trustee or nominee for each of the other Bidder Indemnified Parties) to indemnify the Bidder and each of the Bidder 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 the Bidder or any of the Bidder Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Target Warranties or as a result, directly or indirectly, from any Target Information which is misleading or deceptive or contains any material omission.

10.6 Qualification of the Target Warranties and the indemnity

The Target Warranties and the indemnity under clause 10.5 are subject to any facts, matters, circumstances and acts which:

- (a) are or have been expressly required to be done by the Target under the Transaction Documents;
- (b) are required by any applicable law, regulation or by a Regulatory Authority;

- (c) are or would have been revealed by a search of the records open to or available for public enquiry or inspection in Australia maintained by the following bodies, as at the dates specified:
 - (i) the Personal Property Securities Register, on 7 March 2023 in respect of each member of the Target Group;
 - (ii) the Australian Securities and Investments Commission:
 - (A) on 28 February 2023 in respect of the Target; and
 - (B) 24 February 2023 in respect of IntelliHR Systems Pty Ltd; and
 - (iii) IP Australia, on 7 March 2023 and 8 March 2023 in respect of each member of the Target Group;
- (d) have been Disclosed by the Target prior to the date of this deed.

10.7 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 10.

10.8 Status of representations and warranties

Each representation and warranty in this clause 10:

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

10.9 No limitation on rights

No representations, warranties or indemnities given under this clause 10 shall prejudice or otherwise limit any rights of the Target or the Target's ability to recover any loss at law.

10.10 No representation or reliance

- (a) Despite anything in this deed, 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.

11 Releases

11.1 Target Parties

- (a) Without limiting clause 14, Bidder releases its rights against, and agrees with Target that it will not make a Claim against, any Target Party (other than Target) in connection with:
 - (i) any breach of any representation, covenant, and warranty of Target in this deed;or

- (ii) any disclosure made (at any time) by any Target Party that contains any statement which is false or misleading whether in content or by omission, except to the extent the relevant Target Party has not acted in good faith or has acted fraudulently or has engaged in wilful misconduct.
- (b) This clause 11.1 is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Target receives and holds the benefit of this clause as trustee for each other Target Party.

11.2 Bidder Parties

- (a) Target releases its rights against, and agrees with Bidder that it will not make a Claim against, any Bidder Party (other than Bidder) in connection with:
 - (i) any breach of any representation, covenant, and warranty of Bidder in this deed; or
 - (ii) any disclosure made (at any time) by any Bidder Party that contains any statement which is false or misleading whether in content or by omission, except to the extent that the relevant Bidder Party has not acted in good faith or has acted fraudulently or has engaged in wilful misconduct.
- (b) This clause 11.2 is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Bidder receives and holds the benefit of this clause as trustee for each other Bidder Party.

12 Confidentiality and Public Announcements

12.1 Confidentiality Deed

The Target and the Bidder acknowledge and agree that they continue to be bound by the Confidentiality Deed after the date of this deed in respect of all information received by it from the other party on, before or after the date of this deed, provided that the terms of this deed will prevail over the terms of the Confidentiality Deed to the extent of any inconsistency.

12.2 Survival of obligations

The rights and obligations of the Target and the Bidder in relation to confidential information under the Confidentiality Deed survive termination of this deed.

12.3 Disclosure on termination of agreement

The parties agree that, if this deed is terminated under clause 16, 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 any Regulatory Authority.

12.4 Announcement of the Transaction

Immediately after the execution of this deed, Target must issue a public announcement in a form previously agreed to in writing between the parties, which must include statements consistent

with the Scheme Recommendation, Scheme Voting Intention, Takeover Recommendation and Takeover Acceptance Intention.

12.5 Other public announcements

- (a) Subject to clause 12.5(b), any further public announcement or public disclosure made by Target or Bidder in relation to the Transactions or any other transaction the subject of this deed, may only be made in a form approved by Target and Bidder in writing (acting reasonably).
- (b) Where Target or Bidder is required by applicable law, Listing Rules or the requirements of any Regulatory Authority to make any announcement or to make any disclosure in relation to the Transactions or any other transaction the subject of this deed, it may do so to the extent legally required and only then after it has used all reasonable endeavours, to the extent reasonably practicable in the circumstances, to notify and consult with the other party prior to making the relevant announcement or disclosure and take account of any reasonable comments received from the other party in relation to the form and content of the announcement or disclosure.
- (c) Nothing herein shall prohibit or prevent Bidder or any of its Related Bodies Corporate from disclosing any information of a nature that would typically be provided by private equity funds to their investors or prospective investors so long as such recipients are bound by an obligation to keep such information confidential.

13 Exclusivity arrangements

13.1 No current discussions regarding a Competing Proposal

The Target represents and warrants that, as at the date of this deed neither the Target, nor any of the Target's Representatives, is in negotiations or discussions in respect of any Competing Proposal with any person (other than, for the avoidance of doubt, the discussions with the Bidder and its Representatives in respect of the Transaction).

13.2 No shop

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

- (a) solicits, invites, encourages or initiates any enquiries, expressions of interest, offers, proposals, negotiations or discussions by any person in relation to a Competing Proposal; or
- (b) communicates to any person any intention to do any of those things referred to in clause 13.2(a).

13.3 No talk

Subject to clause 13.5, during the Exclusivity Period, the Target must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) negotiates or enters into; or
- (b) participates in negotiations or discussions with any Third Party regarding,

a Competing Proposal or any agreement, understanding or arrangement that may be reasonably expected to lead to a Competing Proposal, even if that Third Party's Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by the Target or any of its Representatives or the Third Party has publicly announced the Competing Proposal.

13.4 No due diligence

Subject to clause 13.5, during the Exclusivity Period, the Target must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) enables any Third Party other than the Bidder or any of its Representatives to undertake due diligence investigations on any member of the Target Group, any of the operations or assets of the Target Group's businesses or any part thereof;
- (b) makes available to any Third Party, or permits any Third Party to receive, other than the Bidder or any of its Representatives (in the course of due diligence investigations or otherwise) any non-public information relating to any member of the Target Group, any of the operations or assets of the Target Group's businesses or any part thereof; or
- (c) makes available to any Third Party, or permits any Third Party to have access to, other than the Bidder or any of its Representatives (in the course of due diligence investigations or otherwise) any officers or employees of, or premises used, leased, licenced or owned by, any member of the Target Group.

13.5 Fiduciary out

Each of clauses 13.3 and 13.4 do not apply to the extent that the relevant clause restricts the Target or the Target Board from taking or refusing to take any action in relation to a bona fide written actual or proposed Competing Proposal provided that the Target Board has determined, acting in good faith that:

- (a) such a genuine written Competing Proposal is, or could reasonably be considered to become, a Superior Proposal; and
- (b) after receiving written legal advice from its external legal advisors, that compliance with clauses 13.3 and 13.4 would or would be reasonably likely to, constitute a breach of the fiduciary or statutory obligations owed by any Target director.

13.6 Notification of approaches

- (a) During the Exclusivity Period, the Target must as soon as practicable and in any case within one Business Day notify the Bidder in writing if:
 - (i) it or any of its Representatives receives a written approach by any Third Party requesting or proposing that it take any action of a kind referred to in clauses 13.3 or 13.4; or
 - (ii) it or any of its Representatives proposes to take any action of a kind referred to in clauses 13.3 or 13.4,in which case the Target must give the Bidder all material details in its possession of the proposed action.
- (b) During the Exclusivity Period, as soon as practicable and in any case within one Business Day after the Target receives any written Competing Proposal, the Target must give the Bidder notice in writing of:
 - (i) the existence of the Competing Proposal; and
 - (ii) the name and identity of the Third Party who has made the applicable Competing Proposal (and any other Third Party involved in the Competing Proposal) and all other material terms of the applicable Competing Proposal (including details of the proposed price or implied value (including details of the consideration if not cash alone), conditions, timing and break fee (if any)), together with a copy of any material confidential information concerning the operations of the Target Group

provided to any person associated with the Competing Proposal not previously provided to the Bidder.

13.7 Matching right

- (a) If during the Exclusivity Period any Competing Proposal is made, announced, or received, the Target must:
- (i) not, and must ensure that no member of the Target Group enters into any legally binding agreement to give effect to or implement any Competing Proposal; and
 - (ii) ensure that no member of the Target Board publicly recommends a Competing Proposal or a proposed or potential Competing Proposal,
- unless:
- (iii) the Target Board, acting in good faith in order to satisfy what the Target Board considers to be its statutory and fiduciary duties (having received written advice from its external legal advisers), determines that the Competing Proposal is a Superior Proposal;
 - (iv) the Target has given the Bidder (or its Related Entities) at least 5 Business Days after the date the Target Board notifies Bidder that it has made a determination referred to in clause 13.7(a)(iii) (**Matching Date**) to provide a matching or superior proposal to the terms of the Competing Proposal (**Bidder Counter Proposal**); and
 - (v) either:
 - (A) the Bidder has not announced or provided to the Target a Bidder Counter Proposal by the end of the Matching Date; or
 - (B) the Bidder has, by the end of the Matching Date, announced or provided to the Target a Bidder Counter Proposal and:
 - (1) the Target Board has reviewed the Bidder Counter Proposal in good faith and concluded that the Bidder Counter Proposal does not provide an equivalent or superior outcome for the Target Shareholders (as a whole) compared with the Competing Proposal, taking into account all terms and conditions and other aspects of the Bidder Counter Proposal and the Competing Proposal; and
 - (2) the Target has notified the Bidder of that conclusion in writing stating reasons for the conclusion.
- (b) The Target Board agrees that each successive material variation or amendment to any actual or proposed Competing Proposal that is made, announced, or received will constitute a new actual or proposed Competing Proposal for the purposes of the requirements under clauses 13.6 and 13.7 and accordingly the Target must comply with clauses 13.6 and 13.7 in respect of any new actual or proposed Competing Proposal that is made, announced, or received.
- (c) If, by the end of the Matching Date, the Bidder has announced or provided to the Target a Bidder Counter Proposal, the Target must procure that the Target Board reviews the Bidder Counter Proposal in good faith. If the Target Board, acting in good faith, determines that the Bidder Counter Proposal provides an equivalent or superior outcome for the Target's shareholders compared with the applicable Competing Proposal, then the Target and the Bidder must use their best endeavours to agree and enter into such

documentation as is necessary to give effect to and implement the Bidder Counter Proposal as soon as reasonably practicable.

13.8 Normal provision of information

Nothing in this clause 13 prevents the Target from:

- (a) providing any information to its Representatives;
- (b) providing any information to any Regulatory Authority;
- (c) providing any information required to be provided by any applicable law, including to satisfy its obligations under the Listing Rules or to any Regulatory Authority;
- (d) providing any information to its auditors, consultants, customers, joint venturers, suppliers, contractual counterparts or shareholders in the ordinary course of business;
- (e) making presentations to, or responding to enquiries from, brokers, portfolio investors, analysts, institutional investors, financiers and other Third Parties in the ordinary course of business.

13.9 Compliance with law

- (a) If it is finally determined by a court of competent jurisdiction or the Takeovers Panel that any part of this clause 13:
 - (i) involves a breach of the fiduciary or statutory duties of the Target Board or any Target Director;
 - (ii) constitutes Unacceptable Circumstances or breaches an order of the Takeovers Panel; or
 - (iii) was, is or would be unlawful for any reason,then to that extent none of the Target, the Target Board or a Target Director shall be obliged to comply with that provision of this clause 13.

14 Break Fee

14.1 Background

- (a) This clause 14 has been agreed in circumstances where:
 - (i) Target believes the implementation of either of the Transactions will provide significant benefits to it and its shareholders, and acknowledges that, if Bidder enters into this deed and either Transaction is subsequently not implemented, Bidder will have incurred significant costs, including those set out in clause 14.5; and
 - (ii) Bidder requested provision be made for the relevant payment outlined in this clause 14, without which it would not have entered into this deed.
- (b) Target confirms to Bidder that the Target Board has acknowledged that:
 - (i) it is appropriate to agree to the payment referred to in this clause 14 to secure Bidder's entry into this deed; and
 - (ii) the costs actually incurred by Bidder as referred to in clause 14.1(a)(i) will be of such nature that they cannot be accurately ascertained, but that the Break Fee is a reasonable pre-estimate of the minimum cost and loss that would actually be suffered by Bidder.

14.2 Payment of Break Fee

Subject to clause 14.3 and 14.6, Target must pay Bidder the Break Fee if:

- (a) at any time before:
 - (i) in the case of the Scheme Recommendation and the Scheme Voting Intention, the Effective Date; or
 - (ii) in the case of the Takeover Recommendation and Takeover Acceptance Intention, the earlier of the end of the Offer Period and the End Date,any director of Target:
 - (iii) fails to provide, or withdraws, adversely changes or modifies, his or her Scheme Recommendation, Takeover Recommendation, Scheme Voting Intention or Takeover Acceptance Intention;
 - (iv) makes any public statement or recommendation that is inconsistent with his or her Scheme Recommendation, Scheme Voting Intention, Takeover Recommendation or Takeover Acceptance Intention or that they no longer support the Scheme, the Takeover Bid or either of them; or
 - (v) recommends, supports or endorses a Competing Proposal,other than in circumstances where:
 - (vi) in the case of the Scheme, the Independent Expert concludes in the Independent Expert's that the Scheme is not in the best interests of Target Shareholders (except in circumstances where the Independent Expert reaches that conclusion as a result of a Competing Proposal); or
 - (vii) in the case of the Takeover Bid, the Independent Expert concludes in the Independent Expert's Report that the Takeover Bid is not fair and not reasonable (except in circumstances where the Independent Expert reaches that conclusion as a result of a Competing Proposal);
- (b) at any time before the End Date or, if earlier, the date this deed is terminated under clause 15, a Competing Proposal is announced by a Third Party (whether such proposal is announced before or after the date of this deed) and, within one year after that occurring, the Third Party or an Associate of the Third Party:
 - (i) completes in all material respects a transaction of the kind referred to in the definition of Competing Proposal; or
 - (ii) has a relevant interest in at least 50% of Target Shares under a transaction that is or has become wholly unconditional; or
- (c) Bidder terminates this deed under clause 16.1.

14.3 Qualifications

- (a) Notwithstanding the occurrence of any event under clause 14.2, no amount is payable under that clause if:
 - (i) the Scheme becomes Effective; or
 - (ii) Bidder becomes the holder of a relevant interest in at least 50.1% of the Target Shares and the Offer has been declared or becomes unconditional.
- (b) Target can only ever be liable to pay the Break Fee once.

- (c) To the extent that any amounts have already been paid to Bidder under this clause 14 and:
 - (i) the Scheme becomes Effective; or
 - (ii) Bidder becomes the holder of a relevant interest in at least 50.1% of the Target Shares and the Offer has been declared or becomes unconditional,such amounts must be immediately refunded to Target.
- (d) Notwithstanding the occurrence of an event referred to in clause 14.2(b)(i) or 14.2(b)(ii), no amount is payable under clause 14.2(b) if, prior to the event occurring, either party terminates this deed under clause 16.1 due to the failure of the Scheme Condition in clause 3.7(b) or the Takeover Bid Condition in clause 7(a) of Schedule 1.

14.4 Timing of payment

If the Break Fee is payable under this clause 14, Target must pay the Break Fee without set-off or withholding within five Business Days of receipt of a demand for payment from Bidder.

14.5 Nature of payment

The amount payable by Target to Bidder under clause 14.2 is an amount to compensate Bidder for:

- (a) advisory costs (including costs of Advisers other than success fees);
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;
- (d) opportunity costs incurred in pursuing the Transactions (including the significant disruption of its existing business, and diversion of board and management time and focus from its existing business), or in not pursuing other alternative acquisitions or strategic initiatives which could have been developed to further business and objectives; and
- (e) damage to Bidder's reputation associated with a failed transaction and the implications of that damage to Bidder's business,

as incurred by Bidder.

14.6 Compliance with law

- (a) This clause 14 imposes obligations on Target only to the extent that the performance of all or part of those obligations:
 - (i) does not constitute unacceptable circumstances as declared by the Australian Takeovers Panel; and
 - (ii) is not determined to be unlawful by a court,subject to all proper avenues of appeal and review, judicial and otherwise, having been exhausted.
- (b) The parties must not make, or cause or permit to be made, any application to the Australian Takeovers Panel or a court for or in relation to a declaration or determination of a kind referred to in clause 14.6(a).

14.7 Limitation of liability

Notwithstanding any other provision of this deed and except in relation to wilful or intentional breach of this deed by Target:

- (a) the maximum aggregate liability of Target to Bidder under or in connection with this deed including in respect of any breach of this deed will be the amount of the Break Fee; and
- (b) a payment by Target of the Break Fee in accordance with this clause 14 represents the sole and absolute liability of Target to Bidder under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by Target to Bidder in connection with this deed.

15 Reverse Break Fee

15.1 Background

- (a) This clause 15 has been agreed to in circumstances where:
 - (i) Target believes the implementation of either of the Transactions will provide significant benefits to it and its shareholders, and acknowledges that, if Target enters into this deed and either Transaction is subsequently not implemented, Target will have incurred significant costs, including those set out in clause 15.5; and
 - (ii) Target requested provision be made for the relevant payment outlined in this clause 15, without which it would not have entered into this deed.
- (b) Bidder confirms that it has acknowledged that:
 - (i) it is appropriate to agree to the payment referred to in this clause 15 to secure Target's entry into this deed; and
 - (ii) the costs actually incurred by Target as referred to in clause 15.1(a)(i) will be of such nature that they cannot be accurately ascertained, but that the Reverse Break Fee is a reasonable pre-estimate of the minimum cost and loss that would actually be suffered by Target.

15.2 Payment of Reverse Break Fee

Bidder must pay the Reverse Break Fee to the Target if the Target has terminated this deed pursuant to clause 16.1(a)(i).

15.3 Qualifications

- (a) Notwithstanding the occurrence of any event under clause 15.2, no amount is payable under that clause if:
 - (i) the Scheme becomes Effective; or
 - (ii) Bidder becomes the holder of a relevant interest in at least 50.1% of the Target Shares and the Offer has been declared or becomes unconditional.
- (b) Bidder can only ever be liable to pay the Reverse Break Fee once.
- (c) To the extent that any amounts have already been paid to the Target under this clause 15 and:
 - (i) the Scheme becomes Effective; or
 - (ii) Bidder becomes the holder of a relevant interest in at least 50.1% of the Target Shares and the Offer has been declared or becomes unconditional,

such amounts must be immediately refunded to Bidder.

15.4 Timing of payment

If the Reverse Break Fee is payable under this clause 15, Bidder must pay the Reverse Break Fee without set-off or withholding within five Business Days of receipt of a demand for payment from Target.

15.5 Nature of payment

The amount payable by Bidder to Target under clause 15.2 is an amount to compensate Target for:

- (a) advisory costs;
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;
- (d) opportunity costs incurred in pursuing the Transactions (including the significant disruption of its existing business, and diversion of board and management time and focus from its existing business), or in not pursuing other alternative acquisitions or strategic initiatives which could have been developed to further business and objectives; and
- (e) damage to Target's reputation associated with a failed transaction and the implications of that damage to Target's business,

as incurred by Target.

15.6 Compliance with law

- (a) This clause 15 imposes obligations on Bidder only to the extent that the performance of all or part of those obligations:
 - (i) does not constitute unacceptable circumstances as declared by the Australian Takeovers Panel; and
 - (ii) is not determined to be unlawful by a court,subject to all proper avenues of appeal and review, judicial and otherwise, having been exhausted.
- (b) The parties must not make, or cause or permit to be made, any application to the Australian Takeovers Panel or a court for or in relation to a declaration or determination of a kind referred to in clause 15.6(a).

15.7 Limitation of liability

Notwithstanding any other provision of this deed and except in relation to wilful or intentional breach of this deed by Bidder:

- (a) the maximum aggregate liability of Bidder to Target under or in connection with this deed including in respect of any breach of this deed will be the amount of the Reverse Break Fee; and
- (b) a payment by Bidder of the Reverse Break Fee in accordance with this clause 15 represents the sole and absolute liability of Bidder to Target under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by Bidder to Target in connection with this deed.

16 Termination

16.1 General rights

- (a) Either party may terminate this deed by written notice to the other at any time before the later of 8:00am on the Second Court Date and the end of the Offer Period:
- (i) if:
 - (A) either:
 - (1) the other party is in material breach of any provision of this deed (other than a Bidder Representation and Warranty or a Target Representation and Warranty not being true and correct); or
 - (2) a representation and warranty given by the other party (being the Bidder Representations and Warranties where the 'other party' is Bidder, and being the Target Representations and Warranties where the 'other party' is Target) is not true and correct, where that breach of representation and warranty is material in the context of the Transactions as a whole, and the parties acknowledge and agree that, without limitation, a breach of the Target Representations and Warranties in Schedule 3 will be considered material in the context of the Transactions as a whole;
 - (B) the party wishing to terminate has given written notice to the other setting out the relevant circumstances and stating an intention to terminate this deed; and
 - (C) the relevant circumstances continue to exist for five Business Days from the time the notice of intention to terminate is given (or any shorter period ending at 5:00pm on the Business Day before the end of the Offer Period);
 - (ii) in the circumstances set out in, and in accordance with, clause 3.7(b); or
 - (iii) if:
 - (A) the Effective Date for the Scheme has not occurred on or before the End Date; and
 - (B) Bidder withdraws the Takeover Bid or the Takeover Bid lapses for any reason, including non-satisfaction of a Takeover Bid Condition.
- (b) Bidder may terminate this deed by written notice to Target prior to the end of the Offer Period if any director of Target:
- (i) fails to provide, or withdraws, adversely changes or modifies, his or her Scheme Recommendation, Takeover Recommendation, Scheme Voting Intention or Takeover Acceptance Intention; or
 - (ii) makes any public statement or recommendation that is inconsistent with his or her Scheme Recommendation, Scheme Voting Intention, Takeover Recommendation or Takeover Acceptance Intention or that they no longer support the Scheme, the Takeover Bid or either of them; or
 - (iii) recommends, supports or endorses a Competing Proposal.
- (c) Without limiting Target's obligations under clause 9, Target may terminate this deed by written notice to Bidder at any time prior to the end of the Offer Period a majority of the

directors of Target withdraw their Scheme Recommendation or Takeover Recommendation provided such withdrawal is expressly permitted by clause 9(c).

16.2 Effect of termination

If this deed is terminated by a party under clause 3.7(b) or 16.1, this deed will be of no force or effect, without any liability or obligation on the part of any party, other than in relation to rights and obligations that accrued before termination and the provisions of this clause 16 and of clauses 1, 10.7, 11, 14, 15, 16, 17, 18, and 19, which will remain in force after the termination.

16.3 Termination by written agreement

The parties may terminate this deed by another written agreement between them.

17 GST

17.1 Interpretation

- (a) Except where the context suggests otherwise, 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) 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.
- (c) To the extent any consideration for a supply is expressly specified to be inclusive of GST, that consideration must not be taken into account in calculating the GST payable under clause 17.4(a) in relation to that supply.

17.2 GST exclusive

Unless this deed expressly states otherwise, all consideration to be provided under this deed is exclusive of GST.

17.3 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 (or the representative member of the GST group of which the entity seeking reimbursement is a member of) is entitled for the acquisition to which the cost, expense or amount relates.

17.4 GST payable

- (a) If GST is payable in relation to a taxable supply made under or in connection with this deed then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as other consideration is to be provided for that supply.
- (b) No payment of any amount pursuant to clause 17.4(a) is required until the Supplier has provided a valid tax invoice to the Recipient.
- (c) If the GST payable in relation to a supply made under or in connection with this deed varies from the additional amount paid by the Recipient under clause 17.4(a) then the Supplier must promptly issue an adjustment note to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation

from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 17.4(a).

- (d) Clauses 17.4(a) to 17.4(c) do not apply to the extent that the consideration for the supply is subject to a reverse-charge.

18 Notices

18.1 General

A notice, demand, certification, process or other communication (**Notice**) relating to this deed must be in writing in English and may be given by an agent of the sender.

18.2 How notice to be given

In addition to any other lawful means, a Notice may be given by being:

- (a) personally delivered;
- (b) left at the party's current delivery address for notices;
- (c) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) attached to an email that states that the attachment is a communication under this deed; or
- (e) sent by such other form of communication as the parties may from time to time agree.

18.3 Particulars for delivery of Notices

- (a) The particulars for delivery of Notices are set out in the relevant details of the Parties section of this deed for each party.
- (b) Each party may change its particulars for delivery of Notices by Notice to each other party.

18.4 Notices by post

Subject to clause 18.7, a Notice is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia an address outside of Australia, 10 Business Days after posting.

18.5 Notices by email

Subject to clause 18.7, a Notice is given if sent by email when the sender receives an email receipt or other confirmation from the recipient to the sender which indicates that the email was received at the email address of the recipient.

18.6 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings in relation to this deed may be served by any method contemplated by this clause 18 or in accordance with any applicable law.

18.7 After hours Notices

If a Notice is given:

- (a) after 5.00pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken to have been given at 9.00am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

19 Miscellaneous

19.1 Amendment

This deed may only be varied or replaced by a document executed by the parties.

19.2 Waiver and exercise of rights

- (a) A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- (b) A single or partial exercise or waiver by a party of a right relating to this deed does not prevent any other exercise of that right or the exercise of any other right.
- (c) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

19.3 Rights cumulative

Except as expressly stated otherwise in this deed, the rights of a party under this deed are cumulative and are in addition to any other rights of that party.

19.4 Consents

Except as expressly stated otherwise in this deed, a party may conditionally or unconditionally give or withhold any consent to be given under this deed and is not obliged to give its reasons for doing so.

19.5 Further steps

Except as expressly stated otherwise in this deed, each party must promptly do whatever any other party reasonably requires of it to give effect to this deed and to perform its obligations under it.

19.6 Governing law and jurisdiction

This deed is governed by, and is to be construed in accordance with, the laws of Victoria. Each party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts that have jurisdiction to hear appeals from any of those courts; and
- (b) irrevocably waives any right to object to proceedings being brought in those courts on the basis that proceedings have been brought in an inconvenient forum.

19.7 Assignment

Neither party may assign any of its rights under this deed without the prior written consent of the other party.

19.8 Counterparts

This deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

19.9 Entire understanding

- (a) This deed contains the entire understanding between the parties as to the subject matter of this deed.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this deed are merged in and superseded by this deed and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this deed; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

19.10 Approvals and consents

Except where this deed expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this deed.

19.11 Severability

A term or part of a term of this deed that is illegal or unenforceable may be severed from this deed and the remaining terms or parts of the term of this deed continue in force.

19.12 Relationship

Except where this deed expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

19.13 No merger

The warranties, undertakings and indemnities in this deed will not merge on completion of any transaction under this deed.

19.14 Legal advice

The parties acknowledge they have obtained, or have had the opportunity to obtain, independent legal advice in relation to this deed (including in relation to their rights and obligations under this deed).

19.15 Costs and expenses

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

19.16 Electronic execution

This deed may be executed electronically. A party may sign electronically a soft copy of this deed (or a counterpart) and bind itself accordingly. This will satisfy any statutory or other requirements for this deed to be in writing and signed by that party.

19.17 Duties

The Bidder must pay any duties payable on the transfer by Scheme Shareholders of the Scheme Shares to the Bidder.

Schedule 1

Takeover Bid Terms

1 The Offer

- (a) Bidder will offer to acquire all (but not some only) of the Target Shares on and subject to the terms and conditions set out in this Schedule 1.
- (b) The consideration under the Offer will be the Takeover Bid Consideration.
- (c) By accepting the Offer, each Target Shareholder will undertake to transfer to Bidder not only the Target Shares to which the Offer relates, but also all Rights attached to those Target Shares.
- (d) The Offer will be made to each person registered as the holder of Target Shares in the Target Share Register at open of business (Sydney time) on the Register Date. It will also extend to:
 - (i) holders of securities that come to be Target Shareholders during the period from the Register Date to the end of the Offer Period due to the conversion of, or exercise of rights conferred by, such securities and which are on issue as at the Register Date; and
 - (ii) any person who becomes registered as the holder of Target Shares during the Offer Period.
- (e) The Offer will be dated in accordance with the Timetable.

2 Offer Period

- (a) Unless withdrawn, the Offer will remain open for acceptance during the period commencing on the date of the Offer and ending at 7:00pm (Sydney time) on the later of:
 - (i) the date set pursuant to the Timetable; or
 - (ii) any date to which the Offer Period is extended.
- (b) Despite anything else in this Schedule 1 the Offer Period must not expire prior to the date that is 20 Business Days after the date of the Scheme Meeting.

3 How the Offer will be accepted

- (a) A Target Shareholder will be required to accept the Offer for all (but not some only) of their Target Shares.
- (b) A Target Shareholder will be allowed to accept the Offer at any time during the Offer Period.
- (c) Bidder may establish an institutional acceptance facility to facilitate the acceptance of the Offer by institutional shareholders of Target.

4 Validity of acceptances

- (a) Bidder will be entitled to determine, in its sole discretion, all questions as to the form of documents, eligibility to accept the Offer and time of receipt of an acceptance of the Offer. The determination of Bidder will be final and binding on all parties.
- (b) Bidder will be entitled, in its sole discretion, at any time and without further communication to Target Shareholders, to deem any Acceptance Form it receives to be a valid acceptance in respect of Target Shares, even if a requirement for acceptance has not been complied with but the payment of the consideration in accordance with the Offer may

be delayed until any irregularity has been resolved or waived and any other documents required to procure registration have been received by Bidder.

- (c) Where a Target Shareholder satisfies the requirement for acceptance in respect of only some of its Target Shares, Bidder will be entitled, in its sole discretion, to regard the Offer to be accepted in respect of those Target Shares but not the remainder.

5 The effect of acceptance

Target Shareholders who have accepted the Offer will be able to revoke their acceptance at any time until the Takeover Bid Condition in clause 7(a) of this Schedule 1 has been satisfied or waived in accordance with this deed and the Corporations Act. When the Takeover Bid Condition in clause 7(a) has been satisfied or waived, a Target Shareholder that has accepted the Offer will be unable to revoke its acceptance and the contract resulting from their acceptance will be binding on them and they will be unable to withdraw their Target Shares from the Offer or otherwise dispose of their Target Shares, except as permitted under the Corporations Act.

6 Payment of consideration

Bidder will provide the consideration due to Target Shareholders for their Target Shares within the time required under the Corporations Act.

7 Takeover Bid Conditions

- (a) **(No Target Prescribed Occurrence)** No Target Prescribed Occurrence occurs between (and including) the date of this deed and the end of the Offer Period;
- (b) **(Restraints)** No law, statute, ordinance, regulation, rule, temporary restraining order, preliminary or permanent injunction or other judgment, order or decree issued by any Court of competent jurisdiction or Regulatory Authority or other legal restraint or prohibition preventing or materially restricting the Takeover Bid is in effect at the end of the Offer Period;
- (c) **(Scheme fails)** Either:
 - (i) the Scheme is not approved at the Scheme Meeting by the requisite majority of Target Shareholders under subparagraph 411(4)(a)(ii)(B) of the Corporations Act; or
 - (ii) following the approval of the Scheme at the Scheme Meeting by the requisite majority of Target Shareholders under subparagraph 411(4)(a)(ii)(B) of the Corporations Act, the Court does not approve the Scheme in accordance with section 411(4)(b) of the Corporations Act;
- (d) **(Minimum acceptance)** Bidder has a relevant interest in at least 50.1% of the Target Shares on issue (on a fully diluted basis);
- (e) **(Termination of the Transaction Implementation Deed)** This deed is not terminated by Bidder under clause 16.1(a) before the end of the Offer Period.

8 Nature and waiver of Takeover Bid Conditions

- (a) Each of the Takeover Bid Conditions will be conditions subsequent. The non-fulfilment of any condition subsequent does not, until the end of the Offer Period (or in the case of the Condition in clause 7(a) of this Schedule 1, until the end of the third Business Day after the end of the Offer Period), prevent a contract to sell Target Shares from arising, but will entitle Bidder by written notice to Target Shareholders, to rescind the contract resulting from Target Shareholders' acceptance of the Offer.

- (b) Subject to the Corporations Act and clause **Error! Reference source not found.** of this Schedule 1, Bidder may declare the Takeover Bid to be free from any Takeover Bid Condition by giving written notice to Target declaring the Offer to be free from the relevant Condition or Conditions specified, in accordance with section 650F of the Corporations Act. This notice may be given:
 - (i) in the case of the Takeover Bid Condition in clause 7(a) of this Schedule 1, not later than three Business Days after the end of the Offer Period; and
 - (ii) in the case of all the other Takeover Bid Conditions in clause 7 of this Schedule 1, not less than seven days before the end of the Offer Period.
- (c) If a Scheme Condition is waived or satisfied, Bidder must declare the Takeover Bid free from the corresponding Takeover Bid Condition.
- (d) If, at the end of the Offer Period (or in the case of the Takeover Bid Condition in clause 7(a) of this Schedule 1, at the end of the third Business Day after the end of the Offer Period), the Takeover Bid Conditions have not been fulfilled and Bidder has not declared the Offer (or it has not become) free from those Conditions, all contracts resulting from the acceptance of the Offer will be automatically void.

9 **Withdrawal of the Offer**

- (a) Bidder will be entitled to withdraw the Offer with the consent in writing of ASIC, which consent may be subject to conditions. If ASIC gives such consent, Bidder will give notice of the withdrawal to the ASX and to Target and will comply with any other conditions imposed by ASIC.
- (b) If, at the time the Offer is withdrawn, all the Takeover Bid Conditions have been freed, all contracts arising from acceptance of the Offer before it was withdrawn will remain enforceable.
- (c) If, at the time the Offer is withdrawn, the Offer remains subject to one or more of the Takeover Bid Conditions, all contracts arising from its acceptance will become void (whether or not the events referred to in the relevant conditions have occurred).
- (d) A withdrawal pursuant to this clause 9 of this Schedule 1 will be deemed to take effect:
 - (i) if the withdrawal is not subject to conditions imposed by ASIC, on and after the date on which that consent in writing is given by ASIC; or
 - (ii) if the withdrawal is subject to conditions imposed by ASIC, on and after the date on which those conditions are satisfied.

10 **Notice on status of conditions**

The date for giving the notice on the status of the conditions required by section 630(1) of the Corporations Act will be determined in accordance with the Timetable (subject to extension in accordance with section 630(2) of the Corporations Act if the Offer Period is extended).

11 **Variation of the Offer**

Bidder will be entitled to vary the Offer in accordance with the Corporations Act.

12 **Power of attorney**

Immediately upon the Offer being declared or becoming unconditional and until Target registers Bidder as the holder of the relevant Target Shares in the Target Share Register, each Target Shareholder that has accepted the Offer:

- (a) is deemed to have appointed Bidder as attorney and agent (and directed Bidder in each such capacity) to appoint any director, officer, secretary or agent nominated by Bidder as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the relevant Target Shares registered in their name and sign any shareholders' resolution or document;
- (b) must not attend or vote at any of those meetings or sign any resolutions, whether in person, by direct vote, by proxy or by corporate representative (other than pursuant to clause 12(a) of this Schedule 1);
- (c) must take all other actions in the capacity of a registered holder of the relevant Target Shares as Bidder reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 12(a) of this Schedule 1, Bidder and any director, officer, secretary or agent nominated by Bidder under clause 12(a) of this Schedule 1 may act in the best interests of Bidder as the intended registered holder of the relevant Target Shares.

13 Rights

If Bidder becomes entitled to any Rights as a result of an acceptance of the Offer, it may require the person who accepted the Offer to give to Bidder all documents necessary to vest title to those Rights in Bidder. If those documents are not provided to Bidder, or if a person who accepted the Offer received or is entitled to receive (or any previous holder of the relevant Target Shares received or is entitled to receive) the benefit of those Rights, Bidder will be entitled to deduct the amount (or value as reasonably assessed by Bidder) of such Rights (excluding the value of any franking credit) from any consideration otherwise payable. If Bidder does not, or cannot, make such a deduction, the person who accepted the Offer will be required to pay that amount to Bidder.

14 Offerees

(a) Registered holders

Offers will be made to each person registered as the holder of Target Shares in the register of Target Shareholders at 7:00pm (Sydney time) on the Register Date. Offers will also extend to:

- (i) holders of Target Shares issued during the period from the Register Date to the end of the Offer Period (inclusive) as a result of the exercise or vesting of the ESS Securities that are on issue as at the Register Date; and
- (ii) any person who becomes registered, or entitled to be registered, as the holder of Target Shares during the Offer Period.

(b) Transferees

Offers will extend to all persons who, during the Offer Period are able to give good title to a parcel of Target Shares as if those persons held the Target Shares on the Register Date.

(c) Trust and nominees

Offers will be made to persons who hold Target Shares in two or more separate parcels within the meaning of section 653B of the Corporations Act (for example, because a person is a trustee or nominee for several distinct beneficial owners), in accordance with section 653B of the Corporations Act so that:

- (i) Bidder will be taken to have made a separate Offer for each separate parcel of Target Shares; and

- (ii) acceptance of the Offer for any distinct parcel of Target Shares will be ineffective unless:
 - (A) the Target Shareholder gives Bidder notice in accordance with the Offer in the Bidder's Statement stating that the Target Shares consist of separate parcels; and
 - (B) the acceptance specifies the number of Target Shares in each separate parcel to which the acceptance relates.

15 **Foreign laws**

Bidder will not be required to register the Offer in any jurisdiction outside Australia (unless an applicable foreign law treats it as registered as a result of the Bidder's Statement being lodged with ASIC).

16 **Stamp duty**

Bidder will pay any stamp duty on the transfer of the Target Shares.

17 **Governing law**

The Offer and any contract that results from an acceptance of the Offer will be governed by the laws in force in Victoria, Australia.

Schedule 2

The Bidder Warranties

The Bidder represents and warrants to the Target that:

- (a) **(Validly existing)** it is a Target properly incorporated and validly existing under the laws of its place of incorporation;
- (b) **(Authority)** the execution and delivery by the Bidder of the Transaction Documents to which the Bidder is party has been properly authorised by all necessary corporate action and the Bidder has full corporate power, capacity and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
- (c) **(Binding and enforceable)** the Transaction Documents to which the Bidder is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms;
- (d) **(No default)** the Transaction Documents to which the Bidder is party (and the Bidder's entry into and compliance with those Transaction Documents) do not conflict with or result in a breach of or default under:
 - (i) the constitution or equivalent constituent documents of the Bidder or any of its Related Bodies Corporate; or
 - (ii) any writ, order or injunction, judgment, law, rule, obligation or regulation to which the Bidder or any of its Related Bodies Corporate is party, or by which the Bidder or any of its Related Bodies Corporate is bound;
- (e) **(No approvals)** other than as expressly contemplated by clause 3.1, no shareholder or Regulatory Authority approvals are required to be obtained by any member of the Bidder Group in order for it to execute and perform the Transaction Documents to which it is party (including any approvals, exemptions, notifications or otherwise as may be required under any applicable laws);
- (f) **(Bidder Information)** as at the First Court Date, the date of despatch of the Scheme Booklet, the date of the Scheme Meeting and the Second Court Date:
 - (i) the Bidder Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that the Target and the Target Parties have relied, and will continue to rely, on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme;
 - (ii) the Bidder Information complies in all material respects with, and contains all information regarding the Bidder, the Bidder Group and the Scheme Consideration required by, all relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides);
 - (iii) the Bidder Information (other than to the extent that it consists of information relating to the Target Group that was provided by or on behalf of the Target, or has been extracted from announcements made by the Target to ASX regarding the Target Group) in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission;

- (iv) any statement of opinion or belief contained in the Bidder Information is honestly held and so far as the Bidder is aware, there are reasonable grounds for holding the opinion or belief;
 - (v) the Bidder has complied, and will continue to comply, with its obligations under clause 5.8(i); and
 - (vi) all information provided by or on behalf of the Bidder to the Independent Expert has been prepared and provided in good faith and on the understanding that the Independent Expert has relied, and will continue to rely, on the information for the purposes of preparing the Independent Expert's Report;
- (g) **(new information)**: it will, as a continuing obligation, provide to the Target all further or new information which arises after the Scheme Booklet has been despatched to the Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information is not misleading or deceptive in any material respect (including by way of omission); and
- (h) **(Insolvency)** no Insolvency Event has occurred in relation to the Bidder or any of its Related Bodies Corporate.
- (i) **(No dealings with Target Shareholders)** No member of the Bidder Group has any agreement, arrangement or understanding 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 under which the Target Shareholder has agreed to vote in favour of the Scheme or accept the Takeover Bid (or against any Competing Proposal).
- (j) **(Unconditional cash reserves)**

By 8.00am on the Implementation Date, Bidder will have available to it on an unconditional basis sufficient cash reserves (whether from internal cash reserves or external funding arrangements, including equity financing or a combination of both) to satisfy Bidder's obligations to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.

From the time at which the Takeover Bid is declared or becomes unconditional, Bidder will have available to it on an unconditional basis sufficient cash reserves (whether from internal cash reserves or external funding arrangements, including equity financing or a combination of both) to satisfy Bidder's obligations to pay the Takeover Bid Consideration in accordance with the terms of the Takeover Bid and the timing requirements of the Corporations Act.

Schedule 3

The Target Warranties

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

- (a) **(Validly existing)** it is a company properly incorporated and validly existing under the laws of its place of incorporation;
- (b) **(Authority)** the execution and delivery by the Target of the Transaction Documents to which the Target is party has been properly authorised by all necessary corporate action and the Target has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
- (c) **(Binding and enforceable)** the Transaction Documents to which the Target is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms;
- (d) **(No default)** the Transaction Documents to which the Target is party (and the Target's entry into and compliance with those Transaction Documents) do not conflict with or result in a breach of or default under:
 - (i) the constitution or equivalent constituent documents of the Target or any of its Subsidiaries; or
 - (ii) any writ, order, injunction, judgment, law, rule, obligation or regulation to which the Target or any of its Subsidiaries is party, or by which the Target or any of its Subsidiaries is bound;
- (e) **(No approvals)** other than as expressly contemplated by clause 3.1, no shareholder or Regulatory Authority approvals are required to be obtained by any member of the Target Group in order for it to execute and perform the Transaction Documents to which it is party (including any approvals, exemptions, notifications or otherwise as may be required under any applicable laws) and as at the date of this deed, no regulatory action of any nature has been taken that would prevent or restrict the Target's ability to perform its obligations under this deed;
- (f) **(Capital structure)** as at the date of this deed:
 - (i) the total issued capital of the Target is comprised of:
 - (A) 339,991,116 Target Shares;
 - (B) 2,250,000 Target Options all issued with an exercise price ranging between \$0.22 to \$0.38 cents; and
 - (C) 21,518,911 Target Performance Rights,and the Target has not issued any other securities, shares, warrants, options, performance rights, convertible notes, instruments or rights (or obligations, offers or agreements to issue any of the foregoing) which may convert into Target Shares which are still outstanding;
 - (ii) all the issued securities of each member of the Target Group (other than the Target) are held by either the Target or another member of the Target Group that is directly or indirectly wholly-owned by the Target;

- (iii) no member of the Target Group has issued or granted (or agreed to issue or grant) any other securities, shares, options, warrants, performance rights, convertible notes, instruments or rights which are still outstanding and may convert into shares and no member of the Target Group is under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any other securities, shares, options, warrants, performance rights, convertible notices, instruments or rights in a member of the Target Group, other than as set out in paragraph (f)(i) of this Schedule 3;
- (g) **(Scheme Booklet)**: as at the date of despatch of the Scheme Booklet, as far as the Target is aware, the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the Bidder Information and the Independent Expert's Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise);
- (h) **(Target Information)** as at the First Court Date, the date of despatch of the Scheme Booklet, the date of the Scheme Meeting and the Second Court Date:
 - (i) the Target Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that the Bidder and the Bidder Indemnified Parties have relied, and will rely, on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet and implementing the Scheme;
 - (ii) the Target Information complies in all material respects with relevant laws and contains all information regarding the Target and the Target Group and the Scheme Consideration required by all relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides);
 - (iii) the Target Information in the form and context in which it appears in the Scheme Booklet does not contain a statement which is misleading or deceptive (whether by omission or otherwise) in any material respect and does not contain any material omission, including having regard to applicable disclosure requirements and will comply with the requirements of the Corporations Act, the *Corporations Regulations 2001* (Cth), the Listing Rules and relevant Regulatory Guides;
 - (iv) any statement of opinion or belief contained in the Target Information is honestly held and so far as the Target is aware there are reasonable grounds for holding the opinion or belief;
 - (v) the Target has complied, and will continue to comply, with its obligations under clause 5.6(q); and
 - (vi) all information provided by or on behalf of the Target to the Independent Expert has been prepared and provided in good faith and on the understanding that the Independent Expert has relied, and will continue to rely, on the information for the purposes of preparing the Independent Expert's Report.

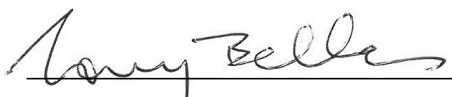
Schedule 4**Indicative Timetable**

Event	Indicative Date
First Court Date	Late April - Early May 2023
Register Date	Late April - Early May 2023
Despatch Transaction Booklet	Late April - Early May 2023
Scheme Meeting	Late May - Early June 2023
If the Scheme is approved by Target Shareholders	
Second Court Date	Late May - Mid June 2023
Effective Date	Late May - Mid June 2023
Scheme Record Date	Mid-June 2023
Implementation Date	Mid - late June 2023
If Target Shareholders do not approve the Scheme	
Offer closes (unless otherwise extended or withdrawn)	Mid - late June 2023

Executed and delivered as a Deed.

Target

Executed by IntelliHR Limited in accordance with section 127 of the *Corporations Act 2001* by:



Director signature

Anthony Bellas

Director full name
(BLOCK LETTERS)



Director/Secretary signature

Suzanne Yeates

Director/Secretary full name
(BLOCK LETTERS)

Transaction Transaction Implementation Deed

Bidder

Executed by Access Workspace Pty Limited
in accordance with section 127 of the
Corporations Act 2001 by:

DocuSigned by:



5D4A0E98C1544DB...

Director signature
Adam Brown

Director full name
(BLOCK LETTERS)

DocuSigned by:



E05325FB5298449...

Director/Secretary signature
Kerry Agiasotis

Director/Secretary full name
(BLOCK LETTERS)

Annexure 1 – Scheme

IntelliHR Limited

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

Scheme of Arrangement

Pursuant to section 411 of the Corporations Act

Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000 Australia
T +61 2 9230 4000
F +61 2 9230 5333
www.allens.com.au

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Scheme of Arrangement

Date

Parties

1 **IntelliHR Limited** (ACN 600 548 516) (*Target*).

Address: Level 3, Transport House, 230 Brunswick Street, Fortitude Valley Qld 4006

Email: tony@bellas.com

Contact: Tony Bellas

2 **Each person registered as a holder of fully paid ordinary shares in the capital of the Target as at the Scheme Record Date.**

Recitals

A The Target and the Bidder have entered into the Transaction Implementation Deed pursuant to which, amongst other things, the Target has agreed to propose the Scheme to the Target Shareholders, and each of the Target and the Bidder have agreed to take certain steps to give effect to this Scheme.

B If the Scheme becomes Effective, then:

(a) all the Scheme Shares will be transferred to the Bidder and the Scheme Consideration will be provided to the Scheme Shareholders in accordance with the provisions of this Scheme; and

(b) the Target will enter the name and address of the Bidder in the Target Share Register as the holder of the Scheme Shares.

C The Bidder has entered into the Deed Poll for the purpose of covenanting in favour of Scheme Shareholders to perform the obligations contemplated of it under this Scheme.

Operative part

1 Definitions and interpretation

1.1 Definitions

The following definitions apply in this document, unless the context requires otherwise.

Aggregate Scheme Consideration means the aggregate amount of the Scheme Consideration payable to Scheme Shareholders for all Scheme Shares under the Scheme.

ASIC means the Australian Securities and Investments Commission.

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

Bidder means Access Workspace Pty Limited (ACN 636 482 383).

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

CHES means the clearing house electronic sub-register system for the electronic transfer of securities operated by ASX Settlements Pty Limited (ABN 49 008 504 532).

Condition means each condition to the Scheme set out in clause 3.1.

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

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

Deed Poll means the deed poll dated [] 2023 executed by the Bidder in favour of the Scheme Shareholders (subject to any amendments permitted by its terms).

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

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

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

End Date has the meaning given in the SID.

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

Listing Rules means the official listing rules of ASX.

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

Regulatory Authority has the meaning given in the Transaction Implementation Deed.

Relevant Amount has the meaning given in clause 6.4(a).

Scheme means the scheme of arrangement under part 5.1 of the Corporations Act between the Target and the Target Shareholders as set out in this document, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to by the Bidder and the Target .

Scheme Consideration means the consideration to be provided to Scheme Shareholders for the transfer to the Bidder of their Scheme Shares, being a cash amount per Scheme Share equal to \$0.22.

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

Scheme Record Date means 5.00 pm (Sydney time) on the date which is 5 Business Days after the Effective Date or such other time and date agreed in writing between the Bidder and the Target .

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

Scheme Shareholder means a person who holds Target Shares 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, which may be or include a master transfer of all or part of the Scheme Shares.

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

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

Separate Account has the meaning given in clause 6.2(d).

Share Registry means Link Market Services Limited ABN 54 083 214 537.

Target Options has the meaning given in the Transaction Implementation Deed.

Target Performance Rights has the meaning given in the Transaction Implementation Deed.

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

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

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

Transaction Implementation Deed means the transaction implementation deed dated 29 March 2023 between the Target and the Bidder under which, amongst other things, the Target has agreed to propose the Scheme to Scheme Shareholders, and each of the Bidder and the Target has agreed to take certain steps to give effect to this Scheme.

Trust Account means an Australian dollar denominated trust account which is operated by or on behalf of the Target as trustee for the Scheme Shareholders, details of which the Target must notify to the Bidder no later than 10 Business Days before the Implementation Date.

Unclaimed Consideration has the meaning given in clause 6.2(d).

Withholding Amount has the meaning given in clause 6.4(a).

1.2 Interpretation

In the Scheme, unless provided otherwise:

- (a) a reference to:
 - (i) the singular includes the plural and vice versa;
 - (ii) a gender includes all genders;
 - (iii) a person includes an individual, corporation or other body corporate, partnership, trust, joint venture, unincorporated body, Regulatory Authority or other entity, whether or not it is a separate legal entity;
 - (iv) a clause, schedule or annexure is a reference to a clause, schedule or annexure of the Scheme;
 - (v) the Scheme includes any schedule or annexure to it;
 - (vi) a party includes that party's successors, permitted substitutes and permitted assigns;
 - (vii) dollars or \$ is a reference to Australian dollars;
 - (viii) the Scheme or another document includes that document as amended, supplemented, novated or replaced from time to time;
 - (ix) legislation or a provision of legislation includes all regulations, orders or instruments issued under that legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or codification of it;
 - (x) subsidiary, holding company, related body corporate, relative and substantial holding has the same meaning as in the Corporations Act;

- (xi) a day, month, quarter or year means a calendar day, calendar month, calendar quarter or calendar year respectively;
 - (xii) time is to the time in Sydney, Australia; and
 - (xiii) writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible or tangible form (and includes communication by email);
- (b) where a word or expression is defined or given meaning, another grammatical form has a corresponding meaning;
 - (c) any recital, heading or table of contents is for convenience only and does not affect the interpretation of the Scheme;
 - (d) a provision of the Scheme must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Scheme or the inclusion of the provision in the Scheme;
 - (e) where an act would be required to be done, or a time limit or period would expire, on a day which is not a Business Day, the act must be done, or the limit or period will expire, on the following Business Day;
 - (f) if a period of time is specified from or after a given day, the period is to be calculated exclusive of that day;
 - (g) any phrase introduced by the terms '**including**', '**include**', '**in particular**' or any similar expression must be construed as illustrative and will not limit the sense of the words preceding those terms; and
 - (h) references to '**the parties**' are to the parties to the Scheme and include their respective permitted successors in title and permitted assignees.

2 Preliminary matters

2.1 Target

- (a) The Target is a public company limited by shares incorporated in the state of Queensland.
- (b) The Target is admitted to the official list of ASX and the Target Shares are officially quoted on the ASX.
- (c) As at the date of the Transaction Implementation Deed the following securities were on issue in the Target:
 - (i) 339,991,116 Target Shares;
 - (ii) 2,250,000 Target Options; and
 - (iii) 21,518,911 Target Performance Rights.

2.2 Bidder

The Bidder is a private company limited by shares incorporated in the state of Victoria.

2.3 Transaction Implementation Deed

The Bidder and the Target have agreed, by executing the Transaction Implementation Deed, to implement the Scheme (among other things). In particular, the Target and the Bidder have agreed that each of them will perform their respective obligations under the Scheme which relate to each of them respectively and have agreed to take certain steps to give effect to the Scheme.

2.4 Deed Poll

The Bidder has agreed, by executing the Deed Poll, to perform its respective obligations under the 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.

3 Conditions Precedent

3.1 Conditions to the Scheme

The Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions, and the provisions of clauses 4 and 5 will not come into effect unless and until each of these conditions have been satisfied:

- (a) as at 8.00 am on the Second Court Date each of the conditions set out in clause 3.2 of the Transaction Implementation Deed (other than the condition relating to the approval of the Court set out in clause 3.2(b) **Error! Reference source not found.** of the Transaction Implementation Deed) have been satisfied or waived in accordance with the terms of the Transaction Implementation Deed;
- (b) as at 8.00 am on the Second Court Date neither the Transaction Implementation Deed nor the Deed Poll is terminated in accordance with their respective terms;
- (c) the Court approves the Scheme under section 411(4)(b) of the Corporations Act with or without modification acceptable to the Bidder and the Target (each acting reasonably);
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme as are acceptable to the Bidder and the Target (each acting reasonably) have been satisfied or been waived; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to the Scheme on or before the End Date.

3.2 Certificates in relation to Conditions Precedent

On the Second Court Date:

- (a) the Target must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8.00 am on the Second Court Date the conditions set out in clause 3.1 (other than clause 3.2(b)) of the Transaction Implementation Deed have been satisfied or waived in accordance with the Transaction Implementation Deed; and
- (b) the Bidder must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8.00 am on the Second Court Date the conditions set out in clause 3.1 (other than clause 3.1(b)) of the Transaction Implementation Deed have been satisfied or waived in accordance with the Transaction Implementation Deed.

3.3 Termination of Transaction Implementation Deed

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

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

4 Scheme

4.1 Effective Date of the Scheme

Subject to clause 4.2, the Scheme will take effect on and from the Effective Date.

4.2 End Date

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

5 Implementation of the Scheme

5.1 Lodgement

If the Conditions are satisfied, the Target must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving the Scheme as soon as possible after, and in any event by no later than 5.00 pm on the Business Day following, the date on which the Court approves the Scheme or such other Business Day as the Target and the Bidder agree in writing.

5.2 Consequences of the Scheme becoming Effective

If the Scheme becomes Effective:

- (a) in consideration for the transfer of each Scheme Share to the Bidder, the Bidder will provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with the Scheme and the Deed Poll;
- (b) subject to the Bidder fulfilling its obligations under clauses 5.2(a) and 6.2(a), all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to the Bidder; and
- (c) the Target will enter, or procure the entry of, the name of the Bidder in the Target Share Register in respect of all the Scheme Shares in accordance with the Scheme.

5.3 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 6.2(a) and the Bidder having provided the Target with written confirmation thereof, all of the Scheme Shares will, together with all rights and entitlements attaching to the Scheme Shares, be transferred to the Bidder without the need for any further act by any Scheme Shareholder (other than acts performed by the Target or its directors as attorney or agent for Scheme Shareholders under the Scheme), by
 - (i) the Target delivering to the Bidder a duly completed and executed Scheme Transfer to transfer all of the Scheme Shares to the Bidder, executed on behalf of the Scheme Shareholders by the Target (or any of its officers) as their agent and attorney; and
 - (ii) the Bidder duly executing such Scheme Transfer and delivering the executed and, if necessary, stamped, Scheme Transfer to the Target for registration; and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 5.3(a)(ii), the Target entering, or procuring the entry of, the name of the Bidder in the Target Share Register in respect of all the Scheme Shares.

6 Scheme Consideration

6.1 Entitlement to Scheme Consideration

Each Scheme Shareholder will be entitled to the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder in accordance with the terms of the Scheme.

6.2 Provision of Scheme Consideration

- (a) Subject to clause 6.5, the obligation of the Bidder to provide, or procure the provision of, the Scheme Consideration to Scheme Shareholders in accordance with the Scheme and the Deed Poll will be satisfied by the Bidder :
- (i) paying, or procuring the payment, into the Trust Account, of an amount in cleared funds equal to the Aggregate Scheme Consideration by no later than one Business Day before the Implementation Date to be held by or on behalf of the Target on trust for the Scheme Shareholders (except that any interest on the amount deposited less bank fees and other charges will be for the account of the Bidder); and
 - (ii) providing the Target with written confirmation that payment has been made in accordance with clause 6.2(a)(i) above.
- (b) Subject to the Bidder complying with its obligations under clause 6.2(a), the Target must on the Implementation Date pay, or procure the payment, from the Trust Account to each Scheme Shareholder an amount equal to the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder as set out in the Target Share Register on the Scheme Record Date, less any amount retained by Target under clause 6.3 or Bidder under clause 6.4.
- (c) The Target's obligations under clause 6.2(b) will be satisfied by the Target:
- (i) where a Scheme Shareholder has, on or before the Scheme Record Date, made an election in accordance with the requirements of the Share Registry to receive dividend payments from the Target by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount to that Scheme Shareholder in Australian currency by electronic means in accordance with that election; or
 - (ii) whether or not a Scheme Shareholder has made an election referred to in clause 6.2(c)(i), 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, such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with clause 6.5).
- (d) If either:
- (i) a Scheme Shareholder does not have a Registered Address and no account has been notified in accordance with clause 6.2(c)(i) or a deposit into such an account is rejected or refunded; or
 - (ii) a cheque issued under this clause 6 has been cancelled in accordance with clause 6.6(a),

(Unclaimed Consideration), the Target as the trustee for the Scheme Shareholders may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of the Target (**Separate Account**) to be held until the Scheme Shareholder

claims the amount or the amount is dealt with as Unclaimed Consideration in accordance with clause 6.6. To avoid doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Shareholder claims the amount or the amount is dealt with as Unclaimed Consideration in accordance with clause 6.6. Until such time as the amount is dealt with as Unclaimed Consideration in accordance with clause 6.6, the Target must hold the amount on trust for the relevant Scheme Shareholder but any interest or other benefit accruing from the amount will be to the benefit of the Bidder. The Target must maintain records of the amounts paid, the people who are entitled to the amount and any transfers of the amount(s).

- (e) If the Scheme lapses after the Bidder has provided some or all of the Scheme Consideration in accordance with clause 6.2(a), but prior to Bidder being entered into the Target Share Register as the holder of the Scheme Shares in accordance with clause 5.3(b), the Target must refund (or procure the refund) to Bidder of the amount deposited into the Trust Account in accordance with 6.2(a), together with any interest earned (less bank fees and charges).

6.3 Amounts to be withheld or retained

If written notice is given to the Target (or the Share Registry) or the Bidder of an order or direction made by a court of competent jurisdiction or another Regulatory Authority that:

- (a) requires payment to a third party in respect of Scheme Shares held by a particular Scheme Shareholder, which amount would otherwise be payable to that Scheme Shareholder by the Target in accordance with clause 6, then the Target will be entitled to make that payment (or procure that it is made) in accordance with that order or direction; or
- (b) prevents the Target from making a payment to a particular Scheme Shareholder in accordance with clause 6, or such payment is otherwise prohibited by applicable law, the Target will be entitled to retain an amount, in Australian dollars, equal to the amount of the relevant payment until such time as payment in accordance with clause 6 is permitted by that order or direction or otherwise by law,

and the payment or retention by or on behalf of the Target will constitute the full discharge of the Target's obligations under the Scheme with respect to the amount so paid or retained until, in the case of clause 6.3(b), it is no longer required to be retained.

6.4 Foreign resident capital gains withholdings

- (a) If the Bidder, having regard to professional advice, is required by law to withhold any amount from a payment to a Scheme Shareholder or is liable to pay an amount to the Commissioner of Taxation under Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) in respect of the acquisition of Scheme Shares from a Scheme Shareholder (the **Relevant Amount**), then the Bidder shall be entitled to withhold an amount, in Australian dollars, equal to the amount of the Relevant Amount from the amount otherwise required to be paid into the Trust Account under 6.2(a) (**Withholding Amount**).
- (b) The Bidder must notify the Target at least 3 Business Days prior to the Implementation Date of each Scheme Shareholder which will be subject to a Withholding Amount and the Withholding Amount applying to each such Scheme Shareholder.
- (c) The payment of the reduced amount by the Bidder into the Trust Account in accordance with clause 6.4(a) will constitute the full discharge of the Bidder's obligations under clause 6.2(a) with respect to payment of Scheme Consideration to the relevant Scheme

Shareholder, subject to the Bidder paying the Withholding Amount to the relevant taxation authority and meeting its obligations under clause 6.4(b).

- (d) The Bidder must pay any Withholding Amount so withheld to the relevant taxation authority, and, if requested in writing by the relevant Scheme Shareholder, provide a receipt or other appropriate evidence (or procure the provision of such receipt or other evidence) of such payment to the relevant Scheme Shareholder.

6.5 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be sent under the Scheme will be made payable to the joint holders and sent at the sole discretion of the 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 6.2(c)(i), in which case the amount must be deposited directly to the nominated bank account of the joint holders);
- (b) any other document required to be sent under the Scheme will be forwarded at the sole discretion of the 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.

6.6 Unclaimed monies

- (a) To the extent that a cheque properly despatched by or on behalf of the Target pursuant to clause 6.2(c) is returned to the Target (or its agents) as undelivered or the cheque is not presented by a Scheme Shareholder earlier than six months after the Implementation Date the Target may cancel (or procure the cancellation of) a cheque sent under clause 6.2(c)(ii).
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to the Target (or the Share Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), the Target must reissue a cheque that was previously cancelled under clause 6.6(a).
- (c) The Target must deal with the Unclaimed Consideration in accordance with any applicable unclaimed moneys legislation.
- (d) Any interest or other benefit accruing from Unclaimed Consideration (less bank fees and other charges) will be to the benefit of the Bidder.
- (e) Subject to the Target complying with its obligations under clause 6.6(b), the Target is discharged from liability to any Scheme Shareholder in respect of the Unclaimed Consideration.

6.7 Rounding

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, the fractional entitlement will be rounded up to the nearest whole cent.

7 Dealings in Target Shares

7.1 Dealings in Target Shares by Scheme Shareholders

For the purposes of establishing who are Scheme Shareholders, dealings in Target Shares will be recognised by the Target provided that:

- (a) in the case of dealings of the type to be effected on CHESSE, the transferee is registered in the Target Share Register as the holder of the relevant Target Shares by the Scheme Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received at the place where the Target Share Register is kept by 3:00 pm on the day which is the Scheme Record Date (in which case the Target must register such transfers before 5:00 pm on that day),

and the Target will not accept for registration, or recognise for the purpose of establishing who are Scheme Shareholders, any transmission application or transfer in respect of the Target Shares received after such times on the Scheme Record Date.

7.2 Target Share Register

The Target will, until the Scheme Consideration has been paid and the Bidder has been entered in the Target Share Register as the holder of all of the Scheme Shares, maintain the Target Share Register in accordance with the provisions of this clause 7 and the Target Share Register in this form and the terms of the Scheme will solely determine entitlements to the Scheme Consideration.

7.3 Information to be made available to the Bidder

The Target must procure that as soon as practicable following the Scheme Record Date, details of the names, registered addresses and holdings of Target Shares of every Scheme Shareholder shown in the Target Share Register at the Scheme Record Date are made available to the Bidder in such form as the Bidder may reasonably require.

7.4 Effect of share certificates and holding statements

As from the Scheme Record Date (and other than for the Bidder following the Implementation Date), all share certificates and holding statements for the Scheme Shares will cease to have effect as documents of title, and each entry on the Target Share Register at that date will cease to have any effect other than as evidence of entitlement to the Scheme Consideration.

7.5 No disposals after Scheme Record Date

If the Scheme becomes Effective, a Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Scheme Record Date.

8 Suspension and termination of quotation

- (a) The Target must apply to ASX for suspension of trading of the Target Shares on ASX with effect from the close of business on the Effective Date.
- (b) The Target must apply to ASX for termination of official quotation of the Target Shares on ASX and the removal of the Target from the official list of ASX with effect from the Business Day immediately following the Implementation Date.

9 General Scheme provisions

9.1 Appointment of agent and attorney

Each Scheme Shareholder, without the need for any further act, irrevocably appoints the Target as its agent and attorney for the purpose of:

- (a) executing any document or form or doing any other act necessary to give effect to the terms of this Scheme including, without limitation, the execution of the share transfers) to

be delivered under clause 5.3 and the giving of the Scheme Shareholders' consent under clause 9.3; and

- (b) enforcing the Deed Poll against the Bidder,

and the Target accepts such appointment. The Target, as agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 9.1 to all or any of its directors and officers (jointly, severally, or jointly and severally).

9.2 Enforcement of Deed Poll

The Target undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against the Bidder (as applicable on behalf of and as agent and attorney for the Scheme Shareholders).

9.3 Scheme Shareholders' consent

Each Scheme Shareholder irrevocably:

- (a) consents to the Target and the Bidder 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; and
- (b) acknowledges that this Scheme binds the Target and all of the Target Shareholders from time to time (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against this Scheme).

9.4 Scheme Shareholder's agreements

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

9.5 Warranty by Scheme Shareholders

Each Scheme Shareholder is deemed to have warranted to the Bidder and, to the extent enforceable, appointed and authorised the Target as its agent to warrant to the Bidder that all its Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to the Bidder, be fully paid and free from all Encumbrances and from any restrictions on transfer of any kind, and that it has full power and capacity to sell and to transfer those Scheme Shares together with any rights and entitlements attaching to such shares to the Bidder under this Scheme.

9.6 Title to Scheme Shares and transfer free from Encumbrance

- (a) The Bidder will be beneficially entitled to the Scheme Shares transferred to it under the Scheme pending registration by the Target of the Bidder in the Target Share Register as the holder of the Scheme Shares.
- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to the Bidder, will, at the time of transfer to the Bidder, vest in the Bidder free from all Encumbrances and free from any restrictions on transfer of any kind.

9.7 Alterations and Conditions

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

9.8 Notices

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

9.9 Inconsistencies

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

9.10 Further assurance

The Target will execute all documents and do all acts and things as may be necessary or expedient for the implementation of, and performance of its obligations under, this Scheme.

9.11 Stamp duty

The Bidder will pay any stamp duty payable on the transfer by Scheme Shareholders of the Scheme Shares to the Bidder.

9.12 Governing Law

The Scheme is governed by, and is to be construed in accordance with, the laws of Victoria. Each party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts that have jurisdiction to hear appeals from any of those courts; and
- (b) irrevocably waives any right to object to proceedings being brought in those courts on the basis that proceedings have been brought in an inconvenient forum.

Annexure 2 – Deed Poll

Access Workspace Pty Limited

Deed Poll

Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000 Australia
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F +61 2 9230 5333
www.allens.com.au

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Deed Poll

Date

By

Access Workspace Pty Limited (ACN 636 482 383) (**Bidder**) of Level 11, 821 Pacific Highway, Chatswood NSW 2067.

In favour of

Each person registered as a holder of fully paid ordinary shares in the capital of the Target as at the Record Date.

Recitals

- A The Target and the Bidder have entered into the Transaction Implementation Deed.
- B The Target has agreed in the Transaction Implementation Deed to propose a scheme of arrangement between the Bidder and the Scheme Shareholders, the effect of which will be that the Bidder acquires all of the Scheme Shares from Scheme Shareholders for the Scheme Consideration, subject to the satisfaction of certain conditions.
- C In accordance with clause 5.8(j) of the Transaction Implementation Deed, the Bidder is entering into this deed poll to covenant in favour of the Scheme Shareholders that it will observe and perform its obligations under the Scheme.

Operative part

1 Definitions and interpretation

1.1 Definitions

In this deed poll:

- (a) **Scheme** means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders, a copy of which is annexed to this deed poll, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to by the Bidder and the Target.
- (b) **Transaction Implementation Deed** means the transaction implementation deed dated 29 March 2023 between the Target and the Bidder under which, amongst other things, the Target has agreed to propose the Scheme to Scheme Shareholders, and each of the Bidder and the Target has agreed to take certain steps to give effect to the Scheme.

Capitalised terms have the meaning given to them in the Scheme, unless the context requires otherwise.

1.2 Interpretation

The provisions of clause **Error! Reference source not found.** 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'.

1.3 Nature of deed poll

The Bidder acknowledges that:

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

- (b) under the Scheme, each Scheme Shareholder appoints the Target as its agent and attorney to enforce this deed poll against the Bidder.

2 Conditions

2.1 Conditions Precedent

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

2.2 Termination

If the Transaction Implementation Deed is terminated or the Scheme does not become Effective on or before the End Date, the obligations of the Bidder under this deed poll automatically terminate and the terms of this deed poll will be of no further force or effect, unless the Target and the Bidder otherwise agree in accordance with the Transaction Implementation Deed (and, if required, as approved by the Court).

2.3 Consequences of termination

If this deed poll is terminated under clause 2.2, then in addition and without prejudice to any other rights, powers or remedies available to it, the Bidder is released from its obligations to further perform this deed poll except those obligations under clause 6.1 and any other obligations which by their nature survive termination.

3 Compliance with Scheme obligations

3.1 Scheme Consideration

Subject to clause 2, in consideration for the transfer to the Bidder of each Scheme Share, on the Implementation Date the Bidder will pay to each Scheme Shareholder the Scheme Consideration for each Scheme Share held by them in accordance with the terms of the Scheme.

3.2 Manner and timing of satisfaction

Pursuant to and subject to the Scheme and subject to clause 2 of this deed poll the obligations of the Bidder to provide the Scheme Consideration to each applicable Scheme Shareholder will be satisfied by the Bidder complying with its obligations under clause **Error! Reference source not found.** of the Scheme.

3.3 Other obligations of the Bidder

Subject to clause 2, the Bidder:

- (a) must procure that all obligations of the Bidder to pay the Scheme Consideration to each Scheme Shareholder in accordance with clause **Error! Reference source not found.** of the Scheme are met; and
- (b) covenants in favour of the Scheme Shareholders to perform all other obligations that are attributed to it under the Scheme, as if named as a party to the Scheme.

4 Warranties

The Bidder represents and warrants that:

- (a) it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) the execution and delivery by it of this deed poll has been properly authorised by all necessary corporate action and it has full corporate power and lawful authority to perform or cause to be performed its obligations under this deed poll and to carry out or cause to be carried out the transactions contemplated by this deed poll; and

- (c) this deed poll will constitute legally, valid and binding obligations on it enforceable in accordance with its terms (subject to any necessary stamping) and does not conflict with or result in a breach of or default under:
 - (i) the constitution or equivalent constituent documents of it or any of its Related Bodies Corporate (as defined in the Transaction Implementation Deed); or
 - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is party, or by which it is bound.

5 Continuing obligations

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

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

6 General

6.1 Stamp duty

The Bidder will:

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

6.2 Waiver

- (a) A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- (b) A single or partial exercise or waiver by a party of a right relating to this deed poll does not prevent any other exercise of that right or the exercise of any other right.
- (c) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

6.3 Variation

A provision of this deed poll may not be varied unless:

- (a) before the Second Court Date, the variation is agreed to in writing by the Target and the Bidder; or
- (b) on or after the Second Court Date, the variation is agreed to in writing by the Target and the Bidder, and is approved by the Court,

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

6.4 Rights cumulative

Except as expressly stated otherwise in this deed poll, the rights of a party under this deed poll are cumulative and are in addition to any other rights of that party.

6.5 Assignment

The rights and obligations of the Bidder and the rights of each Scheme Shareholder under this deed poll are personal and must not be assigned, charged or otherwise dealt with at law or in equity.

6.6 Further steps

Except as expressly stated otherwise in this deed poll, each party must promptly do whatever any other party reasonably requires of it to give effect to this deed poll and to perform its obligations under it.

6.7 Governing law and jurisdiction

This deed poll is governed by, and is to be construed in accordance with, the laws of Victoria. Each party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts that have jurisdiction to hear appeals from any of those courts; and
- (b) irrevocably waives any right to object to proceedings being brought in those courts on the basis that proceedings have been brought in an inconvenient forum.

Execution

EXECUTED as a deed

Executed by Access Workspace Pty Limited
in accordance with section 127 of the
Corporations Act 2001 (Cth) by:

Director signature

Director/Secretary signature

Director full name
(BLOCK LETTERS)

Director/Secretary full name
(BLOCK LETTERS)