



ASX RELEASE – ASX:RFL

Rubik announces acquisition proposal from global software leader Temenos

- Temenos Group AG (“Temenos”) and Rubik Financial Limited (“Rubik”) have entered into a binding scheme implementation deed
- Rubik Shareholders to receive \$0.1667 cash per share if the Scheme becomes effective
- Scheme Consideration represents a significant premium to pre-announcement share price
- Rubik Directors unanimously recommend Rubik shareholders vote in favour of the Scheme in the absence of a superior proposal, and subject to the Independent expert concluding that the Scheme is in the best interests of Rubik shareholders

Sydney, Australia, 15 February 2017: Rubik Financial Limited (ASX: RFL), a leading fintech company delivering innovative banking, wealth and lending solutions to the financial services industry, today announced that it has entered into a binding Scheme Implementation Deed (“SID”) under which it is proposed global banking and finance software specialist, Temenos (SIX: TEMN) will acquire 100% of Rubik shares via a Scheme of Arrangement (“Scheme”).

If the Scheme is implemented, Temenos will acquire 100% of the issued capital of Rubik for a cash consideration of AUD\$0.1667 per share, valuing Rubik’s equity at approximately AUD\$68 million (US\$50 million) on a fully diluted basis. This represents a 52% premium to Rubik’s closing price of \$0.11 on Tuesday, 14 February, 2017. The consideration also represents a:

- 65% premium over the 90 day Volume Weighted Average Price (“VWAP”) for Rubik’s shares;
- 73% premium over the 30 day VWAP for Rubik’s shares; and
- 67% premium to Rubik’s May 2016 rights issue.

Rubik’s Board of Directors has unanimously recommended that its shareholders vote in favour of the Scheme, in the absence of a superior proposal, and subject to an independent expert concluding that the Scheme is in the best interests of Rubik shareholders. Subject to the same qualifications, each Director of Rubik intends to vote, or cause to be voted, all of the Rubik shares in which they have a relevant interest in favour of the Scheme at the scheme meeting.

Rubik’s three largest shareholders, Viburnum Funds Pty Ltd as manager of Viburnum Funds Pty Ltd ATF VF Strategic Equities Fund (“Viburnum”), LHC Capital Partners Pty Ltd, and Regal Funds Management Pty Ltd, who currently represent approximately 44% of the shares on issue of the company, have informed Rubik that they intend to vote the Rubik shares they hold at the time of the Scheme meeting in favour of the Scheme, in the absence of a superior proposal and subject to the Rubik directors maintaining their unanimous recommendation to shareholders to vote in favour of the Scheme¹.

None of Viburnum, LHC Capital nor Regal Funds have made any commitment to hold or not dispose of their current holdings in Rubik. Their voting power at the time of the Scheme may be more, or less, than their current holdings.



Rubik CEO, Iain Dunstan said, “Having enjoyed a strong partnership with Temenos for a number of years, today’s announcement represents a positive result for all Rubik stakeholders. It is compelling in that, if approved, the offer delivers a significant premium to Rubik’s recent share price and provides certainty of value for our shareholders. If implemented, we believe the Scheme will have a positive impact for both our existing clients and prospective clients by providing access to the significant resources of Temenos as a market leading wealth, banking and finance software specialist”.

Commenting on the acquisition, Temenos CEO David Arnott said, “We are delighted to announce the proposed acquisition of Rubik, which will create a leader in the fast growing Australian financial software market by combining Rubik’s local knowledge and product set with Temenos’ global expertise and world class solutions. In particular, Rubik’s expertise and offering in the wealth space are highly complementary to our existing products, and a key aspect of the acquisition for Temenos given the size of this opportunity in the domestic market.

We are increasingly seeing banks around the globe addressing the structural pressures they are facing through core renovation with digital at the heart of their strategy. By acquiring Rubik, we will be able to provide a complete vertically integrated solution for the Australian banking market, enabling our clients to realise their digital ambitions. The acquisition will bring us scale and allow us to accelerate our penetration and growth in the Australian market across wealth, core banking and fund administration.”

The SID contains terms which are common to a transaction of this nature, including customary exclusivity provisions including “no shop”, “no talk”, and “notification” obligations (of which the “no talk” and certain “notification” obligations are subject to the Rubik Directors’ fiduciary obligations) as well as “matching” rights. A break fee of \$700,000 (1% of the equity value) will be payable to Temenos by Rubik in certain circumstances.

The Scheme is subject to approval by Rubik shareholders and other customary conditions, including no “Material Adverse Change” and no “Prescribed Occurrence” occurring, and court approval.

Full details of all conditions precedent to the Scheme and other agreed terms are set out in the SID, a copy of which is attached to this announcement. The acquisition is expected to close by the end of May 2017.

Rubik has, with the approval of its independent directors, also entered into a \$5 million short-term bringing loan, on arms’ length terms, with Viburnum (“Loan”). The purpose of the Loan is to ensure the timely delivery of a number of recently signed customer contracts. The term of the Loan is from 14 February 2017 until the earlier of:

- 5 business days following the completion by Rubik of a capital raising transaction for at least \$5 million;
- 5 business days following the occurrence of a change of a control event (which includes a court-approved scheme of arrangement); and
- 31 March 2018.

Indicative timetable and next steps

Rubik has appointed Grant Thornton as the Independent Expert to prepare a report on whether the Scheme is in the best interests of Rubik shareholders. The Independent’s Expert Report will be included in the scheme booklet to be sent to shareholders (“Scheme Booklet”), along with information relating to the Scheme, the reasons for the Directors’ recommendation and details of the Scheme Meeting. The Scheme Booklet is expected to be sent to Rubik shareholders in late March 2017.



It is currently anticipated that Rubik shareholders will be given the opportunity to vote on the Scheme at a Scheme Meeting expected to be held in late April 2017.

An indicative timetable for the Scheme is set out below:

Event	Target
Scheme Booklet to be provided to ASIC	Tuesday, 7 March 2017
First Court Hearing	Thursday, 23 March 2017
Printing and despatch of Scheme Booklet	Friday, 24 March 2017
Scheme Meeting	Wednesday, 26 April 2017
Second Court Hearing	Tuesday, 2 May 2017
Effective Date	Wednesday, 3 May 2017
Record Date	Wednesday, 10 May 2017
Implementation Date	Thursday, 18 May 2017

- Ends -

For more information please contact:

Iain Dunstan
CEO
+61 2 9488 4067

iain.dunstan@rubik.com.au

Joanna McCarthy
Head of Marketing & Communications
+61 412 162 152

Joanna.McCarthy@rubik.com.au

About Rubik

Rubik Financial Limited (ASX:RFL) is a leading ASX listed fintech company that delivers innovative banking, financial services and collections software solutions both in Australia, and internationally across Asia and the Middle East. More than 150 employees service 930 direct clients and 23,000 end users in 12 countries. Headquartered in Sydney, Rubik's clients are Australia's leading Financial Institutions, including the 4 major banks and a growing list of international financial and telco institutions. Rubik is ISO9001 and ISO27001 certified.

For more information please visit www.rubik.com.au

About Temenos

Temenos Group AG (SIX: TEMN), headquartered in Geneva, is a market leading software provider, partnering with banks and other financial institutions to transform their businesses and stay ahead of a changing marketplace. Over 2,000 firms across the globe, including 38 of the top 50 banks, rely on Temenos to process the daily transactions of more than 500 million banking customers. Temenos customers are proven to be more profitable than their peers: over a seven year period, they enjoyed on average a 31% higher return on assets, a 36% higher return on equity and an 8.6 percentage point lower cost/income ratio than banks running legacy applications.

For more information please visit www.temenos.com



Scheme implementation deed

EXECUTION VERSION

Temenos Group AG

Rubik Financial Limited (ACN 071 707 232)

Contents

	Page	
1	Defined terms and interpretation	3
2	Agreement to proceed with Transaction	3
3	Conditions precedent	4
4	Scheme	8
5	Implementation	9
6	Public announcements	19
7	Board support of Transaction	19
8	Exclusivity	20
9	Target Break Fee	23
10	Representations and Warranties	25
11	Releases	30
12	Termination	32
13	Confidentiality	34
14	Duty, costs and expenses	34
15	GST	34
16	General	35
	Schedule 1 Dictionary	39
	Schedule 2 Target capital structure	50
	Execution page	51

Parties

- 1 **Temenos Group AG** of 2 rue de l'Ecole-de-Chimie, 1205 Geneva, Switzerland (**Bidder**)
 - 2 **Rubik Financial Limited** ACN 071 707 232 of Level 10, 85 Castlereagh Street, Sydney NSW 2000, Australia (**Target**)
-

Background

- A Target has agreed to propose a members' scheme of arrangement pursuant to which Bidder will acquire all the Scheme Shares, and the Target and the Bidder have agreed to implement the Scheme on the terms and conditions of this deed.
- B Bidder has agreed to assist Target in proposing the Scheme.

The parties agree

1 Defined terms and interpretation

1.1 Defined terms

A term or expression which is defined in the dictionary in Schedule 1 has the meaning given to it in the dictionary.

1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this deed.

2 Agreement to proceed with Transaction

- (a) Target agrees to propose the Scheme on and subject to the terms of this deed.
- (b) Bidder agrees to assist Target in proposing the Scheme on and subject to the terms of this deed.
- (c) Bidder may nominate any wholly-owned Subsidiary of Bidder or any entity that is under common control (**Bidder Nominee**) to acquire the Scheme Shares under the Scheme by giving written notice to Target on or before the date that is 5 Business Days before the First Court Date.
- (d) If Bidder nominates the Bidder Nominee to acquire the Scheme Shares under the Scheme, then:
 - (i) references in this deed to Bidder acquiring the Scheme Shares under the Scheme, or taking any other action under or in respect of the Scheme are to be read as references to the Bidder Nominee doing so;
 - (ii) the parties must procure that the Scheme Shares transferred under the Scheme are transferred to the Bidder Nominee, rather than the Bidder;
 - (iii) Bidder must procure that Bidder Nominee complies with the relevant obligations of Bidder under this deed and under the Scheme; and

- (iv) any such nomination will not relieve Bidder of its obligations under this deed, including the obligation to pay (or procure the payment by Bidder Nominee of) the Consideration in accordance with the terms of the Scheme provided that Bidder will not be in breach of this deed for failing to perform an obligation of Bidder if that obligation is fully discharged by Bidder Nominee.
-

3 Conditions precedent

3.1 Conditions precedent

Subject to this clause 3, the Scheme will not become Effective until and unless the following Conditions Precedent are satisfied or waived in accordance with clause 3.3.

- (a) **(Court approval)** The Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.
- (b) **(Target Shareholder approval)** Target Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities under section 411(4)(a) of the Corporations Act, except to the extent the Court orders otherwise under section 411(4)(a)(ii)(A) of the Corporations Act, as contemplated by clause 3.6.
- (c) **(Restraints)** Before and as at 8:00am on the Second Court Date:
 - (i) there is not in effect any temporary restraining order, preliminary or permanent injunction or other preliminary or final decision, order or decree issued by any court of competent jurisdiction or by any Government Agency, nor is there in effect any other legal restraint or prohibition; and
 - (ii) no action or investigation is announced or commenced by any Government Agency,which restrains, prohibits, impedes or otherwise impacts upon (or could reasonably be expected to restrain, prohibit or otherwise impact upon) the completion of the Transaction in a material adverse way.
- (d) **(Prescribed Occurrence)** No Prescribed Occurrence occurs between the date of this deed and 8:00am on the Second Court Date.
- (e) **(Material Adverse Change)** No Material Adverse Change occurs between the date of this deed and 8:00am on the Second Court Date.

3.2 Reasonable endeavours

- (a) Target must use its reasonable endeavours to procure that the Conditions Precedent in clauses 3.1(d) and 3.1(e) are satisfied.
- (b) The parties must each use reasonable endeavours to procure that:
 - (i) the Conditions Precedent in clauses 3.1(a), 3.1(b) and 3.1(c) are satisfied; and
 - (ii) there is no occurrence or non-occurrence within their control or the control of any of their related bodies corporate that prevents, or would be reasonably likely to prevent, the satisfaction of any Condition Precedent.
- (c) Without limiting clause 3.2(b) but subject to clause 3.2(d), each party must:

- (i) keep the other party informed of the progress towards satisfaction of the Conditions Precedent; and
- (ii) except to the extent prohibited by a Government Agency:
 - (A) promptly notify the other party of all material communications between it and a Government Agency in connection with any approval or consent required pursuant to a Condition Precedent in clause 3.1 or any action taken or proposed by, or any enquiries made by, a Government Agency in relation to the Transaction (**Regulatory Matter**);
 - (B) promptly provide the other party with copies of all communications referred to in clause 3.2(c)(ii)(A) (where written);
 - (C) before sending any submission or material correspondence to a Government Agency relating to any Regulatory Matter, consult with the other party in relation to, and provide the other party with a draft copy of, such submission or correspondence; and
 - (D) respond to reasonable requests for information that relate to any Regulatory Matter, whether made by the other party, a Government Agency or any other person, at the earliest practicable time.
- (d) Before providing any document or other information to the other party (in this clause 3.2(d), the **Recipient**) pursuant to clause 3.2(c), a party (in this clause 3.2(d), the **Discloser**) may redact any part of that document, or not disclose any part of that information, which contains or is confidential, non-public information (**Sensitive Confidential Information**) if the Discloser reasonably believes that:
 - (i) the Sensitive Confidential Information is of a commercially sensitive nature; or
 - (ii) the disclosure of the Sensitive Confidential Information to the Recipient would be damaging to the commercial or legal interests of the Discloser or any of its related bodies corporate,

and may provide the document or disclose the information to the Recipient with any Sensitive Confidential Information redacted or excluded, provided that, where Sensitive Confidential Information is so redacted or excluded, the Discloser must provide the Recipient with as much detail about the relevant communication, submission or correspondence (and any other relevant circumstances) as is reasonably possible without disclosing Sensitive Confidential Information.

3.3 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a) and 3.1(b) cannot be waived.
- (b) The Condition Precedent in clause 3.1(c) is for the benefit of Bidder and Target and any breach or non-fulfilment of that Condition Precedent may only be waived with the written consent of both Bidder and Target (in each party's absolute discretion).
- (c) The Conditions Precedent in clauses 3.1(d) and 3.1(e) are for the sole benefit of Bidder and any breach or non-fulfilment of those Conditions Precedent may only be waived with the written consent of Bidder.

- (d) If a party waives the breach or non-fulfilment of a Condition Precedent, such waiver will not prevent that party from suing the other party for any breach of this deed that resulted in the breach or non-fulfilment of the Condition Precedent.
- (e) Waiver of breach or non-fulfilment of a Condition Precedent does not constitute:
 - (i) a waiver of breach or non-fulfilment of any other Condition Precedent resulting from the same event; or
 - (ii) a waiver of breach or non-fulfilment of that Condition Precedent resulting from any other event.
- (f) A party entitled to waive a Condition Precedent under this clause may do so in its absolute discretion. Any waiver of a Condition Precedent by a party for whose benefit the Condition Precedent applies must take place on or prior to 8.00am on the Second Court Date.

3.4 Termination on failure of Condition Precedent

If:

- (a) there is a breach or non-fulfilment of a Condition Precedent before the End Date and:
 - (i) the breach or non-fulfilment is not waived in accordance with clause 3.3 or cannot be waived because of clause 3.3(a); or
 - (ii) each party having the benefit of that Condition Precedent confirms in writing to the other party that it will not waive the breach or non-fulfilment in accordance with clause 3.3; or
- (b) a Condition Precedent becomes incapable of satisfaction before the End Date and:
 - (i) the breach or non-fulfilment of that Condition Precedent that has occurred or would otherwise occur is not waived in accordance with clause 3.3; or
 - (ii) each party having the benefit of that Condition Precedent confirms in writing to the other party that it will not waive the breach or non-fulfilment of that Condition Precedent that has occurred or would otherwise occur in accordance with clause 3.3; or
- (c) the Scheme has not become Effective by the End Date,

then either party may give the other party written notice (**Consultation Notice**) within 10 Business Days after the relevant event (**Termination Event**). The parties must then consult in good faith with a view to determining whether they can reach agreement with respect to:

- (i) an extension of the time for satisfaction of the relevant Condition Precedent or an extension of the End Date (as the case may be); or
 - (ii) the Transaction proceeding by way of alternative means or methods.
- (d) If the parties are unable to reach such agreement within 10 Business Days after a Consultation Notice is given, or if a Consultation Notice is not given within 10 Business Days after a Termination Event, either party (in this clause 3.4, the

Terminating Party) may terminate this deed by giving written notice (**Termination Notice**) to the other party, provided that:

- (i) if the basis upon which the Terminating Party is seeking to terminate this deed is the occurrence of an event described in clause 3.4(a) or 3.4(b), the Terminating Party has the benefit of the relevant Condition Precedent or the Condition Precedent is one referred to in clause 3.3(a); and
 - (ii) there has been no failure by the Terminating Party to comply with its obligations under this deed, where that failure directly and materially contributed to the circumstances forming the basis upon which the Termination Notice was given.
- (e) Where a Termination Notice is validly given under this clause 3.4, this deed will terminate with immediate effect and clause 12.5 will apply.

3.5 Certain notices

Each party must promptly notify the other party in writing if:

- (a) a Condition Precedent has been satisfied, in which case that party must comply with any reasonable request for evidence of such satisfaction made by the other party;
- (b) there is a breach or non-fulfilment of a Condition Precedent;
- (c) it becomes aware of any fact, matter or circumstance that has resulted, will result or is reasonably likely to result in:
 - (i) a Condition Precedent becoming incapable of satisfaction or otherwise not being satisfied in accordance with its terms; or
 - (ii) a material breach of this deed by that party (including any breach of a Representation or Warranty by that party that is reasonably likely to constitute a Material Adverse Change or be material in the context of the Transaction taken as a whole).

3.6 Scheme voted down

If the Scheme is not approved by Target Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and Bidder considers acting reasonably that Share Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied, then Target must:

- (a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as Counsel engaged by Target to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Act by making an order to disregard the Headcount Test.

4 Scheme

4.1 Scheme

- (a) Target agrees to propose the Scheme on and subject to the terms of this deed and substantially in accordance with the Timetable.
- (b) Target must not consent to any modification of, or amendment to, the Scheme, or to the making or imposition by a court of any condition in respect of the Scheme, without the prior written consent of Bidder (such consent not to be unreasonably withheld).

4.2 Consideration

- (a) If the Scheme becomes Effective:
 - (i) each Scheme Shareholder will be entitled to receive the Consideration under the Scheme, in respect of each Scheme Share held by that Scheme Shareholder; and
 - (ii) all of the Scheme Shares held by each Scheme Shareholder will be transferred to Bidder.
- (b) In consideration of the transfer to Bidder of all the Scheme Shares held by a Scheme Shareholder under the Scheme, on the Implementation Date Bidder will:
 - (i) accept that transfer; and
 - (ii) pay, or procure the payment, into a trust account operated by Target as trustee for the Scheme Shareholders, of an amount in cleared funds equal to the aggregate amount of the Consideration for all Scheme Shares, by no later than the Business Day before the Implementation Date (provided that any interest on the amount so deposited (less bank fees and other charges) will accrue for the benefit of Bidder),

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

- (c) Subject to the Scheme becoming Effective and Bidder complying with its obligations under clause 4.2(b), at 10.00am on the Implementation Date, the transactions which form part of the Scheme will be implemented in the following sequence:
 - (i) all Scheme Shares will be transferred to Bidder; and
 - (ii) in exchange, each Scheme Shareholder will receive the Consideration for each Scheme Share held by it, which Target will procure is paid to each Scheme Shareholder from the trust account referred to in clause 4.2(b)(ii).
- (d) 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.

4.3 Target incentive plans

- (a) Target represents and warrants to Bidder that as at the date of this deed:

- (i) the Loan Funded Shares, LTIP Shares and Employee Gift Plan Shares on issue are allocated to the persons set out in document reference 07.01.03.03.03 (entitled 2017_0213_Shareholding List for Valuation per share calcs_v2B_gross cash_updated for Schedule 2.xlsx) in the Online Data Room (**Incentive Schedule**); and
 - (ii) the Employee Share Plan Trust holds such number of Treasury Shares as set out in the Incentive Schedule and which are unallocated.
- (b) Target must procure that, subject only to the Scheme becoming Effective, the Loan Funded Shares, LTIP Shares, Employee Gift Plan Shares and Treasury Shares are treated in the manner described in the Disclosure Letter.
 - (c) Target must consult with Bidder in relation to any action taken in connection with clause 4.3(b) above and promptly provide Bidder with all information reasonably requested in relation to the Employee Gift Plan Shares, Loan Funded Shares, LTIP Shares, Treasury Shares or Employee Share Plan Trust.
 - (d) In this clause 4.3:

Employee Gift Plan Shares means Target Shares issued pursuant to the Employee Gift Plan Rules dated 7 October 2015;

Employee Share Plan Trust means the employee share plan trust established pursuant to a trust deed dated 19 October 2015, the trustee of which is Rubik ESOP Trusco Pty Ltd;

Loan Funded Shares means Target Shares issued pursuant to the executive loan share plan, subject to the invitation letters dated 29 April 2015 from Target to Darius Coveney and Iain Dunstan;

LTIP Shares means Target Shares issued pursuant to the Long Term Incentive Plan Rules dated 7 September 2015; and

Treasury Shares means Target Shares held by the Employee Share Plan Trust that are not allocated to employees as Loan Funded Shares, LTIP Shares or Employee Gift Plan Shares.

5 Implementation

5.1 General obligations

Target and Bidder must each:

- (a) use all reasonable endeavours and commit necessary resources (including management and corporate relations resources and the resources of external advisers); and
- (b) procure that its officers and advisers act reasonably and work in a timely and co-operative fashion with the other party (including by attending meetings and by providing information),

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

5.2 Target obligations

Target must, acting reasonably, take all steps reasonably necessary to implement the Scheme substantially in accordance with the Timetable and otherwise as soon as practicable and on and subject to the terms of this deed. Without limiting the foregoing, Target must:

- (a) **(announce directors' recommendation)** following execution of this deed, announce, in the form of its Agreed Public Announcement (on the basis of statements made to Target by each Target Director) that:
 - (i) the Target Board intends to unanimously recommend the Scheme to Target Shareholders and recommend that Target Shareholders vote in favour of the Scheme at the Scheme Meeting; and
 - (ii) each Target Director intends to vote, or cause to be voted, all Target Shares in which he or she has a Relevant Interest in favour of the Scheme at the Scheme Meeting,in each case in the absence of:
 - (iii) a Superior Proposal; or
 - (iv) the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Transaction is not in the best interests of Target Shareholders.
- (b) **(Independent Expert)** as soon as reasonably practicable after the date of this deed, 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 (and any update to any such report);
- (c) **(Copy of Independent Expert's Report)** promptly provide Bidder with a copy of advanced drafts and final report received from the Independent Expert (accepting that any review of the Independent Expert's Report by Bidder is limited to review for factual accuracy, including parts that include information relating to Bidder);
- (d) **(preparation of Scheme Booklet)**
 - (i) subject to clause 5.3(a), prepare the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report) in accordance with all applicable laws (including the Corporations Act and Corporations Regulations), RG 60 and the Listing Rules; and
 - (ii) consult with Bidder as to the content and presentation of the Scheme Booklet, including providing Bidder with material drafts of the Scheme Booklet and the factual information sections relating to Bidder in the Independent Expert's Report, in a timely manner and, acting reasonably and in good faith, consider (and, where applicable, promptly provide to the Independent Expert in writing) all reasonable comments from Bidder and its Representatives on those drafts when preparing revised drafts, provided that such comments are provided to Target in a timely manner (however in relation to the Independent Expert's Report Target makes no representation as to the extent to which the Independent Expert will receive or consider those comments);

- (e) **(lodgement of Regulator's Drafts)**
- (i) 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 for the purposes of section 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to Bidder immediately thereafter; and
 - (ii) keep Bidder reasonably informed of any material issues raised by ASIC in relation to the Regulator's Draft and, where practical to do so, consult with Bidder in good faith prior to taking any steps or actions to address any such material issues (provided that, where such issues relate to Bidder Information, Target must not take any steps to address them without Bidder's prior written consent, not to be unreasonably withheld);
- (f) **(no objection statement)** apply to ASIC for a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (g) **(First Court Hearing)** apply to the Court for orders under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;
- (h) **(due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Target Information;
- (i) **(approval and registration of Scheme Booklet)** request that, in accordance with section 412(6) of the Corporations Act, ASIC register the Scheme Booklet;
- (j) **(Scheme Meeting)** as soon as reasonably practicable following registration of the Scheme Booklet by ASIC, despatch the Scheme Booklet to Target Shareholders, and convene and hold the Scheme Meeting in accordance with the orders made by the Court at the First Court Hearing;
- (k) **(Director votes and participation)** use its reasonable endeavours to procure that each member of the Target Board votes any Target Shares in which they have a Relevant Interest in favour of the Scheme at the Scheme Meeting and participates in reasonable efforts to promote the Scheme, in the absence of:
- (i) a Superior Proposal; or
 - (ii) the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Transaction is not in the best interests of Target Shareholders;
- (l) **(supplementary disclosure)** if, after despatch of the Scheme Booklet, Target becomes aware:
- (i) that information included in the Scheme Booklet is or has become false, misleading or deceptive in any material respect (whether by omission or otherwise); or
 - (ii) of information that is required to be disclosed to Target Shareholders under any applicable law or having regard to RG 60 but was not included in the Scheme Booklet,

promptly disclose such information to and consult with Bidder in good faith as to the need for, and form of, any supplementary disclosure to Target Shareholders, and make any such disclosure that it considers reasonably necessary in the circumstances, having regard to applicable laws and RG 60;

- (m) **(Conditions Precedent certificate)** at the Second Court Hearing, provide to the Court (through its counsel):
 - (i) a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent (other than the Condition Precedent in clause 3.1(a)) have been satisfied or waived in accordance with clause 3, a draft of which certificate must be provided to Bidder by 5:00pm on the Business Day prior to the Second Court Date; and
 - (ii) any certificate provided to it by Bidder pursuant to clause 5.3(g);
- (n) **(Second Court Hearing)** subject to the Conditions Precedent (other than the Condition Precedent in clause 3.1(a)) being satisfied or waived in accordance with clause 3, apply to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme;
- (o) **(appeal process)** if the Court refuses to make any orders directing Target to convene the Scheme Meeting or approving the Scheme, Target and Bidder must:
 - (i) consult with each other in good faith as to whether to appeal the Court's decision; and
 - (ii) appeal the court decision, unless the parties agree otherwise or an independent senior counsel opines that, in his or her view, an appeal would have no reasonable prospect of success;
- (p) **(Court Documents)** prepare the Court Documents, provide drafts of those documents to Bidder in a timely manner and, acting reasonably and in good faith, take into account all reasonable comments from Bidder and its Representatives on those drafts, provided that such comments are provided in a timely manner;
- (q) **(Bidder representation at Court Hearings)** allow, and not oppose, any application by Bidder for leave of the Court to be represented by counsel at a Court Hearing;
- (r) **(lodgement of Court order)** for the purposes of section 411(10) of the Corporations Act, lodge with ASIC an office copy of the orders made by the Court under section 411(4)(b) of the Corporations Act approving the Scheme before 5:00pm on the Business Day following the day on which it receives such office copy;
- (s) **(quotation of Target Shares and ASX listing)** apply to ASX to have:
 - (i) trading in Target Shares suspended with effect from the close of trading on the Effective Date; and
 - (ii) Target removed from the official list of ASX, and quotation of Target Shares on the ASX terminated, with effect on and from the close of trading on the Trading Day immediately following, or shortly after, the Implementation Date,

and not do anything to cause any of these things to happen before the time specified in this clause 5.2(s);
- (t) **(information)** provide Bidder with such information and assistance as Bidder reasonably requests, including any copy of the Share Register (including any sub-register), and which is necessary for the purpose of soliciting votes in favour of the

Scheme, preparing the Bidder Information for inclusion in the Scheme Booklet and facilitating the provision of the Consideration to Scheme Shareholders;

- (u) **(compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws, regulations and policy; and
- (v) **(implementation)** if the Scheme becomes Effective, do all things contemplated of it under the Scheme and all other things (if any) necessary for the Target to do to lawfully give effect to the Scheme, including:
 - (i) determining the identity of each Scheme Shareholder and their entitlement to the Consideration as at the Record Date, including by closing the Register as at the Record Date; and
 - (ii) executing proper instruments of transfer of and giving effect to and registering the transfer of the Scheme Shares to Bidder on the Implementation Date.

5.3 Bidder obligations

Bidder must, acting reasonably, take all steps reasonably necessary to implement the Scheme substantially in accordance with the Timetable and otherwise as soon as practicable and on and subject to the terms of this deed. Without limiting the foregoing, Bidder must:

- (a) **(prepare Bidder Information)**
 - (i) as soon as reasonably practicable after the date of this deed, prepare the Bidder Information for inclusion in the Scheme Booklet in accordance with all applicable laws (including the Corporations Act and Corporations Regulations), RG 60 and the Listing Rules; and
 - (ii) provide Target with drafts of the Bidder Information in a timely manner and, acting reasonably and in good faith, take into account all reasonable comments from Target and its Representatives on those drafts, provided that such comments are provided to Target in a timely manner;
- (b) **(assistance with Scheme Booklet and Court Documents)** provide any assistance or information reasonably requested by Target or its Representatives in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to Target Shareholders) or any Court Documents, including reviewing the drafts of the Scheme Booklet prepared by Target and provide comments in a timely manner on those drafts in good faith;
- (c) **(Independent Expert's Report)** subject to the Independent Expert agreeing to reasonable confidentiality restrictions, provide any assistance or information reasonably requested by Target or its Representatives, or by the Independent Expert, in connection with the preparation of the Independent Expert's Report (and any update or variation to any such report);
- (d) **(due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Bidder Information;
- (e) **(confirmation of Bidder Information)** promptly after Target requests that it does so, confirm in writing to Target that:

- (i) it consents to the inclusion of the Bidder Information in the Scheme Booklet, in the form and context in which the Bidder Information appears; and
 - (ii) the Bidder Information in the Scheme Booklet is not misleading or deceptive in any material respect (whether by omission or otherwise), and the inclusion of such Bidder Information, in that form and context, has been approved by the Chief Financial Officer or Chief Operating Officer of the Bidder;
- (f) **(update Bidder Information)** promptly advise Target in writing if it becomes aware:
- (i) of information which should have been but was not included in the Bidder Information in the Scheme Booklet (including if known at the time), and promptly provide Target with the omitted information; or
 - (ii) that the Bidder Information in the Scheme Booklet is misleading or deceptive in any material respect (whether by omission or otherwise), and promptly provide Target with any information required to correct the misleading or deceptive statements;
- (g) **(Conditions Precedent certificate)** before 8:00am on the Second Court Date, provide to Target for provision to the Court at the Second Court Hearing a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent (other than the Condition Precedent in clause 3.1(a)) have been satisfied or waived in accordance with clause 3, a draft of which certificate must be provided to Target by 5:00pm on the Business Day prior to the Second Court Date;
- (h) **(representation at Court)** ensure that it is represented by counsel at the First Court Hearing and the Second Court Hearing, at which, through its counsel, Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as are reasonably necessary in order to ensure the fulfilment of its obligations under this deed, the Scheme and to, so far as reasonably practicable, ensure that the Court makes an order under section 411(4)(b) of the Corporations Act approving the Scheme;
- (i) **(Scheme Consideration)** if the Scheme becomes Effective, pay or procure the payment of the Scheme Consideration in the manner and in the amount contemplated by clause 4.2 of this deed, the terms of the Scheme and the Deed Poll;
- (j) **(share transfer)** if the Scheme becomes Effective, accept a transfer of the Scheme Shares as contemplated by clause 4.2(b) and execute instruments of transfer in respect of the Scheme Shares;
- (k) **(Deed Poll)** before 5:00pm on the Business Day prior to the First Court Date, enter into the Deed Poll and deliver it to Target, and, if the Scheme becomes Effective, fully comply with its obligations under the Deed Poll; and
- (l) **(compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws, regulations and policy.

5.4 Scheme Booklet

- (a) If the parties are unable to agree on the form or content of a particular part of the Scheme Booklet, then:
 - (i) if the relevant part of the Scheme Booklet is Bidder Information, Target will make such amendments to that part of the Scheme Booklet as required by Bidder (acting reasonably and in good faith); and
 - (ii) in any other case, Target (acting reasonably and in good faith) will decide the form and content of that part of the Scheme Booklet.
- (b) The parties agree that the Scheme Booklet will contain a responsibility statement to the effect that:
 - (i) Target is responsible for the Target Information contained in the Scheme Booklet;
 - (ii) Bidder is responsible for the Bidder Information contained in the Scheme Booklet; and
 - (iii) the Independent Expert is responsible for the Independent Expert's Report, and none of Target, Bidder or their respective directors or officers assumes any responsibility for the accuracy or completeness of the Independent Expert's Report.

5.5 Conduct of business

- (a) Subject to clause 5.5(b), from the date of this deed up to and including the Implementation Date, Target must:
 - (i) ensure that the business of the Target Group is conducted:
 - (A) in the usual and ordinary course;
 - (B) in a manner generally consistent with the manner in which such business has been conducted in the 12 months prior to the date of this deed; and
 - (C) in accordance with all applicable laws in all material respects;
 - (ii) not, and must ensure that its Related Bodies Corporate do not, other than in the ordinary course of business:
 - (A) do or cause to be done, or fail to do or cause not to be done, anything that would or may result in the Scheme not being implemented or being implemented otherwise than in accordance with the Timetable and the terms of this deed, provided that this clause 5.5(a)(ii) does not require a standard of conduct higher than that set out in clause 3.2 in respect of the satisfaction of the Conditions Precedent; or
 - (B) authorise, commit or agree to do any of the matters set out above;
 - (iii) make reasonable endeavours to maintain and preserve the Target Group's relationships with material joint venturers, customers, suppliers, investors, Government Agencies, licensors, licensees and others with whom the Target Group has material business dealings;

- (iv) provide such assistance as Bidder reasonably requests to facilitate the refinancing of any Target Group financing with effect from completion of the Transaction;
- (v) use reasonable endeavours act cooperatively with Bidder to obtain the consents to the transactions contemplated by the Scheme of any relevant person who has rights in respect of change of control or similar provisions in any significant contracts (including all Material Contracts) or any joint venture documentation;
- (vi) use reasonable endeavours to retain the services of its Relevant Employees;
- (vii) use reasonable endeavours to ensure there is no material decrease in the amount of cash in the Target Group other than as:
 - (A) used in the ordinary course of business; or
 - (B) a result of reasonable costs incurred directly in relation to the Transaction;
- (viii) other than with the prior approval of Bidder (which approval must not be unreasonably withheld or delayed) or as required by law or this deed, Target must not, and must ensure that each member of the Target Group does not:
 - (A) enter into, amend or terminate a Material Contract;
 - (B) increase the remuneration of (including with regard to superannuation benefits) or benefits provided to or pay any bonus, or accelerate the right to compensation or bonuses, or otherwise vary or terminate the employment agreements with its officers or a Relevant Employee (other than in accordance with existing arrangements or where reasonably necessary in the ordinary course, including in connection with a usual annual pay review);
 - (C) issue any securities or options to or accelerate the rights of any of its officers or employees to benefits of any kind;
 - (D) pay an officer, executive or employee a termination or retention payment, other than as provided for in an existing employment contract in place as at the date of this deed and fairly disclosed in the Disclosure Materials;
 - (E) hire any new employee other than a replacement for any departing existing employee or where reasonably necessary in the ordinary course of business in each case on terms that are reasonable in the circumstances;
 - (F) change any accounting practices or policy applied by a member of the Target Group to report their financial position other than any change required by a change in accounting standards;
 - (G) settle or compromise or make any concessions in relation to any material Tax claims, liabilities or disputes or make any election in relation to Tax, or otherwise engage in any transaction, act or event which gives rise to any Tax liability which is outside the ordinary course of business as it was conducted prior to the date of this deed;

- (H) dispose of any securities, business, asset, interest in a joint venture, entity or undertaking, the value of which exceeds \$2 million, to any person other than another entity in the Target Group;
 - (I) acquire any securities, business, asset, interest in a joint venture, entity or undertaking from another person other than another entity in the Target Group, excluding any capital expenditure or project expenditure which does not exceed \$500,000 individually or \$2 million in aggregate;
 - (J) settle any legal proceedings, claim, investigation, arbitration or other like proceedings for an amount greater than \$100,000, provided that in the case of any Notified Claim, Target must not take any material action in respect of that Notified Claim (including, without limitation, settling that Notified Claim, bringing any claim or counterclaim, engaging in correspondence, instructing advisers, or varying accounting treatment in respect of that Notified Claim) without consent of the Bidder (such consent not to be unreasonably withheld or delayed), and Target must promptly provide Bidder with any relevant documents or information received in relation to any Notified Claim;
 - (K) amend in any material respect any arrangement with its financial advisers in respect of the transactions contemplated by this deed;
 - (L) grant any licence, assignment or other right or interest in respect of intellectual property owned by the Target Group, other than in the ordinary course of business;
 - (M) except in the ordinary course of business, disclose any material source code for the Target Group's products to any person, except to the extent that the source code is publicly available as at the date of this agreement; or
 - (N) authorise, commit or agree to do any of the matters set out above;
- (ix) ensure that no Prescribed Occurrence occurs; and
 - (x) ensure that the Target Group does not enter into any lines of business which are different to the Existing Business Lines.
- (b) Nothing in clause 5.5(a) restricts the ability of Target to take any action which:
- (i) is expressly required or permitted by this deed or the Scheme;
 - (ii) has been fairly disclosed to Bidder in the Disclosure Materials;
 - (iii) has been fairly disclosed by Target in any announcement to or filing with ASX or in a document lodged by Target with ASIC that is publicly available, in each case between 1 January 2014 and the Business Day prior to the date of this deed;
 - (iv) has been agreed to in writing by Bidder;
 - (v) ensures that directors' and officers' run-off insurance cover for the directors and officers of Target and each member of the Target Group is maintained on terms and at such costs which are reasonable and standard for a company similar to Target or a member of the Target Group (as the case

may be) for a period of 7 years from the resignation or retirement date of each such director and officer; or

- (vi) is required by law or by any applicable governmental or other regulatory authority.
- (c) In this deed, unless the context requires otherwise, references to the business or assets of the Target Group are to that business or those assets taken as a whole.
- (d) For the avoidance of doubt, nothing in this clause 5.5 restricts the ability of Target to respond to a Competing Proposal to the extent permitted under and in accordance with clause 8.

5.6 Transaction Implementation Committee

- (a) The parties must establish a Transaction Implementation Committee as soon as reasonably practical after the date of this deed. The role of the Transaction Implementation Committee will be to act as a forum for consultation and planning by the parties to:
 - (i) implement the Scheme; and
 - (ii) subject to clause 5.6(b), ensure the smooth transition of the management of the business and affairs of the Target Group to Bidder following the implementation of the Scheme.
- (b) Subject to this deed, nothing in this clause 5.6 requires either party to act at the direction of the other. The business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this deed constitutes the relationship of a partnership or a joint venture between the parties.

5.7 Access

From the date of this deed until the Implementation Date, Target must use reasonable endeavours to procure that Bidder is provided with reasonable, non-disruptive access during normal business hours and on reasonable notice to information, premises and senior executives of any member of the Target Group, where Bidder requests such access for the purposes of:

- (a) implementation of the Transaction; or
- (b) obtaining an understanding, or furthering its understanding, of the Target Group or its business or assets in order to allow Bidder to develop, finalise and implement its plans for the Target Group following implementation of the Transaction,

provided that Target does not provide any warranties in respect of information provided after the date of this deed, and compliance with a request for access would not, in the reasonable opinion of Target (acting in good faith), result in undue disruption to the Target Group's business, and provided that nothing in this clause 5.7 shall require Target to provide Bidder with any information:

- (c) in breach of an obligation of confidentiality to any person; or
- (d) concerning the consideration of the Transaction or any actual or potential Competing Proposal by the Target Board (or a sub-committee of the Target Board) or Target management.

5.8 Resignation of directors

Subject to provision of the Consideration in accordance with clause 4.2, Target must procure that, with effect on and from the Implementation Date:

- (a) those persons nominated by Bidder are appointed to the Target Board and the boards of other members of the Target Group, provided that:
 - (i) such persons sign consents to act as a director of the relevant member(s) of the Target Group; and
 - (ii) such consents to act are provided to Target before the Implementation Date; and
- (b) those Target Directors and directors of other members of the Target Group, as nominated by Bidder, resign as a director of the relevant member(s) of the Target Group and provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against Target (provided that nothing in this clause 5.8(b) requires any such director to forego any rights they may have under any deed of access and indemnity or policy of directors and officers insurance).

6 Public announcements

- (a) Immediately after execution of this deed, each of Target and Bidder must release its respective Agreed Public Announcement.
- (b) Subject to clause 6(c), before making any public announcement in relation to the Transaction (whether through the ASX or otherwise), a party must provide the other party with a draft copy of the relevant portion of such public announcement as soon as reasonably practicable before it is proposed that such public announcement is made, and must give the other party a reasonable opportunity to comment on the form and content of the relevant portion of such draft announcement and must take into account all reasonable comments from that party and its Representatives on the draft.
- (c) A party will only be required to comply with clause 6(b) if and to the extent that compliance would not, in the reasonable opinion of that party, be likely to result in that party breaching its continuous disclosure obligations.

7 Board support of Transaction

7.1 Confirmation of Recommendations and Voting Intentions

Target represents and warrants to Bidder that each Target Director has confirmed (by way of a unanimous resolution of the Target Board) that:

- (a) his or her recommendation in respect of the Scheme is that Target Shareholders vote in favour of the Scheme at the Scheme Meeting (**Recommendation**); and
- (b) he or she intends to vote, or cause to be voted, all Target Shares in which he or she has a Relevant Interest in favour of the Scheme at the Scheme Meeting (**Voting Intention**),

in each case in the absence of:

- (c) a Superior Proposal; or
- (d) the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Transaction is not in the best interests of Target Shareholders.

7.2 Maintenance of Recommendations and Voting Intentions

- (a) Target must use its reasonable endeavours to ensure that no Target Director withdraws, changes or modifies a Recommendation or Voting Intention unless:
 - (i) a Superior Proposal is made; or
 - (ii) the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Transaction is not in the best interests of Target Shareholders.
- (b) Subject to a Target Director withdrawing or changing a Recommendation or Voting Intention following the occurrence of either of the events referred to in clause 7.2(a) applies, Target must ensure that:
 - (i) the Scheme Booklet includes statements to the effect that that Target Director gives the Scheme Recommendation and has the Voting Intention; and
 - (ii) no public announcement or statement to any broker, analyst, journalist, Target Shareholder or professional or institutional investor is made by Target or that Target Director, which is inconsistent with that Target Director giving the Recommendations and having the Voting Intentions.
- (c) Without limiting clause 8, if a Target Director gives notice that he or she intends to withdraw, change or modify a Recommendation or Voting Intention following the occurrence of one of the events referred to in clause 7.2(a):
 - (i) Target must notify Bidder in writing immediately; and
 - (ii) the parties must, acting reasonably, consult for 2 Business Days after the date on which the notification is given to consider and determine whether the Recommendation or Voting Intention in place at the time can be maintained.

7.3 Bidder acknowledgement

Bidder acknowledges that, without derogating from a party's rights under clause 12 but subject to clause 7.2(c), if any of the events in clause 7.2(a) occur, then any Target Director may change, withdraw or modify their Recommendation or Voting Intention.

8 Exclusivity

8.1 Existing discussions

On the date of this deed, Target must, and must procure that each of its Representatives:

- (a) cease any discussions with any Third Party in relation to a potential Competing Proposal; and

- (b) cease the provision of any due diligence access and the making available of any non-public information in relation to the Target Group (**Non-Public Information**) to any Third Party, where the due diligence access and provision of Non-public Information was for the purposes of or in connection with, a potential Competing Proposal and promptly procure the return or destruction of any such Non-Public Information by any Third Party.

8.2 No-shop

During the Exclusivity Period, except with the prior written consent of Bidder, Target must not and must ensure that its Representatives do not directly or indirectly:

- (a) solicit, invite, encourage, respond to or initiate any Competing Proposal;
- (b) respond to or facilitate any enquiries, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal;
- (c) enter into any letter of intent, memorandum of understanding or other agreement regarding, any inquiries or proposals concerning, or participate in any discussions or negotiations with any person (other than the Bidder) concerning, or enter into or agree to, a Competing Proposal; or
- (d) communicate any intention to do any of the things set out in paragraphs (a) to (c) above.

8.3 No-talk

Subject to clause 8.7, during the Exclusivity Period, Target must not and must ensure that its Representatives do not (whether directly or indirectly):

- (a) negotiate or enter into or participate in negotiations or discussions with any person; or
- (b) communicate any intention to do any of these things,

in relation to, or that may reasonably be expected to lead to, a Competing Proposal, even if:
 - (c) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Target; or
 - (d) that person has publicly announced the Competing Proposal.

8.4 No due diligence

- (a) Without limiting the general nature of clause 8.3 but subject to clause 8.7, during the Exclusivity Period, Target must not and must ensure that its Representatives do not (whether directly or indirectly):
 - (i) solicit, invite, facilitate or encourage any party (other than Bidder or its Representatives) to undertake a due diligence investigation of Target, any member of the Target Group or its business or its operations in relation to a Competing Proposal; or

- (ii) make available to any person, or permit any person to receive, any non-public information relating to Target, any member of the Target Group or its business or its operations in relation to a Competing Proposal.
- (b) Target must not permit any person to undertake diligence investigations to the extent permitted under clause 8.7 unless and until that person has executed a confidentiality agreement which includes terms and conditions no less onerous to the person than apply to Bidder under the Confidentiality Agreement.

8.5 Notice of Unsolicited Approach

During the Exclusivity Period, Target must inform Bidder within 2 Business Days if it, or if it becomes aware that any of its Representatives:

- (a) receives any unsolicited approach with respect to any Competing Proposal and must disclose to Bidder the fact that such an approach has been made and:
 - (i) all material details of the Competing Proposal; and
 - (ii) subject to clause 8.7, the identity of the proposed bidder or acquirer;
- (b) receives any request for information relating to Target or any of its Related Bodies Corporate or any of their businesses or operations or any request for access to the books or records of Target or any of its Related Bodies Corporate, which Target has reasonable grounds to suspect may relate to a current or future Competing Proposal; or
- (c) provides any information relating to Target or any of its Related Bodies Corporate or any of their businesses or operations to any person in connection with or for the purposes of a current or future Competing Proposal.

8.6 Matching right

- (a) Without limiting any other part of this clause 8, Target must not enter into any agreement or arrangement to give effect to or in relation to or in connection with the implementation of a Competing Proposal (in this clause 8.6, a **Rival Proposal**) and must use its best endeavours to procure that no Target Directors withdraws, changes or modifies a Recommendation or Voting Intention or publicly recommends, endorses or supports a Rival Proposal unless:
 - (i) the Rival Proposal is a Superior Proposal;
 - (ii) Target has given Bidder written notice (**Matching Right Notice**) of the consideration, conditions, structure and other key terms of the Rival Proposal; and
 - (iii) Bidder does not, within 3 Business Days after receiving the Matching Right Notice, make a written proposal (**Bidder Proposal**) to Target in respect of an improvement to the Scheme Consideration or an alternative transaction or arrangement that the Target Board determines, acting in good faith, would result in an outcome more favourable or no less favourable for Target Shareholders as a whole as would result from the Rival Proposal (assuming that both the Bidder Proposal and Rival Proposal would be implemented in accordance with their terms) (**Matching Right Determination**).
- (b) Target must ensure that, as soon as practicable after:

- (i) receipt of a Bidder Proposal, the Target Board considers, acting reasonably, taking into account all terms, conditions, financial, regulatory and other aspects of the Bidder Proposal and Rival Proposal, whether the Matching Right Determination can be made; and
 - (ii) the Target Board has considered this matter, Bidder is notified of the Target Board's decision in writing.
- (c) If the Target Board makes the Matching Right Determination, Bidder and Target must use reasonable endeavours to promptly agree such matters, and take such other steps, as are reasonably necessary to give effect to the Bidder Proposal (including entering into an amending deed in respect of amendments to this deed).
- (d) Target acknowledges and agrees that each successive modification of any Rival Proposal will constitute a new Rival Proposal for the purposes of the requirements under this clause 8.6 and accordingly Target must comply with clause 8.6(a) and 8.6(b) in respect of any new Rival Proposal.

8.7 Fiduciary exception

Clauses 8.3, 8.4 and 8.5(a)(ii) do not prevent Target or its Representatives from taking or refusing to take any action with respect to a bona fide written Competing Proposal (which was not encouraged, solicited, invited or initiated by Target or its Representatives in breach of this clause 8) if the Target Board, acting in good faith and reasonably, determines:

- (a) after consultation with its advisers that the Competing Proposal is a Superior Proposal or the steps which the Target Board proposes to take may reasonably be expected to lead to a Competing Proposal which is a Superior Proposal; and
- (b) after receiving written legal advice from Target's reputable external legal advisers, that failing to respond to the Competing Proposal would be reasonably likely constitute a breach of its fiduciary or statutory duties.

9 Target Break Fee

9.1 Background

This clause 9 has been agreed to in circumstances where:

- (a) each party believes that it and its shareholders and/or investors will derive significant benefits from the implementation of the Transaction;
- (b) Bidder has incurred and will further incur significant costs in connection with the Transaction, which will include significant opportunity costs if the Transaction is not implemented;
- (c) Bidder has requested that provision be made for the payment of the Target Break Fee by Target, and would not have entered into this deed had such provision not been made;
- (d) Target believes that it is appropriate to agree to pay the Target Break Fee to secure Bidder's entry into this deed; and
- (e) each party has received separate legal advice in relation to this deed and the operation of this clause 9.

The parties acknowledge and agree that the costs referred to in clause 9.1(b) are of such a nature that they cannot be precisely quantified, but that the Target Break Fee is a genuine and reasonable pre-estimate of a proportion of those costs.

9.2 Payment of Target Break Fee

Subject to clauses 9.3, 9.5, 9.6 and 9.7, Target must pay Bidder the Target Break Fee (without set-off or withholding) within 10 Business Days after receipt of a written demand from Bidder if any of the following events occur:

- (a) at any time before the earlier to occur of the End Date and the date this deed is terminated in accordance with its terms, a Competing Proposal is made or announced by a Third Party, and, within 9 months thereafter a Competing Proposal of the type referred to in paragraph (b), (c) or (d) of the definition of Competing Proposal is completed, implemented or consummated by the Third Party or any of its Associates;
- (b) Bidder becomes entitled to terminate this deed under clause 12.1(b), 12.2(b) or 12.2(d);
- (c) Bidder becomes entitled to terminate this deed under clause 12.2(e) and the relevant event, matter, circumstance or occurrence was within the control of the Target;
- (d) Bidder becomes entitled to terminate this deed under clause 12.2(c) and the relevant event, matter, circumstance or occurrence giving rise to the breach of the relevant Target Representation and Warranty was:
 - (i) known by the Target but not known to the Bidder at the date of this deed;
 - (ii) within the control of the Target; or
 - (iii) a result of a deliberate failure of the Target to take reasonable steps to prevent the event, matter, circumstance or occurrence; or
- (e) Bidder becomes entitled to terminate this deed under clause 12.2(a) or the Target terminates this deed under clause 12.3(a) (other than in circumstances where the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Transaction is not in the best interests of Target Shareholders and that conclusion is not based wholly or in part on the existence of a Competing Proposal).

9.3 Payment conditions

- (a) Notwithstanding the occurrence of any event referred to in clause 9.2, the Target Break Fee will not be payable if the Scheme becomes Effective. The Target Break Fee must be refunded to Target within 10 Business Days after the Scheme becomes Effective if it was paid to Bidder before that time.
- (b) Target can only ever be liable to pay the Target Break Fee once.

9.4 Nature of payment

The Target Break Fee is an amount to compensate Bidder for the following costs and expenses:

- (a) external advisory costs (excluding success fees);

- (b) internal costs such as costs of management and directors' time, risk management costs and capital costs;
- (c) out-of-pocket expenses; and
- (d) opportunity costs incurred in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives which otherwise could have been developed or pursued.

9.5 Compliance with law

This clause 9 does not impose any obligations on Target to pay the Target Break Fee to the extent that the performance of those obligations:

- (a) constitutes unacceptable circumstances as declared by the Takeovers Panel; and
- (b) after all proper avenues of appeal and review, whether judicial or otherwise, have been exhausted, is held to be unenforceable by a court.

If the Target Break Fee is paid to Bidder and clause 9.5(a) or 9.5(b) applies, Bidder must refund the relevant part of the Target Break Fee (if any) to Target within 10 Business Days after receipt of a written demand from Target. No party may make, or cause or permit to be made, an application for a declaration or order referred to in clause 9.5(a) or 9.5(b).

9.6 Other claims

The maximum aggregate amount which the Target is required to pay in relation to a breach of this deed (including in respect of a breach or representation and warranty) is an amount equal to the Target Break Fee and in no event will the aggregate liability of the Target under or in connection with a breach of this deed exceed an amount equal to the Target Break Fee.

9.7 Exclusive Remedy

Notwithstanding any other provision of this deed:

- (a) the maximum liability of the Target to Bidder under or in connection with this deed, including in respect of any breach of the deed, will be the Target Break Fee; and
- (b) a payment by the Target in full satisfaction of amounts owing under this clause 9 represents the sole and absolute liability of the Target under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by the Target in connection with this deed.

10 Representations and Warranties

10.1 Bidder Representations and Warranties

Bidder represents and warrants to the Target that:

- (a) **(validly existing)** it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) **(power)** it has full corporate power and lawful authority to execute, deliver and perform this deed and the Deed Poll;

- (c) (**corporate action**) it has taken all necessary corporate action to authorise the entry into this deed and has taken or will take all necessary corporate action to authorise the performance of this deed and the Deed Poll;
- (d) (**binding**) this deed is its valid and binding obligation enforceable in accordance with its terms;
- (e) (**performance**) the execution and performance by it of this deed did not and will not violate or breach any provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree binding on it; or
 - (ii) its constitution;
- (f) (**Bidder Information**) the Bidder Information included in the Scheme Booklet with its consent pursuant to clause 5.3(e)(ii), and any other information provided by it pursuant to clause 5.3(f), will not be misleading or deceptive in any material respect (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission or otherwise, and will comply in all material respects with applicable laws (including the Corporations Act and Corporations Regulations), RG 60 and the Listing Rules;
- (g) (**basis of Bidder Information**) the Bidder Information:
 - (i) will be provided to Target in good faith and on the understanding that Target and each other Target Indemnified Party will rely on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme; and
 - (ii) will comply in all material respects with the requirements of the Corporations Act, Corporations Regulations, RG 60 and the Listing Rules,

and all information provided by Bidder to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (h) (**new information**): it will, as a continuing obligation, provide to Target all further or new information which arises after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information is not misleading or deceptive (including by way of omission); and
- (i) (**Insolvency Event or regulatory action**): no Insolvency Event has occurred in relation to it or another member of the Bidder Group, nor has any regulatory action of any nature of which it is aware been taken that would prevent or restrict its ability to fulfil its obligations under this deed.

10.2 Bidder's indemnity

Bidder agrees to indemnify Target and each of the Target Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Target or any of the other Target Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Bidder Representations and Warranties.

10.3 Target Representations and Warranties

Target represents and warrants to Bidder that:

- (a) (**validly existing**) it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) (**power**) it has full corporate power and lawful authority to execute, deliver and perform this deed and the Scheme;
- (c) (**corporate action**) it has taken all necessary corporate action to authorise the entry into this deed and has taken or will take all necessary corporate action to authorise the performance of this deed and the Scheme;
- (d) (**binding**) this deed is a valid and binding obligation on Target, enforceable in accordance with its terms;
- (e) (**performance**) the execution and performance by it of this deed did not and will not violate or breach any provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree binding on it; or
 - (ii) its constitution;
- (f) (**capital structure**) as at the date of this deed, its capital structure is as set out in Schedule 2 and, other than as set out in Schedule 2:
 - (i) it has not issued any other Target Shares or other securities, rights or instruments which are still outstanding and may convert into, or give the holder the right to be issued, Target Shares; and
 - (ii) it is not under any obligation to issue, and no person has any right to require or call for the issue of, any Target Shares or other securities, rights or instruments issuable by Target or any Target Group Member (whether such obligation or right is conditional or otherwise) other than under an existing employment arrangement fairly disclosed in the Disclosure Materials;
- (g) (**Target Information**) the Target Information included in the Scheme Booklet, and any supplementary disclosure made to Target Shareholders pursuant to clause 5.2(I) (excluding any information provided by Bidder), will not be misleading or deceptive in any material respect (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission or otherwise, and will comply in all material respects with applicable laws, including (in respect of the Target Information) the Corporations Act, Corporations Regulations, RG 60 and the Listing Rules;
- (h) (**basis of Target Information**) the Target Information:
 - (i) will be prepared and included in the Scheme Booklet in good faith and on the understanding that Bidder and each other Bidder Indemnified Party will rely on that information for the purpose of determining to proceed with the Transaction; and
 - (ii) will comply in all material respects with the requirements of the Corporations Act, Corporations Regulations, RG 60 and the Listing Rules,and all information provided by Target to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;

- (i) (**new information**) it will, as a continuing obligation (but in respect of the Bidder Information, only to the extent that Bidder provides Target with updates to the Bidder Information), ensure that the Scheme Booklet is updated to include all further or new information which arises after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information is not misleading or deceptive (including by way of omission);
- (j) (**continuous disclosure**) it is in compliance in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and as at the date of this deed, is not relying on the carve out in Listing Rule 3.1A to withhold any information from disclosure (other than the transactions contemplated by this deed or fairly disclosed in the Disclosure Materials);
- (k) (**disclosure**) so far as Target is aware, Target has provided to Bidder all material information actually known to it as at the date of this deed regarding matters affecting or relating to it:
 - (i) which is not already in the public domain; and
 - (ii) the disclosure of which might reasonably be expected to have resulted in Bidder not entering into this agreement at all or only entering into this agreement on materially different terms;
- (l) (**complete and accurate**) so far as Target is aware as at the date of this deed, the Disclosure Materials are in all material respects not misleading or deceptive, whether by way of omission or otherwise;
- (m) (**related party transactions**) the Disclosure Materials contain copies of all material agreements and arrangements between any Target Group Member and any director of the Target Group and any person with a Substantial Holding in the Target or their respective Associates;
- (n) (**compliance**) so far as the Target is aware, the Target Group has complied in all material respects with all applicable laws and have all material licences, permits and franchises necessary for them to conduct their respective businesses as presently being conducted (where a material licence or permit for the purposes of this paragraph means a licence or permit absent which, if the Target Group was conducting its business as it is presently conducted, would be reasonably likely to result in a Material Adverse Change);
- (o) (**no default**) so far as the Target is aware, no Target Group member is in material default under any Material Contract, or any other document, agreement or instrument binding on it or its assets where a default would be reasonably likely to result in a Material Adverse Change, nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party thereto a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect;
- (p) (**litigation or regulatory investigation**) so far as the Target is aware, there is no litigation or regulatory investigations commenced or threatened against any member of the Target Group other than to the extent of any Notified Claim which would be reasonably likely to result in a Material Adverse Change or that would prevent or restrict the ability of a member of the Target Group to fulfil its obligations under this deed;

- (q) **(not aware that business infringes third party IP rights)** so far as the Target is aware, neither the carrying on of the business conducted by each Target Group member nor the use (or intended use) of any material intellectual property by a Target Group member infringes the intellectual property rights of any third party, which would be reasonably likely to result in a Material Adverse Change, and no Target Group member has received any notice or claim from any party alleging the foregoing nor is the Target aware of any facts or circumstances which may give rise to any such allegation;
- (r) **(Insolvency Event or regulatory action)** no Insolvency Event has occurred in relation to it or another member of the Target Group, nor has any regulatory action of any nature of which it is aware been taken that would prevent or restrict its ability to fulfil its obligations under this deed; and
- (s) **(Target Shares not indirect Australian real property interests)** the relevant Target Shares held by each Scheme Shareholder are not, and until (and including) the Implementation Date will not be, indirect Australian real property interests within the meaning of Division 855 of the Tax Act for the Scheme Shareholder.

10.4 Target's indemnity

Subject to clause 9.6, Target agrees with Bidder (in its own right and separately as trustee or nominee for each Bidder Indemnified Party) to indemnify Bidder and each of the Bidder Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Bidder or any of the other Bidder Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Target Representations and Warranties.

10.5 Qualifications on Target's Representations and Warranties

- (a) The Target Representations and Warranties in clause 10.3 and the indemnity in clause 10.4 are each subject to:
 - (i) matters that have been fairly disclosed the Disclosure Materials;
 - (ii) matters within the actual knowledge of any director, secretary or senior officer of the Bidder or a Bidder Group company who have been involved in the assessment and/or negotiation of the Transaction before the date of this deed; and
 - (iii) matters that have been fairly disclosed in Target's announcements to or filings with ASX, or a document lodged with ASIC that is publicly available, in each case between 1 January 2014 and the Business Day prior to the date of this deed.
- (b) For the avoidance of doubt, and notwithstanding clause 10.3(g), Target makes no representation or warranty as to the accuracy of any forward-looking statements, forecast information or other forecast contained in the Scheme Booklet (including any representation or warranty as to the likelihood of achievement or reasonableness of any such statement).

10.6 Survival of Representations and Warranties

Each Representation and Warranty:

- (a) is severable;

- (b) survives 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.

10.7 Survival of indemnities

Each indemnity in this deed (including those in clauses 10.2 and 10.4):

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

10.8 Timing of Representations and Warranties

- (a) Each Representation and Warranty is given at the date of this deed and again at 5.00pm on the Business Day before the Second Court Date.
- (b) For the purposes of clause 10.8(a), a Representation and Warranty shall be read with any necessary adjustments to the tense used in the Representation and Warranty.

10.9 Warranty Certificate

Target must provide to Bidder by 5.00pm on the Business Day before the Second Court Date a certificate signed by a director of the Target and made in accordance with a resolution of the Target Board stating, as at that date, that the Target Representations and Warranties remain true and accurate or, if any such representation or warranty is not true and accurate as at that date, provide complete particulars of the facts and matters which make the representation or warranty untrue or inaccurate.

11 Releases

11.1 Release of Target Indemnified Parties

- (a) Subject to clause 11.1(b), Bidder releases any and all rights that it may have, and agrees with Target that it will not make any claim, against any Target Indemnified Party as at the date of this deed and from time to time in connection with:
 - (i) any breach of any covenant, representation or warranty given by Target under this deed;
 - (ii) any disclosures containing any statement which is false or misleading (whether by omission or otherwise); or
 - (iii) any failure to provide information,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where a Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. To avoid doubt, nothing

in this clause 11.1(a) limits the rights of Bidder to terminate this deed under clause 12.

- (b) The release in clause 11.1(a) is subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) Target receives and holds the benefit of clause 11.1(a) as trustee for the Target Indemnified Parties.

11.2 Release of Bidder Indemnified Parties

- (a) Subject to clause 11.2(b), Target releases any and all rights that it may have, and agrees with Bidder that it will not make any claim, against any Bidder Indemnified Party as at the date of this deed and from time to time in connection with:
 - (i) any breach of any covenant, representation or warranty given by Bidder under this deed;
 - (ii) any disclosures containing any statement which is false or misleading (whether by omission or otherwise); or
 - (iii) any failure to provide information,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where a Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. To avoid doubt, nothing in this clause 11.2 limits the rights of Target to terminate this deed under clause 12.

- (b) The release in clause 11.2(a) is subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) Bidder receives and holds the benefit of clause 11.2(a) as trustee for that Bidder Indemnified Parties.

11.3 Deeds of indemnity and insurance

- (a) Subject to the Scheme becoming Effective and the Transaction completing, Bidder undertakes in favour of Target and each other person who is a Target Indemnified Party that it will:
 - (i) for a period of 7 years from the Implementation Date, ensure that the constitutions of Target and each other member of the Target Group continue to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its 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
 - (ii) procure that Target and 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 7 years from the retirement date of each director and officer.
- (b) Bidder acknowledges that notwithstanding any other provision of this deed, Target may, prior to the Implementation Date, enter into arrangements to secure directors

and officers run-off insurance for up to such 7 year period on terms and at such costs which are reasonable and standard for a company similar to Target or a member of the Target Group (as the case may be), and that any actions to facilitate that insurance or in connection therewith will not be Prescribed Occurrences or breach any provision of this deed.

- (c) The undertakings contained in clause 11.3(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (d) Target receives and holds the benefit of clause 11.3(a), to the extent it relates to the other Target Indemnified Parties as trustee for them.
- (e) The undertakings contained in clause 11.3(a) are given until the earlier of the end of the relevant period specified in clause 11.3(a) or the relevant Target Group Member ceasing to be part of the Target Group.

12 Termination

12.1 Termination by either party

- (a) Either party may terminate this deed in accordance with clause 3.4(d).
- (b) Other than in respect of a breach of a Representation and Warranty (which are dealt with in clauses 12.2 and 12.3), at any time before 8:00am on the Second Court Date, either party may terminate this deed if the other party commits a material breach of this deed, provided that:
 - (i) it has given written notice to the other party setting out the relevant circumstances and stating an intention to terminate this deed;
 - (ii) the relevant circumstances have not been remedied within 10 Business Days from the time such notice is given (or any shorter period ending at 5:00pm on the Business Day before the Second Court Date); and
 - (iii) the material breach must:
 - (A) constitute a Material Adverse Change; or
 - (B) be material in the context of the Transaction taken as a whole.

Termination under this clause 12.1(b) will take effect at the expiry of the period referred to in clause 12.1(b)(ii).

12.2 Termination by Bidder

Bidder may terminate this deed, with immediate effect, at any time before 8:00am on the Second Court Date by notice in writing to Target if:

- (a) in any circumstances (including where clause 7.2(a) applies), a Target Director:
 - (i) withdraws, adversely changes or makes any public statement that is inconsistent with a Recommendation or Voting Intention; or
 - (ii) recommends, endorses or supports any Competing Proposal;

- (b) in any circumstances, Target voluntarily enters into any agreement or arrangement in relation to the implementation of any Competing Proposal;
- (c) at the time they were made, the Target Representations and Warranties were not true and accurate in all material respects, provided that:
 - (i) Bidder has given written notice to Target setting out the relevant circumstances and stating an intention to terminate this deed or to allow the Scheme to lapse;
 - (ii) the relevant breach or circumstances have not been remedied for 10 Business Days from the time such notice is given (or any shorter period ending at 5:00pm ending on the Business Day before the Second Court Date); and
 - (iii) the relevant breach of the Target Representations and Warranties would:
 - (A) result in a Material Adverse Change; or
 - (B) be material in the context of the Transaction taken as a whole;
- (d) Target materially breaches clause 8; or
- (e) a Material Adverse Change occurs or a Prescribed Occurrence occurs that has or could reasonably be expected to have a material adverse effect on the Target Group.

12.3 Termination by Target

Target may terminate this deed, with immediate effect, by notice in writing to Bidder if, at any time before 8:00am on the Second Court Date:

- (a) the Target Board publicly:
 - (i) withdraw or adversely change their Recommendation; or
 - (ii) recommend a Competing Proposal,
 in each case provided that:
 - (iii) clause 7.2(a) applies; and
 - (iv) in a circumstance involving a Competing Proposal, Target has complied with clause 8.6 to the extent applicable; or
- (b) at the time they were made, the Bidder Representations and Warranties were not true and accurate in all material respects, provided that:
 - (i) Target has given written notice to Bidder setting out the relevant circumstances and stating an intention to terminate this deed or to allow the Scheme to lapse;
 - (ii) the relevant breach or circumstances have not been remedied for 10 Business Days from the time such notice is given (or any shorter period ending at 5:00pm ending on the Business Day before the Second Court Date); and

- (iii) the loss that would reasonably be expected to follow from the relevant breach of the Bidder Representations and Warranties is material in the context of the Transaction taken as a whole.

12.4 Termination by written agreement

This deed may be terminated by the written agreement of the parties, on such terms as the parties agree.

12.5 Effect of termination

If this deed is terminated in accordance with this clause 12, this deed will cease to have force and effect without any liability or obligation on the part of any party, except that:

- (a) this clause 12.5 and clauses 1, 9, 10, 11, 13, 14 and 15, and Schedule 1, will survive termination; and
- (b) each party will retain any rights and remedies that accrued prior to termination, including any rights and remedies in respect of any past breach of this deed or (if applicable) in respect of the breach giving rise to termination.

13 Confidentiality

Each party acknowledges and agrees that nothing in this deed derogates from the rights and obligations of the Bidder and the Target under the Confidentiality Agreement, provided that this deed prevails to the extent of any inconsistency with the Confidentiality Agreement.

14 Duty, costs and expenses

14.1 Stamp duty

Bidder:

- (a) must pay all stamp duties and any related fines and penalties in respect of this deed or any transaction effected under it; and
- (b) indemnifies Target against any liability arising from or in connection with any failure by it to comply with clause 14.1(a).

14.2 Costs and expenses

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

15 GST

- (a) In this clause 15, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that legislation.
- (b) If a party makes a supply under or in connection with this deed in respect of which GST is payable, the consideration for the supply but for the application of this clause 15(b) (**GST exclusive consideration**) is increased by an amount

(**Additional GST amount**) equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

- (c) If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by the amount equal to any input tax credit the other party, or the representative member of the GST group of which the other party is a member, is entitled to with respect to the loss, cost or expense, and then increased in accordance with clause 15(b) if such amount is consideration for a taxable supply made under or in connection with this deed.
- (d) A party need not make a payment of the Additional GST amount until it receives a tax invoice or adjustment note (as appropriate) for the supply to which the payment relates.

16 General

16.1 Notices

- (a) A notice, consent, approval, waiver or other communication sent by a party under this deed (**Notice**) must be:
 - (i) in writing;
 - (ii) sent by an authorised representative of the sender; and
 - (iii) marked for the attention of the person named below,and must be:
 - (iv) left at, or sent by commercial courier to, the address set out below.

Bidder

Attention: **Legal Department**
Address: **2 rue de l'Ecole-de-Chimie,
1205 Geneva
Switzerland**

Target

Attention: **Company Secretary**
Address: **Level 10, 85 Castlereagh Street,
Sydney NSW 2000
Australia**

With a copy to:

Adam Laura

**C/- Gilbert + Tobin
Level 35, Tower 2
200 Barangaroo Avenue,
Barangaroo NSW 2000
Australia**

- (b) Subject to clause 16.1(c), a Notice is taken to be received:
 - (i) if sent by delivery, when it is delivered;
 - (ii) if sent by commercial courier, three days after dispatch.
- (c) If a Notice is taken to be received under clause 16.1(b):
 - (i) before 9:00am on a Business Day, it will be taken to be received at 9:00am on that Business Day; or
 - (ii) after 5:00pm on a Business Day or on a non-Business Day, it will be taken to be received at 9:00am on the next Business Day,

provided that a Notice of termination given prior to 8.00am on the Second Court Date under clauses 12.1, 12.2 or 12.3 will be taken to be received at the time it is given.

16.2 Governing law and jurisdiction

- (a) This deed is governed by the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and courts competent to hear appeals from those courts.

16.3 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other person, except for any representation or inducement expressly set out in this deed.

16.4 No merger

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

16.5 Waivers and consents

- (a) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party does not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.

- (c) No waiver of a breach of any term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) Except where this deed expressly provides otherwise, where the consent of a party is required under this deed, such consent may be given or withheld in that party's absolute discretion.

16.6 Variation

This deed may only be varied by a document signed by or on behalf of each of the parties.

16.7 Assignment

A party may not assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior written consent of the other parties.

16.8 Further action

Each party will do all things and execute all further documents necessary to give full effect to this deed.

16.9 Entire agreement

This deed supersedes all previous agreements, understandings, negotiations or deeds in respect of its subject matter and embodies the entire agreement between the parties.

16.10 Severability

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction but only to the extent that it is void, unenforceable or illegal and provided that it will have full force and effect in any other jurisdiction. Where a provision (or any part thereof) is severed in a jurisdiction, the remainder of this deed will have full force and effect in that (and any other) jurisdiction.

This clause 16.10 does not apply to any severance that alters the basic nature of this deed or is contrary to public policy.

16.11 Counterparts

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

16.12 Appointment of process agent

Without preventing any method of service allowed under any relevant law, Bidder:

- (a) irrevocably appoints King & Wood Mallesons as its process agent to receive any document in an action in connection with this document; and
- (b) agrees that failure by a process agent to notify Bidder of any document in an action in connection with this document does not invalidate the action concerned.

If for any reason King & Wood Mallesons ceases to be able to act as process agent, Bidder agrees to appoint another person as its process agent in the place referred to in clause 16.2 and ensure that the replacement process agent accepts its appointment and confirms its appointment to Bidder.

Bidder agrees that service of documents on its process agent at the following address is sufficient service on it:

Temenos Group AG c/o King & Wood Mallesons
Level 61, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia

1 Dictionary

Additional GST amount has the meaning given in clause 15(b).

Agreed Public Announcement means an announcement of Target or an announcement of Bidder, as the context requires, each in a form agreed between the parties prior to execution of this deed, to be released by each of Bidder and Target pursuant to clause 6(a).

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in section 12 of the Corporations Act as if section 12(1) of that Act included a reference to this deed and Target was the designated body.

ASX means ASX Limited (ABN 98 008 624 691) or, where the context requires, the financial market operated by it known as the "Australian Securities Exchange".

Bidder Board means the board of directors of the Bidder.

Bidder Director means a director of Bidder.

Bidder Group means, collectively, Bidder and each of its Related Bodies Corporate.

Bidder Indemnified Party means a director, officer, employee or adviser of a member of the Bidder Group.

Bidder Information means information regarding the Bidder Group provided by or on behalf of Bidder to Target or its Representatives in writing for inclusion in a Scheme Booklet. Bidder Information does not include information about the Target Group (except to the extent it relates to any statement of intention relating to the Target Group following the Implementation Date) or the Independent Expert's Report.

Bidder Representations and Warranties means the representations and warranties set out in clause 10.1.

Business Day has the meaning given in the Listing Rules.

Claim Change has the meaning given in the Disclosure Letter.

Competing Proposal means any inquiry, offer, proposal or expression of interest, transaction or arrangement (including by way of takeover bid or scheme of arrangement) under which, if entered into or ultimately completed substantially in accordance with its terms, a person or two or more persons who are Associates would directly or indirectly:

- (a) acquire a Relevant Interest in or become the holder of or obtain a right to acquire more than 15% of the issued share capital of Target;
- (b) acquire, obtain a right to acquire, receive or become the holder of, or otherwise obtain an economic interest in:
 - (i) 50% or more of the issued share capital of Target or any material member of the Target Group; or

- (ii) all or a substantial part of the business or property of the Target Group; or
- (c) acquire control of Target or any material member of the Target Group within the meaning of section 50AA of the Corporations Act, disregarding section 50AA(4) of that Act; or
- (d) otherwise acquire or merge with Target or any of its controlled entities,

whether by takeover bid, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy-back or repurchase or exchange, sale or purchase of assets or businesses, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding entity for Target or other synthetic merger or any other transaction or arrangement.

Condition Precedent means a condition set out in clause 3.1.

Confidentiality Agreement means the confidentiality agreement between the parties in relation to the Transaction, dated 23 November 2016.

Consideration means, in respect of each Scheme Share, \$0.1667.

Consultation Notice has the meaning given in clause 3.4(c).

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

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

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

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

Court Documents means the documents required for the purposes of a Court Hearing, including (as applicable) originating process, affidavits, submissions and draft minutes of Court orders.

Court Hearing means the First Court Hearing or Second Court Hearing (as applicable), and **Court Hearings** means both of them.

Deed Poll means the deed poll to be entered into by Bidder in respect of the provision of the Consideration, in the form of Attachment C.

Discloser has the meaning given in clause 3.2(d).

Disclosure Letter means the letter so entitled from Target and countersigned by Bidder on or prior to the date of this deed.

Disclosure Materials means the information in relation to the Target Group disclosed in writing by or on behalf of Target to Bidder and its Representatives prior to the date of this deed, in:

- (a) the Disclosure Letter;
- (b) the documents and information contained in the online data room (**Online Data Room**) to which Bidder and its Representatives were given access prior to the date of this deed, the index of which has been initialled by the parties for identification; and

- (c) any written answers to requests for further information made by Bidder and its Representatives as contained in the Online Data Room.

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

Effective Date means the date on which a 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 the date that is 6 months after the date of this deed or such later date as Bidder and Target agree in writing.

Existing Business Lines means lines of business in which Target is engaged as at the date of this deed as fairly disclosed in the Disclosure Materials.

Exclusivity Period means the period from the date of this deed to the earlier of:

- (a) the termination of this deed under clause 12; and
- (b) the End Date.

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

First Court Date means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act directing Target to convene 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) with such hearing being the **First Court Hearing**.

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal, statutory 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, or any other federal, state, provincial, local or other 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 and the Takeovers Panel).

GST exclusive consideration has the meaning given in clause 15(b).

Headcount Test means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of Target Shareholders present and voting, either in person or by proxy.

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

Independent Expert means the independent expert to be appointed by Target to prepare the Independent Expert's Report in accordance with clause 5.2(b).

Independent Expert's Report means the report in respect of the Scheme to be prepared and issued by the Independent Expert for inclusion in the Scheme Booklet.

Insolvency Event means, in relation to any entity:

- (a) the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity;
- (b) a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;
- (c) the entity executing a deed of company arrangement;
- (d) the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation) or is otherwise presumed to be insolvent under the Corporations Act unless the entity has, or has access to, committed financial support from its parent entity such that it is able to pay its debts; or
- (e) the entity being deregistered as a company or otherwise dissolved.

Listing Rules means the official listing rules of ASX.

Material Adverse Change means:

- (a) a Specified Event which (whether individually or when aggregated with all other changes, events, circumstances, occurrences or matters of a similar kind or category) has resulted in or is reasonably likely to result in:
 - (i) the consolidated net assets of the Target Group, taken as a whole at the end of any Quarter being reduced by at least \$5,000,000; or
 - (ii) the consolidated earnings before interest, tax, depreciation and amortisation of the Target Group being reduced by at least \$1,500,000 in any calendar year; or
 - (iii) the result that the business of the Target Group is unable to be carried on in substantially the same manner as carried on at the date of this deed,in each case other than changes, events, occurrences or matters:
 - (iv) expressly required by this deed or the Scheme;
 - (v) fairly disclosed to Bidder in the Disclosure Materials;
 - (vi) fairly disclosed by Target in any announcement to or filing with ASX or in a document lodged by Target with ASIC that is publicly available, in each case between 1 January 2014 and the Business Day prior to the date of this deed;
 - (vii) within the actual knowledge of any director, secretary or senior officer of the Bidder or a Bidder Group company who have been involved in the assessment and/or negotiation of the Transaction before the date of this deed (which does not include knowledge of the risk of an event, occurrence or matter happening);
 - (viii) consented to in writing by Bidder or resulting from the failure of the Bidder to provide any consent or approval under this deed;
 - (ix) which arise from:

- (A) changes in exchange rates or interest rates;
- (B) general economic, political or business conditions, including material adverse changes or major disruptions to, or fluctuations in, domestic or international financial markets, and acts of terrorism, war (whether or not declared), natural disaster or the like; or
- (C) changes to accounting standards, laws or policies of a Government Agency in Australia,

but excluding any change, event, circumstance, occurrence or matter which has a disproportionate effect on the Target Group, taken as a whole, as compared to other participants in the industries in which the Target Group operates; or

- (x) which relate to a Notified Claim;
- (b) in relation to a Notified Claim, a Claim Change occurs which (individually or in aggregate with any other Claim Change in connection with the Notified Claim) will, or is reasonably likely to, result in the Notified Claim as affected by the relevant Claim Change or Claim Changes reducing:
 - (i) the consolidated net assets of the Target Group, taken as a whole at the end of any Quarter by an amount set out in the Disclosure Letter; or
 - (ii) the consolidated earnings before interest, tax, depreciation and amortisation of the Target Group by an amount set out in the Disclosure Letter, in any calendar year; or
- (c) the Target Group's financial results for the financial half year ended 31 December 2016 report revenue or consolidated earnings before interest, tax, depreciation and amortisation of the Target Group lower than the thresholds agreed in the Disclosure Letter.

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

- (a) under which any member of the Target Group might reasonably be expected to make or receive total payments in excess of an amount equal to \$1 million per annum;
- (b) under which any member of the Target Group is lessee of or holds or operates any material property, real or tangible, owned by any other party;
- (c) concerning the acquisition or disposal of any securities, business, asset, interest in a joint venture, entity or undertaking, with a value which exceeds \$2 million, or the grant of any exclusive licence in respect of intellectual property;
- (d) for the acquisition by a member of the Target Group of material information technology or communications services, including any licence to use or exploit intellectual property, without which a Target Group member would be unable to fulfil its commitments to one or more customers or licensees, but excluding licences for commercially available off the shelf software having a value which exceeds \$1 million per annum;

- (e) for the supply or disclosure of source code to a person who is not a member of the Target Group (excluding any arrangements relating to escrow in the ordinary course or required under such contracts); or
- (f) containing a covenant not to compete granted by any member of the Target Group in favour of a third party that materially prohibits or restricts any member of the Target Group from engaging in business anywhere in the world.

Notice has the meaning given in clause 16.1(a).

Notified Claim means any claim identified in the Disclosure Letter, subject to the terms thereof.

Prescribed Occurrence means the occurrence of any of the following:

- (a) Target converting all or any of its shares into a larger or smaller number of shares;
- (b) any member of the Target Group resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming any of its shares;
- (c) any 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;
- (d) any member of the Target Group issuing shares, or granting a performance right or an option over its shares, or agreeing to make such an issue or grant such a performance right or an option;
- (e) any member of the Target Group issuing or agreeing to issue securities convertible into shares (including any issue or agreement to issue performance rights) or debt securities;
- (f) any member of the Target Group making, determining as payable or declaring any distribution of income or capital (whether by way of dividend, or capital reduction or otherwise and whether in cash or in specie);
- (g) any member of the Target Group disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;
- (h) any member of the Target Group ceasing, or threatening to cease, the whole or a material part of its business;
- (i) any member of the Target Group creating, granting or agreeing to any Encumbrance over any of the assets of any member of the Target Group, other than a lien which arises by operation of law, legislation or arises in the ordinary course of the Target Group's business;
- (j) any member of the Target Group resolving that it be wound up or the making of an application or order for the insolvent winding up or dissolution of a member of the Target Group other than where the application or order (as the case may be) is set aside within 14 days;
- (k) a liquidator or provisional liquidator of a member of the Target Group being appointed;

- (l) a court making an order for the winding up of a member of the Target Group;
- (m) an administrator of a member of the Target Group being appointed under the Corporations Act;
- (n) any member of the Target Group is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act unless that company has, or has access to, committed financial support from its parent entity such that it is able to pay its debts;
- (o) a member of the Target Group making any change to its constitution;
- (p) any member of the Target Group executing a deed of company arrangement;
- (q) a receiver, or a receiver and manager, being appointed in relation to the whole, or a substantial part, of the property of a member of the Target Group;
- (r) any member of the Target Group being deregistered as a company or otherwise dissolved other than on a solvent basis;
- (s) any member of the Target Group authorises, procures or commits or agrees to do any of the matters set out above,

but does not include any occurrence:

- (t) required or permitted by this deed or the Scheme or the transactions contemplated by either;
- (u) agreed to in writing by Bidder;
- (v) fairly disclosed in the Disclosure Materials; or
- (w) fairly disclosed by Target in an announcement made by Target to ASX, or a document lodged by it with ASIC that is publicly available, in each case between 1 January 2014 and the Business Day prior to the date of this deed.

Quarter means a calendar quarter, commencing on 1 January, 1 April, 1 July and 1 October.

Recipient has the meaning given in clause 3.2(d).

Recommendation has the meaning given in clause 7.1(a).

Record Date means 7:00pm on the fifth Business Day after the Effective Date of the Scheme.

Regulator's Draft has the meaning given in clause 5.2(e)(i).

Regulatory Matter has the meaning given in clause 3.2(c)(ii)(A).

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

Relevant Employee means any executive or employee of the Target Group whose annual base salary exceeds \$150,000 per annum, and any Target Director.

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

Representation and Warranty means a Bidder Representation and Warranty or Target Representation and Warranty.

Representative means, in respect of a party, an employee, agent, officer, director, adviser or financier of that party (or of a Related Body Corporate of that party), and, in the case of advisers and financiers, includes employees, officers and agents of the adviser or financier (as applicable).

RG 60 means Regulatory Guide 60 issued by ASIC and dated September 2011.

Scheme means a members' scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders, in the form of Attachment B, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act.

Scheme Booklet means the explanatory statement in respect of the Scheme to be prepared by Target pursuant to section 412 of the Corporations Act and in accordance with clause 5.2(d), and to be despatched to Target Shareholders in accordance with clause 5.2(j), which will contain (among other things) the Independent Expert's Report (or a concise version of that report), a notice of meeting in respect of the Scheme Meeting and a proxy form.

Scheme Meeting means the meeting of Target Shareholders ordered by the Court to be convened at the First Court Hearing.

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

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

Second Court Date means the first day on which an application made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme is heard (or if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard), with such hearing being the **Second Court Hearing**.

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

Sensitive Confidential Information has the meaning given in clause 3.2(d).

Share Register means the register of Target Shareholders maintained in accordance with the Corporations Act.

Share Splitting means the splitting by a holder of Shares into two or more parcels of Shares whether or not it results in any change in beneficial ownership of the Shares.

Specified Event means a change, circumstance, event, occurrence or matter that:

- (a) occurs after the date of this deed;
- (b) occurs before the date of this deed but is only announced or publicly disclosed after the date of this deed; or

- (c) will or is reasonably certain to occur after the date of this deed and which has not been publicly announced prior to the date of this deed.

Subsidiary has the meaning given to that term in Division 6 of Part 1.2 of the Corporations Act.

Substantial Holding has the meaning given to that term in Division 1 of Part 1.2 of the Corporations Act.

Superior Proposal means a bona fide Competing Proposal which in the determination of the Target Board acting in good faith in order to satisfy what the Target Board considers to be its fiduciary or statutory duties (after having taken advice from their legal advisers):

- (a) is capable of being completed in accordance with its terms, taking into account all financial, regulatory and other aspects of the proposal, including the ability of the proposing party to consummate the transactions contemplated by the Competing Proposal and its conditionality; and
- (b) would, if completed substantially in accordance with its terms, be reasonably likely to result in a transaction more favourable to Target Shareholders as a whole than the Transaction, taking into account all aspects of the Competing Proposal, including the identity, reputation and financial condition of the person making the proposal, consideration, conditionality, funding, certainty and timing of the proposal.

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 Break Fee means \$700,000 (exclusive of GST).

Target Director means a director of Target.

Target Group means, collectively, Target and each of its Related Bodies Corporate.

Target Indemnified Party means a director, officer, employee or adviser of a member of the Target Group.

Target Information means all the information in a Scheme Booklet other than the Bidder Information and the Independent Expert's Report.

Target Representations and Warranties means the representations and warranties set out in clause 10.3.

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

Target Shareholder means a holder of one or more Target Shares, as shown in the Share Register.

Tax means all forms of taxes, duties, imposts, charges, withholdings, rates, levies, clawbacks or other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines and other additional statutory charges incidental or related to the imposition, assessment or charge of those amounts.

Terminating Party has the meaning given in clause 3.4.

Termination Event has the meaning given in clause 3.4.

Termination Notice has the meaning given in clause 3.4.

Third Party means a person other than Bidder and its Associates.

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

Trading Day has the meaning given in the Listing Rules.

Transaction means the acquisition of Target by Bidder by means of the Scheme.

Transaction Implementation Committee means a committee to be made up of:

- (a) Martin Frick and Philip Barnett as representatives of Bidder and Iain Dunstan and Darius Coveney as representatives of Target; and
- (b) such other persons as the parties may agree from time to time.

Voting Intention has the meaning given in clause 7.1(b).

2 Interpretation

In this deed, the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words “include”, “including”, “such as”, “to avoid doubt” and similar expressions are not words of limitation and do not limit what else might be included.
- (f) A reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate or entity (as that term is defined in section 64A of the Corporations Act);
 - (ii) a thing (including a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or a party, schedule or attachment to, this deed (as applicable);

- (vi) this deed includes all schedules and attachments to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a Listing Rule and is a reference to that law as amended, consolidated or replaced;
 - (viii) an agreement (other than this deed) includes an undertaking or legally enforceable arrangement or understanding (whether or not in writing);
 - (ix) a time period includes the date referred to as that on which the period begins and the date referred to as that on which the period ends; and
 - (x) a monetary amount is in Australian dollars.
- (g) An agreement on the part of two or more persons binds them jointly and severally.
 - (h) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
 - (i) In determining the time of day, where relevant to this deed, the time of day is:
 - (i) for the purposes of giving or receiving Notice, the time of day where the party receiving Notice is located; or
 - (ii) for any other purpose under this deed, the time of day in the place where the party required to perform an obligation is located.
 - (j) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it.
 - (k) Any reference to time is to the time in Sydney, Australia.
 - (l) A reference to "fairly disclosed" means disclosed in sufficient detail and context that could reasonably be expected to allow a person experienced in transactions of the nature contemplated by this deed acting by and through its appropriate Representatives to understand the consequence of the disclosure.

Schedule 2 Target capital structure

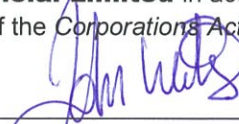
Ordinary Shares	Number of shares
Securities quoted on ASX	
Loan Funded Shares issued to CEO and CFO	18,857,144
LTIP Shares allocated to senior management (vested and unvested)	7,482,000 ¹
Gift Plan Shares allocated to staff	168,000
Treasury Shares	5,172,000
All other Ordinary Shares on issue	391,907,930
TOTAL	423,587,074

¹ A portion of the LTIP shares described above will become Treasury Shares to the extent they do not vest.

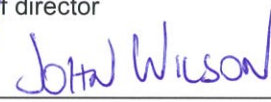
Execution page

Executed as a deed.

Signed, sealed and delivered by **Rubik Financial Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:



Signature of director



Name of director (print)



Signature of director/secretary

DARIUS COVENEY

Name of director/secretary (print)

SIGNED AND DELIVERED by)
..... as authorised)
representative for **TEMENOS GROUP**)
AG in the presence of:)
)
)
.....)
Signature of witness)
)
.....)
Name of witness (block letters))
)
)

.....
By executing this document the signatory warrants that the signatory is duly authorised to execute this document on behalf of **TEMENOS GROUP AG**

Execution page

Executed as a deed.

Signed, sealed and delivered by **Rubik Financial Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

SIGNED AND DELIVERED by *David ARNOTT and Max CHVARD* as authorised representative for **TEMENOS GROUP AG** in the presence of:



E. S. S. S.
Signature of witness

EMILIE ERARD
Name of witness (block letters)

[Signature]
By executing this document the signatory warrants that the signatory ^{is an} is duly authorised to execute this document on behalf of **TEMENOS GROUP AG**



Attachment A Timetable

Event	Target date
Regulator's Draft provided to ASIC	Tuesday, 7 March 2017
First Court Hearing	Thursday, 23 March 2017
Printing and despatch of Scheme Booklet	Friday, 24 March 2017
Scheme Meeting	Wednesday, 26 April 2017
Second Court Hearing	Tuesday, 2 May 2017
Effective Date	Wednesday, 3 May 2017
Record Date	Wednesday, 10 May 2017
Implementation Date	Thursday, 18 May 2017

Attachment B Scheme

DRAFT

Scheme of arrangement

Rubik Financial Limited (ACN 071 707 232)

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

Contents

	Page	
1	Defined terms and interpretation	1
1.1	Defined terms	1
1.2	Interpretation	1
2	Preliminary matters	1
3	Conditions	2
3.1	Conditions precedent	2
3.2	Conditions precedent and operation of clause 4	2
3.3	Certificates	2
3.4	End Date	2
4	Implementation of this Scheme	3
4.1	Lodgement of Court orders with ASIC	3
4.2	Transfer of Scheme Shares	3
5	Consideration	3
5.1	Entitlement to Consideration	3
5.2	Provision of Consideration	3
5.3	Joint holders	5
5.4	Cancellation and re-issue of cheques	5
5.5	Unclaimed monies	5
5.6	Orders of a court	5
5.7	Foreign resident capital gains withholding	6
6	Dealings in Target Shares	6
6.1	Determination of Scheme Shareholders	6
6.2	Share Register	6
7	Quotation of Target Shares	7
8	General Scheme provisions	7
8.1	Consent to amendments to this Scheme	7
8.2	Scheme Shareholders' agreements and warranties	7
8.3	Title to and rights in Scheme Shares	8

8.4	Appointment of sole proxy	8
8.5	Authority given to Target	9
8.6	Binding effect of this Scheme	9
9	General	9
9.1	Stamp duty	9
9.2	Consent	9
9.3	Enforcement of Deed Poll	10
9.4	Notices	10
9.5	Governing law and jurisdiction	10
9.6	Further action	10
9.7	No liability when acting in good faith	10
Schedule 1	— Dictionary	11

Parties

- 1 **Rubik Financial Limited** ACN 071 707 232 of Level 10, 85 Castlereagh Street, Sydney NSW 2000, Australia (**Target**)
- 2 Each person registered as a holder of fully paid ordinary shares in Target as at the Record Date (**Scheme Shareholders**)

The parties agree

1 Defined terms and interpretation

1.1 Defined terms

A term or expression starting with a capital letter which is defined in the dictionary in Schedule 1 has the meaning given to it in the dictionary.

1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this Scheme.

2 Preliminary matters

- (a) Target is an Australian public company limited by shares, and has been admitted to the official list of ASX.
- (b) Target Shares are quoted for trading on the ASX.
- (c) As at **[insert date]**, there were **[insert number]** Target Shares that are quoted for trading on the ASX.
- (d) Bidder is a public limited company listed on the SIX Swiss Exchange.
- (e) If this Scheme becomes Effective:
 - (i) Bidder must provide or procure the provision of the Consideration to Scheme Shareholders in accordance with this Scheme and the Deed Poll; and
 - (ii) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, will be transferred to Bidder and Target will enter the name of Bidder in the Share Register in respect of all the Scheme Shares.
- (f) Bidder and Target have entered into the Implementation Deed in respect of (among other things) the implementation of this Scheme.
- (g) This Scheme attributes actions to Bidder but does not itself impose any obligations on Bidder to perform those actions. By executing the Deed Poll, Bidder has agreed to perform the actions attributed to it under this Scheme. By executing the Deed Poll, Bidder agrees to perform its obligations under the Deed Poll, including payment of the Consideration in accordance with the terms of this Scheme.

3 Conditions

3.1 Conditions precedent

This Scheme is conditional on and will have no force or effect until and unless the following conditions precedent are satisfied:

- (a) all the conditions in clause 3.1 of the Implementation Deed (other than the condition in clause 3.1(a) 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 the Delivery Time;
- (b) neither the Implementation Deed nor the Deed Poll is terminated in accordance with its terms by the Delivery Time;
- (c) this Scheme is approved by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to Target and Bidder;
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme as are acceptable to Target and Bidder are satisfied or waived; and
- (e) the order of the Court made under section 411(4)(b) of the Corporations Act approving this Scheme comes into effect pursuant to section 411(10) of the Corporations Act.

3.2 Conditions precedent and operation of clause 4

The satisfaction of each condition of clause 3.1 of this Scheme is a condition precedent to the operation of clause 4 of this Scheme.

3.3 Certificates

- (a) Each of Target and Bidder will provide a certificate to the Court at the Second Court Hearing confirming (in respect of matters within their knowledge) whether or not the conditions precedent in clauses 3.1(a) and 3.1(b) above have been satisfied or waived as at the Delivery Time.
- (b) The certificates given by Target and Bidder constitute conclusive evidence that the conditions precedent in clauses 3.1(a) and 3.1(b) above have been satisfied or waived as at the Delivery Time.

3.4 End Date

This Scheme will lapse and be of no further force or effect and each of Bidder and Target will be released from any further obligation to take steps to implement the Scheme 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 before the Scheme becomes Effective, unless the Bidder and Target otherwise agree in writing.

4 Implementation of this Scheme

4.1 Lodgement of Court orders with ASIC

Provided the conditions precedent set out in clause 3.1 of this Scheme (other than the condition precedent in clause 3.1(e)) are satisfied, for the purposes of section 411(10) of the Corporations Act, Target must lodge with ASIC an office copy of the order made by the Court under section 411(4)(b) of the Corporations Act approving this Scheme as soon as possible, and in any event no later than 5:00pm on the Business Day following the day on which such office copy is received by Target or such later date as Target and Bidder agree in writing.

4.2 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Consideration in the manner contemplated by clause 5.2(a), the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, must be transferred to Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by Target as attorney and agent for Scheme Shareholders under clause 8.5), by:
 - (i) Target duly completing and executing the Scheme Transfer, duly executed on behalf of the Scheme Shareholders (as transferors), and delivering it to Bidder; and
 - (ii) Bidder duly executing the Scheme Transfer (as transferee), attending to the stamping of the Scheme Transfer (if required) and delivering it to Target for registration; and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.2(a), Target must enter, or procure the entry of, the name of Bidder in the Share Register in respect of all the Scheme Shares transferred to Bidder in accordance with this Scheme.

5 Consideration

5.1 Entitlement to Consideration

Subject to the terms of this Scheme, on the Implementation Date in consideration for the transfer to the Bidder of the Scheme Shares, each Scheme Shareholder will be entitled to \$0.1667 for each Scheme Share.

5.2 Provision of Consideration

- (a) Bidder will provide the Consideration by depositing in cleared funds an amount equal to the aggregate amount of the Consideration for all Scheme Shares into the Trust Account on the Business Day before the Implementation Date (provided that any interest on the amount so deposited (less bank fees and other charges) (**Accrued Interest**) will accrue for the benefit of Bidder).
- (b) Subject to Bidder having complied with clause 5.2(a), Target must, on the Implementation Date and from the Trust Account, pay to each Scheme Shareholder the Consideration attributable to that Scheme Shareholder based on

the number of Scheme Shares held by that Scheme Shareholder as at the Record Date, which obligation will be satisfied by Target:

- (i) where a Scheme Shareholder has, before the Record Date, made an election in accordance with the requirements of the Share 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 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 5.2(b)(i), dispatching, or procuring the dispatch of, a cheque drawn on an Australian bank in Australian currency for the relevant amount to the Scheme Shareholder by prepaid post to their Registered Address, such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with clause 5.3).
- (c) In the event that:
- (i) either:
 - (A) a Scheme Shareholder does not have a Registered Address; or
 - (B) Target as the trustee for the Scheme Shareholders believes that a Scheme Shareholder is not known at the Scheme Shareholder's Registered Address,and no account has been notified in accordance with clause 5.2(b)(i) or a deposit into such an account is rejected or refunded; or
 - (ii) a cheque issued under clause 5.2(b) has been cancelled in accordance with clause 5.4(a),

Target as the trustee for the Scheme Shareholders may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of Target (**Separate Account**) to be held until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 1995* (NSW). 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 in accordance with the *Unclaimed Money Act 1995* (NSW).

Until such time as the amount is dealt with in accordance with the *Unclaimed Money Act 1995* (NSW), 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 Bidder. An amount credited to the Separate Account or Trust Account (as applicable) is to be treated as having been paid to the Scheme Shareholder when credited to the Separate Account or Trust Account (as applicable). Target must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.

- (d) 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 be paid by Target as the trustee for the Scheme Shareholders to Bidder following the satisfaction of Target's obligations as the trustee for the Scheme Shareholders under this clause 5.2.

- (e) Target must pay any Accrued Interest to any account nominated by Bidder following satisfaction of Target's obligations under clause 5.2(b) (and, in any event, on the Implementation Date).

5.3 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to the holder whose name appears first in the Share Register as at the Record Date; and
- (b) any other document required to be sent under this Scheme will be forwarded to the holder whose name appears first in the Share Register as at the Record Date.

5.4 Cancellation and re-issue of cheques

- (a) Target may cancel a cheque issued under clause 5.2(b) if the cheque:
 - (i) is returned to Target; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Target (or the Share Registry) (which request may not be made until the date which is 5 Business Days after the Implementation Date), a cheque that was previously cancelled under clause 5.4(a) must be reissued.

5.5 Unclaimed monies

- (a) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Consideration which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).
- (b) Any interest or other benefit accruing from unclaimed Consideration will be to the benefit of Bidder.

5.6 Orders of a court

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

- (a) requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which sum would otherwise be payable to that Scheme Shareholder by Target in accordance with this clause 5, then Target will be entitled to make that payment (or procure that it is made) in accordance with that order or direction; or
- (b) prevents Target from making a payment to a particular Scheme Shareholder in accordance with clause 5.2(b), or such payment is otherwise prohibited by applicable law, 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 this clause 5 is permitted by that order or otherwise by law.

5.7 Foreign resident capital gains withholding

If Bidder determines, acting reasonably and in good faith and following consultation with the Target, that it must pay an amount to the Commissioner pursuant to Subdivision 14-D of Schedule 1 to the *Tax Administration Act 1953* (Cth) (**TAA**) with respect to the acquisition of the Scheme Shares from a Scheme Shareholder, Bidder will, for any such Scheme Shareholder:

- (a) determine the amount to be paid to the Commissioner (**Payment Amount**);
- (b) remit the Payment Amount to the Commissioner within the time required under the TAA; and
- (c) reduce the amount of Consideration payable to that Scheme Shareholder by the Payment Amount for the purposes of the Deed Poll, this Scheme and the Implementation Deed.

For the avoidance of doubt, Bidder will, for the purposes of the Deed Poll, this Scheme and the Implementation Deed, be deemed to have satisfied its obligations to pay the Consideration to a Scheme Shareholder if the amount paid to the Scheme Shareholder is the amount of the Consideration that would have otherwise been payable to the Scheme Shareholder pursuant to the Scheme, less the Payment Amount for that Scheme Shareholder.

6 Dealings in Target Shares

6.1 Determination of Scheme Shareholders

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

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

and Target must 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 on or after the Record Date, or received prior to the Record Date but not in registrable or actionable form.

6.2 Share Register

- (a) Target must register registrable transmission applications or transfers of Target Shares in accordance with clause 6.1(b) at or before the Record Date, provided that nothing in this clause 6.2(a) 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' (as defined in the operating rules of ASX).
- (b) If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them after the Record Date otherwise than

pursuant to this Scheme, and any attempt to do so will have no effect and Target will be entitled to disregard any such disposal, purported disposal or agreement.

- (c) For the purpose of determining entitlements to the Consideration, Target must maintain the Share Register in accordance with the provisions of this clause 6.2 until the Consideration has been paid to the Scheme Shareholders. The Share Register in this form will solely determine entitlements to the Consideration.
- (d) All statements of holding for Target Shares (other than statements of holding in favour of Bidder) will cease to have effect after the Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Share Register (other than entries in respect of Bidder) will cease to have effect except as evidence of entitlement to the Consideration in respect of the Target Shares relating to that entry.
- (e) As soon as possible after the Record Date, and in any event within one Business Day after the Record Date, Target will ensure that details of the names, Registered Addresses and holdings of Target Shares for each Scheme Shareholder as shown in the Share Register as at the Record Date are available to Bidder in the form Bidder reasonably requires.

7 Quotation of Target Shares

- (a) Target will apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date.
- (b) Target will apply:
 - (i) for termination of the official quotation of Target Shares on the ASX; and
 - (ii) to have itself removed from the official list of ASX,

in each case with effect on and from the close of trading on the trading day immediately following, or shortly after, the Implementation Date.

8 General Scheme provisions

8.1 Consent to amendments to this Scheme

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

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

8.2 Scheme Shareholders' agreements and warranties

- (a) Each Scheme Shareholder:
 - (i) agrees to the transfer of their Target Shares together with all rights and entitlements attaching to those shares in accordance with this Scheme;

- (ii) agrees to the variation, cancellation or modification of the rights attached to their Target Shares constituted by or resulting from this Scheme; and
 - (iii) acknowledges that this Scheme binds Target and all Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting).
- (b) Each Scheme Shareholder is taken to have warranted to Bidder, and appointed and authorised Target as its attorney and agent to warrant to Bidder, that:
- (i) all their Scheme Shares (including any rights and entitlements attaching to their Scheme Shares) which are transferred under this Scheme will, at the time of transfer of them to Bidder, be fully paid and free from all:
 - (A) mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Properties Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise; and
 - (B) restrictions on transfer of any kind; and
 - (ii) they have full power and capacity to transfer their Scheme Shares to Bidder together with any rights and entitlements attaching to those shares.

8.3 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme will, at the time of transfer of them to Bidder, vest in Bidder free from all:
 - (i) mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Properties Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise; and
 - (ii) restrictions on transfer of any kind.
- (b) Upon the Scheme becoming Effective, Bidder will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending registration by Target of Bidder in the Share Register as the holder of the Scheme Shares. Bidder's entitlement to be registered in the Share Register as the holder of the Scheme Shares arises on the Implementation Date in accordance with clause 4.2.

8.4 Appointment of sole proxy

Upon the Scheme becoming Effective and until Target registers Bidder as the holder of all Scheme Shares in the Share Register:

- (a) each Scheme Shareholder 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 Scheme Shares registered in their name and sign any shareholders' resolution whether in person, by proxy or by corporate representative;

- (b) no Scheme Shareholder may itself attend or vote at any shareholders' meetings or sign any shareholders' resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.4(a));
- (c) each Scheme Shareholder must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and
- (d) each Scheme Shareholder acknowledges and agrees that in exercising the powers conferred by clause 8.4(a), Bidder and any director, officer, secretary or agent nominated by Bidder under that clause may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

8.5 Authority given to Target

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

- (a) enforcing the Deed Poll against Bidder; and
- (b) executing any document, or doing or taking any other act, necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it, including executing the Scheme Transfer,

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

8.6 Binding effect of this Scheme

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

9 General

9.1 Stamp duty

Bidder will:

- (a) pay all stamp duty (if any) and any related fines and penalties payable on or in respect of the transfer by the Scheme Shareholders of the Scheme Shares to Bidder pursuant to this Scheme or the Deed Poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 9.1(a).

9.2 Consent

Each Scheme Shareholder consents to Target doing all things necessary or incidental to give full effect to the implementation of this Scheme and the transactions contemplated by it.

9.3 Enforcement of Deed Poll

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

9.4 Notices

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

9.5 Governing law and jurisdiction

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

9.6 Further action

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

9.7 No liability when acting in good faith

None of Target, Bidder, or any of their respective directors, officers, secretaries or employees, will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

1 Dictionary

Accrued Interest has the meaning given in clause 5.2(a).

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market operated by it known as the “Australian Securities Exchange”.

Bidder means Temenos Group AG.

Business Day has the meaning given in the Listing Rules.

CHES means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Limited and ASX Clear Pty Limited.

Commissioner means the Commissioner of Taxation.

Consideration means, in respect of each Scheme Share, A\$0.1667.

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

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

Deed Poll means the deed poll dated [insert] under which Bidder covenants in favour of Scheme Shareholders to provide the Consideration in accordance with the terms of this Scheme.

Delivery Time means 8.00am on the Second Court Date, or if the commencement of the hearing is adjourned, 2 hours before the commencement of the adjourned hearing, of the court to approve the Scheme in accordance with section 411(4)(b) of the Corporations Act is due to commence.

Effective means 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.

End Date means the date that is 6 months after the date of this deed or such later date as Bidder and Target agree in writing.

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal, statutory 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, or any other federal, state, provincial, local or other 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 and the Takeovers Panel).

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

Implementation Deed means the scheme implementation deed dated 14 February 2017 between Bidder and Target relating to (among other things) the implementation of this Scheme.

Listing Rules means the official listing rules of ASX.

Record Date means 7:00pm on the fifth Business Day after the Effective Date of the Scheme.

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

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

Target Shareholder means a holder of one or more Target Shares, as shown in the Share Register.

Scheme means this scheme of arrangement subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Bidder and Target.

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

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

Scheme Shareholder means a Target Shareholder as at the 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 on which an application made to the Court for an order under section 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), with such hearing being the **Second Court Hearing**.

Share Register means the register of Target Shareholders maintained in accordance with the Corporations Act.

Share Registry means Computershare Investor Services Pty Limited.

Trust Account means an Australian dollar denominated trust account which attracts interest at a commercial rate and is operated by Target as trustee for the Scheme Shareholders, details of which Target must notify to Bidder no later than 5 Business Days before the Implementation Date. To avoid doubt, any Accrued Interest on funds in the Trust Account will not be held by Target on trust for the Scheme Shareholders but rather will be held by Target on trust for Bidder.

2 Interpretation

In this Scheme, the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this Scheme.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words “include”, “including” and similar expressions are not words of limitation and do not limit what else might be included.
- (f) A reference to:
 - (i) a person includes a natural person, estate of a natural person, partnership, joint venture, government agency, association, corporation or other body corporate or entity (as that term is defined in section 64A of the Corporations Act);
 - (ii) a thing (including a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or a party, schedule or attachment to, this Scheme (as applicable);
 - (vi) this Scheme includes all schedules to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a Listing Rule and is a reference to that law as amended, consolidated or replaced;
 - (viii) an agreement (other than this Scheme) includes an undertaking or legally enforceable arrangement or understanding (whether or not in writing);
 - (ix) a time period includes the date referred to as that on which the period begins and the date referred to as that on which the period ends; and
 - (x) a monetary amount is in Australian dollars.

Attachment C Deed Poll

Deed poll

Temenos Group AG

In favour of each person registered as a holder of fully paid ordinary shares in Rubik Financial Limited (ACN 071 707 232) as at the Record Date

Contents

	Page	
1	Defined terms and interpretation	1
1.1	Defined terms	1
1.2	Interpretation	1
1.3	Nature of deed poll	1
2	Conditions	1
2.1	Conditions	1
2.2	Termination	2
2.3	Consequences of termination	2
3	Scheme obligations	2
4	Warranties	2
5	Continuing obligations	3
6	Further assurances	3
7	General	3
7.1	Stamp duty	3
7.2	Notices	3
7.3	Cumulative rights	4
7.4	Waiver and variation	4
7.5	Governing law and jurisdiction	4
7.6	Assignment	5
7.7	Counterparts	5
7.8	Further action	5
7.9	Foreign resident capital gains withholding	5
	Execution page	6

Date:

Parties

- 1 **Temenos Group AG** of 2 rue de l'Ecole-de-Chimie, 1205 Geneva, Switzerland (**Bidder**)
 - 2 In favour of each person registered as a holder of fully paid ordinary shares in Rubik Financial Limited (ACN 071 707 232) (**Target**) as at the Record Date (**Scheme Shareholders**)
-

Background

- A Bidder and Target have entered into the Implementation Deed, under which Bidder is to pay the Consideration and acquire all Scheme Shares held by Scheme Shareholders under the Scheme, and also under which Bidder has agreed to enter into this deed poll.
- B Bidder is entering into this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to procure and undertake the actions attributed to Bidder under the Scheme.

The parties agree

1 Defined terms and interpretation

1.1 Defined terms

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

1.2 Interpretation

Clause 2 of Schedule 1 of the Scheme applies to the interpretation of this deed poll, except that references to 'Scheme' are to be read as references to 'deed poll'.

1.3 Nature of deed poll

Bidder acknowledges and agrees 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 irrevocably appoints Target and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this deed poll against Bidder.
-

2 Conditions

2.1 Conditions

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

2.2 Termination

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

- (a) the Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme does not become Effective by the End Date.

2.3 Consequences of termination

If this deed poll is terminated under clause 2.2, in addition and without prejudice to any other available rights, powers or remedies available to Scheme Shareholders:

- (a) Bidder is released from its obligations to further perform this deed poll; and
- (b) each Scheme Shareholder retains the rights they have against Bidder in respect of any breach of this deed poll which occurs before it was terminated.

3 Scheme obligations

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

- (a) deposit (or procure the deposit of) the aggregate amount of the Consideration for all Scheme Shares in cleared funds into a trust account operated by Target as trustee for the Scheme Shareholders, by no later than the Business Day before the Implementation Date (except that the amount of any interest on the amount deposited will be to Bidder's account); and
- (b) undertake all other actions attributed to it under the Scheme,

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

4 Warranties

The Bidder represents and warrants that:

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

5 Continuing obligations

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

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

6 Further assurances

Bidder will do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.

7 General

7.1 Stamp duty

Bidder must:

- (a) pay all stamp duty (if any) and any related fines and penalties payable on or in respect of the transfer by the Scheme Shareholders of the Scheme Shares to Bidder pursuant to the Scheme or this deed poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 7.1(a).

7.2 Notices

Any notice or other communication to Bidder in connection with this deed poll must be:

- (a) in legible writing in English;
- (b) signed by the person making the communication or that person's duly authorised agent; and
- (c) given by hand delivery or pre-paid post in accordance with the details set out below:

Bidder

Attention: Legal Department
Address: 2 rue de l'Ecole-de-Chimie,
1205 Geneva
Switzerland

- (d) Subject to clause 7.2(e), any notice or other communication given in accordance with clause 7.2 will be deemed to have been duly given as follows:
 - (i) if delivered by hand, on delivery; and
 - (ii) if sent by pre-paid post, on receipt.

- (e) Any notice or other communication that, pursuant to clause 7.2(d), would be deemed to be given:
 - (i) other than on a Business Day or after 5:00pm on a Business Day is regarded as given at 9:00am on the following Business Day; and
 - (ii) before 9:00am on a Business Day is regarded as given at 9:00am on that Business Day,

where references to time are to time in the place the recipient is located.

7.3 Cumulative rights

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

7.4 Waiver and variation

- (a) A party waives a right under this deed poll only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) Failure to exercise or enforce, a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed poll by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed poll.
- (c) A provision of this deed poll may not be varied unless:
 - (i) if before the First Court Date (as defined in the Implementation Deed), the variation is agreed to by Target in writing; or
 - (ii) if on or after the First Court Date (as defined in the Implementation Deed), the variation is agreed to by Target in writing and the Court indicates that the variation would not of itself preclude approval of the Scheme,

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

7.5 Governing law and jurisdiction

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

7.6 Assignment

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

7.7 Counterparts

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

7.8 Further action

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

7.9 Foreign resident capital gains withholding

If Bidder determines, acting reasonably and in good faith and following consultation with the Target, that it must pay an amount to the Commissioner pursuant to Subdivision 14-D of Schedule 1 to the *Tax Administration Act 1953* (Cth) (**TAA**) with respect to the acquisition of the Scheme Shares from a Scheme Shareholder, Bidder will, for any such Scheme Shareholder:

- (a) determine the amount to be paid to the Commissioner (**Payment Amount**);
- (b) remit the Payment Amount to the Commissioner within the time required under the TAA; and
- (c) reduce the amount of Consideration payable to that Scheme Shareholder by the Payment Amount for the purposes of the Deed Poll, this Scheme and the Implementation Deed.

For the avoidance of doubt, Bidder will, for the purposes of this Deed Poll, the Scheme and the Implementation Deed, be deemed to have satisfied its obligations to pay the Consideration to a Scheme Shareholder if the amount paid to the Scheme Shareholder is the amount of the Consideration that would have otherwise been payable to the Scheme Shareholder pursuant to the Scheme, less the Payment Amount for that Scheme Shareholder.

Execution page

Executed as a deed poll

SIGNED AND DELIVERED by)
..... as authorised)
representative for **TEMENOS GROUP**)
AG in the presence of:)
)
)
.....)
Signature of witness)
)
)
.....)
Name of witness (block letters))
)
)

.....
By executing this document the
signatory warrants that the signatory is
duly authorised to execute this
document on behalf of **TEMENOS
GROUP AG**