

Scheme of Arrangement Legally Effective

InvoCare Limited (IVC:ASX) (“**InvoCare**”) refers to the announcement made earlier today and confirms that it has lodged an office copy of the orders made by the Supreme Court of New South Wales (“**Court**”), approving the proposed acquisition by Eternal Aus BidCo Pty Ltd ACN 669 053 258 (“**TPG BidCo**”), an entity ultimately owned by funds managed or advised by TPG Capital Asia (“**TPG**”) or its related entities, of all the issued capital of InvoCare which is not already held by it or its related entities, by way of a scheme of arrangement (“**Scheme**”) with the Australian Securities and Investments Commission (“**ASIC**”).

Lodgement of Court Orders and Suspension of Trading

An office copy of the Court orders lodged with ASIC is attached to this announcement as **Annexure A**.

The Scheme is now legally effective, and it is expected that quotation of InvoCare Shares on the ASX will be suspended from the close of trading today (Friday, 3 November 2023).

Payment of Scheme Consideration and Special Dividend

InvoCare Shareholders will be provided the Scheme Consideration on implementation of the Scheme (expected to be 24 November 2023) in respect of InvoCare Shares held at 7.00pm (Sydney time) on 17 November 2023.

InvoCare Shareholders will also receive the fully franked special dividend of \$0.60 per InvoCare Share announced on Tuesday, 31 October 2023 (“**Special Dividend**”) in respect of InvoCare Shares held at 7.00pm (Sydney time) on 8 November 2023. Payment of the Special Dividend is expected to occur on 16 November 2023.

ATO Class Ruling

InvoCare has applied to the ATO requesting a class ruling regarding the income tax implications for InvoCare Shareholders of receiving the Special Dividend, including the ability to attach franking credits to the Special Dividend. Subject to the receipt of a favourable class ruling from the ATO, and depending on their own tax circumstances, InvoCare Shareholders may receive additional value from any franking credits attaching to the Special Dividend as previously announced on Tuesday, 31 October 2023.

Unless otherwise indicated, capitalised terms used in this announcement have the meaning given to them in the Scheme Booklet dated 22 September 2023.

Further Information

If you have any questions in relation to the Scheme or the Scheme Booklet, please contact the InvoCare Shareholder Information Line on 1800 774 615 (within Australia) or + 61 1800 774 615 (outside Australia), Monday to Friday (excluding public or bank holidays in Sydney, Australia) between 8.30am and 5.00pm (Sydney time).

-ENDS-

This announcement has been authorised by the Board of InvoCare Limited.

For more details, contact:

Media – Clive Mathieson at clive@catoandclive.com

Investor Relations – Emma Roche at investor.relations@invocare.com.au

BACKGROUND

InvoCare, headquartered in Sydney, is a leading provider of funeral services in Australia, New Zealand, and Singapore, and operates private memorial parks and crematoria in Australia and New Zealand. It is also a leading provider of pet cremation services in Australia.

Annexure A - Court orders lodged with ASIC



Issued: 3 November 2023 10:23 AM

JUDGMENT/ORDER

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2023/00268572

TITLE OF PROCEEDINGS

First Plaintiff	InvoCare Limited ACN 096437393
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Corporation subject of the proceeding	InvoCare Limited
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DATE OF JUDGMENT/ORDER

Date made or given	3 November 2023
Date entered	3 November 2023

TERMS OF JUDGMENT/ORDER

VERDICT, ORDER OR DIRECTION:

Hearing of Originating Process filed 23 August 2023. Second Court hearing.

Black J makes orders in accordance with the Short Minutes of Order initialled by him and placed on the file.

THE COURT ORDERS THAT:

1. Pursuant to subsection 411(4)(b) of the Corporations Act 2001 (Cth) (Act), the Scheme of Arrangement between the Plaintiff and its members agreed to by the said members at the meeting held on 31 October 2023 (the terms of which are set out in Annexure A to these orders) (Scheme) be and is hereby approved.
2. Pursuant to subsection 411(12) of the Act, the Plaintiff be exempted from compliance with subsection 411(11) of the Act in relation to the Scheme.
3. These orders be entered forthwith.

SEAL AND SIGNATURE



Signature Chris D'Aeth
Capacity Principal Registrar
Date 3 November 2023

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

ATTACHMENTS TO ORDERS

(Annexure A to Orders - 3.11.23.pdf)

[attach.]

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

Date

Parties InvoCare Limited ACN 096 437 393 of Level 5, 40 Mount Street, North Sydney, NSW 2060 (Target)

Each holder of Target Shares recorded in the Target Share Register on the Scheme Record Date (other than an Excluded Shareholder).

Background

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

Operative provisions

1. Definitions and interpretation

1.1 Definitions

Unless the context requires otherwise, in this Scheme:

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

Aggregate Scrip Consideration means the aggregate number of HoldCo Shares issued to Scheme Shareholders under this Scheme (taking into account all valid Elections made on or before the Election Date and the terms of this Scheme).

All Cash Consideration means the Cash Consideration for each Scheme Share held by a Scheme Shareholder.

All Scrip Consideration means the Scrip Consideration for each Scheme Share held by a Scheme Shareholder.

All Scrip Election Option means an election by a Target Shareholder (other than an Excluded Shareholder) to receive the All Scrip Consideration for the Scheme Shares held by that Target Shareholder.

ASIC means the Australian Securities and Investments Commission.

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

Bidder means Eternal Aus BidCo Pty Ltd (ACN 669 053 258).

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

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

Cash Consideration means an amount of \$12.70 for each Scheme Share, as adjusted in accordance with clause 5.9(b) of the Implementation Deed (if applicable).

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

CHESS Holding has the meaning given in the Settlement Rules.

Class B Share means a Class B Share in the capital of HoldCo having the rights set out in the HoldCo Constitution and HoldCo SHD.

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

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

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

Custodian has the meaning given in the HoldCo SHD.

Custom Consideration means, in respect of a Scheme Shareholder who has made a Custom Consideration Election Option:

- (a) the Cash Consideration for such number of Scheme Shares; plus
- (b) the Scrip Consideration for such number of Scheme Shares,

as agreed with Bidder (in its absolute discretion) in writing.

Custom Consideration Election Option means an election by a Target Shareholder (other than an Excluded Shareholder) to receive the Custom Consideration for the Scheme Shares held by that Target Shareholder.

Deed Poll means a deed poll to be entered into by Bidder and HoldCo substantially in the form of Attachment 3 to the Implementation Deed under which Bidder and HoldCo covenant in favour of the Scheme Shareholders to perform their obligations under this Scheme.

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

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

Election means:

- (a) a Mixed Election Option 1;
- (b) a Mixed Election Option 2;
- (c) a Mixed Election Option 3;
- (d) an All Scrip Election Option; or

(e) a Custom Consideration Election Option.

Election Date means 7.00pm on the date which is at least 5 Business Days prior to the date of the Scheme Meeting, or such other date as agreed in writing between Bidder and Target.

Election Form means the form of election under which a Target Shareholder (other than an Excluded Shareholder) is offered the opportunity to make an Election.

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 31 December 2023 or such other date as agreed in writing by Target and Bidder.

Excluded Shareholder means any Target Shareholder who is a Bidder Group Member or any Target Shareholder who holds any Target Shares on behalf of, or for the benefit of, any Bidder Group Member and does not hold Target Shares on behalf of, or for the benefit of, any other person.

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

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian. It also includes any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions (including ASIC, ASX, the Australian Competition and Consumer Commission, the Foreign Investment Review Board, the Australian Takeovers Panel and equivalent bodies outside Australia).

HoldCo means Eternal Aus HoldCo Ltd (ACN 669 042 782).

HoldCo Constitution means the constitution of HoldCo.

HoldCo Register means the register of members of HoldCo maintained in accordance with the Corporations Act.

HoldCo Share means a fully paid Class B Share to be provided to Scheme Shareholders under this Scheme.

HoldCo SHD means the shareholders' deed in respect of the affairs of HoldCo to be entered into by the shareholders of HoldCo, amongst others, on substantially the terms set out in the term sheet in Attachment 4 to the Implementation Deed or such other form as agreed between Target and Bidder.

Implementation Date means the fifth Business Day after the Scheme Record Date, or such other date after the Scheme Record Date as the parties agree in writing.

Implementation Deed means the scheme implementation deed between Target and Bidder dated 9 August 2023.

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

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

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

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

Listing Rules means the official listing rules of the ASX.

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

Maximum Cash Consideration means a cash amount equal to the value of the Cash Consideration multiplied by the total number of Scheme Shares.

Maximum Scrip Threshold means 20% of the total issued capital of HoldCo as at the Implementation Date.

Minimum Scrip Threshold means 5%, or such lesser percentage as notified by Bidder to Target in writing at least 3 Business Days prior to the date of the Scheme Meeting, of the total issued capital of HoldCo as at the Implementation Date.

Mixed Consideration Option 1 means:

- (a) the Cash Consideration for each Scheme Share, in respect of 75% of the Scheme Shares; plus
- (b) the Scrip Consideration for each Scheme Share, in respect of the other 25% of the Scheme Shares,

held by a Scheme Shareholder who has made a Mixed Election Option 1.

Mixed Consideration Option 2 means:

- (a) the Cash Consideration for each Scheme Share, in respect of 50% of the Scheme Shares; plus
- (b) the Scrip Consideration for each Scheme Share, in respect of the other 50% of the Scheme Shares,

held by a Scheme Shareholder who has made a Mixed Election Option 2.

Mixed Consideration Option 3 means:

- (a) the Cash Consideration for each Scheme Share, in respect of 25% of the Scheme Shares; plus
- (b) the Scrip Consideration for each Scheme Share, in respect of the other 75% of the Scheme Shares,

held by a Scheme Shareholder who has made a Mixed Election Option 3.

Mixed Election Option 1 means an election by a Target Shareholder (other than an Excluded Shareholder) to receive the Mixed Consideration Option 1 for the Scheme Shares held by that Target Shareholder.

Mixed Election Option 2 means an election by a Target Shareholder (other than an Excluded Shareholder) to receive the Mixed Consideration Option 2 for the Scheme Shares held by that Target Shareholder.

Mixed Election Option 3 means an election by a Target Shareholder (other than an Excluded Shareholder) to receive the Mixed Consideration Option 3 for the Scheme Shares held by that Target Shareholder.

Options means the options to acquire Target Shares issued under Target's long term incentives plans as listed in Schedule 3 to the Implementation Deed.

Performance Rights means the performance rights awarded or granted under Target's long-term incentive schemes and employee share schemes as listed in Schedule 3 to the Implementation Deed.

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

Related Bodies Corporate has the meaning set out in section 50 of the Corporations Act.

Restricted Shares means the restricted Target Shares issued under Target's exempt employee share scheme as listed in Schedule 3 to the Implementation Deed.

Scaleback Mechanism means the scaleback mechanism set out in clause 5.9.

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

Scheme Booklet means the scheme booklet to be prepared by Target in respect of the Scheme pursuant to section 412 of the Corporations Act to be dispatched to the Target Shareholders and which must include or be accompanied by:

- (a) a copy of this Scheme;
- (b) an explanatory statement complying with the requirements of the Corporations Act, the *Corporations Regulations 2001* (Cth) and ASIC Regulatory Guide 60;
- (c) the Independent Expert's Report;
- (d) a copy or summary of the Implementation Deed;
- (e) a copy of the executed Deed Poll;
- (f) a notice of meeting;
- (g) a proxy form(s); and
- (h) an Election Form.

Scheme Consideration means in respect of a Scheme Shareholder (depending on the Elections made by the Election Date and subject to the Scaleback Mechanism and the terms of this Scheme):

- (a) All Cash Consideration;
- (b) Mixed Consideration Option 1;

- (c) Mixed Consideration Option 2;
- (d) Mixed Consideration Option 3,
- (e) All Scrip Consideration; or
- (f) Custom Consideration.

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

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

Scheme Shareholder means a Target Shareholder as at the Scheme Record Date, other than any Excluded Shareholder.

Scheme Shares means all Target Shares held by the Scheme Shareholders as at the Scheme Record Date, and, for the avoidance of doubt, does not include any Target Share held by an Excluded Shareholder as at the Scheme Record Date.

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

Scrip Consideration means such number of HoldCo Shares for each Scheme Share as determined by Bidder at least 5 Business Days prior to the First Court Date, as adjusted in accordance with clause 5.9(b) of the Implementation Deed (if applicable).

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

Security Interest means any mortgage, charge, pledge, lien, assignment or other security interest or any other arrangement (including a right of set off or combination) entered into for the purpose of conferring a priority, including any security interest as defined in section 51A of the Corporations Act or in the *Personal Property Securities Act 2009* (Cth).

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

Share Rights means the rights to Target Shares issued under Target's employee share schemes as listed in Schedule 3 to the Implementation Deed.

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

Target Equity Incentive means the Options, Share Rights, Performance Rights and Restricted Shares as listed in Schedule 3 to the Implementation Deed.

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

Target Registry means Link Market Service Limited of Level 12, 680 George Street Sydney, NSW 2000.

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

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

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

Transaction means the acquisition of the Scheme Shares by Bidder through implementation of the Scheme in accordance with the terms of the Implementation Deed.

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

1.2 Business Day

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

1.3 Listing Rules are law

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

1.4 Interpretation

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

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a **party** includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this Scheme) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment, or annexure is a reference to a party, clause, schedule, exhibit, attachment, or annexure to or of this Scheme, and a reference to this Scheme includes all schedules, exhibits, attachments, and annexures to it;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;

- (l) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to \$ or dollar is to Australian currency;
- (k) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this Scheme;
- (l) a reference to a date or time is to that date or time in Sydney, Australia; and
- (m) this Scheme (including any term or condition of it) must not be construed adversely to a party solely on the basis that the party prepared it or caused it to be prepared.

2. Preliminary matters

2.1 Target

- (a) Target is a public company limited by shares, incorporated in Australia and registered in the State of New South Wales, Australia.
- (b) Target is admitted to the official list of ASX and Target Shares are officially quoted on the ASX.
- (c) As at the date of the Implementation Deed:
 - (i) 144,060,733 Target Shares were on issue and officially quoted on ASX; and
 - (ii) the following Target Equity Incentives were on issue:
 - A. 479,572 Options;
 - B. 17,665 Share Rights;
 - C. 1,209,842 Performance Rights; and
 - D. 42,891 Restricted Shares.

2.2 Bidder

Bidder is a proprietary company limited by shares, incorporated and registered in the State of New South Wales, Australia.

2.3 HoldCo

HoldCo is an unlisted public company limited by shares, incorporated and registered in the State of New South Wales, Australia.

2.4 Implementation Deed

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

2.5 Deed Poll

The Bidder and HoldCo have agreed, by executing the Deed Poll, to perform their respective obligations under this Scheme, including the obligation to provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with the terms of this Scheme.

3. Conditions precedent

3.1 Conditions

This Scheme is conditional on and will have no force or effect (and will not become Effective) unless and until each of the following conditions precedent is satisfied:

- (a) all of the Conditions in clause 3.1 of the Implementation Deed (other than the Condition in clause 3.1(f) of the Implementation Deed relating to Court approval of this Scheme) are satisfied or waived in accordance with the terms of the Implementation Deed by 8.00am on the Second Court Date;
- (b) neither the Implementation Deed nor the Deed Poll is terminated in accordance with their terms before 8.00am on the Second Court Date;
- (c) this Scheme is approved by the Court under paragraph 411(4)(b) of the Corporations Act, including with such alterations or other conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to by Target and Bidder in writing (each acting reasonably);
- (d) such other conditions made or required by the Court under subsection 411(6) of the Corporations Act in relation to this Scheme and agreed to by Target and Bidder in writing (each acting reasonably) are satisfied or waived; and
- (e) the orders of the Court made under paragraph 411(4)(b) of the Corporations Act (and if applicable, subsection 411(6) of the Corporations Act) approving this Scheme coming into effect pursuant to subsection 411(10) of the Corporations Act on or before the End Date (or any later date Target and Bidder agree in writing).

3.2 Certificate

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

3.3 End Date

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

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

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

4. Implementation of this Scheme

4.1 Lodgement of Court orders with ASIC

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

4.2 Consequences of this Scheme becoming Effective

If this Scheme becomes Effective:

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

4.3 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to Bidder providing or procuring the provision of the Scheme Consideration in the manner contemplated by this Scheme, all of the Scheme Shares, together with all rights and entitlements attaching to them at the Implementation Date, must be transferred to Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by Target or its officers as agent and attorney of the Scheme Shareholders under clause 9.5) by:
 - (i) Target delivering to Bidder a duly completed and executed Scheme Transfer to transfer all of the Scheme Shares to Bidder, executed on behalf of the Scheme Shareholders by Target as their agent and attorney; and
 - (ii) Bidder duly executing such Scheme Transfer and delivering the executed and, if necessary, stamped, Scheme Transfer to Target for registration; and
- (b) as soon as reasonably practicable following receipt of the Scheme Transfer in accordance with clause 4.3(a)(ii), but subject to stamping of the Scheme Transfer (if necessary), Target must enter or procure the entry of, the name of Bidder in the Target Share Register in respect of all the Scheme Shares transferred to Bidder in accordance with this Scheme.

5. Scheme Consideration

5.1 Scheme Consideration

- (a) The Scheme Consideration in respect of each Scheme Share is either:

- (i) the All Cash Consideration;
 - (ii) the Mixed Consideration Option 1;
 - (iii) the Mixed Consideration Option 2;
 - (iv) the Mixed Consideration Option 3,
 - (v) the All Scrip Consideration; or
 - (vi) the Custom Consideration.
- (b) Each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder, subject to the terms of this Scheme.

5.2 Bidder undertakings in relation to Scheme Consideration

Subject to the terms of this Scheme, Bidder undertakes and warrants to Target (in Target's own right and separately as trustee for each of the Scheme Shareholders) that, in consideration of the transfer to Bidder of each Target Share held by a Scheme Shareholder under the terms of this Scheme, on the Implementation Date, Bidder will:

- (a) accept that transfer;
- (b) provide, or procure the provision to, each Scheme Shareholder the Scheme Consideration for each Scheme Share in accordance with:
 - (i) subject to clause 5.3 and any application of the Scaleback Mechanism, any Election made by that Scheme Shareholder as contemplated by clause 5.4;
 - (ii) clauses 5.5 and 5.6; and
 - (iii) the terms of this Scheme; and
- (c) on the Implementation Date:
 - (i) pay, or procure the payment of, to the Trust Account, an amount in cleared funds equal to the Aggregate Cash Consideration; and
 - (ii) subject to clause 5.3, procure the allotment of the Aggregate Scrip Consideration to applicable Scheme Shareholders (either directly or indirectly through the Custodian to be held as bare trustee for those Scheme Shareholders, at the absolute discretion of Bidder), subject to any applicable scaleback in accordance with the Scaleback Mechanism,

in each case in accordance with the terms of this Scheme and the Deed Poll.

5.3 Minimum Scrip Threshold not reached

If the Aggregate Scrip Consideration is less than the Minimum Scrip Threshold:

- (a) Bidder will not:
 - (i) comply with any Elections made on or before the Election Date; or
 - (ii) procure that HoldCo issue any Scrip Consideration to any Scheme Shareholders;

- (b) each Scheme Shareholder who gives an Election on or before the Election Date will be entitled to receive the All Cash Consideration for the Scheme Shares they hold; and
- (c) Bidder must, instead of complying with clauses 5.2(b), and 5.2(c)(ii), by no later than 12pm on the Implementation Date, pay or procure the payment of, to a trust account operated by or on behalf of Target, to be held on trust for Scheme Shareholders, an amount in cleared funds equal to the Maximum Cash Consideration and will, by doing so, satisfy its obligations under clauses 5.2(b) and 5.2(c)(ii).

5.4 Election mechanism

- (a) Each Target Shareholder (other than Excluded Shareholders and Ineligible Foreign Shareholders) will be entitled to make an Election. All Elections take effect in accordance with this Scheme to the extent any Target Shareholder (other than Excluded Shareholders and Ineligible Foreign Shareholders) who makes an Election qualifies as a Scheme Shareholder.
- (b) Target must ensure that the Scheme Booklet is accompanied by an Election Form.
- (c) The Election Form must state to the effect that:
 - (i) subject to clause 5.4(c)(iv), an Election must be made in accordance with the terms and conditions stated on the Election Form for it to be valid and must be completed and returned in writing to the address specified on the Election Form on or before the Election Date (provided that Bidder may, with the agreement of Target in writing, settle as it thinks fit any difficulty, matter of interpretation or dispute which may arise in connection with determining the validity of any Election, and any such decision will be conclusive and binding on Bidder, Target and the relevant Target Shareholder, with Bidder having no obligation to communicate with any Target Shareholder prior to making this determination);
 - (ii) an Election will apply to all of the Target Shares of the Target Shareholder (other than an Excluded Shareholder) as at the Election Date;
 - (iii) once made, an Election may be varied, waived or revoked before the Election Date by notice in writing to Target; and
 - (iv) in the manner considered appropriate by Bidder and Target (acting reasonably), a Target Shareholder (other than an Excluded Shareholder) who holds one or more parcels of Target Shares as trustee or nominee for, or otherwise on account of, another person, may make separate Elections in relation to each of those parcels of Target Shares (subject to providing to Bidder and the Target any substantiating information they reasonably require). If a Target Shareholder (other than an Excluded Shareholder) does so, it will be treated as a separate Target Shareholder for each such parcel in respect of which a separate Election is made (and for any balance of its holding), provided that if, at the Election Date, it holds fewer Target Shares than it held at the time it made the Election, then, unless it has at the time of any sale of Target Shares notified the Target whether the Target Shares sold relate to, any such separate Election (and if so, which separate Election the Target Shares sold relate to), it will be treated as not having made a valid Election in respect of any of its Target Shares or otherwise be treated in any other manner that Bidder and Target agree is fair and appropriate.

- (d) Target must ensure that, to the extent reasonably practicable, persons who acquire Target Shares after the date of the dispatch of the Scheme Booklet and up until the Election Date are sent Election Forms upon those persons requesting one from the Target.
- (e) In order to facilitate the issue of the Scrip Consideration (if applicable), Target must provide, or procure the provision, to Bidder:
 - (i) reasonable written updates of the Elections that have been received from Target Shareholders up to the Election Date; and
 - (ii) written details of any final Elections made by a Target Shareholder, on the Business Day after the Election Date, including the name and address of each Target Shareholder (other than an Excluded Shareholder) who has made an Election on or before the Election Date and the number of HoldCo Shares that HoldCo must issue to that Target Shareholder to meet its obligations under the Scheme in accordance with that Target Shareholder's Election and subject to the Scaleback Mechanism.
- (b) The parties agree that the terms and conditions that will be stated on the Election Form will include the following:
 - (i) Ineligible Foreign Shareholders may not make an Election and that any purported Election by such persons will be of no effect. Clause 5.8 will apply to any Target Shareholder who makes an Election but who qualifies as an Ineligible Foreign Shareholder;
 - (ii) Excluded Shareholders may not make an Election and that any purported Election by such persons will be of no effect;
 - (iii) if a Target Shareholder does not make a valid Election on or before the Election Date, that Target Shareholder will receive All Cash Consideration in respect of the Scheme Shares held by that Target Shareholder;
 - (iv) Target Shareholders (other than Excluded Shareholders) who make a valid Election on or before the Election Date agree to become members of HoldCo from the Implementation Date and become bound by the HoldCo Constitution and HoldCo SHD from the Implementation Date, pursuant to this Scheme;
 - (v) Target Shareholders (other than Excluded Shareholders) who make an Election on or before the Election Date agree that their Scrip Consideration will be issued to that Scheme Shareholder (either directly or indirectly through the Custodian to be held as bare trustee for those Scheme Shareholders, at the absolute discretion of Bidder), pursuant to and in accordance with the terms of the HoldCo SHD;
 - (vi) Target Shareholders (other than Excluded Shareholders) who make a valid Election on or before the Election Date must provide, before the Election Date, the information and documents described in the Election Form as being required by Bidder or Target; and
 - (i) if the Aggregate Scrip Consideration is less than the Minimum Scrip Threshold, Target Shareholders (other than Excluded Shareholders) who make valid Elections on or before the Election Date will receive the All Cash Consideration in respect of the Scheme Shares held by that Target Shareholder (other than an Excluded Shareholder),

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

5.5 All Cash Consideration

- (a) If a Target Shareholder:
 - (i) is an Ineligible Foreign Shareholder; or
 - (ii) does not make a valid Election on or before the Election Date,that Target Shareholder (other than an Excluded Shareholder) will receive the All Cash Consideration for the Scheme Shares held by them.
- (b) All Target Shareholders (other than Excluded Shareholders) will receive the All Cash Consideration for the Scheme Shares held by them if the provisions of clause 5.3 apply.
- (c) If a calculation of Scheme Consideration would result in a Scheme Shareholder becoming entitled to a fraction of a cent:
 - (i) where the entitlement is to half a cent or more, the fractional entitlement will be rounded up to the nearest whole cent; and
 - (ii) where the entitlement is to less than half a cent, the fractional entitlement will be rounded down to the nearest whole cent.

5.6 Scrip Consideration

If a Target Shareholder (other than an Excluded Shareholder) makes a valid Election on or before the Election Date and clause 5.3 does not apply:

- (a) the Target Shareholder (other than an Excluded Shareholder) will be entitled to receive the Scheme Consideration relevant to their Election (subject to the Scaleback Mechanism and the terms of this Scheme);
- (b) if the number of HoldCo Shares to which that Target Shareholder (other than an Excluded Shareholder) is entitled is not a whole number:
 - (i) where the entitlement is to half a HoldCo Share or more, the number of HoldCo Shares will be rounded up to the nearest whole number; and
 - (ii) where the entitlement is to less than half a HoldCo Share, the number of HoldCo Shares will be rounded down to the nearest whole number; and
- (c) the Scrip Consideration in respect of which the Target Shareholder (other than an Excluded Shareholder) is entitled to will be issued directly to that Scheme Shareholder (such that the Scheme Shareholder will be the legal holder of the relevant Scrip Consideration) or the Custodian to be held as bare trustee for that Scheme Shareholder (at the absolute discretion of Bidder) (such that the Scheme Shareholder will be the beneficial holder but not the legal holder of the relevant Scrip Consideration), pursuant to and in accordance with the terms of the HoldCo SHD.

5.7 Share splitting

If Bidder and Target are of the opinion that a number of Scheme Shareholders and/or other persons (who, to avoid doubt, may include other Scheme Shareholders) have, on or before the Election Date, been party to a shareholding splitting or division or an acquisition of Scheme Shares in an attempt to obtain, or which provides, an advantage by reference to

the rounding as contemplated by clause 5.6(b)(i), Bidder may give notice to those Scheme Shareholders prior to the Implementation Date:

- (a) setting out the names and Registered Address of all of those Scheme Shareholders;
- (b) stating that opinion; and
- (c) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after the notice has been so given, the Scheme Shareholder specifically identified in the notice will, for the purposes of this Scheme, be taken to hold all those Scheme Shares and each of the other Scheme Shareholders whose names are set out in the notice will, for the purposes of this Scheme, be taken to hold no Scheme Shares.

5.8 Ineligible Foreign Shareholders

Bidder has no obligation to provide, and will not provide, under the Scheme any Scrip Consideration to Ineligible Foreign Shareholders, regardless of any Election made by those persons, but must pay the All Cash Consideration to each Ineligible Foreign Shareholder for the Scheme Shares they hold in accordance with the Scheme.

5.9 Scaleback Mechanism

If:

- (a) the:
 - (i) Scheme Shareholder is not an Ineligible Foreign Shareholder and has made a valid Election on or before the Election Date; and
 - (ii) Aggregate Scrip Consideration exceeds the Maximum Scrip Threshold,

then:

- (b) that Scheme Shareholder is entitled to receive:
 - (i) Scrip Consideration as calculated in accordance with the following formula:

$$A = (B \times \text{Scrip Consideration}) \times \left(\frac{C}{D} \right)$$

where:

A = the number of HoldCo Shares to be received by the Scheme Shareholder pursuant to this Scheme;

B = if the Scheme Shareholder:

(i) has made a Mixed Election Option 1, a number equal to 25% of the Scheme Shares held by the Scheme Shareholder;

(ii) has made a Mixed Election Option 2, a number equal to 50% of the Scheme Shares held by the Scheme Shareholder;

(iii) has made a Mixed Election Option 3, a number equal to 75% of the Scheme Shares held by the Scheme Shareholder;

(iv) has made an All Scrip Election Option, a number equal to 100% of the Scheme Shares held by the Scheme Shareholder; or

(v) has made a Custom Consideration Election Option, a number equal to the percentage of that Scheme Shareholder's Scheme Shares in respect of which that Scheme Shareholder will receive Scrip Consideration;

C = the number of HoldCo Shares equal to the Maximum Scrip Threshold; and

D = the Aggregate Scrip Consideration,

plus:

(ii) the All Cash Consideration for:

A. each Scheme Share they hold; less

B. the number of Scheme Shares held by the Scheme Shareholder in respect of which the Scheme Shareholder will receive Scrip Consideration as calculated in accordance with clause 5.9(b)(i).

6. Provision of Scheme Consideration

6.1 Provision of Aggregate Cash Consideration

- (a) The obligation of Bidder to provide, or procure the provision of, the Aggregate Cash Consideration to Scheme Shareholders in accordance with this Scheme and the Deed Poll will be satisfied by Bidder by:
- (i) depositing, or procuring the deposit, into the Trust Account, of an amount in cleared funds equal to the Aggregate Cash Consideration by no later than 12pm on the Implementation Date to be held by or on behalf of Target on trust for the Scheme Shareholders (provided that any interest on the amount so deposited, less bank fees and other charges, will accrue for the benefit of Bidder); and
 - (ii) providing Target with written confirmation that payment has been made in accordance with clause 6.1(a)(i) above.
- (b) Subject to Bidder complying with its obligations under clause 6.1(a), Target must on the Implementation Date pay, or procure the payment, from the Trust Account to each Scheme Shareholder an amount equal to the Cash 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.
- (c) Target's obligations under clause 6.1(b) will be satisfied by Target (in its absolute discretion, and despite any election referred to in clause 6.1(c)(i) or authority referred to in 6.1(c)(ii) made or given by the Scheme Shareholder):
- (i) where a Scheme Shareholder has, before the Scheme Record Date, made an election in accordance with the requirements of the Target Registry to receive dividend payments from Target by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount to that Scheme Shareholder in Australian currency by electronic means in accordance with that election;

- (ii) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Shareholder by an appropriate authority from the Scheme Shareholder to Target; or
- (iii) dispatching, or procuring the dispatch of, a cheque in Australian currency for the relevant amount to that Scheme Shareholder by prepaid post to the Registered Address of that Scheme Shareholder (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with clause 6.3).

6.2 Provision of Aggregate Scrip Consideration

- (a) Subject to clauses 5.3, 5.4, 5.7, 5.8 and 6.2(b) and the Scaleback Mechanism, before 12pm (or such other time as Bidder and Target agree in writing) on the Implementation Date, HoldCo must:
 - (i) issue the Scrip Consideration to each Scheme Shareholder who has made a valid Election, or is otherwise deemed to have validly elected, to receive Scrip Consideration in accordance with the Scheme in respect of that Scheme Shareholder's Scheme Shares; and
 - (ii) procure that the name and address of each such Scheme Shareholder is entered into the HoldCo Register in respect of the Scrip Consideration to which it is entitled under the Scheme (either directly or indirectly through the Custodian to hold as bare trustee for the relevant Scheme Shareholders pursuant to and in accordance with the terms of this Scheme and the HoldCo SHD).
- (b) Notwithstanding any other provision of this Scheme, the Scrip Consideration in respect of which a Scheme Shareholder is entitled under clause 5.6(a) may, in Bidder's absolute discretion, be issued to:
 - (i) that Scheme Shareholder directly (such that the Scheme Shareholder will be the legal holder of the relevant Scrip Consideration); or
 - (ii) indirectly through the Custodian to hold as bare trustee for that Scheme Shareholder (such that the Scheme Shareholder will be the beneficial holder but not the legal holder of the relevant Scrip Consideration), pursuant to and in accordance with the terms of the HoldCo SHD.
- (c) Within 5 Business Days after the Implementation Date, HoldCo must send, or procure the sending of, a certificate or other holding statement to each Scheme Shareholder and/or the Custodian (if applicable) who received Scrip Consideration under this Scheme, reflecting the issue of such Scrip Consideration, to their Registered Address or as otherwise validly directed by the relevant Scheme Shareholder or the Custodian (as applicable).

6.3 Joint holders

In the case of Scheme Shares held in joint names:

- (a) subject to clause 6.3(c), any Scheme Consideration payable in cash in respect of those Scheme Shares is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of Target, the holder whose name appears first in the Target Share Register as at the Scheme Record Date or to the joint holders (unless the joint holders have nominated a bank account under clause 6.1(c)(ii), in which case

the amount must be deposited directly to the nominated bank account of the joint holders);

- (b) any Scrip Consideration to be issued under this Scheme must be issued to and registered in the names of the joint holders or, if Scrip Consideration is issued to the Custodian to hold as bare trustee for the joint holders (as contemplated by clause 6.2(b)), the joint holders will have joint beneficial ownership of that Scrip Consideration; and
- (c) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of Target (or, in the case of clause 6.2(c), Bidder), the holder whose name appears first in the Target Share Register as at the Scheme Record Date or to the joint holders.

6.4 Unclaimed monies

- (a) Target may cancel a cheque issued under clause 6.1(c)(iii) if the cheque:
 - (i) is returned to Target; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Target (or the Target Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), a cheque that was previously cancelled under clause 6.4(a) must be reissued.
- (c) The *Unclaimed Money Act 1995 (NSW)* will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of *Unclaimed Money Act 1995 (NSW)*).

6.5 Treatment of surplus amounts

To the extent that there is a surplus in the amount held by Target as the trustee for the Scheme Shareholders in the Trust Account, that surplus may, at the election of Bidder, either remain with Target or be paid by Target as trustee for the Scheme Shareholders to Bidder following the satisfaction of Target's obligation as the trustee for the Scheme Shareholders under this clause 6.

6.6 Amounts to be withheld or retained

- (a) If written notice is given to Target (or the Target Registry) or Bidder of an order or direction made by a court of competent jurisdiction or another Government Agency that:
 - (i) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which amount would otherwise be payable to that Scheme Shareholder by Target in accordance with this clause 6, then Target will be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
 - (ii) prevents Target from providing consideration to any particular Scheme Shareholder in accordance with clause 6, or the payment or issuance of such consideration is otherwise prohibited by applicable law, Target will be entitled to (as applicable) retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme

Shareholder multiplied by the Cash Consideration until such time as provision of the Scheme Consideration in accordance with this clause 6 is permitted by that (or another) order or direction or otherwise by law.

- (b) To the extent that amounts are so deducted or withheld in accordance with clause 6.6(a), such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the person in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted as required.

7. Dealings in Target Shares

7.1 Determination of Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in Target Shares or other alterations to the Target Share Register will only be recognised if:

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

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

7.2 Target Share Register

- (a) For the purposes of determining entitlements to the Scheme Consideration, Target must maintain the Target Share Register in accordance with the provisions of this clause 7.2 until the Scheme Consideration has been provided to the Scheme Shareholders. The Target Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (b) Target must register, or cause to be registered, valid registrable transmission applications or transfers of the Scheme Shares that are received in accordance with clause 7.1(b) by no later than the Scheme Record Date (provided that for the avoidance of doubt nothing in this clause 7.2(b) requires Target to register a transfer that would result in a Target Shareholder holding a parcel of Target Shares that is less than a Marketable Parcel).
- (c) Target will not accept for registration or recognise for any purpose any transmission application or transfer in respect of Target Shares received after the Scheme Record Date, other than to Bidder in accordance with this Scheme.
- (d) If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that holder) must not dispose of or otherwise deal with, or purport or agree to dispose of or otherwise deal with, any Scheme Shares or any interest in them on or after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and Target shall be entitled to disregard any such disposal, purported disposal, agreement or other dealing.

7.3 Information made available to Bidder

As soon as practicable after the Scheme Record Date and in any event at least 3 Business Days before the Implementation Date, Target will ensure that details of the names, Registered Addresses and holdings of Target Shares for each Scheme Shareholder as shown in the Target Share Register as at the Scheme Record Date are available to Bidder in the form Bidder reasonably requires.

7.4 Effect of share certificates and holding statements

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

8. Quotation of Target Shares

8.1 Suspension of trading

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

8.2 Removal of Target from official list of ASX

On the Business Day immediately following the Implementation Date, Target will apply:

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

9. General Scheme provisions

9.1 Consent to amendments to this Scheme

If the Court proposes to approve this Scheme subject to any alterations or conditions:

- (a) Target may, by its counsel or solicitors, consent on behalf of all persons concerned to those alterations or conditions to which Bidder has consented in writing; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which Target, by its counsel or solicitors, has consented to in accordance with clause 9.1(a).

9.2 Binding effect of this Scheme

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

9.3 Agreement of Scheme Shareholders

Each Scheme Shareholder:

- (a) irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares, in accordance with terms of this Scheme;
- (b) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (c) agrees to, on the direction of Bidder, destroy any share certificates or holding statements relating to their Scheme Shares;
- (d) to the extent they are to receive Scrip Consideration, agrees to become a member of HoldCo and to be bound by the terms of the HoldCo Constitution and HoldCo SHD as a 'Rollover Shareholder';
- (e) to the extent they are to receive Scrip Consideration and that Scrip Consideration is issued to the Custodian to hold as bare trustee for that Scheme Shareholder, agrees to be bound by the Custodian Deed (as defined in the HoldCo SHD);
- (f) who holds their Target Shares in a CHESS Holding agrees to the conversion of those Scheme Shares to an Issuer Sponsored Holding and irrevocably authorises Target to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion;
- (g) acknowledges and agrees that this Scheme binds Target and all Scheme Shareholders (including those who did not attend the Scheme Meeting, those who did not vote at that Scheme Meeting, or voted against this Scheme at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Target to the extent of any inconsistency;
- (h) irrevocably consents to Bidder and Target doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of this Scheme; and
- (i) who is an Ineligible Foreign Shareholder agrees and acknowledges that the payment to it of an amount in accordance with clause 5.8 constitutes the satisfaction in full of its entitlement to the Scheme Consideration,

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

9.4 Warranties by Scheme Shareholders

- (a) Each Scheme Shareholder is deemed to have warranted to Target and Bidder on the Implementation Date, and appointed and authorised Target as its attorney and agent to warrant to Bidder on the Implementation Date that:
 - (i) all Scheme Shares held by that Scheme Shareholder, together all rights and entitlements attaching to those Scheme Shares, which are transferred to Bidder under this Scheme will, at the time of transfer to Bidder, be:
 - A. fully paid;
 - B. free from all Encumbrances and third party rights or interests of any kind; and
 - C. free from all restrictions on transfer of any kind;

- (ii) it has full power and capacity to sell and to transfer their Scheme Shares, together with all rights and entitlements attaching to their Scheme Shares, to Bidder; and
 - (iii) it has no existing right to be issued any Target Shares, Target Equity Incentive, or any other Target equity securities.
- (b) Target undertakes that it will provide the warranty in clause 9.4(a) to Bidder as agent and attorney for each Scheme Shareholder.

9.5 Authority given to Target

- (a) Upon this Scheme becoming Effective, each Scheme Shareholder without the need for any further act:
- (i) irrevocably appoints Target and each of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purpose of:
 - A. enforcing the Deed Poll against Bidder and HoldCo;
 - B. doing and/or executing all acts, matters, things and documents necessary, desirable, incidental or expedient to give full effect to this Scheme and the transactions contemplated by it, including executing and delivering the Scheme Transfer,

and Target accepts such appointment; and
 - (ii) will be deemed to have authorised Target to do and execute all acts, matters, things and documents on the part of each Scheme Shareholder necessary, desirable, incidental or expedient to give full effect to this Scheme and the transactions contemplated by it, including executing and delivering the Scheme Transfer as agent and attorney of each Scheme Shareholder.
- (b) Target as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 9.5 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

9.6 Appointment of sole proxy

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

- (a) is deemed to have irrevocably appointed Bidder as its attorney and agent (and directed Bidder in such capacity) to appoint any director, officer, secretary or agent nominated by Bidder as its sole proxy and, where applicable, corporate representative to attend shareholders' meetings of Target, exercise the votes attaching to the Scheme Shares registered in their name and sign any Target shareholders' resolution or document;
- (b) must not attend or vote at any of those meetings or sign or vote on any resolutions, whether in person, by proxy or by corporate representative, other than as pursuant to clause 9.4(a);
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and

- (d) acknowledges and agrees that in exercising the powers referred to in clause 9.4(a), Bidder and any director, officer, secretary or agent nominated by Bidder under clause 9.4(a) may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

9.7 Title to Target Shares

Upon the Scheme Consideration being provided to the Scheme Shareholders and until Target registers Bidder as the holder of all Scheme Shares in the Target Share Register, Bidder will be beneficially entitled to all of the Scheme Shares.

10. General

10.1 Stamp duties

Bidder:

- (a) must pay all stamp duties and any related fines and penalties in respect of the transfer of the Scheme Shares to Bidder pursuant to this Scheme or the Deed Poll and is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause; and
- (b) indemnifies each Scheme Shareholder against any liability from a failure to comply with clause 10.1(a).

10.2 Consent

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

10.3 Notices

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

10.4 Further acts and documents

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

10.5 No liability when acting in good faith

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

11. Governing law and jurisdiction

11.1 Governing law

This Scheme is governed by the law applying in New South Wales, Australia.

11.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non exclusive jurisdiction of the courts of New South Wales, Australia the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 11.2(a).