

## Scheme Implementation Agreement

---

Date: 19 December 2016

Spicers Limited ACN 005 146 350

The Trust Company (RE Services) Limited ACN 003 278 831 In its personal capacity and  
as responsible entity for the Paperlinx SPS Trust

**Arnold Bloch Leibler**  
Lawyers and Advisers

Level 21 333 Collins Street | **Melbourne** | Victoria 3000 Australia  
Level 24 Chifley Tower 2 Chifley Square | **Sydney** | NSW 2000 Australia

[www.abl.com.au](http://www.abl.com.au)

Ref: JDL:JAV 011902308  
ABL/5356395v7



# TABLE OF CONTENTS

Page no.

<b>1</b>	<b>Definitions and interpretation .....</b>	<b>3</b>
1.1	Definitions.....	3
1.2	Interpretation .....	14
1.3	Best and reasonable endeavours.....	14
1.4	Further assurances.....	15
<b>2</b>	<b>Proposal .....</b>	<b>15</b>
2.1	Proposal of Trust Scheme .....	15
2.2	Proposal of Shareholder Meeting .....	15
2.3	Compliance with obligations .....	15
<b>3</b>	<b>Transaction steps.....</b>	<b>15</b>
3.1	Shareholder Meeting and Trust Scheme .....	15
3.2	Treatment of Ineligible Overseas Holders .....	16
3.3	Deferral of litigation.....	16
3.4	Releases .....	16
3.5	Saving of indemnities .....	16
3.6	Timetable.....	16
<b>4</b>	<b>Post-Completion Steps.....</b>	<b>17</b>
4.1	Issue of Holding Statements.....	17
4.2	Deregistration of SPS Trust and Change of Trustee .....	17
<b>5</b>	<b>Obligations in relation to the Shareholder Meeting and Trust Scheme .....</b>	<b>17</b>
5.1	Obligations of all parties .....	17
5.2	Additional obligations of TrustCo .....	18
5.3	Additional obligations of Spicers.....	19
<b>6</b>	<b>Conditions Precedent and Pre-Implementation Steps.....</b>	<b>22</b>
6.1	Conditions Precedent .....	22
6.2	Benefit and waiver of Conditions Precedent.....	23
6.3	Best endeavours and co-operation.....	24
6.4	Notifications.....	24
6.5	Failure of Conditions Precedent .....	24
6.6	Certificate in relation to Conditions Precedent.....	25
<b>7</b>	<b>Conduct of business .....</b>	<b>25</b>
<b>8</b>	<b>Board matters .....</b>	<b>25</b>
8.1	Spicers Board recommendation .....	25
8.2	TrustCo Board recommendations.....	26
8.3	Changes to Spicers board composition .....	26
<b>9</b>	<b>Court proceedings.....</b>	<b>27</b>
9.2	Appeals .....	27
9.3	Defence of proceedings.....	27
<b>10</b>	<b>Consideration.....</b>	<b>27</b>
<b>11</b>	<b>Confidentiality.....</b>	<b>28</b>
<b>12</b>	<b>Representations and Warranties .....</b>	<b>28</b>
12.1	Representations and warranties.....	28
12.2	Reliance by parties .....	29
12.3	Indemnities .....	29
12.4	Notifications.....	30
12.5	Repetition of Warranties .....	30
12.6	Status of representations and warranties .....	30
12.7	Survival of indemnities.....	30
<b>13</b>	<b>Public announcements .....</b>	<b>30</b>
13.1	Announcement of the Scheme .....	30
13.2	Other public announcements.....	30
13.3	Required announcement .....	31

<b>14</b>	<b>Termination .....</b>	<b>31</b>
14.1	Termination.....	31
14.2	Effect of termination.....	31
<b>15</b>	<b>Exclusivity Period.....</b>	<b>32</b>
15.1	No-shop .....	32
15.2	No-talk and no due diligence .....	32
15.3	Notification of approaches .....	32
15.4	Fiduciary exception to no-talk, no-due diligence and notification provisions .....	33
<b>16</b>	<b>GST.....</b>	<b>33</b>
16.1	Interpretation .....	33
16.2	Taxable supplies.....	33
16.3	Reimbursements .....	33
16.4	Tax invoice .....	33
16.5	Amounts exclusive of GST .....	33
<b>17</b>	<b>Notices.....</b>	<b>34</b>
17.1	Notices .....	34
17.2	Notices sent by email .....	34
17.3	Receipt of Notices sent by email .....	35
<b>18</b>	<b>TrustCo Limitation of Liability .....</b>	<b>35</b>
<b>19</b>	<b>General .....</b>	<b>36</b>
19.1	Entire agreement .....	36
19.2	Paramountcy of document.....	36
19.3	No waiver.....	36
19.4	Remedies cumulative .....	36
19.5	Further assurances.....	36
19.6	Amendment .....	37
19.7	Assignment.....	37
19.8	No merger.....	37
19.9	Costs .....	37
19.10	Severability of provisions.....	37
19.11	Governing law and jurisdiction.....	37
19.12	Attorney .....	37
19.13	Counterparts.....	38
19.14	Electronic delivery of document.....	38
	<b>SCHEDULE 1 - TIMETABLE .....</b>	<b>39</b>
	<b>SCHEDULE 2 - TRUST SCHEME DEED POLL .....</b>	<b>40</b>
	<b>SCHEDULE 3 - SUPPLEMENTAL DEED.....</b>	<b>41</b>
	<b>SCHEDULE 4 – DEED OF RETIREMENT AND APPOINTMENT OF TRUSTEE .....</b>	<b>2</b>

**THIS AGREEMENT** is made on 19 December 2016

## **PARTIES**

**SPICERS LIMITED** (ACN 005 146 350)  
of 155 Logis Boulevard, Dandenong South, Victoria, 3175  
("Spicers")

and

**THE TRUST COMPANY (RE SERVICES) LIMITED** (ACN 003 278 831)  
of 123 Pitt St, Sydney, NSW, 2000  
in its personal capacity and as responsible entity for the Paperlinx SPS Trust ARSN 123 839 814  
("TrustCo")

## **BACKGROUND**

- A Spicers and TrustCo have agreed to implement the Trust Scheme on and subject to the terms and conditions of this Agreement.
- B The Trust Scheme will involve the transfer to Spicers of all SPS Units in the SPS Trust held by Eligible Unitholders in consideration for the provision of 545 fully paid ordinary shares in the capital of Spicers every one SPS Unit.
- C Spicers will seek Shareholder approval for the issuance of 1,431,386,910 Shares on the terms of the Trust Scheme.
- D Spicers and TrustCo have agreed certain other matters in connection with the Trust Scheme as set out in this Agreement.

## **AGREED TERMS**

### **1 Definitions and interpretation**

---

#### **1.1 Definitions**

In this Agreement, unless the context requires otherwise:

**"ACCC"** means the Australian Competition and Consumer Commission.

**"Adviser"** means, in relation to an entity, a person who in the ordinary course of its business provides services as a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant and who has been engaged in that capacity in connection with the transactions contemplated by the Trust Scheme.

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

**"ASX"** means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it.

**"ATO Ruling"** means a ruling from the Australian Tax Office regarding the taxation impact of the Trust Scheme on Spicers and/or any of its Related Entities.

**"Bank"** means a corporation authorised by law to carry on the general business of banking in Australia.

**"Business Day"** means a day on which Banks are open for general banking business in Melbourne, excluding Saturdays, Sundays and public holidays.

**"Claim"** means any allegation, debt, cause of action, Liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

**"Competing Proposal"** means any bona fide proposed transaction or arrangement that is similar to the Trust Scheme or any other proposal or arrangement (including any takeover bid, scheme of arrangement, share or asset sale, capital reduction or buy back, equity or equity-linked raising or recapitalisation, joint venture or dual listed company structure) under which a third party will or may (either individually or collectively with other persons), if the proposal or arrangement is entered into or completed, subject to satisfaction of conditions:

- (a) acquire a relevant interest in, become the holder of, or otherwise acquire, have a right to acquire or have an economic interest, directly or indirectly, in 20% or more of the Shares or Units;
- (b) acquire control (as defined in section 50AA of the Corporations Act) of any Group member;
- (c) acquire (whether directly or indirectly) or become the holder of, or otherwise acquire, have a right to acquire or have an economic interest in all or a substantial part of the assets or business of any Group member; or
- (d) otherwise acquire or merge with any Group member.

**"Conditions Precedent"** means the conditions precedent set out in clause 6.1.

**"Controller"** means, in relation to a person's property:

- (a) a receiver or receiver and manager of that property; or
- (b) anyone else who (whether or not as agent for the person) is in possession, or has control of that property to enforce an Encumbrance.

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

**"Court"** means the Supreme Court of New South Wales or such other court of competent jurisdiction as Spicers and TrustCo may agree in writing.

**"Deed of Retirement and Appointment of Trustee"** means a deed pursuant to which TrustCo retires as trustee of the SPS Trust and appoints a Spicers' Subsidiary nominated by Spicers as the new trustee of the SPS Trust between TrustCo and Spicer's nominee, substantially in the form contained in Schedule 4.

**"Effective"** means, when used in relation to the Trust Scheme, the Supplemental Deed taking effect pursuant to section 601GC of the Corporations Act.

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

**"Eligible Unitholder"** means a registered holder of SPS Units immediately following the close of registers on the Record Date, but does not include Spicers or any of its Related Entities in respect of any Units held by such parties.

**"Encumbrance"** means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement. Claim,

covenant, profit a prendre, easement or any other security arrangement or any other arrangement having the same effect.

**"End Date"** means 30 June 2017 or such other date agreed in writing between the parties.

**"Exclusivity Period"** means the period commencing on the date of this Agreement and ending on the earlier of:

- (a) the date this Agreement is terminated in accordance with its terms; and
- (b) the Effective Date.

**"First Court Date"** means the first day of hearing of an application made to the Court by TrustCo for the First Judicial Advice or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**"First Judicial Advice"** means confirmation from the Supreme Court of New South Wales pursuant to section 63 of the *Trustee Act 1925* (NSW), that TrustCo would be justified in convening the Trust Scheme Meeting and proceeding on the basis that amending the constitution of the SPS Trust to facilitate implementation of the Trust Scheme would be within the powers of alteration conferred by the constitution of the SPS Trust and section 601GC of the Corporations Act.

**"Governmental Agency"** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister (including the Commonwealth Treasurer), ASIC, the ACCC, the Australian Taxation Office, ASX and any regulatory organisation established under statute or any stock exchange.

**"Group"** means each of Spicers, the SPS Trust, TrustCo (acting in its capacity as responsible entity of the SPS Trust), and each of their respective Subsidiaries.

**"Guidance Note 15"** means the document titled *"Guidance Note 15: Trust Scheme Mergers"* issued by the Takeovers Panel.

**"Implementation Date"** means the third Business Day following the Record Date or such later Business Day as the parties may agree.

**"Independent Expert"** means:

- (a) in the case of Spicers' Shareholder Meeting, the independent expert to be appointed by Spicers to prepare the relevant Independent Expert's Report; and
- (b) in the case of the Trust Scheme, the independent expert to be appointed by TrustCo to prepare the relevant Independent Expert's Report.

**"Independent Expert's Report"** means:

- (a) in the case of the Shareholder Meeting, the report prepared by the relevant Independent Expert to be provided to Shareholders on whether, in the opinion of the relevant Independent Expert, the Shareholder Resolutions are in the best interests of Shareholders; and
- (b) in the case of the Trust Scheme, the report prepared by the relevant Independent Expert to be provided to Unitholders on whether, in the opinion of the relevant Independent Expert, the Trust Scheme is fair and reasonable and in the best interests of Unitholders (other than Spicers and any of its Related Entities).

**"Ineligible Overseas Holder"** means a holder of SPS Units who following the close of registers on the Record Date has a registered address which is outside Australia and its

external territories or New Zealand unless TrustCo and Spicers are satisfied that Spicers is not prevented from lawfully issuing Shares to such Unitholder, either unconditionally or after compliance with such conditions as TrustCo and Spicers regard as acceptable.

**“Insolvency Event”** means the occurrence of any of the following events in relation to any person:

- (a) the person becomes insolvent as defined in the Corporations Act, states that it is insolvent or is presumed to be insolvent under an applicable law;
- (b) the person is wound up, dissolved or declared bankrupt;
- (c) the person becomes an insolvent under administration as defined in the Corporations Act;
- (d) a liquidator, provisional liquidator, Controller, administrator, trustee for creditors, trustee in bankruptcy or other similar person is appointed to, or takes possession or control of, any or all of the person’s assets or undertaking;
- (e) the person enters into or becomes subject to:
  - (i) any arrangement or composition with one or more of its creditors or any assignment for the benefit of one or more of its creditors; or
  - (ii) any re-organisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (f) an application or order is made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken which is preparatory to or could result in any of (b), (c), (d) or (e) above;
- (g) the person is taken, under section 459F(1) of the Corporations Act, to have failed to comply with a statutory demand;
- (h) the person suspends payment of its debts, ceases or threatens to cease to carry on all or a material part of its business or becomes unable to pay its debts when they fall due; or
- (i) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the other paragraphs of this definition,

unless the event occurs as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved in writing by the other party.

**“IOH Sale Period”** means the period of time agreed between the parties during which the IOH Transferee must sell the IOH Shares issued to it in accordance with the IOH Transferee Deed.

**“IOH Transferee”** means the party that holds an Australian financial services licence issued by ASIC, as further described in clause 3.2.

**“IOH Transferee Deed”** means a deed or letter agreement to be entered into between the IOH Transferee and Spicers, which includes provisions substantially in accordance with those referred to in clause 3.2(b) and the Supplemental Deed.

**“IOH Shares”** means the Trust Scheme Consideration issued by Spicers to the IOH Transferee in respect of the Units held by Ineligible Overseas Holders on the Record Date.

**“Judicial Advice”** means the:

- (a) First Judicial Advice; and
- (b) Second Judicial Advice.

**“Liability”** means all costs (including any Tax), charges, losses, damages, expenses, liabilities of any kind, legal costs incurred in defending any proceeding or appearing before any court, tribunal, Governmental Agency or other body.

**“Listing Rules”** means the official listing rules of ASX as amended from time to time.

**“Meeting Materials”** means the:

- (a) Shareholder Meeting Materials; and
- (b) Trust Scheme Booklet.

**“Meeting Resolutions”** means the:

- (a) Shareholder Resolutions; and
- (b) Trust Scheme Resolutions.

**“Meetings”** means the:

- (a) Shareholder Meeting; and
- (b) Trust Scheme Meeting.

**“Notices of Meeting”** means the:

- (a) notice convening the Shareholder Meeting; and
  - (b) notice convening the Trust Scheme Meeting,
- together with the proxy forms for those meetings.

**“Record Date”** means:

- (a) the 2nd Business Day following the Effective Date; or
- (b) such later date as Spicers and TrustCo may agree in writing.

**“Regulatory Approval”** means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Governmental Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

**“Related Body Corporate”** has the meaning given to that term by section 9 of the Corporations Act.

**“Related Entity”** has the meaning given to that term in section 9 of the Corporations Act.

**“Sale Proceeds”** means, in respect of each Ineligible Overseas Holder, an amount equal to the average price at which the IOH Shares are sold by the IOH Transferee in accordance with the IOH Transfer Deed (after deducting any applicable brokerage, stamp duty and other taxes), multiplied by the number of the number of IOH Shares that the Ineligible Overseas Holder would otherwise have been entitled to receive had they not been an Ineligible Overseas Holder (subject to rounding to the nearest whole sent or, if the amount calculated is exactly half a cent, subject to rounding down to the nearest whole cent).



**“Second Court Date”** means the first day on which an application to the Court by TrustCo for the Second Judicial Advice or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned or appealed application is heard.

**“Second Judicial Advice”** means confirmation from the Supreme Court of New South Wales that, subject to the Trust Scheme Resolutions being approved at the Trust Scheme Meeting, TrustCo would be justified in doing all things and taking all necessary steps to effect the Trust Scheme.

**“Share Registry”** means the registry engaged by Spicers, being Computershare Investor Services Pty Limited.

**“Shareholder Meeting”** means the extraordinary general meeting of the Shareholders convened by Spicers to consider the Shareholder Resolutions and includes any adjournment of that meeting.

**“Shareholder Meeting Materials”** means the meeting materials despatched by Spicers to Shareholders in relation to the Shareholder Meeting and which must include a copy of this Agreement or a summary of it, the Independent Expert’s Report, and the Notice of Meeting.

**“Shareholder Resolutions”** means the resolutions to be put to the Shareholders of Spicers at the Shareholder Meeting by Spicers, including:

- (a) a resolution for the purposes of Listing Rule 7.1 to permit the issuance of the Trust Scheme Consideration; and
- (b) any other resolution required under the Listing Rules or the Corporations Act.

**“Shareholders”** means the registered holders of Shares in the capital of Spicers.

**“Shares”** means full paid ordinary shares in the capital of Spicers.

**“Specified Matters”** means:

- (a) the SPS Trust Matters; and
- (b) the Spicers Matters.

**“Spicers Indemnified Parties”** means Spicers each of its officers, Advisors, employees and representatives.

**“Spicers Information”** means information about Spicers, the Group and the Trust Scheme provided by or on behalf of Spicers to TrustCo or Unitholders in relation to the Trust Scheme Resolutions.

**“Spicers Matters”** means the management and operation of the Spicers business in the period from the date of the SPS Trust to the completion date of the Trust Scheme.

**“Spicers Offer Document”** means a prospectus issued by Spicers in accordance with Chapter 6D of the Corporations Act in relation to the offer to issue the Trust Scheme Consideration as consideration for the acquisition of all SPS Units in accordance with the Trust Scheme and that contains the Spicers’ Information.

**“Spicers Prescribed Occurrence”** means the occurrence of any of the following on or after the date of this Agreement:

- (a) Spicers or any of its Subsidiaries converting all or any securities into a larger or smaller number of securities;

- (b) Spicers or any of its Subsidiaries resolving to reduce its issued capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of the securities of a member of the Group (other than the SPS Trust);
- (c) Spicer or any of its Subsidiaries:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) Spicer declaring, paying or distributing any dividend, bonus or other security of its profits or assets or returning or agreeing to return any capital to its shareholders (whether by way of dividend, capital reduction, distribution or otherwise and whether in cash or in specie);
- (e) Spicer or any of its Subsidiaries issuing securities, or granting an option over its securities, or agreeing to make such an issue or grant such an option;
- (f) Spicer or any of its Subsidiaries issuing or agreeing to issue, securities or other instruments convertible into securities or debt securities;
- (g) Spicer or any of its Subsidiaries making any change or amendment to its constitution;
- (h) Spicer or any of its Subsidiaries creating, or agreeing to create, any Encumbrance over the whole, or a substantial part, of its business or property;
- (i) an Insolvency Event occurring in relation to any member of the Group;
- (j) Spicer or any of its Subsidiaries changing any significant accounting policy applied by them to report their financial position;
- (k) Spicer or any of its Subsidiaries making any loans, advances or capital contributions to or investments in any person other than a wholly-owned Subsidiary;
- (l) Spicer or any of its Subsidiaries cancelling, materially amending or failing to renew on its expiry any existing material insurance policy;
- (m) Spicer or any of its Subsidiaries:
  - (i) entering into or announcing an intention or proposal to enter into;
  - (ii) disclosing the existence of; or
  - (iii) incurring, becoming subject to or advancing the time for performance of, an obligation to acquire or dispose of any entity, asset, undertaking or business (or any interest in any assets or business) or to perform or acquire the benefit of any services in relation to any asset or business or interest therein having an individual value greater than \$250,000;
- (n) Spicer ceases to be admitted on the official list of ASX;
- (o) Spicer or any of its Subsidiaries enters into a new loan, advance or financing arrangement, or guarantees or indemnifies the obligations of any other person, or materially amends (or waives any material rights under) any existing financing arrangements except extension, refinancing or replacement of any existing facilities provided that any such extension, refinancing or replacement does not result in an increase in any existing facility;

- (p) a new director, employee, consultant or agent is employed or engaged by Spicers or any of its Subsidiaries, who cannot be terminated on payment of not more than 6 months remuneration;
- (q) Spicers changing the remuneration or compensation payable to a director or key executive, including any bonus payments, except pursuant to any contractual rights or arrangements entered into prior to the date of this Agreement;
- (r) Spicers entering into or varying any agreement or arrangement with a director and/or Shareholder (or Related Entity of a director and/or Shareholder);
- (s) Spicers or any of its Subsidiaries enters into, varies or terminates any contract, joint venture, partnership or commitment involving revenue or expenditure individually of more than \$250,000 per annum;
- (t) Spicers or any of its Subsidiaries taking any action that triggers a Realisation, Redemption or Exchange of the Units (as those terms are defined in the Trust Constitution);
- (u) a Claim is brought against Spicers or any of its Subsidiaries (other than a frivolous or vexatious Claim) which will or is reasonably likely to have a material adverse effect on the Group;
- (v) Spicers or any of its Subsidiaries agrees or resolves to do any of the foregoing, provided that a Spicers Prescribed Occurrence will not include a matter:
  - (w) required to be done or procured by Spicers or any of its Subsidiaries pursuant to, or which is otherwise contemplated by, this Agreement, the Shareholder Resolutions or the Trust Scheme;
  - (x) the implementation of any redundancy program involving expenditure individually or in aggregate up to \$1 million;
  - (y) Spicers or a Subsidiary entering into, or agreeing to enter into, any obligation to acquire any entity, asset, undertaking or business located in Australia or New Zealand, for an amount less than \$1 million;
  - (z) in the ordinary course of business;
  - (aa) necessary to implement the reduction of capital of Spicers Paper (Hong Kong) Limited; or
  - (bb) the undertaking of which TrustCo has approved in writing, which approval may be given or withheld in its absolute discretion.

**“Spicers Representation and Warranty”** means the representations and warranties provided by Spicers in clause 12.

**“SPS Trust”** means the PaperlinX SPS Trust, ARSN 123 839 814.

**“SPS Trust Matters”** means:

- (a) the preparation, issue and distribution of the replacement product disclosure statement dated 7 March 2007 issued by TrustCo in respect of SPS Units and the issue of SPS Units pursuant to that replacement product disclosure statement;
- (b) TrustCo’s compliance with the Trust Constitution, the terms of issue of the SPS Unit and all agreements between TrustCo and Spicers; and
- (c) the management and operation of the SPS Trust in the period from the date of the SPS Trust to the completion date of the Trust Scheme.

**“SPS Unit”** means PaperlinX SPS, being a class of Units in the SPS Trust that is not the ordinary Unit.

**“Stamp Duty”** means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount in respect of the above.

**“Subsidiary”** has the meaning given to that term by section 9 of the Corporations Act.

**“Superior Proposal”** means a bona fide Competing Proposal that was not solicited, invited or initiated by TrustCo, any Group member or any of their Advisers during the Exclusivity Period, which TrustCo or the relevant Group member’s board determines, acting in good faith and acting reasonably, after consultation with its financial Adviser and after receiving written advice from its external legal Adviser:

- (a) is reasonably capable of being valued and implemented on a timely basis, taking into account all aspects of the Competing Proposal, including its conditions precedent; and
- (b) would, if completed substantially in accordance with its terms, be more favourable than the Trust Scheme to the Unitholders not associated with Spicers and Shareholders, taking into account all terms and conditions of the Competing Proposal,

after taking into account a qualitative assessment of the identity, reputation and financial standing of the person making the Competing Proposal, such that TrustCo’s or the relevant Group member’s board would be in breach of their fiduciary and/or statutory duties were they to continue to recommend the Trust Scheme (in the case of TrustCo) or the Shareholder Resolutions (in the case of Spicers) instead of the Competing Proposal.

**“Supplemental Deed”** means the deed poll under which TrustCo will amend the Trust Constitution, the form of which is contained in Schedule 3, with any alterations or conditions approved in writing by TrustCo and Spicers.

**“Tax”** includes any tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding which is levied or imposed by a Governmental Agency, and any related interest, penalty, charge, fee or other amount.

**“Timetable”** means the indicative timetable set out in Schedule 1.

**“Trust Constitution”** means the constitution establishing the SPS Trust dated 7 February 2007 (as amended from time to time).

**“Trust Scheme”** means an arrangement under which Spicers acquires all of the SPS Units in the SPS Trust from Eligible Unitholders by way of amending the constitution of the SPS Trust, subject to the requisite approval of Unitholders, and pursuant to which TrustCo will be removed or responsible entity of the TrustCo and be released in respect of the Specified Disputes.

**“Trust Scheme Booklet”** means the information approved by the Court and to be despatched by TrustCo to the Unitholders and which must include the Supplemental Deed, the Trust Scheme Explanatory Statements, the Independent Expert’s Report, the Trust Scheme Deed Poll a copy of this Agreement (without the schedules and annexures unless required by the Corporations Act) or a summary of it, and the Notice of Meeting.

**“Trust Scheme Consideration”** means 545 Shares in respect of each SPS Unit held by an Eligible Unitholder that:

- (a) are issued on the Implementation Date to each Eligible Unitholder; or

- (b) in the case of Ineligible Foreign Holders, the IOH Shares issued to the IOH Transferee on the Implementation Date and which must be sold on behalf of Ineligible Foreign Holders in accordance with the IOH Transferee Deed.

**“Trust Scheme Deed Poll”** means the deed poll to be executed by Spicers prior to the date the Trust Scheme Booklet is despatched to Unitholders, in the form set out in Schedule 2 or in such other form as is acceptable to Spicers and TrustCo, each acting reasonably.

**“Trust Scheme Explanatory Statements”** means each explanatory statement to be sent to Unitholders by TrustCo in relation to the Trust Scheme explaining the effect of the Trust Scheme and setting out information that is not the Spicers Information and that is material to the making of a decision by Unitholders whether or not to vote in favour of the Trust Scheme Resolutions, copies of which will be included in the Trust Scheme Booklet.

**“Trust Scheme Meeting”** means the meeting of the Unitholders convened by TrustCo pursuant to clause 16 of the Trust Constitution to consider the Trust Scheme Resolutions and includes any adjournment of that meeting.

**“Trust Scheme Resolutions”** means the resolutions to be put to the Unitholders of the SPS Trust to agree to the Trust Scheme (such resolutions to be put at the Trust Scheme Meeting and that, to be passed, must be approved by the requisite majorities pursuant to the Trust Constitution), including:

- (a) a resolution for the purposes of item 7 of section 611 of the Corporations Act to approve the acquisition of all the SPS Units held by Eligible Unitholders by Spicers;
- (b) a resolution for the purposes of section 601GC(2) of the Corporations Act to approve amendments to the Trust Constitution as set out in the Supplemental Deed;
- (c) a resolution for the purposes of section 601FL(1) of the Corporations Act to approve the retirement of TrustCo as responsible entity for the SPS Trust.

**“TrustCo Indemnified Party”** means TrustCo (in its personal capacity and as responsible entity of the SPS Trust), each of its officers, Advisors, employees and representatives.

**“TrustCo Prescribed Occurrence”** means the occurrence of any of the following on or after the date of this agreement:

- (a) TrustCo converting all or any Unit or other securities of the SPS Trust into a larger or smaller number of Units or other securities (as applicable);
- (b) TrustCo resolving to reduce the SPS Trust's issued capital in any way or reclassifying, combining, splitting or redeeming directly or indirectly any of the securities of the SPS Trust;
- (c) TrustCo (in respect of the SPS Trust) declaring, paying or distributing any distribution, bonus or other security of its profits or assets or returning or agreeing to return any capital to Unitholders (whether by way of capital reduction, distribution or otherwise and whether in cash or in specie);
- (d) TrustCo (in respect of the SPS Trust) issuing securities, or granting an option over its securities, or agreeing to make such an issue or grant such an option;
- (e) TrustCo (in respect of the SPS Trust) issuing or agreeing to issue, securities or other instruments convertible into securities or debt securities;
- (f) TrustCo making any change or amendment to the constitution of the SPS Trust, other than the Supplemental Deed;

- (g) TrustCo (in respect of the SPS Trust) creating, or agreeing to create, any Encumbrance over the whole, or a substantial part, of the business or property of the SPS Trust;
- (h) TrustCo (in respect of the SPS Trust) using the assets of the SPS Trust for the purposes of making any loans, advances or capital contributions to or investments in any person other than a wholly-owned Subsidiary;
- (i) TrustCo (in respect of the SPS Trust) cancelling, materially amending or failing to renew on its expiry any existing material insurance policy;
- (j) TrustCo (in respect of the SPS Trust):
  - (i) entering into or announcing an intention or proposal to enter into;
  - (ii) publicly disclosing the existence of; or
  - (iii) incurring, becoming subject to or advancing the time for performance of, an obligation to acquire or dispose of any entity, asset, undertaking or business (or any interest in any assets or business) or to perform or acquire the benefit of any services in relation to any asset or business or interest therein but excluding any services provided in relation to the Trust Scheme, having a value greater than \$250,000, whether individually or in the aggregate;
- (k) TrustCo effects or facilitates the retirement, removal or replacement of TrustCo as trustee or responsible entity of the SPS Trust;
- (l) TrustCo does or omits to do something that could restrict TrustCo's right of indemnity from the property of the SPS Trust in respect of obligations incurred by TrustCo under the documents to which it is a party;
- (m) the SPS Trust is terminated or there is a resettlement of the SPS Trust;
- (n) the SPS Trust ceases to be admitted to the official list of ASX;
- (o) TrustCo (in respect of the SPS Trust) enters into a new loan, advance or financing arrangement, or guarantees or indemnifies the obligations of any other person, or materially amends (or waives any material rights under) any existing financing arrangements except extension, refinancing or replacement of any existing facilities provided that any such extension, refinancing or replacement does not result in an increase in any existing facility;
- (p) a new consultant or agent is engaged by TrustCo (in respect of the SPS Trust) and whose fees will be paid for by Spicers and, who cannot be terminated on payment of not more than 3 months remuneration;
- (q) TrustCo in respect of the SPS Trust enters into, varies or terminates any contract, joint venture, partnership or commitment involving revenue or expenditure individually of more than \$250,000; or
- (r) TrustCo agrees or resolves to do any of the foregoing,
 

provided that a TrustCo Prescribed Occurrence will not include a matter:

  - (s) required to be done or procured by TrustCo pursuant to, or which is otherwise contemplated by, this Agreement or the Trust Scheme or in the ordinary course of business; or
  - (t) the undertaking of which Spicers has approved in writing, which approval may be given or withheld in its absolute discretion.



**“TrustCo Representation and Warranty”** means the representations and warranties provided by TrustCo in clause 12.

**“Unit”** means a fully paid unit in the SPS Trust, being an SPS Unit and the ordinary unit held by Spicers.

**“Unitholders”** means a registered holder of Units.

## **1.2 Interpretation**

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Agreement.
- (f) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to \$ is to the lawful currency of Australia.
- (i) A reference to time is a reference to time in Sydney, Australia.
- (j) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.
- (k) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.
- (l) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.
- (m) A reference to a party is to a party to this Agreement.

## **1.3 Best and reasonable endeavours**

Any provision of this Agreement that requires a party to use best endeavours, or reasonable endeavours, or to take all steps reasonably necessary, to procure that something is performed or occurs, requires that party to do so as soon as is reasonably practicable, but does not include any obligation to:

- (a) pay any significant sum of money or to provide any significant financial compensation, valuable consideration or any other incentive to or for the benefit of any person, or to assume or incur a material Liability, actual or contingent, except for payment of any applicable fee for the lodgement or filing of any relevant application with any Court or Governmental Agency, the printing and circulation of the Meeting Materials, or (with respect to each of the parties) fees to any professional Advisers;

- (b) commence any legal action or proceeding against any person, to procure that that thing is done or happens, except where that provision expressly specifies otherwise; or
- (c) do anything that would be contrary to the best commercial, economic or operational interests of their business.

#### **1.4 Further assurances**

Subject to this Agreement, Spicers and TrustCo must do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

## **2 Proposal**

---

### **2.1 Proposal of Trust Scheme**

- (a) TrustCo will propose the Trust Scheme on and subject to the terms and conditions of this Agreement.
- (b) Spicers agrees to assist TrustCo to propose and implement the Trust Scheme, on and subject to the terms and conditions of this Agreement.

### **2.2 Proposal of Shareholder Meeting**

Spicers will convene the Shareholder Meeting on and subject to the terms and conditions of this Agreement.

### **2.3 Compliance with obligations**

The parties' obligations under this Agreement are subject to their compliance with their respective obligations, functions, powers and duties at law and under:

- (a) this Agreement;
- (b) the constitution of Spicers;
- (c) the Trust Constitution; and
- (d) the Corporations Act and the Listing Rules.

## **3 Transaction steps**

---

### **3.1 Shareholder Meeting and Trust Scheme**

- (a) Spicers must, substantially in compliance with the Timetable, hold the Shareholder Meeting.
- (b) TrustCo must, substantially in compliance with the Timetable, propose the Trust Scheme to Unitholders.
- (c) If the Trust Scheme becomes Effective, then on the Implementation Date the following events must occur:
  - (i) Spicers must, and Spicers must procure the IOH Transferee to, enter into the IOH Transferee Deed;
  - (ii) Spicers will pay the Trust Scheme Consideration by issuing a total of 1,431,386,910 Shares and allotting them to each Eligible Unitholder (other than Ineligible Overseas Holders), and in the case of Ineligible Overseas Holders, allotting them to the IOH Transferee, on a 545 for 1 basis; and
  - (iii) TrustCo must, as agent and attorney for each Eligible Unitholder transfer all the right, title and interest of and in the SPS Units held by Eligible Unitholders to Spicers by executing a transfer of such SPS Units in favour of Spicers.



- (d) The Trust Scheme (including the acquisition by Spicers of SPS Units held by Eligible Unitholders and the issuance of the Trust Scheme Consideration by Spicers) is conditional on the requisite approvals being obtained for the Shareholder Resolutions and the Trust Scheme Resolutions.

### **3.2 Treatment of Ineligible Overseas Holders**

- (a) Spicers will be under no obligation under the Trust Scheme to issue, and will not issue, any Trust Scheme Consideration to any Ineligible Overseas Holder, and instead Spicers will issue on the Implementation Date the Trust Scheme Consideration to which that Ineligible Overseas Holder would otherwise have been entitled (if they were an Eligible Unitholder who was not an Ineligible Overseas Holder) to the IOH Transferee.
- (b) Spicers will procure that, as soon as reasonably practicable after the Implementation Date and in any event in accordance with the IOH Transfer Deed the IOH Transferee:
  - (i) sells on the ASX all of the Trust Scheme Consideration issued to the nominee in accordance with clause 3.2(a) and in such manner, at such price and on such other terms as the IOH Transferee determines in good faith, and at the risk of the Ineligible Overseas Holders; and
  - (ii) remits to Spicers the proceeds of sale (after deducting any applicable brokerage, stamp duty and other taxes).
- (c) Promptly after the last remittance in accordance with clause 3.2(b)(ii), Spicers will pay to each Ineligible Overseas Holder the Sale Proceeds to which that Ineligible Overseas Holder is entitled.

### **3.3 Deferral of litigation**

TrustCo must use its best endeavours to procure that the NSW Supreme Court proceedings number 2015/147870 are adjourned until after the Second Court Date. The obligation to use its best endeavours includes, without limitation, TrustCo negotiating with the interested parties in relation to the proposed adjournment and preparing and filing evidence in support of its application for an adjournment.

### **3.4 Releases**

To the fullest extent permitted by law:

- (a) without limiting any other indemnity between them, Spicers will release and indemnify TrustCo in its personal capacity in respect of all actions, conduct and decisions made in its capacity as the responsible entity of the SPS Trust in relation to the Specified Matters, except to the extent of any fraud or wilful misconduct; and
- (b) under the terms of the Trust Scheme:
  - (i) the Unitholders will fully release TrustCo, in its personal capacity and in its capacity as responsible entity of the SPS Trust, in respect of all actions, conduct and decisions made in relation to the Specified Matters; and
  - (ii) the Unitholders will fully release Spicers in respect of all actions, conduct and decisions made in relation to the Specified Matters.

### **3.5 Saving of indemnities**

Nothing in clause 3.4 and the releases contemplated by clause 3.4 operate to release any party from its obligations under this Agreement including the indemnities set out in clause 12.3.

### **3.6 Timetable**

The parties acknowledge the Timetable is an indicative timetable.

## 4 Post-Completion Steps

---

### 4.1 Issue of Holding Statements

Upon the issue and allotment of the Trust Scheme Consideration in accordance with clause 3.1(c):

- (a) TrustCo must register Spicers as holder of the SPS Units transferred to Spicers under clause 3.1(c)(ii); and
- (b) Spicers must promptly notify the Share Registry and request it to dispatch holding statements in relation to the issue of the Trust Scheme Consideration not later than 4 Business Days after the date of issue of the Trust Scheme Consideration.

### 4.2 Deregistration of SPS Trust and Change of Trustee

Promptly following the Implementation Date:

- (a) TrustCo must apply to ASIC to deregister the SPS Trust as a registered managed investment scheme, in accordance with section 601PA of the Corporations Act and use reasonable endeavours and do all other things reasonably required to procure such deregistration.
- (b) Spicers must:
  - (i) nominate a Subsidiary to replace TrustCo as trustee of the SPS Trust with effect from the Business Day immediately following the date on which the SPS Trust ceases to be a registered managed investment scheme or such earlier date permitted by ASIC modification; and
  - (ii) following the nomination referred to in paragraph (i), procure its nominee to complete and deliver to TrustCo two copies of the Deed of Retirement and Appointment of Trustee duly executed by it,

and TrustCo must duly execute and deliver to Spicers one counterpart of the Deed of Retirement and Appointment of Trustee delivered to it in accordance with this clause.

## 5 Obligations in relation to the Shareholder Meeting and Trust Scheme

---

### 5.1 Obligations of all parties

Each party must:

- (a) **(Advisers)** use reasonable endeavours to procure that its Advisers work in good faith and in a timely and co-operative manner with each other party and that its Advisers assist with the implementation of the Trust Scheme in accordance with this Agreement;
- (b) **(consultation)** consult with each other party to assist with finalising the content and presentation of the Meeting Materials;
- (c) **(co-operation)** co-operate with each other party, any Government Agency and any third parties, and use reasonable endeavours to assist with the implementation of the Trust Scheme as soon as is reasonably practicable after the date of this Agreement;
- (d) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this Agreement are effected in accordance with all applicable laws and regulations; and
- (e) **(information)** provide the other party, any Government Agency and any third parties with all information reasonably required for the implementation of the Trust Scheme.

## 5.2 Additional obligations of TrustCo

TrustCo must take all steps reasonably necessary to implement the Trust Scheme as soon as reasonably practicable after the date of this Agreement and in any event prior to the End Date and substantially in accordance with the Timetable, including without limitation taking each of the following steps:

- (a) **(preparation of Trust Scheme Booklet)** as soon as reasonably practicable after the date of this Agreement prepare and verify the Trust Scheme Booklet so that, subject to any waivers, exemptions or modifications that TrustCo may obtain or receive from ASIC, it complies with all applicable laws, including the Corporations Act and all applicable ASIC regulatory guides and policies (including ASIC Regulatory Guides 60 and 74), the Listing Rules and Guidance Note 15;
- (b) **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Trust Scheme Booklet;
- (c) **(provide a copy of the report)** promptly provide Spicers with a copy of the final Independent Expert's Report to be included in the Trust Scheme Booklet received from the Independent Expert;
- (d) **(approval of Trust Scheme Booklet)** convene a meeting of its board to approve the final draft of the Trust Scheme Booklet for provision to the Court and Unitholders;
- (e) **(liaison with ASIC)** to the extent TrustCo liaises with ASIC in relation to the Trust Scheme, keep Spicers reasonably informed of any matters raised by ASIC in relation to those matters (and of any resolution of those matters), and use reasonable endeavours, in consultation with Spicers, to resolve any such matters (which will include participating or allowing other parties to participate in meetings and discussions with ASIC);
- (f) **(Board's recommendation)** include in the Trust Scheme Booklet and the Announcement each of the statements with respect to a TrustCo director's recommendation as contemplated under clause 8.2, subject only to the qualifications specifically contemplated under that clause;
- (g) **(Governmental Agency)**
  - (i) keep Spicers fully informed of any matters raised by any Government Agency in relation to the Trust Scheme and use all reasonable endeavours to co-operate with Spicers to resolve any such matters; and
  - (ii) generally use its reasonable endeavours to obtain any Regulatory Approvals required by a Governmental Agency to effect the Trust Scheme (including ASIC relief or waivers), and keep Spicers informed of progress in obtaining any such Regulatory Approvals;
- (h) **(Court documents)** prepare all documents necessary for the Court proceedings (including any appeals) relating to the Trust Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) in accordance with all applicable laws, and provide Spicers with drafts of those documents for review and (acting reasonably and in good faith) take into account, for the purpose of finalising those documents, any comments from Spicers or its Advisers on those drafts;
- (i) **(update Trust Scheme Booklet)** inform Spicers if, after the despatch of the Trust Scheme Booklet, it becomes aware of information (including information not contained in the Trust Scheme Booklet) that is material for disclosure to Unitholders in deciding whether to approve the Trust Scheme or that is required to be disclosed to Unitholders under any applicable law;

- (j) **(TrustCo representation)** engage experienced counsel satisfactory to Spicers to represent TrustCo in all Court proceedings related to the Trust Scheme;
- (k) **(Court direction and advice)** apply to the Court for the First Judicial Advice;
- (l) **(Trust Scheme Meeting)** convene the Trust Scheme Meeting to be held on the same day but after the time for the Shareholder Meeting in accordance with the First Judicial Advice, the Trust Constitution and the Corporations Act;
- (m) **(Second Judicial Advice)** if Unitholders approve the Trust Scheme Resolutions at the Trust Scheme Meeting and Shareholders approve the Shareholder Resolutions at the Shareholder Meeting, apply to the Court for the Second Judicial Advice as soon as practicable;
- (n) **(Supplemental Deed)**
  - (i) prior to the lodgement of the Trust Scheme Booklet with the Court for the First Judicial Advice, make any changes or amendments to the Supplemental Deed (and provide its written consent to such changes or amendments) as are reasonably required by Spicers in order to implement a restructure of the Spicers Group following the Implementation Date; and
  - (ii) conditional on the passing of the Trust Scheme Resolutions, execute the Supplemental Deed;
- (o) **(lodge copy of Supplemental Deed)** if the Court gives the Second Judicial Advice, lodge with ASIC a copy of the executed Supplemental Deed;
- (p) **(registration)**
  - (i) close the register of SPS Units as at 5pm on the Record Date to determine the identity of the Eligible Unitholders and entitlements to the Trust Scheme Consideration;
  - (ii) execute proper instruments of transfer of and effect and register the transfer of SPS Units held by the Eligible Unitholders to Spicers, in accordance with the Trust Scheme; and
  - (iii) do all other things contemplated by or necessary to give effect to the Trust Scheme and the terms of the Supplemental Deed; and
- (q) **(timetable)** use best endeavours to ensure that each step in the Timetable is met by the date set out beside that step (and must consult regularly with, and must respond to requests from, Spicers about its progress in that regard).

### 5.3 Additional obligations of Spicers

Spicers must take all steps reasonably necessary to obtain Shareholder approval of the Shareholder Resolutions by the requisite majorities as soon as reasonably practicable after the date of this Agreement and in any event prior to the End Date and substantially in accordance with the Timetable, including without limitation taking each of the following steps:

- (a) **(preparation of Shareholder Meeting Materials)** as soon as reasonably practicable after the date of this Agreement prepare and verify the Shareholder Meeting Materials so that, subject to any waivers, exemptions or modifications that Spicers may obtain or receive from ASIC or ASX, it complies with all applicable laws, including the Corporations Act and all applicable ASIC regulatory guides and policies and the Listing Rules;
- (b) **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Shareholder Meeting Materials;

- (c) **(provide a copy of the report)** promptly provide TrustCo with a copy of the final Independent Expert's Report to be included in the Shareholder Meeting Materials received from the Independent Expert;
- (d) **(TrustCo Independent Expert's Report)** provide any assistance or information reasonably requested by the Independent Expert appointed by TrustCo in connection with the preparation of the Independent Expert's Report to be included in the Trust Scheme Booklet;
- (e) **(Board approval of Shareholder Meeting Materials)** procure that a meeting of the Board is held to consider approving the Shareholder Meeting Materials for despatch to the Spicers Shareholders;
- (f) **(Board approval of Spicers Information)** procure that a meeting of the Board is held to consider approving the Spicers Information (whether contained in the Trust Scheme Booklet or the Spicers Offer Document) and, if applicable, authorise the lodgement of the Spicers Offer Document with ASIC;
- (g) **(Board's recommendation)** include in the Shareholder Meeting Materials and the Announcement each of the statements with respect to a Spicers director's recommendation as contemplated under clause 8.1, subject only to the qualifications specifically contemplated under that clause;
- (h) **(Governmental Agency)**
  - (i) keep TrustCo informed of any matters raised by any Government Agency in relation to the Shareholder Meeting or the Trust Scheme and use all reasonable endeavours to co-operate with TrustCo to resolve any such matters; and
  - (ii) generally use its reasonable endeavours to obtain any Regulatory Approvals required by a Governmental Agency to effect the Trust Scheme (including ASIC relief or waivers), and keep TrustCo informed of progress in obtaining any such Regulatory Approvals;
- (i) **(Court documents)** assist in the preparation of all documents necessary for the Court proceedings (including any appeals) relating to the Trust Scheme in accordance with all applicable laws, and provide TrustCo with drafts of those documents for review and (acting reasonably and in good faith) take into account, for the purpose of finalising those documents, any comments from the other parties or TrustCo or its Advisers on those drafts;
- (j) **(update Shareholder Meeting Materials)** inform TrustCo if, after the despatch of the Shareholder Meeting Materials, it becomes aware of information (including information not contained in the Shareholder Meeting Materials) that is material for disclosure to Shareholders in deciding whether to approve the Shareholder Resolutions or that is required to be disclosed to Shareholders under any applicable law;
- (k) **(update Spicers Information)** if, after the despatch of the Trust Scheme Booklet, and if applicable, the Spicers Offer Document, Spicers becomes aware of information (including information not contained in those documents) that is material for disclosure to Unitholders in deciding whether to approve the Trust Scheme or that is required to be disclosed to Unitholders under any applicable law it must:
  - (i) inform TrustCo immediately in writing; and
  - (ii) if required by law or TrustCo (acting reasonably) issue a supplementary disclosure document to Unitholders;
- (l) **(Spicers representation)** engage experienced counsel satisfactory to TrustCo to represent Spicers in all Court proceedings related to the Trust Scheme;



- (m) **(consultation with TrustCo)** consult with TrustCo as to the content and presentation of the Spicers Information and, if applicable, the Spicers Offer Document including:
  - (i) providing to TrustCo drafts of the Spicers Information and, if relevant, the Spicers Offer Document for the purpose of enabling TrustCo to review and comment on those draft documents;
  - (ii) taking all comments made by TrustCo into account in good faith when producing a revised draft of the Spicers Information and, if relevant, the Spicers Offer Document;
  - (iii) implement such changes to those parts of the Spicers Information and, if relevant, the Spicers Offer Document as reasonably requested by TrustCo and prior to finalising the document; and
  - (iv) obtaining written approval from TrustCo for the form and content of the Spicers Information and, if relevant, the Spicers Offer Document and Spicers not lodging the Spicers Offer Document with ASIC until such approval is obtained from TrustCo;
- (n) **(due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Spicers Information and the Spicers Offer Document, provided:
  - (i) the form and scope of such processes, and all reports issued in relation to them, are acceptable to TrustCo; and
  - (ii) TrustCo receives and is entitled to rely, on all reports issued in relation to such processes (in its personal capacity and as responsible entity of the SPS Trust);
- (o) **(Trust Scheme Deed Poll)** prior to the despatch of the Trust Scheme Booklet, enter into the Trust Scheme Deed Poll and deliver the executed Trust Scheme Deed Poll to TrustCo;
- (p) **(Shareholder Meeting)** arrange the despatch of the Shareholder Meeting Materials, convening and holding, or causing to be convened and held, the Shareholder Meeting, and putting the Shareholder Resolutions to the Shareholders at the Shareholder Meeting, provided that if this Agreement is terminated under clause 14 it will take all steps reasonably required to ensure the Shareholder Meeting is not held;
- (q) **(registration)** if the Trust Scheme becomes Effective (and Shareholder Resolutions passed by the requisite majorities):
  - (i) register all issues of Shares to Eligible Unitholders and the IOH Transferee (as applicable) as soon as practicable after the Implementation Date;
  - (ii) execute proper instruments of issuance of and effect and register the issuance of the Shares in accordance with the Trust Scheme; and
  - (iii) do all other things contemplated by or necessary to give effect to the Trust Scheme; and
- (r) **(timetable)** use best endeavours to ensure that each step in the Timetable is met by the date set out beside that step (and must consult regularly with, and must respond to requests from, TrustCo about its progress in that regard).

## 6 Conditions Precedent and Pre-Implementation Steps

---

### 6.1 Conditions Precedent

Subject to this clause 6.1, the obligations of Spicers and TrustCo under this Agreement in relation to the proposal and implementation of the Trust Scheme are subject to the satisfaction or waiver (as applicable) of each of the following Conditions Precedent:

- (a) **(ATO Ruling)** Spicers obtaining a favourable ruling from the Australian Taxation Office confirming that:
  - (i) the implementation of the Trust Scheme should not impact the Australian tax losses of the Group; and
  - (ii) there should not be any assessable gain as a result of Spicers acquiring all SPS Units in the SPS Trust from Eligible Unitholders;
- (b) **(Due diligence)** TrustCo confirming on or before the First Court Date that Spicers has complied with its obligations in clauses 5.3(m) and 5.3(n);
- (c) **(Regulatory Approvals):**
  - (i) **(ASIC Modification)** before 8:00am on the First Court Date, ASIC issues or provides such modifications, consents or approvals that TrustCo or Spicers considers necessary or desirable to implement the Trust Scheme (which will include, for the avoidance of doubt, a modification of items 7 of section 611 to permit all Unitholders (other than Spicers) to vote on the Trust Scheme Resolutions and a modification exempting TrustCo from the requirements of Chapter 6D in respect of the Trust Scheme Booklet on the condition the Trust Scheme Booklet is accompanied by the Spicers Offer Document issued by Spicers) and such consent, approval or other act has not been withdrawn or revoked;
  - (ii) **(other Regulatory Approvals)** all other Regulatory Approvals required to implement the Trust Scheme are granted or obtained at or before 8.00 am on the Second Court Date and those Regulatory Approvals are not withdrawn, cancelled or revoked, and each is granted or obtained subject to conditions that each of Spicers and TrustCo reasonably consider to be acceptable;
  - (iii) **(Court orders)** at or before 8.00 am on the Second Court Date no court or Governmental Agency has issued or taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Trust Scheme and no such order, decree, ruling, other action or refusal is in effect that prohibits, materially restricts, makes illegal or restrains the implementation of the Trust Scheme;
- (d) **(No Spicers Prescribed Occurrence)** a Spicers Prescribed Occurrence has not occurred between the date of this Agreement and 5:00pm on the Business Day immediately prior to the Second Court Date;
- (e) **(No TrustCo Prescribed Occurrence)** a TrustCo Prescribed Occurrence has not occurred between the date of this Agreement and 5:00pm on the Business Day immediately prior to the Second Court Date;
- (f) **(No change of Spicers' board recommendation)** between the date of this Agreement and the date of the Meetings, the Spicers board has not changed, qualified or withdrawn its unanimous recommendation for Shareholders to vote in favour of the Shareholder Resolutions, which recommendation may be expressed to be given:
  - (i) in the absence of a Superior Proposal; and

- (ii) subject to an Independent Expert concluding that the Shareholder Resolutions are in the best interests of Shareholders;
- (g) **(No change of TrustCo's board recommendation)** between the date of this Agreement and the date of the Meetings, TrustCo's Board has not changed, qualified or withdrawn its unanimous recommendation of the Trust Scheme to Unitholders not associated with Spicers, which recommendation may be expressed to be given:
  - (i) in the absence of a Superior Proposal; and
  - (ii) subject to an Independent Expert concluding that the Trust Scheme is in the best interests of Unitholders (not associated with Spicers);
- (h) **(Shareholder approval of Shareholder Resolutions)** before 8.00am on the Second Court Date the Shareholder Resolutions are approved by Shareholders at the Shareholder Meeting by the requisite majorities under the Corporations Act or the Listing Rules;
- (i) **(Unitholder approval of Trust Scheme)** before 8.00am on the Second Court Date, Unitholders approve the Trust Scheme Resolutions at the Trust Scheme Meeting by the requisite majorities under the Corporations Act (subject to any exemption or modification granted by ASIC);
- (j) **(Court approval of Trust Scheme)** the Trust Scheme is approved by the Court by granting the Judicial Advice;
- (k) **(No termination)** this Agreement has not been terminated including in accordance with clause 14;
- (l) **(Change in law)** after the date of this agreement and before the Second Court Date, there is no change in law which:
  - (i) restrains or prohibits, or otherwise materially adversely impacts on, the implementation of the Trust Scheme or the completion of any transaction contemplated by the Trust Scheme (whether subject to conditions or not); or
  - (ii) requires the divestiture by Spicers of any Units, or the divestiture of any assets of the Group;
- (m) **(Restraining orders)** as at 8.00am on the Second Court Date, no temporary restraining order, preliminary or permanent injunction or other legal restraint or prohibition restraining or prohibiting the Trust Scheme is in effect;
- (n) **(Superior Proposal)** no Superior Proposal is announced or proposed to TrustCo or a Group member before 8.00 am on the Second Court Date.

## 6.2 Benefit and waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 6.1(a), 6.1(k), 6.1(l) and 6.1(n) are for the benefit of each party, and (except in the cases of the Conditions Precedent in clauses 6.1(c), 6.1(h), 6.1(i), 6.1(j) and 6.1(m) which cannot be waived) any non-fulfilment of, or any failure to satisfy, any of those Conditions Precedent may only be waived with the written consent of both of the parties.
- (b) The Conditions Precedent in clauses 6.1(e) and 6.1(g) are for the sole benefit of Spicers and any breach or non-fulfilment of them may only be waived by Spicers giving its written consent.
- (c) The Conditions Precedent in clauses 6.1(d) and 6.1(f) are for the sole benefit of TrustCo and any breach or non-fulfilment of them may only be waived by TrustCo giving its written consent.
- (d) A party entitled to waive the non-fulfilment of, or any failure to satisfy, a Condition Precedent pursuant to this clause 6.2 may do so in its absolute discretion.



- (e) Notwithstanding anything herein, the Conditions Precedent in clauses 6.1(c), 6.1(h), 6.1(i), 6.1(j) and 6.1(m) cannot be waived.
- (f) If a waiver by a party of a Condition Precedent is itself expressed to be conditional and the other party accepts the conditions, the terms of the conditions apply accordingly. If the other party does not accept the conditions, the relevant Condition Precedent has not been waived.
- (g) If a party waives the non-fulfilment of, or failure to satisfy, a Condition Precedent, that waiver will not preclude it from suing any other party for any breach of this Agreement constituted by the same event that gave rise to the non-fulfilment of, or failure to satisfy, the Condition Precedent.
- (h) Waiver of a non-fulfilment or failure to satisfy in respect of one Condition Precedent does not constitute:
  - (i) a waiver of non-fulfilment of or failure to satisfy any other Condition Precedent resulting from the same events or circumstances; or
  - (ii) a waiver of non-fulfilment of or failure to satisfy that Condition Precedent resulting from any other event or circumstance.

### **6.3 Best endeavours and co-operation**

Without prejudice to any other obligations of the parties under this Agreement:

- (a) the parties must use their respective best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clause 6.1 to the extent that it is within their respective control or ability; and
- (b) no party will take any action that will or is likely to hinder or prevent the satisfaction of the Conditions Precedent in clause 6.1,

except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by, this Agreement or is required by law.

### **6.4 Notifications**

Each party must:

- (a) keep the other parties promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent;
- (b) promptly notify the other parties in writing if it believes or becomes aware that any Condition Precedent has been satisfied, in which case the notifying party must also provide reasonable evidence that the Condition Precedent has been satisfied; and
- (c) promptly notify the other parties in writing if it believes or becomes aware of a failure to satisfy a Condition Precedent or of any fact or circumstance that results in that Condition Precedent becoming incapable of being satisfied or that may result in that Condition Precedent not being satisfied in accordance with its terms (having regard to the obligations of the parties under clause 6.3).

### **6.5 Failure of Conditions Precedent**

- (a) If:
  - (i) a Condition Precedent is not satisfied or waived in accordance with clause 6.2 on or before the End Date; or
  - (ii) a Condition Precedent becomes incapable of satisfaction, having regard to the obligations of the parties under clause 6.3,

each party, other than a party that has caused the non-fulfilment, may serve notice on the other parties, and the parties must then consult in good faith with a view to determining whether:

- (iii) the Trust Scheme may proceed by way of alternative means or methods;
  - (iv) to extend the relevant time or date for satisfaction of the Condition Precedent;
  - (v) to change the date of the application to be made to the Court approving the Trust Scheme or to adjourn that application (as applicable) to another date agreed by the parties; or
  - (vi) to extend the End Date.
- (b) If the parties are unable to reach agreement under clauses 6.5(a)(iii), 6.5(a)(iv), 6.5(a)(v) or 6.5(a)(vi) within 5 Business Days after the delivery of the notice under that clause, any party may terminate this Agreement by notice in writing to the other parties, provided that there has been no failure by that party to comply with its obligations under this Agreement, where that failure directly and materially contributed to the Condition Precedent to which the notice relates becoming incapable of satisfaction, in which case clause 14.2 will have effect.

## **6.6 Certificate in relation to Conditions Precedent**

On the Second Court Date, TrustCo must provide to the Court a certificate (or such other evidence as the Court may request) confirming whether or not as at 8.00 am on the Second Court Date the Conditions Precedent (other than the Conditions Precedent set out in clause 6.1(j)) have been satisfied in accordance with this Agreement.

## **7 Conduct of business**

---

- (a) From the date of this Agreement up until and including the Implementation Date, Spicers must ensure that all Group members (other than SPS Trust):
- (i) conduct their businesses in the ordinary course;
  - (ii) comply with all relevant laws;
  - (iii) make all reasonable efforts to:
    - (A) keep available the services of their officers and employees; and
    - (B) maintain their relationships with Government Agencies, customers, suppliers, landlords, trade unions, licensors, licensees and others with whom they have business dealings;
  - (iv) not enter into any activities which are unrelated to an existing business of the Group members at the date of this Agreement; and
  - (v) not engage in other activities which are unrelated to an existing business.
- (b) From the date of this Agreement up until and including the Implementation Date, TrustCo in relation to the SPS Trust must ensure that:
- (i) the business of the SPS Trust is conducted in the ordinary course;
  - (ii) it complies with all relevant laws; and
  - (iii) operates the SPS Trust so that the SPS Trust complies with all relevant laws.

## **8 Board matters**

---

### **8.1 Spicers Board recommendation**

Spicers shall use its reasonable endeavours to procure that the Spicers board:

- (a) unanimously recommends that Shareholders vote in favour of the Shareholder Resolutions;

- (b) not make any public statement to the effect, or take any other action that suggests, that the Shareholder Resolutions are no longer unanimously recommended by the Spicers board; and

- (c) not change, modify or withdraw its unanimous recommendation,

unless:

- (d) the Independent Expert appointed by Spicers concludes either prior to the despatch of the Shareholder Meeting Materials or prior to the Shareholder Meeting that the Shareholder Resolutions are not in the best interests of Shareholders; or

- (e) a Superior Proposal is received by Spicers.

## 8.2 TrustCo Board recommendations

TrustCo shall use its reasonable endeavours to procure that the TrustCo board:

- (a) unanimously recommends that Unitholders support the Trust Scheme and vote in favour of the Trust Scheme and any other resolution submitted to Unitholders for their approval in connection with the Trust Scheme;

- (b) not make any public statement to the effect, or take any other action that suggests, that the Trust Scheme is no longer recommended unanimously by the TrustCo board; and

- (c) not change, modify or withdraw its unanimous recommendation,

unless:

- (d) the Independent Expert appointed by TrustCo concludes either prior to the despatch of the Trust Scheme Booklet or prior to the Trust Scheme Meeting that the Trust Scheme is not in the best interests of Unitholders; or

- (e) a Superior Proposal is received by TrustCo.

## 8.3 Changes to Spicers board composition

- (a) Spicers will as soon as practicable:

- (i) after the date of this Agreement, appoint a recruitment consultant which specialises in director and chairperson appointments for ASX-listed entities ("**Recruitment Consultant**") to undertake a recruitment process for Spicers to appoint up to 3 suitably qualified and experienced, independent, non-executive directors (including a potential chairperson) to the Board ("**Director Recruitment Process**");

- (ii) undertake the Director Recruitment Process (in consultation with the Recruitment Consultant);

- (iii) after the Implementation Date, make an announcement to ASX that Spicers will accept nominations for the election of directors from Shareholders, subject to those nominations being made in compliance with the ASX Listing Rules and Spicers' constitution; and

- (iv) as soon as reasonably practicable following the Implementation Date and in any event within 4 months from the Implementation Date, call and hold an extraordinary general meeting to seek Shareholder approval for:

- (A) the election of any person nominated by the Spicers board to be a director of Spicers, or any person appointed as director of Spicers by the Board prior to the extraordinary general meeting; and

- (B) the election of any person validly nominated by a Shareholder to be a director of Spicers.

- (b) Spicers acknowledges that Mr Robert Kaye and Mr Michael Barker will each resign as directors of Spicers with effect from the close of the extraordinary general meeting referred to in clause 8.3(a)(iv), subject to:
  - (i) the persons being nominated as directors to the Spicers board being of good fame and character; and
  - (ii) the Spicers board comprising such number of directors as is required under the Corporations Act and Spicers' constitution.

## **9 Court proceedings**

---

### **9.1 Conduct**

- (a) The Parties are entitled to separate representation at all Court proceedings relating to the Trust Scheme.
- (b) Nothing in this Agreement shall be taken to give a party any right or power to give undertakings to the Court for or on behalf of another party without that party's consent.
- (c) Subject to the overriding obligation of directors and officers of Spicers and TrustCo to each exercise their respective powers and discharge their duties in the best interests of the relevant company, Spicers and TrustCo must each give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Trust Scheme.

### **9.2 Appeals**

If the Court refuses to make orders to grant the Judicial Advice, Spicers and TrustCo must appeal the Court's decision to the fullest extent possible except to the extent that:

- (a) the parties agree otherwise; or
- (b) senior counsel representing each of Spicers and TrustCo indicate that, in their opinions, an appeal would likely have less than a 50% chance (or similarly expressed) prospect of success,

in which case this Agreement is terminated.

### **9.3 Defence of proceedings**

- (a) Each party must vigorously defend, or must cause to be vigorously defended, any lawsuits or other legal proceeding brought against it (or any of its Related Bodies Corporate) challenging this Agreement or the implementation of the Trust Scheme. Neither Spicers or TrustCo will settle or compromise or permit any of its Related Bodies Corporate to settle or compromise any claim brought in connection with this agreement or the implementation of the Trust Scheme without the prior written consent of the other, such consent not to be unreasonably withheld.
- (b) For the avoidance of doubt Spicers must indemnify TrustCo in respect of any liability, cost, expense or payment that TrustCo suffers, incurs or is liable for, arising out of or that relates to clause 9.3(a).

## **10 Consideration**

---

Each party acknowledges that any obligations it incurs or rights it provides under this Agreement is for valuable consideration received from the other parties.

## 11 Confidentiality

---

- (a) The parties acknowledge that the terms of this Agreement may be disclosed to their Advisers, counsel appointed by them, ASIC and the Court and otherwise in accordance with clause 11(b).
- (b) Subject to clause 11(a), each party agrees not to disclose or authorise the disclosure of this Agreement to any other person except as required by law (including any disclosure requirements in connection with the Trust Scheme and the Meetings, but subject to the prior written consent of the other parties, such consent not to be unreasonably withheld or delayed), the listing rules of the ASX or any Government Agency, or to the extent that the other parties to this Agreement consent in writing.

## 12 Representations and Warranties

---

### 12.1 Representations and warranties

- (a) Each party (a Representor) represents and warrants that:
  - (i) except as consented to in writing by the parties, on the date of this Agreement and on each subsequent day until midnight on the date before the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date), this Agreement is its valid and binding obligation enforceable in accordance with its terms;
  - (ii) it is not aware of, nor has it been approached about, any Competing Proposal; and
  - (iii) it is doing everything reasonably practicable within the resources available to it, including without limitation the use of its Advisers, to:
    - (A) obtain all necessary approvals to allow the Trust Scheme to be implemented consistently with the Timetable; and
    - (B) ensure that each step in the Timetable occurs on the date specified in relation to that step in the Timetable.
  - (iv) the execution and delivery of this Agreement by it has been properly authorised by all necessary corporate action and it has full corporate power and lawful authority to execute and deliver this Agreement and to perform or cause to be performed its obligations under this Agreement;
  - (v) this Agreement constitutes legal, valid and binding obligations on it and this Agreement does not result in a breach of or default under any agreement or deed or any writ, order or injunction, rule or regulation to which it or any of its Subsidiaries is a party or to which they are bound;
  - (vi) the relevant Meeting Materials for which it is responsible will be prepared in good faith (acknowledging that the Meeting Materials will include information prepared by the other party);
  - (vii) as at the date the relevant Meeting Materials for which it is responsible is despatched, to the best of its knowledge, information and belief, after due enquiry, the Meeting Materials are not misleading or deceptive in any material respect (whether by omission or otherwise);
  - (viii) subject to the announcement of the Trust Scheme in accordance with clause 13.1, it is not in breach of its continuous disclosure obligations under the Listing Rules;
  - (ix) as at the date of this agreement, neither ASIC or ASX has made a determination against any member of the Group (including TrustCo but

only in respect of the SPS Trust) for any contravention of the requirements of the Corporations Act or Listing Rules or any rules, regulations or regulatory guides under the Corporations Act or Listing Rules; and

- (x) as at the date of this agreement, no Insolvency Event has occurred in relation to any member of the Group.
- (b) Spicers further represents and warrants that:
  - (i) the Spicers Information (whether included in the Spicers' Offer Document or included in the Meeting Materials) will be prepared in good faith and on the understanding that each of the TrustCo Indemnified Parties will rely on that information to prepare the Trust Scheme Booklet and to propose and implement the Trust Scheme in accordance with applicable laws;
  - (ii) the Spicers Information as at the date the Meeting Materials and, if applicable, the Spicers Offer Document are dispatched, will (to the best of Spicers' knowledge, information and belief, after due enquiry) not contain any statement which is materially misleading or deceptive, including by way of omission;
  - (iii) Spicers will, as a continuing obligation, provide to TrustCo all further or new information which it becomes aware of after the Meeting Materials and, if applicable, the Spicers Offer Document have been dispatched until the date of the Trust Scheme Meeting which is necessary to ensure that there would be no breach of clause 12.1(b)(ii) if it applied as at the date on which that information arose.
- (c) TrustCo further represents and warrants that:
  - (i) the SPS Trust is validly established and registered under Part 5C of the Corporations Act;
  - (ii) it is the sole responsible entity of the SPS Trust and no action has been taken or proposed to remove it as responsible entity of the SPS Trust or to appoint an additional responsible entity to it;
  - (iii) it has not taken any step to terminate the SPS Trust or wind up the SPS Trust (whether under Part 5C of the Corporations Act or otherwise);
  - (iv) the Trust Scheme Booklet (other than the Spicers Information), as at the date the Trust Scheme Booklet is dispatched to Unitholders, will not contain (to the best of TrustCo's knowledge, information and belief, after due enquiry) any statement which is materially misleading or deceptive, including by way of omission.

## 12.2 Reliance by parties

Each Representor acknowledges that:

- (a) in entering into this Agreement each other party has relied on the representations and warranties provided by the Representor under this clause 12:
- (b) any breach of a representation and warranty provided by the Representor under this clause 12 after the Trust Scheme becomes Effective cannot result in a termination of this Agreement; and
- (c) it has not entered into this Agreement in reliance on any warranty or representation made by or on behalf of any other party except the representations and warranties set out in this Agreement.

## 12.3 Indemnities

- (a) Spicers agrees with TrustCo (in its own right and separately as trustee or nominee for each TrustCo Indemnified Party) to indemnify TrustCo and each of the other TrustCo Indemnified Parties from any claim, action, damage, loss,



liability, cost, expense or payment of whatever nature and however arising which TrustCo or any of the other TrustCo Indemnified Parties suffers, incurs or is liable for arising out of any TrustCo Representation and Warranty being untrue or incorrect.

- (b) TrustCo agrees with Spicers (in its own right and separately as trustee or nominee for each Spicers Indemnified Party) to indemnify Spicers and each of the other Spicers Indemnified Parties from any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising which Spicers or any of the other Spicers Indemnified Parties suffers, incurs or is liable for arising out of any Spicers Representation and Warranty being untrue or incorrect.

## **12.4 Notifications**

Each party will promptly advise the other parties in writing if it becomes aware of any fact, matter or circumstance that constitutes or may constitute a breach of a representation and warranty given by it under this clause 12.

## **12.5 Repetition of Warranties**

- (a) TrustCo must ensure that as at the date of this Agreement and at all times prior to 8.00am on the Second Court Date each of the TrustCo Representations and Warranties is accurate.
- (b) Spicers must ensure that as at the date of this Agreement and at all times prior to 8.00am on the Second Court Date each of the Spicers Representations and Warranties is accurate.

## **12.6 Status of representations and warranties**

Each representation and warranty in this clause 12:

- (a) is severable;
- (b) will survive the termination of this Agreement: and
- (c) is given with the intent that Liability under it will not be confined to breaches that are discovered prior to the date of termination of this Agreement.

## **12.7 Survival of indemnities**

Each indemnity in this Agreement (including those in clauses 12.3 and 19.9):

- (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 Agreement; and
- (d) survives the termination of this Agreement.

# **13 Public announcements**

---

## **13.1 Announcement of the Scheme**

Immediately after the execution of this Agreement, Spicers and TrustCo shall each issue a public announcement in an agreed form.

## **13.2 Other public announcements**

Subject to clause 13.3, no public announcement or disclosure of the Trust Scheme or any other transaction the subject of this Agreement or the Trust Scheme may be made other than in the course of filing documents with the Court and court proceedings and otherwise in a form approved by each party (acting reasonably), but each party must use all reasonable endeavours to provide such approval as soon as practicable.

### 13.3 Required announcement

Where a party is required by applicable law (including the listing rules of a stock or securities exchange) to make any announcement or to make any disclosure in connection with the Trust Scheme or any other transaction the subject of this Agreement or the Trust Scheme, the party must use reasonable endeavours, to the extent practicable and lawful, to consult with the other parties prior to making the relevant disclosure.

## 14 Termination

---

### 14.1 Termination

Without limiting clause 6.5, this Agreement may be terminated at any time prior to 8.00 am on the Second Court Date as follows:

- (a) by either party giving the other party written notice in relation to the failure of the other party to satisfy a Condition Precedent, in accordance with clause 6.5;
- (b) by Spicers giving written notice to TrustCo, if TrustCo is in material breach of this Agreement before the Second Court Date and such breach is either incapable of remedy or TrustCo has failed to remedy that breach within 5 Business Days of receipt by TrustCo of a written notice setting out full details of the relevant circumstances and stating an intention to terminate this Agreement, and the relevant circumstances and requesting that TrustCo remedy the breach;
- (c) by TrustCo giving written notices to Spicers, if Spicers is in material breach of this Agreement before the Second Court Date and such breach is either incapable of remedy or Spicers has failed to remedy that breach within 5 Business Days of receipt by Spicers of a written notice setting out full details of the relevant circumstances and stating an intention to terminate this Agreement, and the relevant circumstances and requesting that Spicers remedy the breach;
- (d) by either party giving the other party written notice if any of the Shareholder Resolutions or the Trust Scheme Resolutions are not approved by the required majorities;
- (e) by either party by giving the other party written notice if the Court refuses to make any order directing TrustCo to convene the Trust Scheme Meeting or refuses to make any order approving the Trust Scheme;
- (f) by Spicers if a TrustCo Prescribed Occurrence occurs;
- (g) by TrustCo if a Spicers Prescribed Occurrence occurs; or
- (h) by a party if the Trust Scheme does not become Effective or is not implemented on or before the End Date or has ceased to be capable of becoming Effective or being implemented on or before the End Date other than arising from a breach of this agreement by that party.

### 14.2 Effect of termination

In the event of termination of this Agreement by a party pursuant to clause 14.1, this Agreement will have no further force or effect and the parties will have no further obligations under this Agreement, provided that:

- (a) this clause 14 and clauses 11 (confidentiality), 13 (announcements), 17 (notices) and 18 (general) will survive termination; and
- (b) each party will retain any accrued rights and remedies, including any rights and remedies it has or may have against the other parties in respect of any past breach of this Agreement.



## **15 Exclusivity Period**

---

### **15.1 No-shop**

During the Exclusivity Period, each of Spicers and TrustCo must not, and must ensure that each of its Advisers does not, directly or indirectly solicit, invite, encourage or initiate any Competing Proposal or any enquiries, expressions of interest, offers, proposals, negotiations or discussions with any third party in relation to, or which may reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of those things.

### **15.2 No-talk and no due diligence**

Subject to clause 15.4, during the Exclusivity Period, each of Spicers and TrustCo must not, and must ensure that each of its Advisers does not, directly or indirectly:

- (a) enter into, continue, participate or facilitate in any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any third party in relation to, or that may reasonably be expected to encourage or lead to a Competing Proposal;
- (b) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into any agreement, arrangement or understanding regarding any actual, proposed or potential Competing Proposal;
- (c) make available to any third party or permit such third party to receive any non-public information relating to the business or affairs of any Group member in connection with such third party formulating, developing or finalising, or assisting the formulation, development or finalisation of, a Competing Proposal, or which could reasonably be expected to encourage or lead to receipt of a Competing Proposal; or
- (d) communicate to any person an intention to do anything referred to in this clause 15.2,

even if:

- (e) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Spicers or TrustCo (as applicable) or any of its respective Advisers; or
- (f) the Competing Proposal has been publicly announced.

### **15.3 Notification of approaches**

- (a) During the Exclusivity Period, each of Spicers and TrustCo must promptly notify the other if:

- (i) it is approached by any third party to take any action of a kind that would breach its obligations under clause 15.2, including details of the party making an expression of interest, offer or proposal, their terms and any updates to the expression of interest, offer or proposal;
- (ii) it becomes aware of any approach or discussions in respect of any offer or proposal of a kind referred to in clause 15.2; or
- (iii) proposes to take any action of a kind that would breach its obligations under clause 15.2,

unless (and only to the extent that) the board of Spicers or TrustCo (as applicable), acting in good faith, determines that it would be a breach of its fiduciary or statutory duties to notify the other party.

- (b) If Spicers or TrustCo receive a Superior Proposal and as a result the board of Spicers proposes to publicly withdraw its recommendation for Shareholders to vote in favour of the Shareholder Resolutions Trust or TrustCo proposes to

publicly withdraw its recommendation for the Trust Scheme, it must (unless the relevant board determines that it would be a breach of its fiduciary or statutory duties to do so) give the other party 5 clear Business Days' written notice of such proposed change or withdrawal, and provide to that other party all material terms of the applicable Competing Proposal.

#### **15.4 Fiduciary exception to no-talk, no-due diligence and notification provisions**

- (a) Clause 15.2 does not prohibit any action or inaction by Spicers or TrustCo or any of their respective Advisers in relation to a Competing Proposal:
  - (i) where the board of Spicers or TrustCo (as applicable) determines that the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal; and
  - (ii) if compliance with the relevant clause would, in the opinion of the board of Spicers or TrustCo (as applicable), formed in good faith after receiving written advice from its external legal Advisers constitute, or would be likely to constitute, a breach of any of the fiduciary or statutory duties owed by any director of Spicers or TrustCo (as applicable),provided that the Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of clause 15.1 or 15.2.
- (b) If clause 15.4(a) overrides the restrictions in clause 15.2(c), Spicers or TrustCo (as applicable) must not provide any confidential information to a third party, before the third party has entered into a written agreement in favour of Spicers or TrustCo (as applicable) regarding the use and disclosure of the confidential information provided to the third party and that restricts the third party's ability to solicit the employees of any Group member.

## **16 GST**

---

### **16.1 Interpretation**

In this clause 16, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given in that act.

### **16.2 Taxable supplies**

If anything done under or in connection with this Agreement constitutes a Taxable Supply from one party to another in respect of which GST is payable, the consideration payable for the supply will be increased by an amount equal to the GST exclusive consideration multiplied by the applicable rate of GST.

### **16.3 Reimbursements**

If a party must reimburse or indemnify another party for any cost, loss or expense under or in connection with this Agreement, the amount of the cost, loss or expense will be reduced by the amount of any Input Tax Credit the other party is entitled to claim for the cost, loss or expense.

### **16.4 Tax invoice**

A party is not required to make a payment for a Taxable Supply made under or in connection with this Agreement until it receives a tax invoice in relation to that supply.

### **16.5 Amounts exclusive of GST**

Unless expressly stated otherwise, all amounts payable under this Agreement are exclusive of GST.

## 17 Notices

---

### 17.1 Notices

Any notice, demand, consent, waiver or other communication (a Notice) given or made under this Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post or by hand or fax to the address or fax number below or the address (being an address in Australia) or fax number last notified by the intended recipient to the sender:
  - (i) Spicers  
Attention: Frank Glynn  
Address: 155 Logis Boulevard, Dandenong South, Victoria, 3175  
Fax: N/A
  - (ii) TrustCo  
Attention: Jane O'Leary  
Address: 123 Pitt Street, Sydney NSW 2000  
Fax: N/A
- (c) will be taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country); or
  - (iii) in the case of fax, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4:00 pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place; and

### 17.2 Notices sent by email

Any Notice which may be given or made under this Agreement may instead be sent by email if:

- (a) the Notice is signed by a person clearly authorised by the sender in a manner which complies with the electronic signature guidelines agreed by the sender and the intended recipient;
- (b) the Notice is sent to the email address below or the email address last notified by the intended recipient to the sender:
  - (i) Spicers  
email address: Frank.Glynn@spicers.com.au
  - (ii) TrustCo  
email address: jane.oleary@perpetual.com.au
- (c) the sender keeps an electronic copy of the Notice sent.

### 17.3 Receipt of Notices sent by email

A Notice sent under clause 17.2 will be conclusively taken to be duly given or made on the first to occur of:

- (a) receipt by the sender of an email acknowledgement from the recipient's information system showing that the Notice has been delivered to the email address stated above;
- (b) the time that the Notice enters an information system which is under the control of the recipient; or
- (c) the time that the Notice is first opened or read by an employee or officer of the recipient,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4.00 pm (local time) it will be conclusively taken to have been duly given or made at the start of business on the next Business Day in that place.

## 18 TrustCo Limitation of Liability

---

- (a) TrustCo enters into this document in its personal capacity solely in respect of clauses 3.4 (Releases), 12.3 (indemnities) and 19.9 (Costs). With respect to all other clauses, TrustCo enters this document as responsible entity of the SPS Trust and in no other capacity.
- (b) The parties acknowledge that TrustCo incurs TrustCo Liabilities solely in its capacity as trustee of the Trust and agree that (to the maximum extent permitted by law) TrustCo will cease to have any TrustCo Liability if TrustCo ceases for any reason to be trustee of the Trust.
- (c) A TrustCo Liability may be enforced against TrustCo only to the extent to which:
  - (i) TrustCo is actually indemnified in respect of that TrustCo Liability out of the property of the Trust; and
  - (ii) there is sufficient property held by TrustCo as trustee at the time, which is available to meet that indemnity (after all Trust assets have been allocated to meet the indemnity and any other valid claims).
- (d) Subject to subclause 18(e), no person will be entitled to:
  - (i) claim from or commence proceedings against TrustCo in respect of any TrustCo Liability in any capacity other than as trustee of the Trust;
  - (ii) enforce or seek to enforce any judgment in respect of any TrustCo Liability against any property of TrustCo other than property held by TrustCo as trustee of the Trust;
  - (iii) take any steps to procure or support the appointment of a liquidator, administrator or any other similar office holder to TrustCo on the basis of a TrustCo Liability, or prove in any liquidation, administration or arrangement of or affecting TrustCo; or
  - (iv) in respect of a TrustCo Liability, appoint or take any steps to procure or support the appointment of a receiver or receiver and manager to any property of TrustCo, other than property which is held by it in its capacity as trustee of the Trust.
- (e) The restrictions in subclauses 18(c) and 18(d) do not apply to any TrustCo Liability to the extent to which there is, whether under the constitution of the Trust or by operation of law, a reduction in the extent of TrustCo's indemnification, or in respect of which TrustCo is not entitled to be indemnified, out of the property of the Trust, as a result of TrustCo's fraud, negligence or breach of trust.

- (f) Each other party to this document agrees that no act or omission of TrustCo (including any related failure to satisfy any TrustCo Liabilities) will constitute fraud, negligence or breach of trust of TrustCo for the purposes of clause 18(e) to the extent to which the act or omission was caused or contributed to by any failure of that party to fulfil its obligations relating to the Trust or by any other act or omission of that party.
- (g) No attorney, agent or other person appointed in accordance with this document has authority to act on behalf of TrustCo in a way which exposes TrustCo to any personal liability, and no act or omission of such a person will be considered fraud, negligence or breach of trust of TrustCo for the purposes of clause 18(e).
- (h) This limitation of TrustCo's Liability applies despite any other provisions of this document and extends to all TrustCo Liabilities of TrustCo in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document or its performance.
- (i) TrustCo is not obliged to do or refrain from doing anything under this document (including incur any liability) unless TrustCo's liability is limited in the same manner as set out in paragraphs 18(a) to 18(h).
- (j) In this clause, "**TrustCo Liability**" means any liability or obligation (of any kind including, without limitation, for negligence, in tort, in equity, or under statute) of TrustCo which arises in any way under or in connection with this document or its performance, or any representation, warranty, conduct, omission, agreement or transaction made under or in connection with this document or its performance.

## **19 General**

---

### **19.1 Entire agreement**

This Agreement constitutes the entire agreement between the parties in relation to its subject matter. All prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter are replaced by this Agreement and have no further effect.

### **19.2 Paramountcy of document**

If this Agreement conflicts with any other document, agreement or arrangement, this Agreement prevails to the extent of the inconsistency.

### **19.3 No waiver**

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

### **19.4 Remedies cumulative**

The rights, powers and remedies provided to each party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

### **19.5 Further assurances**

Each party must do or cause to be done all things necessary or reasonably desirable to give full effect to this Agreement and the transactions contemplated by it (including, but not limited to, the execution of documents).

### **19.6 Amendment**

No amendment or variation of this Agreement is valid or binding on a party unless made in writing executed by each of the parties, which may so make an amendment or variation notwithstanding that one or more other parties or persons may be entitled to the benefit of all or any of the provisions of this Agreement.

### **19.7 Assignment**

The rights and obligations of each party under this Agreement are personal. They cannot be assigned, encumbered or otherwise dealt with and no party may attempt, or purport, to do so without the prior consent of the other parties.

### **19.8 No merger**

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

### **19.9 Costs**

- (a) Subject to clauses (b) and (d) below, Spicers will indemnify TrustCo for its reasonable costs incurred in relation to the Trust Scheme including taking any actions in accordance with this Agreement that TrustCo considers appropriate.
- (b) Prior to engaging any Advisers or Independent Experts, TrustCo must:
  - (i) provide to Spicers a cost estimate for each Adviser or Independent Expert for any work relating to the Trust Scheme; and
  - (ii) obtain pre-approval of these cost estimates from Spicers (such approval not to be unreasonably withheld).
- (c) Any Advisers or Independent Experts engaged by TrustCo in relation to the Trust Scheme must be required under their terms of engagement to promptly advise TrustCo if their cost estimates are likely to be exceeded and the anticipated amount of additional fees to be incurred.
- (d) Where TrustCo is advised that an Adviser or Independent Expert will exceed their cost estimate in accordance with clause (c) above, TrustCo must promptly obtain approval from Spicers for the additional fees (such approval not to be unreasonably withheld).

### **19.10 Severability of provisions**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

### **19.11 Governing law and jurisdiction**

This Agreement is governed by the laws of Victoria. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement.

### **19.12 Attorney**

Each attorney executing this Agreement states that he or she has no notice of revocation or suspension of his or her power of attorney.

### **19.13 Counterparts**

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

### **19.14 Electronic delivery of document**

If a party delivers an executed counterpart of this Agreement or any other document executed in connection with it ("**Relevant Document**") by facsimile or other electronic means:

- (a) the delivery will be deemed to be an effective delivery of an originally executed counterpart; and
- (b) the party will still be obliged to deliver an originally executed counterpart, but the failure to do so will not affect the validity or effectiveness of the Relevant Document.

## **SCHEDULE 1 - TIMETABLE**

<b>Event</b>	<b>Indicative Date</b>
Spicers releases half year accounts	15 February 2017
TrustCo releases the SPS Trust half year accounts	20 February 2017
First Court Date	17 March 2017
Despatch of Meeting Materials	20 March 2017
Shareholder Meeting and Trust Scheme Meeting	21 April 2017
Second Judicial Advice Date	28 April 2017
Effective Date (the day of the Second Judicial Advice Date)	28 April 2017
Record Date	2 May 2017
Implementation Date	5 May 2017



## SCHEDULE 2 - TRUST SCHEME DEED POLL

## Deed Poll - Trust Scheme

---

[date]

by Spicers Ltd ACN 005 146 350  
in favour of each Eligible Unitholder



**THIS DEED POLL** is made on [date].

**BY**

**SPICERS LIMITED**

ACN 005 146 350

of 155 Logis Boulevard, Dandenong South VIC 3175

("Spicers")

**IN FAVOUR OF**

**EACH ELIGIBLE UNITHOLDER**

**BACKGROUND**

- A Spicers and TrustCo have entered into the Scheme Implementation Agreement.
- B Under the Scheme Implementation Agreement Spicers has agreed, subject to the satisfaction or waiver of certain conditions, to execute this Deed Poll.
- C Spicers is entering into this Deed Poll to covenant in favour of each Eligible Unitholder to perform its obligations under this deed and the Trust Scheme, including payment of the Trust Scheme Consideration.

**AGREED TERMS**

**1 Definitions and interpretation**

---

**1.1 Definitions**

In this Deed Poll, unless the context requires otherwise:

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

**"Bank"** means a corporation authorised by law to carry on the general business of banking in Australia.

**"Business Day"** means a day on which Banks are open for general banking business in Melbourne, excluding Saturdays, Sundays and public holidays.

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

**"Effective"** means the Supplemental Deed taking effect pursuant to section 601GC of the Corporations Act.

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

**"Eligible Unitholder"** means a registered holder of SPS Units immediately following the close of registers on the Record Date, but does not include Spicers or any of its Related Entities in respect of any SPS Units.

**"End Date"** means 30 June 2017 or such other date agreed in writing between the parties.

**“First Judicial Advice”** means confirmation from the Supreme Court of New South Wales pursuant to section 63 of the Trustee Act 1925 (NSW), that TrustCo would be justified in convening the Trust Scheme Meeting and proceeding on the basis that amending the constitution of the SPS Trust to facilitate implementation of the Trust Scheme would be within the powers of alteration conferred by the constitution of the SPS Trust and section 601GC of the Corporations Act.

**“Implementation Agreement”** means the Scheme Implementation Agreement executed by Spicers and TrustCo on 19 December 2016.

**“Implementation Date”** means the third Business Day following the Record Date or such later Business Day as the parties may agree.

**“Ineligible Overseas Holder”** means a holder of SPS Units who at following the close of registers on the Record Date has a registered address which is outside Australia and its external territories or New Zealand unless TrustCo and Spicers are satisfied that Spicers is not prevented from lawfully issuing Shares as the Trust Scheme Consideration to such Unitholder, either unconditionally or after compliance with such conditions as TrustCo and Spicers regard as acceptable.

**“IOH Transferee”** means the party that holds an Australian financial services licence issued by ASIC, as further described in clause 3.2 of the Implementation Agreement.

**“IOH Transferee Deed”** means a deed or letter agreement to be entered into between the IOH Transferee and Spicers, which includes provisions substantially in accordance with those referred to in clause 3.2(b) of the Scheme Implementation Agreement and the Supplemental Deed.

**“IOH Shares”** means the Trust Scheme Consideration issued by Spicers to the IOH Transferee in respect of the SPS Units held by Ineligible Overseas Holders on the Record Date.

**“Judicial Advice”** means the:

- (a) First Judicial Advice; and
- (b) Second Judicial Advice.

**“Record Date”** means:

- (a) the second Business Day following the Effective Date; or
- (b) such later date as Spicers and TrustCo may agree in writing.

**“Related Body Corporate”** has the meaning given to that term by section 9 of the Corporations Act.

**“Related Entity”** has the meaning given to that term in section 9 of the Corporations Act.

**“Second Judicial Advice”** means confirmation from the Supreme Court of New South Wales that, subject to the Trust Scheme Resolutions being approved at the Trust Scheme Meeting, TrustCo would be justified in doing all things and taking all necessary steps to effect the Trust Scheme.

**“Shareholder Resolutions”** has the meaning given to that term in the Implementation Agreement.

**“Shareholders”** means the registered holders of Shares in the capital of Spicers.

**“Shares”** means full paid ordinary shares in the capital of Spicers.

**“Spicers Prescribed Occurrence”** has the meaning given to that term in the Implementation Agreement.

**“SPS Trust”** means the PaperlinX SPS Trust (ARSN 123 839 814).

**“SPS Unit”** means PaperlinX SPS, being a class of Units in the SPS Trust that is not the ordinary Unit.

**“Stamp Duty”** means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount in respect of the above.

**“Supplemental Deed”** means the deed poll under which TrustCo will amend the Trust Constitution, with any alterations or conditions approved in writing by TrustCo and Spicers.

**“Trust Scheme”** means an arrangement under which Spicers acquires all of the SPS Units in the SPS Trust from Eligible Unitholders by way of amending the constitution of the SPS Trust, subject to the requisite approval of Unitholders.

**“TrustCo”** means The Trust Company (RE Services) Limited (ACN 003 278 831) in its personal capacity and as responsible entity for the SPS Trust.

**“Trust Scheme Consideration”** means 545 Shares in respect of each Unit held by an Eligible Unitholder that:

- (a) are issued on the Implementation Date to each Eligible Unitholder; or
- (b) in the case of Ineligible Foreign Holders, the IOH Shares issued to the IOH Transferee and which must be sold on behalf of Ineligible Foreign Holders in accordance with the IOH Transferee Deed.

**“Unit”** means a fully paid unit in the SPS Trust, being an SPS Unit and the ordinary unit held by Spicers.

**“Unitholders”** means a registered holder of Units.

## **1.2 Interpretation**

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Deed Poll.
- (f) A reference to an agreement or document (including a reference to this Deed Poll) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Deed Poll or that other agreement or document.

- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to \$ is to the lawful currency of Australia.
- (i) A reference to time is a reference to time in Melbourne, Australia.
- (j) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.
- (k) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.
- (l) Nothing in this Deed Poll is to be interpreted against a party solely on the ground that the party put forward this Deed Poll or a relevant part of it.
- (m) A reference to a party is to a party to this Deed Poll.

### **1.3 Nature of deed poll**

This deed poll may be relied on and enforced against Spicers in accordance with its terms by each Eligible Unitholder on and from the date of this deed poll even though the Eligible Unitholders are not a party to this deed poll.

## **2 Conditions Precedent and Termination**

---

### **2.1 Conditions Precedent**

The obligations on Spicers under this Deed Poll are conditional on the Trust Scheme becoming Effective.

### **2.2 Termination**

The obligations on Spicers under this Deed Poll to Eligible Unitholders will automatically terminate, and this Deed Poll will lapse and be of no further force or effect, if:

- (a) the Implementation Agreement is terminated; or
- (b) the Effective Date has not occurred on or before the End Date.

### **2.3 Consequences of Termination**

If the obligations of Spicers under this Deed Poll are terminated under clause 2.2 then, in addition and without prejudice to any other rights, powers or remedies available to Eligible Unitholders, Spicers is released from its obligations to further perform its obligations under this Deed Poll except those obligations contained in clause 12.

## **3 Compliance with Trust Scheme obligations**

---

Subject to clause 1.3, in consideration for the transfer to Spicers on the Implementation Date of all SPS Units held by Eligible Unitholders, Spicers covenants in favour of each Eligible Unitholder to do all those things that Spicers is required to do under the Trust Scheme or which the Trust Scheme contemplates will be done by Spicers, including payment of the Trust Scheme Consideration in accordance with the terms of the Trust Scheme.

## **4 Interim conduct of Spicers**

---

For the period commencing on the Implementation Date and ending on the date on which Spicers holds a general meeting of Shareholders to seek Shareholder approval for the



election of directors, Spicers will not undertake any Spicers Prescribed Occurrence, other than as contemplated by the Implementation Agreement, the Trust Scheme or the Shareholder Resolutions.

## 5 Representations and Warranties

---

Spicers represents and warrants that:

- (a) **(status)** it is a body corporate duly incorporated under the laws of the place of its incorporation;
- (b) **(power)** it has full legal capacity and power to:
  - (i) own property and carry on its business; and
  - (ii) enter into and perform its obligations under this Deed Poll;
- (c) **(authorisations)** it has taken all corporate and other action required and obtained or been granted all consents, approvals, permissions and authorisations, whether internal or external, necessary to enable it to enter into and perform its obligations under this Deed Poll;
- (d) **(binding obligations)** this deed poll is valid and binding upon it;
- (e) **(no contravention)** the execution, delivery and performance of this Deed Poll will not contravene:
  - (i) any law, regulation, order, judgment or decree of any court or Government Agency which is binding on it or any of its property;
  - (ii) any provision of its constitution or equivalent documents; or
  - (iii) any agreement, undertaking or instrument which is binding on it or any of its property; and
- (f) **(no regulatory action)** no regulatory action of any nature has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this Deed Poll.

## 6 Continuing Obligations

---

Subject to clause 2.2, this Deed Poll is irrevocable and remains in full force and effect until Spicers has fully performed all of its obligations under this Deed Poll.

## 7 Further assurances

---

Spicers will do all things and execute all deeds, instruments, transfers and other documents as may be necessary to give full effect to the provisions of this Deed Poll and the transactions contemplated by it.

## 8 Notices

---

- (a) A notice, consent or other communication ("**Notice**") given or made under this Deed Poll is only effective if it is:
  - (i) in writing, signed by or on behalf of the person giving it;
  - (ii) addressed to the person to whom it is to given; and
  - (iii) either:
    - (A) delivered or sent by pre-paid mail to that person's address; or

- (B) sent by fax to that person's fax number and the machine from which it is sent produces a report that states it was sent in full.
- (b) A Notice that complies with this clause 8 is regarded as given and received:
  - (i) if it is delivered or sent by fax:
    - (A) by 5:00 pm (local time in the place of receipt) on a Business Day - on that day; or
    - (B) after 5:00 pm (local time in the place of receipt) on a Business Day or on a day that is not a Business Day - on the next Business Days; and
  - (c) if it is sent by mail:
    - (A) within Australia - three Business Days after posting; or
    - (B) to or from a place outside Australia - seven Business Days after posting.
  - (d) Spicers' address and other details are:
    - Attention: Frank Glynn
    - Address: 155 Logis Boulevard, Dandenong South VIC 3175
    - Facsimile: N/A

## 9 Remedies cumulative

---

The rights, powers and remedies provided to Spicers and the Eligible Unitholders under this Deed Poll are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity.

## 10 Variation

---

- (a) A provision of this Deed Poll may only be varied by Spicers if:
  - (i) the variation is agreed to by TrustCo, which may give or withhold such agreement without reference to or approval by any Eligible Unitholder being required; and
  - (ii) the Court indicates that the variation would not of itself preclude approval of the Trust Scheme or provision of Judicial Advice.
- (b) Spicers will enter into a further deed poll in favour of the Eligible Unitholders giving effect to any such variation.

## 11 No Waiver

---

A waiver is not valid or binding on the party granting that waiver unless it is made in writing. No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

## 12 Costs and Stamp Duty

---

All stamp duty that may be payable on or in connection with this Deed Poll and any instrument effected by, executed under or pursuant to this Deed Poll must be borne by Spicers.

## **13 Assignment**

---

The rights and obligations of Spicers and each Eligible Unitholder under this Deed Poll are personal. They cannot be assigned, encumbered or otherwise dealt with and neither Spicers or any Eligible Unitholder may attempt, or purport, to do so without the prior written consent of TrustCo and Spicers.

## **14 Governing law and jurisdiction**

---

This Deed Poll and any dispute arising out of or in connection with it is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Deed Poll.

**EXECUTED as a DEED**

EXECUTED by SPICERS LIMITED )  
)

Signature of director

Signature of director / company secretary  
(delete as applicable)

Name of director (print)

Name of director / company secretary (print)

## SCHEDULE 3 - SUPPLEMENTAL DEED



**The Trust Company (RE Services) Limited**  
(ACN 003 278 831)  
**as responsible entity for PaperlinX SPS Trust**  
(ARSN 123 839 814)

## **Parties:**

BY: The **Trust Company (RE Services) Limited** (ACN 003 278 831) as responsible entity for **PaperlinX SPS Trust** (ARSN 123 839 814) of Level 15, 20 Bond Street, Sydney NSW 2000 (**Issuer**).

## **Recitals:**

- A. The trust known as the PaperlinX SPS Trust (ARSN 123 839 814) (**Trust**) is governed by a constitution dated 7 February 2007 (**Constitution**).
- B. Pursuant to clause 23 of the Constitution, the Issuer may, by supplemental deed, make any modification, addition or deletion to the Constitution.
- C. Section 601GC(1)(a) of the Corporations Act 2001 (Cth) permits the modification of the Constitution by special resolution of the unit holders of the Trust (**Members**).
- D. A meeting of Holders was held on **[date]** and a special resolution was passed for the purposes of, among other things, section 601GC(1)(a) of the Corporations Act 2001 (Cth) to authorise and approve the modifications to the Constitution set out in this Deed.

## **1. Definitions and Interpretation**

### **1.1. Definitions**

Except as expressly set out in this Deed, terms defined in the Constitution have the same meaning in this Deed.

### **1.2. Interpretation**

The interpretation provisions set out in Clause 1.2 of the Constitution apply as if set out in full in this Deed.

## **2. Amendments**

### **2.1. Amendments**

The Issuer amends the Constitution in the manner set out in the Schedule.

### **2.2. Commencement and Operation**

- (a) This Deed takes effect on lodgement with ASIC.
- (b) This Deed operates as a deed poll given in favour of all Members and binds the Issuer.

### **2.3. Confirmation**

- (a) Except as expressly varied by Clause 2.1, the Issuer confirms the terms of the Constitution.
- (b) For the avoidance of doubt, nothing in this Deed results in or amounts to a declaration, redeclaration or resettlement of the Trust.

## **3. General**

### **3.1. Governing law and jurisdiction**

- (a) This Deed is governed by the laws of the State of New South Wales.
- (b) Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales.



### **3.2. Prohibition and enforceability**

- (a) Any provision of, or the application of any provision of, this Deed or any power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Deed or which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

### **3.3. Variation**

A variation of any term of this Deed must be in writing and signed by the Issuer.

## Schedule

### Amendments to Constitution

1. Insert the following new clause 23A immediately following clause 23 of the Constitution:

#### **"23A Trust Scheme**

##### **23A.1 Implementation of Scheme**

- (a) *Each Eligible Unitholder and the Issuer must do all things and execute all deeds, instruments, transfers or other documents as the Issuer considers are necessary or desirable to give full effect to the terms of the Trust Scheme and the transactions contemplated by it.*
- (b) *Without limiting the Issuer's other powers under this clause 23A, the Issuer has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Trust Scheme, Implementation Agreement and the transactions contemplated by them.*
- (c) *Subject to the Corporations Act, the Issuer, Spicers or any of their directors, officers, employees or associates may do any act, matter or thing described in or contemplated by this clause 23A even if they have an interest (financial or otherwise) in the outcome of such exercise.*
- (d) *This clause 23A:*
  - (i) *binds the Issuer and all Holders, including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against the Resolutions at that meeting; and*
  - (ii) *overrides any other provisions of this Constitution to the extent of any inconsistency.*

##### **23A.2 Dealings in Units**

- (a) *To establish the persons who are Eligible Unitholders on the Record Date, dealings in SPS Units will only be recognised if:*
  - (i) *in the case of dealings of the type to be affected using CHESS, the transferee is recognised in the Register as the holder of the relevant SPS Units before the close of the Register on the Record Date; and*
  - (ii) *in all other cases, registerable transfers or transmissions of applications in respect of those dealings are received by the Register by 4pm on the Record Date.*
- (b) *The Issuer will enter into the Register SPS Unit transfers or transmission applications of the kind referred to in clause 23A.2(a)(ii) by no later than 5pm on the Record Date.*
- (c) *The Issuer will not except for registration, nor recognise for any purpose, any transfer or transmission application in respect of SPS Units received after the time specified in clauses 23A.2(a) or 23A.2(b), or received prior to such times but not in registrable form.*
- (d) *In order to determine entitlements to the Trust Scheme Consideration, the Issuer will, until the Trust Scheme Consideration has been issued to Eligible Unitholders and the IOH Transferee, and the name and address of Spicers has been entered into the Register as the holder of the SPS Units, maintain, or procure the maintenance of, a "Scheme Register" in accordance with this clause 23A.2(d). The Scheme Register shall consist of the names, addresses, bank accounts and other relevant details of persons who are Eligible Unitholders and the number of SPS*

*Units held by such persons as shown in each case on the Scheme Register as at the Record Date (immediately after registration of registrable transfer or transmission applications of the kind referred to in clause 23A.2(a)). The Scheme Register and the terms of the Trust Scheme will solely determine entitlements to the Trust Scheme Consideration.*

- (e) *From the Record Date, each Eligible Unitholder (and any person claiming through or on behalf of, that Eligible Unitholder) must not dispose of, agree to, or purport to dispose of any SPS Units or any interest in them other than in accordance with this clause 23A.*
- (f) *From the Record Date and subject to the provision of the Trust Scheme Consideration in accordance with the Trust Scheme:*
  - (i) *all certificates and holding statements for SPS Units will cease to have any effect (whether as documents of title or otherwise); and*
  - (ii) *each entry in the Register as at the Record Date in respect of Eligible Unitholders and SPS Units will cease to have any effect,*

*in each case, other than as evidence of the entitlements of Eligible Unitholders (or the IOH Transferree, in the case of Ineligible Overseas Holders) to the Trust Scheme Consideration in respect of the SPS Units held by that Eligible Unitholder.*
- (g) *As soon as practical after the Record Date and in any event before the Implementation Date, the Issuer will give to Spicers the name and registered address of, and number of SPS Units held by, each Eligible Unitholder in whatever form Spicers reasonably requires.*

### **23A.3 Trust Scheme Consideration**

*Each Eligible Unitholder will on Implementation receive and accept the Trust Scheme Consideration as consideration for the transfer of its Units to Spicers in accordance with this clause 23A.*

### **23A.4 Spicers to provide the Trust Scheme Consideration**

- (a) *In accordance with the provisions of this clause 23A, Spicers will provide the Trust Scheme Consideration to which each Eligible Unitholder is entitled (or the IOH Transferree, in the case of Ineligible Overseas Holders) under the Trust Scheme by issuing Shares in the number and manner on the terms provided in this clause 23A on or before 12 noon on the Implementation Date to each Eligible Unitholder who is not an Ineligible Overseas Holder and to the IOH Transferree (as applicable).*
- (b) *The Issuer must procure that Spicers provides the Trust Scheme Consideration with respect to each Eligible Unitholder and to the IOH Transferree (as applicable) by:*
  - (i) *prior to the transfer of any SPS Units to Spicers on the Implementation Date, issuing the Shares to which each Eligible Unitholder and to the IOH Transferree (as applicable) is entitled to under the Trust Scheme;*
  - (ii) *on the Implementation Date, entering in the Spicers Register the name and address of each such Eligible Unitholder and to the IOH Transferree (as applicable) and the number of Shares which that Eligible Unitholder and to the IOH Transferree (as applicable) is entitled to receive under the Trust Scheme; and*
  - (iii) *on or within 4 Business Days after the Implementation Date despatching to each such Eligible Unitholder and the IOH Transferree by pre-paid ordinary post (or, if the address of the Eligible Unitholder in the Register is outside Australia, by pre-paid airmail post) to their address recorded in the Register on the Record Date, a holding statement for the Shares issued to that Eligible Unitholder or the IOH Transferree (as applicable) under the Trust*

*Scheme. In the case of Units held in joint names, holding statements for Shares in Spicers must be issued in the names of joint holders and sent to the holder whose name appears first in the Register on the Record Date.*

- (c) *The Trust Scheme Consideration to be allotted and issued by Spicers will be of equal ranking with all existing Shares then on issue and will be allotted and issued free from all encumbrances.*
- (d) *Eligible Unitholders who receive Shares issued by Spicers by way of the Trust Scheme Consideration accept those Shares and agree to become a member of Spicers and to be bound by Spicers constitution.*

#### **23A.5 Transfer of Scheme Units to Spicers**

*On the Implementation Date, subject to Spicers having provided issued the Trust Scheme Consideration in the manner contemplated by clause 23A and providing the Issuer with written confirmation of that having occurred, the following will occur:*

- (a) *all of the SPS Units held by Eligible Unitholders, together with all rights and entitlements attaching to those SPS Units as at the Implementation Date, will be transferred to Spicers, without the need for any further act by any Eligible Unitholder (other than acts performed by the Issuer (or any of its directors and officers appointed as sub-attorneys and/or agents of the Issuer) as attorney and/or agent for Eligible Unitholders under the Trust Scheme);*
- (b) *the Issuer will procure:*
  - (i) *in the case of SPS Units in a CHESS holding, a message to be transmitted to ASX Settlement in accordance with ASX Settlement Operating Rules so as to transfer the SPS Units held by the Eligible Unitholder from the CHESS sub-register of the Issuer to the issuer sponsored sub-register operated by the Issuer; and*
  - (ii) *the delivery to Spicers for execution duly completed and, if necessary, stamped transfers to transfer all of the SPS Units held by Eligible Unitholders to Spicers, duly executed by the Issuer (or any of its directors and officers appointed as sub-attorneys and/or agents of the Issuer) as the attorney or agent of each Eligible Unitholder as transferor under this clause 23A; and*
- (c) *The Issuer will, immediately after receipt of the executed transfers in respect of the SPS Units transferred by Eligible Unitholders from Spicers, enter or procure the entry of, the name and address of Spicers in the Register in respect of all of the transferred SPS Units.*

#### **23A.6 Foreign Members**

- (a) *Spicers will be under no obligation under the Trust Scheme to issue, and will not issue, any Share to any Ineligible Overseas Holder, and instead Spicers will issue on the Implementation Date the Trust Scheme Consideration to which that Ineligible Overseas Holder would otherwise have been entitled (if they were an Eligible Unitholder who was not an Ineligible Overseas Holder) to the IOH Transferee. On the Implementation Date, Spicers and the Issuer will procure the entry in the Share Register of the name and address of the IOH Transferee in respect of the SPS Units that are attributable to each Ineligible Overseas Holder.*
- (b) *Spicers will procure that, as soon as reasonably practicable after the Implementation Date and in any event before the end of the IOH Sale Period the IOH Transferee sells on the ASX all of the Trust Scheme Consideration issued to the nominee in accordance with clause 3.2(a) and in such manner, at such price and on such other terms as the IOH Transferee determines in good faith, and at the risk of the Ineligible Overseas Holder, with the objectives of:*
  - (i) *achieving the best price for the IOH Shares that is reasonably obtainable at the relevant time of sale; and*

- (ii) ensuring that all sales of the IOH Shares are effected in the ordinary course of trading on the ASX during the IOH Sale Period.
- (c) *Spicers will procure that the IOH Transferee;*
  - (i) on each date on which the sale of IOH Shares is settled, deposits all funds received into the Sale Facility Account; and
  - (ii) once settlement of the sale of all the IOH Shares as occurred, and in no case later than 5 Business Days thereafter, transfer the Sale Facility Consideration to the Share Registry.
- (d) *Spicers must procure that the Share Registry, no later than five Business Days after the IOH Transferee has transferred the funds to the Sale Facility Account in accordance with clause 23A.6(c), arranges in respect of each Ineligible Overseas Holder for payment of the Sale Facility Consideration by either:*
  - (i) *dispatching by mail to the registered address of that Ineligible Overseas Holder a cheque or bank draft which includes the Sale Facility Consideration for that Ineligible Overseas Member payable in Australian dollars (provided that, in the case of Ineligible Overseas Members who are joint holders of Units, the cheque will be made payable to the Joint Holders and sent to the Holder whose name appears first in the Scheme Register as at the Record Date); or*
  - (ii) *making an electronic funds transfer in Australian dollars to an account nominated by that Ineligible Overseas Holder for the purposes of the Sale Facility or the payment of distributions on Units,*

*in full satisfaction of Spicers obligations to that Foreign Overseas Holder under the terms of the Trust Scheme in respect of the Trust Scheme Consideration.*
- (e) *Each Ineligible Overseas Holder appoints the Issuer as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) that the IOH Transferee is required to provide to Ineligible Overseas Holders under the Corporations Act.*

#### **23A.7 Covenants**

- (a) *Each Eligible Unitholder and the Issuer must (and must ensure that its officers, employees and agents) do all things (including executing any document) that is necessary, expedient or incidental to give full effect to the Trust Scheme (including this clause 23A and the transactions contemplated by it).*
- (b) *Each Eligible Unitholder:*
  - (i) *must transfer all of their SPS Units, together with all rights and entitlements attaching to those Units to Spicers in accordance with this clause 23A;*
  - (ii) *agrees to and is bound by the modification or variation (if any) of the rights attaching to their Scheme Units arising from this clause 23A;*
  - (iii) *agrees to and is bound by all things and all deeds, instruments, transfers or other documents that the Issuer and Spicers or either of them do or enter into which are as may be necessary or desirable to give full effect to the Trust Scheme and the transactions contemplated by it (including this clause 23A).*
- (c) *Without the need for any further act, the Issuer and each of the Issuer's directors and officers, jointly and severally, are irrevocably appointed as each Eligible Unitholders attorney and agent for the purposes of doing anything (including executing any document) necessary, expedient or incidental to give full effect to the Trust Scheme (including this clause 23A) and the transactions contemplated by it, including the provision of a proper instrument of transfer of that Eligible Unitholders' SPS Units for the purposes of section 1071B of the Corporations Act (which may be a master transfer for all or part of the SPS Units).*



- (d) *Without the need for any further act, the Issuer and each of its directors and officers, is irrevocably appointed by each Eligible Unitholder to enforce the Spicers Deed Poll against Spicers on behalf of an as agent and attorney for the Eligible Unitholder.*
- (e) *From the Effective Date until the Issuer registers Spicers as the holder of all SPS Units in the Register, each Eligible Unitholder is deemed to have appointed Issuer as its attorney and agent (and directed the Issuer in such capacity) to appoint the Chairman of Spicers (or other nominee of Spicers) as its sole proxy and, where applicable, corporate representative to attend unitholder meetings of the Trust, exercise the votes attaching to the SPS Units of which they are the registered holder and sign any Unitholders' resolution, and no Eligible Unitholder may attend or vote at any of those meetings or sign or vote on any resolutions (whether in person, by proxy or by corporate representative) other than pursuant to this clause 23.A7(e).*

#### **23A.8 Status of Scheme Units**

- (a) *Each Eligible Unitholder and each Ineligible Overseas Holder is deemed to have warranted to Spicers that each of their SPS Units (including any rights and entitlements attaching to those Units) will, as at the time of the transfer of them to Spicers pursuant to the Trust Scheme, be fully paid and free of all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power in capacity to sell and to transfer their SPS Units (including any rights and entitlements attaching to those Units) to Spicers pursuant to the Trust Scheme.*
- (b) *From the Implementation Date, Spicers will be beneficially entitled to the SPS Units the subject of the Trust Scheme, pending registration by the Issuer of the name and address of Spicers in the Register as the holder of those SPS Units.*

#### **23A.10 Releases**

*On and from the Implementation Date, in consideration for receipt of the Trust Scheme Consideration, each Eligible Unitholder:*

- (a) *releases the Issuer, in its personal capacity and in its capacity as responsible entity of the SPS Trust, in respect of all actions, conduct and decisions made in relation to the Specified Matters; and*
- (b) *releases Spicers in respect of all actions, conduct and decisions made in relation to the Specified Matters.*

#### **23A.10 Limitation of liability and indemnity in favour of the Issuer in respect of the Trust Scheme**

- (a) *Subject to the Corporations Act, the liability of the Issuer to any person of any nature whatsoever in connection with the Trust Scheme (including its implementation) is limited to the Issuer's ability to be indemnified from the Assets.*
- (b) *The indemnity in clause 23A.10(a) applies in respect of any liability incurred in connection with the Trust Scheme (including its implementation).*

#### **23A.11 Expenses of the Trust Scheme**

*In addition to any fees to which the Issuer may be entitled, and as to any expenses in respect of which the Issuer is entitled to be in reimbursed under the terms of the Constitution, the Issuer is entitled to pay (or be reimbursed) out of the Assets all costs, charges and expenses which may properly be incurred by the Issuer in formulating, documenting, executing or implementing the Trust Scheme.*

#### **23A.12 Independent and separate powers and authorities**

*Each of the Issuer's powers described in and the appointments made under, this clause 23A are separate and independent powers and appointments (as the case may be).*



### **23A.13 Definitions**

*In this Clause 23A the following words have these meanings unless the contrary intention appears:*

**Effective Date** means the effective date for the Trust Scheme.

**Eligible Unitholder** means a registered holder of SPS Units immediately following the close of registers on the Record Date, but does not include Spicers or any of its Related Entities in respect of any Units held by such parties.

**Scheme Implementation Deed** means the deed between Spicers and the Issuer dated [date].

**Ineligible Overseas Holder** means a Unitholder who at the close of the register on the Record Date has a registered address which is outside Australia and its external territories or New Zealand unless TrustCo and Spicers are satisfied that Spicers is not prevented from lawfully issuing the Trust Scheme Consideration to such Unitholder, either unconditionally or after compliance with such conditions as TrustCo and Spicers regard as acceptable.

**IOH Sale Period** means the period of time agreed between the parties during which the IOH Transferee must sell the IOH Shares issued to it in accordance with the IOH Transferee Deed.

**IOH Transferee** means the party that holds an Australian financial services licence issued by ASIC, who will be issued and must sell the IOH Shares as further described in clause 3.2 of the Scheme Implementation Deed and Clause 23A of the Constitution.

**IOH Transferee Deed** means a deed or letter agreement to be entered into between the IOH Transferee and Spicers, which includes provisions substantially in accordance with those referred to in this deed .

**IOH Shares** means the Trust Scheme Consideration issued by Spicers to the IOH Transferee in respect of the Units held by Ineligible Overseas Holders on the Record Date.

**Record Date** means the date nominated as the record date for the purposes of the Trust Scheme in the Trust Scheme Booklet.

**Sale Facility Account** means the account established by the IOH Transferee in its own name, to which the IOH Transferee must deposit all funds received in respect of the IOH Shares.

**Sale Facility Consideration** means, in respect of each Ineligible Overseas Holder, an amount equal to the average price at which the IOH Shares are sold by the IOH Transferee in accordance with the IOH Transfer Deed (after deducting any applicable brokerage, stamp duty and other taxes), multiplied by the number of the number of IOH Shares that the Ineligible Overseas Holder would otherwise have been entitled to receive had they not been an Ineligible Overseas Holder (subject to rounding to the nearest whole cent or, if the amount calculated is exactly half a cent, subject to rounding down to the nearest whole cent),

**Shares** means fully paid ordinary shares in Spicers.

**Share Registry** means the Spicers share registry.

**Spicers** means Spicers Limited (ACN 005 146 350).

**Specified Matters** has the meaning given in the Scheme Implementation Deed.

**Trust Scheme Consideration** means 545 Shares in respect of each SPS Unit held by an Eligible Unitholder that:

- (a) are issued on the Implementation Date to each Eligible Unitholder; or

- (b) *in the case of Ineligible Foreign Holders, the IOH Shares issued to the IOH Transferee and which must be sold on behalf of Ineligible Foreign Holders in accordance with the IOH Transferee Deed.*

**Trust Scheme Booklet** *means the information to be despatched by TrustCo to the Unitholders and which must include the information required by the Scheme Implementation Deed.*

**Trust Scheme Meeting** *means the meeting of Unitholders to be convened by the Issuer to consider the Trust Scheme Resolutions.*

**Trust Scheme Resolutions** *has the meaning given in the Scheme Implementation Deed."*

**Executed** by the Party as a Deed Poll:

**SIGNED, SEALED AND DELIVERED** by )  
)  
as attorney for **The Trust Company (RE** )  
**Services) Limited** )  
(ACN 003 278 831) under power of )  
attorney dated )  
)  
in the presence of: )  
)  
)  
)  
Signature of witness )  
)  
)  
Name of witness (block letters) )  
)  
)  
)

By executing this deed the attorney states  
that the attorney has received no notice of  
revocation of the power of attorney

**SCHEDULE 4 – DEED OF RETIREMENT AND APPOINTMENT OF  
TRUSTEE**



## **Deed of Retirement and Appointment of Trustee**

**The Trust Company (RE Services) Limited**  
(ACN 003 278 831)

**[Nominee]**  
(ACN [ACN])

**Watson Mangioni Lawyers Pty Limited**  
Corporate and Commercial Lawyers  
Level 23, 85 Castlereagh Street  
SYDNEY NSW 2000  
Tel: (02) 9262 6666  
Fax: (02) 9262 2626  
Email: [mail@wmlaw.com.au](mailto:mail@wmlaw.com.au)  
Ref: PAV 216 6382 SNJ

**This Deed** is made on

**[date]** 2016

## **Parties:**

1. **The Trust Company (RE Services) Limited** (ACN 003 278 831) of Level 15, 20 Bond Street, Sydney NSW 2000 (**Retiring Trustee**).
2. **[Nominee]** (ACN **[ACN]**) of **[Address]** (**New Trustee**)

## **Recitals:**

- A. The Trust was established by the Trust Deed and is a managed investment scheme that has been registered under Part 5C.1 of the Corporations Act.
- B. The Retiring Trustee is currently the responsible entity of the Trust.
- C. The Retiring Trustee has applied to ASIC to deregister the Trust as a registered managed investment scheme in accordance with Section 601PA of the Corporations Act.
- D. The Retiring Trustee desires to retire as responsible entity of the Trust and the New Trustee desires to be appointed in its place.
- E. The retirement of the Retiring Trustee and the appointment of the New Trustee will be made in accordance with clause 13 of the Trust Deed.
- F. The New Trustee consents to its appointment as Trustee of the Trust.

## **1. Definitions and Interpretation**

### **1.1. Definitions**

In this Deed:

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

**Business Day** means a day upon which banks are open for normal business in Sydney.

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

**Effective Date** means the date of this Deed.

**Transaction** means the replacement of the Retiring Trustee with the New Trustee.

**Trust** means the managed investment scheme called PaperlinX Trust (ARSN 123 839 814).

**Trust Deed** means the Trust Deed constituting the Trust dated 7 February 2007, as amended from time to time.

### **1.2. Terms defined in the Trust Deed**

The terms used in this Deed have the same meaning as in the Trust Deed unless the contrary intention appears.

## **2. Retirement of Retiring Trustee and Appointment of New Trustee**

### **2.1. Timing**

The events in Clauses 2.2 and 2.3 take place simultaneously at the Effective Date.



## **2.2. Retirement**

The Retiring Trustee retires as trustee of the Trust.

## **2.3. Appointment**

The Retiring Trustee appoints the New Trustee as trustee of the Trust in place of the Retiring Trustee and the New Trustee accepts the appointment.

## **2.4. Effect**

Clauses 3 to 8 inclusive only apply from the Effective Date.

# **3. Covenants**

## **3.1. New Trustee bound by the Trust Deed**

In accordance with clause 13 of the Trust Deed, the New Trustee covenants to be bound by the provisions of the Trust Deed and to carry out the obligations of the Trustee under the Trust Deed, as if the New Trustee had originally been a party to the Trust Deed.

## **3.2. Powers and duties of the New Trustee**

The New Trustee may exercise all the powers and enjoy and exercise all the rights and will be subject to all the duties and obligations of the Trustee under the Trust Deed in respect of the Trust in all respects as fully as though the New Trustee had been originally named as a party to the Trust Deed.

## **3.3. Giving effect to the change of Trustee**

Each Party must use their reasonable endeavours and must execute all documents and do or cause to be done all things as may reasonably be required or desirable on their respective parts as will give full force and effect to the retirement of the Retiring Trustee and the appointment of the New Trustee under this Deed.

# **4. Release of Retiring Trustee and Actions to be Taken**

## **4.1. Release**

From the Effective Date, the Retiring Trustee is released from all further duties, obligations and liabilities under or in connection with the Trust arising on and from the Effective Date.

## **4.2. Fees**

The Retiring Trustee is entitled to any fees and other amounts payable to the Trustee under the Trust Deed up to (but excluding) the Effective Date and the New Trustee must pay those fees and other amounts to the Retiring Trustee within 5 Business Days of the Effective Date.

# **5. Acknowledgment**

## **5.1. Acknowledgment by Parties**

The Parties acknowledge that on and from the Effective Date the rights, obligations and liabilities of the Retiring Trustee in relation to the Trust become the rights, obligations and liabilities of the New Trustee in relation to the Trust, except for:

- (a) any right of the Retiring Trustee to be paid fees for the performance of its functions before it ceased to be the Trustee;
- (b) any right of the Retiring Trustee to be indemnified for expenses it incurred before it ceased to be the Trustee;

- (c) any right, obligation or liability that the Retiring Trustee entity had as a beneficiary of the Trust;
- (d) any liability for which the Retiring Trustee could not have been indemnified out of the Trust property if it had remained the Trustee of the Trust;
- (e) any obligation or liability arising from a breach by the Retiring Trustee of its duties and obligations under the Trust Deed that occurred before the Effective Date;
- (f) any liability the Corporations Act continues to impose on the Retiring Trustee;
- (g) any obligation or liability arising from an existing or antecedent fraud, negligence or breach of trust by the Retiring Trustee; or
- (h) any obligation or liability arising from a failure by the Retiring Trustee to transfer assets of the Trust to the New Trustee.

It is acknowledged that these provisions are subject to the rights of any third parties.

## **5.2. Directions to Retiring Trustee**

The Retiring Trustee must deal with any assets of the Trust that remain within its control after its retirement in such manner and at such times as the New Trustee reasonably directs in writing and at the cost of the New Trustee. The New Trustee warrants that any direction given to the Retiring Trustee in accordance with this Clause will be given in compliance with the New Trustee's obligations in respect of the Trust.

## **5.3. Vesting of property and books and records**

The Retiring Trustee must:

- (a) use its reasonable endeavours to procure the novation in favour of the New Trustee of any relevant agreement entered into by the Retiring Trustee in relation to the Trust, unless otherwise agreed with the New Trustee in any case;
- (b) vest the Trust in the New Trustee; and
- (c) deliver all books and records to the New Trustee, including all breach and complaints registers relating to the Trust, books of account of the Trust, documents lodged with any regulator, details of any claims, pending litigation or unsatisfied liabilities of the Trust and other relevant records to reasonably enable the New Trustee to take on the role and perform its duties as Trustee, subject to the Retiring Trustee being permitted to retain documents which are subject to legal professional privilege,

as soon as practical after the Effective Date.

## **5.4. Parties to give effect to retirement and appointment**

The Parties agree, acknowledge and confirm that each Party must do all such things and must execute all such documents as may be reasonably required on their respective parts as will give full force and effect to the retirement of the Retiring Trustee and the appointment of the New Trustee as the trustee of the Trust under the Trust Deed.

# **6. Indemnification**

## **6.1. Indemnification of Retiring Trustee**

Subject to Clause 6.2, with effect from the Effective Date, the New Trustee indemnifies the Retiring Trustee for any liability properly incurred by the Retiring Trustee:

- (a) prior to the Effective Date, to the extent that the Retiring Trustee would have been entitled to be indemnified for that liability out of the assets of the Trust had the Retiring Trustee remained as Trustee of the Trust; and
- (b) after the Effective Date, to the extent that the Retiring Trustee has acted in accordance with the instructions or directions of the New Trustee under Clause 5.2.

## **6.2. Taxes**

The New Trustee indemnifies the Retiring Trustee out of the assets of the Trust against any liability of the Retiring Trustee for capital gains tax or any other tax or duty (including stamp duty and GST) in relation to or arising from the vesting of the assets of the Trust in the New Trustee, to the extent to which the Retiring Trustee is not fully indemnified out of the assets of the Trust. This indemnity does not extend to any liability of the Retiring Trustee for tax on its own income.

## **6.3. Limitations**

- (a) Subject to Clause 6.3(b), the New Trustee is only liable under Clause 6.1 and 6.2 to the extent it is actually indemnified for the liability out of the assets of the Trust.
- (b) Clause 6.3(a) does not apply to the extent that the New Trustee has lost its ability to exercise a right of indemnity out of the assets of the Trust by reason of the New Trustee's acts or omissions.

## **6.4. Indemnification of New Trustee**

The Retiring Trustee indemnifies the New Trustee for any liability arising out of the performance of the Retiring Trustee's duties and obligations in relation to the Trust prior to the Effective Date to the extent that the Retiring Trustee would not have had a right of indemnity out of the assets of the Trust in respect of those liabilities and that the Retiring Trustee would have been liable for had the Retiring Trustee remained as Trustee of the Trust.

## **6.5. No effect on existing rights**

Nothing in this Deed affects any rights of indemnification of the Retiring Trustee out of the assets of the Trust under the Trust Deed or at law, in respect of events occurring prior to the Effective Date.

## **6.6. Claims**

Neither Party need pay any expenses or assume any liability before claiming on an indemnity by the other Party provided under this Deed.

# **7. Future claims**

## **7.1. Notification of any likely claim**

The New Trustee must notify the Retiring trustee as soon as practicable after it becomes aware of any circumstance which in the New Trustee's opinion is likely to give rise to a claim for which it may seek to call on the indemnity given by the Retiring Trustee under Clause 6.

## **7.2. Co-operation in relation to claims**

Each Party must:

- (a) consult and co-operate with the other in respect of the manner in which a claim under an indemnity given under Clause 6 is dealt with; and
- (b) subject to both Parties making appropriate arrangements satisfactory to the New Trustee to ensure that no cost or other disadvantage will be suffered by the New Trustee or the Trust,

permit the Retiring Trustee to take any action it sees fit for the purposes of contesting the claim under an indemnity given under Clause 6 as against any third parties involved.

### **7.3. Limitation on obligations**

The obligations of the New Trustee under this Clause 7 are subject to its compliance with its obligations, functions and duties under the Trust Deed, the Corporations Act and the general law.

## **8. Payment of fees**

### **8.1. Entitlement**

- (a) The Retiring Trustee is entitled to fees payable to it under the Trust Deed in respect of the period up to the Effective Date.
- (b) The New Trustee will pay the Retiring Trustee any fees due to the Retiring Trustee from the assets of the Trust.

## **9. General**

### **9.1. Governing law and jurisdiction**

- (a) This Deed is governed by the laws of the State of New South Wales.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the courts of the State of New South Wales.

### **9.2. Prohibition and enforceability**

- (a) Any provision of, or the application of any provision of, this Deed or any right, power, authority, discretion or remedy of a party under this Deed which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Deed which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- (c) The application of this Clause 9.2 is not limited by any other provision of this Deed in relation to severability, prohibition or enforceability.

### **9.3. Variation**

A variation of any term of this Deed must be in writing and signed by the Parties.

### **9.4. Cumulative rights**

The rights, powers, authorities, discretions and remedies of a Party under this Deed do not exclude any other right, power, authority, discretion or remedy.

### **9.5. Entire agreement**

This Deed supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the Parties.

### **9.6. Counterparts**

This Deed may be executed in any number of counterparts each of which, when executed, is deemed to be an original and the counterparts will constitute one and the same instrument.

**9.7. Costs**

- (a) Each Party will bear its own legal costs and expenses arising out of the preparation of this Deed.
- (b) Any stamp duty payable on or in connection with this Deed will be borne by the New Trustee.

**9.8. Binding effect of this Deed**

This Deed shall bind the Parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect thereof.

**Executed** by the Parties as a Deed:

**SIGNED, SEALED AND DELIVERED** by )  
 )  
as attorney for **The Trust Company (RE** )  
**Services) Limited** )  
(ACN 003 278 831) under power of )  
attorney dated **[dated]** )  
 )  
in the presence of: )  
 )  
 )  
..... )  
Signature of witness )  
 )  
..... )  
Name of witness (block letters) )  
 )  
 )  
 )

.....  
By executing this deed the attorney  
states that the attorney has received no  
notice of revocation of the power of  
attorney

**SIGNED** by )  
**[Nominee]** )  
(ACN **[ACN]**) )  
in accordance with section 127 of the )  
Corporations Act: )

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

**EXECUTED** as an Agreement

**EXECUTED** by **SPICERS LIMITED**

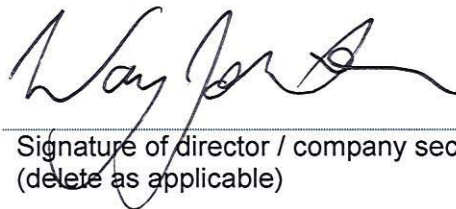
)  
)



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

Robert Kaye SC

\_\_\_\_\_  
Name of director (print)



\_\_\_\_\_  
Signature of director / company secretary  
(delete as applicable)

Wayne Johnston

\_\_\_\_\_  
Name of director / ~~company secretary~~  
(print)

**EXECUTED** by **THE TRUST COMPANY**  
**(RE SERVICES) LIMITED** as responsible  
entity for the PaperlinX SPS Trust

)  
)

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

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Signature of director / company secretary  
(delete as applicable)

\_\_\_\_\_  
Name of director / company secretary  
(print)



**EXECUTED** as an Agreement

**EXECUTED** by **SPICERS LIMITED**

)  
)

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

\_\_\_\_\_  
Signature of director / company secretary  
(delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director / company secretary (print)

**EXECUTED** by **THE TRUST COMPANY  
(RE SERVICES) LIMITED** as responsible  
entity for the PaperlinX SPS Trust

)  
)



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



\_\_\_\_\_  
Signature of director / ~~company secretary~~  
(delete as applicable)

**GLENN FOSTER**

\_\_\_\_\_  
Name of director (print)

**CHRIS GREEN**

\_\_\_\_\_  
Name of director / ~~company secretary~~ (print)