



14 September 2020

PACIFIC EQUITY PARTNERS PROPOSES TO ACQUIRE CITADEL IN A RECOMMENDED TRANSACTION

- Citadel has entered into a Scheme Implementation Deed with Pacific Group Bidco Pty Ltd, an entity owned by funds advised by Pacific Equity Partners (**PEP**) under which it is proposed that PEP will acquire 100% of the share capital in Citadel by way of a Scheme of Arrangement for \$5.70 per share in cash, reduced to the extent of any Special Dividend
- Cash consideration of \$5.70 per share represents a significant premium of 43.2% to the last closing price of \$3.98 per share and 51.4% to the 3-month volume weighted average price (VWAP) of \$3.76 per share
- A scrip alternative provides Citadel shareholders with the potential to participate in the future of Citadel, subject to rounding and scale back mechanisms
- Citadel's Board intends to declare a fully franked Special Dividend of up to 15 cents per share on or shortly before the implementation date of the Scheme, which would enable shareholders to receive up to 6.4 cents per share of additional benefit from franking credits¹. Shareholders will also receive the previously declared fully franked final dividend of 6 cents per share on 1 October 2020
- Citadel's Board unanimously recommends that Citadel shareholders vote in favour of the Scheme in the absence of a superior proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of Citadel shareholders
- Subject to the same qualifications, each Citadel Director intends to vote the Citadel shares held or controlled by them in favour of the proposed Scheme
- The Scheme is subject to certain conditions which must be satisfied before it can be implemented. Citadel shareholders do not need to take any action at the present time

Canberra, Australia – The Citadel Group Limited (ASX: CGL) (**Citadel** or the **Company**) is pleased to announce that it has entered into a binding Scheme Implementation Deed (**SID**) with Pacific Group Bidco Pty Ltd, an entity owned by funds advised by Pacific Equity Partners (**PEP**), under which it is proposed that PEP will acquire 100% of the shares in Citadel by way of a Scheme of Arrangement (the **Scheme**) that is subject to shareholder and court approval in accordance with the requirements of Part 5.1 of the Corporations Act 2001 (Cth).

Under the Scheme, Citadel shareholders will receive \$5.70 per share in cash reduced for any Special Dividend (**Scheme Consideration**), with a scrip alternative available to Citadel shareholders.

The cash consideration of \$5.70 per share values Citadel's equity at \$448.6 million and enterprise value at \$503.1 million².

¹ It remains at the discretion of the Citadel board whether the Special Dividend is ultimately declared and paid. Whether a shareholder will be able to capture the full benefit of the franking credits will depend on their individual tax circumstances.

² Implied equity value of \$448.6 million based on the Scheme Consideration of \$5.70 per Citadel share multiplied by current shares on issue of 78,710,046 shares. Enterprise value includes Citadel net debt of \$54.5 million as at 30 June 2020.



PEP is a leading Australian based private equity firm, with over \$5 billion assets under management. Funds managed by PEP have made more than 34 primary transactions and over 120 follow-on investments.

Citadel Directors unanimously recommend the Scheme

Each member of the Citadel Board recommends that Citadel shareholders vote in favour of the Scheme at the Scheme meeting in the absence of a Superior Proposal³ and subject to the Independent Expert concluding in the Independent Expert's Report (or in any update of that report) that the Scheme is in the best interests of Citadel's shareholders. The Board of Citadel makes no recommendation in relation to the scrip alternative.

Subject to the same qualifications, each Citadel Director intends to vote the Citadel shares held or controlled by them in favour of the Scheme.

Under the SID, Citadel is permitted to pay its previously declared fully franked final dividend of 6 cents per share in relation to the six months to 30 June 2020, which will be paid on 1 October 2020.

If the Scheme is implemented, the Citadel Board also intends to declare a fully franked special dividend of up to 15 cents per share (**Special Dividend**). It remains at the discretion of the Citadel Board whether the Special Dividend is ultimately declared and paid. The Scheme Consideration will be reduced by the cash amount per share of any such dividend.

Citadel Directors believe this is a compelling offer for Citadel shareholders for the following reasons:

- **Attractive premium:** The cash consideration of \$5.70 per share represents:
 - 43.2% premium to the closing price of Citadel shares on ASX of \$3.98 on 11 September 2020⁴
 - 51.4% premium to the 3-month VWAP⁵ of Citadel shares of \$3.76 per share
 - 66.5% premium to the VWAP⁶ of Citadel shares since Wellbeing share issuance of \$3.42 per share
- **Attractive transaction multiple:** the cash consideration of \$5.70 per share represents ~14.7x FY20A PF proportionate EV/EBITDA⁷
- **Certainty of value:** the cash consideration provides Citadel shareholders with certainty of value and the opportunity to realise their investment for cash
- **Limited conditionality:** the Scheme is subject only to conditions customary for transactions of this type, including regulatory approvals, court approval and approval by the shareholders of Citadel, and is not subject to financing or due diligence.

Citadel Chairman, Peter Leahy AC Lt-Gen (Retd), said: "*The Scheme is an attractive transaction which provides an all-cash option for Citadel shareholders. The Citadel Board has unanimously*

³ As that term is defined in the attached Scheme Implementation Deed.

⁴ 11 September 2020, being the last trading day prior to this announcement.

⁵ Volume weighted average price based on cumulative trading volume and value up to and including 11 September 2020.

⁶ Volume weighted average price since 2 April 2020 (date of issuance of the conditional placement shares for Wellbeing acquisition) up to and including 11 September 2020.

⁷ Proportionate EBITDA adjusts for the impact of the non-controlling interest on the reported FY20A pro forma EBITDA of \$38.4 million. The non-controlling interest adjustment is \$4.2 million, resulting in a FY20A PF proportionate EBITDA of \$34.2 million.



concluded that the Scheme represents a compelling outcome for our shareholders, customers, suppliers, and staff.

The price is a very tangible measure of the value and quality of Citadel's industry leading expertise in specialist software and critical secure information management in complex environments like healthcare, defence and national security, government and tertiary education. At a significant premium to the current trading price, PEP's offer provides Citadel shareholders with certainty of value and the opportunity to realise their investment in full for cash.

Citadel's customers will benefit from access to a broader product suite and service capability given Citadel's ability to invest more in growth markets and sectors, and further develop its industry-leading software solutions, with PEP's backing. In addition, the Scheme is positive news for Citadel staff, as we believe there will be increased opportunities to develop new technologies with new partners and advance and grow their careers."

Scrip alternative

Under the Scheme, a scrip alternative is proposed that would enable Citadel shareholders to retain an indirect interest in the business.

Subject to certain conditions, Citadel shareholders will have the option to elect to receive the Scheme Consideration in the following ways:

- All cash consideration: \$5.70 per share in cash (reduced to the extent of any Special Dividend); or
- Maximum Scrip Consideration: 1 Class B share in Pacific Group Topco Limited (**HoldCo**), a newly incorporated acquisition entity, for each Citadel share held, subject to any scale back to ensure that the total number of Class B shares do not exceed 40% of the total shares on issue in HoldCo (**Scrip Scale Back**)
- Mix-and-Match: Citadel shareholders can elect to receive Class B shares in HoldCo in exchange for between 50% and 100% of their Citadel shares (subject to the Scrip Scale Back) and \$5.70 in cash for the remainder of their Citadel shares (reduced to the extent of any Special Dividend).

The Maximum Scrip Consideration and Mix-and-Match alternatives will only operate if Citadel shareholders (excluding ineligible foreign shareholders) holding, in aggregate, at least 5% of the total issued capital of Citadel elect to receive a scrip alternative. In the event this criterion is not satisfied, all Citadel shareholders will receive the cash consideration option.

Citadel shareholders that receive Class B shares in HoldCo will become parties to the HoldCo shareholders deed, a draft of which is included as an Annexure to the SID.

Key terms of the Scheme Implementation Deed

The SID entered into between PEP and Citadel contains customary terms and conditions on which Citadel and PEP will implement the Scheme.

The implementation of the Scheme is subject to Citadel shareholders approving the Scheme by the required majorities. Citadel shareholders will have the opportunity to vote on the Scheme at a meeting (**Scheme Meeting**) expected to be held in December 2020.

The implementation of the Scheme remains subject to certain other customary conditions including:

- Foreign Investment Review Board approval;
- court approval;



- there being no termination of certain material contracts or the occurrence of a prescribed business disruption; and
- no Target Prescribed Occurrence⁸.

The Scheme does not include any funding condition.

Under the SID, Citadel is bound by customary exclusivity provisions including “no shop”, “no talk” and “no due diligence” (subject to the Citadel Directors’ fiduciary obligations), “notification” obligations and “matching” rights. A break fee of 1% of the aggregate Scheme Consideration disregarding the deduction of any Special Dividend will be payable to PEP by Citadel in certain circumstances.

A full copy of the SID, including all applicable conditions, is attached to this announcement.

Indicative timetable and next steps

Shareholders do not need to take any action at the present time.

An Independent Expert will be appointed to prepare a report on whether, in the Independent Expert’s opinion, the Scheme is in the best interests of Citadel shareholders. The Independent Expert’s report will be included in the Scheme Booklet, along with information relating to the Scheme, the reasons for the Directors’ recommendation and details of the Scheme meeting. The Scheme Booklet is expected to be sent to Citadel shareholders in late October 2020.

Shareholders will then have the opportunity to vote on the Scheme at a court convened shareholder meeting, anticipated to be held in December 2020. Subject to the conditions of the Scheme being satisfied, the Scheme is expected to be implemented in December 2020.

Event	Expected Date
First court hearing	Late October 2020
Dispatch of Scheme booklet to Citadel shareholders	Late October 2020
Scheme Meeting	Early December 2020
Second court hearing	Early December 2020
Effective date	Mid December 2020
Record date	Mid December 2020
Implementation date	Mid-Late December 2020

These dates are indicative and subject to change.

Investor conference call

An investor call will be hosted by Citadel’s Chairman Peter Leahy, AC Lt-Gen (Retd) and CEO & Managing Director Mark McConnell at 12:30 pm AEST today, Monday 14 September 2020.

Those wishing to dial into the briefing are encouraged to pre-register via: <https://s1.c-conf.com/diamondpass/10009949-2kdles.html>. Once registered, you will receive an individual passcode and PIN allowing for direct access to the briefing.

Alternatively, at the time of the results call, dial your respective local number below and provide the conference ID to the operator. Please be aware that there may be a short wait:

⁸ As those terms are defined in the attached Scheme Implementation Deed.



Australia Toll Free: 1 800 558 698
Australia Local: +61 (0) 2 9007 3187
Conference ID: 10009949

Advisers

Macquarie Capital (Australia) is acting as financial adviser and Gadens is acting as legal adviser to Citadel.

Authorised for publication by the Board of Directors.

- ENDS -

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About Citadel Group

Citadel is a software and services company. We specialise in managing information in complex environments through integrating know-how, systems and people to provide information on an anywhere-anytime basis. We are a leader in the development and delivery of managed technology solutions. The majority of our revenues are derived from software solutions and long term managed services contracts.

About Pacific Equity Partners

PEP is a leading Australian private equity firm. Founded in 1998, PEP has completed 34 primary transactions and over 120 follow-on investments. The PEP Funds have over A\$5 billion in assets under management, including \$2.5 billion from our newly raised PEP Fund VI. The PEP Funds have a strong track record of successful investment across a range of target industries, including healthcare, technology and education.

Scheme Implementation Deed

The Citadel Group Limited

Pacific Group Bidco Pty Ltd

gadens

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Scheme Implementation Deed

Parties

1. **The Citadel Group Limited** ACN 127 151 026 of 'Citadel House', 11-13 Faulding Street, High Technology Park, Symonston, Australian Capital Territory (**Target**)
2. **Pacific Group Bidco Pty Ltd** ACN 644 075 221 of Level 31, 126-130 Phillip Street, Sydney, New South Wales 2000 (**Bidder**)

Background

- A. The Bidder and the Target have agreed that the Target will propose a members' scheme of arrangement under Part 5.1 of the Corporations Act pursuant to which the Bidder will acquire all of the Target Shares.
- B. The parties have agreed to implement the Scheme on the terms of this Deed.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Deed, unless the context requires otherwise:

Accounting Standards means:

- (a) the requirements of the Corporations Act about the preparation and contents of financial reports; and
- (b) the accounting standards approved under the Corporations Act, being the Australian Accounting Standards and any authoritative interpretations issued by the Australian Accounting Standards Board;

Announcement means an announcement by the Target in the form agreed between the parties prior to signing this Deed;

ASIC means the Australian Securities and Investment Commission;

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

Associate has the meaning given to that term in section 12 of the Corporations Act;

ASX means ASX Limited ACN 008 624 691 or the market operated by it, as the context requires;

ASX Listing Rules means the official listing rules of ASX, modified to the extent of any express written waiver of ASX;

ATO means the Australian Taxation Office;

Bidder Group means the Bidder and each of its Related Bodies Corporate and a reference to a **Bidder Group Member** or a **member of the Bidder Group** is to the Bidder or any of its Related Bodies Corporate;

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

Bidder Information means all information (including any updates to such information) regarding the Bidder Group, HoldCo and the Scheme Consideration that is provided by or on behalf of the Bidder Group or HoldCo to Target, its Representatives or the Independent Expert to enable the Scheme Booklet to be prepared and completed in accordance with this Deed and required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or ASIC Regulatory Guide 60, but excluding information about the Target Group (except to the extent it relates to any statement of intention relating to the Target Group following the Effective Date);

Bidder Representations and Warranties means the representations and warranties of the Bidder as set out in clause 14.5;

Break Fee means \$4,486,473;

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

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;

Class A Shares means fully paid Class A Shares in the capital of HoldCo, having the rights specified in the HoldCo Constitution and the HoldCo Shareholders Deed;

Competing Transaction means any expression of interest, proposal, offer, agreement, transaction or arrangement (whether existing before, on or after the date of this Deed) by or with any person which, if entered into or completed substantially in accordance with its terms, would mean a person (other than the Bidder or funds advised or managed by the Bidder) would:

- (a) directly or indirectly, acquire or have a right to acquire an interest or Relevant Interest in or become the holder of 10% or more of the issued share capital of the Target or Voting Power of 10% or more in the Target;
- (b) directly or indirectly acquire or have a right to acquire an interest in or become the holder of 50% or more of the issued share capital in any of the Target's Subsidiaries, including by way of takeover bid, scheme of arrangement, capital reduction, reconstruction, sale of shares or joint venture;
- (c) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in, all or a material part of the assets or business of the Target or its Subsidiaries;
- (d) acquire Control of the Target (or a material Subsidiary of the Target);
- (e) have the right to appoint one or more directors to the Target Board;

- (f) otherwise acquire or merge (including by a reverse takeover bid, joint venture or dual listed company structure) with the Target (or a material Subsidiary of the Target); or
- (g) require the Target to abandon, or otherwise fail to proceed with, the Transaction;

For the purposes of the definition of "Competing Transaction", a Subsidiary or relevant business or assets will be material if the relevant Subsidiary or business or assets contributes more than 50% of the consolidated net profits or represents more than 50% of the total consolidated assets of the Target Group;

Condition means each of the conditions precedent set out in clause 3.1;

Confidentiality Agreement means the confidentiality agreement between the Target and PEP Services Pty Limited dated 7 July 2020;

Consolidated Group means a "consolidated group" or a "MEC group" as those terms are defined in section 995-1(1) of the ITAA;

Control has the meaning given to that term in section 50AA of the Corporations Act;

Controller means, in relation to a person:

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

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

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

Court means the Supreme Court of Victoria, Federal Court of Australia, or such other court of competent jurisdiction under the Corporations Act agreed in writing by the Target and the Bidder;

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

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

Cut-Off Time means 8.00am on the Second Court Date;

Data Room means the electronic data room operated by or on behalf of the Target and hosted by Intralinks, the index of which has been initialled by, or on behalf of, the parties for the purposes of identification;

Debt Commitment Letter means the credit-approved, executed commitment letter and accompanying term sheet from certain banks or other financial institutions addressed to the Bidder and dated on or before the date of this Deed;

Debt Financing means the debt financing incurred or intended to be incurred pursuant to the Debt Commitment Letter;

Declared Dividend means the Target's previously declared dividend of \$0.06 per Target Share in relation to the 6 months to 30 June 2020;

Deed means this scheme implementation deed including the recitals, any schedules and any annexures;

Deed Poll means the Deed Poll to be executed by the Bidder, MidCo and HoldCo in favour of the Scheme Participants substantially in the form set out in Annexure B or such other form as may be agreed in writing between the parties;

Disclosure Materials means the information disclosed in writing by or on behalf of the Target to the Bidder and its Representatives in:

- (a) the documents and information contained in the Data Room made available by the Target to the Bidder and its Representatives prior to the date of this Deed, the index of which has been initialled by, or on behalf of, the parties for the purposes of identification; and
- (b) any written answers to requests for further information made by the Bidder and its Representatives as contained in the Data Room prior to the date of this Deed, a copy of which has been initialled by, or on behalf of, the parties for the purposes of identification;

Duty means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them, but excludes any Tax;

Effective when used in relation to the Scheme, means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the Scheme Order, but in any event at no time before an office copy of the Scheme Order is lodged with ASIC;

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

Election has the meaning given to that term in the Scheme;

Election Form has the meaning given to that term in the Scheme;

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or 12(2) of the PPSA or any agreement to create any of them or allow them to exist;

End Date means the date which is 6 months after the date of this Deed or another date as is agreed by the Target and the Bidder in writing;

Equity Commitment Letter means a binding, executed commitment letter dated before the date of this Deed addressed to HoldCo and the Bidder;

Equity Financing means the equity financing commitments set out in the Equity Commitment Letter;

Excluded Indebtedness means any Indebtedness resulting from:

- (a) making any draw downs under any of its Existing Debt Financing Agreements for the purposes of funding any or all of the following:
 - (i) the Permitted Dividend;
 - (ii) the Declared Dividend;
 - (iii) operational working capital requirements in the ordinary course of business;

- (iv) the Transaction Costs; and
 - (v) payments to holders of Share Rights existing as at the date of this Deed in circumstances where those Share Rights are cash settled in accordance with the terms of the Share Rights Plan and for an amount that in aggregate is not in excess of the Share Rights Buyout Amount;
- (b) the entry into any finance leases in the ordinary course and consistent with past practice for the purpose of purchasing client equipment provided that entry into such finance leases are permitted under the Existing Debt Financing Agreements and the aggregate amount the subject of such finance leases does not exceed \$1,000,000;
- (c) the entry into any swap, option, hedge, forward, futures or similar transaction:
 - (i) in the ordinary course in relation to customer contracts which are denominated in a foreign currency; or
 - (ii) for the purpose of repatriating funds throughout the Target Group in connection with the payment of the Permitted Dividend, the Declared Dividend or the repayment of intercompany trading loans within the Target Group,

provided that such swap, option, hedge, forward, futures or similar transaction is permitted under the Existing Debt Financing Agreements; or
- (d) the provision or replacement of any bank guarantee to a customer or landlord of the Target Group in the ordinary course and consistent with past practice provided that the aggregate amount of such bank guarantees, together with all other bank guarantees or letters of credit on issue, does not exceed \$15,000,000;

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

- (a) the End Date; and
- (b) the date this Deed is terminated in accordance with its terms;

Existing Debt Financing Default means a “default” or “review event” (in each case, howsoever described) under the Existing Debt Financing Agreements;

Existing Debt Financing Agreements means:

- (a) loan note subscription agreement dated 27 March 2020 between, among others, the Target, certain members of the Target Group, Australia and New Zealand Banking Group Limited (as agent) and ANZ Fiduciary Services Pty Ltd (as security trustee); and
- (b) transactional facilities letter of offer originally dated 27 March 2020 and as amended on 22 July 2020 between the Target, certain members of the Target Group and Australia and New Zealand Banking Group Limited (as lender);

Fairly Disclosed means, in relation to a matter, event or circumstance, disclosed to the relevant party or its Representatives to the extent, and in reasonably sufficient detail, so as to allow a reasonable and sophisticated bidder (or one of its Representatives) experienced in transactions similar to the Transaction to identify or otherwise determine the nature and scope of the relevant matter, event or circumstance;

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

filosoph-E means filosoph-e Pty Ltd ACN 116 725 305;

FIRB means the Foreign Investment Review Board;

First Court Date means the first day on which an application made to the Court for an order under section 411(1) of the Corporations Act convening the Scheme Meeting is heard (or if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard), with such hearing being the **First Court Hearing**;

Forfeited Share Rights means the Share Rights other than the Vested Share Rights.

Foreign Scheme Shareholders means a Scheme Participant whose address in the Target Share Register as at the Record Date is a place outside Australia, New Zealand or the United Kingdom unless the Target and the Bidder agree in writing that it is lawful and not unduly onerous or impracticable to issue HoldCo Shares to the Scheme Participant if the Scheme Participant so elects under the Scheme;

Government Agency means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

GST has the meaning given in the GST Law;

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

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

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

HoldCo means Pacific Group Topco Limited ACN 644 302 492;

HoldCo Constitution means the constitution adopted, or to be adopted, by HoldCo;

HoldCo Prescribed Occurrence means the occurrence of an Insolvency Event in relation to HoldCo or the Bidder;

HoldCo Shareholders Deed means the shareholders' deed in relation to HoldCo in the form set out in Annexure C or as otherwise agreed between the Target and the Bidder;

HoldCo Shares means fully paid Class B Shares in the capital of HoldCo, having the rights specified in the HoldCo Constitution and the HoldCo Shareholders Deed;

Implementation Date means the date which is 5 Business Days after the Record Date or such other date after the Record Date agreed in writing between the Target and the Bidder;

Indebtedness means any debt or other monetary liability (whether present or future, actual or contingent), together with all interest, fees and penalties accrued thereon, in respect of moneys borrowed or raised or any financial accommodation including under or in respect of any:

- (a) bill, bond, debenture, note or similar instrument;
- (b) acceptance, endorsement or discounting arrangement;
- (c) guarantee or letter of credit or other instrument issued by a bank or financial institution in respect of financial liabilities;

- (d) bill of exchange, cheque or other negotiable instrument;
- (e) finance or capital lease or hire purchase contract;
- (f) swap, option, hedge, forward, futures or similar transaction;
- (g) redeemable share or security;
- (h) obligation to deliver assets or services paid for in advance by a financier, or any guarantee of the obligations of another person with respect to the foregoing;
- (i) all recourse and non-recourse liabilities and other liabilities (whether conditional or unconditional, present or future) arising from any transactions related to the assignment or securitisation of receivables for financing purposes to any third party, including all factoring agreements and similar agreements executed for the purpose of obtaining financing and including any amount raised pursuant to such agreements but which, in accordance with Accounting Standards, have not otherwise been recognised on the balance sheet as a liability; or
- (j) all interest and non-interest bearing loans, advances or other financing liabilities or obligations, including overdrafts and any other liabilities in the nature of borrowed money (whether secured or unsecured);

Independent Expert means an independent expert in respect of the Scheme appointed by the Target;

Independent Expert's Report means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating whether or not in the Independent Expert's opinion the Scheme is in the best interests of Target Shareholders;

Insolvency Event means, in relation to a party, any one or more of the following events or circumstances:

- (a) being in liquidation or provisional liquidation or under administration;
- (b) having a Controller or analogous person appointed to it or any of its property;
- (c) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) being unable to pay its debts as and when they become due and payable, being insolvent within the meaning of section 95A of the Corporations Act or being otherwise insolvent;
- (e) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
- (f) entering into, or resolving to enter into a scheme of arrangement, a deed of company arrangement or other compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (g) seeking or obtaining protection from its creditors under any statute or any other law;
- (h) any analogous event or circumstance under the laws of any jurisdiction or which has a substantially similar effect; or
- (i) taking any step or being the subject of any action that is reasonably likely to result in any of the above occurring,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other party;

ITAA means the Income Tax Assessment Act 1997 (Cth);

Key Employees means those persons employed by the Target Group referred to in Document 17.3 in the Data Room;

Law means in respect of a party:

- (a) any law or any requirement under law, including at common law, in equity, under any statute, regulation, or by law, any condition of any Material Authorisation (including any fiduciary duty);
- (b) any binding decision or directive, or published policies, standards or guidelines, of any Regulatory Authority; and
- (c) any binding code of practice,

in any jurisdiction that is applicable to it;

Losses means all claims, demands, damages, losses, costs, expenses and liabilities;

Material Authorisations means each licence, authorisation, approval or permit held or required to be held by a Target Group Member, the failure to hold, have the benefit, cessation or material alteration of which would be reasonably likely to have a material adverse effect on the operational or financial performance of the relevant Target Group Member;

Material Contract means those contracts contained in folders 3.1.1.1 and 3.4.1 (other than documents 3.4.1.21.2 to 3.4.1.21.9) in the Data Room;

MidCo means Pacific Group Midco Pty Ltd ACN 644 072 248;

Permitted Dividend means a dividend declared or determined by the Target Board after the date of this Deed in accordance with clause 4.6, provided that the maximum paid or payable by Target per Target Share in respect of such dividend does not exceed \$0.15 per Target Share (which will be fully franked subject to the availability of franking credits and which, to the extent franked, will not result in the franking account of the Target being in deficit after the payment of the dividend);

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

PPS Register means the register established under section 147 of the PPSA;

Recommendation has the meaning given to that term in clause 8.1;

Record Date means 5.00pm on the date that is 2 Business Days after the Effective Date, or such other date as may be agreed in writing between the Bidder and the Target or as may be required by ASX;

Related Body Corporate has the meaning given to that term in the Corporations Act;

Relevant Interest has the meaning given to that term in sections 608 and 609 of the Corporations Act, as modified by any legislative instrument issued by ASIC;

Regulatory Approval means any waiver, consent, approval or ruling (binding or non-binding) of a Government Agency necessary to implement the Scheme or which the parties

agree acting reasonably and in good faith should be obtained in connection with the Scheme;

Regulatory Authority means:

- (a) a government or governmental, semi-governmental or judicial entity or authority;
- (b) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (c) any regulatory organisation established under statute;

Representative means, in relation to:

- (a) the Target or its Related Bodies Corporate;
- (b) the Bidder or its Related Bodies Corporate; or
- (c) HoldCo or its Related Bodies Corporate,

any partner, member, director, employee, officer, agent, contractor, professional adviser (including legal, financial or accounting advisers), potential debt and equity financing source, potential co-investor, banker, auditor or other consultant and representatives of any of the foregoing;

Scheme or Scheme of Arrangement means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Participants substantially in the form set out in Annexure A, subject to any alterations or conditions agreed or any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Bidder and the Target;

Scheme Booklet means, in relation to the Scheme, the information booklet to be approved by the Court and dispatched to Scheme Participants which includes the Scheme, the Deed Poll, an explanatory statement complying with the requirements of the Corporations Act, the Independent Expert's Report, a notice of meeting and proxy form and an Election Form;

Scheme Cash Consideration has the meaning given to that term in the Scheme;

Scheme Consideration has the meaning given to that term in the Scheme;

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

Scheme Order means the order of the Court made for the purposes of section 411(4)(b) of the Corporations Act approving the Scheme;

Scheme Participant means each holder of a Scheme Share as at the Record Date;

Scheme Scrip Consideration has the meaning given to that term in the Scheme;

Scheme Shares means all the Target Shares on issue as at the Record Date;

Second Court Date means the first day of the Second Court Hearing or, if the Second Court Hearing is adjourned for any reason, the first day on which the adjourned application is heard;

Second Court Hearing means the hearing of the application made to the Court for the Scheme Order;

Share Right means a right granted under the Share Rights Plan to acquire by way of issue a Share subject to the terms of such plan;

Share Rights Buyout Amount means the amount equal to \$1,567,654;

Share Rights Plan means the Target's LTI Equity Plan Rules;

Subsidiary has the meaning given to that term in section 46 of the Corporations Act;

Superior Proposal means a bona fide Competing Transaction which the Target Board, acting in good faith in order to satisfy what the Target Board reasonably considers to be its fiduciary or statutory duties and after taking advice from the Target's legal and financial advisers, determines that:

- (a) would, if completed substantially in accordance with its terms, result in an acquisition of Control of the Target or all or substantially all of the assets of the Target Group;
- (b) is reasonably likely to be completed in accordance with its terms in a timely fashion and not materially after the proposed Implementation Date (based on the Timetable), taking into account all financial, regulatory and other aspects of such proposal, including its conditionality and the ability of the proposing party to fund and consummate the transactions contemplated by the Competing Transaction; and
- (c) would, if completed substantially in accordance with its terms, result in a transaction that is more favourable to Target Shareholders than the Transaction, taking into account all the terms and conditions of the Competing Transaction;

Takeovers Panel means the takeovers panel established under section 171 of the *Australian Securities and Investments Commission Act 2001* (Cth);

Target Board means the board of directors of the Target, and a reference to a Target Board Member means any director of the Target comprising part of the Target Board;

Target Business Warranties means representations and warranties of Target set out in Schedule 2;

Target Director means any director of the Target;

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

Target Indemnified Parties means the Target, its Related Bodies Corporate and their directors, officers and employees;

Target Indemnity means the indemnities given by the Target in clauses 14.4 and 14.9;

Target Information means all information contained in the Scheme Booklet other than the Bidder Information, the Independent Expert's Report and any information in respect of which a statement that a Third Party assumes responsibility for that information is included in the Scheme Booklet;

Target Prescribed Occurrence means any of the following events:

- (a) the Target converting all or any of the Target Shares into a larger or smaller number of Target Shares;

- (b) the Target or another member of the Target Group resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares (including the Target Shares);
- (c) the Target or another member of the Target Group:
 - (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) any outstanding share or performance rights or similar rights vest, have been exercised or converted into Target Shares in a manner other than as set out in this Deed without the prior written consent of the Bidder;
- (e) any bonus, incentive, compensation, payment or other benefit is made to Employees other than salary, wages, commissions or other benefits required to be paid under any applicable agreement or Law;
- (f) any member of the Target Group agrees to pay, makes or declares, or announces an intention to make or declare, or pays any distribution (whether by way of dividend, capital reduction or any other form of distribution of profits or return of capital and whether in cash or *in specie*) to its members other than the declaration and payment by a member of the Target Group of the Declared Dividend, the Permitted Dividend or a dividend where the recipient of that dividend is the Target or another member of the Target Group other than philosoph-E;
- (g) a member of the Target Group issuing shares, or granting a performance right or an option over its shares, or agreeing to make such an issue or grant such a performance right or an option, other than:
 - (i) to another member of the Target Group other than philosoph-E; or
 - (ii) the issuing of Target Shares pursuant to the vesting of Share Rights as permitted by clause 5;
- (h) a member of the Target Group issuing or agreeing to issue securities convertible into shares or other instruments or rights that are convertible or exercisable into shares (including Target Shares) other than to another member of the Target Group other than philosoph-E;
- (i) a member of the Target Group disposing, or agreeing to dispose, of the whole, or a substantial or material part, of the Target Group's business, assets or property ;
- (j) a member of the Target Group acquiring, or agreeing to acquire, any securities, business, assets, interest in a joint venture, entity or undertaking, the value of which in aggregate, exceeds \$1,000,000;
- (k) a member of the Target Group adopts a new constitution or makes any change to or repeals its constitution;
- (l) a member of the Target Group creating, or agreeing to create, any mortgage, charge, lien or other Encumbrance over the whole, or a substantial part, of its business or property or over a material asset of the Target Group other than in the ordinary course of business;
- (m) a member of the Target Group incurring or committing to any additional Indebtedness in excess of \$500,000 from the level of Indebtedness existing in the Target Group at the time of entry into this Deed (including borrowings, loans and advances and including make any draw downs under any of its Existing Debt

Financing Agreements (or any other debt facility)) or liability (whether actual or contingent), but excluding any Excluded Indebtedness;

- (n) a member of the Target Group enters into or resolves to enter into a transaction with any related party of Target (other than a related party which is a Target Group Member) as defined in section 228 of the Corporations Act which would require shareholder approval under Chapter 2E or under Chapter 10 of the Listing Rules;
- (o) an Existing Debt Financing Default occurs;
- (p) an Insolvency Event occurring in relation to a member of the Target Group; or
- (q) a member of the Target Group resolves to be wound up;

but excludes any matter:

- (r) required to be done, or permitted under this Deed or the Scheme;
- (s) Fairly Disclosed in the Disclosure Materials;
- (t) undertaken with the written consent of the Bidder, which in the case of subparagraphs (e) and (f) above, will not be unreasonably withheld or delayed provided there are no adverse economic consequences to the Bidder from such actions; or
- (u) Fairly Disclosed in an announcement made by the Target to ASX or a document lodged with ASIC in the 3 years prior to the date of this Deed;

Target Scheme Warranties means the representations and warranties of the Target as set out in clause 14.1(b);

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

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

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

Target Shareholders means each person who is registered in the Target Share Register as a holder of Target Shares;

Target Warranties means the Target Scheme Warranties and the Target Business Warranties;

Tax means any tax, levy, charge, impost, fee, deduction, goods and services tax (including GST), compulsory loan or withholding, that is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above, but excludes Duty;

Tax Demand means:

- (a) a demand or assessment from a Government Agency requiring the payment of any Tax or Duty for which Target may be liable under this Deed;
- (b) any document received from a Government Agency administering any Tax or Duty assessing, imposing, claiming or indicating an intention to claim any Tax or Duty;
- (c) a notice to a contributing member of a Consolidated Group given under section 721-15(5) of the ITAA 1997;

- (d) a notice to a member of a GST Group (as defined in the GST Act), in relation to section 444-90(1) of Schedule 1 to the ITAA; and
- (e) a lodgement of a Tax or Duty return or a request for an amendment to a lodged Tax or Duty return;

Tax Indemnity means the indemnity in clause 14.9;

Timetable means the indicative timetable in relation to the Scheme set out in Schedule 1 or such other indicative timetable as agreed in writing between the parties or as may be required by ASX;

Third Party means a person other than the Bidder and its Associates;

Transaction means the acquisition of the Target by the Bidder through the implementation of the Scheme in accordance with the terms of this Deed;

Transaction Costs has the meaning given in clause 9.1(b)(xii).

Transaction Implementation Committee means a committee to be comprised of:

- (a) one or more representatives from each of the Target and the Bidder;
- (b) one or more representatives from one or more legal and financial advisers of the Target and the Bidder; and
- (c) anyone else the parties may agree from time to time;

United Kingdom means the United Kingdom of Great Britain and Northern Ireland;

Vested Share Rights means 270,739 Share Rights.

Voting Intention has the meaning given to that term in clause 8.1(d);

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

W&I Policy means a policy of warranty and indemnity insurance that may be issued to Bidder on or after the date of this Deed in respect of the Target Warranties and Target Indemnities.

1.2 Interpretation

In this Deed, unless the context requires otherwise:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) a reference to a person includes any other entity recognised by law and vice versa;
- (e) a reference to any time is a reference to Melbourne, Australia time;
- (f) a reference to all or any part of a statute, rule, regulation or ordinance (including an ASX Listing Rule or operating rule of a financial market or a clearing and settlement facility) (**statute**) includes that statute as amended, consolidated, re-

enacted or replaced from time to time and a regulation or statutory instrument issued under it;

- (g) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (h) a reference to a clause described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this Deed means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (i) any reference to a party to this Deed includes its successors and permitted assigns;
- (j) any reference to any agreement or document includes that agreement or document as amended at any time;
- (k) if something is to be or may be done on a day that is not a Business Day, then it must be done on the next Business Day;
- (l) a reference to an event, matter or circumstance being Fairly Disclosed to a party means disclosed to that party or any of its Representatives in sufficient detail so as to enable a reasonable and sophisticated buyer experienced in transactions similar to the Transaction and experienced in business similar to any business conducted by the Target Group (if disclosed by Target) to identify the nature, substance and scope of the relevant event, matter or circumstance on the Target Group;
- (m) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (n) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Deed;
- (o) the expression **at any time** includes reference to past, present and future time and performing any action from time to time; and
- (p) money amounts are stated in Australian currency unless otherwise specified.

2. Agreement to propose Scheme

- (a) The Target agrees to propose the Scheme to Target Shareholders on and subject to the terms of this Deed.
- (b) The Bidder agrees to assist the Target to propose the Scheme, on and subject to the terms of this Deed.

3. Conditions

3.1 Conditions precedent

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Scheme (including the obligations of the Bidder under clause 4.2) will not become binding, unless and until each of the following Conditions is satisfied or waived to the extent and in the manner set out in this clause 3:

Condition Precedent		Party entitled to benefit	Party responsible
(a)	<p>(FIRB approval) before 8.00am on the the Second Court Date either:</p> <p>(i) the Treasurer (or the Treasurer's delegate) has provided a written no objections notification to the Scheme either without conditions or with conditions acceptable to the Bidder (acting reasonably); or</p> <p>(ii) following notice of the proposed Scheme having been given by the Bidder to the Treasurer under the FATA, the Treasurer has ceased to be empowered to make any order under Part 3 of the FATA because the applicable time limit on making orders and decisions under the FATA has expired.</p>	Cannot be waived	Bidder
(b)	<p>(Independent Expert) the Independent Expert issues an Independent Expert's Report which concludes that the Scheme is in the best interests of Target Shareholders before the time when the Scheme Booklet is registered with ASIC and the Independent Expert does not publicly withdraw, qualify or change that opinion at any time prior to 8.00am on the Second Court Date.</p>	Target	Both
(c)	<p>(Shareholder approval) Target Shareholders approve the Scheme by the requisite majorities in accordance with section 411(4)(a)(ii) of the Corporations Act.</p>	Cannot be waived	Target
(d)	<p>(Court approval) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.</p>	Cannot be waived	Target
(e)	<p>(No regulatory intervention) no Court or Government Agency has:</p> <p>(i) 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 Scheme, the implementation of the Transaction or the rights of the Bidder in</p>	Both	Both

Condition Precedent		Party entitled to benefit	Party responsible
	<p>respect of the Target Shares to be acquired under the Scheme;</p> <p>(ii) announced, commenced or threatened to commence any action or investigation in consequence or, or in connection with, the Transaction which restrains, prohibits or prevents (or could reasonably be expected to restrain, prohibit or prevent) the Scheme, the implementation of the Transaction or the rights of the Bidder in respect of the Shares to be acquired under the Scheme,</p> <p>and none of those things is in effect as at 8.00am on the Second Court Date.</p>		
(f)	(No Target Prescribed Occurrence) no Target Prescribed Occurrence occurs between the date of this Deed and 8.00am on the Second Court Date.	Bidder	Target
(g)	(No HoldCo Prescribed Occurrence) no HoldCo Prescribed Occurrence occurs between the date of this Deed and 8.00am on the Second Court Date.	Target	Bidder
(h)	(Target Scheme Warranties) the Target Scheme Warranties are true and correct in all material respects at all times between the date of this Deed and as at 8.00am on the Second Court Date, except where expressed to be operative at another time.	Bidder	Target
(i)	(Bidder Representations and Warranties) the Bidder Representations and Warranties are true and correct in all material respects at all times between the date of this Deed and as at 8.00am on the Second Court Date, except where expressed to be operative at another time.	Target	Bidder
(j)	(HoldCo Shareholders Deed) the HoldCo Shareholders Deed is executed by the persons named as the parties to that document.	Target	Both
(k)	(Employee incentive arrangements) by 8.00am on the Second Court Date the Target has taken all necessary steps to ensure that all outstanding Share Rights	Bidder	Target

Condition Precedent	Party entitled to benefit	Party responsible
<p>will either vest and be exercised and converted into Target Shares, be cash settled or lapse and be cancelled by the Effective Date, as contemplated by clause 5, including obtaining any necessary waiver of, or approval under, the Listing Rules in relation to the vesting and exercise or conversion, cash settlement, lapse or cancellation of the Share Rights.</p>		
<p>(I) (Cybersecurity) between the date of this Deed and 8.00am on the Second Court Date, no member of the Target Group has been subject to a cyber-security incident which:</p> <p>(i) results in customer confidential data or information received by that Target Group Member pursuant to a contract which is material to the business of the Target Group being accessed by a third party not authorised to access such data or information under the relevant material contract other than in circumstances where:</p> <p>(A) the relevant customer agrees or acknowledges in writing, within a reasonable period after the unauthorised access, that the unauthorised access was not caused by the actions or omissions of the Target Group; or</p> <p>(B) the incident is not likely to have a material adverse effect on the business, assets, operations, performance or prospects of the Target Group as a whole; or</p> <p>(ii) results in a shutdown of the systems or operations of the Target Group for more than 1 week that results in a breach of customer service level requirements and where the shutdown is likely to have a material adverse effect on the business, assets, operations,</p>	Bidder	Target

Condition Precedent		Party entitled to benefit	Party responsible
	performance or prospects of the Target Group as a whole.		
(m)	(Material Contracts) between the date of this Deed and 8.00am on the Second Court Date. no counterparty to a Material Contract has given notice in writing to the relevant member of the Target Group of its intention to terminate the relevant Material Contract.	Bidder	Target

3.2 Duties relating to Conditions

Each of the Target and the Bidder agrees to use reasonable endeavours to procure that:

- (a) each of the Conditions for which it is the party responsible (as noted in clause 3.1):
 - (i) is satisfied as soon as practicable after the date of this Deed; and
 - (ii) continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
- (b) where a party is responsible for a Condition being satisfied, there is no occurrence that would prevent a Condition from being satisfied.

3.3 Regulatory matters

Without limiting clause 3.2:

- (a) **(Regulatory Approvals process)** each party must take all steps it is responsible for as part of any Regulatory Approval process, including responding to requests for information at the earliest practicable time;
- (b) **(consultation)** each party must consult with the other party in advance in relation to all material communications (whether written or oral, and whether direct or via a Representative) with any Government Agency relating to any Regulatory Approval
- (c) **(assistance)** each party must give the other party reasonable assistance in connection with obtaining any Regulatory Approval as well as in connection with the satisfaction of the Condition in clause 3.1(a);
- (d) **(communications with Government Agency)** each party must, if required in writing by the other party:
 - (i) provide the other party with drafts of any material written communications to be sent to a Government Agency; and
 - (ii) provide copies of any material written communications sent to or received from a Government Agency to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so.

For the avoidance of doubt, neither party is required to disclose commercially sensitive information in relation to the application for a Regulatory Approval to the other party and the party applying for a Regulatory Approval may withhold or redact information or documents from the other party if and to the extent that they are either confidential to a third party or commercially sensitive and confidential to the applicant.

3.4 Conditional approvals

Any approvals required under the Conditions must be obtained either on an unconditional basis or subject to conditions that are acceptable to the party who is entitled to the benefit of the relevant Condition (acting reasonably), provided that the parties acknowledge that the tax conditions published at the date of this Deed in Attachment B to Guidance Note 47 issued by FIRB are accepted if imposed on the no objections notifications.

3.5 Waiver of Conditions Precedent

- (a) A Condition may only be waived in writing by the party or parties entitled to the benefit of that Condition as noted in clause 3.1 and will be effective only to the extent specifically set out in that waiver.
- (b) A party entitled to waive the breach or non-fulfilment of a Condition under this clause 3.5 may do so in its absolute discretion.
- (c) If either the Target or the Bidder waives the breach or non-fulfilment of a Condition in accordance with this clause 3.5, then that waiver does not preclude that party from suing the other for any breach of this Deed arising as a result of the breach or non-fulfilment of that Condition or arising from the same event which gave rise to the breach or non-fulfilment of that Condition.
- (d) A waiver of a breach or non-fulfilment in respect of a Condition does not constitute:
 - (i) a waiver of a breach or non-fulfilment of any other Condition arising from the same event; or
 - (ii) a waiver of a breach or non-fulfilment of that Condition resulting from any other event.

3.6 Notices

Each party must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) promptly notify the other in writing if it becomes aware that any Condition has been satisfied and provide reasonable evidence of the same; and
- (c) promptly notify the other in writing if it becomes aware that any Condition is or has become incapable of being satisfied (having regard to the respective obligations of each party under clause 3.2(b)).

3.7 Scheme voted down because of Headcount Test

- (a) If the Condition in clause 3.1(c) is not satisfied only because of a failure to obtain the majority required by section 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice to the other within 3 Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that section provided the party has in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable and if such a notice is provided by either party, the Target must:

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

3.8 Failure of Condition

- (a) If:
 - (i) there is a breach or non-fulfilment of a Condition which is not waived in accordance with this Deed by the time or date specified in this Deed for the satisfaction of the Condition;
 - (ii) there is an act, failure to act or occurrence which will prevent a Condition from being satisfied by the time or date specified in this Deed for the satisfaction of the Condition (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this Deed); or
 - (iii) the Scheme has not become Effective by the End Date,

the parties must consult in good faith with a view to determining whether:

 - (iv) the Scheme may proceed by way of alternative means or methods;
 - (v) to extend the relevant time for satisfaction of the Condition or to adjourn or change the date of an application to the Court; or
 - (vi) to extend the End Date.

3.9 Failure to agree

If the parties are unable to reach agreement under clause 3.8(a) within 5 Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date):

- (a) subject to clause 3.9(b), either party may terminate this Deed (and that termination will be in accordance with clause 16.1(a)(ii)); or
- (b) if a Condition may be waived and exists for the benefit of one party only, that party only may waive that Condition or terminate this Deed (and that termination will be in accordance with clause 16.1(a)(ii) or 16.1(a)(i) as applicable),

in each case before 8.00am on the Second Court Date, and provided that, a party will not be entitled to terminate this Deed under this clause if the relevant Condition has not been satisfied as a result of a breach of this Deed by that party or a deliberate act or omission of that party.

4. Scheme

4.1 Proposal of Scheme

The Target must propose a scheme of arrangement under which:

- (a) all of the Scheme Shares held by a Scheme Participant will be transferred to the Bidder; and
- (b) each Scheme Participant who holds Scheme Shares to be transferred to the Bidder will be entitled to receive the Scheme Consideration in respect of those transferred Scheme Shares.

4.2 Scheme Consideration

Each Scheme Participant is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Participant at the Record Date subject to and in accordance with this Deed and the Scheme.

4.3 Payment of Scheme Consideration

Subject to this Deed and the Scheme, the Bidder undertakes to the Target (in its own right and separately as trustee or nominee of each Scheme Participant) that, in consideration of the transfer to the Bidder of each Scheme Share held by a Scheme Participant at the Record Date, the Bidder will, on the Implementation Date:

- (a) accept that transfer; and
- (b) provide, and procure that HoldCo provides, to each Scheme Participant, the relevant component of the Scheme Consideration,

in accordance with the Scheme.

4.4 Scheme Scrip Consideration

- (a) Subject to the Scheme becoming Effective, the Bidder must:
 - (i) issue (or procure the issue of) the Scheme Scrip Consideration to the Scheme Participants who have made valid Elections to receive the Scheme Scrip Consideration in accordance with the Scheme on terms that each HoldCo Share will rank equally in all respects with each other HoldCo Share and will have the rights set out in the HoldCo Constitution and the HoldCo Shareholders Deed; and
 - (ii) ensure that on issue each HoldCo Share will be fully paid and free from any Encumbrance.
- (b) To facilitate the issue of the Scheme Scrip Consideration to Scheme Participants, the Target must provide to the Bidder, or procure the provision to the Bidder of, a complete copy of the Target Share Register as at the Record Date (which must include the name, address and registered holding of each Scheme Participant as at the Record Date), within 2 Business Days after the Record Date. The details and information to be provided under this clause must be provided in such form as the Bidder may reasonably require.
- (c) The Bidder will not issue (nor procure the issue of) Scheme Scrip Consideration to Foreign Scheme Shareholders.

- (d) Any fractional entitlement of a Scheme Participant to a part of a HoldCo Share will be rounded down to the nearest whole number of HoldCo Shares.

4.5 Election mechanism

- (a) The Target must ensure that an Election Form is made available to Target Shareholders with the Scheme Booklet sent to each of them.
- (b) The Election Form must include the relevant matters set out in the Scheme and must otherwise be in a form agreed between the parties in writing.
- (c) The Target must procure that, to the extent practicable, Target Shareholders who acquired Target Shares after the date of the despatch of the Scheme Booklet receive an Election Form upon request.

4.6 Permitted Dividends

- (a) Subject to clause 4.6(b), the Bidder acknowledges and agrees that at any time on or before the Implementation Date, the Target may announce, declare and pay a Permitted Dividend.
- (b) If the Target announces, declares and pays any Permitted Dividend in accordance with clause 4.6(a):
 - (i) the payment date of the Permitted Dividend will be determined by the Target provided that the Permitted Dividend is paid no later than the Implementation Date;
 - (ii) the Permitted Dividend may be franked to the maximum extent possible, subject to the franking account of the Target not being in deficit after the payment of the Permitted Dividend (and prior to the declaration of any Permitted Dividend, the Target must provide the Bidder with supporting documents evidencing (to the Bidder's reasonable satisfaction) that the franking account of the Target will not be in deficit after the payment of such); and
 - (iii) the Permitted Dividend is to be paid from profits, retained earnings or distributable reserves (or a combination of all or some of them) of the Target Group existing prior to the declaration or authorisation of such dividends and otherwise in accordance with the Corporations Act.

4.7 Deed Poll

The Bidder covenants in favour of the Target (in its own right and separately as trustee for each of the Scheme Participants) to execute and deliver and to procure that HoldCo and MidCo executes and delivers, the Deed Poll by no later than the First Court Date, and, if the Scheme becomes Effective, fully comply, and procure that HoldCo and MidCo, fully complies, with the Deed Poll.

4.8 No amendment

The Target must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of the Bidder.

5. Treatment of Share Rights

- (a) The Target must ensure that, by no later than the Effective Date, there are no outstanding Share Rights.
- (b) In order to comply with its obligation under clause 5(a), the Target must:
 - (i) in respect of the Vested Share Rights:
 - (A) cause some or all of the Vested Share Rights to vest in accordance with their terms and, following vesting, cause the relevant number of Target Shares to be issued to the relevant former holder in sufficient time to allow the relevant former holders of the relevant Share Rights to participate in the Scheme; or
 - (B) cash settle those Vested Share Rights for an amount that does not exceed the Share Rights Buyout Amount and ensure that all Vested Share Rights which are cash settled are cancelled prior to the Effective Date; and
 - (ii) take any action as may be necessary to cancel Forfeited Share Rights.

6. Steps for Implementation

6.1 General obligations

The Target and the Bidder must each:

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

to comply with their respective obligations under this clause 6, produce the Scheme Booklet and take all necessary steps and exercise all rights necessary to implement the Scheme as soon as reasonably practicable and in accordance with the Timetable.

6.2 Target's obligations

The Target must take all steps reasonably necessary to propose and (subject to all of the Conditions being satisfied or waived in accordance with their terms) implement the Scheme as soon as reasonably practicable after the date of this Deed and substantially in accordance with the Timetable, including taking each of the following steps:

- (a) **(Scheme Booklet)**: prepare the Scheme Booklet in accordance with clause 6.4;
- (b) **(Election Form and bank account details)**:
 - (i) not finalise the Election Form without the prior written consent of the Bidder (acting reasonably);
 - (ii) ensure that the Election Form contains:

- (A) a section which requires a Target Shareholder to provide details of bank accounts into which any future dividends on and other payments relating to HoldCo Shares are to be paid; and
 - (B) wording to the effect that a Target Shareholder, by signing and submitting an Election Form, consents to the Target providing to HoldCo such bank account details and tax file numbers or bank account details or tax file numbers previously notified by the Target Shareholder to the Target; and
- (iii) not later than the Business Day before the Implementation Date, provide HoldCo with the bank account details and tax file numbers referred to in clause 6.2(b)(ii)(B);
- (c) **(Independent Expert)**: promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (d) **(approval of draft for ASIC)**: as soon as reasonably practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a meeting of the Target Board, or of a committee of the Target Board appointed for the purpose, is held to consider approving that draft as being in a form appropriate for provision to ASIC for its review for the purposes of section 411(2) of the Corporations Act;
- (e) **(liaison with ASIC)**: as soon as reasonably practicable after the date of this Deed:
 - (i) provide an advanced draft of the Scheme Booklet, in a form approved in accordance with clause 6.2(d) or 6.3(f), to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act, and provide a copy of that draft to the Bidder immediately thereafter; and
 - (ii) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet and keep the Bidder reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet and use reasonable endeavours, in consultation with the Bidder, to resolve any such matters (provided that, where any matters related to Bidder Information, the Target must not take any steps to address them without the prior written consent of Bidder, such consent not to be unreasonably withheld or delayed);
- (f) **(consult with the Bidder)**: consult with the Bidder as to the content and presentation of the Scheme Booklet, including:
 - (i) providing the Bidder with successive drafts of the Scheme Booklet for the purpose of enabling, and providing sufficient time for, the Bidder to review and comment on those draft documents;
 - (ii) taking all comments made by the Bidder into account in good faith when producing a revised draft of the Scheme Booklet;
 - (iii) providing to the Bidder a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for review pursuant to section 411(2) of the Corporations Act is finalised; and
 - (iv) obtaining the Bidder's written consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet);

- (g) **(ASIC review)**: keep the Bidder reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet and, where practical to do so, consult with the Bidder in good faith prior to taking any steps or actions to address material issues and use reasonable endeavours to take into consideration the Bidder's views in resolving any material issues raised by ASIC (provided that, where those issues relate to Bidder Information, the Target must not take any steps to address them without the Bidder's prior written consent, not to be unreasonably withheld);
- (h) **(approval of Scheme Booklet)**: as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Target Board, or of a committee of the Target Board appointed for the purpose, is held to consider approving the Scheme Booklet for despatch to Target Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (i) **(section 411(17)(b) statements)**: apply to ASIC for the production of statements in writing under section 411(17)(b) of the Corporations Act stating that ASIC does not intend to appear before the Court at the First Court Hearing and that ASIC has no objection to the Scheme;
- (j) **(Court Documents)**: consult with the Bidder in relation to the form and content of the Court Documents required for the Court Hearings held for the purpose of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme and consider in good faith, for the purpose of amending drafts of those Court Documents, reasonable comments from the Bidder;
- (k) **(First Court Hearing)**: lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that, the approvals in clauses 6.2(h) and 6.3(g) have been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meeting;
- (l) **(registration of Scheme Booklet)** as soon as practicable after the Court orders Target to convene the Scheme Meeting, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (m) **(convening of Scheme Meeting)**: take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to the Target Shareholders and convening and holding the Scheme Meeting;
- (n) **(supplementary disclosure)** if, after despatch of the Scheme Booklet, Target becomes aware:
 - (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
 - (ii) of information that is required to be disclosed to Target Shareholders under any applicable Law but was not included in the Scheme Booklet,

promptly consult with Bidder in good faith as to the need for, and the form of, any supplementary disclosure to Target Shareholders, and make any disclosure that Target considers reasonably necessary in the circumstances to ensure that the information is no longer misleading or deceptive in any material respect or contains any material omission, having regard to applicable laws and regulations;

- (o) **(Promotion)** participate in efforts reasonably requested by the Bidder to promote the merits of the Transaction and encourage the Target Shareholders to vote on

the Scheme in accordance with the Recommendation, including meeting with key Target shareholders at the reasonable request of the Bidder, soliciting proxy votes in favour of the Scheme and, if requested to do so by Bidder, engage a proxy solicitation firm to assist in soliciting proxy votes (and the Target may independently decide to appoint a proxy solicitation firm after consulting in good faith with Bidder);

(p) **(information):**

- (i) keep Bidder reasonably informed on the status of proxy forms for the Scheme Meeting, including over the period commencing 10 Business Days before the Scheme Meeting and ending on the deadline for receipt of proxy forms;
- (ii) keep Bidder reasonably informed on the status of Elections by Target Shareholders;
- (iii) provide to the Bidder all necessary information, and procure that the Target Share Registry provide all necessary information, in each case in a form reasonably requested by the Bidder, for the purpose of understanding legal and beneficial ownership of Target Shares and proxy appointments and directions received by Target prior to the Scheme Meeting; and
- (iv) keep Bidder reasonably informed of such other information as the Target Group may receive concerning the voting intentions of Target Shareholders

(q) **(Court approval application if parties agree that Conditions are capable of being satisfied):** if the resolution submitted to the Scheme Meeting is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act and, if necessary, the parties agree on the Business Date immediately following the Scheme Meeting that it can be reasonably expected that all of the Conditions (other than the Condition in paragraph (d) in clause 3.1) will be satisfied or waived prior to the proposed Second Court Date, apply to the Court for orders approving the Scheme;

(r) **(Conditions certificate)** at the Second Court Hearing, provide to the Court (through its counsel):

- (i) a certificate signed by one of the Target Directors and made in accordance with a resolution of the Target Board or of a committee of the Target Board appointed for the purpose confirming (in respect of matters within the Target's knowledge) whether or not the Conditions for which it is responsible, as noted in clause 3.1 (other than paragraph (d)), have been satisfied or waived in accordance with clause 3.5, a draft of which must be provided to the Bidder by 5.00pm on the Business Day prior to the Second Court Date; and
- (ii) any certificate provided to it by the Bidder under clause 6.3(h);

(s) **(implementation of Scheme):** if the Scheme is approved by the Court:

- (i) subject to the ASX Listing Rules, lodge with ASIC an office copy of the Scheme Order in accordance with section 411(10) of the Corporations Act no later than 1 Business Day after the date on which it receives such office copy;
- (ii) determine entitlements to the Scheme Consideration as at the Record Date in accordance with the Scheme;

- (iii) execute proper instruments of transfer of and effect and register the transfer of the Scheme Shares to the Bidder on the Implementation Date; and
- (iv) do all other things contemplated by or necessary to give effect to the Scheme and the Scheme Order;
- (t) **(suspension of trading)**: apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date;
- (u) **(listing)** take all reasonable steps to maintain the Target's listing on ASX, notwithstanding any suspension of the quotation of Target's Shares, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC, and take any action as reasonably requested by the Bidder to obtain the approval of ASX to the de-listing of the Target following implementation of the Scheme;
- (v) **(regulatory notifications)**: in relation to the Regulatory Approvals, lodge with any Government Agency within the relevant time periods all documentation and filings required by law to be so lodged by the Target in relation to the Transaction;
- (w) **(compliance with laws)**: do everything reasonably within its power to ensure that all transactions contemplated by this Deed are effected in accordance with all applicable laws and regulations; and
- (x) **(other things necessary)** promptly do all other things contemplated by or reasonably necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

6.3 Bidder's obligations

The Bidder must take all steps reasonably necessary to assist the Target to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable, including taking each of the following steps:

- (a) **(Bidder Information)**: provide to the Target, in a form appropriate for inclusion in the Scheme Booklet, all Bidder Information that is required by all applicable Law, the ASX Listing Rules and ASIC Regulatory Guide 60 for inclusion in the Scheme Booklet, which the Bidder Information must (without limiting the above):
 - (i) contain all information necessary to enable the Target to ensure that the Scheme Booklet complies with the requirements of the Corporations Act, the Corporations Regulations and ASIC Regulatory Guide 60;
 - (ii) not be misleading or deceptive in any material respect (whether by omission or otherwise) including in the form and context in which it appears in the Scheme Booklet; and
 - (iii) be updated by all such further or new material information which may arise after the Scheme Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that it is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (b) **(Regulatory notification)**: in relation to the Regulatory Approvals, lodge with any Government Agency within the relevant time periods all documentation and filings required by Law to be so lodged by the Bidder in relation to the Transaction;
- (c) **(Independent Expert)**: subject to the Independent Expert agreeing to reasonable confidentiality restrictions, promptly provide all assistance and information

reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report;

- (d) **(review of Scheme Booklet)**: as soon as reasonably practicable after delivery, review the drafts of the Scheme Booklet prepared by the Target and provide comments on those drafts in good faith;
- (e) **(Court Documents)**: provide any assistance or information reasonably requested by the Target or its Representatives in connection with the preparation of the Court Documents, including reviewing the drafts of the Court Documents prepared by the Target and providing reasonable comments in a timely manner on those drafts;
- (f) **(approval of draft for ASIC)**: as soon as reasonably practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a meeting of the appropriate representatives of the Bidder is held to consider approving those sections of that draft that relate to the Bidder Information as being in a form appropriate for provision to ASIC for review;
- (g) **(approval of Scheme Booklet)**: as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the appropriate representatives of the Bidder is held to consider approving those sections of the Scheme Booklet that relate to the Bidder Information as being in a form appropriate for despatch to Target Shareholders, subject to Court approval;
- (h) **(Conditions certificate)** before 8.00am on the Second Court Date, provide to the Target for provision to the Court at the Second Court Hearing a certificate confirming (in respect of matters within the Bidder's knowledge) whether or not the Conditions for which the Bidder is responsible, as noted in clause 3.1 (other than paragraph (d)), have been satisfied or waived in accordance with clause 3.5, a draft of which must be provided to the Target by 5.00pm on the Business Day prior to the Second Court Date;
- (i) **(Deed Poll)**: by no later than the Business Day prior to the First Court Hearing, execute and deliver to the Target the Deed Poll and procure that HoldCo and MidCo executes and delivers to the Target the Deed Poll;
- (j) **(Representation)**: procure that, if requested by the Target, the Bidder is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act; and
- (k) **(compliance with Laws)**: do everything reasonably within its power to ensure that all transactions contemplated by this Deed are effected in accordance with all applicable Laws.

6.4 Scheme Booklet

- (a) **(Preparation)**: As soon as reasonably practicable after the date of this Deed and substantially in accordance with the Timetable, the Target must prepare the Scheme Booklet in compliance with:
 - (i) all applicable Laws, in particular the Corporations Act, the Corporations Regulations, ASIC Regulatory Guide 60 and the ASX Listing Rules; and
 - (ii) this clause 6.4;
- (b) **(Content)**: The Scheme Booklet will include:
 - (i) the terms of the Scheme;

- (ii) the notice of Scheme Meeting and any other notice of meeting in respect of any resolution that is necessary, expedient or incidental to give effect to the Scheme together with a proxy form for the Scheme Meeting and for any ancillary meeting;
 - (iii) the Election Form;
 - (iv) the Target Information;
 - (v) the Bidder Information;
 - (vi) a copy of this Deed (without the schedules or annexures);
 - (vii) a copy of the executed Deed Poll; and
 - (viii) a copy of the Independent Expert's Report;
- (c) **(Drafts):** The Target must make available to the Bidder drafts of the Scheme Booklet for the purpose of enabling the Bidder to review and comment on those draft documents (accepting that any review of the Independent Expert's Report by the Bidder is limited to review for factual accuracy of those parts that include information relating to the Bidder), consult with the Bidder in relation to the form and content of those drafts (other than the Bidder Information), and consider in good faith, for the purposes of amending those drafts, comments from the Bidder on those drafts. The Bidder acknowledges and agrees that the Target has ultimate discretion with respect to the preparation, form and content of the Scheme Booklet, other than the Independent Expert's Report and as expressly provided in this Deed with respect to the Bidder Information;
- (d) **(Bidder Information):** The Target must seek approval from the Bidder for the form and context in which the Bidder Information appears in the Scheme Booklet, which approval the Bidder must not unreasonably withhold or delayed, and the Target must not lodge the Scheme Booklet with ASIC until such approval is obtained from the Bidder;
- (e) **(Not misleading or deceptive):**
 - (i) the Target must take all reasonable steps to ensure that the Scheme Booklet (other than the Bidder Information) is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date it is despatched to Target Shareholders, including undertaking customary verification processes; and
 - (ii) the Bidder must take all reasonable steps to ensure that the Bidder Information is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Scheme Booklet is despatched to Target Shareholders, including undertaking customary verification processes;
- (f) **(New information):**
 - (i) the Target must provide to the Bidder all such further or new information of which the Target becomes aware that arises after the Scheme Booklet has been despatched to the date of the Scheme Meeting where this is or may be necessary to ensure that the Scheme Booklet continues to comply with the Corporations Act, the Corporations Regulations, ASIC Regulatory Guide 60 and the ASX Listing Rules and is not misleading or deceptive in any material respect (whether by omission or otherwise); and

- (ii) the Bidder must provide to the Target all such further or new information of which the Bidder becomes aware that arises after the Scheme Booklet has been despatched to the date of the Scheme Meeting where this is or may be necessary to ensure that the Bidder Information continues to comply with the Corporations Act, the Corporations Regulations, ASIC Regulatory Guide 60 and the ASX Listing Rules and is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (g) **(Responsibility statements):** The responsibility statement to appear in the Scheme Booklet, in a form to be agreed by the parties, will contain words to the effect that:
 - (i) the Bidder is responsible for the Bidder Information contained in the Scheme Booklet (and no other part of the Scheme Booklet) and, to the maximum extent permitted by law, the Target will not be responsible for any Bidder Information and will disclaim any liability for Bidder Information appearing in the Scheme Booklet; and
 - (ii) the Target is responsible for the content of the Scheme Booklet other than, to the maximum extent permitted by law, the Bidder Information, the Independent Expert's Report or any other report or letter issued to Target by a third party. The Bidder, to the maximum extent permitted by law, will not be responsible for the content of the Scheme Booklet (other than the Bidder Information) and will disclaim any liability for that content appearing in the Scheme Booklet;
- (h) **(Dispute):** If the Bidder and the Target disagree on the form or content of the Scheme Booklet, they must consult in good faith to try and settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:
 - (i) if the disagreement relates to the form or content of the Bidder Information contained in the Scheme Booklet, the Target will make any amendments as the Bidder, acting in good faith, reasonably requires; and
 - (ii) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the Target Board will, acting reasonably and in good faith, decide the final form or content of the disputed part of the Scheme Booklet; and
- (i) **(Acknowledgement):** The Bidder and the Target each agree that the efficient preparation of the Scheme Booklet and the implementation of the Scheme are in the interests of the Target Shareholders and the Bidder and that they will use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external advisers) to comply with their respective obligations under this clause 6.4 and to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable.

6.5 Transaction Implementation Committee

- (a) The parties must establish a Transaction Implementation Committee as soon as reasonably practical after the date of this Deed. The role of the Transaction Implementation Committee will be to act as a forum for consultation and planning by the parties to:
 - (i) facilitate satisfaction of the Conditions;
 - (ii) discuss the parties' progress in relation to clauses 6.2 and 6.3;
 - (iii) implement the Scheme in accordance with this Deed; and

- (iv) subject to clause 6.7, ensure the smooth transition of the management of the business and affairs of the Target Group to the Bidder following the implementation of the Scheme.
- (b) The Transaction Implementation Committee will meet on a fortnightly basis from the date of this Deed until the Scheme is fully implemented unless otherwise agreed by the parties.
- (c) The Transaction Implementation Committee will consider all matters relevant to ensuring that the Scheme becomes Effective, including the following:
 - (i) the structure and timing for accomplishing the Scheme in accordance with the Timetable; and
 - (ii) communication strategies, including with any Regulatory Authority, Target employees, Target Shareholders and the media.
- (d) Notwithstanding the above:
 - (i) each party may act in its own interests; and
 - (ii) each member of the Transaction Implementation Committee may act in the interests of the party they represent in participating in the Transaction Implementation Committee.
- (e) At meetings of the Transaction Implementation Committee, the Target must report to the Bidder on the quantum of Third Party costs in respect of the Transaction that it has incurred.

6.6 Existing financing and security

- (a) The Target must cooperate with, and undertake all steps reasonably required or requested in connection with any repayment of existing debt of the Target Group as may be required in connection with the Transaction, including:
 - (i) liaising with the Bidder in good faith in relation to the using of the existing cash reserves of the Target for this purpose;
 - (ii) issuing prepayment, cancellation and other notices or consent requests in relation to existing Target Group debt facilities and closing out any hedging positions;
 - (iii) using all reasonable endeavours to procure:
 - (A) deeds of release, discharges of real property mortgages and registrations on the PPS Register (or any other relevant security register in other jurisdictions as applicable) from secured parties in relation to any Encumbrance granted by a member of the Target Group in favour of that party and procuring the return of any title documents held by a secured party; and
 - (B) the termination or replacement of any letters of credit, bank guarantees, financial undertakings or similar instruments outstanding in connection with such repayment, discharge or termination,

subject always to:
 - (iv) the Target not being required to actually effect such repayment until the Implementation Date; and

- (v) no member of the Target Group being required to take any action that would breach any existing contractual obligations or result in the loss of legal privilege.
- (b) The Bidder agrees to reimburse the Target for reasonable fees, costs and expenses reasonably incurred in complying with this clause 6.6 on provision of written evidence of the payment of such fees, costs and expenses.

6.7 Debt financing cooperation

During the period from the date of this Deed to the earlier of the Implementation Date and the termination of this Deed in accordance with its terms:

- (a) the Target Group entities shall furnish at least 10 Business Days prior to the Implementation Date all documentation and other information with respect to the Target Group entities required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations; and
- (b) the Target Group entities shall use commercially reasonable efforts to provide, and shall cause the respective directors, managers, officers, employees and other representatives of the Target Group entities to provide, in each case in a timely manner, all reasonable cooperation and assistance to Bidder in connection with the arrangement of the Debt Financing that may be reasonably requested by the Bidder, including using commercially reasonable efforts to:
 - (i) make appropriate officers and employees available for participation in a reasonable number of meetings with prospective financings sources at reasonable times and upon reasonable notice;
 - (ii) make available to the Bidder and its financing sources such financial and operating data and other information with respect to the Target Group entities as is reasonably requested by Bidder or the financiers in respect of the Debt Financing (including customary rating agency presentations, bank information memoranda, marketing materials and similar documents in connection with the syndication of the Debt Financing);
 - (iii) reasonably cooperating with marketing efforts of the Bidder and its financing sources for any portion of the Debt Financing;
 - (iv) obtaining surveys, title insurance and legal opinions at the expense of and as reasonably requested by the Bidder; and
 - (v) using reasonable efforts to obtain consents of accountants for use of their reports in any marketing materials relating to the Debt Financing,

provided, in each case that no member of the Target Group shall be required to incur any liability in connection with any Debt Financing prior to implementation of the Scheme.

- (c) The Bidder must indemnify and hold harmless the Target (in its own right and separately as trustee or nominee for each of the other Target Indemnified Parties) and each other Target Indemnified Parties from and against any and all Losses suffered or incurred by any of them in connection with the Debt Financing (including, to avoid doubt, any Alternative Financing) or the Equity Financing and any information utilised in connection therewith in each case other than to the extent any of the foregoing arises from any fraud or wilful misconduct by that Target Indemnified Party.
- (d) No Target Group Member or Target Indemnified Party will be required to execute, other than subject to the Scheme becoming Effective, any credit agreements,

pledge or security documents or legal opinions in connection with the Debt Financing (including, to avoid doubt, any Alternative Financing) or the Equity Financing.

- (e) Nothing in this clause 6.7 shall require the Target's cooperation to the extent that it would:
 - (i) unreasonably interfere with the ongoing business or operations of the Target (having regard to, among other things, the reasonableness of the notice given to the Target of any requested assistance or cooperation);
 - (ii) cause any Condition in clause 3.1 to not be satisfied or otherwise cause any breach of this Deed;
 - (iii) require any member of the Target Group to take any action that would reasonably be expected to conflict with or violate any member of the Target Group's constituent documents or any Law or regulation; or
 - (iv) require any member of the Target Group to take any action that would breach any existing contractual obligations or result in the loss of legal privilege.
- (f) The Bidder agrees to reimburse the Target for reasonable fees, costs and expenses reasonably incurred in complying with this clause 6.7 on provision of written evidence of the payment of such fees, costs and expenses.

6.8 Alternative financing

- (a) Notwithstanding anything to the contrary contained in this agreement, a Debt Commitment Letter may be superseded at the option of Bidder after the date of this agreement but prior to the Implementation Date by instruments (**Replacement Financing Letters**) that replace the existing Debt Commitment Letters and/or contemplate co-investment by or financing from one or more debt financing sources or other or additional parties, provided that:
 - (i) the terms of any Replacement Financing Letter shall not reduce the aggregate amount of the Debt Financing below an amount necessary to fund the aggregate Scheme Consideration payable for all the Scheme Shares, expand upon the conditions precedent to the Debt Financing as set forth in the Debt Commitment Letters or otherwise be reasonably likely to prejudice the Bidder's or HoldCo's ability to pay or provide the Scheme Consideration in accordance with this Deed and the Deed Poll; and
 - (ii) neither the arrangement or negotiation of any Replacement Financing Letters nor the terms thereof shall be expected to delay the Implementation Date.
- (b) For the purposes of this agreement:
 - (i) the references to "Debt Financing" shall include the financing contemplated by the Debt Commitment Letters as permitted by this clause 6.8 to be amended, modified or replaced; and
 - (ii) the references to "Debt Commitment Letters" shall include such documents (including any fee letter in connection with such Debt Commitment Letters) as permitted by this clause 6.8 to be amended, modified or replaced,

in each case from and after such amendment, modification and replacement.

6.9 No partnership or joint venture

Subject to this Deed, nothing in this clause 6 requires either party to act at the direction of the other. The business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this Deed constitutes the relationship of a partnership or a joint venture between the parties.

7. Court proceedings

7.1 Conduct

- (a) The Target and the Bidder are entitled to separate representation at all Court proceedings relating to the Scheme.
- (b) Each party must give all undertakings to the Court in all proceedings which are reasonably required to obtain Court approval and confirmation of the Scheme as contemplated by this Deed.
- (c) Nothing in this Deed gives the Target or the Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that party's prior written consent.

7.2 Appeal and other proceedings

- (a) If the Court refuses to make an order convening the Scheme Meeting or approving the Scheme, the Target will appeal the Court's decision, except to the extent that:
 - (i) the parties agree otherwise; or
 - (ii) either party obtains the advice of an independent senior counsel who states that, in his or her view, an appeal would have no reasonable prospect of success,in which case either party may terminate this Deed in accordance with clause 16.1(a)(ii).
- (b) The Bidder and the Target must defend, or cause to be defended, any lawsuit or other legal proceeding brought against it challenging this Deed or the completion of the Scheme, unless the Target has, in good faith, determined that such action is not in the best interest of Target Shareholders.

8. Target Board recommendation

8.1 Target Board recommendation and voting intention

- (a) The Target must ensure that the Announcement and the Scheme Booklet state that all Target Directors unanimously recommend that Target Shareholders vote in favour of the Scheme (**Recommendation**) which Recommendation must not be qualified in any way other than by words to the effect that the recommendation to vote in favour of the Scheme is made "in the absence of a Superior Proposal" and "subject to the Independent Expert concluding and continuing to conclude that the Scheme is in the best interest of Target Shareholders".
- (b) For the avoidance of doubt, the Target will not have failed to comply with clause 8.1(a) merely because any Target Director recommends Target Shareholders elect

to receive Scheme Cash Consideration and makes no recommendation in relation to the Scheme Scrip Consideration.

- (c) The Bidder agrees that each Target Director, may, subject to the terms of this Deed, publicly (or otherwise) withdraw, change or in any way qualify their Recommendation if:
 - (i) the Target receives a Competing Transaction and the Target Directors who are entitled to vote on the resolution unanimously determine, after all of the Bidder's rights under clause 11.6 have been exhausted, that the Competing Transaction constitutes a Superior Proposal; or
 - (ii) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or any updates of its report) that the Scheme is not in the best interests of Target Shareholders.
- (d) The Target must ensure that the Announcement and the Scheme Booklet state that each Target Director intends to cause any Target Shares in which they have a Relevant Interest to be voted in favour of the Scheme (**Voting Intention**), subject to:
 - (i) there being no Superior Proposal; and
 - (ii) the Independent Expert concluding and continuing to conclude that the Scheme is in the best interest of Target Shareholders.
- (e) The Bidder agrees that each Target Director may, subject to the terms of this Deed, publicly (or otherwise) withdraw, change or in any way qualify his or her Voting Intention if:
 - (i) the Target receives a Competing Transaction and the Target Directors who are entitled to vote on the resolution unanimously determine, after all of the Bidder's rights under clause 11.6 have been exhausted, that the Competing Transaction constitutes a Superior Proposal is made; or
 - (ii) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or any updates of its report) that the Scheme is not in the best interest of Target Shareholders.
- (f) The Target must procure that each of the Target Directors acts in accordance with his or her obligations under this clause 8.1.

8.2 Confirmation

The Target represents and warrants to the Bidder that each Target Director has confirmed their Recommendation and Voting Intention and their agreement not to do anything inconsistent with their Recommendation and Voting Intention (including withdrawing, changing or in any way qualifying their Recommendation or Voting Intention) other than in the circumstances referred to in clause 8.1(c) or 8.1(e).

8.3 Withdrawal or change of recommendation

Without limiting clause 11, if circumstances arise which may lead to one or more Target Directors changing, withdrawing or modifying his or her Recommendation as permitted under this Deed or if the Target receives notice from a Target Director that he or she proposes to withdraw, change or modify his or her Recommendation to vote in favour of the Scheme:

- (a) the Target must promptly notify the Bidder in writing; and

- (b) the parties must consult in good faith for 2 Business Days after the date on which the notification in clause 8.3(a) is received by the Bidder (**Consultation Period**) to consider and to determine whether there are any steps that can be taken to avoid such withdrawal, change or modification (as applicable). The Recommendation cannot be withdrawn, changed or modified under clause 8.1(c) until the end of the Consultation Period.

9. Conduct before the Implementation Date

9.1 Conduct

Subject to clause 9.2, from the date of this Deed up to and including the Implementation Date:

- (a) the Target must, and must cause each Target Group Member to:
 - (i) conduct the business of the Target Group:
 - (A) in the ordinary course consistent with past practice and in substantially the same manner in which such business has been conducted in the 12 months prior to the date of this Deed; and
 - (B) substantially in accordance with the budget for the Target Group in respect of the financial year ending 30 June 2021 a copy of which is included in the Disclosure Materials;
 - (ii) use all reasonable endeavours to:
 - (A) maintain and preserve the Target Group's relationships with all joint venturers, customers, contractors, landlords, investors and suppliers and Government Agencies and others having material business dealings with any member of the Target Group;
 - (B) enforce any contract to which a member of the Target Group is party, and not waive any breach by any counterparty to any such contract, where such a failure to enforce such contract or where a waiver of such breach would, or would be reasonably likely to, result in a material reduction to the earnings of the Target Group; and
 - (C) retain the services of all officers and Key Employees;
 - (iii) use all reasonable endeavours to ensure that all assets of the Target Group are maintained in the normal course consistent with past practice;
 - (iv) use all reasonable endeavours to pursue all new business opportunities in the ordinary course and keep the Bidder updated in respect of the same;
 - (v) pay the dividend announced by the Target on the ASX on 27 August 2020 on 1 October 2020;
 - (vi) ensure that there is no material decrease in the amount of cash in the Target Group other than in the ordinary course of business and consistent with budgets and projections Fairly Disclosed to the Bidder prior to the date of this Deed;

- (vii) comply in all material respects with all material contracts to which a member of the Target Group is a party, and with all Laws, authorisations and licences applicable to each member of the Target Group;
 - (viii) maintain such policies of insurance as are appropriate to the Target Group's operations, property and assets, in such amounts and against such risks as are customarily carried and insured against by owners of comparable businesses and assets;
 - (ix) keep the Bidder informed of any current, pending or threatened Tax or Duty audits, reviews or investigations or Tax Demands relating to any Target Group Member, and procure that no member of the Target Group settles, compromises or otherwise deals with such audits, reviews or investigations or Tax Demands without the prior written consent of the Bidder (which must not be unreasonably withheld or delayed);
 - (x) elect one month interest periods under the Existing Debt Financing Agreements;
- (b) the Target must not and must ensure that no member of the Target Group:
- (i) terminates or materially amends a Material Contract;
 - (ii) acquires, leases or disposes of, agrees to acquire, lease or dispose of or offers, proposes or announces a bid or tender for, any securities, business, assets, interest in a joint venture, entity or undertaking, the value of which, in aggregate, exceeds \$1,000,000 (which includes, for the avoidance of doubt, any potential acquisition opportunities specified in the Disclosure Materials unless the Bidder has given its prior written consent, in which case the relevant transaction must not be on materially different terms to those agreed to by the Bidder), but excluding:
 - (A) any tender for a new customer business opportunity submitted in the ordinary course or in connection with the renewal of any existing contract on materially the same terms;
 - (B) the expiration of any lease of real property existing as at the date of this Deed in accordance with the terms of the relevant lease and the replacement of such expired lease with an appropriate new lease for the same or similar premises on market terms; and
 - (C) the extension or renewal of any lease of real property existing as at the date of this Deed on the same terms and in the ordinary course and consistent with past practice;
 - (iii) incurs, creates, assumes, gives a commitment to incur, guarantee or otherwise become liable or responsible for:
 - (A) any Indebtedness which in aggregate is in excess of \$500,000, but excluding
 - (I) any Excluded Indebtedness; and
 - (II) any corporate guarantee given in relation to another Target Group Member other than philosoph-E; or
 - (B) any capital expenditure in relation to property, plant and equipment in excess of \$500,000 (in aggregate), which for the avoidance of doubt, excludes, to the extent Fairly Disclosed in the Disclosure

Materials, any expenditure in relation to R&D development time or ERP spend which has been capitalised;

- (iv) provides financial accommodation to, or guarantees or indemnifies the obligations of, any person other than a Target Group Member (irrespective of what form that financial accommodation, guarantee or indemnity takes);
- (v) defers the purchase price or other payment in relation to the acquisition of any asset or service of greater than \$500,000;
- (vi) enters into any agreement, arrangement or transaction with respect to derivative instruments (including, but not limited to, swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments other than:
 - (A) in the ordinary course in relation to customer contracts which are denominated in a foreign currency; or
 - (B) for the purpose of repatriating funds throughout the Target Group in connection with the payment of the Permitted Dividend, the Declared Dividend or the repayment of intercompany trading loans within the Target Group;
- (vii) makes any Tax election (including any change of residence) or settles or compromises any liability relating to Tax, unless that election, settlement or compromise is required by Tax law, is supported by an opinion of the Target Group's tax advisers, or is in the ordinary course of business and is consistent with past practices;
- (viii) either:
 - (A) enters into or offers to enter into a new employment contract with a potential employee of the Target Group;
 - (B) enters into or offers to enter into a new employment contract or amends (other than as part of any annual salary review conducted in the ordinary course) an employment contract with an existing employee of the Target Group; or
 - (C) terminates an employment contract with an existing employee of the Target Group (other than for cause),

in each case, in respect of which the base salary payable to that existing or potential employee is in excess of \$200,000 per annum;
- (ix) other than in the ordinary course of business and consistent with past practice, increases the remuneration (including any short term incentives and long term incentives) of or benefits (including with regard to superannuation benefits) provided to or pay any bonus or issue any incentive options to, or otherwise varies the employment or appointment arrangements with, any of the Key Employees;
- (x) other than as set out in in clause 5 of this Deed or as set out in Documents 17.1 and 17.4 in the Data Room:
 - (A) accelerates the rights of any of its employees or officers to compensation or benefits of any kind (including under any employee share or incentive plans);

- (B) pay or agree to pay any bonus or incentive payments to its employees, including the Key Employees;
 - (C) amend the terms of any option, performance right, incentive or share plan (including the terms of the Share Rights);
 - (D) pays any of its directors or Key Employees a termination or retention payment; or
 - (E) creates, or agrees to create, issue any securities under, or become liable for any obligations under, or provides, or agrees to pay or provide, any bonuses or benefits to any employee or officer that such employee or officer is not entitled to as at the date of this Deed;
- (xi) enters into, or varies, any enterprise bargaining agreement or similar collective employment agreement;
 - (xii) pay, incur or agree to pay or incur transaction costs (being any investment banking, financial adviser, legal, accounting, share registry and other costs payable to other advisers or third party service providers, and any payments to employee that relate to the Transaction such as deal or retention bonuses) other than in accordance with the transaction cost estimates and arrangements set out in the document with the reference 7.20 in the Data Room (**Transaction Costs**);
 - (xiii) waives or forgives any loans made to any officer or employee of any member of the Target Group;
 - (xiv) enter into or resolve to enter into a joint venture or partnership with any person;
 - (xv) terminate or fail to renew the policies of insurance (to the extent that the policy is capable of renewal by the Target Group) held by the Target Group that are in force as at the date of this Deed other than in circumstances where a policy is replaced with another policy with substantially similar coverage;
 - (xvi) changes its accounting policies other than as required by applicable Accounting Standards;
 - (xvii) enters into a contract or commitment restraining a member of the Target Group from competing with any person or conducting activities in any market;
 - (xviii) commence, threaten in writing, settles or compromise any legal proceedings, claim, investigation, arbitration or other like proceeding against that Target Group Member involving the possible payment or receipt of amounts that exceed \$500,000; or
 - (xix) authorises, commits or agrees to do any of the matters set out above; and
- (c) not take any action that constitutes a Target Prescribed Occurrence or that could reasonably be expected to result in a Target Prescribed Occurrence.

9.2 Permitted activities

- (a) The obligations of the Target under clause 9.1 do not apply in respect of any matter:

- (i) expressly required to be done or procured by the Target under this Deed or the terms of the Scheme or otherwise expressly permitted to be done by the Target under this Deed;
 - (ii) required by any Law or an order of any Court or Government Agency;
 - (iii) Fairly Disclosed in the Disclosure Materials or in an announcement to ASX or a document lodged with ASIC in the 3 years prior to the date of this Deed; or
 - (iv) agreed in writing by the Bidder (such agreement not to be unreasonably withheld or delayed).
- (b) For the avoidance of doubt, nothing in clause 9.1 restricts the ability of the Target to respond to a Competing Transaction to the extent expressly permitted in accordance with clause 11 11.

9.3 Access and information

Between the date of this Deed and the Implementation Date, the Target must:

- (a) procure that at least two members of the Target's senior management team meet with representatives of the Bidder on a fortnightly basis for no longer than 1 hour to assist with, among other things:
 - (i) keeping Bidder fully informed of the matters contemplated by clause 9.4 and 9.3(c) below; and
 - (ii) providing the Bidder with access to the people it has requested under clause 9.3(c) below;
- (b) provide Bidder with copies of the following materials, promptly following the relevant meeting at which the relevant materials are considered:
 - (i) the minutes of the Target Board held between the date of this Deed and the Implementation Date; and
 - (ii) any reports of the Chief Executive Officer and the Chief Financial Officer provided to the Target Board,

provided that the Target has no obligation under this clause 9.3(b) to provide Bidder with, and may redact or withhold in its entirety, any information about, or otherwise in connection with the Target Board's consideration of the Transaction, any advice provided to the Target Board in connection with the Transaction and information in connection with any Competing Transaction;

- (c) provide the Bidder and its Representatives with reasonable, non-disruptive access during normal business hours and on reasonable notice to the Target's officers and advisers which the Bidder reasonably requires for the purposes of:
 - (i) keeping Bidder informed of material developments relating to the Target Group including the Target Group's financial position (including its cash flow and working capital position), trading and operational performance;
 - (ii) implementing the Scheme;
 - (iii) preparing for carrying on the business of the Target Group following implementation of the Scheme; and
 - (iv) any other purpose which is agreed in writing between the parties,

provided in every case that such access, in the reasonable opinion of the Target, does not place an unreasonable burden on the ability of the Target to operate its business, and provided that nothing in this clause 9.3 requires the Target to provide the Bidder with any information:

- (d) in breach of confidentiality obligations owed to third parties or applicable privacy laws;
- (e) where the Target reasonably considers that the provision of such documents, records or other information would result in the loss of legal professional privilege; or
- (f) concerning the consideration of the Scheme or of any actual or potential Competing Transaction by the Target Directors.

9.4 Business Updates

From the date of this Deed up to and including the Implementation Date, the Target must use reasonable endeavours to notify the Bidder in writing of any of the following matters of which the Target becomes aware:

- (a) events, facts, matters or circumstances which have had, or are reasonably likely to have, a material adverse effect on:
 - (i) the financial or operational performance of, or the reputation of, the Target Group (taken as a whole); or
 - (ii) the Target Group's relationships with Government Agencies or the counterparties to Material Contracts;
- (b) developments in relation discussions with potential new customers or existing customers in relation to extensions of existing contracts including the Material Contracts and the opportunities with the counterparties as set out in Document 17.2 contained in the Data Room;
- (c) proposed or potential changes to the composition of the Target's executive management team (including the Key Employees); and
- (d) any material breach of this Deed by the Target.

9.5 Confidentiality

The parties acknowledge that all information that is provided pursuant to clause 9.3 will be provided subject to the terms of the Confidentiality Agreement.

9.6 Change of control

- (a) As soon as practicable after the date of this Deed, the parties must seek to identify any change of control or similar provisions in leases and material contracts to which the Target or a member of the Target Group is a party which may be triggered by the implementation of the Scheme.
- (b) In respect of any lease or material contract identified under clause 9.6(a), the parties agree that:
 - (i) the Target and the Bidder will agree upon a proposed course of action and then jointly initiate contact with the relevant landlord or counterparty and request that they provide any consents required;

- (ii) neither the Bidder nor its Representatives may contact any landlord or counterparty without the Target's express written approval; and
- (iii) each party must cooperate with, and provide reasonable assistance to, the other party to obtain such consents as expeditiously as possible, including by:
 - (A) promptly providing any information reasonably required by landlords or counterparties; and
 - (B) making its Representatives available, where necessary, to meet with landlords or counterparties to deal with issues arising in relation to the change of control of the Target.
- (c) For the avoidance of doubt, a failure by a member of the Target Group to obtain any landlord or third party consent will not constitute a breach of this Deed by the Target and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this Deed.

10. Actions on and following the Implementation Date

- (a) On the Implementation Date, after the Target or the Target Share Registry has commenced the despatch of the Scheme Consideration to Scheme Participants or the Scheme Shares have been registered in the name of the Bidder (whichever is earlier), subject to receipt by the Target of signed consents to act, the Target must take all actions necessary (and in accordance with the constitution of the relevant member of the Target Group, the Corporations Act and the ASX Listing Rules) to appoint the persons nominated by the Bidder as new Target directors and new directors of each Target Subsidiary.
- (b) Without limiting clause 10(a), on the Implementation Date, but subject to receipt by the Target of written notices of resignation to the effect that the outgoing directors have no claim against any member of the Target Group, the Target must procure that:
 - (i) the incumbent Target Directors (other than those specified in writing by the Bidder to the Target) resign from the Target Board;
 - (ii) to the extent specified in writing by the Bidder to the Target, the incumbent directors of each Subsidiary of the Target resign from their office; and
 - (iii) to the extent specified in writing by the Bidder to the Target, those directors appointed by, or who represent, the Target Group on the board of any entity in which any member of the Target Group holds securities resign from office.

11. Exclusivity

11.1 Termination of existing discussions

- (a) The Target represents and warrants that, as at the time of execution of this Deed, the Target Group is not (including through its Representatives) in any negotiations or discussions, and it has ceased any existing negotiations or discussions, in respect of any Competing Transaction with any Third Party.
- (b) Unless otherwise agreed by the Bidder, the Target must:

- (i) promptly enforce the terms of any confidentiality agreement, deed or undertaking (or similar document) entered into with a person other than the Bidder in the 18 months prior to the date of this Deed in relation to any potential Competing Transaction; and
- (ii) not waive, and must promptly enforce, any standstill obligations of any such person.

11.2 No shop

During the Exclusivity Period, the Target must not, and must procure that each member of the Target Group and each of their Representatives do not, directly or indirectly:

- (a) solicit, invite, encourage or initiate any Competing Transaction or any enquiries, negotiations, discussions or proposals with any person in relation to, or that may reasonably be expected to encourage or lead to, an actual, proposed or potential Competing Transaction or which may otherwise lead to the Transaction not being completed; or
- (b) solicit, invite, encourage or initiate approaches, enquiries, discussions or proposals with a view to obtaining any offer, proposal or expression of interest from any person in relation to, or which may be reasonably be expected to lead to, an actual, proposal or potential Competing Transaction,

or communicate any intention to do any of those things.

11.3 No talk

Subject to clause 11.7, during the Exclusivity Period, the Target must not, and must procure that each member of the Target Group and each of their Representatives do not, directly or indirectly:

- (a) facilitate, enter into, continue or otherwise participate (including by way of responding) in any negotiations or discussions with any person:
 - (i) regarding an actual or potential Competing Transaction;
 - (ii) which may reasonably be expected to encourage or lead to, an actual or potential Competing Transaction; or
 - (iii) which may otherwise lead to the Transaction not being completed,

even if not directly or indirectly solicited, invited, encouraged or initiated by the Target or its Representatives, or that person has publicly announced the Competing Transaction;
- (b) enter into any agreement, arrangement or understanding with any person:
 - (i) regarding a Competing Transaction; or
 - (ii) which may reasonably be expected to lead to, a Competing Transaction; or
 - (iii) which may otherwise lead to the Transaction not being completed,

even if not directly or indirectly solicited, invited, encouraged or initiated by the Target or its Representatives, or that person has publicly announced the Competing Transaction;
- (c) communicate to any person an intention to do any of the things referred to in clause 11.3(a) or 11.3(b); or

- (d) approve or recommend a Competing Transaction.

11.4 No due diligence

- (a) Subject to clause 11.7, without limiting clause 11.3, during the Exclusivity Period, the Target must not, and must ensure that neither it, nor any member of the Target Group or any of their Representatives directly or indirectly, in relation to an actual, proposed or potential Competing Transaction, makes available, facilitates or permits any Third Party to access non-public information, or to undertake due diligence investigations (including without limitation access to premises used by the Target Group or officers or employees of the Target Group), in relation to the Target Group or its business.
- (b) If the Target proposes that any non-public information relating to the business or operations of the Target Group which has not been provided to the Bidder be provided to a Third Party while validly relying on the exception in clause 11.7 then the Target must promptly, and in any event within 2 Business Days after providing it to the Third Party, provide a copy of such information to the Bidder.

11.5 Notice of Competing Transaction

- (a) During the Exclusivity Period, the Target must promptly (and in any event no later than 48 hours) of becoming aware of such matter, notify the Bidder in writing of:
 - (i) any approach by any person to discuss or engage in any activity in relation to an actual, proposed or potential Competing Transaction;
 - (ii) any negotiations or discussions, approach or attempt to initiate any negotiations or discussions, with the Target, any member of the Target Group or their Representatives in respect of any inquiry, expression of interest, offer, proposal or discussion that could reasonably be expected to lead to a Competing Transaction;
 - (iii) receipt of a request for information relating to the Target Group, or its business or operations, in connection with formulation, development or finalisation of, or assisting in the formulation, development or finalisation of, an actual, proposed or potential Competing Transaction, or which the Target has reasonable grounds to suspect may relate to an actual, proposed or potential Competing Transaction.
- (b) If the Target proposes or determines to take any action of a kind that would breach its obligations under clause 11.3 or 11.4 were it not for clause 11.7, then the Target must notify the Bidder in writing no later than 1 Business Day after making that decision or determination.
- (c) A notice given under clause 11.5(a) must be accompanied by all relevant details of the relevant approach, including the identity of the person that made the approach and the material terms and conditions of the Competing Transaction (including proposed price or implied value, conditions, timing and details of any break fee) to the extent known to the Target.
- (d) The Bidder agrees that:
 - (i) any information received under clause 11.5(a) is Confidential Information (as such term is defined in the Confidentiality Agreement) and subject to the terms of the Confidentiality Agreement; and
 - (ii) it must not, and must ensure that its Representatives do not, contact the Third Party that made the actual, proposed or potential Competing

Transaction for any purpose relating to the Scheme, the Competing Transaction or any similar transaction.

11.6 Matching right

- (a) Without limiting clauses 11.2 and 11.3, during the Exclusivity Period, the Target:
- (i) must not enter, and must procure that no member of the Target Group enters, into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, the Target or both proposes or propose to undertake or give effect to an actual, anticipated, proposed or potential Competing Transaction; and
 - (ii) must procure that no Target Director publicly recommends, supports or endorses an actual, anticipated, proposed or potential Competing Transaction or withdraws, changes or modifies his or her Recommendation or Voting Intention,
- unless:
- (iii) the Target Board acting in good faith and in order to satisfy what the Target Board considers to be its statutory or fiduciary duties (having received a written opinion from its external legal and financial advisers), determines that the Competing Transaction constitutes a Superior Proposal;
 - (iv) the Target has provided the Bidder with the material terms and conditions of the actual, anticipated, proposed or potential Competing Transaction, including price, conditions, details of any break fee and the identity of the Third Party making the actual, anticipated, proposed or potential Competing Transaction; and
 - (v) either:
 - (A) the Bidder has not announced or provided the Target a Counterproposal by the expiry of the Matching Period; or
 - (B) the Bidder has announced or provided to the Target a Counterproposal by the expiry of the Matching Period and the Target Board has determined, acting in good faith, that Counterproposal would not provide an equivalent or superior outcome to the Target Shareholders as a whole compared with the Competing Transaction and the Bidder has been granted the right to amend the Counterproposal in accordance with clause 11.6(f).
- (b) The Target acknowledges and agrees that each successive modification or variation of any actual, anticipated, proposed or potential Competing Transaction will constitute a new actual, anticipated, proposed or potential Competing Transaction for the purposes of the requirements under clause 11.5 and clause 11.6.
- (c) If the Target provides the Bidder a notice under clause 11.6(a)(iv), the Bidder will have the right (but not the obligation) at any time during the period of 2 Business Days after receipt of that notice (**Matching Period**) to amend the terms of the Transaction including increasing the amount of consideration offered under the Transaction or proposing a new proposal (**Counterproposal**), and if the Bidder does so, the Target must procure that the Target Board, acting in good faith, consider the Counterproposal and determines whether the Counterproposal would provide an equivalent or superior outcome for Target Shareholders as a whole compared with the applicable Competing Transaction, taking into account all of the terms and conditions of the Counterproposal;

- (d) The Target must procure that the Target Board promptly, and in any event within 48 hours, notifies the Bidder of its determination in relation to the Counterproposal in writing, stating reasons for that determination.
- (e) If the Target Board, acting in good faith, determines that the Counterproposal would provide an equivalent or superior outcome for Target Shareholders as a whole compared with the applicable Competing Transaction, taking into account all of the terms and conditions of the Counterproposal, then:
 - (i) the Target and the Bidder must use their best endeavours to agree the amendments to this Deed and, if applicable, the Scheme and Deed Poll that are reasonably necessary to reflect the Counterproposal and to implement the Counterproposal, in each case as soon as reasonably practicable; and
 - (ii) the Target must use its best endeavours to procure that each of the Target Directors recommends the Counterproposal and not the applicable Competing Transaction.
- (f) If the Target Board determines in good faith that the Counterproposal would not provide an equivalent or superior outcome to the Target Shareholder as a whole compared to the applicable Competing Transaction, then the Bidder may take steps to amend the Counterproposal to address the reasons given by the Target within a further period of 3 Business Days after the receipt of notice under clause 11.6(d). If the Bidder does so to the Target's reasonable satisfaction, then clause 11.6(e) applies to that Counterproposal.

11.7 Fiduciary exception

- (a) Clauses 11.3 and 11.4 do not apply to the extent that they restrict the Target or the Target Board from taking or refusing to take any action with respect to an actual, proposed or potential Competing Transaction (which was not solicited, invited, encouraged or initiated by the Target in contravention of clause 11.2) provided that the Target Board has determined, in good faith and acting reasonably that:
 - (i) after receiving advice from its financial adviser, the relevant Competing Transaction is, or is reasonably likely to become, a Superior Proposal; and
 - (ii) after receiving written legal advice from its external legal advisers, that compliance with clauses 11.3 or 11.4 (as applicable) would constitute, or would be reasonably likely to constitute, a breach of any of the fiduciary or statutory duties of the Target Directors.
- (b) If the Target proposes that any non-public information be provided to a Third Party while relying on the exception in clause 11.7(a), then:
 - (i) before the Target provides such information, the Third Party must enter into an agreement which contains obligations on the recipient that are no less onerous in any respect than the obligations imposed on PEP Services Pty Limited by the Target in connection with this Transaction; and
 - (ii) any non-public information provided to that Third Party must also be provided to the Bidder.

11.8 Exception

Nothing in this clause 11 prevents the Target from:

- (a) taking any action in good faith to comply with its continuous disclosure obligations; or

- (b) continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to its business generally.

12. Break Fee

12.1 Background

This clause 12 has been agreed in circumstances where:

- (a) the Target believes that the Scheme will provide significant benefits to, the Target and Target Shareholders, and the Bidder and the Target acknowledge that, if they enter into this Deed and the Scheme is subsequently not implemented, the Bidder will incur significant costs, including those set out in clause 12.5;
- (b) the Bidder requested that provision be made for the Break Fee, without which the Bidder would not have entered into this Deed;
- (c) the Target believes it is appropriate for it to agree to the payment referred to in this clause to secure the Bidder's entry into this Deed and participation in the Scheme; and
- (d) both parties have received legal advice on this Deed and the operation of this clause.

12.2 Payment by Target to Bidder

Subject to clauses 12.3, 12.4 and 13, the Target agrees to pay the Break Fee to the Bidder without withholding or set off if:

- (a) a Competing Transaction is announced during the Exclusivity Period and, within 12 months of such announcement:
 - (i) the Competing Transaction is implemented or completed, but for the purposes of this clause 12.2(a)(i), paragraphs (e) and (g) of the definition of "Competing Transaction" will be ignored and the references to "10% or more" in paragraph (a) of the definition of "Competing Transaction" will be deemed to be references to "more than 20%"; or
 - (ii) the proponent of that Competing Transaction (or any of its Associates) acquires a Relevant Interest in, an economic interest in or Voting Power of 50% or more of the Target Shares and that acquisition is unconditional or Control of the Target;
- (b) during the Exclusivity Period, any Target Director fails to recommend the Scheme or withdraws, adversely changes or adversely qualifies his or her Recommendation or otherwise makes a public statement indicating that he or she no longer supports the Scheme, except where:
 - (i) the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interest of Target Shareholders (other than where the reason for the Independent Expert's conclusion is due wholly or partly to the existence of a Competing Transaction; or
 - (ii) the Target is entitled to terminate this Deed pursuant to clause 16.1(a)(i) and has given the appropriate termination notice to the Bidder; or

- (c) the Bidder validly terminates this Deed in accordance with clause 16.1(a)(i).

12.3 No amount payable if Scheme becomes Effective

- (a) Notwithstanding the occurrence of any event in clause 12.2, if the Scheme becomes Effective:
 - (i) no amount is payable by the Target under clause 12.2; and
 - (ii) if any amount has already been paid under clause 12.2 it must be refunded by the Bidder within 10 Business Days after the Scheme becomes Effective.
- (b) The Target can only ever be liable to pay the Break Fee once.
- (c) The Break Fee is not payable merely because the resolution submitted to the Scheme Meeting in respect of the Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act.

12.4 Timing of payment

- (a) A demand by the Bidder for payment of the Break Fee under clause 12.2 must:
 - (i) be in writing;
 - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account into which the Target must pay the Break Fee.
- (b) The Target must pay the Break Fee to the Bidder under clause 12.2 without withholding or set-off within 10 Business Days of receipt by the Target of a valid demand for payment from the Bidder under clause 12.4(a).

12.5 Nature of payment

- (a) The Break Fee is an amount intended to compensate the Bidder for:
 - (i) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
 - (ii) costs of management and directors' time in planning and implementing the Transaction;
 - (iii) out-of-pocket expenses incurred by the Bidder and its respective employees, advisers and agents in planning and implementing the Transaction;
 - (iv) damage to the Bidder's reputation associated with a failed transaction and the implications of that damage to the Bidder's business; and
 - (v) reasonable opportunity costs incurred by the Bidder in pursuing the Transaction or in not pursuing alternative acquisitions or strategic initiatives.

- (b) The parties agree that the costs incurred are and will be of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 12.2.

12.6 Limitation of liability

- (a) The parties acknowledge and agree that other than in respect of any wilful or deliberate material breach of clause 11 taken in the context of the Scheme as a whole:
 - (i) the maximum liability of the Target to the Bidder under or in connection with this Deed including in respect of any breach of this Deed will be the Break Fee and in no event will the aggregate liability of the Target under or in connection with a breach of this Deed exceed an amount equal to the Break Fee; and
 - (ii) the payment by the Target of the Break Fee represents the sole and absolute amount of liability of the Target to the Bidder under or in connection with this Deed and no further damages, fees, expenses or reimbursements of any kind will be payable by the Target to the Bidder in connection with this Deed.
- (b) For the avoidance of doubt, clause 12.6(a) does not apply to clauses 14.3, 14.4(b) and 14.9 which are subject to clause 14.10.

13. Modifications required to Break Fee or exclusivity

13.1 Modifications following regulatory intervention

If any of the following occurs:

- (a) a Government Agency finds that all or any part of the payment required to be made under clause 12 or an exclusivity arrangement under clause 11 is unacceptable or unenforceable; or
- (b) as a result of an application to the Takeovers Panel, the Takeovers Panel indicates that, in the absence of a written undertaking under section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) to modify the amount of the Break Fee or the circumstances in which it is to be paid or the circumstances in relation to an exclusivity arrangement under clause 11, it will make a declaration of unacceptable circumstances,

then, subject to clause 13.3:

- (c) the parties must amend clause 11 or clause 12 (or both) to the extent required to give effect to the requirements of the Government Agency or the Takeovers Panel (as the case may be) and (in circumstances referred to in clause 13.1(b)) must give the required undertaking(s); and
- (d) neither the occurrence of any of the events referred to in clause 13.1(a) or clause 13.1(b) nor the amendment of clause 11 or clause 12 (or both) will be taken to be a breach of, or permit any party to terminate, this Deed.

13.2 Conduct during proceedings

- (a) During the course of any Takeovers Panel or court proceedings (including any appeal or review thereof) referred to in clause 13.1, the parties must take all

reasonable steps to ensure that any such declaration or determination has the minimum effect possible.

- (b) The parties must not make or cause or permit to be made any application to a court of the Takeovers Panel for or in relation to a determination referred to in clause 13.1.

13.3 No requirement to act unless decision final

The parties are only required to take steps under 13.1(c) in relation to any requirement of a Government Agency or the Takeovers Panel if:

- (a) no appeal or review proceeding is available from the decision to impose that requirement or the period for lodging an appeal or commencing review proceedings has expired without an appeal having been lodged or review proceedings commenced; or
- (b) the Bidder and the Target agree in writing not to appeal or seek review of the decision to impose that requirement.

13.4 Appeals and review of regulatory decisions

Nothing in this Deed requires either party to appeal or seek review of any decision of a Government Agency or the Takeovers Panel referred to in clause 13.1(a) or clause 13.1(b). If either the Bidder or the Target wishes to appeal or seek review of any such decision, then the other must make submissions in the course of those proceedings supporting the review made by the first party.

13.5 Determination by Government Agency

If a Government Agency determines that payment of all or any part of the Break Fee is unacceptable, unlawful or involves a breach of the fiduciary or statutory duties of the members of the Target Board (**Impugned Amount**) and either no appeal from that determination is available or the period for lodging an appeal has expired without having an appeal having been lodged then:

- (a) the obligation of the Target to pay the Break Fee does not apply to the extent of the Impugned Amount; and
- (b) if the Bidder has received any part of the Impugned Amount, it must refund it within 5 Business Days after that determination is made or the period for lodging has expired, whichever is later.

13.6 Obligations of parties

No party must undertake, or be involved in undertaking or supporting, any action that would trigger the operation of clause 13.1 or clause 13.5.

14. Representations and warranties

14.1 Target Scheme Warranties

- (a) The Target represents and warrants to the Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) each of the matters set out in clause 14.1(b) as at the date of this Deed and on each subsequent date until the Cut-Off Time (except that where any statement is expressed to be made only at a particular date it is given only at that date).

(b) The Target represents and warrants that:

- (i) **(status)**: it is a validly existing corporation registered under the laws of its place of incorporation;
- (ii) **(authorisation)**: the execution and delivery of this Deed by the Target has been properly authorised by all necessary corporate action and the Target has full corporate power and lawful authority to execute and deliver this Deed and to perform or cause to be performed its obligations under this Deed;
- (iii) **(validity of obligations)**: this Deed constitutes legal, valid and binding obligations on the Target which are enforceable against it in accordance with its terms;
- (iv) **(no contravention)**: the entry into, its compliance with its obligations and the exercise of its rights under, this Deed do not and will not conflict with:
 - (A) its constituent documents or cause a limitation on its powers or the powers of its directors to be exercised; or
 - (B) any applicable Law;
- (v) **(continuous disclosure)**: the Target is not in breach of its continuous disclosure obligations under the ASX Listing Rules and is not relying on the carve-out in ASX Listing Rule 3.1A to withhold any information from disclosure (other than the transaction contemplated by this Deed);
- (vi) **(compliance with law)**: each member of the Target Group has complied in all material respects with all Australian and foreign laws and regulations applicable to it and orders of Australian and foreign governmental agencies having jurisdiction over it and has all material licenses, permits and authorisations necessary for it to conduct its respective businesses as presently being conducted;
- (vii) **(regulatory filings)**: so far as the Target is aware having made due enquiries, no document or announcement which the Target has lodged or filed with, or otherwise given to, any Government Agency (or which has been so lodged, filed or given on its behalf or on behalf of any member of the Target Group) since the date 3 years before the date of this Deed and which is currently publicly available or otherwise in the public domain, was misleading or deceptive in any material respect (whether by omission or otherwise) as at the date that document or announcement was lodged or filed with or given to the Government Agency;
- (viii) **(provision of information to the Independent Expert)**: all information provided by or on behalf of the Target to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (ix) **(reliance)**: the Target Information in the Scheme Booklet will be included in good faith on the understanding that the Bidder and its directors will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme;
- (x) **(Target Information)**: the Target Information provided under this Deed and included in the Scheme Booklet as at the date of the Scheme Booklet will

not contain any material statement which is misleading or deceptive in any material respect (whether by omission or otherwise) nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, the ASX Listing Rules and all regulatory guidance and other requirements of ASIC;

- (xi) **(Target Prescribed Occurrence)**: Other than as Fairly Disclosed to Bidder in the Disclosure Materials, no Target Prescribed Occurrence has occurred between 30 April 2020 and the date of this Deed;
- (xii) **(Scheme Booklet)**: as at the date the Scheme Booklet is despatched to Target Shareholders, the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the Bidder Information and the Independent's Expert Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise);
- (xiii) the Target will, as a continuing obligation (but in respect of Bidder Information only to the extent Bidder provides the Target with updates to the Bidder Information), ensure that the Scheme Booklet is updated or supplemented to include all further or new information which arises and the Target becomes aware of after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive (including by way of omission);
- (xiv) **(disclosure)**: the Disclosure Materials have been prepared in good faith and the Target is not aware that it has:
 - (A) withheld from the Disclosure Materials any information in its possession:
 - (I) which would reasonably be expected to be material to the financial position or financial performance of the business of the Target Group; or
 - (II) which could reasonably be expected to be material to the Bidder's evaluation of the Target Group and merits of the Transaction (including full details of all fees, costs and expenses which Target (or any other Target Group Member) has paid or agreed to pay, or may become liable to pay, to advisers in connection with the Transaction);
 - (B) included in the Disclosure Materials any information that is misleading in any material respect (including by omission);
- (xv) **(Indebtedness)**: the Target has provided the Bidder complete and accurate information relating to the level of Indebtedness as at the date of this Deed as well as the current and estimated (as at the Implementation Date) Transaction Costs;
- (xvi) **(securities)**: as at the date of this Deed:
 - (A) the total issued capital of the Target is:
 - (I) 78,710,046 Target Shares; and
 - (II) 363,860 Share Rights,

and there are no other options, performance rights, shares, convertible notes or other securities (or obligations, offers or agreements to issue any of the foregoing);

- (B) all the issued securities of each Target Group Member (other than Target) are held by either Target or a another Target Group Member that is directly or indirectly wholly-owned by Target; and
 - (C) no Target Group Member has issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into shares and no Target Group Member is under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any shares, options, warrants, performance rights or other securities or instruments in a Target Group Member other than as set out in clause 14.1(b)(xvi)(A);
- (xvii) **(no Insolvency Event)**: no member of the Target Group is subject to an Insolvency Event;
- (xviii) **(Target Prescribed Occurrence)**: no Target Prescribed Occurrence has occurred;
- (xix) **(material contracts)**: as at the date of this Deed, neither it nor any member of the Target Group is in material default under any material document (including the Material Contracts), agreement or instrument binding on it or its assets nor has anything occurred which is, or would with the giving of notice or lapse of time, constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under any such material document or agreement with such an effect;
- (xx) **(material customers or suppliers)**: as at the date of this Deed, the Target is not aware of any facts or circumstances that will cause a third party, as a result of the entry into this Deed and the implementation of the Transaction to exercise a right to terminate a contract which is material to the business of the Target Group or vary the performance of any material obligation of the Target Group under any such contract; and
- (xxi) **(regulatory approvals)**: so far as the Target is aware having made due enquiries, no Regulatory Approval is required to be obtained by the Target in order for it to execute, deliver and perform this Deed, other than those approvals set out in clause 3.1, and so far as the Target is aware having made due enquiries, as at the date of this Deed, no regulatory action of any nature has been taken that would prevent or restrict its ability to perform its obligations under this Deed.

14.2 Qualifications on Target Warranties

The Target Warranties and the indemnity in clause 14.3 are subject to matters that:

- (a) are expressly permitted or required under this Deed or the Scheme;
- (b) have been Fairly Disclosed in the Disclosure Materials;
- (c) have been Fairly Disclosed in an announcement made by the Target to the ASX or a document lodged with ASIC in 3 years prior to entry into this Deed;
- (d) would have been Fairly Disclosed to the Bidder had the Bidder conducted searches 10 Business Days before the date of this Deed of:

- (i) the public records maintained by:
 - (A) ASIC;
 - (B) the High Court of Australia, Federal Court of Australia, the Supreme Courts of Victoria, the Australian Capital Territory, New South Wales, South Australia, Western Australia and Queensland; or
 - (C) IP Australia; or
- (ii) the PPS Register; or
- (e) as at the date of this Deed are within the actual knowledge of the Bidder, which for the purposes of this clause will be taken to be limited to the facts, matters and circumstances of which the following individuals are actually aware as at the date of this Deed:
 - (i) David Brown; and
 - (ii) Rohan Wolfers.

14.3 Target Business Warranties

The Target represents and warrants to Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) each of the Business Warranties on the date of this Deed and as at the Implementation Date.

14.4 Target's indemnity

- (a) Subject to clause 12.6 and clause 14.2, the Target agrees with the Bidder (on the Bidder's own behalf and separately as trustee for each of the Bidder Indemnified Parties) to indemnify and keep indemnified the Bidder Indemnified Parties from and against all Losses incurred by the Bidder Indemnified Parties as a result of any breach of any of the Target Scheme Warranties.
- (b) Subject to clause 14.2 and clause 14.10, the Target agrees with the Bidder (on the Bidder's own behalf and separately as trustee for each of the Bidder Indemnified Parties) to indemnify and keep indemnified the Bidder Indemnified Parties from and against all Losses incurred by the Bidder Indemnified Parties as a result of any breach of any of the Target Business Warranties.

14.5 Bidder warranties

- (a) The Bidder represents and warrants to the Target (on the Target's own behalf and separately as trustee or nominee for each of the other Target Indemnified Parties) each of the matters set out in clause 14.5(b) as at the date of this Deed and on each subsequent day until the Cut-Off Time (except that where any statement is expressed to be made only at a particular time it is given only at that date).
- (b) The Bidder represents and warrants that:
 - (i) **(status)**: the Bidder is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) **(authorisation)**: the execution and delivery of this Deed has been properly authorised by all necessary corporate action and the Bidder has full corporate power and lawful authority to execute and deliver this Deed and to perform or cause to be performed its obligations under this Deed;

- (iii) **(validity of obligations)**: this Deed constitutes legal, valid and binding obligations on the Bidder which are enforceable against it in accordance with its terms;
- (iv) **(no contravention)**: the entry into, its compliance with its obligations and the exercise of its rights under, this Deed do not and will not conflict with:
 - (A) its constituent documents or cause a limitation on its powers or the powers of its directors to be exercised; or
 - (B) any applicable Law;
- (v) **(new information)**: it will, as a continuing obligation, provide to the Target all further or new information which arises after the Scheme Booklet has been dispatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information is not misleading or deceptive in any material respect (including by way of omission);
- (vi) **(compliance with law)**: each member of the Bidder Group has complied in all material respects with all Australian and foreign laws and regulations applicable to it and orders of Australian and foreign governmental agencies having jurisdiction over it;
- (vii) **(no dealing with Target Shareholders)**: neither it nor, so far as the Bidder is aware having made reasonable enquires, any of its Associates has any agreement, arrangement or understanding with any Target Shareholder under which that Target Shareholder (or an Associate of that Target Shareholder) would be entitled to receive consideration for their Target Shares different from the Scheme Consideration or under which the Target Shareholder agrees to vote in favour of the Scheme or against a Competing Transaction;
- (viii) **(provision of information to the Independent Expert)**: all information provided by or on behalf of the Bidder Group (including HoldCo) to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (ix) **(reliance)**: the Bidder Information provided to the Target in accordance with clause 6.3(a) for inclusion in the Scheme Booklet will be provided in good faith on the understanding that each of the Target Indemnified Parties will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the requirements of the Corporations Act;
- (x) **(Bidder Information)**: the Bidder Information provided under this Deed and included in the Scheme Booklet as at the date of the Scheme Booklet will not contain any material statement which is misleading or deceptive in any material respect nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, the ASX Listing Rules and all regulatory guidance and other requirements of ASIC;
- (xi) **(reasonable basis)**: all factual information the Bidder has provided to the Target prior to this Deed is, to the best of the Bidder's knowledge having made due enquiries, accurate in all material respects and not misleading in any material respect (whether by omission or otherwise);

- (xii) **(HoldCo Shares)**: on issue, each HoldCo Share will be fully paid and free from all Encumbrances;
- (xiii) **(HoldCo issued capital)** unless agreed with the Target, on or prior to the Implementation Date:
 - (A) no HoldCo Share will be issued other than as Scheme Scrip Consideration; and
 - (B) no ordinary share in the capital of HoldCo will be issued at an issue price that is less than \$5.55 per share;
- (xiv) **(Insolvency Event)**: no member of the Bidder Group is subject to an Insolvency Event;
- (xv) **(Equity Commitment Letter)**: the Equity Commitment Letter has been duly executed by the parties to that letter and constitutes legally binding obligations of those parties that are enforceable in accordance with their respective terms and the Equity Commitment Letter has not been terminated;
- (xvi) **(ongoing effect)**: as a continuing obligation, without the prior written consent of the Target:
 - (A) the Bidder will not, and will procure HoldCo does not, amend the Equity Commitment Letter in any respect which will, or is reasonably likely to, prejudice the Bidder's or HoldCo's ability to pay or provide the Scheme Consideration in accordance with this Deed and the Deed Poll; and
 - (B) the Bidder will not, and will procure HoldCo does not, waive any of their rights under the Equity Commitment Letter in any respect which will, or is reasonably likely to, prejudice the Bidder's or HoldCo's ability to pay or provide the Scheme Consideration in accordance with this Deed and the Deed Poll;
- (xvii) **(Debt Commitment Letter)**: the Debt Commitment Letter has been duly executed by the Bidder and constitutes legally valid and binding obligations on, and rights of, the Bidder that are enforceable in accordance with its terms and the Debt Commitment Letter has not been terminated (other than as permitted under this Deed);
- (xviii) **(ongoing effect)**: as a continuing obligation, without the prior written consent of the Target or otherwise as permitted under clause 6.8:
 - (A) the Bidder will not, and will procure HoldCo does not, amend the Debt Commitment Letter in any respect which will, or is reasonably likely to, prejudice the Bidder's or HoldCo's ability to pay or provide the Scheme Consideration in accordance with this Deed and the Deed Poll; and
 - (B) the Bidder will not, and will procure HoldCo does not, waive any of their rights under the Debt Commitment Letter in any respect which will, or is reasonably likely to, prejudice the Bidder's or HoldCo's ability to pay or provide the Scheme Consideration in accordance with this Deed and the Deed Poll;
- (xix) **(Scheme Consideration)**: the Bidder has a reasonable basis to expect that it will, by the Implementation Date have available to it sufficient cash amounts (whether from internal cash reserves or external funding

arrangements, including equity and debt financing or a combination of both) to satisfy the Bidder's obligation to provide or procure the provision of the Scheme Consideration in accordance with its obligations under this Deed, the Scheme and the Deed Poll; and

- (xx) **(regulatory approvals)**: so far as the Bidder is aware having made due enquiries, no Regulatory Approval is required to be obtained by the Bidder in order for it to execute, deliver and perform this Deed, other than those approvals set out in clause 3.1, and so far as the Bidder is aware having made due enquiries, as at the date of this Deed, no regulatory action of any nature has been taken that would prevent or restrict its ability to perform its obligations under this Deed.

14.6 Qualifications on Bidder Representations and Warranties

The Bidder Representations and Warranties in clause 14.5 and the indemnity in clause 14.7 are subject to matters that, as at the date of this Deed, are within the actual knowledge of the Target which for the purposes of this clause will be taken to be limited to the facts, matters and circumstances of which the following individuals are actually aware as at the date of this Deed:

- (a) Mark McConnell;
- (b) Jennifer Martin; and
- (c) Spencer Chipperfield.

14.7 Bidder indemnity

Subject to clause 14.6, the Bidder agrees with the Target (on the Target's own behalf and separately as trustee for each of the Target Indemnified Parties) to indemnify and keep indemnified the Target Indemnified Parties from and against all Losses incurred by the Target Indemnified Parties as a result of any breach of any of the representations and warranties in clause 14.5.

14.8 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstances which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 14.

14.9 Tax indemnity

Subject to clause 14.10, the Target agrees to indemnify and keep indemnified the Bidder and HoldCo from and against, and must pay the Bidder on demand the amount of all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings attributable to:

- (a) Tax or Duty payable by a member of the Target Group (whether payable before, on or after implementation of the Scheme) to the extent that such Tax or Duty relates to:
 - (i) any period, or part period, up to and including the implementation of the Scheme;
 - (ii) any act, transaction, event or omission, or any misstatement, executed, performed or made on or prior to implementation of the Scheme; or
 - (iii) a failure by a member of the Target Group to comply with any law relating to Tax or Duty ;

- (b) the loss or limitation, including any reduction in the rate of use, of any tax attributes of the Target Group at the implementation of the Scheme; or
- (c) Tax costs incurred by or on behalf of a member of the Target Group to the extent that such Tax costs arise from or relate to any of the matters for which the Target is liable under clause 14.9(a) and/or 14.9(b).

14.10 W&I Policy and limitations on claims in connection with a Target Warranty or Target Indemnity

Notwithstanding any provision to the contrary in this Deed:

- (a) the Bidder agrees that it will not be entitled to make, and that it will not make, and irrevocably waives any right it may have to make, any Claim for breach of a Target Warranty or under a Target Indemnity, except to the extent required to permit a Claim under the W&I Policy (if any) and then only on the basis that the Target will have no liability whatsoever for such Claim;
- (b) the Bidder covenants in favour of the Target that, prior to the Scheme becoming Effective and subject to the Bidder taking out a W&I Policy, it will:
 - (i) not do anything that causes any right of the insured under the W&I Policy not to have full force and effect upon its terms;
 - (ii) not novate or assign its rights under the W&I Policy other than where permitted by the terms of the W&I Policy; and
 - (iii) comply with the terms of the W&I Policy relating to deliverables required to satisfy conditions in the W&I Policy;
- (c) the Bidder must ensure that any W&I Policy includes terms to the effect that:
 - (i) the insurer irrevocably waives its rights to bring any Claim against any Target Indemnified Party by way of subrogation, claim for contribution or otherwise; and
 - (ii) the Bidder acknowledges that each Target Indemnified Party is entitled to directly enforce such waivers and that in respect of the waivers, the Bidder contracts in its own right as an agent of each Target Indemnified Party;
- (d) the Bidder acknowledges and agrees that:
 - (i) there is no excess, premium or any other amount payable by any member of the Target Group or a Target Indemnified Party under the W&I Policy (if any);
 - (ii) clause 14.10(d)(i) above applies regardless of whether or not it takes out a W&I Policy and regardless of whether any W&I Policy that the Bidder does take out lapses, is or becomes void or is voided or rescinded or does not respond to or otherwise apply to cover any Claim for breach of a Target Warranty or under a Target Indemnity;
 - (iii) it indemnifies and must hold harmless each Target Indemnified Party in respect of any Loss or Claim arising out of or otherwise in connection with any exercise or attempted or purported exercise by an insurer (under any W&I Policy, the general law, statute or otherwise) of any rights of subrogation or claim for contribution; and
 - (iv) in the event that it takes out a W&I Policy, it will promptly provide Target with a copy of such policy; and

- (e) the Target acknowledges and agrees that:
 - (i) the Bidder is under no obligation to take out a W&I Policy;
 - (ii) if the Bidder takes out a W&I Policy and provides a copy of such policy to it, it shall keep the terms of such policy confidential in accordance with the Confidentiality Agreement; and
 - (iii) it will cooperate with the Bidder and provide all reasonable assistance requested by Bidder in connection with the purchase of a W&I Policy, including the provision of access to the Data Room to the insurance broker engaged by the Bidder, any underwriter of the W&I Policy or any of their respective advisers (in each case, if and when requested by Bidder, but subject to the proviso that each such person first enters into a confidentiality agreement with the Target on reasonable and customary terms or agrees to be bound by the confidentiality obligations under the Confidentiality Agreement as if they were a party to that agreement) provided that, to the extent the Target's management is requested to respond to any queries from the Bidder in relation to the W&I Policy, the insurance broker engaged by the Bidder or any underwriter of the W&I Policy or from the Bidder to the extent they arise due to queries from the insurance broker engaged by the Bidder or any underwriter of the W&I Policy, the Bidder has first considered those queries and responded to them to the extent it is reasonably able to.

14.11 Survival of warranties

Each Target Warranty and each Bidder Representation and Warranty:

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

14.12 Survival of indemnities

Each indemnity in this Deed (including those in clauses 14.3 and 14.7) will:

- (a) be severable;
- (b) be a continuing obligation;
- (c) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this Deed; and
- (d) survive the termination of this Deed.

15. Releases

15.1 Release of Bidder Indemnified Parties

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

- (i) Bidder's execution or delivery of this Deed or the Deed Poll;
- (ii) any breach of any representations and warranties, covenant or obligation of the Bidder or any other member of the Bidder Group in this Deed;
- (iii) the implementation of the Scheme; or
- (iv) any disclosure containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct, gross negligence or fraud. Nothing in this clause 15.1 limits the Target's rights to terminate this Deed under clause 16.1.

- (b) The Bidder receives and holds the benefit of this clause to the extent it relates to each Bidder Indemnified Party on behalf of each of them.

15.2 Release of Target Indemnified Parties

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

- (i) Bidder's execution or delivery of this Deed or the Deed Poll;
- (ii) any breach of any representations and warranties, covenant or obligation of the Target or any other member of the Target Group in this Deed;
- (iii) the implementation of the Scheme; or
- (iv) any disclosure containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct, gross negligence or fraud. Nothing in this clause 15.2 limits the Bidder's rights to terminate this Deed under clause 16.1.

- (b) The Target receives and holds the benefit of this clause to the extent it relates to each Target Indemnified Party on behalf of each of them.

15.3 Directors' and officers' insurance

Subject to the Scheme becoming Effective and subject to the Corporations Act and clause 15.4, the Bidder undertakes in favour of the Target and each other person who is a Target Indemnified Party that it will:

- (a) for a period of 7 years from the Implementation Date, ensure that the constitutions of the Target and each other member of the Target Group continue to contain the rules that are contained in those constitutions at the date of this Deed that provide for each member of the Target Group to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of that company to any person other than a member of the Target Group; and

- (b) procure that the Target and each other member of the Target Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that the directors' and officers' run-off insurance cover for those directors and officers is maintained, subject to clause 15.4, for a period of 7 years from the retirement date of each director and officer.

15.4 Period of undertaking

The undertakings contained in clause 15.3 are given:

- (a) subject to any Corporations Act restriction or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly; and
- (b) until the earlier of the end of the relevant period specified in that clause or the relevant member of the Target Group ceasing to be part of the Bidder Group.

15.5 Benefit of undertaking for Target Group

The Target acknowledges that it receives and holds the benefit of clause 15.3 to the extent it relates to each director and officer of a member of the Target Group on behalf of each of them.

15.6 Bidder acknowledgement regarding insurance

The Bidder acknowledges that, notwithstanding any other provision of this Deed, the Target may, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to a period of 7 years, subject to such the terms of that run-off insurance being acceptable to the Bidder (acting reasonably), and that any actions to facilitate that insurance or in connection therewith will not be a Target Prescribed Occurrence or breach any provision of this Deed.

16. Termination

16.1 Termination

- (a) Either party may terminate this Deed by written notice to the other party:
 - (i) at any time prior to the Cut-Off Time if the other party has materially breached this Deed (including a breach of a Target Scheme Warranty or a Bidder Representation and Warranty or in relation to a Target Prescribed Occurrence but excluding a breach of a Target Business Warranty or any failure by the Target to give the Bidder a notice required by clause 9.4(d) or clause 14.8 in relation to any Target Business Warranty) taken in the context of the Scheme as a whole, provided that the Bidder or the Target (as the case may be) has, if practicable, given notice to the other setting out the relevant circumstances and the breach:
 - (A) is not capable of being remedied; or
 - (B) is capable of being remedied, but has not been remedied to the satisfaction of the Bidder or the Target (as the case may be) within 10 Business Days (or any shorter period ending at the Cut-Off Time or 5.00pm on the day before the Second Court Date if clause 3.9 applies) after the time the notice is given;
 - (ii) in accordance with and pursuant to clause 3.9 or clause 7.2(a);

- (iii) if the Scheme has not become Effective on or before the End Date; or
 - (iv) if agreed to in writing by the Bidder and the Target.
- (b) The Bidder may terminate this Deed by written notice to the Target until the Cut-Off Time if any member of the Target Board fails to make the Recommendation, withdraws their Recommendation, adversely changes or qualifies their Recommendation, or otherwise makes a public statement indicating that he or she no longer supports the Scheme (excluding a statement that no action should be taken by the Target Shareholders pending the assessment of a Competing Transaction by the Target Board).
- (c) The Target may terminate this Deed by written notice to the Bidder until the Cut-Off Time if at any time before the Cut-Off Time, a majority of the Target Board publicly recommends a Competing Transaction that is a Superior Proposal, and provided that the Competing Transaction was not solicited or facilitated by the Target or its Representatives in breach of the Target's obligations in clause 11.2.

16.2 Notice of termination

Where a party has a right to terminate this Deed, that right will be validly exercised if the party delivers a notice, in writing, to the other party stating that it terminates this Deed and the provision under which it is terminating the Deed.

16.3 Consequences of termination

If this Deed is terminated by either party, or if this Deed otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this Deed, other than the obligations set out in this clause and in clauses 12 to 15 and clauses 17 to 24 (inclusive) will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause releases any party from liability for any pre-termination breach of this Deed.

16.4 Damages

Subject to the limitations in clause 12.6 and clause 14.10, and in addition to the right of termination under clause 16.1, where there is no appropriate remedy for the breach in this Deed (other than termination), the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this Deed.

17. Public announcements

17.1 Announcement of Transaction

Immediately after the execution of this Deed, the Target must issue a public announcement of the Transaction in a form previously agreed between the parties.

17.2 Required disclosure

Where a party is required by Law or the ASX Listing Rules to make any announcement or to make any disclosure in connection with the Scheme, it must use all reasonable endeavours, to the extent possible, to consult with the other party prior to making the relevant disclosure.

17.3 Subsequent announcements

Subject to clauses 17.1 and 17.2, no party may make any public announcement or disclosure in connection with the Scheme (including disclosure to a Government Authority)

other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable. Nothing in this clause requires the giving of prior notice or the taking of any action if doing so would lead to a party breaching an applicable Law or the ASX Listing Rules.

18. Confidentiality

18.1 Confidentiality Agreement

Each party acknowledges and agrees that it continues to be bound by the Confidentiality Agreement in respect of all information received by it from the other party on, before or after the date of this Deed.

18.2 Survival of obligations

The rights and obligations of the parties to the Confidentiality Agreement survive termination (for whatever reason) of this Deed.

19. GST

19.1 Definitions

Unless the context requires otherwise, words and expressions used in this clause 19 have the same meaning as in *A New Tax System (Goods and Services) Tax Act 1997* (Cth).

19.2 Consideration is GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Deed are exclusive of GST.

19.3 Payment of GST

- (a) If GST is imposed on any Supply made under or in accordance with this Deed, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (b) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Deed.

19.4 Reimbursement of expenses

If this Deed requires a party (the **First Party**) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (the **Other Party**), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:

- (a) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (**Net Amount**); and
- (b) if the Other Party's recovery for the First Party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

20. Withholding tax

- (a) The Target must withhold any amounts required by Law to be withheld from the Permitted Dividend payable to Target Shareholders (without gross-up of any kind).
- (b) If Bidder is required by Subdivision 14-D of Schedule 1 of the Taxation Administration Act 1953 (Cth) (Subdivision 14-D) to pay amounts to the ATO in respect of the acquisition of Target Shares from certain Target Shareholders, Bidder is permitted to deduct the relevant amounts from the payment of the Scheme Consideration to those Target Shareholders, and remit such amounts to the ATO. The aggregate sum payable to Target Shareholders shall not be increased to reflect the deduction and the net aggregate sum payable to those Target Shareholders shall be taken to be in full and final satisfaction of the amounts owing to those Target Shareholders.
- (c) The Target agrees that Bidder may approach the ATO to obtain clarification as to the application of Subdivision 14-D to the Transaction and will provide all information and assistance that Bidder reasonably requires in making that approach.
- (d) The Bidder agrees:
 - (i) to provide the Target a reasonable opportunity to review the form and content of all materials to be provided to the ATO, to take into account Target's comments on those documents and more generally in relation to Bidder's engagement with the ATO and to participate in any discussions and correspondence between the Target and the ATO in connection with the application of Subdivision 14-D to the Transaction; and
 - (ii) not to contact any Target Shareholders in connection with the application of Subdivision 14-D to the Transaction without Target's prior written consent.
- (e) The parties agree to consult in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the ATO following the process specified above in this clause 20. The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable following that consultation which may include, without limitation, making amendments to this deed and the Scheme) to ensure that relevant representations are obtained from the Target Shareholders.

21. Costs

21.1 Costs

Subject to clauses 19 and 21.2 and except as otherwise provided in this Deed, each party must pay its own costs and expenses (including taxes) in connection with the negotiation, preparation, execution, delivery and performance of this Deed.

21.2 Stamp duty

The Bidder must:

- (a) pay all stamp duty and any related fines, penalties, interest, costs and brokerage in respect of or in connection with this Deed, the performance of this Deed, or any

instruments entered into under this Deed and in respect of a transaction effected by or made under the Scheme and this Deed, including the transfer of Scheme Shares under the Scheme; and

- (b) indemnify each Scheme Participant on demand against any liability arising from its failure to comply with clause 21.2(a).

22. Enforcement of rights conferred on non-parties

Solely to the extent that this Deed purports to grant a right or benefit to a person (**Relevant Person**) who is not a party to this Deed:

- (a) if that right or benefit is also granted to the Target, the Target executes this Deed as agent for the Relevant Person (as well as in the Target's own capacity) and, despite the fact that the Relevant Person is not a party to this Deed, the Target may enforce the obligations corresponding to the Relevant Person's right or benefit as agent for, and for the benefit of, the Relevant Person;
- (b) if that right or benefit is also granted to the Bidder, the Bidder executes this Deed as agent for the Relevant Person (as well as in the Bidder's own capacity) and, despite the fact that the Relevant Person is not a party to this Deed, the Bidder may enforce the obligation corresponding to the Relevant Person's right or benefit as agent for, and for the benefit of, the Relevant Person; and
- (c) for the purposes of enforcement, the obligation corresponding to the Relevant Person's right or benefit is taken to be owed to the Relevant Person.

23. Notices

- (a) Any notice or communication in respect of this Deed (**Notice**) may be served by delivery in person, by post or by email to the address or email address of a party specified in this Deed or most recently notified by a party to the sender.
- (b) Any Notice to a party must be in writing and signed by either:
 - (i) the sender or, if a corporate party, an authorised officer of the sender; or
 - (ii) the party's solicitor.
- (c) A Notice:
 - (i) if delivered in person, will be deemed served upon delivery;
 - (ii) if posted, will be deemed served 2 Business Days after posting; and
 - (iii) if sent by email, will be deemed served that day unless the sender receives an automated message generated by the recipient's mail server (**Failure Message**) that the email has not been delivered within two hours. For the avoidance of doubt any response generated by or at the instigation of the recipient (including an 'out of office' message) will not be a Failure Message,

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (addressee's time), it is deemed to have been served at 9.00am on the next Business Day.

- (d) The address for service for Notices for the parties are:

Target

Attention: Spencer Chipperfield
Address: Level 19, 459 Collins Street, Melbourne VIC 3000

Email: Spencer.Chipperfield@citadelgroup.com.au

with a copy to:

Gadens in accordance with the following:

Address: Level 13, Collins Arch, 447 Collins Street, Melbourne VIC 3000

Email: Jeremy.Smith@gadens.com and Jol.Rogers@gadens.com

For the attention of: Jeremy Smith and Jol Rogers

Bidder

Attention: David Brown / Rohan Wolfers
Address: Level 31, 126 Phillip Street, Sydney NSW 2000

Email: david.brown@pep.com.au and rohan.wolfers@pep.com.au

with a copy to:

Clayton Utz in accordance with the following:

Address: Level 15, 1 Bligh Street, Sydney NSW 2000

Email: nananda@claytonutz.com

For the attention of: Niro Ananda

23.2 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Deed may be served by any method contemplated by this clause 23 or in accordance with any applicable law.

24. General provisions

24.1 Assignment

A party must not transfer any right or liability under this Deed without the prior consent of each other party, except where this Deed provides otherwise.

24.2 Governing law and jurisdiction

- (a) This Deed is governed by and construed under Victorian law.
- (b) Any legal action in relation to this Deed against any party or its property may be brought in any court of competent jurisdiction of Victoria.

- (c) By execution of this Deed, each party irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this clause in relation to both itself and its property.

24.3 Amendments

Any amendment to this Deed has no force or effect, unless effected by a deed executed by the parties.

24.4 Entire understanding

This Deed contains the entire understanding between the parties concerning the subject matter of the agreement and supersedes all prior communications between the parties other than the Confidentiality Agreement.

24.5 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this Deed, except for the representations or inducements expressly set out in this Deed.
- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for the representations or inducements expressly set out in this Deed.

24.6 Further assurances

Each party must execute any document and perform any action necessary to give full effect to this Deed, whether before or after performance of this Deed.

24.7 Continuing performance

- (a) The provisions of this Deed do not merge with any action performed or document executed by any party for the purposes of performing this Deed.
- (b) Any representation in this Deed survives the execution of any document for the purposes of, and continues after, performance of this Deed.
- (c) Any indemnity agreed by any party under this Deed:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this Deed or any other agreement; and
 - (ii) survives and continues after performance of this Deed.

24.8 Rules of construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed or any part of it.

24.9 Waivers

Any failure by a party to exercise any right under this Deed does not operate as a waiver. The single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

24.10 Remedies

The rights of a party under this Deed are cumulative and not exclusive of any rights provided by law.

24.11 Severability

Any clause of this Deed which is invalid in any jurisdiction, is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining clauses of this Deed or the validity of that clause in any other jurisdiction.

24.12 Counterparts

This Deed may be executed in any number of counterparts, all of which taken together are deemed to constitute the same document.

Schedule 1 – Timetable

Event	Date
Lodge Scheme Booklet with ASIC and ASX	12 October 2020
First Court Date	28 October 2020
Printing and despatch of Scheme Booklet	29 October 2020
Scheme Meeting held	1 December 2020
Second Court Date	7 December 2020
Lodge Court order with ASIC (Effective Date)	8 December 2020
Record Date	10 December 2020
Implementation Date	17 December 2020

Schedule 2 – Target Business Warranties

1. Definitions and interpretation

1.1 Definitions

Accounts means the consolidated audited financial statements (including the notes thereto) contained in the financial report in respect of the Target Group for the period to the Accounts Date

Accounts Date means 30 June 2020.

Anti-Corruption Laws means:

- (a) the U.S. Foreign Corrupt Practices Act of 1977, as amended;
- (b) the Criminal Code Act 1995 (Cth); and
- (c) any similar applicable law that has as its objective the prevention of corruption, including without limitation legislation enacted in furtherance of the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions 1997.

Anti-Money Laundering Laws means anti-money laundering laws and counter-terrorism financing and regulations applicable to the Target Group from time to time, including without limitation the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth).

Development includes carrying out:

- (a) building work, plumbing or drainage work,
- (b) operational work;
- (c) reconfiguring a lot; or
- (d) making a change of use of premises.

Duty means any stamp, transaction or registration duty or similar charge imposed by any Regulatory Authority and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them, but excludes any Tax.

Employee Share Plan means the Share Rights Plan and the rules governing the Target Group's Employee Share Scheme.

Environment means:

- (a) ecosystems and their constituent parts, including people and communities;
- (b) all natural and physical resources;
- (c) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and

- (d) the social, economic, aesthetic and cultural conditions that affect, or are affected by, things mentioned in paragraphs (a) to (c).

Environmental Law means any statute or common law regulating or otherwise relating to the Environment.

Governmental Official means, whether in Australia or elsewhere:

- (a) an officer, agent or employee of a government, government-owned enterprise (or any agency, department or instrumentality thereof), political party or public international organisation;
- (b) a candidate for government or political office; or
- (c) an agent, officer, or employee of any entity owned by a government.

GST Law has the meaning given in the GST Act.

Intellectual Property Rights means all intellectual and industrial property rights of whatever nature throughout the world conferred under statute, common law or equity, whether existing now or at any time in the future, and includes rights in respect of or in connection with trade marks, service marks (including good will in those marks), business names, trade names, domain names, designs, software (including proprietary source code), inventions (including patents), business processes or methods, circuit layouts, copyright and analogous rights, rights to have confidential information, know-how and similar intellectual property and industrial rights, whether or not registered or registrable, and includes pending applications for such rights and the right to apply for or renew the registration of such rights.

Management Accounts means the monthly unaudited historical financial information of the Target Group for the period 1 July 2016 to 31 July 2020 and Wellbeing for the period 1 July 2016 to 31 July 2020 as set out in the folder 7.6 of the Data Room.

Material Authorisations means each licence, authorisation, approval or permit held or required to be held by a Target Group Member, the failure to hold, have the benefit, cessation or material alteration of which would be reasonably likely to have a material adverse effect on the operational or financial performance of the relevant Target Group Member.

Permitted Encumbrance means

- (a) a charge or lien arising in favour of a Regulatory Authority by operation of statute in the ordinary course of the business of the Target Group;
- (b) any mechanics', workmen's or other like lien arising in the ordinary course of the business of the Target Group;
- (c) any retention of title arrangement or purchase money security interest (including arising from any lease of goods or consignment arrangement), in each case, arising in favour of a trade supplier to the business of the Target Group in the ordinary course of that business;
- (d) a PPS Lease (as defined in the PPSA);
- (e) any Security Interest within the meaning of section 12(3) of the PPSA;
- (f) any Encumbrance registered by Bidder;
- (g) any Encumbrance created in the ordinary course of business after the execution of this Deed that does not secure the payment of Indebtedness;

- (h) any Encumbrance approved in writing by Bidder; and
- (i) any Encumbrance relating to any specific Indebtedness that is agreed by Bidder as not being paid out in connection with implementation of the Scheme.

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a tangible form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Planning Law means any statute or common law regulating or otherwise relating to Development.

Privacy Laws means the Privacy Act 1988 (Cth), the Australian Privacy Principles contained in Schedule 1 to the Privacy Act 1988 (Cth), and all other applicable federal, state, local and foreign laws (only as they apply to a Target Group Member) pertaining to the collection, storage, use, disclosure and transfer of Personal Information.

Records means originals and copies, in any material form, of all minute books, statutory books and registers, books of account and copies of taxation returns

Sanctioned Person means at any time:

- (a) any person or entity listed on any Sanctions-related list of designated or blocked persons;
- (b) any person resident in, or entity organised under the laws of, a country or territory that is the subject of comprehensive Sanctions (including Cuba, Iran, Democratic People's Republic of Korea, Sudan, Syria, and the Crimea region); or
- (c) any person or entity majority-owned or controlled by or acting on behalf of any of the foregoing.

Sanctions means those economic and financial sanctions and trade embargoes imposed, administered or enforced from time to time by:

- (a) the Australian government, including those arising under the Charter of the United Nations Act 1945 (Cth), the Autonomous Sanctions Act 2011 (Cth), the Anti-Money Laundering Laws or administered by the Department of Foreign Affairs and Trade or AUSTRAC;
- (b) the European Union and implemented by its member States;
- (c) the United Nations Security Council;
- (d) Her Majesty's Treasury of the United Kingdom; or
- (e) the U.S. government, including those administered by the U.S. Treasury, Office of Foreign Assets Control.

Tax Law means any Law relating to either Tax or Duty as the context requires.

Wellbeing means Wellbeing Software Group Holdings Limited.

Wellbeing Accounts means the consolidated audited financial statements (including the notes thereto) contained in the financial report in respect of Wellbeing for the period to the Accounts Date.

WHS Laws means all safety-related:

- (a) laws;
- (b) guidance materials;
- (c) mandatory codes of practice;
- (d) other compliance codes; and
- (e) directions on safety, standards or notices issued by any relevant Regulatory Authority,

relevant and applicable to occupational health and safety, work health and safety, dangerous goods, rail safety or electricity safety.

Work Safety Authority means a Regulatory Authority with responsibility for the investigation and enforcement of work health and safety legislation, amongst other functions.

2. Business Warranties

2.1 (Existence and Authority)

- (a) Each Target Group Member is a validly existing corporation registered under the laws of its place of incorporation.
- (b) The Target has full capacity, corporate power and lawful authority to execute, deliver and perform this Deed and the Scheme.
- (c) Each Target Group Member:
 - (i) has the power to own its assets and carry on the Business as it is being carried on as at the date of this Deed.
 - (ii) is duly registered and authorised to do business in those jurisdictions which, by the nature of its business and assets, makes registration or authorisation necessary; and
 - (iii) has conducted the Business in compliance with the constitution or other constituent documents of that Target Group Member.
- (d) The execution of this Deed of itself does not result in a breach of or default under any agreement or deed or any write, order or injunction, rule or regulation to which the Target or any Target Group member is a party or to which they are bound.
- (e) This Deed is a valid and binding obligation on the Target and is enforceable against it in accordance with its terms.
- (f) So far as the Target is aware, there are no facts or circumstances that will cause a Third Party, as a result of the entry into this Deed and the implementation of the Transaction to exercise a right to terminate a contract which is material to the business of the Target Group or vary the performance of any material obligation to the Target under any such contract or exercise a right to acquire, or require the disposal of, any material assets of the Target Group.

- (g) As at the date of this Deed, no Insolvency Event has occurred or is reasonably likely to occur in the near term in relation to the Target or another Target Group Member, nor has any regulatory action of any nature of which it is aware been taken that would reasonably be likely to prevent or restrict the Target's ability to fulfil its obligations under this Deed or under the Scheme.

2.2 (Capital structure)

- (a) As at the date of this Deed, the total issued capital of the Target is 78,710,046 Target Shares and 363,860 Share Rights.
- (b) No Target Group Member has issued or granted (or agreed to issue or grant) any other shares or other securities, options, warrants, rights or instruments which are still outstanding and may convert into, or give the holder the right to be issued, shares in a Target Group Member.
- (c) No Target Group Member is under any obligation to issue, and no person has any right to require or call for the issue or grant of, any share or other securities, options, warrants, rights or instruments issuable in any Target Group member (whether such obligation or right is conditional or otherwise).
- (d) No Target Group member has granted any option, right or other entitlement under any employee incentive scheme or plan (or similar arrangement) to acquire, by way of issue or transfer, or, subject to satisfaction of vesting or performance condition, to retain, a share or security in any Target Group Member, except as Fairly Disclosed in the Disclosure Materials as being issued under the Employee Share Plan.

2.3 (Target Group)

- (a) The structure diagram in the Disclosure Materials with the identification number 1.1.19 contained in the Data Room includes details of all members of the Target Group and the details included are true and accurate in all respects.
- (b) No Target Group Member holds shares, options, units, securities or interests in, or is a member of, any company, trust, partnership, incorporated or unincorporated joint venture or association, or other entity.
- (c) All related party arrangements between each Target Shareholder and the Target Group and between each Target Indemnified Party and the Target Group have been Fairly Disclosed in the Disclosure Materials.

2.4 (Financial Information)

- (a) The Accounts:
 - (i) comply with applicable statutory requirements and were prepared with due care and in good faith in accordance with the Accounting Standards and in accordance with the requirements of the Corporations Act and any other applicable laws;
 - (ii) give a true and fair view of the financial position and the assets and liabilities of the Target Group as at the Accounts Date and of the financial performance of the Target Group for the 12 month period ending on the Accounts Date; and

- (iii) are not affected by any unusual, abnormal, extraordinary or non-recurring items, other than those items specifically disclosed in those financial statements.
- (b) The Wellbeing Accounts:
 - (i) comply with applicable statutory requirements and were prepared with due care and in good faith in accordance with the Accounting Standards and applicable laws;
 - (ii) give a true and fair view of the financial position and the assets and liabilities of Wellbeing as at the Accounts Date and of the financial performance of Wellbeing for the 18 month period ending on the Accounts Date;
 - (iii) to the extent they are required to be disclosed by the applicable Accounting Standards, include proper and adequate reserves and provisions for all liabilities, and including Tax, that are sufficient to cover all liabilities of Wellbeing in respect of all periods up to and including the Accounts Date;
 - (iv) are not affected by any unusual, abnormal, extraordinary or non-recurring items, other than those items specifically disclosed in those financial statements; and
 - (v) accurately disclose all material liabilities (actual, prospective or contingent) to the extent they are required to be disclosed by the applicable Accounting Standards
- (c) Bearing in mind the purpose for which they have been prepared and the fact that they are unaudited and have not taken into account any adjustments that are customary or required for the purpose of preparing year end consolidated statutory accounts, the Management Accounts:
 - (i) do not materially misstate:
 - A. the assets, the liabilities and the financial position of the Target Group as at the date to which they have been prepared;
 - B. the financial position and state of affairs of the Target Group as at the date to which they have been prepared;
 - C. the financial performance of the Target Group for the period in respect of which they have been prepared; and
 - D. have been prepared in good faith and with reasonable care and diligence.

2.5 (Conduct of business)

- (a) Since the Accounts Date, the Target Group has conducted its businesses and operations:
 - (i) in the ordinary course and has not entered into material contracts or arrangements outside of the ordinary course of the business of the Target Group;

- (ii) in accordance with material legal and contractual obligations; and
 - (iii) in a manner generally consistent (subject to any applicable laws, regulations and regulatory approvals) with the manner in which each such business and operation had been conducted in the 12 month period prior to the Accounts Date.
- (b) Between the Accounts Date and the date of this Deed:
 - (i) no Target Group Member has implemented any new accounting or valuation method for the business of any Target Group Member, or the assets, property or of that business, which has had or could reasonably be expected to have a material adverse effect on the Target Group;
 - (ii) no member of the Target Group undertook any actions which would have resulted in a breach of clause 9 had it been operative during that period;
 - (iii) no Target Group Member has incurred or undertaken any actual or contingent liabilities or obligations, including Tax, except in the ordinary and usual course of business;
 - (iv) there has not been incurred or agreed to be incurred any operational expense which is of an unusual or non-recurring nature or abnormal amount having regard to the customary business practices applicable to the industries in which the Target Group operates and which would have a material adverse effect on the Target Group;
 - (v) no Target Group Member has entered into any agreements, arrangements or understandings affecting a Target Group Member or the business of any Target Group Member that are unusual, abnormal, contain onerous provisions, or could not be fulfilled or performed without undue or unusual expenditure of money or effort on the part of any Target Group Member;
 - (vi) so far as the Target is aware, there has been no event, occurrence, fact or circumstance affecting the business, condition (financial or otherwise), liabilities, results of operations, or prospects of any Target Group Member which may materially and adversely affect the business of the Target Group; and
 - (vii) no Target Group Member has written down any of its material assets.
- (c) The Target is not aware of any information relating to the Target Group or its respective businesses or operations (having made reasonable enquiries) as at the date of this Deed that has or could reasonably be expected to give rise to a material adverse change that has not been Fairly Disclosed in an announcement by the Target to the ASX or in the Disclosure Materials.

2.6 (Key contracts and other arrangements)

- (a) All contracts, agreements and arrangements set out in folder 3 and folder 4 of the Data Room (**Key Contracts**) have been Fairly Disclosed in the Disclosure Material and the copies of all Key Contracts included in the Disclosure Material are current, accurate and complete (when considered with any and all amendments, variations, supplements, correspondences,

addendums, annexures, appendices, extensions and/or renewals in respect of such Key Contracts that are also included in the Disclosure Material).

- (b) Each Key Contract is valid, binding and enforceable upon and against each member of the Target Group that is a party thereto and each other party thereto.
- (c) No Target Group Member is in breach of, or default under, any material provision of any Key Contract.
- (d) No Target Group Member has received or given any notice in respect of any actual, alleged or potential breach of any Key Contract, nor are there any facts, matters or circumstances which may reasonably be expected to result in such a notice being given.
- (e) No party to any Key Contract has terminated, suspended or reduced the supply of, or demand for, services provided by or to a Target Group Member under a Key Contract or altered the terms of a Key Contract in any way which has had or is likely to have a material adverse impact on the business and activities of the Target Group as at the Implementation Date, and Target is not aware that any such termination, suspension, reduction in scope, or alteration of a Key Contract is threatened or is reasonably likely.
- (f) No member of the Target Group is in material default under any Key Contract binding on it or its assets nor has anything occurred which is or would with the giving of notice or the lapse of time constitute an event of default, prepayment event or similar event or give another party a termination right or right to accelerate any right or obligation under any such document.
- (g) No Target Group Member is a party to any material agreement or arrangement that:
 - (i) is not on arm's length terms;
 - (ii) was not entered into in the ordinary course of business; or
 - (iii) contains a non-compete undertaking.
- (h) No Target Group Member has received any notice, advice or correspondence from a counterparty to a Key Contract:
 - (i) with respect to the non-renewal or non-extension of the term of that Key Contract; or
 - (ii) confirming or suggesting that a Key Contract will be renewed or extended only on materially amended terms.
- (i) No Target Group Member has received any written notice of any Claims in relation to the products or services it provides.

2.7 (Financing arrangements)

- (a) There are no:
 - (i) agreements or arrangements entered into by any member of the Target Group for the borrowing of money or the incurrence of any debt or other Indebtedness (whether contingent or otherwise), or

the granting of Encumbrances or other security (other than Permitted Encumbrances);

- (ii) debentures, bonds, notes or similar debt instruments issued by any member of the Target Group (whether by one instrument or by all of the instruments in a series);
 - (iii) guarantees, letters of comfort, indemnities or other commitments of financial support which have been given or issued in favour of any Third party in respect of any Indebtedness incurred by any member of the Target Group, and no member of the Target Group has requested that any bank or other financial institution give or issue any such guarantee, letter of comfort, indemnity or other commitment of financial support;
 - (iv) bank guarantees, letters of credit, trade instruments or similar credit support which have been issued in respect of, or at the request of, any member of the Target Group or any arrangements related thereto (including cash-backing);
 - (v) interest rate swaps, foreign currency forward contracts or other derivative contracts to which any member of the Target Group is a party or by which any member of the Target Group is bound; or
 - (vi) financing arrangements that restrict the sale or disposal of any member of the Target Group (or any assets thereof).
- (b) No member of the Target Group has given any guarantee, letter of comfort or other commitments of financial support, or granted any Encumbrance, in respect of any obligation or liability of any Third party.
- (c) No outstanding acceleration demands have been made under, or in respect of, any of the financing or security arrangements to which any member of the Target Group is a party or by which any member of the Target Group (or any assets thereof) is bound.
- (d) So far as the Target is aware:
 - (i) no action has been taken or threatened by any person to enforce any Encumbrance of any kind over any assets of any member of the Target Group; and
 - (ii) there are no facts, matters or circumstances that would or may entitle any person to take such action.
- (e) There is no existing or unremedied material breach of, nor any default, event of default, cancellation event, review event, prepayment event or similar event currently subsisting under, any financing or security arrangements.
- (f) Where a member of the Target Group has received funding or financial support from a Regulatory Authority, no calls or demands have been made to repay those amounts and no member of the Target Group has been notified or is aware that any such funding or financial support is required to be repaid.
- (g) No Target Group Member is liable to repay an investment or other grant or subsidy made to it by any person (including a Government Agency). No matter (including the execution and performance of this Deed) exists that might entitle a body to require repayment of, or refuse an application for, the whole or part of a grant or subsidy.

2.8 (Documents and Records)

- (a) The Records:
 - (i) contain all relevant material details, which are accurate, of all matters required to be entered by all applicable laws; and
 - (ii) give a reasonably and materially accurate view of the Target Group's operations, assets and the contractual position of the Target Group.
- (b) All material documents relating to any Target Group Member (including documents of title and copies of all agreements to which a Target Group Member is a party) which are the property of a Target Group Member or ought to be in its possession, are in its possession or under its control.
- (c) Each material document or filing which is required by law to be delivered or made to any Regulatory Authority by a Target Group Member in connection with the operation of the Target Group has been duly delivered or made.

2.9 (Assets)

- (a) The Target Group owns, or has the right to use all of the assets that are necessary for the conduct of the Business as at the date of this Deed and at Implementation Date.
- (b) All the material tangible assets of the Target Group are:
 - (i) the absolute property of a member of the Target Group under a contract pursuant to which such member of the Target Group is entitled to use the relevant asset(s) on the terms and conditions of such contract (each such contract being an **Asset Contract**);
 - (ii) not the subject of any lease or hire purchase agreement or agreement for purchase on deferred terms;
 - (iii) in the exclusive possession or under the control of a member of the Target Group, its agent or nominee;
 - (iv) other than pursuant to an Asset Contract, not the subject of any agreements or arrangements to dispose or not dispose or that otherwise restrict their use or disposal.
- (c) The Target Group owns, or has the right to use (on terms no less favourable to the Target Group than the terms applicable as at the date of this Deed), all of the assets that are necessary for the carrying on of the Business and operations of the Target Group as such Business and operations are currently carried on.
- (d) No member of the Target Group has received any notice, order or direction from any Regulatory Authority or Third party in respect of any of its assets or the use of such assets, nor is the Target aware of any facts, matters or circumstances which may result in such a notice being given.
- (e) Subject to fair wear and tear and age and use of such plant and equipment, each item of material plant and equipment owned or used by the Target Group:

- (i) is capable of performing the function for which it is intended to be used and are not dangerous, inefficient, out-of-date, unsuitable or in need of renewal or replacement;
 - (ii) has been properly serviced throughout its life; and
 - (iii) is in good repair and condition and satisfactory working order for its age and is in satisfactory working order and has been regularly and properly maintained.
 - (iv) so far as the Target is aware, has been maintained in accordance with industry best practice standards; and
 - (v) so far as the Target is aware, complies with all applicable laws and standards in all material respects and has not been repaired or modified in a way which would adversely impact a warranty provided by a supplier of that item of plant and equipment.
- (f) The Target Group has good title to all equipment that is the subject of a lease, hire or rental agreement, free and clear of all Encumbrances (other than a Permitted Encumbrance).

2.10 (Properties)

- (a) The Target Group does not hold freehold title to any real property.
- (b) The Disclosure Materials includes copies of all agreements or other documents pursuant to which a member of the Target Group leases (or sub-leases) or licences, occupies or otherwise uses any parcel of real property (all such agreements and other documents, being the **Property Leases**, and all such parcels of real property, being the **Leased Properties**), and the copies of such Property Leases included in the Disclosure Material are current, accurate and complete (and include any and all amendments, variations, supplements, addendums, annexures, appendices, extensions and/or renewals in respect of such Property Leases).
- (c) No member of the Target Group has any interest in land other than the interests in the Leased Properties (together, the **Properties**).
- (d) No member of the Target Group is party to any agreement or arrangement in relation to the ownership (including purchase or sale), occupation, lease, licence or use of any real property other than in respect of the Properties.
- (e) Each of the Property Leases is valid, binding, enforceable and subsisting, and (where necessary to be binding and enforceable against successors in title) registered.
- (f) No member of the Target Group has received:
 - (i) any notice to vacate or notice to quit in respect of any of the Properties;
 - (ii) any notice in respect of the compulsory acquisition or resumption of any of the Properties (or any part thereof);
 - (iii) any notice requiring material work to be done or expenditure to be made in respect of any of the Properties or any footpath or road adjoining any of the Properties for which a Target Group member is responsible;

- (iv) any notice in respect of any contemplated, pending or threatened condemnation or change to the planning, zoning or other ordinances in respect of any of the Properties;
- (v) any notice in respect of any actual, alleged or potential breach of any Property Lease or the termination or intended termination of any Property Lease; or
- (vi) any order, direction, notice or proposal from any Regulatory Authority affecting or in respect of any of the Properties or the use thereof,

nor is the Target aware of any facts, matters or circumstances which may result in any such notice, order, direction or proposal being given.

- (g) So far as the Target is aware, all buildings or other improvements on the Properties are in such condition and state of repair as to be substantially fit for the purpose for which they are used by the Target Group and such use is permitted under applicable Planning Law.
- (h) So far as the Target is aware, each material consent required under any legislation for any development or use carried out by the Target Group or any Property has been properly obtained and all conditions or restrictions imposed in any such consent have been observed and performed in all material respects.
- (i) No member of the Target Group is in default, or would be in default but for the requirements of notice or lapse of time, under any Property Lease, and the Target is not aware of any grounds for termination, rescission, avoidance or repudiation of any Property Lease.
- (j) The relevant members of the Target Group are not overdue in the payment of rent, fees, rates and other amounts payable by them in respect of the Properties (including under the Property Leases).
- (k) Other than in relation to those Properties in respect of which a member of the Target Group has granted a sub-lease to a Third Party, the relevant members of the Target Group have exclusive occupation and right of quiet enjoyment in respect of each of the Properties.
- (l) Other than in relation to those Properties in respect of which a member of the Target Group has granted a sub-lease to a Third Party, none of the Properties are subject to any sub-lease, licence, tenancy or right of occupation in favour of any person other than a Target Group Member.
- (m) None of the Properties is subject to any restrictive covenant or exception or reservation which may adversely affect its use.
- (n) So far as Target is aware:
 - (i) there are no disputes, Claims or actions relating to any of the Properties or the use thereof; and
 - (ii) there is no intention on the part of any counterparty to a Property Lease to:
 - A. terminate the Property Lease;
 - B. not renew or extend the Property Lease at expiry or only renew or extend the Property Lease at expiry on

terms materially more favourable to such counterparty than the current terms; or

- C. seek to increase the rent, fees, rates or other amounts payable by the relevant member(s) of the Target Group under the Property Lease (whether at expiry of the Property Lease or otherwise) other than in accordance with any rent adjustment provisions under the terms of the relevant Property Lease.

2.11 (Environment and Planning)

- (a) The Target Group has fully complied with all obligations under any Environmental Law or Planning Law.
- (b) The present use of each of the Property Leases complies in all material respects with any applicable planning scheme or plan and with all other applicable statutory, local body and other regulations and requirements, including any approval, consent, licence or permit required for the operation of the business.
- (c) So far as the Target is aware, there are no known or suspected factors affecting any of the Properties that will, or would reasonably be likely to, give rise to any liability for any Target Group Member under any Environmental Law.
- (d) No Target Group Member has received notice under or in respect of any Environmental Law (including notice of any actual or alleged breach of, or investigation in respect to, any Environmental Law), nor is Target aware of any facts, matters or circumstances which may result in such a notice being given.
- (e) The Target Group has not assumed, undertaken, provided an indemnity with respect to, or otherwise become subject to, any liability of any other person relating to Environmental Law other than in accordance with this Deed.
- (f) So far as Target is aware, the business carried on by each Target Group Member is conducted, and has been conducted during the three years prior to the date of this Deed, in compliance with Environmental Law in all material respects.
- (g) So far as the Target is aware:
 - (i) the Target has not received any outstanding written notices, orders, directions or declarations from or by any Regulatory Authority to a Target Group Member in respect of any Environmental Law or Planning Law applicable to any of the Properties that will, or would reasonably be likely to, have a material adverse effect on the Target Group; and
 - (ii) all approvals, authorisations, licences, consents and permits that are material to and required for the conduct of the Business and the conduct of all activities carried out on the Properties pursuant to an Environmental Law or Planning Law have been obtained and complied with.
- (h) So far as Target is aware, Target has obtained each Material Authorisation under Environmental Law (**Environmental Permit**) required for the operation of the business carried on by each Target Group Member and the use of the Properties. So far as Target is aware, each Environmental Permit:

- (i) is current; and
 - (ii) has been complied with in all material respects (including compliance with conditions); and
 - (iii) is not the subject of any dispute, challenge, opposition or appeal by any third party or Regulatory Authority.
- (i) So far as Target is aware, there is no current proposal to revoke, suspend, modify or not renew any Environmental Permit, or to serve a notice from a Regulatory Authority in relation non-compliance with Environmental Law on any Target Group Member, and no event has occurred that could lead to any Environmental Permit being revoked, suspended, modified or not renewed.

2.12 (Intellectual property rights)

- (a) The Disclosure Materials contain reasonable particulars of material Intellectual Property Rights owned or used by any member of the Target Group (**Business Intellectual Property**), as well as any terms and conditions attaching to the use of the Business Intellectual Property.
- (b) In respect of the Business Intellectual Property that is owned by a member of the Target Group:
 - (i) such Business Intellectual Property is valid, subsisting and enforceable, and free and clear of all Encumbrances;
 - (ii) no member of the Target Group has assigned, licensed or otherwise disposed of or allowed to lapse any right, title or interest in such Business Intellectual Property;
 - (iii) the relevant members of the Target Group have taken all reasonable steps to obtain and maintain appropriate registrations for such Business Intellectual Property (to the extent such Business Intellectual Property is registrable), including the payment of all applicable application and renewal fees;
 - (iv) the Target Group has taken all reasonable steps to record and protect such Business Intellectual Property, to the extent that it is unregistrable;
 - (v) the terms on which the Business Intellectual Property is licensed within the Target Group does not compromise or otherwise adversely affect the validity, subsistence or enforceability of any of the Business Intellectual Property; and
 - (vi) so far as the Target is aware there are no Claims, challenges, disputes or proceedings that have been brought or threatened by any Third party or Regulatory Authority in relation to such Business Intellectual Property that may adversely affect the right to use, enforce or assign or licence such Business Intellectual Property, including opposition proceedings, non-use proceedings, or amendment, rectification, revocation or cancellation proceedings, and no member of the Target Group has received notice of, nor are there any facts, matters or circumstances that could rise to, any such Claims, challenges, disputes or proceedings; and
 - (vii) so far as the Target is aware no Third party:

- A. has infringed, attacked or opposed, in the 5 years prior to the date of this Deed, or is infringing, attacking or opposing, as at the date of this Deed, such Business Intellectual Property; or
 - B. has any right to use, assign or licence any such Business Intellectual Property, or any right which would otherwise restrict or have the potential to restrict the use by the Target Group (or any member thereof) of such Business Intellectual Property; or
 - C. has threatened to allege or has alleged in the 5 years prior to the date of this Deed, or is threatening to allege or is alleging as at the date of this Deed, that any such Business Intellectual Property infringes Intellectual Property Rights owned by or licensed to that Third party.
- (c) A member of the Target Group has the exclusive right, enforceable against its employees, consultants and independent contractors, to claim full ownership of and all rights in and title to all Business Intellectual Property generated by those persons in the course of, or in connection with, their employment or engagement with or by the Target Group. The Target Group has taken steps to ensure that such Intellectual Property Rights do not breach or infringe any Intellectual Property Rights of Third Parties or breach any obligation of confidence owed to any Third party.
- (d) So far as the Target is aware, the use of the Business Intellectual Property by or on behalf of the Target Group does not:
 - (i) breach or infringe any Intellectual Property Rights of any Third party;
 - (ii) breach any obligation of confidence owed to any Third party; or
 - (iii) breach any law, regulation, rule or policy in force in any jurisdiction, where such breach or infringement or material risk of breach or infringement will, or is reasonably likely to, have a material adverse effect on the operational or financial performance of the Target Group (taken as a whole).
- (e) In respect of Business Intellectual Property that is used but not owned by the Target Group, a member of the Target Group has a current licence to use such Business Intellectual Property and:
 - (i) such licence is valid, binding and enforceable;
 - (ii) no member of the Target Group is in breach of such licence; and
 - (iii) the licensor has not given a notice to terminate such licence nor, so far as the Target is aware, does the licensor intend to give such notice.
- (f) The Intellectual Property Rights owned by the Target Group or used by the Target Group under valid, binding, enforceable and sub-licensable licences from Third Parties together comprise all of the Intellectual Property Rights necessary for the carrying on of the businesses and operations of the Target Group as such businesses and operations are currently carried on.

- (g) There are no material royalties, fees, damages, compensation or other amounts payable by any member of the Target Group in connection with the use of Intellectual Property Rights owned by Third Parties.

2.13 (Privacy)

- (a) Any collection, use or disclosure of Personal Information in connection with the business conducted by the Target Group:
 - (i) is consistent with any privacy statement or privacy policy issued by the Target Group; and
 - (ii) complies with all Privacy Laws by which the members of the Target Group are bound.
- (b) Each Target Group Member has reasonable safeguards in place to protect Personal Information in its possession or control from unauthorised access by Third Parties.
- (c) As far as the Target is aware, within the 2 years preceding the date of this Deed:
 - (i) there have been no material security breaches relating to, or material violations regarding, or unauthorised access, use, processing or disclosure of any Personal Information or sensitive data held or stored by a Target Group Member;
 - (ii) there have been no material cyber security incidents; and
 - (iii) Group has complied in all material respects with applicable data protection and privacy laws.

2.14 (Information technology)

- (a) The data, records and information technology and telecommunications systems, hardware and software owned or validly licensed (under a current, enforceable licence) by the Target Group (collectively, the **Systems**):
 - (i) comprise all the data, records and information technology and telecommunications systems, hardware and software necessary for the carrying on of the Business and operations of the Target Group as such Business and operations are currently carried on; and
 - (ii) with the exception of Systems which are dependent on Third Party hosting platforms, are under the sole control of the Target Group and not shared with or used by or on behalf of or accessible by any other person.
- (b) Each Target Group Member either owns or is validly licensed to use the software comprised in the Systems.
- (c) Each Target Group Member has a disaster recovery plan in place in the event of a material System failure or disruption.
- (d) The Target Group has at all times had reasonable and appropriate security measures in place to protect the confidential information of the Business and any personal information maintained or processed by or for the Target Group

against loss and against unauthorised access, use, modification, disclosure or other misuse, that have been regularly tested and reviewed

- (e) No action is necessary to enable Systems to continue to be used by the Target Group to the same extent and in the same manner as they are used as at the date of this Deed.
- (f) No member of the Target Group is in breach of any agreement under which a member of the Target Group is licensed to use Systems where such breach may result in any member of the Target Group ceasing to be entitled to use those Systems.
- (g) So far as the Target is aware, the software utilised by the Target Group:
 - (i) is free of material defects and complies with all applicable laws;
 - (ii) is capable of being used for the functions and purposes for which it was designed and/or for which it is currently utilised by the Target Group in all material respects;
 - (iii) is not materially deficient (for example, requiring urgent repair, upgrade or replacement to enable) for the present operation of the Business;
 - (iv) so far as the Target is aware, do not infringe on the Intellectual Property Rights of any person; and
 - (v) to the extent has been developed by employees or contractors of the Target Group, the Target Group owns the copyright in the software.

2.15 (Employees and contractors)

- (a) The Disclosure Material contains accurate details of the commencement date, position title, employing entity, salaries and wages, participation (if any) in an applicable incentive arrangement, redundancy or termination entitlements, applicable allowances, applicable enterprise agreement (if any), modern award coverage (if any), and accrued long service leave, annual leave, leave loading and personal leave for each employee (of a member of the Target Group) (**Employee**) as at the relevant dates specified in such disclosure.
- (b) No member of the Target Group is involved in bargaining for a proposed enterprise agreement.
- (c) No member of the Target Group has given a commitment (whether legally binding or otherwise) to increase or supplement the wages, salaries, incentives, annual leave and leave loading, long service leave, personal/carer's leave or any other remuneration, compensation, gratuities or benefits of any Employee beyond the amounts and entitlements specified in the Disclosure Materials.
- (d) Each member of the Target Group has complied with all of its obligations under any relevant and applicable laws and regulations relating to Employees (including employment and industrial laws and regulations, anti-discrimination laws, and WHS Laws) and any applicable industrial agreements and awards.
- (e) All Employees who were or are employed and paid as fixed-term employees were or are properly, accurately and lawfully characterised by their Target Group employer as fixed-term employees.

- (f) So far as the Target is aware, all independent contractors engaged by the Target Group (or otherwise in respect of the Business) are properly, accurately and lawfully categorised as independent contractors and there is no reasonable basis for such individuals to claim they are employees at law.
- (g) The Target Group does not engage any contractors or casual workers whose engagement with the Business would deem them to be employees of the respective company at law or otherwise entitle them to leave or other entitlements or protections given to employees.
- (h) Each member of the Target Group has kept adequate and suitable records regarding its Employees and, in respect of each member of the Target Group incorporated in Australia, such records meet the applicable record keeping obligations under the *Fair Work Act 2009* (Cth) or the Fair Work Regulations 2009 (Cth) (if any) and recording keeping obligations under any applicable law, enterprise agreement or modern award.
- (i) No member of the Target Group is a party to any collective bargaining agreement, workplace agreement or other contract with a trade union or industrial organisation, labour union, labour organisation, works council, group of employees or individual employees in respect of Employees and their employment and no industrial awards, collective bargaining agreements or workplace agreements apply to any Employees.
- (j) No member of the Target Group has been involved in any labour or industrial dispute with any union or industrial organisation, labour organisation, works council, group of employees or Employee at any time within the 3 years preceding the date of this Deed.
- (k) There is no actual or pending or (so far as the Target is aware) threatened Claim, dispute, demand, legal proceedings or cause of action by an Employee against any member of the Target Group and, so far as Target is aware, there are no facts, matters or circumstance which may give rise to any such Claim, dispute, demand, charge, complaint, audit, investigation, legal proceeding or cause of action against any member of the Target Group.
- (l) The Disclosure Material contains details of all Claims, disputes and, legal proceedings made or threatened against a member of the Target Group by current or past Employees during the 2 year period prior to the date of this Deed.
- (m) No member of the Target Group has made any offer of work to, or any appointment of, a new individual (or any company controlled by an individual as a senior executive, or as an independent contractor) for a term of 12 months or more or for payment of \$100,000 or more per annum, that remains capable of acceptance and that cannot be terminated without penalty on less than 1 months' notice.
- (n) No employee who receives a salary or remuneration in excess of \$100,000 per annum has provided a notice of resignation.
- (o) No member of the Target Group is a party to any written employment or service agreement with any current member of key management personnel for the purposes of the Corporations Act other than those agreements disclosed in full in the Disclosure Material.
- (p) Other than as contemplated in this Deed, no Employee is, or may become, entitled to any bonus, compensation, payment or other benefit:

- (i) on execution of, or in connection with, this Deed or the transactions contemplated hereby; or
 - (ii) which is triggered by a change of control of the Target, or by the termination or cessation of that Employee's employment with the relevant member of the Target Group.
- (q) No member of the Target Group operates or has adopted, or has resolved or agreed to operate or adopt, any incentive plan in which Employees participate or may participate, except the Employee Share Plans.
- (r) Details of all investigations or Claims relating to health and safety issues which have occurred, been made or carried out in the last 3 years before the date of this Deed and affecting any member of the Target Group or any Employees have been Fairly Disclosed in the Disclosure Material.
- (s) The members of the Target Group have complied with all their obligations to make superannuation or pension contributions which they are required to make on behalf of Employees including employees under the extended definition provided in Section 12 of the Superannuation Guarantee Administrative Act, (where applicable).
- (t) Each member of the Target Group has complied with all applicable requirements of the *Superannuation Guarantee (Administration) Act 1992* (Cth).
- (u) The prescribed minimum level of superannuation support for each Employee, including employees under the extended definition provided in Section 12 of the *Superannuation Guarantee Administrative Act 1992* (Cth) (**Superannuation Guarantee Administrative Act**), has been provided by each member of the Target Group so as not to incur a superannuation guarantee charge prescribed by the *Superannuation Guarantee (Administration) Act 1992* (Cth).
- (v) There are no overdue contributions due to be paid on the part of any member of the Target Group or any Employee, including employees under the extended definition provided in Section 12 of the Superannuation Guarantee Administrative Act, that are outstanding and unpaid.
- (w) Provisions have been made by each member of the Target Group for any outstanding and unpaid superannuation benefits currently due to an Employee, including employees under the extended definition provided in Section 12 of the Superannuation Guarantee Administrative Act, or his or her dependants or beneficiaries.
- (x) No member of the Target Group contributes to any defined benefit fund in respect of the Employees and no member of the Target Group is liable to contribute in respect of any defined benefit fund.
- (y) Each member of the Target Group:
 - (i) has not been subject to a Work Safety Authority investigation or prosecution in the last 3 years;
 - (ii) has not at any time received an Improvement Notice or prohibition notice from Work Safety Authority; and
 - (iii) is not currently subject to an investigation or prosecution by a Work Safety Authority and, so far as the Target is aware, no facts,

matters or circumstances exist which may give rise to any potential investigation or prosecution by a Work Safety Authority.

- (z) Each member of the Target Group:
 - (i) has current workers' compensation insurance, a certificate of currency, and has paid all its workers compensation insurance up to date; and
 - (ii) is not currently the subject of any workers' compensation claim that has not already been Fairly Disclosed in the Disclosure Material, and the Target is not aware of any future claim or any facts, matters or circumstances which may give rise to a potential future claim, and details of all workers' compensation claims during the last 3 years have been Fairly Disclosed in the Disclosure Material.
- (aa) Each member of the Target Group has complied with applicable legislation, including any Tax Law and any agreement binding on it, in respect of independent contractors.
- (bb) The Target Group has complied with every contractual, statutory, legal or fiscal obligation (including every code of practice, collective agreement and award) applying to the employment of any of its past or present Employees.
- (cc) Each member of the Target Group has:
 - (i) paid all wages, salaries, bonuses, commissions, wage premiums, fees, expense reimbursement, severance, and other compensation that have become due and payable to its Employees, consultants, independent contractors, and other individual service providers (in each case both past and present) pursuant to any law, contract, or policy; and
 - (ii) has, in all material respects, correctly calculated, accrued and paid entitlements for leave including annual leave and leave loading, long service leave, personal/carer's leave, compassionate/bereavement leave, public holidays, family and domestic violence leave, maternity and parental leave, and community service leave for its Employees (both past and present) pursuant to any law (including any applicable industrial instrument, modern award or the *Fair Work Act 2009* (Cth)), contract or policy.

2.16 (Litigation and disputes)

- (a) No Target Group Member is, at the date of this Deed, a party to or the subject of any pending Claim, litigation, prosecution, mediation, arbitration or other proceedings with any other person which is or may be materially prejudicial to the financial position of the Target Group taken as a whole (**Material Proceedings**).
- (b) No member of the Target Group is subject to any outstanding or unsatisfied settlement, judgment, decree, award, order or other decisions of any court, quasi-judicial body or Regulatory Authority.

- (c) No member of the Target Group has given any undertaking or assurance (whether legally binding or otherwise) to any court or Regulatory Authority under any anti-trust or similar legislation in any jurisdiction.
- (d) There are no unsatisfied or outstanding judgments, awards, orders, decrees, Claims or demands against any member of the Target Group.

2.17 (Compliance with laws and authorisations)

- (a) Each Target Group Member holds all Material Authorisations required to carry on its business as such business is currently conducted.
- (b) Each member of the Target Group has complied in all material respects with all Australian and foreign laws, regulations and administrative requirements applicable to them and orders of Australian and foreign Government Agencies having jurisdiction over them, and have complied in all material respects with the requirements of, all material licenses, authorisations, consents, permissions and permits (**Material Authorisations**) necessary for them to conduct the business of the Target Group as presently being conducted.
- (c) So far as the Target is aware, all Material Authorisations are valid and subsisting and no other circumstances which are likely to prejudice the continuance or renewal of them, and the Target Group has complied with all material conditions of the Material Authorisations.
- (d) The Target is not aware of any action to revoke, prevent the renewal of or impose any conditions on, or any right to terminate that would arise from implementation of the Transaction, any Material Authorisation.

2.18 (Insurance)

- (a) In respect of the insurances effected in respect of the Target Group:
 - (i) the insurances provide usual insurance coverage for the business activities undertaken by the Target Group; and
 - (ii) the Target Group has not carried out any business activities in respect of which it does not have usual insurance coverage.
- (b) The Disclosure Material Fairly Discloses reasonable particulars of all current insurance policies and cover notes taken out in respect of the Target Group (or a member thereof) or the businesses or operations conducted thereby (or any such business or operation) (**Insurances**).
- (c) Each Insurance is in full force and effect in accordance with its terms and all applicable premiums have been paid by the due date for payment.
- (d) So far as the Target is aware, nothing has been done or omitted to be done:
 - (i) that would make any Insurance void or voidable or that would permit an insurer to cancel the policy or refuse or materially reduce a claim or materially increase the premium payable under any Insurance or otherwise alter the terms of the policy; or
 - (ii) by a member of the Target Group so as to make void or voidable any Insurance or to permit an insurer to refuse or reduce a current claim by a member of the Target Group under any Insurance.

- (e) As at the date of this Deed:
 - (i) there are no outstanding claims made by a member of the Target Group or any person on its behalf under any Insurance or an insurance policy previously taken out by or for the benefit of any member of the Target Group;
 - (ii) so far as the Target is aware, there are no threatened or pending claims under any Insurance and there are no facts, matters or circumstances which could give rise to an entitlement to make a claim under any Insurance.
- (f) The members of the Target Group have notified insurers of all material claims, facts, matters and circumstances as required by the notification provisions under each Insurance.
- (g) No member of the Target Group has made a claim under any Insurance that has been rejected or denied by the insurer.
- (h) Each member of the Target Group has in place all insurances required by law or contract to be taken out by it, subject to excesses and deductibles.
- (i) No member of the Target Group has been notified by any insurer that it is required or it is advisable for it to carry out any maintenance, repairs or other works in relation to any of its assets.

2.19 (Anti-Corruption and Anti-Money Laundering)

- (a) So far as the Target is aware, each Target Group Member and their respective directors, officers and Employees are, and have been, in compliance with Anti-Corruption Laws in all material respects.
- (b) So far as the Target is aware, the operations of each Target Group Member are, and have been, conducted at all times in compliance with all applicable Anti-Money Laundering Laws.
- (c) So far as the Target is aware, no Target Group Member and none of their respective directors or officers, is or has been the subject of any pending or threatened investigation, audit, suspension, inquiry or enforcement proceeding regarding any offence or alleged offence under any applicable Anti-Corruption Laws and Anti-Money Laundering Laws or similar law or regulation, and so far as the Target is aware:
 - (i) no such investigation, inquiry or proceeding has been threatened or is pending; and
 - (ii) there are no circumstances reasonably likely to give rise to any such investigation, inquiry or proceeding.
- (d) So far as the Target is aware, no Target Group Member has been the subject of any penalty, fine or loss of privileges by any Regulatory Authority for violation of any Anti-Corruption Laws and Anti-Money Laundering Laws nor, so far as the Target is aware, is there any investigation by any Regulatory Authority for any such violations.
- (e) So far as the Target is aware, no Government Official is associated with, or owns an interest, whether direct or indirect, in any of the Target Group Members, or has any legal or beneficial interest in the Transaction.

- (f) So far as the Target is aware, none of the Target Group Members or their respective representatives has violated applicable Anti-Corruption Laws, nor has any Target Group Member or respective representatives offered, paid, promised to pay, or authorized the payment of any money or anything of value to any Government Official or to any person, directly or indirectly for the purpose of:
 - (i) influencing any act or decision of a Government Official in his official capacity;
 - (ii) inducing such Government Official to do or omit to do any act in violation of his lawful duties;
 - (iii) securing any improper advantage;
 - (iv) inducing such Government Official to influence or affect any act or decision of any Regulatory Authority;
 - (v) assisting any Target Group Member in obtaining or retaining business for or with, or directing business to, any Target Group Member; or
 - (vi) obtaining an improper business advantage, in violation of applicable Anti- Corruption Laws.
- (g) So far as the Target is aware, the Target Group Members have been managed with effective controls that are sufficient to provide reasonable assurances that violations of applicable Anti-Corruption Laws will be prevented, detected and deterred.

2.20 (Taxes and duties)

- (a) Any Tax or Duty arising under any Tax Law due and payable:
 - (i) in respect of any income, gains or profits (however calculated), transaction or assets of a member of the Target Group for all periods up to the Implementation Date;
 - (ii) in respect of any event, omission or instrument executed or performed on or prior to the Implementation Date; and
 - (iii) in respect of payments made by a member of the Target Group to another person that must be withheld from that payment prior to the Implementation Date,

will have been so withheld (if applicable) and paid prior to the Implementation Date in accordance with the requirements of the relevant Tax Law.
- (b) Each member of the Target Group has complied with all material obligations imposed on them by any Tax Law or as requested by any Regulatory Authority.
- (c) Each member of the Target Group has maintained proper and adequate records to enable it to comply in all material respects with its obligations to:
 - (i) prepare and submit any applications, information, notices, computations, returns and payments required in respect of any Tax Law;

- (ii) prepare any accounts necessary for compliance with any Tax Law; and
 - (iii) retain necessary records as required by any Tax Law.
- (d) Each member of the Target Group has up to and including the Implementation Date submitted any necessary applications, information, notices, computations and returns to the relevant Regulatory Authority in respect of any Tax or Duty.
- (e) Any information, notice, computation and return that has been submitted by any member of the Target Group to a Regulatory Authority in respect of any Tax or Duty:
 - (i) discloses all material facts required to be disclosed under any Tax Law; and
 - (ii) is not misleading in any material particular.
- (f) The Target is not aware of any current, pending or threatened Tax or Duty audit, review or investigation relating to any member of the Target Group.
- (g) There are no disputes between any member of the Target Group and any Regulatory Authority in respect of any Tax or Duty and the Target is not aware of facts, matters or circumstances that may give rise to a dispute between any member of the Target Group and any Regulatory Authority in respect of any of Tax or Duty.
- (h) No member of the Target Group will have a franking or imputation account deficit immediately at or any time after the Implementation Date as a result of any act, omission or transaction relating to periods prior to the Implementation Date. No act or omission of any member of the Target Group at or before the Implementation Date will cause any member of the Target Group to be liable for franking deficit tax pursuant to section 205-45 of the Tax Act at or after the Implementation Date.
- (i) All transactions and other dealings between the Target Group and related parties for the purposes of the Tax Law have been (and can be demonstrated to have been) conducted at arm's length.
- (j) No member of the Target Group has ever received notice that it may be subject to Tax in a jurisdiction where it does not currently file tax returns or pay Tax, asserting that members of the Target Group are or may be subject to taxation in any such jurisdiction.
- (k) No debt owed by any member of the Target Group has been, or has been agreed to be, released, waived, forgiven or otherwise extinguished in circumstances which would have attracted any Tax or the operation of the debt forgiveness rules or limited recourse debt rules under the Tax Law.
- (l) No member of the Target Group has knowingly entered into or been a party to any transaction which contravenes any anti-avoidance or integrity provisions of any Tax Law (including but not limited to Part IVA of the Tax Act).
- (m) Any material ruling, determination or election requested, received or made by any member of the Target Group in respect of Tax or Duty:
 - (i) has been Fairly Disclosed in the Disclosure Material; and

- (ii) has at all times been complied with in all material respects by that member of the Target Group.
- (n) No agreement extending the period for assessment or collection of any Tax or Duty of any member of the Target Group has been executed or filed with any Regulatory Authority (excluding, for the avoidance of doubt, requests by the Target for extensions of time for tax filings or payments).
- (o) All registrations required to be maintained by any member of the Target Group with any Regulatory Authority in relation to Tax or Duty are and have at all times been maintained by that member of the Target Group.
- (p) Each member of the Target Group has at all relevant times appointed a public officer, pursuant to section 252 of the Tax Act, where required under the applicable Tax Laws.
- (q) No member of the Target Group has entered into or been a party to an arrangement, agreement or indemnity whereby it is liable to reimburse or indemnify another party in respect of Tax or Duty, and no Target Group Member has any liability for Taxes of another person as a transferee or successor.
- (r) The Target does not have a tainted share capital account or a share capital account that is taken to be tainted under any Tax Law and has not taken any action, up to and including the Implementation Date, that would cause its share capital account to be a tainted share capital account, nor has an election been made at any time up to and including the Implementation Date, to untaint the Target's share capital account.
- (s) No member of the Target Group has made any election or made any choice under Division 230 of the Tax Act.
- (t) No member of the Target Group has been in breach of the benchmark franking percentage rules, where relevant.
- (u) The Target has been the Head Company of the Target Consolidated Group at all times since formation of the Target Consolidated Group.
- (v) The Target Consolidated Group is not and has never been a MEC Group (having the meaning given in given by section 995-1 of the Tax Act) for the purposes of Part 3-90 of the Tax Act.
- (w) No member of the Target Group has been a member of a Consolidated Group other than the Target Consolidated Group.
- (x) No tax attributes of the Target Group as at the Implementation Date are subject to any losses, limitations or restrictions due to prior changes in the control or ownership of the Target Consolidated Group.
- (y) No member of the Target Group is a party to any document, instrument, contract, agreement, deed or transaction in respect of which it is or will become liable to pay GST in circumstances where such member of the Target Group has no express entitlement to increase the consideration payable under the agreement, instrument, contract, agreement, deed or transaction or otherwise seek reimbursement so that such member of the Target Group retains the amount it would have retained but for the imposition of GST.
- (z) There is no contract, arrangement or understanding requiring a member of the Target Group to pay any amount in respect of GST on a supply which

does not contain a provision enabling it as recipient to require the other party to the contract, arrangement or understanding to provide to the member of the Target Group a tax invoice for any GST on that supply prior to the due date for payment for that supply.

- (aa) No member of the Target Group is, or has ever been the representative member of a GST group.
- (bb) Each member of the Target Group:
 - (i) that is required to be registered for GST under the GST Law is so registered;
 - (ii) has complied in all respects with the GST Law;
 - (iii) is not in default of any obligation to make or lodge any payment or GST return or notification under the GST Law and had otherwise complied with the GST Law; and
 - (iv) has adequate systems established for it to ensure it complies with the GST Law.
- (cc) No member of the Target Group:
 - (i) has paid any amount on account of, or in respect of, GST to any entity which it was not contractually required to pay; or
 - (ii) is, and has never been, a member (including a joint venture operator) of a GST joint venture.
- (dd) All transactions and instruments for which a member of the Target Group is the person statutorily liable to pay the stamp duty, or where a member of the Target Consolidated Group has agreed to pay the stamp duty, have been lodged with the relevant Regulatory Authority, are stamped, are not insufficiently stamped, the stamp duty has been paid and there is no requirement to upstamp on the account of an interim assessment.
- (ee) No event has occurred, or will occur, as a result of anything provided for in this Deed, or as a result of this Deed itself, as a result of which any Duty from which a member of the Target Group may have obtained an exemption or other relief may become payable on any document, instrument, contract, agreement, deed or transaction.
- (ff) All amounts required to be deducted or withheld by the Target Group under any Tax Law from any payment made, or deemed by any applicable Tax Law to be made (including but not limited to withholding tax in respect of royalties, dividends, interest and salary and wages, as well as other amounts required to be withheld under the Pay As You Go (PAYG) withholding provisions) by the Target Consolidated Group on or prior to the Implementation Date have been deducted or withheld and, where required by the Tax Law to be paid to a Government Authority, have been duly paid.
- (gg) Members of the Target Group have maintained, with respect to transfer pricing, proper intercompany agreements, and concurrent and supporting documentation, as required under the applicable Tax Law.
- (hh) Members of the Target Group are not party to any agreement or arrangement relating to the apportionment, sharing, assignment or allocation of any Tax, Duty, Tax asset or Duty asset.

- (ii) No fact, matter or circumstances exist which has prevented or might prevent members of the Target Group from obtaining any future income tax benefit provided for on the Implementation Date. All tax losses recorded in any tax working papers included in the Disclosure Materials (and whether disclosed in the Accounts or not) would be available to the Target Group to use to reduce assessable income or capital gains at the Implementation Date if the current tax year for the Target had sufficient income for that tax year.
- (jj) No member of the Target Group has any amended assessments to which an extended or refreshed period of review could apply under section 155-70 of the Taxation Administration Act 1953 in respect of GST.

2.21 (Accuracy of Information)

- (a) The Disclosure Materials have been collated and prepared in good faith, and the Target is not aware of any information contained in the Disclosure Material that is false or misleading in any material respect (including by omission) as at the date of collation or preparation.
- (b) The Target has not intentionally withheld from the Disclosure Material any information which would reasonably be expected to be material to a reasonable and sophisticated buyer's evaluation of the Target Group, including details of all material liabilities of the Target Group and the aggregate amount of all fees, costs and expenses which the Target or any other Target Group Member has paid or agreed to pay, or may become liable to pay, in connection with the Transaction.
- (c) The Target has provided (and Fairly Disclosed) complete and accurate information in relation to the Transaction Costs, any Competing Transactions as at the date of this Deed and any other transaction where such retainer or mandate is current, or under which the Target Group still has obligations.
- (d) The historical and factual information contained in Disclosure Material is accurate and complete in all material respects and all forecasts, budgets, projections or similar forward looking materials contained in the Disclosure Material are genuine operational documents of the Target Group.

Signing page

Executed as a deed.

Dated 14 September 2020

Executed by The Citadel Group Limited
under section 127 of the Corporations Act by its
duly authorised officers:



Signature of Director

Mark McConnell

Name of Director
(Block Letters)



Signature of ~~Director~~/Secretary

Spencer Chipperfield

Name of ~~Director~~/Secretary
(Block Letters)

**Executed by Pacific Group Bidco Pty
Limited** under section 127 of the Corporations
Act by its duly authorised officers:



Signature of Director

David Brown

Name of Director
(Block Letters)



Signature of Director/Secretary

Rohan Wolfers

Name of Director/Secretary
(Block Letters)

Annexure A – Scheme of Arrangement

Scheme of Arrangement

The Citadel Group Limited

Scheme Participants

gadens

Level 13, Collins Arch
447 Collins Street
Melbourne VIC 3000
Australia

T +61 3 9252 2555
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Scheme of Arrangement

This scheme of arrangement is made under section 411 of the *Corporations Act 2001 (Cth)*.

Parties

1. The Citadel Group Limited ACN 127 151 026 of 'Citadel House', 11-13 Faulding Street, High Technology Park, Symonston, Australian Capital Territory 2609 (**Target**)
2. Each holder of Scheme Shares as at the Record Date (**Scheme Participants**)

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Scheme, unless the context requires otherwise:

Accrued Interest has the meaning given to that term in clause 5.4(a);

Aggregate HoldCo Elected Shares means the total number of HoldCo Shares the subject of all Elections;

ASIC means the Australian Securities and Investment Commission;

ASX means ASX Limited ACN 008 624 691 or the market operated by it, as the context requires;

Available HoldCo Shares means 23,600,000 HoldCo Shares or such other amount agreed between the Bidder and the Target in writing;

Bidder means Pacific Group Bidco Pty Ltd ACN 644 075 221;

Bidder Shares means fully paid ordinary shares in the capital of the Bidder which are designated as a "Class B" shares, having the rights specified in the constitution of the Bidder;

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

CHES means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Ltd;

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

Court means the Supreme Court of Victoria, Federal Court of Australia, or such other court of competent jurisdiction under the Corporations Act agreed in writing by the Target and the Bidder;

Cut-Off Time means 8.00am on the Second Court Date;

Declared Dividend means the Target's previously declared dividend of \$0.06 per Target Share in relation to the 6 months to 30 June 2020.

Deed Poll means the Deed Poll dated [] executed by the Bidder, MidCo and HoldCo under which the Bidder, MidCo and HoldCo covenant in favour of the Scheme Participants to perform the actions attributable to them respectively under this Scheme;

Effective means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the Scheme Order, but in any event at no time before an office copy of the Scheme Order is lodged with ASIC;

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

Election means an election by a Target Shareholder to receive Scheme Scrip Consideration in accordance with the provisions of clause 5.2(b);

Election Date means 5.00pm on the fifth Business Day before the date of the Scheme Meeting or such other date as the Target and the Bidder agree in writing;

Election Form means a form issued by the Target for the purposes of a Scheme Participant (other than Foreign Scheme Shareholders) making an Election;

End Date means the date which is 6 months after the date of the Scheme Implementation Deed or another date as is agreed by the Target and the Bidder in writing;

Foreign Scheme Shareholders means a Scheme Participant whose address in the Target Share Register as at the Record Date is a place outside Australia, New Zealand the United Kingdom unless the Target and the Bidder agree in writing that it is lawful and not unduly onerous or impractical to issue HoldCo Shares to the Scheme Participant if that Scheme Participant so elects under this Scheme;

Government Agency means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

HoldCo means Pacific Group Topco Limited ACN 644 302 492;

HoldCo Constitution means the constitution adopted, or to be adopted, by HoldCo;

HoldCo Shareholders Deed means the shareholders' deed in relation to HoldCo in the form set out in Annexure C of the Scheme Implementation Deed or as otherwise agreed between the Target and the Bidder;

HoldCo Shares means fully paid ordinary shares in the capital of HoldCo which are designated as a "Class B" shares, having the rights specified in the HoldCo Constitution and the HoldCo Shareholders Deed;

Implementation Date means the 5th Business Day after the Record Date or such other date after the Record Date agreed in writing between the Target and the Bidder;

MidCo means Pacific Group Midco Pty Ltd ACN644 072 248;

MidCo Shares means fully paid ordinary shares in the capital of MidCo which are designated as a "Class B" shares, having the rights specified in the constitution of MidCo;

Nominee has the meaning given in the HoldCo Shareholders Deed;

Nominee Deed has the meaning given in the HoldCo Shareholders Deed;

Permitted Dividend means the dividend referred to in clause 4.6 of the Scheme Implementation Deed;

Record Date means 5.00pm on the date that is 2 Business Days after the Effective Date, or such other date as may be agreed in writing between the Bidder and the Target or as may be required by ASX;

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

Related Body Corporate has the meaning given to that term in the Corporations Act;

Scaleback Arrangements the provisions of this Scheme providing for the scaleback of HoldCo Shares to be issued pursuant to this Scheme in accordance with clause 5.6;

Scaleback HoldCo Shares has the meaning given in clause 5.6(b);

Scheme means this scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Participants, subject to any alterations or conditions agreed or any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Bidder and the Target;

Scheme Cash Consideration means, in respect of each Scheme Share for which Scheme Scrip Consideration is not payable under the Scheme, \$5.70 cash for each Scheme Share held by a Scheme Participant, less the amount per Target Share of any Permitted Dividend for every Scheme Share held by that Scheme Participant, but for the avoidance of doubt, not less the amount per Target Share of the Declared Dividend;

Scheme Consideration means the consideration to be provided to each Scheme Participant for the transfer to the Bidder of each Scheme Share, being for each Target Share held by a Scheme Participant as at the Record Date being:

- (a) the Scheme Cash Consideration; and/or
- (b) the Scheme Scrip Consideration;

Scheme Implementation Deed means the scheme implementation deed between the Bidder and the Target dated 14 September 2020 pursuant to which the Target agreed to propose the Scheme to Target Shareholders, and each of the Bidder and the Target agreed to take certain steps to give effect to the Scheme;

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

Scheme Order means the order of the Court made for the purposes of section 411(4)(b) of the Corporations Act approving the Scheme;

Scheme Participant means each holder of a Scheme Share as at the Record Date;

Scheme Scrip Consideration means 1 HoldCo Share for each Scheme Share held on the Record Date by a Scheme Participant in respect of which a valid Election is made in accordance with this Scheme, subject to the Scaleback Arrangements and the other conditions in this Scheme;

Scheme Shares means all of the Target Shares on issue as at the Record Date;

Scheme Transfer means, for each Scheme Participant, a proper instrument of transfer of the Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all Scheme Shares;

Second Court Date means the first day of the Second Court Hearing or, if the Second Court Hearing is adjourned for any reason, the first day on which the adjourned application is heard;

Second Court Hearing means the hearing of the application made to the court for the Scheme Order;

Separate Account has the meaning given to that term in clause 5.4(c);

Share Right means a right granted under the Share Rights Plan to acquire by way of issue a Share subject to the terms of such plan;

Share Rights Plan means the Target's LTI Equity Plan Rules;

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

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

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

Target Shares means a fully paid ordinary share in the capital of the Target;

Target Shareholders means each person who is registered in the Target Share Register as a holder of Target Shares;

Trust Account means an Australian dollar denominated trust account operated by the Target as trustee for the benefit of the Scheme Participants;

UK Scheme Participant means each holder of Scheme Shares at the Record Date who is resident in the United Kingdom, or is holding Scheme Shares or any interest in Scheme Shares directly or indirectly on behalf of any person who is resident in, or has a registered address in, the United Kingdom; and

United Kingdom means the United Kingdom of Great Britain and Northern Ireland.

1.2 Interpretation

In this Scheme, unless the context requires otherwise:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) a reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this document includes its successors and permitted assigns;

- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression **at any time** includes reference to past, present and future time and performing any action from time to time;
- (j) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (k) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day;
- (l) a reference to a time of day is a reference to Melbourne time;
- (m) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (n) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day; and
- (o) an agreement, representation or warranty by two or more persons binds them jointly and severally and is for the benefit of them jointly and severally.

2. Preliminary

2.1 Target

- (a) The Target is a public company limited by shares, incorporated in Australia and registered in New South Wales.
- (b) The Target is admitted to the official list of ASX and Target Shares are quoted for trading on ASX.
- (c) As at the date of the Scheme Implementation Deed, the Target's issued securities are:
 - (i) 78,710,046 Target Shares; and
 - (ii) 363,860 Share Rights.

2.2 Bidder

The Bidder is an Australian proprietary company limited by shares and registered in New South Wales.

2.3 General

- (a) The Target and the Bidder have agreed by executing the Scheme Implementation Deed to implement this Scheme.
- (b) This Scheme attributes actions to the Bidder, MidCo and HoldCo but does not itself impose an obligation on them to perform those actions, as the Bidder, MidCo and HoldCo are not parties to this Scheme. The Bidder, MidCo and HoldCo have executed the Deed Poll for the purposes of covenanting in favour of the Scheme Participants to perform (or procure the performance of) their respective obligations

as contemplated by this Scheme, including to provide (or procure the provision of) the Scheme Consideration to the Scheme Participants.

2.4 Summary of the Scheme

If the Scheme becomes Effective:

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

3. Conditions

3.1 Condition precedent

- (a) The Scheme is conditional on, and will not become Effective until, the satisfaction of each of the following conditions precedent:
 - (i) all of the conditions precedent in clause 3.1 of the Scheme Implementation Deed (other than the condition precedent in clause 3.1(d) of the Scheme Implementation Deed relating to Court approval of the Scheme) having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed by the Cut Off Time;
 - (ii) neither the Scheme Implementation Deed nor the Deed Poll having been terminated in accordance with their terms as at the Cut Off Time;
 - (iii) the Court having approved the Scheme pursuant to section 411(4)(b) of the Corporations Act, without modification or with modifications which are agreed to in writing between the Target and the Bidder;
 - (iv) such other conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing between the Bidder and the Target having been satisfied; and
 - (v) the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) approving this Scheme coming into effect pursuant to section 411(10) of the Corporations Act on or before the End Date.
- (b) The satisfaction of the conditions referred to in clause 3.1(a) of this Scheme is a condition precedent to the operation of clauses 4 and 5.

3.2 Certificate

- (a) The Target and the Bidder must each provide to the Court, on the Second Court Date, a certificate, or such other evidence as the Court may request, confirming (in respect of matters within their knowledge) whether or not the conditions precedent in clauses 3.1(a)(i) and 3.1(a)(ii) above have been satisfied or waived as at the Cut Off Time.

- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that the conditions precedent in clauses 3.1(a)(i) and 3.1(a)(ii) above were satisfied, waived or taken to be waived.

3.3 Effective Date

Subject to clause 3.4, this Scheme takes effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

3.4 Termination and End Date

Without limiting any rights under the Scheme Implementation Deed, if:

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

then, unless the Bidder and the Target otherwise agree in writing, the Scheme will lapse and each of the Bidder and the Target are released from any further obligation to take steps to implement the Scheme.

4. Implementation

4.1 Lodgement of Court order

Following the approval of the Scheme by the Court in accordance with section 411(4)(b) of the Corporations Act, the Target will, as soon as possible and in any event by no later than 5.00pm on the first Business Day after the Court approves the Scheme, lodge with ASIC an office copy of the Scheme Order in accordance with section 411(10) of the Corporations Act.

4.2 Transfer of Scheme Shares held by Scheme Participants

On the Implementation Date:

- (a) subject to:
 - (i) the payment by the Bidder of the Scheme Cash Consideration in the manner contemplated by clause 5.4(a); and
 - (ii) the Bidder confirming in writing to the Target by no later than 12.00pm (or such later time as the Bidder and the Target may agree in writing) on the Implementation Date that the Scheme Scrip Consideration has been provided in the manner contemplated by clause 5.5(a) (**Bidder Confirmation Certificate**),

the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to the Bidder, without the need for any further act by any Scheme Participant (other than acts performed by the Target or its officers as agent and attorney of the Scheme Participants under clause 8.6 or otherwise), by:

- (iii) the Target delivering to the Bidder a duly completed and executed Scheme Transfer to transfer all the Scheme Shares to the Bidder, executed on behalf of the Scheme Participants by the Target; and

- (iv) the Bidder duly executing such Scheme Transfer and delivering it to the Target for registration; and
- (b) immediately after receipt of the Scheme Transfer in accordance with clause 4.2(a)(iv), the Target must enter, or procure the entry of, the name of the Bidder in the Target Share Register in respect of the Scheme Shares transferred to the Bidder in accordance with this Scheme.

5. Scheme Consideration

5.1 Entitlement to Scheme Consideration

On the Implementation Date, in consideration for the transfer to the Bidder of the Scheme Shares, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clauses 5.4 and/or 5.5 of this Scheme (as applicable).

5.2 Election procedure

- (a) Unless the applicable terms of this Scheme are satisfied, the Scheme Consideration will be in the form of Scheme Cash Consideration.
- (b) Each Target Shareholder (other than a Foreign Scheme Shareholder) will be entitled to make an Election. All Elections will take effect in accordance with this Scheme to the extent that any Target Shareholder who makes an Election qualifies as a Scheme Participant.
- (c) Despite clause 5.2(a), and subject to clauses 5.2(d) and 5.2(e), a Scheme Participant, other than a Foreign Scheme Shareholder, may elect to receive at least 50% of its Scheme Consideration in the form of the Scheme Scrip Consideration, subject to the Scaleback Arrangements, if the Scheme Participant validly completes and returns an Election Form in accordance with the instructions specified in the form so that it is received on or before the Election Date.
- (d) UK Scheme Participants will be entitled to make Elections to receive Scheme Scrip Consideration in accordance with clause 5.2(b) on the following basis:
 - (i) UK Scheme Participants who make Elections to receive Scheme Scrip Consideration will be:
 - (A) offered 1 Bidder Share for each Scheme Share held on the Record Date by that UK Scheme Participant in respect of which a valid Election is made;
 - (B) deemed to irrevocably and unconditionally accept the offer contemplated in clause 5.2(d)(i)(A) and direct the Bidder to issue the Bidder Shares to MidCo, in exchange for MidCo offering to issue to that UK Scheme Participant 1 MidCo Share for each Bidder Share offered to that UK Scheme Participant under the terms of clause 5.2(d)(i)(A); and
 - (C) deemed to irrevocably and unconditionally direct MidCo to issue the MidCo Shares to HoldCo, in exchange for HoldCo issuing to the UK Scheme Participant 1 HoldCo Share for each MidCo Share offered to that UK Scheme Participant under the terms of clause 5.2(d)(i)(B); and

- (ii) if the UK Scheme Participant attempts in any way to revoke or renege on the deemed acceptance or directions set out in clause 5.2(d)(i), its Election will be deemed invalid with immediate effect and it will be entitled to receive only Scheme Cash Consideration in respect of all of its Scheme Shares.
- (e) All Scheme Participants will receive Scheme Cash Consideration and no Scheme Participants will be entitled to receive Scheme Scrip Consideration unless Target Shareholders (other than a Foreign Scheme Shareholder) holding, in aggregate, at least 5% of the issued Target Shares at the Election Date make valid Elections to receive the Scheme Scrip Consideration in accordance with clause 5.2(b).
- (f) If a Scheme Participant elects to receive:
 - (i) less than 50% of its Scheme Consideration in the form of the Scheme Scrip Consideration, then that Scheme Participant will receive Scheme Cash Consideration in respect of all of its Scheme Shares; or
 - (ii) at least 50% but not more than 100% of its Scheme Consideration in the form of the Scheme Scrip Consideration, then, subject to the Scaleback Arrangements, that Scheme Participant will receive the Scheme Cash Consideration in respect of the remaining number of Scheme Shares held by that Scheme Participant.
- (g) A Target Shareholder which makes an Election may vary, withdraw or revoke that Election by lodging a replacement Election Form so that it is received on or before the Election Date.
- (h) An Election must be made in accordance with the terms and conditions of the Election Form and this clause 5.2, and an Election not so made will not be a valid election for the purpose of this Scheme and will not be recognised by the Bidder or the Target for any purpose (provided that the Bidder may, with the agreement of the Target, waive this requirement and may, with the agreement of the Target, settle as it thinks fit any difficulty, matter of interpretation or dispute which may arise in connection with determining the validity of any Election, and any such decision will be conclusive and binding on the Bidder, the Target and the relevant Scheme Participant).
- (i) Clause 5.3 will apply to any Target Shareholder who makes an Election but who qualifies as a Foreign Scheme Shareholder.
- (j) Subject to clause 5.2(k), if a Target Shareholder makes an Election, that Election will be deemed to apply in respect of the Target Shareholder's entire registered holding of Target Shares at the Record Date, regardless of whether the Target Shareholder's holding of Target Shares at the Record Date is greater or less than the Target Shareholder's holding at the time it made its Election.
- (k) A Target Shareholder who is noted on the Target Share Register as holding one or more parcels of Target Shares as trustee or nominee for, or otherwise on account of, another person, may make separate Elections under this clause 5.2 in relation to each of those parcels of Target Shares (subject to providing to the Bidder and the Target any substantiating information they reasonably require), and if it does so it will be treated as a separate Scheme Participant in respect of each such parcel in respect of which a separate Election is made (and in respect of any balance of its holding), provided that if, at the Record Date, it holds fewer Shares than it held at the time that it made the Election, then, unless it has at the time of any sale of Target Shares notified the Target whether the Target Shares sold relate to any such separate Election (and if so which separate Election the Target Shares sold relate to), it will be treated as not having made a valid Election in respect of any of its Target Shares (or will be treated in any other manner that the Bidder and the

Target agree is fair to the Target Shareholder in all the circumstances acting reasonably).

5.3 Foreign Scheme Shareholders

HoldCo will be under no obligation to issue, and must not issue, any HoldCo Shares under the Scheme to Foreign Scheme Shareholders.

5.4 Provision of Scheme Cash Consideration

- (a) The Bidder must, by no later than the Business Day before the Implementation Date, deposit (or procure the deposit) in cleared funds into the Trust Account an amount equal to the aggregate amount of the total Scheme Cash Consideration payable to Scheme Participants, such amount to be held by the Target on trust for Scheme Participants for the purposes of paying the aggregate Scheme Cash Consideration to the Scheme Participants in accordance with clause 5.4(b) (except that any interest on the amount deposited (less bank fees and other charges) (**Accrued Interest**) will be for the account of the Bidder).
- (b) On the Implementation Date and subject to funds having been deposited in accordance with clause 5.4(a), the Target must pay or procure the payment of the Scheme Cash Consideration to each Scheme Participant from the Trust Account by doing any of the following:
 - (i) where a Scheme Participant has, before the Record Date, made an election in accordance with the requirements of the Target Share Register to receive dividend payments from the Target by electronic funds transfer to a bank account nominated by the Scheme Participant, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
 - (ii) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Participant by an appropriate authority from the Scheme Participant to the Target; or
 - (iii) dispatching, or procuring the dispatch of, a cheque drawn on an Australian bank in Australian currency for the relevant amount to the Scheme Participant by pre-paid ordinary post (or, if the address of the Scheme Participant in the Target Share Register is outside Australia, by pre-paid airmail post) to their Registered Address as at the Record Date, such cheque being drawn in the name of the Scheme Participant (or in the case of joint holders, in accordance with clause 5.5).
- (c) In the event that:
 - (i) either:
 - (A) a Scheme Participant does not have a Registered Address; or
 - (B) the Target as trustee for the Scheme Participants believes that a Scheme Participant is not known at the Scheme Participant's Registered Address,and no account has been notified in accordance with clause 5.4(b)(i) or clause 5.4(b)(ii) or a deposit into such account is rejected or refunded; or
 - (ii) a cheque issued under this clause 5 has been cancelled in accordance with clause 5.9(a),

the Target as the trustee for the Scheme Participants may credit the amount payable to the relevant Scheme Participant to a separate bank account of the Target (**Separate Account**) to be held until the Scheme Participant claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 2008* (Vic). To avoid doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Participant claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 2008* (Vic).

Until such time as the amount is dealt with in accordance with the *Unclaimed Money Act 2008* (Vic), the Target must hold the amount on trust for the relevant Scheme Participant, but any interest or other benefit accruing from the amount will be to the benefit of the Bidder. An amount credited to the Separate Account or Trust Account (as applicable) is to be treated as having been paid to the Scheme Participant when credited to the Separate Account or Trust Account (as applicable). The Target must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.

- (d) To the extent that there is a surplus in the amount held by the Target as the trustee for the Scheme Participants in the Trust Account, that surplus may be paid by the Target as the trustee for the Scheme Participants to the Bidder following the satisfaction of the Target's obligations as the trustee for the Scheme Participants under this clause 5.4.
- (e) The Target must pay any Accrued Interest to any account nominated by the Bidder following satisfaction of the Target's obligations under this clause 5.4.

5.5 Provision of Scheme Scrip Consideration

- (a) Subject to the Scaleback Arrangements, before 12.00pm (or such later time as the Bidder and the Target may agree in writing) on the Implementation Date, HoldCo must:
 - (i) issue the HoldCo Shares to the Scheme Participants entitled to receive the Scheme Scrip Consideration in accordance with this Scheme or issue those HoldCo Shares to the Nominee to be held as bare trustee for those Scheme Participants in accordance with this Scheme: and
 - (ii) procure that the name of each Scheme Participant entitled to receive Scheme Scrip Consideration under this Scheme or the Nominee (as applicable) is entered into HoldCo's register of members as the holder of those HoldCo Shares.
- (b) The HoldCo Shares in respect of which a Scheme Participant is entitled may, in the Bidder's and HoldCo's absolute discretion, be issued directly to that Scheme Participant (such that the Scheme Participant will be the legal holder of the relevant HoldCo Shares) or, pursuant to and in accordance with the terms of the HoldCo Shareholders Deed, issued to the Nominee to hold as bare trustee for that Scheme Participant (such that the Scheme Participant will be beneficial holder but not the legal holder of the relevant HoldCo Shares).

5.6 Scaleback Arrangements

- (a) If the Aggregate HoldCo Elected Shares are less than or equal to the Available HoldCo Shares, each Scheme Participant (or Nominee on that Scheme Participant's behalf) who is entitled to be issued HoldCo Shares will receive the number of HoldCo Shares the subject of their valid Elections in full, subject to the other conditions in this Scheme.

- (b) If the Aggregate HoldCo Elected Shares exceed the Available HoldCo Shares, each Scheme Participant (or Nominee on that Scheme Participant's behalf) who is entitled to be issued HoldCo Shares will receive the number of HoldCo Shares calculated in accordance with the formula below (**Scaleback HoldCo Shares**), and that Scheme Participant will receive the Scheme Cash Consideration in respect of the remaining number of HoldCo Shares that would otherwise have been issued to that Scheme Participant (or Nominee on that Scheme Participant's behalf):

$$\text{Scaleback HoldCo Shares} = A \left(\frac{B}{C} \right)$$

where:

A is the number of HoldCo Shares the subject of the Scheme Participant's valid Election;

B is the Available HoldCo Shares; and

C is the Aggregate HoldCo Elected Shares.

5.7 Joint holders

In the case of Scheme Shares held in joint names:

- (a) to the extent that the Scheme Consideration comprises Scheme Scrip Consideration, any HoldCo Shares to be issued under this Scheme will be registered in the names of the joint holders;
- (b) to the extent that the Scheme Consideration comprises Scheme Cash Consideration, any cheque required to be sent under this Scheme will be made payable to the joint holders and sent at the sole discretion of the Target, either to the holder whose name appears first in the Target Share Register as at the Record Date or to the joint holders; and
- (c) any other document required to be sent under this Scheme will be forwarded, at the sole discretion of the Target, either to the holder whose name first appears in the Target Share Register as at the Record Date or to the joint holders.

5.8 Fractional entitlements

Where the calculation of Scheme Consideration to be provided to a Scheme Participant would result in the Scheme Participant becoming entitled to a fraction of a cent or a fraction of a HoldCo Share, that fractional entitlement will be rounded down to the nearest whole cent or HoldCo Share as the case may be.

5.9 Unclaimed monies

- (a) The Target may cancel a cheque sent under this clause 5 if the cheque:
 - (i) is returned to the Target; or
 - (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.
- (a) During the period of 12 months commencing on the Implementation Date, upon request in writing from a Scheme Participant to the Target (or the Target Share Registry) (which request may not be made until the date which is 20 Business

Days after the Implementation Date), the Target must reissue a cheque that was previously cancelled under clause 5.9(a).

- (b) The *Unclaimed Money Act 2008 (Vic)* will apply in relation to any Scheme Consideration which becomes "unclaimed money" (as defined in section 3 of the *Unclaimed Money Act 2008 (Vic)*).
- (c) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of the Bidder

5.10 Status of HoldCo Shares

- (a) Subject to this Scheme becoming Effective, HoldCo, MidCo and the Bidder must:
 - (i) issue (or procure the issue of) the HoldCo Shares required to be issued under this Scheme on terms such that each such HoldCo Share will rank equally in all respects with each other HoldCo Share; and
 - (ii) ensure that each HoldCo Share required to be issued under this Scheme is duly issued and is fully paid and free from any mortgage, charge, lien, encumbrance or other security interests or arrangements (including any "security interests" within the meaning of section 12 of the *Personal Property Securities Act 2009 (Cth)*).
- (b) On or before the date that is 5 Business Days after the Implementation Date, the Bidder must send or procure the sending of a certificate to each Scheme Participant entitled to receive HoldCo Shares under this Scheme, reflecting the issue of such HoldCo Shares.

5.11 Order of a court or Government Agency

If:

- (a) written notice is given to the Target (or the Target Share Registry) of an order or direction made by a court of competent jurisdiction or by another Government Agency that requires payment to a third party of a sum in respect of such Scheme Shares held by a particular Scheme Participant, which would otherwise be payable to that Scheme Participant by the Target in accordance with this clause 5, then the Target may procure that payment is made in accordance with that order or direction; or
- (b) written notice is given to the Target (or the Target Share Registry) of an order or direction made by a court of competent jurisdiction or by another Government Agency that prevents the Target from making a payment to a particular Scheme Participant in accordance with clause 5.4(b), or such payment is otherwise prohibited by applicable law, the Target may retain an amount equal to the amount which would otherwise be payable to that Scheme Participant under clause 5.4(b) until such time as payment in accordance with this clause 5 is permitted by that order or direction or otherwise by law,

and the payment or retention by the Target (or the Target Share Registry) will constitute the full discharge of the Target's obligations under clause 5.4(b) with respect to the amount so paid or retained until, in the case of clause 5.11(b), it is no longer required to be retained.

5.12 Withholding

- (a) If the Bidder determines, having regard to legal advice, that Bidder is either:
 - (i) required by law to:

- (A) withhold any amount from a payment to a Scheme Participant; or
- (B) not issue a security (or any securities) to a Scheme Participant; or
- (ii) liable to pay an amount to the Commissioner of Taxation under section 14-200 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) (amounts required to be paid for CGT non-resident withholding) in respect of the acquisition of Scheme Shares from a Scheme Participant,

then the Bidder is entitled to:

- (iii) withhold the relevant amount before making the payment to the Scheme Participant; or
 - (iv) not issue the relevant security (or securities) to the Scheme Participant until permitted to do so,
- (and payment of the reduced amount or issue of the reduced number of securities shall be taken to be full payment of the relevant amount or issue of the relevant securities for the purposes of this Scheme, including clause 5.4 and clause 5.5).
- (b) The Bidder must pay any amount so withheld to the relevant taxation authority within the time permitted by law, and, if requested in writing by the relevant Scheme Participant, provide a receipt or other appropriate evidence (or procure the provision of such receipt or other evidence) of such payment to the relevant Scheme Participant.

6. Dealings in Scheme Shares

6.1 Determination of Scheme Participants

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

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

and the Target will not accept for registration, nor recognise for any purpose (except a transfer to the Bidder under this Scheme and any subsequent transfer by the Bidder or its successors in title), any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

6.2 Register

- (a) **(Register of transfers):** The Target must register registrable transmission applications or transfers of the kind referred to in clause 6.1(b) on or before the Record Date (provided that for the avoidance of doubt nothing in this clause 6.2 requires the Target to register a transfer that would result in a Target Shareholder holding a parcel of Target Shares that is less than a 'marketable parcel' (as that term is defined in the Settlement Rules)).

- (b) **(No registration after Record Date):** The Target will not accept for registration or recognise for any purpose any transmission or transfer in respect of Target Shares received after the Record Date, other than to the Bidder in accordance with this Scheme and any subsequent transfer by the Bidder or its successors in title.
- (c) **(Maintenance of Target Share Register):** For the purposes of determining entitlements to the Scheme Consideration, the Target must maintain the Target Share Register in accordance with the provisions of this clause 6 until the Scheme Consideration has been delivered to the Scheme Participants and the Bidder has been entered in the Target Share Register as the holder of all the Scheme Shares. The Target Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) **(No disposal after Record Date):** From the Record Date until registration of the Bidder in respect of all Scheme Shares under clause 4, no Scheme Participant may dispose or otherwise deal with Target Shares (or purport to do so) in any way except as set out in this Scheme and any attempt to do so will have no effect and the Target will be entitled to disregard any such disposal or dealing.
- (e) **(Statements of holding from Record Date):** All statements of holding for Target Shares will cease to have effect from the Record Date as documents of title in respect of those shares (other than statements of holding in favour of the Bidder and its successors in title). From the Record Date, each entry current at that date on the Target Share Register (other than entries in respect of the Bidder or its successors in title) will cease to have effect except as evidence of an entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.
- (f) **(Provision of Scheme Participant details):**
 - (i) The Target must provide, or procure the provision, to the Bidder, details of any Election made by a Target Shareholder, on the Business Day after the Election Date, including the name and address of each Target Shareholder who has made a valid Election and the number of HoldCo Shares that HoldCo must issue to that Target Shareholder to meet its obligations under the Scheme in accordance with that Target Shareholder's Election subject to the terms of this Scheme.
 - (ii) As soon as practicable after the Record Date and in any event within 1 Business Day after the Record Date, the Target will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant as shown in the Target Share Register are available to the Bidder in the form the Bidder reasonably requires.

7. Quotation of Shares

- (a) The Target will apply to ASX to suspend trading on the ASX in Target Shares with effect from the close of trading on the Effective Date.
- (b) On the date after the Implementation Date to be determined by the Bidder, and only after the transfer of the Scheme Shares has been registered in accordance with clause 4.2(b), the Target will apply:
 - (i) for termination of the official quotation of Target Shares on ASX; and
 - (ii) to have itself removed from the official list of ASX.

8. General Scheme provisions

8.1 Consent to amendments to this Scheme

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

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

8.2 Binding effect of Scheme

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

8.3 Scheme Participants' agreements and acknowledgements

Each Scheme Participant:

- (a) agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those Scheme Shares in accordance with this Scheme;
- (b) agrees to any variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (c) agrees to, on the direction of the Bidder, destroy any share certificates relating to their Scheme Shares;
- (d) to the extent they are to receive HoldCo Shares as a component of the Scheme Consideration to which they are entitled, agrees to become a shareholder of HoldCo and to be bound by the HoldCo Constitution and the HoldCo Shareholders Deed; and
- (e) acknowledges and agrees that this Scheme binds the Target and all Scheme Participants (including those who did not attend the Scheme Meeting or did not vote at that meeting or voted against this Scheme at that Scheme Meeting),

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

8.4 Warranties by Scheme Participants

- (a) Each Scheme Participant warrants to the Bidder and is deemed to have authorised the Target as agent and attorney for the Scheme Participant by virtue of this clause 8.4(a) to warrant to the Bidder, that as at the Implementation Date:
 - (i) all of its Scheme Shares which are transferred to the Bidder under this Scheme, including any rights and entitlements attaching to those Scheme Shares, will, at the time of transfer, be free from all mortgages, charges, liens, assignments, encumbrances, title retentions, preferential rights or trust arrangements, claims, covenants, profit a prendre, easements, pledges, or any other security interests or arrangements (including any "security interests" within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and any other interests of third parties

of any kind, whether legal or otherwise, and restrictions on transfer of any kind;

- (ii) all of its Scheme Shares which are transferred to the Bidder under this Scheme will, on the date on which they are transferred to the Bidder, be fully paid;
 - (iii) it has full power and capacity to transfer its Scheme Shares to the Bidder together with any rights attaching to those Scheme Shares; and
 - (iv) it has no existing right to be issued any Target Shares, options exercisable into Target Shares, convertible notes convertible into Target Shares or any other securities issued by the Target.
- (b) The Target undertakes that it will provide the warranties in clause 8.4(a) to the Bidder as agent and attorney of each Scheme Participant.

8.5 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attached to the Scheme Shares) transferred under this Scheme will, at the time of transfer of them to the Bidder, vest in the Bidder free from all mortgages, charges, liens, assignments, encumbrances, title retentions, preferential rights or trust arrangements, claims, covenants, profit a prendre, easements, pledges, or any other security interests (including any "security interests" within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind.
- (b) On and from the Implementation Date, immediately after the Bidder and HoldCo satisfy their respective obligations in clauses 5.4(a) and 5.5(a), the Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by the Target of the Bidder in the Target Share Register as the holder of the Scheme Shares.

8.6 Authority given to Target

- (a) Scheme Participants will be deemed to have authorised the Target to do and execute all acts, matters, things and documents on the part of each Scheme Participant necessary for or incidental to the implementation of this Scheme, including executing and delivering, as agent and attorney of each Scheme Participant:
- (i) a Scheme Transfer in relation to its Scheme Shares as contemplated by clause 4.2;
 - (ii) any deed or document required by the Target, the Bidder, MidCo or HoldCo that causes each Scheme Participant entitled to HoldCo Shares to be bound by the HoldCo Shareholders Deed, HoldCo Constitution and the Nominee Deed; and
 - (iii) any deed or document required by the Target, the Bidder, MidCo or HoldCo that causes each Scheme Participant issued HoldCo Shares under this Scheme to be bound by the constituent documents of any trust for the Scheme Participant the trustee of which will hold on bare trust for the Scheme Participant the Scheme Participant's HoldCo Shares.
- (b) Each Scheme Participant, without the need for any further act, irrevocably appoints the Target and all of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purposes of:

- (i) enforcing the Deed Poll against the Bidder, MidCo and HoldCo, and the Target undertakes in favour of each Scheme Participant that it will enforce the Deed Poll against the Bidder, MidCo and HoldCo on behalf of and as agent and attorney for each Scheme Participant; and
- (ii) executing any document necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it, including a Scheme Transfer of its Scheme Shares,

and the Target accepts such appointment. The Target, as attorney and agent of each Scheme Participant, may sub-delegate its functions, authorities or powers under this clause 8.6 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

8.7 Appointment of sole proxy

Immediately after the Bidder and HoldCo satisfy their respective obligations in clauses 5.4(a) and 5.5(a) and until the Target registers the Bidder as the holder of all Scheme Shares in the Target Share Register, each Scheme Participant:

- (a) is deemed to have irrevocably appointed the Bidder as its attorney and agent (and directed the Bidder in such capacity) to appoint an officer or agent nominated by the Bidder as its sole proxy and, where applicable, corporate representative to attend shareholders' meetings of the Target, exercise the votes attaching to the Scheme Shares registered in its name and sign any shareholders' resolution;
- (b) undertakes not to otherwise attend shareholders' meetings, exercise the votes attaching to Scheme Shares registered in their names or sign or vote on any resolution (whether in person, by proxy or by corporate representative) other than pursuant to clause 8.7(a);
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as the Bidder reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 8.7(a), the Bidder and an officer or agent nominated by the Bidder under clause 8.7(a) may act in the best interests of the Bidder as the intended registered holder of Target Shares.

8.8 Instructions and elections

If not prohibited by law (and including where permitted or facilitated by relief granted by a Government Agency), all instructions, notifications or elections by a Scheme Participant to the Target binding or deemed binding between the Scheme Participant and the Target relating to the Target or the Target Shares (including any email addresses, instructions relating to communications from the Target, whether dividends are to be paid by cheque or into a specific bank account, notices of meetings or other communications from the Target) will be deemed from the Implementation Date (except to the extent determined otherwise by the Bidder in its sole discretion) by reason of this Scheme, to be made by the Scheme Participants to the Bidder and be a binding instruction, notification or election to the Bidder in respect of HoldCo Shares provided to that Scheme Participant until that instruction, notification or election is revoked or amended in writing addressed to the Bidder at its registry.

9. General

9.1 Further assurances

- (a) The Target must do (on its own behalf and on behalf of each Scheme Participant) anything necessary (including executing agreements and documents) or incidental to give full effect to this Scheme and the transactions contemplated by it.
- (b) Each Scheme Participant consents to the Target doing all things necessary or incidental to give full effect to this Scheme and the transactions contemplated by it.
- (c) Each Scheme Participant acknowledges and agrees that this Scheme binds the Target and all Scheme Participants (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against the Scheme at that meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of the Target.

9.2 Notices

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

9.3 Governing law and jurisdiction

- (a) This Scheme is governed by and construed under Victorian law.
- (b) Each party irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this clause in relation to both itself and its property.

9.4 Variations, alterations and conditions

The Target may, with the consent of the Bidder, consent on behalf of all persons concerned to any variations, alterations or conditions to this Scheme which the Court thinks fit to impose.

9.5 No liability when acting in good faith

Neither the Target nor the Bidder, nor any of their respective officers, will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

9.6 Stamp duty

The Bidder must:

- (a) pay all stamp duty and any related fines, penalties, interest, costs and brokerage in respect of or in connection with this Scheme, the performance of this Scheme, or any instruments entered into under this Scheme and in respect of a transaction effected by or made under this Scheme, including the transfer of Scheme Shares under the Scheme; and

- (b) indemnify each Scheme Participant on demand against any liability arising from its failure to comply with clause 9.6(a).

Annexure B – Deed Poll

Deed Poll

Pacific Group Bidco Pty Ltd

Pacific Group Midco Pty Ltd

Pacific Group Topco Limited

gadens

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Deed Poll

Parties

1. **Pacific Group Bidco Pty Ltd** ACN 644 075 221 of Level 31, 126-130 Phillip Street, Sydney, New South Wales 2000 (**Bidder**)
2. **Pacific Group Midco Pty Ltd** ACN 644 072 248 of Level 31, 126-130 Phillip Street, Sydney, New South Wales 2000 (**MidCo**)
3. **Pacific Group Topco Limited** ACN 644 302 492 of Level 31, 126-130 Phillip Street, Sydney, New South Wales 2000 (**HoldCo**)

In favour of each person registered as a holder of Target Shares as at the Record Date (**Scheme Participants**)

Background

- A. The Target and the Bidder entered into the Scheme Implementation Deed under which the Target agreed, subject to the satisfaction or waiver of certain conditions, to propose the Scheme to the Scheme Participants.
- B. The effect of the Scheme will be to transfer all Scheme Shares to the Bidder in exchange for the Scheme Consideration.
- C. The Bidder, MidCo and HoldCo are making this Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform their respective obligations under the Scheme, including to provide or procure the provision of the Scheme Consideration in accordance with the Scheme.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Deed Poll, unless the context requires otherwise:

Deed Poll means this deed poll including any recitals, any schedules and any annexures;

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

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Participants substantially in the form set out in Annexure A of the Scheme Implementation Deed, subject to any alterations or conditions agreed or any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Bidder and the Target; and

Terms defined in the Scheme have the same meanings in this Deed Poll.

1.2 Interpretation

Clause 1.2 of the Scheme applies to the interpretation of this Deed Poll, except that references to "this Scheme" are to be read as references to "this Deed Poll".

1.3 Nature of Deed Poll

The parties acknowledge and agree that:

- (a) this Deed Poll may be relied upon and enforced by any Scheme Participants in accordance with its terms even though the Scheme Participants are not party to it; and
- (b) under the Scheme, each Scheme Participant irrevocably appoints the Target and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this Deed Poll against the parties.

2. Conditions precedent and termination

2.1 Conditions

The obligations of the parties under this Deed Poll are subject to the Scheme becoming Effective.

2.2 Termination

If:

- (a) the Scheme has not become Effective on or before the End Date or any later date as the Court, with the written consent of the Bidder and the Target, may order; or
- (b) the Scheme Implementation Deed is terminated in accordance with its terms,

then this Deed Poll and the obligations of the parties under this Deed Poll will automatically terminate and the terms of this Deed Poll will be of no further force or effect unless the parties and the Target agree in writing.

2.3 Consequences of termination

If this Deed Poll is terminated under clause 2.2 then, in addition and without prejudice to any other rights, powers or remedies available to Scheme Participants:

- (a) the parties are released from their obligations to further perform this Deed Poll, except those obligations contained in clause 6; and
- (b) each Scheme Participant retains any rights, powers or remedies it has against the parties in respect of any breach of this Deed Poll by the parties which occurred before termination of this Deed Poll.

3. Scheme Consideration

3.1 Undertaking

Subject to clause 2, each of the Bidder, MidCo and HoldCo undertake in favour of each Scheme Participant to:

- (a) provide or procure the provision of the Scheme Consideration to each Scheme Participant in accordance with the terms of the Scheme; and
- (b) undertake or procure the undertaking of all other actions attributed to them under the Scheme, as if named as a party to the Scheme,

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

3.2 Status of HoldCo Shares

The Bidder, MidCo and HoldCo undertake in favour of each Scheme Participant that the HoldCo Shares which are provided to Scheme Participants in accordance with the Scheme will be duly issued, fully paid and free from any mortgage, charge, lien, encumbrance or other security interests or arrangements (including any "security interests" within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth) and will have the rights attaching to them as set out in the HoldCo Shareholders Deed and HoldCo Constitution.

4. Representations and warranties

Each party represents and warrants in favour of each Scheme Participant that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this Deed Poll and to carry out the transaction contemplated by this Deed Poll;
- (c) it has taken all necessary corporate action to authorise entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) it is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets (or any event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in this paragraph);
- (e) this Deed Poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (f) this Deed Poll does not conflict with or result in the breach of, or any default under:
 - (i) any provision of its constituent documents; or
 - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

5. Continuing obligations

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

- (a) the parties have fully performed their obligations under this Deed Poll; or
- (b) the earlier termination of this Deed Poll under clause 2.2.

6. Stamp duty

The Bidder must:

- (a) pay or procure the payment of all stamp duty and any related fines, penalties, interest in respect of or in connection with this Deed Poll, the performance of this Deed Poll, or any instruments entered into under this Deed Poll and in respect of a transaction effected by or made under the Scheme and this Deed Poll, including the transfer by the Scheme Participants of Scheme Shares to the Bidder under the Scheme; and
- (b) indemnify each Scheme Participant on demand against any liability arising from its failure to comply with clause 6(a).

7. Notices

- (a) Any notice or communication in respect of this Deed Poll (**Notice**) may be served by delivery in person, by post or by email to the address or email address of a party specified in this Deed Poll or most recently notified by a party to the sender.
- (b) Any Notice to a party must be in writing and signed by either:
 - (i) the sender or, if a corporate party, an authorised officer of the sender; or
 - (ii) the party's solicitor.
- (c) A Notice:
 - (i) if delivered in person, will be deemed served upon delivery;
 - (ii) if posted, will be deemed served 2 Business Days after posting; and
 - (iii) if sent by email, will be deemed served that day unless the sender receives an automated message generated by the recipient's mail server (**Failure Message**) that the email has not been delivered within two hours. For the avoidance of doubt any response generated by or at the instigation of the recipient (including an 'out of office' message) will not be a Failure Message,

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (addressee's time), it is deemed to have been served at 9.00am on the next Business Day.

- (d) The address for service for Notices for the parties are:

Bidder, MidCo and HoldCo

Attention: David Brown / Rohan Wolfers
Address: Level 31, 126 Phillip Street, Sydney NSW 2000
Email: david.brown@pep.com.au and rohan.wolfers@pep.com.au

in each case, with a copy to:

Clayton Utz in accordance with the following:

Address: Level 15, 1 Bligh Street, Sydney NSW 2000
Email: nananda@claytonutz.com
For the attention of: Niro Ananda

8. General provisions

8.1 Variation

This Deed Poll cannot be varied, altered or amended unless the variation is agreed to in writing by the Bidder, MidCo and HoldCo and:

- (a) if before the First Court Date, the variation, alteration or amendment is agreed to in writing by the Target; and
- (b) if on or after the First Court Date, the variation, alteration or amendment is agreed to in writing by the Target and the Court indicates that the variation would not of itself preclude approval of the Scheme,

in which event the parties must enter into a further deed poll in favour of the Scheme Participants giving effect to the variation, alteration or amendment.

8.2 Assignment

- (a) The rights and obligations of each Scheme Participant and the parties under this Deed Poll are personal and must not be assigned, encumbered or otherwise dealt with at law or in equity and no person may attempt, or purport, to do so without the prior written consent of the parties and the Target.
- (b) Any purported dealing in contravention of clause 8.2(a) is invalid.

8.3 Further assurances

The parties must execute any document and perform any action necessary (on their own behalf and on behalf of each Scheme Participant) to give full effect to this Deed Poll and the transactions contemplated by it.

8.4 Governing law and jurisdiction

- (a) This Deed Poll is governed by and construed under the laws of Victoria.
- (b) Any legal action in relation to this Deed Poll against a party or its property may be brought in any court of competent jurisdiction of Victoria.
- (c) By execution of this Deed Poll, the parties irrevocably, generally and unconditionally submit to the non-exclusive jurisdiction of any court specified in this clause in relation to both itself and its property.

8.5 Waivers

- (a) A Scheme Participant waives a right under this Deed Poll only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) A failure, delay, relaxation or indulgence by a Scheme Participant in exercising any power or right conferred on that party by this Deed Poll does not operate as a waiver of the power or right.
- (c) No Scheme Participant may rely on words or conduct of either the Bidder, MidCo or HoldCo as a waiver of any right unless the waiver is in writing and signed by the Bidder, MidCo or HoldCo, as appropriate.
- (d) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Deed Poll.
- (e) A waiver of a breach does not operate as a waiver of any other breach.

8.6 Remedies

The rights, powers and remedies of the parties and the Scheme Participants under this Deed Poll are cumulative and are in addition to, and do not exclude any other rights, powers and remedies provided by law.

8.7 Severability

Any clause of this Deed Poll which is invalid in any jurisdiction, is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining clauses of this Deed Poll or the validity of that clause in any other jurisdiction.

Signing page

Executed as a deed poll.

Dated

2020

Executed by Pacific Group Bidco Pty Ltd
under section 127 of the Corporations Act by its
duly authorised officers:

Signature of Director

Signature of Director

Name of Director
(Block Letters)

Name of Director
(Block Letters)

Executed by Pacific Group Midco Pty Ltd
under section 127 of the Corporations Act by its
duly authorised officers:

Signature of Director

Signature of Director

Name of Director
(Block Letters)

Name of Director
(Block Letters)

Executed by Pacific Group Topco Limited
under section 127 of the Corporations Act by its
duly authorised officers:

Signature of Director

Signature of Director

Name of Director
(Block Letters)

Name of Director
(Block Letters)

Annexure C – HoldCo Shareholders Deed

Shareholders Deed

Pacific Group Topco Limited

The parties set out in Schedule 1

Clayton Utz
Lawyers
Level 15 1 Bligh Street
Sydney NSW 2000
GPO Box 9806
Sydney NSW 2001
Tel +61 2 9353 4000
Fax +61 2 8220 6700
www.claytonutz.com

Our reference 14242/18450/80171028

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Shareholders Deed

Date

2020

Parties

Pacific Group Topco Limited ACN 644 302 492 of Level 31, 126 - 130 Phillip Street, Sydney NSW 2000 (**Company**)

The parties set out in Schedule 1 (each, an **Initial PEP Shareholder**)

Background

- A. The Company is an Australian unlisted public company limited by shares and was incorporated on 14 September 2020 with the name Pacific Group Topco Limited.
- B. As at the date of this Deed, the Initial PEP Shareholders hold 100% of the Class A Shares in the Company.
- C. PEP intends for the Company to (through an indirect wholly owned subsidiary) acquire and hold 100% of the issued shares in the Target by way of a scheme of arrangement under part 5.1 of the Act (**Scheme**).
- D. Following the entry into of this Deed and prior to the Scheme becoming effective, PEP will subscribe for additional Class A Shares in the Company.
- E. The consideration offered to securityholders of the Target under the Scheme includes Class B Shares in the Company.
- F. This Deed sets out the terms and conditions upon which:
 - (a) the holdings of Shareholders are regulated;
 - (b) the Shareholders agree to conduct the Business of the Company; and
 - (c) the Shareholders agree to finance, control and manage the Company and its Subsidiaries.

The Parties agree

1. Definitions and interpretation

1.1 Definitions

In this Deed except where the context otherwise requires:

Acceptance Period has the meaning given in clause 10.2(a)(vi).

Accession Deed means a deed in substantially the form of the deed forming Schedule 2 or any other form required by the Board.

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

Accounting Standards means, at any time:

- (a) the requirements of the Act about the preparation and contents of financial reports;
- (b) accounting standards approved under the Act; and

- (c) Australia's equivalent to the International Financial Reporting Standards as approved by the Australian Accounting Standards Board.

Affiliate means in respect of a person (**Primary Person**), a person:

- (a) Controlled directly or indirectly by the Primary Person;
- (b) Controlling directly or indirectly the Primary Person; or
- (c) directly or indirectly under the common Control of the Primary Person and another person or persons,

and:

- (a) with respect to PEP, includes an Investor Advisor and an Investor Affiliate;
- (b) for the avoidance of doubt, a general partner is deemed to Control a limited partnership; and
- (c) with respect to a Class B Shareholder or Management Shareholder that is an individual:
 - (i) any Family Entity of that individual;
 - (ii) any self-managed superannuation fund for that individual, the trustee of which is that individual, that individual and their spouse, or a Family Entity of that individual; and
 - (iii) a spouse of the individual;

Appointing Beneficiary means a Non-PEP Shareholder who has appointed the Nominee to hold Shares on Bare Trust for it in accordance with clause 23 and the Nominee Deed.

Auditor means the person appointed from time to time to the office of the auditor of the Company.

Audited Financial Statements means the audited consolidated profit and loss account, consolidated balance sheet and statement of cash flow.

Australian Accounting Standards means:

- (a) the accounting standards referred to in section 334 of the Act; and
- (b) the generally accepted accounting principles of the accountancy profession in Australia to the extent those principles are not inconsistent with the accounting standards of the type described in paragraph (a) above.

Bare Trust means a trust established under the Nominee Deed under which the Nominee holds Beneficial Securities for an Appointing Beneficiary.

Beneficial Holder means a Non-PEP Shareholder on whose behalf the Nominee holds Shares as bare trustee.

Beneficial Securities means in relation to a Beneficial Holder, means the Shares held by the Nominee as bare trustee for that Beneficial Holder.

Board means the board of Directors as constituted from time to time.

Board Meeting means a duly constituted meeting of the Board.

Business means the business of the Company Group.

Business Day means any day other than a Saturday, Sunday, bank holiday or public holiday in New South Wales, Australia.

Business Hours means between 9.00am and 5.00pm on a Business Day.

Business Plan and Budget means, from time to time, the business plan for the conduct of the Business and budget for one or more Financial Years, which will be in a form, and include such statements, reports, forecasts and projections and other information, as the Board determines from time to time.

CEO means any person from time to time appointed to, or acting in the capacity of, the position of chief executive officer of the Company.

CEO Director has the meaning given in clause 4.2(d).

CFO means any person from time to time appointed to, or acting in the capacity of, the position of chief financial officer of the Company.

Chairperson means any person from time to time appointed to, or acting in the capacity of, the position of chairperson of the Board.

Change of Control means:

- (a) the person or persons that have Control of a Shareholder cease(s) to have Control of that Shareholder; or
- (b) a person or persons who did not have Control of a Shareholder gain(s) Control of that Shareholder.

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.

Class A Share means an Ordinary Share in the capital of the Company which is designated as a Class A Share and has the rights set out in this Deed.

Class B Director means a Director appointed by the Class B Shareholders pursuant to this Deed or designated as a Class B Director under clause 4.2(d)(i).

Class B Meetings has the meaning given in clause 5.6.

Class B Share means an Ordinary Share in the capital of the Company which is designated as a Class B Share and has the rights set out in this Deed.

Class B Shareholder means each person holding the legal or beneficial interest to any Class B Shares who is a party to this Deed, including any Shareholder who executes an Accession Deed as a "Class B Shareholder".

Class C Share means a Share in the capital of the Company which is designated as a Class C Share.

Class C Shareholder means each person holding the legal or beneficial interest to any Class C Shares who is a party to this Deed, including any Shareholder who executes an Accession Deed as a "Class C Shareholder".

Company Group means the Company, its Subsidiaries and each of its or their interests in joint ventures or other entities (including trusts), from time to time, and where the context allows, includes any one or more of such entities (each a **Company Group Member**).

Company Note means a loan note issued by the Company on such terms reasonably determined by the Board at a minimum interest rate equal to the higher of the FBT benchmark interest rate or Division 7A benchmark interest rate.

Competitor means, from time to time, any person who:

- (a) has a business in Australia or any country in which the Company Group operates which is similar to or the same as a business operated by the Company Group or which otherwise directly or indirectly competes with any business operated by the Company Group from time to time (including any new business a Company Group Member is actively taking steps to establish or acquire, or which the Business Plan and Budget at that time contemplates will be established or acquired);
- (b) is an Affiliate of a person referred to in paragraph (a) of this definition;
- (c) is a person in whom a person referred to in paragraph (a) of this definition has an Interest; or
- (d) has an Interest in a person referred to in paragraphs (a), (b) or (c) of this definition.

Confidential Information means:

- (a) all commercial, financial, legal and technical and other advice, correspondence, material, memoranda, opinions, know-how and information concerning the Business made available at any time (whether in written or electronic form or orally) by any party including information relating to secret processes, technical know-how, techniques, trade secrets, discoveries, inventions, ideas, research, engineering methods, practices, systems, formulae, drawings, trade secrets and special purpose computer programmes, financial, marketing and other confidential information and data subsisting in or relating to the Business or belonging to any Company Group Member;
- (b) notes, summaries, compilations, conclusions, calculations, computer records (including data, copies, models, reproductions and recordings) or other material in whatever form made or derived in whole or in part by a party from, or from inspection or evaluation of, any information of the type referred to in paragraph (a);
- (c) the nature, existence and contents of any meetings, discussions, negotiations or agreements between the Parties and their respective advisers in relation to the Business, the Company Group or this Deed;
- (d) the fact of or reasons for any termination of discussions or negotiations between the Parties and their respective advisers in relation to the Company Group; and
- (e) the existence and contents of this Deed, the Nominee Deed, the Constitution, the Transaction Documents or the constitutional documents of any Company Group Member.

Constitution means the Constitution of the Company in the form set out in Annexure A to this Deed, as amended from time to time after the date of this Deed in accordance with this Deed.

Control has the meaning given in section 50AA of the Act and:

- (a) in the case of a corporation, includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of a majority of the board of directors of that corporation or the voting rights of the majority of the voting shares of the corporation;
- (b) in the case of a trust or partnership, includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the appointment or

removal of the trustee of the trust or general partner of the partnership, the composition of a majority of the board of directors of the trustee or general partner or the voting rights of the majority of the securities of the trust or partnership; and

- (c) in the case of a limited partnership, a general partner is deemed to Control the limited partnership of which it is the general partner,

and **Controlled** has a corresponding meaning.

Cost means, in respect of a Share:

- (a) where the Company issued that Share to the relevant Shareholder, the issue price paid (or deemed paid) for that Share; or
- (b) where the relevant Shareholder acquired that Share by way of purchase, the price it paid to acquire that Share (unless the Share was acquired from an Affiliate of the relevant Shareholder, in which case it is the earliest in time price paid to acquire that Share by any Affiliate of the relevant Shareholder from a person that was not an Affiliate of the relevant Shareholder).

Deed means this deed including its recitals, schedules and annexures.

Default Notice has the meaning given in clause 20.1(b).

Default Sale Shares has the meaning given in clause 20.1(b).

Defaulting Shareholder has the meaning given in clause 20.1(a)(i).

Director means a person from time to time appointed to, or acting in the capacity of, the office of director of the Company, and includes any alternate director duly appointed and acting as a director.

Disclosee has the meaning given in clause 27.1.

Dispose in relation to a person and any property means:

- (a) to sell, offer for sale, transfer, assign, surrender, gift, create an Encumbrance or option over, declare oneself a trustee of or part with the benefit of or otherwise dispose of that property (or any direct or indirect legal or beneficial interest in or over any rights in respect of any part of it);
- (b) to do anything which has the effect of placing a person in substantially the same position as if the person had done any of the things specified in paragraph (a); or
- (c) to attempt to do any of the things specified in paragraph (a),

and **Disposal** has a corresponding meaning.

Disputing Shareholder has the meaning given in clauses 8.3(c), 10.2(b), 20.3 or 21.6 (as applicable).

Dividend includes a dividend, bonus or other distribution in kind or in cash and, for the avoidance of doubt, excludes a return of capital.

Drag Along Notice means a notice given in accordance with clause 15.2.

Drag Price has the meaning given in clause 15.2(c).

Drag Proportion has the meaning given in clause 15.2(b).

Drag Sale Terms has the meaning given in clause 15.2(c).

Dragged Shares has the meaning given in clause 15.2(d).

Drag Transaction means a Disposal of Shares in accordance with clause 15.

Emergency Funding means funding provided by PEP in accordance with the provisions of clause 9.4(j).

Emergency Funding Shares has the meaning given in clause 9.4(j).

Emergency Funding Catch-up Offeree has the meaning given in clause 9.4(j)(iii).

Emergency Funding Catch-up Shares has the meaning given in clause 9.4(j)(iii).

Emergency Funding Catch-up Share Price has the meaning given in clause 9.4(j)(iv).

Employee means any person who is in full-time or part-time employment of a Company Group Member.

Employee Share Option Plan means an equity incentive plan established by the Company or another Company Group Member for Employees of the Company Group.

Encumbrance includes any mortgage, charge, pledge, lien, encumbrance, assignment, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person by way of security for the payment of a debt or any other monetary obligation.

Engage In means:

- (a) to carry on, participate in, provide finance (other than debt funding in the course of a genuine finance business to third parties), to provide services to (including license intellectual property rights to or from but excluding the provision of services as part of a bona fide business which provides services or arms-length terms to members of the public) or otherwise be directly or indirectly involved in, contribute to or have an economic interest in, directly or indirectly (including through any interposed body corporate, trust, partnership, entity or other person) and in any capacity whatsoever, including as a shareholder, unitholder, security holder, director, consultant, advisor, contractor, principal, agent, manager, employee, beneficiary, partner, associate, trustee or financier; or
- (b) managing, advising or influencing, whether for direct remuneration or benefit or otherwise, including influencing through any association or arrangement with any person in which any economic interest or over which influence, (absolute or partial) is held,

and **Engaging In** has a corresponding meaning.

Event of Default means, in relation to a Shareholder (other than a PEP Shareholder) or a Relevant Manager:

- (a) a breach of any of their obligations under or in relation to clause 14, which cannot be remedied or which remains un remedied for 20 Business Days after the Company has notified the Shareholder or Relevant Manager of the breach;
- (b) a breach of any other of their material obligations under any Transaction Document, which cannot be remedied or which remains un remedied for 20 Business Days after the Company has notified the Shareholder or Relevant Manager of the breach;
- (c) a breach of clause 26;

- (d) the Shareholder or Relevant Manager becomes the subject of an Insolvency Event;
- (e) the Shareholder becomes a Shareholder pursuant to a transfer of Shares in breach of this Deed;
- (f) a Change of Control occurs in relation to the Shareholder that circumvents the restrictions on Disposals set out in clause 14;
- (g) if it is a Management Shareholder:
 - (i) it is required (pursuant to a court order or otherwise) to transfer any or all of its Shares to its Relevant Manager's spouse or partner in connection with Relationship Proceedings between its Relevant Manager and his or her spouse or partner; or
 - (ii) it ceases to be an Affiliate of its Relevant Manager and its Relevant Manager fails to arrange for the transfer of the Shares held by it to the Relevant Manager or another Affiliate of the Relevant Manager approved by the Board within 20 Business Days of it ceasing to be an Affiliate of the Relevant Manager.

Event of Default Date means, in relation to a Shareholder or a Relevant Manager, the date that the Company becomes aware that the Shareholder or the Relevant Manager has committed an Event of Default.

Excess Emergency Funding Shares means, in respect of an issuance under clause 9.4(j), the amount of Emergency Funding Shares equal to the difference between the number of Emergency Funding Shares actually issued to PEP or an Affiliate of PEP under the issuance and the amount of Emergency Funding Shares that would have been issued to PEP or an Affiliate of PEP had they been issued at the Emergency Funding Catch-up Share Price.

Excess M&A Shares means, in respect of an issuance under clause 9.4(k), the amount of M&A Shares equal to the difference between the number of M&A Shares actually issued to PEP or an Affiliate of PEP under the issuance and the amount of M&A Shares that would have been issued to PEP or an Affiliate of PEP had they been issued at the M&A Catch-up Share Price.

Exit Event or Exit means:

- (a) an IPO;
- (b) Share Sale; or
- (c) a Trade Sale.

Exit Notice has the meaning given in clause 18.1.

Fair Market Value means the fair market value of a Security as determined by the Board, or if a Referral Notice is validly issued, the value determined under clause 22.

Family Entity means, in respect of a Class B Shareholder or Manager, a company or trust of which the Class B Shareholder or Manager has Control and of which the ultimate beneficial owners (or, in the case of a trust, the beneficiaries or potential beneficiaries) are the Class B Shareholder or Manager and/or a Relative(s) of the Class B Shareholder or Manager and/or charities.

Financial Adviser has the meaning given in clause 18.1.

Financial Year in relation to **the Company Group** means the period commencing on the date of incorporation of **the Company** and ending on the following 30 June, or such other period for a financial year as may be determined by the Board under applicable law.

Fixed Rate Return Instrument means any preference share or other Security issued by the Company which has a fixed interest rate, coupon, dividend or other fixed return and is not convertible into an Ordinary Share.

Governmental Agency means any government or any governmental, semi-governmental or administrative department, entity, agency, authority, commission, corporation or body (including those constituted or formed under any statute) where the department, entity, agency, authority, commission, corporation or body is subject to the control or direction of the Commonwealth of Australia or a State or Territory of Australia.

Immediately Available Funds means cash, bank cheque, electronic funds transfer to an account nominated by the payee in writing, or any other form of payment that the payer and the payee agree in writing.

Implementation Date means the date on which the Scheme is implemented in accordance with its terms.

Inconsistent Instrument means any power of attorney or any other instrument signed, executed or issued by or on behalf of a Shareholder at any time, whether before on or after the date of this Deed, conferring on persons other than the attorney appointed under clause 24 (whether jointly or severally or jointly and severally) rights which contradict or are inconsistent with some or all of the rights contained in the power of attorney granted under clause 24.

Independent Directors has the meaning given in clause 4.3(a).

Instruction has the meaning given in the Nominee Deed.

Insolvency Event means:

- (a) a "**controller**" (as defined in section 9 of the Act), manager, trustee, administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a corporation;
- (c) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraphs (a) or (b);
 - (ii) winding up a corporation; or
 - (iii) proposing or implementing a scheme of arrangement;
- (d) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of an individual or his estate under any Insolvency Provision;
- (e) a moratorium of any debts of a person, a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with a person's creditors or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 7 days;

- (f) a person becomes, or admits in writing that it is, is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts; or
- (g) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person.

Interest means:

- (a) an economic interest other than a passive ownership interest in securities in an entity which comprise 5% or less of the aggregate number of securities in that entity (on a fully-diluted basis) which does not confer any control, information or governance rights of any type; or
- (b) otherwise Engaging In,

whether held directly or indirectly or through any interposed entity, fund vehicle or other person.

Investor Advisor means any entity that from time to time provides investment advice, whether directly or indirectly, to PEP.

Investor Advisor Group means with respect to an Investor Advisor, that Investor Advisor and its Related Bodies Corporate and **Investor Advisor Group Company** is to be construed accordingly.

Investor Affiliate means:

- (a) any Investor Advisor Group Company (other than the Investor Advisor);
- (b) any partnership, limited partnership, venture capital limited partnership, trust, managed investment scheme, limited liability company or body corporate or other fund or entity of which any Investor Advisor Group Company or any person assuming the rights and obligations of such Investor Advisor Group Company, is the manager, trustee, responsible entity, general partner or investment advisor (**Investor Fund**);
- (c) any person Controlled by an Investor Fund; and
- (d) any partner, limited partner, unitholder, shareholder, trustee, responsible entity or custodian of any of the entities, funds, trusts or other things set out in any of paragraphs (a) to (c) above from time to time.

Invitation to Tag means in respect of the Shareholders, an invitation in the form contemplated by clause 16.2.

Involved includes direct or indirect involvement including as a principal, agent, partner, employee, shareholder, unitholder, director, trustee, beneficiary, manager, contractor, subcontractor, consultant, adviser or financier.

IPO means an initial public offering of shares in the Company, shares in any Subsidiary or shares in a company of which the Company is or will be a wholly owned subsidiary in conjunction with an application for the quotation of those shares on the Stock Exchange.

Liability means all liabilities, obligations, damages, losses, costs, interest, fees, penalties, fines, assessments, forfeiture and expenses of whatever description (whether actual, contingent, current or prospective), and irrespective of when the act, event or thing giving rise to the liabilities, obligations, damages, losses, costs, interest, fees, penalties, fines, assessments, forfeiture and expenses occurs.

M&A Catch-up Offeree has the meaning given in clause 9.4(k)(i).

M&A Catch-up Share Price has the meaning given in clause 9.4(k)(ii).

M&A Catch-up Shares has the meaning given in clause 9.4(k)(i).

M&A Funding means funding provided by PEP in accordance with the provisions of clause 9.4(k).

M&A Shares has the meaning given in clause 9.4(k).

Management Incentive Plan means equity plans or other equity incentive agreements or arrangements of the Company providing eligible Managers with an opportunity to acquire Securities.

Management Shareholder means a holder of Securities issued pursuant to the Management Incentive Plan.

Manager means a person that is:

- (a) invited by the Board to participate in a Management Incentive Plan; and
- (b) an employee, executive director or non-executive director of any Company Group Member at the time the Manager (or any Affiliate of the Manager) becomes a Management Shareholder,

and who is or becomes a party to this Deed as a "Manager" by executing an Accession Deed.

Member means a person whose name is entered in the register of members of the Company as a holder of a Share.

ND Deed of Adherence has the meaning given in the Nominee Deed.

Net Cost means Cost less any capital returned to the Shareholder on the relevant Share by way of a return of capital or otherwise.

Nominated Affiliate has the meaning given in clause 9.6.

Nominee means the independent third party trustee company appointed from time to time by the Company under clause 23 and the Nominee Deed to hold Shares on bare trust in accordance with clause 23 and the Nominee Deed.

Nominee Deed means the document entitled "Nominee Deed" entered into on or about the date of this Deed between the Company, the Nominee and the initial Appointing Beneficiaries as of that date.

Nominee Transfer means a transfer of legal title to Shares:

- (a) by a Non-PEP Shareholder to the Nominee to be held under a Bare Trust, either at the request of the Board or with the prior written consent of the Board;
- (b) in connection with the replacement of the Nominee in accordance with the Nominee Deed; or
- (c) by the Nominee to an Appointing Beneficiary if the Nominee is required to do so under this Deed or the transfer otherwise has the approval of the Board.

Non-contributing Shareholder has the meaning given in clause 10.2(e).

Non-PEP Shareholders has the meaning given in clause 23.1(a).

Objectives means the objectives of the Company Group set out in clause 3.2.

Observer has the meaning given in clause 4.11.

Ordinary Shares means ordinary shares in the capital of the Company having the rights and entitlements set out in the Constitution, including the Class A Shares and the Class B Shares.

Oversubscribing Shareholder has the meaning given in clause 10.2(e)(ii).

Parties means each of the parties to this Deed and any other person that executes an Accession Deed and becomes a party to this Deed, in accordance with this Deed, from time to time and **Party** means any one of them.

PEP means the Initial PEP Shareholders and any of their respective Affiliates who hold Shares, from time to time (and each a **PEP Shareholder**).

PEP Director means a Director appointed by the PEP and their Permitted Transferees.

Permitted Transferee of a Shareholder means:

- (a) in relation to a Shareholder that is not an individual, a Related Entity of the Shareholder;
- (b) in relation to a Shareholder that is an individual, a Relative of the Shareholder;
- (c) in relation to a Class B Shareholder that is an Appointing Beneficiary, the Nominee in its capacity as bare trustee for the Class B Shareholder; and
- (d) in relation to a Shareholder that is a PEP Shareholder who is a trustee, custodian, responsible entity or general partner of a trust or partnership, includes the person who is a replacement trustee, custodian, responsible entity or general partner of the same trust or partnership as well as that PEP Shareholder's Affiliate.

Qualified Person means a person who is not subject to any commercial or other conflict of interest in relation to the Business or operations of the Company Group, excluding any conflict arising solely from the person holding or having a relevant interest (as defined in the Act) in any Class B Shares. It is acknowledged that as at the date of this Deed, a Qualified Person shall include any person who is a director of the Target.

Referral Notice has the meaning given in clauses 8.3(c), 10.2(b), 20.3 or 21.6 (as applicable).

Related Body Corporate has the meaning given in section 9 of the Act and includes, with respect to any person, any other person which, directly or indirectly, Controls, is Controlled by, or is under common Control with, such first person.

Related Entity means, in relation to an entity (the **first entity**):

- (a) a Related Body Corporate of the first entity; or
- (b) a Controlled entity of the first entity;
- (c) an entity of which the first entity is a Controlled entity;
- (d) a Controlled entity of another entity of which the first entity is also a Controlled entity; and
- (e) in relation to a PEP Shareholder, includes any Affiliate of PEP.

Relationship Proceedings means any proceedings for divorce or nullity of marriage by or against a Relevant Manager or, in the case of de facto relationships, an application under

applicable law for property orders, and includes substantially similar types of proceedings instituted in any jurisdiction.

Relative means a spouse, former spouse, mother, father, brother, sister or child.

Relevant Manager means:

- (a) in relation to a Manager who is invited to participate in the Management Incentive Plan, the person nominated by the Company at the date of issue of Securities to them as their Relevant Manager; and
- (b) in relation to any Management Shareholder who acquires Securities as a Permitted Transferee of the Management Shareholder transferring Securities, the person who is the Relevant Manager of the transferor.

Relevant Proportion means, in relation to a Shareholder:

- (a) when used in relation to all Shareholders, the proportions which their respective aggregate holdings of Shares bear to the aggregate of all of the issued Shares; or
- (b) when used in relation to less than all the Shareholders, the proportions which their respective aggregate holdings of Shares bear to the aggregate holdings of Shares of those Shareholders,

provided that, in each case:

- (c) where the context requires a 'Relevant Proportion' to be determined with reference to a particular class of Shares, the proportionate holdings for the purposes of the above definition are to be determined with reference to the relevant parties' holdings of that particular class, that is, only Shares of the particular class will comprise the numerator and denominator for purposes of the calculation.

Relevant Transaction has the meaning given in clause 14.7.

Reorganisation Event means:

- (a) a bonus issue of Shares;
- (b) a subdivision or consolidation of Shares; or
- (c) any other reorganisation or reconstruction of share capital where the Company neither pays nor receives cash.

Restrained Party has the meaning given in clause 26.1.

Restraint means the prohibitions and restraints contained in clause 26.

Restraint Area means:

- (a) Australia and the United Kingdom, or if that area is determined to be unenforceable, then;
- (b) Australia, or if that area is determined to be unenforceable, then;
- (c) Australian Capital Territory, New South Wales, Victoria, Western Australia, and Queensland, or if that area is determined to be unenforceable, then;
- (d) Australian Capital Territory, New South Wales, Victoria and Queensland, or if that area is determined to be unenforceable, then;

- (e) Australian Capital Territory, New South Wales and Victoria.

Restraint Period means:

- (a) the period during which the Restrained Party is a Shareholder and three years after the Disposal Date, unless that period is held invalid for any reason by a court of competent jurisdiction; then
- (b) the period during which the Restrained Party is a Shareholder and two years after the Disposal Date, unless that period is held invalid for any reason by a court of competent jurisdiction; then
- (c) the period during which the Restrained Party is a Shareholder and one year after the Disposal Date, unless that period is held invalid for any reason by a court of competent jurisdiction; then
- (d) the period during which the Restrained Party is a Shareholder and six months after the Disposal Date, unless that period is held invalid for any reason by a court of competent jurisdiction; then
- (e) the period during which the Restrained Party is a Shareholder.

Sale Price has the meaning given in clause 20.1(c).

Scheme means the scheme of arrangement under Part 5.1 of the Act under which a Company Group Member acquires 100% of the issued shares in the Target.

Scheme Implementation Deed means the scheme implementation deed dated 14 September 2020 between The Citadel Group Limited and Pacific Group Bidco Pty Ltd ACN 644 075 221 in relation to the Scheme.

Secondary Acceptance Period has the meaning given in clause 10.2(e)(ii).

Securities means Shares, options, Fixed Rate Return Instruments, any security with rights of conversion into equity and/or all other securities of the Company within the meaning of section 92(3) of the Act other than debentures with no rights of conversion into equity and no rights of economic participation in the Company Group beyond a market interest rate.

Sensitive Information means confidential information received from contractual counterparties under the terms of agreements between Company Group Members and customers.

Share Capital means all of the Shares on issue, from time to time.

Share Sale means a sale of the Share Capital.

Shareholder means a person that is from time to time a registered holder of Shares who is a Party to this Deed whether as an original party or by acquiring Shares and duly executing and delivering an Accession Deed in accordance with this Deed.

Shares means shares in the capital of the Company and includes Ordinary Shares.

Simple Majority of Class B Shareholders means, in relation to a Class B Meeting, a majority of all votes cast by or on behalf of Class B Shareholders who are present at the Class B Meeting and entitled to vote on the resolution concerned.

Small Holding Securities means the Class B Shares held by a Small Shareholder.

Small Holding Transaction means a Disposal of Small Holdings Securities in accordance with clause 21.

Small Shareholder means a Class B Shareholder who holds Class B Shares which had, at the time or times of their issue, an aggregate issue price and/or face value (as applicable) of \$10,000 or less.

Special Director Approval means a Board approval which includes at least 1 Class B Director (for so long as there is at least 1 Class B Director appointed), and a majority of the PEP Directors.

Special Majority Resolution means a resolution approved by:

- (a) a majority of the votes cast by the PEP Shareholders who are present (in person or by proxy) at the meeting of Shareholders and entitled to vote on the resolution concerned; and
- (b) a majority of all votes cast by or on behalf of Class B Shareholders who are present at the meeting of Shareholders and entitled to vote on the resolution concerned.

Special Resolution of Appointing Beneficiaries in relation to an amendment or variation of all or any part of clause 23.9, means a resolution that has been passed by at least 75% of the votes cast by Appointing Beneficiaries where:

- (a) only Appointing Beneficiaries can vote on the resolution;
- (b) each Appointing Beneficiary is entitled to cast a vote for each Security held on trust for, or on behalf of, the Appointing Beneficiary under the bare trustee arrangements set out in clause 23.9; and
- (c) the provisions of Part 2G.2 of the Act apply as if the Appointing Beneficiary is a member of the Company.

Stock Exchange means the Australian Securities Exchange or any other recognised stock exchange.

Subsidiary in relation to any person, has the meaning given in the Act but so that:

- (a) an entity will also be deemed to be a Subsidiary of a company if that entity is required by the Australian Accounting Standards to be consolidated with that company;
- (b) a trust may be a Subsidiary, for the purposes of which any units or other beneficial interests will be deemed shares; and
- (c) a corporation or trust may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.

Tag Option has the meaning given in clause 16.2(d).

Tag Price has the meaning given in clause 16.2(c).

Tag Proportion has the meaning given in clause 16.2(b).

Tag Terms has the meaning given in clause 16.2(c).

Tag Transaction means a Disposal of Shares in accordance with clause 16.

Tagged Shares has the meaning given in clause 16.2(d).

Target means The Citadel Group Limited ACN 127 151 026.

Tax means taxes, levies, imposts, charges and duties (including stamp and transaction duties) paid, payable or accessed as being payable by any authority together with any fines, penalties and interest in connection with them.

Termination Date has the meaning given in clause 23.9.

Third Party means a party other than a party or an Affiliate of the party.

Third Party Buyer a buyer (or a proposed buyer) of Securities who is a Third Party in relation to the seller (or proposed seller) of those Securities.

Trade Sale means the sale of the whole or substantially all the Business or the sale of all or substantially all of the assets of the Company Group, whether by way of a sale of assets of the Company, or by a sale of assets or shares of any Subsidiary of the Company.

Transaction Documents means:

- (a) this Deed;
- (b) the Constitution;
- (c) Nominee Deed; and
- (d) any other agreement or document that the Parties agree is a Transaction Document.

Trustee means the trustee or responsible entity of any Shareholder that is a trust.

Valuer means an independent chartered accountant nominated by, at the request of the Board, the managing partner (or similar officer or partner) in Australia of KPMG, Deloitte, PwC, Ernst & Young or any other independent firm of chartered accountants nominated by the President of the Institute of Chartered Accountants in Australia. The Shareholders must promptly sign a deed of release in the form required by the President of the Institute of Chartered Accountants in Australia.

Valuer's Certificate has the meaning given in clause 22.1(a)(ii).

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) the expression "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a right or obligation of any 2 or more persons (including in respect of the PEP Shareholders, the Class B Shareholders and the Management Shareholders (as applicable)) confers that right, or imposes that obligation, severally, not jointly or jointly and severally;
- (d) a reference to any Party includes that Party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (e) a reference to any document (including this Deed) is to that document as varied, notated, ratified or replaced from time to time;

- (f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (g) without limiting clause 14, a reference to a person Disposing of any Securities, includes Disposing of a beneficial interest in any of those Securities and instructing any trustee or other nominee (including the Nominee) to Dispose of a legal and/or beneficial interest in any of those Securities;
- (h) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (i) references to Parties, clauses, schedules, exhibits or annexures are references to Parties, clauses, schedules, exhibits and annexures to or of this Deed, and a reference to this Deed includes any schedule, exhibit or annexure to this Deed;
- (j) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) the word **"includes"** in any form is not a word of limitation;
- (l) a reference to **"\$"** or **"dollar"** is to the currency of Australia;
- (m) references to payments to any Party to this Deed will be construed to include payments to another person upon the direction of such Party;
- (n) all payments to be made under this Deed must be made by unendorsed bank cheque or other Immediately Available Funds;
- (o) if any day appointed or specified by this Deed for the payment of any money or doing of any thing falls on a day which is not a Business Day, the day so appointed or specified shall be deemed to be the next Business Day;
- (p) this Deed must not be construed adversely to a Party just because that Party prepared it or caused it to be prepared;
- (q) a reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a permanent and visible form; and
- (r) if any calculations relating to the issue or transfer of Shares under this Deed result in a number that is, or includes, a fraction, that fraction will be rounded upwards to the nearest whole number.

1.3 Paramountcy

To the extent permitted by law:

- (a) the Parties must ensure that the Constitution or other governing document of the Company is consistent with this Deed; and
- (b) if there is any inconsistency between the Constitution or other governing document of the Company and this Deed:
 - (i) in relation to rights attaching to Shares which are set out in the Constitution, the Constitution prevails; and
 - (ii) otherwise, this Deed prevails.

- (c) if a Shareholder gives the Company a notice specifying an inconsistency and requesting an amendment to the Constitution that will remove that inconsistency, each Shareholder must take all necessary steps to amend the Constitution to make the Constitution consistent with this Deed.

1.4 Notices, consents and approvals

Unless otherwise provided in this Deed, where this Deed requires or allows a notice, consent or approval to be given the consent or approval:

- (a) must be given in writing unless this Deed expressly allows the notice, consent or approval to be given in another form;
- (b) may be given on a conditional basis; and
- (c) may be given or withheld in the absolute discretion of the party whose consent or approval is required unless otherwise specified.

2. Capital Structure and effect

2.1 Initial capital structure

- (a) As at the date of this Deed, the only Shareholders in the Company are the Initial PEP Shareholders.
- (b) Following entry into this Deed and on or before the Implementation Date, the Initial PEP Shareholders and its Affiliates will subscribe for additional Class A Shares in the Company pursuant to clause 9.4(a) and the terms of the Scheme.

2.2 Effect

This document comes into effect on and from the Implementation Date, except for this clause 2, and clauses 1, 27, 29, 30, 31, 32, 33 and 34 which each come into effect on the date of this Deed.

2.3 Failure to achieve Scheme Implementation

Unless the Initial PEP Shareholders agree otherwise in writing, this Deed terminates if:

- (a) the Scheme fails and cannot be implemented for any reason; or
- (b) the Scheme Implementation Deed is terminated for any reason.

3. Business and objectives

3.1 Nature of Business

The Company Group will not carry on any other business apart from the Business unless authorised in accordance with this Deed.

3.2 Objectives

The Parties agree that the primary objectives of the Company Group are to:

- (a) carry on the Business as varied from time to time in accordance with this Deed; and
- (b) maximise the sustainable value of the Company Group for the Shareholders.

3.3 Parties' duties

To the maximum extent permitted by law, no Party shall owe any other Party any duty or obligations in relation to the Business or the Company except as set out in this Deed.

3.4 No partnership

This Deed is to be interpreted so as to not create or give rise to a relationship of agency, partnership or of a fiduciary nature between the Parties.

4. The Board

4.1 Number of Directors

The Board must consist of a maximum of ten Directors or such other maximum number as determined by the Board.

4.2 Appointment of Directors

- (a) The PEP Shareholders have the right to appoint, remove and replace up to the maximum number of Directors which may be appointed to the Board in accordance with clause 4.1 after allowing for, if applicable:
 - (i) any Directors which may be appointed by the Class B Shareholders in accordance with clauses 4.2(b) or 4.2(c);
 - (ii) the appointment of the CEO Director under clause 4.2(d)(ii); and
 - (iii) the appointment of any Independent Directors.
- (b) Subject to the remainder of this clause 4.2, for so long as the Class B Shareholders in aggregate hold 20% or more of the Share Capital, the Class B Shareholders have the right to, by written notice to the Company, appoint, remove and replace two Directors to the Board.
- (c) Subject to the remainder of this clause 4.2, for so long as the Class B Shareholders in aggregate hold 10% or more of the Share Capital, the Class B Shareholders have the right to, by written notice to the Company, appoint, remove and replace one Director to the Board.
- (d) In addition to its rights to appoint Directors under clause 4.2(a), the PEP Shareholders have the right to appoint the CEO as a Director on the following basis:
 - (i) if the CEO has a direct or indirect interest in any Class B Shares and if the Class B Shareholders in aggregate hold 10% or more of the Share Capital, then the CEO will be designated as a Class B Director and the rights of the Class B Shareholders under clauses 4.2(b) and 4.2(c) to appoint Directors will be reduced by one Director;
 - (ii) if:
 - A. the CEO does not have a direct or indirect interest in any Class B Shares; or
 - B. the Class B Shareholders are not eligible to appoint a Director under clause 4.2(b) or 4.2(c),
 then the CEO will not be designated as a PEP Director, Class B Director or Independent Director.

- (e) Any person nominated as a proposed Director by the Class B Shareholders must:
 - (i) be a Qualified Person;
 - (ii) have the necessary knowledge, skills and expertise, having regard to the Business, to serve as a Director of the Company; and
 - (iii) be approved by the PEP Directors (with such approval not to be unreasonably withheld).
- (f) All Class B Directors must be Australian citizens who ordinarily reside in Australia.
- (g) All Class B Directors will be required to enter into appointment agreements with the Company that will require the Class B Director to immediately resign if that Class B Director ceases to be a Qualified Person or an Australian citizen who ordinarily resides in Australia.
- (h) A Class B Shareholder that is the subject of an Insolvency Event:
 - (i) may not exercise rights with respect to the appointment, removal or replacement of a Director under clauses 4.2(b) or 4.2(c); and
 - (ii) will be excluded for the purposes of calculating the percentage holding of one or more Shareholders within a class of Shares.
- (i) If one or more Class B Shareholders have appointed one or more Class B Directors and cease to be eligible to make such appointment under this clause 4.2, they must immediately remove the relevant Class B Director.

4.3 Appointment and removal of Independent Directors

- (a) The PEP Shareholders may, from time to time, nominate independent Directors (**Independent Directors**).
- (b) An Independent Director will be appointed by the Board, provided that an individual appointed as Independent Director must have suitable experience in respect of general commercial matters and corporate governance to be able to effectively participate on the Board.
- (c) An Independent Director appointed under this clause 4.3 may at any time be removed by Board.

4.4 Structure of initial Board

The initial Board from the Implementation Date will comprise (subject to the Company receiving each relevant consent to act):

- (a) any PEP Director or PEP Directors which PEP has appointed as at the Implementation Date in accordance with this Deed; and
- (b) any Class B Director or Class B Directors which the Class B Shareholders (if applicable) have validly appointed as at the Implementation Date in accordance with this Deed.

4.5 Appointment of Chairperson

- (a) PEP has the right to appoint, remove and replace the Chairperson.
- (b) The initial Chairperson of the Company will be that person appointed by PEP as the initial Chairperson as at the Implementation Date in accordance with this Deed.

4.6 Eligibility/appointment/removal formalities

To the extent permitted by the Corporations Act, no person may be appointed, removed or replaced as a Director (or Chairperson) other than in accordance with this Deed.

4.7 Removal of Directors

A person will be automatically removed as a Director of the Company if the person is, or becomes, ineligible to be a Director in accordance with this Deed, any applicable law or under the provisions of the Constitution.

4.8 Subsidiaries and Subsidiary Boards

- (a) The board of directors of each Subsidiary will consist of up to two Directors, or any other number the Board may determine from time to time. As at the Implementation Date, the Shareholders acknowledge that each Subsidiary board will comprise the CEO, with one vacancy for the CFO.
- (b) Each Shareholder and the Company agree and must procure that each Subsidiary operates consistently with the Business Plan and Budget and the decisions of the Board, and that each Subsidiary does not do or commit to any action or undertaking without the approval of the Board where such approval is required in respect of the Company under this Deed.

4.9 Directors' Interests

- (a) A Director is not disqualified from holding office or position with PEP or any of PEP's Affiliates or Related Entities. A Director may:
 - (i) be or become a director or otherwise hold office or any position in any entity promoted by PEP or in which PEP may be interested; and
 - (ii) contract or make any arrangement with PEP or any of PEP's Affiliates or Related Entities.
- (b) A Director who has a material personal interest in a matter that relates to the Business (other than as a result of such Director's relationship with PEP or any of PEP's Affiliates or Related Entities) must give the other Directors notice of that interest and abstain from voting on that matter unless the Directors who are eligible to vote on the relevant matter unanimously agree otherwise.
- (c) Subject to applicable law, a Director may act in the interests of their nominating Shareholder(s), the funds managed or advised by their nominating Shareholder(s) or its Affiliates and their direct and indirect investors, if any, and a Director will not be in breach of their duties to the Company or any Company Group Member solely because the Director has regard to or acts in the interests of their nominating Shareholder(s), the funds managed or advised by their nominating Shareholder(s) or their Affiliates, or their direct and indirect investors, if any, provided that the Director must act in the best interests of the Company as a whole at all times.

4.10 Alternate Directors

- (a) Any Director may, by notice in writing to the Company, appoint a person to be his or her alternate Director to act in his or her place at such times as the Director may determine, provided that alternative Director must be a Qualified Person and approved by the Board. The person to be appointed as an alternate director may be, but does not need to be, a Director.
- (b) An alternate director:

- (i) will be entitled to attend and vote at meetings of the Board, if the appointing Director does not attend that meeting;
 - (ii) is entitled to exercise the vote or votes of each Director the alternate Director represents as an alternate (in addition to any votes that the alternate Director may have as a Director in his or her own right, if applicable);
 - (iii) is entitled to receive notice of Board Meeting, materials and other information in connection with any Board meeting in the same way that Directors are entitled to receive notice of such meetings, materials and information;
 - (iv) who attends a Board Meeting is counted, for quorum purposes, as a Director for each Director on whose behalf the alternate Director is attending the meeting (in addition to being counted as a Director in his or her own right, if applicable).
- (c) The appointment of the alternate director will cease on the earliest of:
- (i) automatically on the alternate Director's appointing Director ceasing to be a Director;
 - (ii) on a date specified for that cessation in the notice of appointment of the alternate Director (if any); or
 - (iii) on the alternate Director's appointing Director providing notice in writing to the Company revoking the appointment.

4.11 Observer

- (a) The Board may consent to a Shareholder's request from time to time to appoint one or more persons as observers (each an **Observer**) to attend any meeting of the Board or any other board of directors meeting of any Group Company provided the Observers right to attend any meetings is subject to complying with the terms specified by the Board in relation to their appointment (including any confidentiality arrangements).
- (b) Any Observer will be entitled to attend, but not vote at, any meetings of the board of directors of any Group Company in respect of which the Observer has been appointed.
- (c) The Company will, or will procure that the relevant Group Company deliver all notices, written materials and other information given to Directors in connection with any meetings of the board of directors which an Observer is entitled to attend to the Observer at the same time that those materials or information are given to the directors of the relevant Group Company.

4.12 Directors' Remuneration

The Company may pay (at its discretion) any Directors' fees.

4.13 Expenses of Directors and Observers

A Director or Observer is entitled to be reimbursed out of the funds of the relevant Company Group Member for reasonable travelling, accommodation and other expenses which the Director or Observer incurs when travelling to or from meetings of the Board or board Meetings of any other Company Group Member (or a committee of the Board or board of any other Company Group Member) or when otherwise engaged on the business of a Company Group

Member subject to, and in accordance with, any policy adopted by the Board from time to time relating to such expenses.

4.14 Board Meetings

- (a) Board Meetings shall be held at least once a quarter or as determined by the Board, from time to time.
- (b) Each Director must be given at least 3 Business Days prior written notice of any Board Meeting (unless all Directors otherwise agree). The notice must provide reasonable details of the matters to be considered at the meeting and the business to be put to the vote of the Directors as well as the matters required by clause 4.14(c).
- (c) The notice of a Board Meeting must include an agenda accompanied by:
 - (i) a report from the Company on the trading performance in each month since the last Board Meeting, in a form determined by the Board, from time to time; and
 - (ii) a copy of all papers to be considered at that meeting.
- (d) All Board Meetings to be held must permit Directors to participate through technological means such as video conference or teleconference. If the technological link fails, the meeting shall be adjourned until the failure is rectified.
- (e) If a Board Meeting is held in two or more places linked together by any technology:
 - (i) a Director present at one of the places is taken to be present at the meeting unless and until the Director states to the Chairperson of the meeting that the Director is discontinuing his or her participation in the meeting; and
 - (ii) the Chairperson of the meeting may determine at which place the meeting will be taken to have been held.

4.15 Quorum for Board Meetings

- (a) The quorum for a meeting of the Board is two Directors, of whom at least one must be a PEP Director and, for such time as the Board comprises a Class B Director, at least one must be a Class B Director.
- (b) If a quorum is not present at all times during a Board Meeting, the meeting must be adjourned and reconvened at such time and place as determined by the Directors present (provided that notice of the time, date and place of the reconvened meeting must be given to each Director not less than 48 hours before the meeting).
- (c) If the quorum requirements referred to in clause 4.15(a) are not met for two consecutively scheduled Board Meetings under clause 4.15(b), then the next Board Meeting may proceed provided there is at least one PEP Director present.

4.16 Directors' voting rights

At a meeting of the Board:

- (a) on each resolution, subject to clauses 4.17 and 4.18, each Director has 1 vote;
- (b) the Chairperson, if any, will not have a casting vote in addition to his or her deliberative vote; and

- (c) all decisions are by simple majority vote, unless otherwise expressly provided in this Deed.

4.17 Absent PEP Directors

In relation to any resolution of the Board in respect of which:

- (a) a PEP Director is not present at the relevant meeting of the Board and is not able to vote on the resolution and there is no alternate Director appointed by that PEP Director who is present at the meeting and able to vote on the resolution; and/or
- (b) the PEP Shareholders have not appointed the maximum number of Directors they are entitled to appoint at that time in accordance with clause 4.2(a),

each PEP Director or alternate Director for a PEP Director who is present at the meeting and able to vote on the resolution will have an additional vote or votes equal to:

- (c) the aggregate number of PEP Directors described in clause 4.17(a) plus the number of additional Directors which the PEP Shareholders are entitled to appoint in accordance with paragraph clause 4.2(a) but have not; *divided by*
- (d) the number of PEP Directors and alternate directors for PEP Directors present at the meeting and able to vote on the resolution.

Fractional voting entitlements must be recognised and counted when cast.

4.18 Absent Class B Directors

In relation to any resolution of the Board in respect of which:

- (a) a Class B Director is not present at the relevant meeting of the Board and is not able to vote on the resolution and there is no alternate Directors appointed by that Class B Director present at the meeting and able to vote on the resolution; and/or
- (b) Class B Shareholders have not appointed the maximum numbers of Directors they are entitled to appoint at that time in accordance with clause 4.2(b) or 4.2(c) (as applicable),

each Class B Director or alternate director for a Class B Director appointed by the Class B Shareholders who is present at the meeting and able to vote on the resolution will have an additional vote or votes equal to:

- (c) the aggregate number of Class B Directors described in clause 4.18(a) plus the number of additional Directors which the Class B Shareholders are entitled to appoint in accordance with clause 4.2(b) but have not; *divided by*
- (d) the number of Class B Directors and alternate directors for Class B Directors, in each case appointed by the Class B Shareholders, present at the meeting and able to vote on the resolution.

Fractional voting entitlements must be recognised and counted when cast.

4.19 Written resolutions

- (a) A written resolution circulated to all the Directors, and signed by those Directors who would be capable of approving the relevant resolution if it was considered at a Board meeting duly convened in accordance with this Deed will be as valid and effective as a resolution duly passed at a meeting of the Board called and held in accordance with this Deed.

- (b) The document may be in counterparts, signed by one or more Directors and may be circulated by facsimile or email or such other technology platform or document exchange system approved from time to time by the Board.

4.20 Board decisions

- (a) No resolution of the Directors will be carried:
 - (i) unless, subject to the Act or if clause 4.20(b) applies, it is passed by a majority of votes entitled to be cast at the time of the vote; and
 - (ii) if the passing of the resolution, or the circumstances surrounding it, are inconsistent with the provisions of this Deed.
- (b) The following Board resolutions require a Special Director Approval:
 - (i) the acquisition of any businesses (either by way of a share or asset acquisition) having a value of more than \$50,000,000 and which is to be funded from either: (a) the proceeds of issuing Securities; (b) through non-cash consideration in the form of Securities; or a combination of (a) and (b); or
 - (ii) any transfer of Shares or Securities other than as contemplated by clauses 14.1(b)(i) to 14.1(b)(viii) (inclusive).

4.21 Committees

- (a) The Board may constitute committees of the Board from time to time. Such committees will have authority to approve any matters delegated to it by the Board.
- (b) The composition of such committees will be as determined by the Board from time to time.
- (c) The Directors may, at any time and from time to time, revoke or vary any and all powers delegated the Board to any committee in terms of this clause 4.21.

5. Shareholders

5.1 Shareholders' meetings

Subject to the Act, the Board may call a meeting of Shareholders at a time and place as the Directors resolve.

5.2 Quorum for Shareholders' meetings

- (a) A quorum for a meeting of Shareholders is constituted by the presence of two or more Shareholders, of whom at least one is a PEP Shareholder and, where the Class B Shareholders hold 10% or more of the Shares, at least one is a Class B Shareholder.
- (b) No business may be transacted at any meeting of Shareholders unless a quorum is present at the commencement of the meeting, except for the adjournment of the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a meeting of Shareholders, the meeting shall be adjourned to the date 5 Business Days from the date of the original meeting, at the same time and place of the original meeting and the quorum for that re-convened meeting of Shareholders is the presence of one PEP Shareholder.

5.3 Chairperson

The Chairperson of a general meeting does not have a casting vote.

5.4 Shareholder voting rights

- (a) Each Shareholder is entitled to cast votes by reference to the number of fully paid Shares held by it.
- (b) If the number of Shareholders who are required to approve a matter sign and date a document (or two or more documents which are in identical terms) which was sent to all Shareholders and contains a statement to the effect that they are in favour of the matter set out in the document, then the matter is taken to have been approved (as of the date of the last signature required to reach the number of Shareholders required to approve such matter).

5.5 Shareholder decisions

- (a) No resolution of Shareholders will be carried:
 - (i) unless, subject to the Act or clause 5.5(c) applies, it is passed by a majority of votes entitled to be cast at the time of the vote;
 - (ii) if the passing of the resolution, or the circumstances surrounding it, are inconsistent with the provisions of this Deed.
- (b) A Shareholder may have regard to and represent the interests of that Shareholder and may act on the wishes of that Shareholder in exercising any power to vote in relation to the Company.
- (c) The Company may not, and must ensure that each Company Group Member does not take any action or pass any resolution in respect of any of the matters set out in Schedule 3 unless the action or resolution has been approved by a Special Majority Resolution.

5.6 Meetings of Class B Shareholders

- (a) Meetings of Class B Shareholders (**Class B Meetings**) will be held in order to facilitate the exercise of Class B Shareholders' rights to appoint, remove and replace directors under clauses 4.2(b) and 4.2(c).
- (b) The provisions of clauses 5.2 and 5.4 and apply to Class B Meetings, with the following changes:
 - (i) any action or resolution in a Class B Meeting will be made by the affirmative vote of a Simple Majority of Class B Shareholders;
 - (ii) a quorum for Class B Meeting is constituted by the presence of two or more Class B Shareholders; and
 - (iii) only Class B Shareholders are permitted to vote at a Class B Meeting.

6. Management of the Company Group

6.1 Management

- (a) Subject to applicable law and this Deed, the overall direction and management of the Company and each other Company Group Member is vested in the Board including the formulation of policies to be applied in the conduct of the Business.

- (b) The Board and the board of each other Company Group Member must ensure that the Business is managed in accordance with this Deed, the Constitution and the Business Plan and Budget.
- (c) Decisions which are not part of the day to day management of the Company Group must be made at meetings of the Board. Any Director may make a submission to the Board specifying matters for determination by the Board which are not within the day to day management of the Company Group.
- (d) The CEO and such other persons as the Board determines from time to time are authorised by the Company to manage the Business and implement the Business Plan and Budget on a day to day basis, subject to any directions of the Board and subject to this Deed. The Board may revoke or vary such authorisation in its absolute discretion and at any time and from time to time.

6.2 Executives

- (a) The Board may remove and replace the CEO, CFO and any other direct report of the CEO.
- (b) The CEO will report to and serve under the direction of the Board and is subject to any lawful direction or delegation (or revocation of a prior delegation) from the Board.
- (c) The CFO will report to and serve under the direction of the CEO (or as the Board otherwise resolves) and will be responsible for managing the financial affairs of the Business on a day to day basis in accordance with the Business Plan and any policies approved by the Board from time to time.

6.3 Compliance, Corporate Governance and Risk Management

The Company must establish and comply with, and each other Company Group Member must comply with, a compliance, corporate governance and risk management plan which:

- (a) is appropriate for a group of companies conducting the Business; and
- (b) is of a standard which is at least comparable with that generally accepted in the markets in which the Business operates.

6.4 Company covenants

The Company undertakes to each Shareholder to do or cause to be done the following:

- (a) take out and maintain insurance policies in respect of all risks that a prudent person would insure against in relation to the conduct of a business similar to the Business including indemnity insurance policies in respect of the assets of the Company and review those policies annually so as to ensure that the policies are maintained so as to achieve the objective in this clause 6.4;
- (b) subject to the provisions of the Act, take out and, at all times maintain directors' and officers' liability insurance in relation to all Directors and officers of the Company and its Subsidiaries providing cover in the amount and of a level reasonably required by the Boards; and
- (c) that the Company and each of its Subsidiaries will enter into deeds of access and indemnity with each Director and officer of the Company and each of its Subsidiaries, which deeds shall provide for indemnification of the Director or officer, access to company books by the Director or officer for the purpose of defending an action against the Director or officer for breach of duty and maintenance of

directors' and officers' insurance for the Director or officer, after he or she ceases to be a Director or officer, each to the maximum extent permitted by law.

7. Reporting and records

7.1 Information

- (a) The Company Group must maintain books and records as required by law.
- (b) Each Director must at all times be given reasonable access to:
 - (i) inspect the assets of the Company;
 - (ii) inspect and take copies of documents relating to the Business, including the accounts of the Company; and
 - (iii) discuss the affairs, finances and accounts of the Company with its officers, employees, agents, representatives or contractors and the Auditor.
- (c) Each Director may disclose all information (confidential or otherwise) about the affairs, finances and accounts of the Company to the Shareholder appointing him or her.

7.2 Information to PEP

- (a) The Company, and the CEO and CFO, must promptly deliver to, or as directed by, PEP such financial and other information relating to the Company Group as PEP may request, including any information required by any financiers or prospective financiers of the Company or the Company Group.
- (b) The Company must provide to each PEP Shareholder, upon written request, full access to:
 - (i) inspect the assets of the Company Group;
 - (ii) inspect and take copies of documents relating to the Business or the Company Group; and
 - (iii) discuss the affairs, finances and accounts of the Company Group with the Company Group's officers, employees, agents, representatives or contractors and the Auditor.

7.3 Information to Class B Shareholders and Management Shareholders

The Company must provide a copy of the latest Audited Financial Statements of the Company Group on request by a Class B Shareholder or a Management Shareholder, within a reasonable time of the request.

7.4 Exception

Notwithstanding clause 7.1 and 7.2, each Shareholder acknowledges and agrees that the Company Group holds and maintains Sensitive Information by virtue of its agreements with customers and agrees not to request any such Sensitive Information, and the Company is not required to disclose any Sensitive Information to any Shareholder including the PEP Shareholders.

7.5 Business Plan and Budget

- (a) At least 1 month before the commencement of each Financial Year following the Implementation Date, the Company must procure that the CEO, in consultation with the Board, prepares and distributes to the Directors a draft Business Plan and Budget for the upcoming Financial Year.
- (b) The Directors must consider the draft Business Plan and Budget and, subject to compliance with clause 7.6, approve a Business Plan and Budget for the next Financial Year before commencement of the relevant Financial Year.
- (c) The Company must ensure that the Company Group conducts its Business in each Financial Year in accordance with the Business Plan and Budget approved and adopted by the Board for that financial Year, or as may be amended by the Board from time to time in accordance with clause 7.6.

7.6 Variation of Business Plan and Budget

The Board may, at their discretion, agree to amend the Business Plan and Budget at any time during a Financial Year.

8. Dividends

8.1 Decision to pay Dividend

Subject to the Act, a decision to pay and the amount of any Dividend will be at the sole discretion of the Board, subject to:

- (a) retention of such reasonable and proper reserves for working capital requirements, possible future acquisitions, capital expenditure, debt amortisation or other actual or contingent liabilities or commitments of the Company Group as the Board considers reasonably appropriate; and
- (b) such Dividend not resulting in a breach of any covenant or undertaking of the Company Group to any bank or financial institution or under any other material contract of the Company Group.

8.2 Entitlement to Dividend

- (a) Each Shareholder (as at the relevant record date) will be entitled to receive its Relevant Proportion of any Dividend declared by the Board.
- (b) The Parties agree and acknowledge that, as at the date of this Deed, there is no intention for any Dividends to be declared or paid for a period of 2 years commencing on the Implementation Date.

8.3 Dividend reinvestment plan

- (a) The Board may elect to establish a dividend reinvestment plan providing each Shareholder with the right to elect to apply the proceeds of any Dividend payable to it in respect of its Shares towards subscription for further Shares in the same class in the Company.
- (b) Shares to be issued pursuant to a dividend reinvestment plan established under clause 8.3(a) will be issued at Fair Market Value, as determined by the Board in good faith (**Issue Price**).
- (c) If a Shareholder (**Disputing Shareholder**), acting reasonably, disagrees with the Board's determination of the Fair Market Value, it must give the Company a notice

(Referral Notice) within 2 Business Days of receiving notice from the Board of the Issue Price for the Shares to be issued pursuant to the dividend reinvestment plan, specifying the grounds on which it disagrees with the calculation of the Fair Market Value. If the Company receives a Referral Notice in accordance with this clause 8.3(c) the independent valuation process in clause 22 will apply.

9. Further funding and issue of Securities

9.1 No obligation

No Shareholder will be obliged to provide any funds of any nature whatsoever to or on behalf of any Company Group Member, whether by way of loans or subscription for Securities or debentures, provide any form of financial accommodation to or on behalf of any Company Group Member, or guarantee or secure the obligations of any Company Group Member.

9.2 Further funding

If the Company Group requires capital including for the purposes of business development, capital expenditure or any other growth opportunity, the Company must, prior to seeking funding from Shareholders as contemplated by the remainder of this clause 9, use all reasonable endeavours to utilise the cash reserves of the Company Group in the first instance, and if such cash is not sufficient, use all reasonable endeavours to utilise debt funding (subject to availability of commercially acceptable terms).

9.3 Issues of Shares

- (a) If, in the reasonable opinion of the Board, the procurement of further funding by the Company as contemplated by clause 9.2 is not in the commercial best interests of the Company or following exhausting the options contemplated under clause 9.2, the Company may issue further Securities to the Shareholders in accordance with clause 9.3(b).
- (b) The Company must not issue any Securities unless the issue is:
 - (i) an issue of Securities permitted in accordance with clause 9.4; or
 - (ii) issue of Securities pursuant to a pro rata offer in accordance with clause 10.

9.4 Permitted Issues

For the purposes of clause 9.3(b)(i), the Company may issue Securities (or agree to issue or grant any option or right to issue Securities, or enter into a contract, arrangement or understanding with a similar economic effect) if the issue is approved by the Board and is:

- (a) an issue of Class A Shares to PEP Shareholders as contemplated by clause 2 and consistent with the Scheme;
- (b) an issue of Class B Shares to shareholders of the Target pursuant to the Scheme;
- (c) an issue of Securities to a Manager (or an Affiliate of a Manager) by way of incentives including pursuant to, or as contemplated by, the Management Incentive Plan;
- (d) an issue of Securities to Employees pursuant to an Employee Share Option Plan (including upon exercise of options or performance rights or conversion of instruments into Securities (if applicable) granted under the Employee Share Option Plan);

- (e) an issue of Securities pursuant to a dividend reinvestment plan established under clause 8.3;
- (f) an issue of Securities to Third Party investors pursuant to an IPO;
- (g) an issue of Securities as non-cash consideration for an arms' length, bona fide acquisition of a company, business or assets by a Company Group Member provided that any issue of Securities under this clause 9.4(g) is not to PEP or an Affiliate of PEP and does not involve Class B Shares being issued to a person other than an existing Class B Shareholder;
- (h) an issue of Securities under a Reorganisation Event provided that the Reorganisation Event does not dilute the interests of any Shareholder;
- (i) an issue of Securities to which all of the Directors consent in writing, provided PEP Directors are not the only Directors of the Company;
- (j) an issue of Securities to PEP or an Affiliate of PEP (**Emergency Funding Shares**), if the Board determines (acting reasonably), that an urgent injection of funds is appropriate in order to:
 - (i) ensure that the Company Group does not breach (or ceases to breach) the covenants and conditions of its external debt financing, or is otherwise required by its external debt financiers; or
 - (ii) ensure that the Company Group does not experience (or ceases to experience) an Insolvency Event,

provided however that:

- (iii) the process set out in clause 10 is followed after such injection of funds to give all other Shareholders (each Shareholder an **Emergency Funding Catch-up Offeree**) the opportunity to subscribe for further Securities, or to acquire Securities from PEP or its Affiliate, to maintain their Relevant Proportion prior to the injection of funds by PEP or its Affiliate and having regard to any additional Securities issued to the Shareholders of the Emergency Funding Shares under clause 9.4(j)(iv) (**Emergency Funding Catch-up Shares**);
- (iv) if the issue price for the Emergency Funding Catch-up Shares determined under clause 10 (**Emergency Funding Catch-up Share Price**) is less than the issue price of the Emergency Funding Shares, then the Company must, as soon as reasonably practicable after the determination of the issue price of the Emergency Funding Catch-up Shares, do all things necessary to ensure that the PEP Shareholders' holdings of Securities reflect the number of Emergency Funding Shares that would have been issued to the Shareholders of the Emergency Funding Shares had they been issued at the Emergency Funding Catch Up-Share Price, including issuing additional Securities for nil or nominal consideration; and
- (v) if the Emergency Funding Catch-up Share Price is greater than the issue price of the Emergency Funding Shares, then the Shareholders of the Emergency Funding Shares must, as soon as reasonably practicable after the determination of the Emergency Funding Catch-up Share Price, transfer to the Emergency Funding Catch-up Offerees in their Relevant Proportions (as determined immediately prior to the issuance of Emergency Funding Shares) the Excess Emergency Funding Shares for nil consideration; or

- (k) an issue of Securities to PEP or an Affiliate of PEP (**M&A Shares**), if the Board determines (acting reasonably) that an injection of equity funding is required to implement an arms' length, bona fide acquisition of a company, business or assets by a Company Group Member and the timing required to implement the process set out in clause 10 would adversely affect the prospects of the Company Group implementing the transaction provided however that:
- (i) the process set out in clause 10 is followed after such injection of funds to give all other Shareholders (each Shareholder an **M&A Catch-up Offeree**) the opportunity to subscribe for further Securities, or to acquire Securities from PEP or its Affiliate, to maintain their Relevant Proportion prior to the injection of funds by PEP or its Affiliate and having regard to any additional Securities issued to the Shareholders of the M&A Shares under clause 9.4(k)(iii) (**M&A Catch-up Shares**);
 - (ii) if the issue price for the M&A Catch-up Shares determined under clause 10 (**M&A Catch-up Share Price**) is greater than the issue price of the M&A Shares, then the Shareholders of the M&A Shares must, as soon as reasonably practicable after the determination of the issue price of the M&A Catch-up Shares, transfer to the M&A Catch-up Offerees in their Relevant Proportions (as determined immediately prior to the issuance of M&A Shares) the Excess M&A Shares for nil consideration; and
 - (iii) if the M&A Catch-up Share Price is less than the issue price of the M&A Shares, then the Company must, as soon as reasonably practicable after the determination of the issue price of the M&A Catch-up Shares, do all things necessary to ensure that the PEP Shareholders' holdings of Shares reflect the number of M&A Shares that would have been issued to the Shareholders of the M&A Shares had they been issued at the M&A Catch Up-Share Price, including issuing additional Shares for nil or nominal consideration.

9.5 Classes of Securities

- (a) Other than as expressly provided in this Deed, Class A Shares and Class B Shares rank equally, and the rights and obligations attaching to Class A Shares and Class B Shares are identical.
- (b) If at any time a:
 - (i) Class A Share or Class C Share is issued or transferred to a Class B Shareholder, it will automatically and immediately convert to a Class B Share; or
 - (ii) Class A Share or Class B Share is issued or transferred to a Class C Shareholder (that, for the avoidance of doubt, is not also a Class B Shareholder), it will automatically and immediately convert to a Class C Share;
 - (iii) Class B Share or Class C Share is issued or transferred to a PEP Shareholder, it will automatically and immediately convert to a Class A Share.
- (c) Class A Shares, Class B and Class C Shares will otherwise not convert to another class of Security.
- (d) Subject to compliance with the Act and other applicable laws, the conversion of any Securities in-to any other class of Securities will not constitute a cancellation, redemption or termination of the Securities or the issue, allotment or creation of new Securities, but will have the effect of varying the status of, and the rights attaching

to, the Securities so that they become Securities of the class into which they are converted. For clarity, any Securities that are converted in accordance with this clause 9.5 remains on issue at all times throughout the Conversion.

9.6 Nominated Affiliate

Subject to compliance with clauses 9.7, 11 and 12 a PEP Shareholder may nominate an Affiliate (**Nominated Affiliate**) to exercise its right to make an offer to subscribe for new Securities under clauses 9 and 10, and the Company must, subject to receipt of the relevant subscription amount and compliance with clauses 9 and 10, issue to the Nominated Affiliate the number of new Securities allocated to the PEP Shareholder.

9.7 Accession Deed

The Board must not allot or issue any Securities to any person that is not a Shareholder until the proposed allottee has executed, and delivered to the Company, an Accession Deed. If a proposed allottee executes or delivers an Accession Deed the Parties accept such a person as a party to this Deed.

10. Pro rata issue of Shares

10.1 Pro rata offer to Shareholders

For purposes of clause 9.3(b)(ii), the Board may resolve to issue Securities, provided that those Securities are offered to all Shareholders in accordance with this clause 10.

10.2 Basis of Issue

The Company must ensure that the issue is conducted on the following basis:

- (a) the Company must in the first instance, offer each Shareholder in each class of Securities its Relevant Proportion of the total number of Securities to be issued in that class. The Company must serve notice on the holders of each class of Shares (**Issue Notice**) specifying:
 - (i) the terms of issue;
 - (ii) the issue price per new Securities in the relevant class which must be equal to Fair Market Value as determined by the Board in good faith, at the date of the Issue Notice;
 - (iii) the total number of new Securities to be issued (as well as the total number of new Securities to be issued in each class);
 - (iv) the number of new Securities for which the Shareholder would need to subscribe to maintain its Relevant Proportion noting that Shareholders have the right to accept for the whole or part of their entitlement;
 - (v) if some or all of the new Securities will be:
 - A. Ordinary Shares, the number of new Securities which constitutes the Shareholder's Relevant Proportion of those Ordinary Shares; and/or
 - B. any other class of Securities, the number of new Securities for which the Shareholder would need to subscribe in order to maintain the Shareholder's existing Relevant Proportion (after accounting for any Ordinary Shares to be issued), and

- (vi) the date on which acceptance of the offer must be received by the Company which date must not be less than 5 Business Days after the date of the Issue Notice (**Acceptance Period**).
- (b) if a Shareholder (**Disputing Shareholder**), acting reasonably, disagrees with the Board's determination of the Fair Market Value of the new Securities, it must give the Company a notice (**Referral Notice**) within 2 Business Days of receiving the Issue Notice, specifying the grounds on which it disagrees with the calculation of the Fair Market Value of the new Securities. If the Company receives a Referral Notice in accordance with this clause 10.2(b) the independent valuation process in clause 22 will apply and the Issue Notice will be reissued following the determination of the Fair Market Value of the Securities under clause 22 and will constitute the Issue Notice for the purpose of this clause 10;
- (c) the issue must be for cash;
- (d) if a Shareholder accepts the offer made to it pursuant to clause 10.1 in respect of some or all of the Securities offered to it, the Shareholder must pay the agreed subscription amount at such time and in such manner that the Company directs the Shareholder in writing or as set out in the offer (not being less than 10 Business Days after the date of the Issue Notice);
- (e) in the event a Shareholder (**Non-contributing Shareholder**) does not take up all or any part of its entitlement within the Acceptance Period:
 - (i) that Non-contributing Shareholder will cease to have any right to apply to subscribe for the Securities which have not been taken up; and
 - (ii) subject to clause 10.2(h), any other Shareholder who accepted their entitlement in full within the Acceptance Period (each an **Oversubscribing Shareholder**), may give notice to the Company within 5 Business Days after the expiry of the Acceptance Period (**Secondary Acceptance Period**) that it wishes to subscribe for the Securities not taken up by the Non-contributing Shareholders in which case the Oversubscribing Shareholders may subscribe for the new Securities not taken up by the Non-contributing Shareholders (in which case, at the conclusion of the Secondary Acceptance Period, those new Securities will be issued to the Oversubscribing Shareholders in accordance with the Relevant Proportions of Shares held by the Oversubscribing Shareholders);
- (f) the Company may issue any new Securities that are not subscribed for by Shareholders in accordance with clauses 10.2(a) to 10.2(e) to any Shareholder or Shareholders or any Third Party or Third Parties approved by the Board within 40 Business Days after the expiry of the later of the Acceptance Period and the Secondary Acceptance Period (as applicable) on terms no more beneficial to the subscriber than those set out in the offer made pursuant to clause 10.1; and
- (g) if the Company does not issue the new Securities within 40 Business Days after the expiry of the Acceptance Period or the Secondary Acceptance Period (as applicable), it may not issue those new Shares without first complying again with clause 10.2; and
- (h) a PEP Shareholder may subscribe for Securities that another PEP Shareholder has elected not to subscribe for and, provided that a PEP Shareholder subscribes for such Securities within 3 Business Days after the expiry of the Acceptance Period, such Securities will not be included in the Securities offered under clause 10.2(e)(ii).

11. Maximum number of Members

Notwithstanding any other provision of this Deed, except the approval of the PEP Shareholders or in connection with an IPO pursuant to clause 19:

- (a) the Company must not issue Securities to a person who is not a Member; and
- (b) no party may Dispose of any Securities to a person who is not a Member,

if that issue or Disposal of Securities would result in there being more than 50 Members (calculated assuming that at the time of that issue or Disposal of Securities, all Securities convertible into Shares or another class of Securities have been converted into Shares by their holders).

12. No requirement to prepare disclosure document

Any person's rights to be offered Shares, to subscribe for or transfer or otherwise Dispose of Shares under this Deed are subject to those rights not requiring a Company Group Member to issue a disclosure document (including a prospectus) or a product disclosure statement, undertake any registration or filing with any Government Agency or take any comparable action, whether under Chapter 6D or Chapter 7 of the Act or any comparable legislation in any other jurisdiction, unless the Board determines otherwise. Neither the Company nor any other Party will be in breach of this Deed if it fails to offer or issue any Shares to any person, or give any notice which would constitute an offer of any Shares to any person, in circumstances where such offer or issue of Shares would require the taking of any action described in this clause 12.

13. Management and employee equity

13.1 Incentive Plans

- (a) As soon as practicable following the Implementation Date, the Board will consider the adoption by the Company of a Management Incentive Plan and an Employee Share Option Plan. This may include:
 - (i) the subscription of Securities by Managers; and/or
 - (ii) the issue, to Managers, of incentive securities rights that are convertible or exercisable into Securities; or
 - (iii) the issue, to Employees, of incentive securities rights that are convertible or exercisable into Securities.
- (b) If the Management Incentive Plan or Employee Share Option Plan involves the issue of Shares or Securities that are convertible or exercisable into Shares, then prior to the Shares being issued or transferred to the Manager or Employee, the Manager or Employee must execute an Accession Deed in order to become a Shareholder.
- (c) Any Shares issued to Management Shareholders under the Management Incentive Plan will be designated as Class C Shares. Subject to any voting rights prescribed by the Act, Class C Shares are non-voting shares.

14. Restrictions on Disposal and Deemed Disposals

14.1 Restrictions on disposals of interests

- (a) A Shareholder may not Dispose of any Shares except in accordance with this Deed.

- (b) A Shareholder may not Dispose of its Shares other than if the Disposal is:
 - (i) permitted under clause 14.2 (Permitted Transfers);
 - (ii) required under clause 14.3 (Change of Permitted Transferee);
 - (iii) made in accordance with clauses 15 (Drag Along) or 16 (Tag Along);
 - (iv) made as part of an Exit pursuant to clause 18, including an IPO pursuant to clause 19;
 - (v) made pursuant to clause 20 (Compulsory Transfer);
 - (vi) made pursuant to clause 21 (Disposal of Small Holdings);
 - (vii) by PEP or an Affiliate of PEP to an Emergency Funding Catch-up Offeree or an M&A Catch-up Offeree pursuant to clause 9.4(j) or 9.4(k); and
 - (viii) in respect of a Nominee Transfer pursuant to clause 23; or
 - (ix) approved by way of a Special Director Approval.
- (c) Each Shareholder must take all such actions as they are permitted to do by law so that any purported Disposal of Shares which does not comply with this Deed will be of no force or effect.
- (d) Each Share certificate issued by the Company must include a statement that:

"Transfer and disposal of Shares in the Company are subject to restrictions contained in the Shareholders Agreement relating to the Company dated [●] and its Constitution."

14.2 Permitted Transfers

Subject to clause 23 and 14.3:

- (a) any Disposal of Shares by a Class B Shareholder to a Permitted Transferee of that Shareholder subject to such party signing an Accession Deed; and
- (b) any Disposal of Shares by a PEP Shareholder to Permitted Transferee of that PEP Shareholder subject to such party signing an Accession Deed.

14.3 Change of Permitted Transferee

In the event that any person to whom Shares are Disposed of pursuant to clause 14.2 ceases to be within the required relationship to the original transferor then, that person must, within 15 Business Days of so ceasing, Dispose of all such Shares to the person who originally transferred them or to any person falling within the required relationship to the original transferor on the same terms (except as to consideration) as they were originally transferred.

14.4 Accession Deed

Notwithstanding any other clause in this Deed, a Disposal of Shares to a person that is not a Shareholder is void and of no effect unless and until the proposed transferee has executed, and delivered to the Company and each Shareholder, an Accession Deed.

14.5 Related parties

- (a) If a Class B Shareholder Disposes of any Class B Shares to a Permitted Transferee or the Nominee, or purports to Dispose of any Class B Shares other than in compliance with this Deed, that Class B Shareholder remains liable in respect of all covenants, warranties, undertakings and obligations given by it under this Deed (including in respect of those Class B Shares).
- (b) Each Class B Shareholder must ensure that each Permitted Transferee complies with all of its obligations under this Deed.

14.6 Deemed release

Despite any other provision of this Deed, on completion of any sale or other Disposal of Securities or Shares by any Shareholder other than PEP, after which the relevant Shareholder will no longer hold any Securities or Shares, the Company, PEP and its Affiliates and the other Shareholders will be deemed to be unconditionally released from all Liabilities to that Shareholder and any other Claims by that Shareholder of any nature whatsoever, actual or contingent, in respect of any prior breach by the Company, PEP, its Affiliates or any other Shareholder of any of their respective obligations under this document (whether that Liability or Claim is known at the relevant time or not).

14.7 Obligations on certain conversions and Disposals of Securities

If the Company wishes to undertake a conversion, buy back, redemption or cancellation of any Securities in accordance with this Deed, the Constitution, an incentive plan or the terms of issue of any Securities (**Relevant Transaction**), each party (in all relevant capacities) must do and perform, and procure that any Directors appointed or nominated by it and/or its Affiliates do and perform, all acts and enter into all documents which are within its power (in any capacity), and use its best endeavours to procure others to do and perform all acts and enter into all documents, which are requested by the Board to give effect to the Relevant Transaction, including:

- (a) voting in favour of the Relevant Transaction at any Board and Shareholder's meetings that may be required;
- (b) if the Relevant Transaction includes a buy back and/or cancellation of any Securities, entering into any buy back agreement or cancellation agreement that may be required to effect the buy back and/or cancellation;
- (c) lodging all necessary documents to effect the Relevant Transaction and giving all necessary notifications of the Relevant Transaction to regulatory authorities; and
- (d) performing those acts necessary to complete the Relevant Transaction in accordance with its terms including paying the price for the Securities and delivering the certificate(s) and, if necessary, executed transfer(s) for the Securities.

To avoid doubt, nothing in this clause 14.7 requires:

- (e) any Director to take any action which would breach any of his or her statutory duties;
- (f) any Shareholder to Dispose of its Securities in circumstances where it is not otherwise required to do so under this document, the Constitution, an incentive plan or the terms of issue of any Securities; or
- (g) any Shareholder to agree to the Disposal of its Securities at a price that is less than that specified in, or on terms which are otherwise inconsistent with a express provision of, this document, the Constitution, an incentive plan or the terms of issue

of those Securities (if any) (as applicable to the Shareholder and the Securities which are subject to the Relevant Transaction).

15. Drag Along Rights

15.1 Drag Along

If PEP wishes to Dispose of any of its Shares to one or more Third Party Buyers pursuant to simultaneous transactions in a manner permitted under this Deed, then it may give a Drag Along Notice to each Shareholder, with a copy to the Company.

15.2 Drag Along Notice

A Drag Along Notice must state:

- (a) the identity of the proposed Third Party Buyer (except where the identity of the Third Party Buyer is unknown due to the proposed sale being by way of auction or dual-track Exit process);
- (b) the number of Shares proposed to be sold by PEP and the percentage of the total number of Shares held by PEP proposed to be sold (in each case, a **Drag Proportion** of the relevant class of Shares, as applicable);
- (c) the sale price (which need not be a cash price) for each Class A Share to be sold by PEP (except where the sale price is unknown due to the proposed sale being by way of auction or dual-track Exit process, in which case a minimum sale price must be specified or where the sale price is unknown due to the proposed sale being by way of IPO, in which case a price range must be specified) (**Drag Price**), which need not be cash consideration, and any other terms of the proposed sale (including any representations, warranties and indemnities to be given) by PEP to the Third Party Buyer (**Drag Sale Terms**); and
- (d) that PEP requires each other Shareholder to sell the Drag Proportion of their Shares (**Dragged Shares**) to the Third Party Buyer at the Drag Price per Share and on terms no less favourable to the other Shareholders than the terms contained in the Drag Sale Terms.

15.3 Effect of Drag Notice

If a Drag Notice is given (and has not been withdrawn pursuant to clause 15.4), then:

- (a) each Shareholder (other than PEP) must sell its Dragged Shares to the Third Party Buyer on the terms stated in the Drag Along Notice;
- (b) the Parties must do all things and execute such documentation as is reasonably necessary or is reasonably required by PEP to effect the proposed sale to the Third Party Buyer, including taking all steps necessary to obtain any approvals required from any Governmental Agency;
- (c) PEP must not complete the proposed sale to the Third Party Buyer unless at the same time, the Third Party Buyer offers to buy all the Dragged Shares on the terms stated in the Drag Notice;
- (d) each Shareholder agrees that, except as otherwise expressly provided for in any relevant transaction documentation, each Shareholder must pay its pro rata share (based on the proceeds from the sale of its Shares as a proportion of all proceeds from the sale of Shares at the same time) of all expenses incurred by the PEP Shareholders and the Group Companies (as the case may be) in connection with the relevant transaction, but only to the extent such expenses are not otherwise paid by the Company or another person; and

- (e) subject to clause 17(a), PEP may require each Shareholder to give reasonable representations and warranties under any agreements relating to the purchase of such Dragged Shares, the Business or the Company Group, provided that:
 - (i) such representations and warranties are given on an equivalent basis by PEP; and
 - (ii) all reasonable endeavours are used to procure a warranty and indemnity insurance policy on a no-recourse basis and on market terms in respect of such representations and warranties.

15.4 Withdrawal of Drag Notice

- (a) A Drag Notice may be withdrawn by PEP at any time by written notice to each Shareholder, with a copy to the Company.
- (b) PEP may issue more than one Drag Notice.

15.5 Power of Attorney

Each Shareholder other than PEP irrevocably appoints the Company as its attorney in accordance with clause 24 on default by it of performance of its obligations under this clause 15.

15.6 Ongoing value of the Business

Each Management Shareholder acknowledges that:

- (a) if the Third Party Buyer wishes to offer the Manager participation in a management incentive plan relating to the Business after the Third Party Buyer's acquisition, then the Manager will consider such opportunity in good faith and with a view to maximising the total value of the Business to that Third Party Buyer; and
- (b) to achieve a successful Exit Event the Manager is likely to be required to commit to continue working in the Business in an executive capacity, on market terms, as reasonably required by PEP following the Exit Event.

16. Tag Along

16.1 Invitation to Tag

If PEP intends to Dispose of any of its Class A Shares to a Third Party Buyer, and has not issued a Drag Notice, or has withdrawn such Drag Notice, it must give an Invitation to Tag to the Shareholders other than PEP with a copy to the Company.

16.2 Contents of Invitation to Tag

An Invitation to Tag must state:

- (a) the identity of the proposed Third Party Buyer (except where the identity of the Third Party Buyer is unknown due to the proposed sale being by way of auction or dual-track Exit process);
- (b) the number of Shares proposed to be sold by PEP and the percentage of the total number of Shares held by PEP proposed to be sold (in each case, a **Tag Proportion** of the relevant class of Share, as applicable);
- (c) the sale price for each Share (except where the sale price is unknown due to the proposed sale being by way of auction or dual-track Exit process, in which case a

minimum sale price must be specified or where the sale price is unknown due to the proposed sale being by way of IPO, in which case a price range must be specified) (**Tag Price**) to be sold by PEP (which need not be cash consideration) and any other terms of the proposed sale (including any representations, warranties and indemnities to be given) by PEP to the Third Party Buyer (**Tag Terms**);

- (d) that the Shareholder has an option (**Tag Option**) to direct PEP to include in the sale to the Third Party Buyer the Tag Proportion of Shareholder's Shares, as applicable (the **Tagged Shares**), at the Tag Price per Tagged Share and on terms no less favourable (subject to clause 17(a)) to the Shareholder than the terms contained in the Tag Terms; and
- (e) the period during which the Tag Option may be exercised, which must not be less than 10 Business Days from the date of the Invitation to Tag.

16.3 Exercise of Tag Option

A Tag Option may be exercised by notice in writing to PEP (with a copy to the Company) within the exercise period stated in the Invitation to Tag. Any exercise of a Tag Option must be for all Tagged Shares and is irrevocable.

16.4 Effect of exercise of Tag Option

If a Shareholder exercises its Tag Option:

- (a) that Shareholder must sell all Tagged Shares to the Third Party Buyer on the terms stated in the Invitation to Tag;
- (b) the Parties must do all things and execute such documentation as is reasonably necessary or is reasonably required by PEP to effect the proposed sale to the Third Party Buyer;
- (c) PEP must not complete the proposed sale to the Third Party Buyer unless at the same time, the Third Party Buyer offers to buy all the Tagged Shares for which a valid notice of exercise has been provided on the terms stated in the respective Invitation to Tag;
- (d) that Shareholder agrees that, except as otherwise expressly provided for in any relevant transaction documentation, each Shareholder who sells Tagged Shares at the same time that PEP sells its relevant Shares must pay its pro rata share (based on the proceeds from the sale of its Tagged Shares as a proportion of all proceeds from the sale of Shares at the same time) of all expenses incurred by the PEP Shareholders selling Tagged Shares and the Group Companies (as the case may be) in connection with the relevant transaction, but only to the extent such expenses are not otherwise paid by the Company or another person; and
- (e) subject to clause 17(a), PEP may require each Shareholder to give reasonable representations and warranties under any agreements relating to the purchase of such Tagged Shares, the Business or the Company Group, provided that:
 - (i) such representations and warranties are given on an equivalent basis to PEP; and
 - (ii) all reasonable endeavours are used to procure a warranty and indemnity insurance policy on a no-recourse basis and on market terms in respect of such representations and warranties.

16.5 Power of attorney

Each Shareholder other than PEP irrevocably appoints the Company as its attorney in accordance with clause 24 on default by it of performance of its obligations under clause 16.

16.6 Tag Option does not apply to certain Disposals

For the avoidance of doubt, this clause 16 does not apply to the following Disposals of Shares:

- (a) Disposals to an Emergency Funding Catch-up Offeree or an M&A Catch-up Offeree under clauses 9.4(j) or 9.4(k);
- (b) in connection with an IPO under clause 19; or
- (c) in connection with a Disposal to a Permitted Transferee.

17. Management Shareholders – Drag and Tag Sale Terms

- (a) For the purposes of clauses 15.3(e) and 16.4(e), a Management Shareholder and/or their Relevant Manager may be required to give additional representations and warranties without such representations and warranties being given on an equivalent basis by PEP or the Class B Shareholders, provided that the Company procures a warranty and indemnity insurance policy on a no-recourse basis and on market terms in respect of such representations and warranties.
- (b) For the purposes of clauses 15.2(d) and 16.2(d), the giving of additional representations and warranties by a Management Shareholder or their Relevant Manager under clause 17(a) will not be considered as terms less favourable to the Management Shareholder than the terms contained in the Drag Sale Terms or Tag Terms (as relevant).

18. Exit Process

18.1 Exit Notice

The PEP Shareholders may, at any time, (which right, for the avoidance of doubt, may be exercised more than once) give a notice to the Company (**Exit Notice**), requiring the Board to appoint a financial adviser or investment bank of good standing (**Financial Adviser**) to act on behalf of the Company and all Shareholders to:

- (a) assist the Board with its evaluation on whether to proceed with an IPO, a Share Sale or Trade Sale or whether to commence preparations concurrently for more than one of those options, in order to obtain the highest valuation of the Company Group and the best return on exit for Shareholders; and
- (b) if the Board decides to proceed with an Exit, to manage the process of preparing for an IPO and/or conducting an auction offer for a Share Sale and/or Trade Sale.

18.2 Exit Assistance

If the Board decides to proceed with an Exit, without prejudice to their other obligations:

- (a) each party must (and the Company must procure that the other Company Group Members) use their best endeavours to ensure that the Exit occurs in accordance with the terms approved by the Board;
- (b) each Shareholder must exercise all rights it has in relation to the Company Group and its Securities to ensure that the Exit is achieved in accordance with the terms

approved by the Board, and no Shareholder will object to the Exit or the process by which the Exit is implemented in accordance with the terms approved by the Board;

- (c) each Shareholder must, and must procure that each Director appointed by it and/or its Affiliates, approve all matters appropriate to ensure that the Exit occurs in accordance with the terms approved by the Board and must not withhold, deny or delay any consent or approval right it has in connection with an Exit;
- (d) each party must (and the Company must procure that the other Company Group Members) do all things, execute all documents and provide all such information and assistance as may be required by the Company or the PEP Shareholders (including preparing any necessary materials for, and giving presentations to, Third Parties and potential financiers, facilitating and supporting any due diligence process required (including providing information requested by the PEP Shareholders), assistance in obtaining Governmental Agency and third party approvals and consents required for the Exit and undertaking any action required clause 19 if the Exit is an IPO) to facilitate the Exit; and
- (e) the Company must appoint financial, legal, taxation, accounting and other advisers nominated by the PEP Shareholders to advise on, and assist with, the Exit.

18.3 IPO

If the Board decides to proceed with an IPO, then clause 19 will apply.

18.4 Trade Sale

- (a) If the Board decides to conduct a Trade Sale, the Company and each Shareholder (and each Shareholder must procure that the Directors) must co-operate and use its best endeavours to do all acts, matters and things within its power to effect the Trade Sale.
- (b) If a Trade Sale is implemented and required by the Company, the parties must (including that the Company must procure that the other Group Companies, and each Shareholder must procure that each director of the Group Companies) do all things and execute all documents necessary to ensure that:
 - (i) the Company distributes the proceeds of the Trade Sale to the Shareholders in accordance with their entitlements under this Deed, the Constitution and the terms of the Shares (net of any applicable tax or other costs and expenses to be paid on behalf of the Group Companies or the Shareholders and net of all amounts which the Board determines should be retained by a Group Company or any third party escrow agent on account of any future contingent payments, including in support of any indemnity or post-completion adjustment (**Retained Amounts**)) as soon as reasonably practicable after completion of the Trade Sale;
 - (ii) as soon as reasonably practicable (which may be at multiple times), the Company distributes so much of the Retained Amounts as are no longer required to be retained on account of any future contingent payments (net of any applicable tax or other costs and expenses to be paid on behalf of the Shareholders); and
 - (iii) if required by PEP, any Group Company is wound up.

18.5 Share Sale

If the Board decides to conduct a Share Sale, the provisions of clause 15 may be applied in connection with the implementation of that Share Sale (with any required modifications to reflect the Exit process).

18.6 Agent for receipt of proceeds

In connection with any Tag Transaction, Drag Transaction or Exit, the Company or any PEP Shareholder may:

- (a) make appropriate arrangements to preserve the confidentiality of the details of the consideration received by each Shareholder in connection with the Tag Transaction, Drag Transaction or Exit; and
- (b) without limiting clause 18.6(a), act as, or appoint any other person with their consent to act as, agent for receipt of the proceeds to be paid to some or all Shareholders in connection with the Tag Transaction, Drag Transaction or Exit.

If the Company acts as, or appoints another person to act as, agent for the receipt of proceeds in accordance with this clause 18.6, distribution of those proceeds in accordance with directions received from the relevant Shareholders will constitute a full payment and distribution of the proceeds and neither the Company nor any other person will be liable to see to the receipt of those proceeds, in the absence of fraud or wilful misconduct.

18.7 Impact of Exit Notice on Permitted Transfers

The issue of an Exit Notice under this clause 17 does not limit the rights of Shareholders to under clauses 14, 15 and 16.

18.8 Power of attorney

Each Shareholder other than PEP irrevocably appoints the Company as its attorney in accordance with clause 24 on default by it of performance of its obligations under this clause 17.

19. IPO

19.1 IPO

- (a) If the Board determines to pursue an IPO (including as part of a dual track Exit process), each Shareholder and each Relevant Manager will undertake the reasonable requests of the Board including:
 - (i) giving all reasonable undertakings and enter into any reasonable escrow arrangements in relation to their Shares as may reasonably be required by the relevant Stock Exchange, Financial Adviser or underwriters or brokers to the IPO;
 - (i) applying to the Stock Exchange for admission of the Company or IPO vehicle, as applicable, to its official list and official quotation of the relevant shares on that stock exchange;
 - (ii) exchanging its Securities for securities in the relevant IPO vehicle or any other company which is proposed by the Board to become (and following such exchange will become) the ultimate holding company of the Company Group provided that such change does not have a materially adverse effect on that Shareholder's interest in the Company Group;
 - (iii) appointing appropriately qualified professional advisors;
 - (iv) Disposing of some or all of its Securities (to a newly incorporated sale vehicle or otherwise) and surrendering the certificates (if any) for its Securities, in each case as requested by the Board; and allowing, and doing all things reasonably required by the Board to give effect to, the

redemption, buy back, purchase and/or cancellation by the Company of all or some of its Securities, provided that the price per Security (net of costs, if applicable) for any such Disposal, redemption, buy back, purchase or cancellation is the same for all Securities of the same class issued on the same terms (and for the purpose of determining this price, Class A Shares, Class B Shares and Class C Shares will be taken to be in the same class of Securities and on the same terms);

- (v) appointing an appropriate board of directors to the Company or IPO vehicle having regard to any advice from the Financial Adviser appointed in connection with the IPO, including an appropriate number of independent non-executive directors for the Company's or IPO vehicle's listed state;
- (vi) if a Relevant Manager, consider in good faith and with a view to maximising the total value of the Business, giving all reasonable undertakings and committing to continue working in the Business in an executive capacity, on market terms, as reasonably required by PEP;
- (vii) if recommended by the underwriters, joint lead managers or Financial Adviser in relation to the IPO, do all things reasonably necessary to effect a change in the number and mix of Shares issued by the Company (or its Subsidiary) provided that such change does not have a materially adverse effect on that Shareholder's interest in the Company Group;
- (viii) if recommended by the underwriters, joint lead managers or Financial Adviser in relation to the IPO, reinvest the recommended proportion of Shares held by it immediately prior to completion of the IPO;
- (ix) assist the Company in preparing a prospectus or similar disclosure document;
- (x) do all things reasonably necessary to obtain requisite Stock Exchange and shareholder approvals, as well as other regulatory approvals, for the IPO, including procuring the passing of all appropriate resolutions of a Company Group Member in general meeting (including any class meeting) or by its directors (subject to their fiduciary obligations);
- (xi) meeting the financial reporting requirements of the Stock Exchange or trading system (including as to trading history, extracts from audited accounts of prior years, cash flow and profit forecasts, working capital reports and indebtedness statements);
- (xii) agreeing to amendments to this document, the Constitution and the constitutional documents of other Group Companies, as appropriate in connection with the IPO; and
- (xiii) provide all reasonable assistance for marketing activities, including road shows,

in each case to achieve an IPO on the terms and structure identified by the Board.

- (b) Each Manager Shareholder and each Relevant Manager acknowledges and agrees that for purposes of clauses 19.1(a)(i) and 19.1(a)(viii) it will be reasonable for each Manager Shareholder to be required to reinvest or agree to restrictions on transfer of a material proportion of the aggregate value of the Shares held by it immediately prior to completion of the IPO.

19.2 Participation in IPO

Subject to clause 19.3, any Shareholder may participate as a selling Shareholder in an IPO and the Company must (or if applicable must ensure that the IPO vehicle and/or any other relevant offering entity will) allow the Shareholder to Dispose of its Securities or its securities in the IPO vehicle (as applicable) in the IPO (without imposing any obligation on the Company to ensure or facilitate any such Disposal of Securities or other securities).

19.3 Restrictions and escrow

Each Shareholder agrees to:

- (a) such restrictions on the number of Securities in the Company or IPO vehicle, as applicable, it is permitted to realise for cash as part of an IPO; and
- (b) if the Shareholder:
 - (i) (in the case of a Class B Shareholder, together with its Permitted Transferees) has a Relevant Proportion of 10% or greater at the time of the IPO; or
 - (ii) is a Management Shareholder,
 such escrow arrangements for its Securities in the Company or IPO vehicle, as applicable, on completion of the IPO,

as the Board may reasonably require, having regard to the advice of the financial adviser and joint lead managers on what is reasonably required or desirable for a successful IPO.

19.4 Relationship deed

If an IPO is undertaken, the Parties must procure that the relevant listed entity (be that the Company or the IPO vehicle) enters into a relationship deed with the PEP Shareholders which includes the following terms:

- (a) the PEP Shareholders will be entitled to collectively appoint up to 3 directors to the board of the listed entity for so long as the PEP Shareholders hold at least 20% of its issued share capital of the relevant listed entity and 2 directors to the board of the listed entity for so long as the PEP Shareholders hold at least 10% of its issued share capital;
- (b) for so long as the PEP Shareholders are entitled to appoint any directors to the board of the relevant listed entity,
 - (i) the PEP Shareholders will also be entitled to appoint up to 3 observers to attend each board meeting of the relevant listed entity;
 - (ii) the relevant listed entity must, on written request of a PEP Shareholder, provide the PEP Shareholder with:
 - A. board packs including monthly trading updates;
 - B. consolidated Audited Financial Statements and quarterly unaudited financial and management reports; and
 - C. any other information reasonably requested by the PEP Shareholders for accounting purposes or to otherwise manage their investment in the relevant listed entity; and

- (c) the listed entity agrees to give a cleansing statement under section 708A of the Act on the request of any PEP Shareholder who is party to the relationship deed and holds not less than the proportion of the shares in the listed entity (as agreed by the Company and PEP) if it proposes to sell-down its securities in the listed entity.

19.5 Consent rights

- (a) No Shareholder may use, and each Shareholder must procure that any Directors or other directors of the Company Group appointed or nominated by it and/or its Affiliates (as applicable) do not use, any consent or approval rights conferred on that Shareholder, those Directors and/or those other directors, whether under this document or any Transaction Document, to prevent, prejudice, hinder or delay the performance by any party of any of its obligations under clauses 15, 16, 17 or this clause 19 or any transaction contemplated by any of those clauses (or any obligation or other matter reasonably incidental to giving effect to such matters).
- (b) If a Shareholder or any Director or other director referred to in clause 19.5(a), fails to give consent or approval within 2 Business Days of a request to do so by the PEP Shareholders or any director of a Company Group Member appointed or nominated by the PEP Shareholders and the failure to give that consent or approval would result in (or would be reasonably likely to result in) the prevention, prejudicing, hindering or delaying of the performance by any party of any such obligations or any such transaction:
 - (i) if the consent or approval is the consent or approval of a Shareholder, the consent or approval will be deemed to have been given at 5.00pm on the 2nd Business Day following the request being made; or
 - (ii) if the consent or approval is the consent or approval of a Director or director of a Company Group Member appointed or nominated by the Shareholder and/or its Affiliates (as applicable), the Shareholder must immediately remove, or procure that the relevant Company Group Member removes, the relevant director and replaces him or her with a person willing and able to give the relevant consent or approval.

19.6 Company's obligations

Without limiting the generality of clause 19.1 above, the Company must:

- (a) pay the costs of preparing the prospectus (or other relevant offer document), advisory fees, underwriting commissions (if any), expenses of due diligence investigations, Stock Exchange fees, fees of the relevant regulatory authorities, legal fees, expert's fees, printing expenses and postage expenses;
- (b) use its best endeavours to satisfy all terms and conditions of admission to listing imposed by the Stock Exchange; and
- (c) use reasonable endeavours to maximise liquidity for all Shareholders in connection with the IPO.

19.7 Power of attorney

Each Shareholder other than the PEP Shareholders irrevocably appoints the Company as its attorney in accordance with clause 24 on default by it of performance of its obligations under this clause 19.

20. Compulsory Transfer

20.1 Right to purchase Shares following Event of Default

- (a) PEP (or at PEP's election, its nominee, including the Company) may purchase another Shareholder's Shares in accordance with this clause 20 if:
 - (i) another Shareholder commits an Event of Default (**Defaulting Shareholder**); and
 - (ii) within three months of the Event of Default Date, PEP notifies the Defaulting Shareholder in writing that it wishes to purchase all or any portion of the Defaulting Shareholder's Shares.
- (b) Shares sold under clause 20.1(a) (**Default Sale Shares**) may be sold to:
 - (i) the Company by way of a purchase, buy back, cancellation as part of a reduction of capital or redemption of the relevant Share (subject to applicable law); and/or
 - (ii) PEP or its nominee (which may include any other Shareholder and/or any third party),

in such combination, as determined by the Board. The Company must notify the relevant Shareholder promptly of any such determination (a **Default Notice**).
- (c) The sale price for Default Sale Shares will be an amount equal to:
 - (i) in the case of an Event of Default within limb (g)(i) of the definition of 'Event of Default' (Relationship Proceedings), the Fair Market Value of the Default Sale Shares measured as at the Event of Default Date, as determined by the Board in good faith; or
 - (ii) in any other case, the lower of the Fair Market Value and the Net Cost of the Default Sale Shares measured as at the Event of Default Date, as determined by the Board in good faith,

(**Sale Price**).
- (d) Despite any other provision of this clause 20, where a Shareholder or their Relevant Manager commits an Event of Default within limb (g) of the definition of 'Event of Default', the Company and the PEP will act reasonably in exercising their rights under this clause 20.

20.2 Default Notice

If a Defaulting Shareholder is required to dispose of its Default Sale Shares, the Default Notice must specify for each Default Sale Share:

- (a) the Sale Price payable for the Default Sale Shares on disposal;
- (b) any conditions and other terms of the disposal required by the Board;
- (c) the Company's reasonable best estimate of the date for completion of the disposal;
- (d) the documents required to be signed by the relevant Shareholder to give effect to the disposal of the Default Sale Shares, copies of which must accompany the Default Notice; and

- (e) such other arrangements as the Board reasonably requires to give effect to the disposal of the Default Sale Shares.

20.3 Referral to Valuer

If a Defaulting Shareholder (**Disputing Shareholder**), acting reasonably, disagrees with the Board's determination of the Sale Price specified in the Default Notice, it must give the Company a notice (**Referral Notice**) within 2 Business Days of receiving the Default Notice specifying the grounds on which it disagrees with the calculation of the Sale Price. If the Company receives a Referral Notice in accordance with this clause 20.3 the independent valuation process in clause 22 will apply.

20.4 Suspension of rights

- (a) If an Event of Default occurs, the rights in this clause 20 are without prejudice to any other rights any other party may have.
- (b) With effect from the date that the Defaulting Shareholder receives a notice stating that it is a Defaulting Shareholder in accordance with clause 20.1, all rights, voting rights and entitlements held by the Defaulting Shareholder are immediately suspended.
- (c) Each suspension under clause 20.4(b) continues in respect of any Shares held by the Defaulting Shareholder until the Event of Default has been remedied to the reasonable satisfaction of the Company.
- (d) For the purposes of this clause 20.4, a Defaulting Shareholder will be deemed to have remedied a breach of clause 14 relating to the Disposal of Shares if the Shares the subject of that breach are transferred back to the Defaulting Shareholder and no loss has been suffered by any Shareholder other than the Defaulting Shareholder as a result of the breach.
- (e) The Defaulting Shareholder's obligations under this Deed continue to apply during the period of any suspension of rights under this clause 20.4.

20.5 Payment of Sale Price and completion

- (a) Upon the sale or disposal of Default Sale Shares, the PEP Shareholders or their nominee or the Company or the Company's nominee, as appropriate, must pay the Sale Price to the Defaulting Shareholder:
 - (i) where the disposal is to the Company, in accordance with clause 20.6; or
 - (ii) where the disposal is to another person, in Immediately Available Funds; and
- (b) the Defaulting Shareholder must do anything (including execute any document) reasonably required by the PEP Shareholders (or their nominee) (or the Company or the Company's nominee, as appropriate) to give effect to the sale of the Default Sale Shares free from any Encumbrances.

20.6 Payment of Sale Price by Company

The Company must pay the Sale Price for any Default Sale Shares acquired by it pursuant to this clause 20:

- (a) in Immediately Available Funds (to be paid within 10 Business Days of the completion of the acquisition of the Default Sale Shares); or

- (b) in the case of the Manager Shareholders only, if and to the extent that the Company is not able to pay, or it would not reasonably be considered prudent to pay, the Sale Price in Immediately Available Funds as determined by the Board in its absolute discretion, by issuing a Company Note for all or part of the Sale Price.

20.7 Power of attorney

In consideration of each other Shareholder entering into this Deed, a Defaulting Shareholder that has received a notice from the PEP Shareholders in accordance with clause 20.1(a)(ii) irrevocably appoints the Company to be its attorney in accordance with clause 24 for the purposes of giving effect to the transactions contemplated by this clause 20 on default by it of any of its obligations under clause 20.

20.8 Other remedies

The rights and remedies contained in this clause 20 are in addition to and not to the exclusion of any other rights or remedies that a party may have against a party in default of this Deed.

20.9 Authorisations

The Parties must do all things necessary to ensure that the Company may acquire any Default Sale Shares as contemplated by this clause 20.

21. Disposal of Small Holdings

21.1 Disposal of Small Holdings

- (a) After the first anniversary of the Implementation Date of the Scheme, the Board may at any time serve written notice (**Small Holding Disposal Notice**) on a Small Shareholder that it requires the Small Shareholder to Dispose of all of its Securities on the terms in this clause 21.
- (b) For the avoidance of doubt, under this clause 21:
 - (i) Small Shareholders may be requested by the Board to Dispose of their Small Holding Securities at different times and in different manners (subject to the price per Small Holding Security being the Fair Market Value of that Small Holding Security at the date of the relevant Small Holding Disposal Notice and no Small Shareholder being required to Dispose of only some of its Securities); and
 - (ii) Small Holding Disposal Notices may be given at multiple times.

21.2 Small Holding Disposal Notice

A Small Holding Disposal Notice must state:

- (a) how the Board requires the Small Shareholder to Dispose of its Small Holding Securities, including whether the Small Holding Securities will be bought-back, redeemed, cancelled (including by way of capital reduction) and/or transferred to another Shareholder or third party nominated by the Board;
- (b) the Fair Market Value per Class B Share comprising of the Small Holding Securities subject to the Small Holding Disposal Notice; and
- (c) the date or dates on which the Disposal of the Small Shareholder's Small Holding Securities will be completed.

21.3 Effect of Small Holding Disposal Notice

- (a) If a Small Holding Disposal Notice is given, each Small Shareholder must Dispose of its Small Holding Securities on the terms stated in the Small Holding Disposal Notice (or any amended Small Holding Disposal Notice given by the Company in accordance with clause 21.3(b)).
- (b) A Small Holding Disposal Notice is revocable and may be amended by the Company (in each case, with the consent of the Board and by written notice to the relevant Small Shareholder) without the consent of the Small Shareholder.

21.4 Co-operation

The Company and all Shareholders:

- (a) must take all actions requested by the Board to give effect to a Small Holding Transaction; and
- (b) must enter into and execute all documents as required by the Board in connection with a Small Holding Transaction.

21.5 Small Holding price

The price payable for a Small Holding Shareholder's Small Holding Securities will be the aggregate Fair Market Value of the Small Holding Securities, as determined by the Board in good faith, at the date of the relevant Small Holding Disposal Notice or any other price agreed between the Small Shareholder and the Company (with Board approval).

21.6 Referral to a Valuer

If a Small Holding Shareholder (**Disputing Shareholder**), acting reasonably, disagrees with the Board's determination of the Fair Market Value of the Small Holding Securities specified in the Small Holding Disposal Notice, it must give the Company a notice (**Referral Notice**) within 2 Business Days of receiving the Small Holding Disposal Notice specifying the grounds on which it disagrees with the calculation of the Fair Market Value. If the Company receives a Referral Notice in accordance with this clause 21.6 the independent valuation process in clause 22 will apply.

21.7 Completion of a Small Holding Transaction

Completion of a Small Holding Transaction must occur on the date or dates specified in the Small Holding Disposal Notice or any other date determined by the Board and notified to the relevant Small Shareholder.

21.8 Power of attorney

Each Class B Shareholder irrevocably appoints the Company as its attorney in accordance with clause 24 on default by it of performance of its obligations under this clause 21.

22. Valuer

22.1 Appointment of Valuer

- (a) The Board must as soon as reasonably practicable and in any event not more than 3 Business Days after the date of receipt of a Referral Notice, appoint an appropriate Valuer to:
 - (i) determine the Fair Market Value in accordance with clause 22.2; and

- (ii) as soon as reasonably practicable and, in any event, no later than 15 Business Days following the Valuer's appointment, issue a certificate (**Valuer's Certificate**) specifying the Sale Price or Fair Market Value (as applicable) of Securities, expressed as a price per Share or other Security (as applicable), and provide a report to the Company setting out the results of its valuation, including an explanation of the methodologies used to conduct the valuation.
- (b) The Company and each Shareholder must provide all information and assistance reasonably requested by the Valuer.
- (c) The Valuer acts as an independent expert and not as an arbitrator when valuing Shares.

22.2 Process for Valuation

- (a) The Valuer must be instructed to conduct the valuation:
 - (i) in accordance with the terms of this Deed;
 - (ii) as at the date specified by the Board;
 - (iii) in accordance with the valuation standards, practices and principles generally accepted in the Commonwealth of Australia;
 - (iv) on the basis of an arm's length transaction between an informed and willing seller and an informed and willing buyer under no compulsion to sell or buy, respectively;
 - (v) assuming a reasonable period within which to negotiate the sale considering the state of the market on the valuation date;
 - (vi) assuming no account is taken of any prospective purchaser with unique attributes;
 - (vii) assuming the buyer would not have the benefit of any uncommon sale terms which would serve to increase or decrease the value of the Shares or the Company Group;
 - (viii) if relevant, assuming no allowance for any charges, mortgages or amounts owing on the Shares, or for any expenses or taxation which may be incurred or payable in effecting a sale (although an allowance will be made for any Encumbrances, restrictions or outgoings of an onerous nature which are specific to the Shares and which would affect value if they would not be discharged in the ordinary course prior to a transfer.
- (b) The Valuer must determine the Sale Price or Fair Market Value of Shares as follows:
 - (i) value the whole Company as if it were being sold to a third party, in accordance with the Accounting Standards and having regard to the profit, strategic positioning, future prospects and undertaking of the Business;
 - (ii) determine the price per Share on the basis of the proportion that the value of relevant parcel of Shares in question bears to the total value of Shares on issue; and

- (iii) in respect of Securities issued to PEP or an Affiliate of PEP pursuant to clauses 9.4(j) (Emergency Funding) or 9.4(k) (M&A Funding), the price per Security must be determined at the time immediately prior to the time at which PEP or its relevant Affiliate agreed to provide such Emergency Funding or M&A Funding (as applicable).

22.3 Valuation binding

The Valuer's Certificate is conclusive and binding on the Shareholders and the Company and is not subject to review or appeal except in the case of manifest error.

22.4 Costs of Valuer

The Parties agree that the costs of the Valuer in connection with the valuation are to be:

- (a) borne by the Disputing Shareholder if:
 - (i) the Valuer determined a specific dollar value and the Fair Market Value as determined by the Valuer is equal to or less than the proposed Fair Market Value determined by the Board that was the subject of the relevant Referral Notice; or
 - (ii) the Valuer determined a range of values and the proposed Fair Market Value determined by the Board that was the subject of the relevant Referral Notice is within the range of values determined by the Valuer or is higher than the highest endpoint of the range of values determined by the Valuer; or
- (b) borne by the Company if:
 - (i) the Valuer determined a specific dollar value and the Fair Market Value as determined by the Valuer is greater than the proposed Fair Market Value determined by the Board that was the subject of the relevant Referral Notice; or
 - (ii) the Valuer determined a range of values and the proposed Fair Market Value determined by the Board that was the subject of the relevant Referral Notice is not within the range of values determined by the Valuer or is lower than the lowest endpoint of the range of values determined by the Valuer.

23. Bare Trusts

23.1 Issue or Disposal to Nominee

- (a) If requested by the Company (with Board approval), a Shareholder other than the PEP Shareholders (**Non-PEP Shareholders**) must Dispose of the Class B Shares that it holds to the Nominee.
- (b) Each Non-PEP Shareholder must comply with the directions of the Company for the purposes of facilitating the Disposal of its Shares to the Nominee in accordance with this clause 23, including executing a ND Deed of Adherence.

23.2 Intended operation of this clause

- (a) The Parties confirm that the principle to which this clause 23 is intended to give effect is that the voting, economic and other interests of a Non-PEP Shareholder under this Deed and in respect of the Non-PEP Shareholder's holding of Shares should, assuming that the Nominee and Non-PEP Shareholder act in accordance

with this Deed and the Nominee Deed, be neither enhanced nor impaired as a consequence of appointing the Nominee as bare trustee in respect of that Non-PEP Shareholder's Shares.

- (b) Each party must take all actions within its power and authority, including giving relevant instructions to the Nominee and, in the case of an Appointing Beneficiary, exercising its rights in its capacity as appointor of the Nominee as bare trustee for it, to give effect to the principle in clause 23.2(a).
- (c) Clauses 23.3 to 23.7 (both inclusive) are to be interpreted subject to, and in a manner is consistent with, the principle in clause 23.2(a).
- (d) This clause 23 applies separately in relation to the Nominee in its capacity as bare trustee for each Appointing Beneficiary.

23.3 Appointing Beneficiary rights and obligations

- (a) Each Appointing Beneficiary will continue to have the benefit of, and be bound by, all the provisions of this Deed which would have applied to the Appointing Beneficiary by virtue of, or in relation to, that Appointing Beneficiary's holding of the its Beneficial Securities had it not transferred legal title to its Beneficial Securities to the Nominee (**Relevant Rights and Obligations**), subject to the terms of this Deed and the Nominee Deed.
- (b) The Relevant Rights and Obligations will so far as possible have application to the Nominee and the relevant Appointing Beneficiary in the same way as they would have continued to apply to the Appointing Beneficiary if it held legal title to its Beneficial Securities.
- (c) Each Appointing Beneficiary undertakes to the Company that it will not:
 - (i) take any action, or omit to take any action (including the giving of any Instruction to the Nominee or failing to give any Instruction to the Nominee) which would breach its obligations under this Deed;
 - (ii) fail to give, or delay in giving, any Instruction to the Nominee which is required to enable the Appointing Beneficiary or the Nominee to comply with their respective obligations under this Deed or the Nominee Deed; or
 - (iii) give an Instruction to the Nominee which has the effect of cancelling or superseding an Instruction given on behalf of the Appointing Beneficiary by an attorney acting on behalf of the Appointing Beneficiary under clause 23.1.

23.4 Definitions

- (a) Where the context requires to give effect to clauses 23.2 and 23.3 and without limiting any other provision of this Deed, including clause 23.4(b), any reference in this Deed to a Non-PEP Shareholder who is an Appointing Beneficiary is to be taken to also include a reference to the Nominee as bare trustee for that Appointing Beneficiary.
- (b) If a Non-PEP Shareholder is an Appointing Beneficiary, then for the purposes of any references in this Deed to:
 - (i) the Shares of, or held by, the Non-PEP Shareholder (or any comparable expression, including for the purposes of determining the Relevant Proportion of the Non-PEP Shareholder), the Non-PEP Shareholder is to be regarded as holding legal title to its Beneficial Securities; and

- (ii) the Non-PEP Shareholder taking an action in respect of any Shares, is taken to also include a reference to the Nominee taking that action as bare trustee for the Non-PEP Shareholder.
- (c) If a Non-PEP Shareholder is:
 - (i) a Class B Shareholder, that Shareholder will continue to be a Class B Shareholder for the purposes of this Deed irrespective of whether legal title to all or any of the Shareholder's Class B Shares is held by the Nominee; and
 - (ii) a Management Shareholder or Class C Shareholder, that Shareholder will continue to be a Management Shareholder or a Class C Shareholder for the purposes of this Deed irrespective of whether legal title to all or any of the Shareholder's Class C Shares is held by the Nominee.
- (d) Obligations under this Deed or the Constitution on a Non-PEP Shareholder who is an Appointing Beneficiary to exercise voting rights or take other actions as the registered holder of Shares are to be interpreted as obligations to ensure that the Nominee takes the relevant actions.
- (e) The Nominee is not itself to be regarded for the purposes of this Deed as:
 - (i) as a Class B Shareholder, Class C Shareholder or Management Shareholder; or
 - (ii) otherwise as a holder of any Shares who has independent obligations in their capacity as such.

23.5 Voting and dividends

- (a) Instructions may be given by each Appointing Beneficiary to the Nominee (as the person legally entitled to voting rights, dividends and distributions in respect of those Shares) in accordance with this Deed and the Nominee Deed:
 - (i) in relation to voting, Disposals and other dealings in respect of the Appointing Beneficiary's Beneficial Securities; and
 - (ii) in respect of the payment of dividends and distributions.
- (b) Each Appointing Beneficiary directs the Company to pay dividends and distributions in respect of its Beneficial Securities as it directs in accordance with the Nominee Deed. This clause 23.5 does not affect the right of an Appointing Beneficiary to change such a direction from time to time.

23.6 Disposals of Securities

- (a) References to a Disposal of Class B Shares in this Deed and the Constitution include a Disposal of a beneficial interest in Beneficial Securities and any Disposal of the legal title to those Shares by the Nominee (at the Appointing Beneficiary's direction, or by the Company or another attorney on behalf of the Appointing Beneficiary acting under power of attorney, or otherwise).
- (b) An Appointing Beneficiary must not direct the Nominee to Dispose of, nor otherwise procure the Disposal of, legal or beneficial title to any of its Beneficial Securities to itself or any other person unless it would be entitled in accordance with this Deed to Dispose of these Shares in that manner in the relevant circumstances if it held legal title to them.

- (c) Where this Deed permits the Company to issue or any other party to transfer, sell or otherwise Dispose of Shares to any person, that provision includes permission to issue, transfer, sell or otherwise Dispose of Shares to the Nominee as bare trustee for the Appointing Beneficiary.
- (d) An Appointing Beneficiary may Dispose of Shares to a Permitted Transferee under clause 14.1(b)(i) on the basis that the Nominee is directed to transfer beneficial title to the relevant Beneficial Securities to the Permitted Transferee (that is, the Appointing Beneficiary may Dispose of only the beneficial interest in its Beneficial Securities without a Disposal of legal title from the Nominee).

23.7 Additional Securities

- (a) If an Appointing Beneficiary becomes entitled to receive any additional Shares, whether by way of issue or Disposal (and whether under this Deed or otherwise), then unless the Board has approved another holding arrangement in relation to the relevant transaction, the issue or Disposal must be made in favour of the Nominee on the basis that the Shares are to be held by the Nominee as bare trustee for the Appointing Beneficiary and will be Beneficial Securities of the Appointing Beneficiary.
- (b) An offer to an Appointing Beneficiary to participate in an issue of Shares or other transaction on the basis that legal title to the relevant Securities will be issued to the Nominee as bare trustee for the Appointing Beneficiary will not be regarded for that reason alone as being on different terms from the terms offered to other Shareholders.

23.8 Notices

All notices or communications under this Deed or the Nominee Deed which are provided to the Nominee in its capacity as bare trustee for a particular Appointing Beneficiary must also be provided at the same time to the relevant Appointing Beneficiary.

23.9 Conversion and termination

- (a) If the Company applies to the Australian Securities and Investments Commission to change its type to a proprietary company at a time when it has more than 50 non-employee Appointing Beneficiaries:
 - (i) the bare trustee arrangements contemplated in this clause 23 will terminate on the date on which the change of company type takes effect (**Termination Date**); and
 - (ii) the Nominee must as soon as reasonably possible (and, in any event, before the Termination Date) transfer legal title in respect of all of the Beneficial Securities held by it to the relevant Appointing Beneficiaries who must be registered in the register of members of the Company as the legal holders of such Beneficial Securities.
- (b) Notwithstanding any other provision of this Deed, the provisions of clause 23.9 must not be amended or varied unless such amendment or variation has been approved by a Special Resolution of Appointing Beneficiaries.

23.10 Liability of Nominee

Each party acknowledges that, subject to the terms of the Nominee Deed, the Nominee is obliged to act in accordance with the directions of the Appointing Beneficiaries in relation to their respective Beneficial Securities. Each party agrees that any breach of this Deed or the Constitution which arises as a result of the Nominee complying with a direction given by an Appointing Beneficiary (**Directed Breach**) is to be construed for all purposes as a breach by

the relevant Appointing Beneficiary for which the Appointing Beneficiary is personally liable (including in accordance with the Nominee Deed) and not by the Nominee and without limiting the foregoing:

- (a) the Nominee is released from any Claim or Liability in respect of any Directed Breach; and
- (b) each party (other than the Nominee) covenants not to claim, sue or take any action against the Nominee in respect of any Directed Breach.

23.11 Limitation of Nominee's liability

- (a) Each party acknowledges that the Nominee enters into this Deed in its capacity as bare trustee of the Bare Trusts and in no other capacity.
- (b) Any Liability of the Nominee arising under or in connection with this Deed is limited to, and can be enforced against the Nominee only to the extent to which it can be satisfied out of, the assets of the Bare Trust from which the Nominee is actually indemnified for the Liability or to the extent that the Nominee is actually indemnified for the Liability under the Nominee Deed. This limitation of the Nominee Liability applies despite any other provision of this Deed and extends to all liabilities of the Nominee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed or the Nominee Deed.
- (c) No party may sue the Nominee in any capacity other than as trustee of a Bare Trust, including seeking the appointment of a receiver (except in relation to property of a Bare Trust), a liquidator, an administrator, or any similar person to the Nominee nor may any party prove in any liquidation, administration or arrangement of or affecting the Nominee (except in relation to property of the relevant Bare Trust).
- (d) The provisions of this clause 23.11 do not apply to any Liability of the Nominee to the extent that it is not satisfied under the Nominee Deed or by operation of law or there is a reduction in the extent of the Nominee's indemnification out of the assets of the relevant Bare Trust, in each case as a result of the Nominee's fraud, negligence or breach of trust.
- (e) No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed has authority to act on behalf of the Nominee in a way which exposes the Nominee to any personal liability.

24. Power of Attorney

24.1 Appointment

If a Non-PEP Shareholder is in breach of its obligations in clauses 4.2, 15, 16, 19, 20, 21 or 23, then for so long as such breach is continuing, or if the Non-PEP Shareholder does not comply promptly with a request made of it under any of those clauses which is reasonably necessary to give effect to a transaction, action or matter contemplated in those clauses, that Shareholder hereby severally and irrevocably appoints the Company as its agent and attorney with power to complete any action, matter, or transaction (including Disposal) contemplated in clauses 4.2, 15, 16, 19, 20, 21 or 23 including the power to execute all necessary documentation and the power to vote (to the exclusion of that Shareholder) at any meeting of Shareholders in relation to any such action, matter or transaction (including Disposal).

24.2 Validity

- (a) Each Non-PEP Shareholder declares that all acts and things done by the Company in exercising its powers under this power of attorney will be as good and valid as if they had been done by the Shareholder and agrees to ratify and confirm whatever is done in exercising powers under this power of attorney.

- (b) Each Non-PEP Shareholder agrees that it will not challenge the validity of any act carried out by an attorney on its behalf appointed under this clause.
- (c) Each Non-PEP Shareholder indemnifies the attorney appointed under this clause against, and agrees to reimburse and compensate the attorney for, all liabilities arising in any way in connection with the exercise in accordance with this Deed of any of the powers and authorities under the appointment in this clause.

24.3 Benefits

The Company is expressly authorised to do any act as a result of which a benefit is conferred on it or its appointor.

24.4 Irrevocable

Each Non-PEP Shareholder declares that this power of attorney is given for valuable consideration and is irrevocable whilst that person remains a Shareholder.

24.5 Inconsistent Instruments

Each Non-PEP Shareholder will not issue, sign or execute any Inconsistent Instrument and undertakes to immediately revoke any powers given in such Inconsistent Instrument which contradict or are inconsistent with the powers granted under this power of attorney. If a Non-PEP Shareholder fails to revoke an Inconsistent Instrument the attorney appointed under this clause is authorised to revoke the powers given in the Inconsistent Instrument which contradict or are inconsistent with the powers granted in this power of attorney.

24.6 Specific Performance

Each Non-PEP Shareholder acknowledges that its obligations under this clause may be of a special, unique or invaluable nature such that an award of damages or an account of profits may be inadequate to compensate the PEP Shareholders for a failure by the Non-PEP Shareholders to comply with this clause. Each Non-PEP Shareholder therefore acknowledges that the PEP Shareholders will have a right to seek an ex parte, interlocutory or final injunction to prohibit or restrain any Non-PEP Shareholder from any violation or suspected or threatened violation of this clause. Each Non-PEP Shareholder also acknowledges that the PEP Shareholders will have a right to seek an order for specific performance to require the Non-PEP Shareholders to comply with this clause.

25. Disclaimers

25.1 No representation about acquisition or investment

None of PEP, the Company or any of their respective representatives makes:

- (a) any representation or warranty to any other Shareholder in relation to any acquisition by the Company Group, the value of any Securities or other securities in any Company Group Member at any time, the proposed business strategy of any Company Group Member, the Business performance or the potential Exit strategy or returns achievable on an Exit; or
- (b) any recommendation on the suitability of an acquisition by any Company Group Member or on the suitability of an investment in the Company by any PEP Shareholder or Class B Shareholder.

25.2 No liability accepted for Shareholders investing

To the maximum extent permitted by law, the Company, PEP and their representatives (other than any Class B Shareholder who is such a representative) disclaim all Liability in relation to

the matters referred to in clause 25.1 and no Class B Shareholder may take any action against the Company, PEP or any of their representatives for any Liability suffered as a result of PEP's or any other Class B Shareholder's decision to invest in the Company, in relation to any matter referred to in clause 25.1(a) or as a result of PEP lawfully performing its obligations and/or exercising its rights under this Deed.

25.3 Independent investigations, assessment and advice

Each Class B Shareholder:

- (a) acknowledges and agrees that it has entered into this Deed on the basis of its own independent investigation and assessment and after making its own enquiries; and
- (b) confirms that it has received independent legal, accounting and tax advice in relation to the terms and conditions of this Deed (including the escrow arrangements contemplated by clause 19.3 and clause 25.2).

26. Restraint

26.1 Restraint

- (a) Subject to this clause 26, for the purposes of promoting the commercial objectives of the Company Group and the Business, each Class B Shareholder, Relevant Manager and associated Management Shareholder (each a **Restrained Party** and together the **Restrained Parties**) undertakes to the Company that during the Restraint Period, each Restrained Party will not, and must procure that each of its Affiliates does not:
 - (i) become Involved within the Restraint Area in any capacity in any business or activity which offers the same or substantially similar products or services as those offered by the Business or by the business of any Company Group Member;
 - (ii) directly or indirectly solicit the custom of any person who is, or was a customer of the Business or any Company Group Member during the period which the Restrained Party (or in the case of a Relevant Manager, its associated Management Shareholder) is or was a Shareholder or in the 12 month period following the date the Restrained Party (or in the case of a Relevant Manager, its associated Management Shareholder) ceased to be a Shareholder in respect of the same or substantially similar products or services provided by the Business or by the business of any Company Group Member during that 12 month period; or
 - (iii) directly or indirectly entice or endeavour to entice from any Company Group Member any person who is, or was during the period which the Restrained Party (or in the case of a Relevant Manager, its associated Management Shareholder) is or was a Shareholder or in the 12 month period following the date the Restrained Party (or in the case of a Relevant Manager, its associated Management Shareholder) ceased to be a Shareholder, an employee, consultant or officer in a managerial role of any Company Group Member.
- (b) Each Restrained Party will procure that its Related Entities comply with the undertaking.

26.2 Acknowledgment

Each Restrained Party acknowledges that:

- (a) each Restraint is reasonable in the circumstances and necessary to protect the goodwill of the Business;
- (b) damages are not an adequate remedy if a Restrained Party breaches this clause 26;
- (c) it has received independent legal advice as to the operation and effect of this clause 26; and
- (d) this clause 26 survives termination of this Deed.

26.3 Deletion of restrictions

If any part of the Restraint goes beyond what is reasonable in the circumstances and necessary to protect the goodwill of the Business but would be reasonable and necessary if any activity were deleted or a period or area were reduced, then the Restraint applies with that activity deleted or period or area reduced by the minimum amount necessary to make the Restraint reasonable in the circumstances.

26.4 Severance

Each part of the Restraint has effect as a separate and severable restriction and is to be enforced accordingly.

26.5 Exceptions

This clause 26 does not restrict a Restrained Party from:

- (a) any action (including any economic interest) or omission which has been approved by the PEP Shareholders (acting reasonably and in good faith);
- (b) holding Shares;
- (c) holding or acquiring (either directly or indirectly) in aggregate not more than 5% of the issued ordinary shares in the capital of any body corporate listed on a recognised Stock Exchange;
- (d) holding interests in a Competitor as a result of investing in a managed investment fund in respect of which the relevant Restrained Party has no investment decision making capacity; or
- (e) recruiting a person through a recruitment agency (unless the agency targets employees of the Company Group) or in response to a bona fide published advertisement that is targeted to a wide audience of potential applicants.

26.6 Injunctive relief

The Company, PEP or any Company Group Member may apply for injunctive relief if it believes a Restrained Party or any of their respective Affiliates is likely to breach this clause 26 or if a Restrained Party or any of their respective Affiliates has breached or threatened to breach this clause 26.

27. Confidentiality

27.1 Confidential information not to be disclosed

A Party in receipt of Confidential Information under this Deed (**Disclosee**) must use that information only for the purposes for which it was provided by the relevant disclosing party to the Disclosee and not:

- (a) make public or disclose that Confidential Information to any third party; or
- (b) make or allow to be made copies of or extracts of all or any part of the Confidential Information except for the purposes of this Deed.

27.2 Permitted disclosure

Confidential Information may be disclosed by a Disclosee, despite clause 27.1, where:

- (a) the Confidential Information was at the time immediately before the first disclosure to or observation by the Disclosee already in the lawful possession of the Disclosee;
- (b) the Confidential Information is or becomes part of the public domain (other than by an act of the Disclosee in breach of this Deed);
- (c) the Confidential Information is disclosed to a party by a person who is not a Party to this Deed and that information was not obtained directly or indirectly from the Disclosee;
- (d) the Confidential Information is disclosed to an employee, agent or adviser of the Disclosee who needs to know, but only where such employees, agents or advisers have been required to keep the information confidential;
- (e) the Confidential Information is disclosed in proceedings before any court or tribunal arising out of, or in connection with, this Deed;
- (f) the Confidential Information is disclosed to the extent required by lawful requirement of:
 - (i) any Governmental Agency having jurisdiction over a Party to this Deed or its Related Entities; or
 - (ii) any Stock Exchange having jurisdiction over a Party to this Deed or its Related Entities;
- (g) the disclosure is required under any law, or administrative guidelines, directives, requirements or policies having force of law;
- (h) the party who first provided the Confidential Information to the Disclosee consents to the disclosure of the information by the Disclosee;
- (i) the Confidential Information is disclosed to any Related Body Corporate of a Party, but only where such Related Body Corporate has been required to keep the information confidential;
- (j) Confidential Information is disclosed to investment banks, brokers or accounting firms by the PEP Shareholders for the purposes of seeking the proposals contemplated under clause 17;
- (k) the Confidential Information is disclosed to an Affiliate of PEP or any potential limited partners or investors in such Affiliate on a confidential basis; or
- (l) the Confidential Information is disclosed to a financier of the Company Group or any bona fide prospective purchaser (or financier of such a purchaser) of some or all of the Securities held by the Disclosee, but only where such person has been required to keep the information confidential.

27.3 Announcements concerning this Deed

The Parties will not make any public announcement or statement concerning the existence or the terms and conditions of this Deed unless and to the extent:

- (a) **(court)**: required by an order of a court or tribunal arising out of, or in connection with, this Deed;
- (b) **(regulatory body)**: required by lawful requirement of any Governmental Agency or Stock Exchange having jurisdiction over a Party to this Deed or its Related Entities;
- (c) **(law)**: required under any law; or
- (d) **(consent)**: where the announcement or statement has been made following the procedures under clause 27.4.

27.4 Procedure for making announcements

In the case of written announcements or other written publicity to be issued or made by the Parties concerning the making or the contents of this Deed, or concerning the Business, or concerning any Company Group Member, the Party intending to make the announcement or to issue the publicity must:

- (a) first deliver a copy of the proposed announcement or publicity to the other Parties;
- (b) give the other Parties 5 Business Days (or such shorter period as may reasonably be required in case of emergency or as required by law) to provide comment on the announcement or publicity before either:
 - (i) permitting the making of the announcement or issuing the publicity; or
 - (ii) refusing to grant its consent to the making of the announcement or issuing the publicity; and
- (c) if the consent is not refused, promptly after making the announcement or issuing the publicity give a written copy of the final version of the announcement of publicity to the other Parties.

27.5 Survival of Termination

The rights and obligations of the Parties set out in this Deed with respect to Confidential Information survive termination of this Deed.

28. Representations and warranties

28.1 Representations and warranties

Each Party makes the following representations and warranties on the date of this Deed or when it becomes a party to the Agreement (as the case may be):

- (a) **(registration)**: if the Party is a corporation, the corporation is established with limited liability, registered (or taken to be registered) and validly existing under the Act;
- (b) **(power)**: the Party has full power and has been duly authorised in accordance with its constituent documents to enter into and perform its obligations under this Deed in accordance with the terms of this Deed;

- (c) **(Authorisation)**: all consents, licences, approvals and authorisations of every Government Agency required to be obtained by it in connection with the execution, delivery and performance of this Deed are valid and subsisting;
- (d) **(binding obligations)**: this Deed constitutes legal, valid and binding obligations on the Party;
- (e) **(transaction permitted)**: the execution, delivery and performance by the Party of this Deed does not and will not violate, breach or result in a contravention of:
 - (i) any law;
 - (ii) any authorisation, ruling, consent, judgment, order or decree of any Governmental Agency;
 - (iii) the constitution of the Party;
 - (iv) the trust deed establishing the trust of which the Party is the trustee;
 - (v) any partnership agreement to which the Party is a party; or
 - (vi) any Encumbrance or document which is binding upon the Party; and
- (f) **(information)**: all information provided by a Party to the other Parties under or in connection with this Deed is true in all material respects and is not, by omission or otherwise, misleading in any material respect.

29. Termination

29.1 Automatic Termination

Subject to clause 29.2, this Deed will terminate automatically:

- (a) subject to clause 19, on the date of completion of an IPO;
- (b) by agreement of all Parties;
- (c) for any Shareholder, when it ceases to hold, directly or indirectly, any Shares in the capital of the Company, at which time that Shareholder will have no further rights or obligations under this Deed, except in respect of any prior breach of this Deed;
- (d) upon the appointment of a receiver or a liquidator to the Company, whether voluntarily or involuntarily;
- (e) on the date when the Company is wound up; or
- (f) on the day on which an agreement to sell all of the Shares is completed.

29.2 Consequences of termination

On termination of this Deed this Deed is at an end as to its future operation, except that termination:

- (a) will be without prejudice to any obligations of the Parties which accrued prior to that termination and which remain unsatisfied; and
- (b) will not affect any provision of this Deed which is expressed to come into effect on, or to continue in effect after, termination.

29.3 Winding up the Company

If the Company is to be wound up the proceeds of the winding up must be distributed to the Shareholders of the Company at that time in accordance with the provisions of the Constitution.

30. Specific performance

30.1 Injunction

Each Shareholder and the Company agree that specific performance and injunctive relief would be appropriate remedies in the event of any breach or threatened breach of this Deed. Without limiting the generality of the foregoing, should any controversy arise concerning a sale or disposition of any Shares, an injunction may be issued restraining any sale or disposition pending the determination of such controversy and the resolution thereof shall be enforceable in a court of equity by a decree of specific performance. The remedies specified in this clause 30.1 shall be cumulative and not exclusive, and shall be in addition to any other remedies which the Parties may have.

30.2 Confirmation

Each Party confirms to each other Party that, for the purposes of entering into the transactions contemplated by this Deed:

- (a) it has entered into such transactions entirely on the basis of its own assessment of the risks and effect thereof, except as expressly set out in this Deed it is owed no duty of care or other obligation by any other Party in respect thereof; and
- (b) insofar as it is owed any duty or obligation (not expressly set out in this Deed) (whether in contract, tort or otherwise) by such other Party it hereby waives, to the extent permitted by law, any rights which it may have in respect of such duty or obligation.

31. Limitation of liability - Trustee

31.1 Defined terms

In this clause 31:

- (a) **Trustee** means any entity which is or becomes a party to this Deed in the capacity as trustee or responsible entity of a Trust.
- (b) **Trust** means the trust of which the Trustee is the trustee or responsible entity.
- (c) **Trustee Liability** means any liability or obligation (of any kind including, without limitation, for negligence, in tort, in equity, or under statute) of the Trustee which arises in any way under or in connection with this Deed or its performance, or any representation, warranty, conduct, omission, agreement or transaction made under or in connection with this Deed or its performance.

31.2 Scope and limitation of liability

- (a) The Trustee enters into this Deed in its capacity as trustee of the Trust and in no other capacity.
- (b) The Parties acknowledge that the Trustee incurs the Trustee Liabilities solely in its capacity as trustee of the Trust and agree that (to the maximum extent permitted by law) the Trustee will cease to have any Trustee Liability if the Trustee ceases for any reason to be trustee of the Trust.

- (c) A Trustee Liability may be enforced against the Trustee only to the extent to which:
 - (i) the Trustee is actually indemnified in respect of that Trustee Liability out of the property of the Trust; and
 - (ii) there is sufficient property held by the Trustee 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 clause 31.2(e), no person will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any Trustee Liability in any capacity other than as trustee of the Trust;
 - (ii) enforce or seek to enforce any judgment in respect of any Trustee Liability against any property of the Trustee other than property held by the Trustee 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 the Trustee on the basis of a Trustee Liability, or prove in any liquidation, administration or arrangement of or affecting the Trustee; or
 - (iv) in respect of a Trustee Liability, appoint or take any steps to procure or support the appointment of a receiver or receiver and manager to any property of the Trustee, other than property which is held by it in its capacity as trustee of the Trust.
- (e) The restrictions in clauses 31.2(c) and 31.2(d) do not apply to any Trustee Liability to the extent to which there is, whether under the trust deed in relation to the relevant Trust or by operation of law, a reduction in the extent of the Trustee's indemnification, or in respect of which the Trustee is not entitled to be indemnified, out of the property of the Trust, as a result of the Trustee's fraud, negligence or breach of trust.
- (f) Each other party to this Deed agrees that no act or omission of the Trustee (including any related failure to satisfy any Trustee Liabilities) will constitute fraud, negligence or breach of trust of the Trustee for the purposes of clause 31.2(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 Deed has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability, and no act or omission of such a person will be considered fraud, negligence or breach of trust of the Trustee for the purposes of clause 31.2(e).
- (h) This limitation of the Trustee's Liability applies despite any other provisions of this Deed and extends to all Trustee Liabilities of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed or its performance.
- (i) The Trustee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in clauses 31.2(a) to 31.2(h) (both inclusive).
- (j) Clauses 31.2(a) to 31.2(i) (both inclusive) survive the termination or expiry of this Deed.

32. Limitation of liability – General Partner

32.1 Defined terms

In this clause 32:

General Partner means the general partner, or the general partner of a general partner, of an Investor Affiliate from time to time.

32.2 Scope and limitation of liability

- (a) Each General Partner enters into this Deed as general partner of a relevant PEP Shareholder and in no other capacity.
- (b) The obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, a General Partner under or in respect of this Deed (Obligations) are incurred by that General Partner solely in its capacity as general partner of its PEP Shareholder, and a General Partner will cease to have any obligation under this Deed if the General Partner ceases for any reason to be the general partner of its PEP Shareholder. Each General Partner must, prior to ceasing to be the general partner of its PEP Shareholder, cause any successor of it as the general partner of its PEP Shareholder to execute such documents required by the Company to ensure that this Deed is binding on its successor.
- (c) No General Partner will be liable to pay or satisfy any Obligations except out of the assets, property and right, real and personal, of any value whatsoever against which it is entitled to be indemnified in respect of any liability incurred as general partner of its PEP Shareholder (**LP Assets**).
- (d) If a party does not recover all money owing to it arising from non-performance or breach of the Obligations, it may not seek to recover the shortfall by applying to have any General Partner wound up or proving in the winding up of a General Partner.
- (e) Notwithstanding anything in this clause 32, each General Partner is liable and is not released to the extent that a Liability under this Deed arises out of a General Partner's own fraud, negligence or default, which disentitles it from an indemnity out of the LP Assets in relation to the relevant Liability.
- (f) No attorney or agent appointed in accordance with this Deed has the authority to act on behalf of a PEP Shareholder in a way which exposes that PEP Shareholder to any Liability in excess of any amount for which a PEP Shareholder may be liable under clause 32.2(a).

33. PEP Shareholders and PEP Directors

33.1 Disposals of Shares

- (a) Where a clause in this Deed refers to 'PEP' acquiring or being offered Shares, the PEP Shareholders may elect as between themselves which PEP Shareholder or Affiliates will acquire those Shares.
- (b) In clauses 14 and 15, the reference to the proportion of Shares being sold or Disposed of is a reference to the proportion of Shares held by all of the PEP Shareholders in aggregate.

33.2 Provision of information to PEP Shareholders

Any information or notice that is to be provided to 'PEP' under this Deed is to be provided to each PEP Shareholder.

34. Other provisions

34.1 Amendment

Subject to clauses 5.5(c), this Deed may only be amended by a document signed by:

- (a) the Company; or
- (b) the PEP Shareholders.

34.2 Notices

Any communication under or in connection with this Deed (including, without limitation, any request for information or assistance in accordance with the terms of this Deed):

- (a) must be in writing;
- (b) (in the case of email) must be in pdf or other format that is a scanned image of the original of the communication, including a handwritten signature, and be attached to an email that states that the attachment is a communication under this Deed;
- (c) are taken to be received by the addressee:
 - (i) **(in the case of prepaid post)** on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (ii) **(in the case of fax)** at the local time (in the place that fax is received) that then equates to the time that fax is sent as shown on the transmission report produced by the machine from which that fax is sent confirming transmission of that fax in its entirety, unless that local time is outside Business Hours, when that communication is taken to be received at 9.00 am on the next Business Day;
 - (iii) **(in the case of email)** unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of this clause 34.1, 24 hours after the email was sent; and
 - (iv) **(in the case of delivery by hand)** on delivery at the address of the addressee as provided in this clause, unless that delivery is made outside Business Hours, when that communication is taken to be received at 9.00 am on the next Business Day, and
- (d) must be addressed as set out opposite the party's name in Schedule 1, or as otherwise notified by that party to the other parties from time to time.

34.3 No recourse

Notwithstanding anything that may be expressed or implied in this Deed, no recourse under this Deed may be pursued against any past, current or future representative (including any past, current or future, employee, agent, officer, director, auditor, adviser, partner, Affiliate, consultant, shareholder, member, general or limited partner or other beneficial owner, joint

venturer or contractor) of any PEP Shareholder or any of their respective Affiliates and representatives, whether by the enforcement of any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, it being expressly agreed and acknowledged that no personal Liability whatsoever attaches to, may be imposed on or will otherwise be incurred by any such person for any obligation of a PEP Shareholder or any other person under this Deed for any Claim based on, in respect of or by reason of such obligations or their creation. The provisions of this clause 34.3 survive the termination of this Deed indefinitely.

34.4 Governing Law

This Deed is governed by and must be construed according to the law applying in New South Wales, Australia.

34.5 Jurisdiction

Each Party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 34.5(a).

34.6 Waiver

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

34.7 Nominee Transfer

Provided that clauses 14.4, 11, and 12 are observed but despite anything to the contrary in this Deed, nothing in this Deed:

- (a) prevents or limits the ability of the Nominee to, or the Company to require that the Nominee or a Class B Shareholder, undertake a Nominee Transfer at any time; or
- (b) confers on any other Shareholder any rights with respect to any Nominee Transfer, including any rights under clause 16.

34.8 Further acts and documents

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by another Party to give effect to this Deed.

34.9 Consents

A consent required under this Deed from a Party may be given or withheld, or may be given subject to any conditions, as that Party (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

34.10 Assignment

A Shareholder cannot assign, novate or otherwise transfer any of its rights or obligations under this Deed without the prior consent of each other Party.

34.11 Counterparts

This Deed may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart constitutes an original of this Deed, and all together constitute one agreement.

34.12 No representation or reliance

- (a) Each Party acknowledges that no Party (nor any person acting on a Party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) Each Party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other Party, except for representations or inducements expressly set out in this Deed.

34.13 Expenses

Except as otherwise provided in this Deed, each Party must pay their own costs and expenses incurred in connection with negotiating, preparing and executing this Deed.

34.14 Share Sale and Trade Sale costs

Each Shareholder will be liable for its proportionate share of all Share Sale and Trade Sale costs unless a Company Group Member agrees to bear any Share Sale or Trade Sale costs (which will, to the extent that the Board determines that it is practicable, be set off from the proceeds payable to the Shareholder in the Share Sale or Trade Sale). For the purpose of this clause 34.14, a Shareholder's proportionate share of the Share Sale or Trade Sale costs is the proportion that the proceeds to that Shareholder in connection with the Share Sale or Trade Sale, bears to the total proceeds in connection with the Share Sale or Trade Sale.

34.15 IPO costs

Unless the Board determines that any IPO costs will be borne by each Shareholder pro rata to their proceeds in the IPO, the Company will pay the IPO costs. Each Party will be liable for any individual costs incurred by it.

34.16 Aborted Exit

If a Share Sale, Trade Sale or an IPO is aborted prior to its completion, the Company will pay all Share Sale, Trade Sale Costs and IPO Costs to the maximum extent permitted by law.

34.17 PEP costs

The Company must reimburse PEP for all reasonable out-of-pocket expenses associated with or incidental to the monitoring of the Company or otherwise incurred by PEP or Affiliate of PEP in connection with activities to assist with achieving the Objectives, including all travelling, hotel and other comparable expenses and the costs of any third-party external advisers

retained by PEP or Affiliate of PEP (such expenses to be reimbursed by the Company to PEP or its Affiliate within 10 Business Days of receipt of a statement of account in respect of those expenses).

34.18 Entire agreement

To the extent permitted by law, in relation to its subject matter, this Deed:

- (a) embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.

34.19 Indemnities

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Parties, and survives termination, completion or expiration of this Deed.
- (b) It is not necessary for a Party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.
- (c) A Party must pay on demand any amount it must pay under an indemnity in this Deed.

34.20 Severance

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

34.21 GST

- (a) Any payment or other consideration referred to in any other provision of this Deed for any supply that may be made under this Deed (**Consideration**) is set out or calculated to be exclusive of GST.
- (b) Where any amounts that may be payable under this Deed are calculated by reference to a cost, expense or other amount paid or incurred by a party, the amount so payable must be reduced by the amount of any input tax credits to which the party incurring such cost, expense or other amount is entitled in connection with any acquisition relating to such cost, expense or other amount.
- (c) If GST is payable in relation to a supply made under this Deed, the party required to provide that Consideration (**Recipient**) to another party (**Supplier**) must pay an additional amount equal to the amount of that GST. Any such additional amount must be provided at the same time as this Deed requires the first part of the Consideration for the taxable supply to be provided and is subject to the Supplier issuing a tax invoice to the Recipient for that supply at or before such time.
- (d) If the GST payable in relation to a supply made under this Deed varies from the additional amount paid by the Recipient under clause (c) in respect of that supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from the Recipient (as appropriate).
- (e) Except where the context suggests otherwise, terms used in this clause 34.21 have the meanings given by *A New Tax System (Goods and Services Tax) 1999* (Cth).

Schedule 1 - Initial PEP Shareholders

	Name	Notice Details
1.	Pacific Equity Partners Fund VI GP (Jersey) Limited as General Partner of Pacific Equity Partners Fund VI L.P.	Address: c/- Ocorian Limited, 26 New Street, St Helier, JE2 3RA, Jersey Email: Claire.LeBrocq@ocorian.com Attention: Claire Le Brocq
2.	Pacific Equity Partners Fund VI (Australasia) Pty Limited as Trustee of the Pacific Equity Partners Fund VI (Australasia) Unit Trust	Address: Level 31, 126 - 130 Phillip Street, Sydney NSW 2000 Email: Sam.Kong@pep.com.au Attention: Sam Kong
3.	Pacific Equity Partners Fund VI-A (Australasia) Pty Limited as Trustee of the Pacific Equity Partners Fund VI-A (Australasia) Unit Trust	Address: Level 31, 126 - 130 Phillip Street, Sydney NSW 2000 Email: Sam.Kong@pep.com.au Attention: Sam Kong
4.	Eagle Coinvestment Pty Limited as Trustee for Pacific Equity Partners Fund VI Executives Coinvestment Trust A	Address: Level 31, 126 - 130 Phillip Street, Sydney NSW 2000 Email: Sam.Kong@pep.com.au Attention: Sam Kong
5.	Eagle Coinvestment Pty Limited as Trustee for Pacific Equity Partners Fund VI Executives Coinvestment Trust B	Address: Level 31, 126 - 130 Phillip Street, Sydney NSW 2000 Email: Sam.Kong@pep.com.au Attention: Sam Kong
6.	PEP Investment Pty Limited	Address: Level 31, 126 - 130 Phillip Street, Sydney NSW 2000 Email: Sam.Kong@pep.com.au Attention: Sam Kong

Schedule 2 - Accession Deed

THIS DEED POLL is made the day of

by _____ of _____

(Acceding Party)

RECITAL

This Deed Poll is supplemental to a Shareholders Agreement dated [] 20[] between **[to be inserted]** ("**Shareholders Agreement**").

OPERATIVE PART

1. The Acceding Party:
 - (a) confirms that it has been supplied with a copy of the Shareholders Agreement; and
 - (b) covenants with all present parties thereto (whether original or by accession) ("**Parties**") to observe, perform and be bound by all the terms of the Shareholders Agreement to the intent and effect that the Acceding Party will be deemed with effect from the date on which the Acceding Party is registered as a Shareholder of the Company to be a party to the Shareholders Agreement.
2. The Address of the Acceding Party for the purposes of the Shareholders Agreement will, until substituted in accordance therewith, be as follows:

[]
3. [The Acceding Parties are acceding to the Shareholders agreement as Shareholder [and a Relevant Manager]].
4. This Deed Poll will be governed by and construed in accordance with the laws of the State of New South Wales.

EXECUTED as a deed poll.

Executed by [insert name] ACN [] by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Schedule 3 - Matters requiring Special Majority Resolution

1. **(Amendment of the Constitution)** The making of any amendment to the Constitution that materially adversely affects the rights of Class B Shares or the modification or abrogation of any rights attached to any Class B Shares whether issued or unissued.
2. **(Amendment of this Deed)** The making of any amendment to this Deed that materially adversely affects the rights or obligations of Class B Shareholders under this Deed (other than in a way that impacts Class A Shares and Class B Shares equally).
3. **(Class of securities)** Creating any new class of securities in the Company that ranks ahead of the Class B Shares in a winding up.
4. **(New Securities)** Issuing, allotting or granting any Securities other than as contemplated by clauses 9 and 10.
5. **(Winding up)** The making of an application or the commencement of any proceedings or the taking of any other steps for the voluntary winding up, liquidation or deregistration of a Company Group Member.
6. **(Changing company type)** The conversion of the Company from a public company to a proprietary company.

EXECUTED as a deed.

EXECUTED by **PACIFIC GROUP TOPCO LIMITED** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of director

Full name of director

EXECUTED by **PACIFIC EQUITY PARTNERS
FUND VI GP (JERSEY) LIMITED** as General
Partner of **PACIFIC EQUITY PARTNERS FUND
VI L.P.** by:

Signature of witness

Full name of witness

Signature of authorised signatory

Full name of authorised signatory

EXECUTED by **PACIFIC EQUITY PARTNERS FUND VI (AUSTRALASIA) PTY LIMITED AS TRUSTEE OF THE PACIFIC EQUITY PARTNERS FUND VI (AUSTRALASIA) UNIT TRUST** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

EXECUTED by **PACIFIC EQUITY PARTNERS FUND VI-A (AUSTRALASIA) PTY LIMITED AS TRUSTEE OF THE PACIFIC EQUITY PARTNERS FUND VI-A (AUSTRALASIA) UNIT TRUST** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

EXECUTED by **EAGLE COINVESTMENT PTY LIMITED AS TRUSTEE FOR PACIFIC EQUITY PARTNERS FUND VI EXECUTIVES COINVESTMENT TRUST A** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

EXECUTED by **EAGLE COINVESTMENT PTY LIMITED AS TRUSTEE FOR PACIFIC EQUITY PARTNERS FUND VI EXECUTIVES COINVESTMENT TRUST B** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

EXECUTED by **PEP INVESTMENT PTY LIMITED** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Annexure A - Constitution

Constitution of Pacific Group Topco Limited

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Pacific Group Topco Limited

Constitution

Preliminary

1. Definitions

In this Constitution:

Attending Shareholder means, in relation to a meeting of Shareholders, the Shareholder present at the place of the meeting, in person or by proxy, by attorney or, where the Shareholder is a body corporate, by Corporate Representative.

Board means the Directors of the Company from time to time.

Business Day means a day except a Saturday, Sunday or public holiday in the state or territory in which the Company is taken to be registered for the purposes of the Corporations Act.

Class A Share an Ordinary Share in the capital of the Company which is designated as a Class A Share and has the rights set out in this Constitution.

Class B Share an Ordinary Share in the capital of the Company which is designated as a Class B Share and has the rights set out in this Constitution.

Class C Share a Share in the capital of the Company which is designated as a Class C Share and has the rights set out in this Constitution.

Company means Pacific Group Topco Limited.

Company Group means the Company, its subsidiaries and each of its or their interests in joint ventures or other entities (including trusts), from time to time, and where the context allows, includes any one or more of such entities (each a **Company Group Member**).

Conversion means in relation to a Share, the variation of the rights attaching to the Share and if relevant, the splitting or consolidating of the Share into a larger or smaller number of Shares respectively, such that following the variation, the Share has the same rights as the class of Share into which it is converted and is treated in all respects as being in that class of Share into which it has converted from that time and **Convert**, **Convertible**, **Converted** and **Converting** have corresponding meanings.

Corporate Representative means a person authorised in accordance with the Corporations Act (or a corresponding previous law) by a Shareholder which is a body corporate to act as its representative at a meeting of Shareholders.

Corporations Act means the Corporations Act 2001 (Commonwealth).

Director means a person who is, for the time being, a director of the Company including, where appropriate, an alternate director of the Company.

Executive Director means a Director who is an employee (whether full-time or part-time) of the Company or of any related body corporate of the Company.

Incentive Plan means an equity incentive plan established by the Company or another Company Group Member for the employees of the Company Group and/or other persons and approved by the Board in accordance with the Shareholders Deed.

Jointly Held means, in relation to a Share, a Share which the Register records 2 or more persons as the holders of that Share.

Legal Costs of a person means legal costs calculated on a solicitor-and-client basis incurred by that person in defending or resisting any proceedings (whether criminal, civil, administrative or judicial), appearing before or responding to actions taken by any court, tribunal, government authority or agency, other body or commission, a liquidator, an administrator, a trustee in bankruptcy or other authorised official, where that proceeding, appearance or response relates to a Liability of that person.

Liability of a person means any liability including negligence (except a liability for legal costs) incurred by that person in or arising out of the discharge of duties as an officer of the Company or in or arising out of the conduct of the business of the Company, including as result of appointment or nomination by the Company or a subsidiary as a trustee or as a director, officer or employee of another body corporate.

Non-Executive Directors means all Directors other than Executive Directors.

Notice means a notice given pursuant to, or for the purposes of, this Constitution or the Corporations Act.

Ordinary Share means a Class A Share, a Class B Share or any other ordinary share in the capital of the Company having the rights set out in this Constitution.

Personal Representative means the legal personal representative, executor or administrator of the estate of a deceased person.

Register means the register of Shareholders kept pursuant to the Corporations Act and, where appropriate, includes any branch register.

Relevant Officer means a person who is, or has been, a Director or Secretary.

Secretary means a person appointed as, or to perform the duties of, secretary of the Company for the time being.

Share means a share (of any class) in the capital of the Company.

Shareholder means a person whose name is entered in the Register as the holder of a Share and "**registered holder**" has a corresponding meaning.

Shareholders Deed means the Shareholders Deed relating to the Company, entered into by the Company and its then Shareholders (or beneficial owners of the Company's Shares, if applicable) from time to time.

Transmission Event means:

- (a) if a Shareholder is an individual, the death or bankruptcy of that Shareholder or that Shareholder becoming of unsound mind or becoming a person whose property is liable to be dealt with pursuant to a law about mental health; or
- (b) if a Shareholder is a body corporate, the deregistration of that Shareholder pursuant to the laws of the jurisdiction of its registration or the succession by another body corporate to the assets and liabilities of the Shareholder.

2. Words or expressions defined in the Shareholders Deed

In this Constitution, if the Shareholders Deed is in force, unless the contrary intention appears:

- (a) a word or expression defined in the Shareholders Deed (but not defined in this Constitution) has the same meaning as in the Shareholders Deed when used in this Constitution; and
- (b) a word or expression defined in the Shareholders Deed and also defined in this Constitution has the meaning given to it by this Constitution.

3. Interpretation

Headings are for convenience only and do not affect interpretation. Unless the context indicates a contrary intention, in this Constitution:

- (a) a word importing the singular includes the plural (and vice versa);
- (b) a word indicating a gender includes every other gender;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) the word "includes" in any form is not a word of limitation;
- (e) a reference to a partly paid Share is a reference to a Share on which there is an amount unpaid;
- (f) a reference to a call or an amount called in respect of a Share includes an amount that, by the terms of issue of a Share or otherwise, is payable at one or more fixed times;
- (g) a reference to something being "written" or "in writing" includes that thing being represented or reproduced in any mode in a visible form;
- (h) a notice or document required by this Constitution to be signed may be authenticated by any other manner permitted by the Corporations Act or any other law; and
- (i) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements.

4. Application of Corporations Act

- (a) Unless the context indicates a contrary intention, in this Constitution:
 - (i) a reference to the Corporations Act is to the Corporations Act in force in relation to the Company after taking into account any waiver, modification or exemption which is in force either generally or in relation to the Company; and
 - (ii) a word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Corporations Act, unless that word or phrase is otherwise defined in this Constitution.
- (b) The replaceable rules in the Corporations Act do not apply to the Company.

5. Currency

- (a) The Board may:

- (i) differentiate between Shareholders as to the currency in which any amount payable to a Shareholder is paid (whether by way of or on account of dividends, repayment of capital, participation in surplus property of the Company or otherwise);
 - (ii) determine to pay a distribution in a currency other than Australian dollars and the amount payable will be converted from Australian dollars in any manner, at any time and at any exchange rate as the Board thinks fit; and
 - (iii) in deciding the currency in which a payment is to be made to a Shareholder, have regard to the registered address of the Shareholder, the register on which a Shareholder's Shares are registered and any other matters as the Board considers appropriate.
- (b) Payment in another currency of an amount converted under this Article is as between the Company and a Shareholder adequate and proper payment of the amount payable.
 - (c) An amount payable to a Shareholder, whether by way of or on account of dividend, return of capital, participation in the property of the Company on a winding up, Exit or otherwise, may be paid in accordance with Article 5(a) and the Board may fix a date up to 30 days before the payment date as the date on which any applicable exchange rate will be determined for that purpose.

6. Conflicts with the Shareholders Deed

- (a) In this Constitution, where there is a reference to the Shareholders Deed and for such time as there is no Shareholders Deed in force, the relevant Article will be read as if it did not contain any reference to the Shareholders Deed, and if it is not capable of being so read, will be disregarded in its entirety.
- (b) For as long as the Shareholders Deed is in force, if there is an inconsistency between any provision of this Constitution and the Shareholders Deed, the provisions of the Shareholders Deed will prevail to the extent of the inconsistency and the Shareholders must amend this Constitution to remove the inconsistency.
- (c) An inconsistency will be taken to exist between this Constitution and the Shareholders Deed for the purposes of Article 6(b) if:
 - (i) the subject matter of the relevant provisions in this Constitution and the Shareholders Deed is the same and those provisions specify differing requirements; or
 - (ii) the action required to be taken or not taken (as the case may be) under the relevant provisions in this Constitution and the Shareholders Deed is the same but those provisions specify requirements which both cannot be satisfied by taking, or omitting to take, that action in the same way.
- (d) To avoid doubt:
 - (i) if this Constitution and the Shareholders Deed require an action to be taken, including obtaining an approval or consent, at different standards of performance or other relevant thresholds:
 - A. and the Shareholders Deed contains the higher standard of performance or other relevant threshold (as determined finally by the Board), the standard of performance or other relevant threshold in the Shareholders Deed must be complied with; or

- B. this Constitution contains the higher standard of performance or other relevant threshold (as determined finally by the Board), only the standard of performance or other relevant threshold in the Shareholders Deed must be complied with; and
- (ii) any provision of this Constitution which is expressly stated to be subject to the Shareholders Deed does not limit or otherwise prejudice any other provision being subject to the Shareholders Deed in accordance with Article 6(a).
- (e) A holder of any Shares who, for any reason except where the holder is a nominee holder as bare trustee for a beneficial holder who is a party to the Shareholders Deed, is not at any time a party to the Shareholders Deed must comply with the Shareholders Deed as if it were a party to it as a Shareholder or beneficial owner of Shares.

7. Conflicts with Incentive Plan

- (a) If there is an inconsistency between any provision of this Constitution and an Incentive Plan, the provisions of the Incentive Plan will prevail to the extent of the inconsistency.
- (b) An inconsistency will be taken to exist between this Constitution and an Incentive Plan for the purposes of Article 7(a) if:
 - (i) the subject matter of the relevant provisions in this Constitution and the Incentive Plan is the same and those provisions specify differing requirements; or
 - (ii) the action required to be taken or not taken (as the case may be) under the relevant provisions in this Constitution and the Incentive Plan is the same but those provisions specify requirements which both cannot be satisfied by taking, or omitting to take, that action in the same way.
- (c) To avoid doubt:
 - (i) if this Constitution and an Incentive Plan require an action to be taken, including obtaining an approval or consent, at different standards of performance or other relevant thresholds:
 - A. and the Incentive Plan contains the higher standard of performance or other relevant threshold (as determined finally by the Board), the standard of performance or other relevant threshold in the Incentive Plan must be complied with; or
 - B. this Constitution contains the higher standard of performance or other relevant threshold (as determined finally by the Board), only the standard of performance or other relevant threshold in the Incentive Plan must be complied with; and
 - (ii) any provision of this Constitution which is expressly stated to be subject to an Incentive Plan does not limit or otherwise prejudice any other provision being subject to each Incentive Plan in accordance with Article 7(a).

8. Enforcement

- (a) Each Shareholder submits to the non-exclusive jurisdiction of the courts of New South Wales, the Federal Court of Australia and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to this Constitution.
- (b) If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect pursuant to the law of any jurisdiction, then that does not affect or impair:
 - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
 - (ii) the legality, validity or enforceability pursuant to the law of any other jurisdiction of that or any other provision of this Constitution.

Capital

9. Issue of securities

- (a) Subject to the Corporations Act, Shareholders Deed and any rights and restrictions attached to a class of Shares or other securities, the Company may by resolution of the Board issue Shares, options to acquire Shares, and other securities with rights of conversion to Shares on any terms, to any person, at any time and for any consideration, as the Board resolves.
- (b) Subject to the Shareholders Deed, the Company may issue preference Shares (including those which may be, or at the option of either or both the Company and the holder are, liable to be redeemed) and may convert any issued Shares into preference Shares, if the rights of the holders of the preference Shares are as set out in Article 13 or are approved in accordance with the Corporations Act.

10. Class A Shares

- (a) Class A Shares are a separate class of Ordinary Shares that may be issued by the Company.
- (b) The provisions of this Constitution and the Shareholders Deed (if in force) apply to Class A Shares.
- (c) A Class A Share is Convertible in accordance with Article 14 in the circumstances provided for such Conversion in the Shareholders Deed.

11. Class B Shares

- (a) Class B Shares are a separate class of Ordinary Shares that may be issued by the Company.
- (b) The provisions of this Constitution and the Shareholders Deed (if in force) apply to Class B Shares.
- (c) A Class B Share is Convertible in accordance with Article 14 in the circumstances provided for such Conversion in the Shareholders Deed.

12. Class C Shares

- (a) Class C Shares are a separate class of Shares that may be issued by the Company on terms to be determined by the Board.
- (b) The provisions of this Constitution and the Shareholders Deed (if in force) apply to Class C Shares.
- (c) A Class C Share is Convertible in accordance with Article 14 in the circumstances provided for such Conversion in the Shareholders Deed.
- (d) A Class C Share is a non-voting Share.

13. Preference Shares Rights

If the Company at any time proposes to issue any preference Shares with the terms set out in this Article 13, each preference Share confers on the holder:

- (a) the right to convert the preference Share into an Ordinary Share if and on the basis the Board resolves under the terms of issue;
- (b) the right to receive a dividend at the rate or of the amount (which may be fixed or variable) and on the conditions (including conditions which may be changed or reset at certain times or upon certain events) that the Board resolves under the terms of issue unless, and to extent that, the Board resolves under the terms of issue that there is no right to receive a dividend, and any such dividend:
 - (i) is non-cumulative unless, and to the extent that, the Board resolves otherwise under the terms of issue;
 - (ii) will rank for payment in priority to Ordinary Shares unless, and to the extent that, the Board resolves otherwise under the terms of issue; and
 - (iii) will rank for payment in relation to Shares in any other class of Shares as the Board resolves under the terms of issue;
- (c) in addition to the rights (if any) to receive a dividend, the right to participate equally with the Ordinary Shares in the distribution of profits (or other amounts) available for dividends if and on the basis the Board resolves under the terms of issue;
- (d) if, and to the extent that any dividend on the preference Share is cumulative, the right in a winding up or on a reduction of capital, and on redemption in the case of a redeemable preference Share, to payment of the amount of any dividends accrued but unpaid on the preference Share at the date of winding up or reduction of capital or, in the case of a redeemable preference share, the date of redemption, with the same priority in relation to each other class of Shares as the priority that applies in relation to the payment of the dividend;
- (e) if, and to the extent that any dividend on the preference Share is non-cumulative, and if, and to the extent that, the Board resolves under the terms of issue, the right in a winding up or on a reduction of capital, and on redemption in the case of a redeemable preference Share, to payment of the amount of any dividends accrued but unpaid on the preference Share for the period commencing on the dividend payment date which has then most recently occurred and ending on the date of winding up or reduction of capital or, in the case of a redeemable preference share, the date of redemption, with the same priority in relation to each other class of Shares as the priority that applies in relation to the payment of the dividend;

- (f) the right in a winding up or on a reduction of capital, and on redemption in the case of a redeemable preference Share, to payment of any amount (which may include the amount paid or agreed to be considered as paid on the preference Share) that the Board resolves at the time of issue, and payment of such amount:
 - (i) will rank for payment in priority to Ordinary Shares unless, and to the extent that, the Board resolves otherwise under the terms of issue; and
 - (ii) will rank for payment in relation to any other class of Shares as the Board resolves under the terms of issue;
- (g) the right to a bonus issue or capitalisation of profits in favour of preference Share holders only, if and to the extent the Board resolves under the terms of issue;
- (h) in addition to the rights pursuant to Articles 13(b), 13(c), 13(d), 13(e), 13(f) and 13(g), the right to participate with the Ordinary Shares in profits and assets of the Company, including on a winding up, if and to the extent that the Board resolves under the terms of issue;
- (i) the right to receive notices, reports and accounts and to attend and be heard at all meetings of Shareholders on the same basis as the holders of Ordinary Shares;
- (j) no right to vote at meetings of Shareholders except on the questions, proposals or resolutions or during the periods of time or in the circumstances that the Board resolves under the terms of issue, which, unless the Board resolves otherwise under the terms of issue, are:
 - (i) on any matter considered at a meeting if, at the date of the meeting, the dividend on the preference Shares is in arrears;
 - (ii) on a proposal to reduce the share capital of the Company;
 - (iii) on a resolution to approve the terms of a buy-back agreement;
 - (iv) on a proposal that affects rights attached to the preference Shares;
 - (v) on a proposal to wind up the Company;
 - (vi) on a proposal for the disposal of the whole of the property, business and undertaking of the Company; and
 - (vii) on any matter considered at a meeting held during the winding up of the Company; and
- (k) if voting on any matter in respect of which the holder is entitled to vote is by poll the right to cast the number of votes specified in, or determined in accordance with, the terms of issue for the preference Share.

In the case of a redeemable preference Share, the Company must if required by the terms of issue for that Share but subject to the Corporations Act, at the time and place for redemption specified in, or determined in accordance with, those terms of issue, redeem that Share and, subject to the giving or receiving of a valid redemption notice or other document (if any) required by those terms of issue, pay to or at the direction of the registered holder the amount payable on redemption of that Share.

14. Conversion of Shares

Subject to Article 15, the Corporations Act, the Shareholders Deed and the terms of issue of each class of shares, the Company may by resolution convert or reclassify shares from one class to another. The Conversion of any Share into any other class of Share will not constitute

a cancellation, redemption or termination of the Share or the issue, allotment or creation of new Shares, but will have the effect of varying the status of, and the rights attaching to, the Share so that it becomes a Share of the class into which it Converts.

15. Class rights

- (a) Subject to the Corporations Act, the Shareholders Deed, each Incentive Plan and the terms of issue of Shares in a particular class, the Company may vary or cancel rights attached to Shares in that class:
 - (i) by a special resolution passed at a meeting of the Shareholders holding Shares in that class; or
 - (ii) with the written consent of Shareholders who are entitled to at least 75% of the votes that may be cast in respect of Shares in that class.
- (b) Article 53 applies to a meeting held pursuant to Article 15(a)(i).
- (c) The issue of any new Shares ranking equally, or any conversion of existing securities to Shares ranking equally, with existing Shares is not a variation of the rights conferred on the holders of the existing Shares, unless otherwise provided by the terms of issue of the existing Shares or required by the Corporations Act.
- (d) The issue of any new Shares ranking in priority, or any conversion of existing securities to Shares ranking in priority, to an existing class of preference Shares is a variation of the rights conferred on the holders of the existing preference Shares, unless the issue or conversion is expressly permitted by the terms of the existing preference Shares.

16. Alterations of capital

- (a) The Company may by resolution convert Shares from one class to another, subject to the Corporations Act, this Constitution, the Shareholders Deed and the terms of issue of a class of Shares.
- (b) The Company may reduce, alter or buy-back its share capital in any manner provided by the Corporations Act. The Board may do anything which is required to give effect to any resolution authorising a reduction, alteration or buy-back of the share capital of the Company, including where a Shareholder becomes entitled to a fraction of a Share on a consolidation or subdivision:
 - (i) making cash payments;
 - (ii) ignoring fractions;
 - (iii) appointing a trustee to deal with any fractions on behalf of Shareholders; and
 - (iv) rounding up each fractional entitlement to the nearest whole Share by capitalising any amount available for capitalisation pursuant to Article 74 even though only some Shareholders participate in the capitalisation.

17. Registered holder

- (a) Except as required by law, this Constitution or the Shareholders Deed, the Company is not required to recognise any interest in, or right in respect of, a Share except an absolute right of legal ownership of the Shareholder registered as the holder of that Share, regardless of whether the Company has notice of the interest or right.

- (b) If the Company registers two or more persons as the registered holders of a Share, those persons are taken to hold that Share as joint tenants.

18. Certificates

- (a) Subject to the Corporations Act, the Company may issue certificates for Shares, cancel any certificates for Shares, and replace lost or destroyed or defaced certificates for Shares, on the basis and in the form which the Board resolves.
- (b) Only the Shareholder whose name appears first in the Register in respect of a Jointly Held Share is entitled to a certificate in respect of that Share and delivery of the certificate to that person is delivery to all holders of that Share.

Calls

19. Making of calls

- (a) Subject to the Corporations Act and the terms of issue of a Share, the Company may by resolution of the Board make calls on the registered holders of a Share for any amount unpaid on that Share which is not by the terms of issue of that Share made payable at fixed times, on any terms and at any times as the Board resolves, including payment by instalments.
- (b) The Company may when it issues Shares make calls payable for one or more Shareholders for different amounts and at different times as the Board resolves.
- (c) The Company may by resolution of the Board revoke or postpone a call or extend the time for payment of a call, at any time prior to the date on which payment of that call is due.
- (d) A call is made at the time of or as specified in the resolution of the Board authorising the call.

20. Notice of calls

- (a) The Company must give notice of a call to the Shareholder upon whom the call is made at least 10 Business Days (or any other period of notice required by any terms of issue of the relevant Shares) before the due date for payment. The notice must specify the amount of the call, the time or times and place of payment and any other information as the Board resolves.
- (b) The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any Shareholder does not invalidate the call.

21. Payment of calls

- (a) Each Shareholder must pay to the Company the amount of each call in the manner, at the time and at the place specified in the notice of the call.
- (b) The registered holders of a Jointly Held Share are jointly and severally liable in respect of all payments which are required to be made in respect of that Share.
- (c) If the terms of issue of a Share require an amount to be paid in respect of a Share on the date of issue or any other fixed date, the Shareholder of that Share must pay that amount to the Company at that time and that amount is treated for the purposes of this Constitution as if a call for that amount had been properly made by the Board of which appropriate notice has been given.

- (d) In a proceeding to recover a call, or an amount payable due to the failure to pay or late payment of a call, proof that:
- (i) the name of the person is entered in the Register as a registered holder of the Share on which the call was made;
 - (ii) there is a record in the minute books of the Company of the resolution making the call or the fixed amount payable by the terms of issue of the relevant Shares; and
 - (iii) notice of the call was given or taken to be given to the person in accordance with this Constitution,

is conclusive evidence of the obligation of that person to pay the call.

22. Prepayment of calls

The Company may by resolution of the Board:

- (a) accept from a Shareholder the whole or part of the amount unpaid on a Share even if no part of that amount has been called;
- (b) agree to pay interest on the whole or any part of the amount so accepted, from the date of acceptance to the date on which the amount becomes payable, at any rate agreed between the Board and the Shareholder paying the amount; and
- (c) unless otherwise agreed between the Company and the Shareholder, repay the whole or any part of the amount so accepted at any time.

23. Interest payable

- (a) If an amount called or otherwise payable to the Company in respect of a Share is not paid before or on the time for payment, the person who owes the amount must pay to the Company:
 - (i) interest on the unpaid part of the amount from the date payment is due to the date of payment at the rate that the Board resolves; and
 - (ii) all costs and expenses that the Company incurs due to the failure to pay or the late payment.
- (b) Interest pursuant to Article 23(a) accrues daily and may be capitalised at any interval that the Board resolves.
- (c) The Company may by resolution of the Board waive payment of some or all of the interest, costs or expenses payable pursuant to Article 23(a).

Forfeiture and liens

24. Forfeiture procedure

The Company may by a resolution of the Board forfeit a Share of a Shareholder if:

- (a) that Shareholder does not pay a call or other amount payable in respect of that Share on or before the date for its payment;

- (b) the Company gives that Shareholder notice in writing:
 - (i) requiring the Shareholder to pay that call or other amount, any interest on it and all costs and expenses that the Company has incurred due to the failure to pay; and
 - (ii) stating that the Share is liable to be forfeited if that Shareholder does not pay to the Company, at the place specified in the notice, the amount specified in the notice, within 10 Business Days (or any longer period specified) after the date of the notice; and
- (c) that Shareholder does not pay that amount in accordance with that notice.

25. Effect of forfeiture

- (a) A person whose Shares have been forfeited:
 - (i) ceases to be a Shareholder in respect of the forfeited Shares;
 - (ii) has no claims or demands against the Company in respect of those Shares;
 - (iii) has no other rights or entitlements in respect of those Shares, except the rights that are provided by the Corporations Act or saved by this Constitution;
 - (iv) remains liable to pay, and must immediately pay, to the Company all amounts that at the date of forfeiture were payable by the person to the Company in respect of those Shares; and
 - (v) must pay to the Company interest at the rate that the Board resolves on those amounts from the date of forfeiture until and including the date of payment of those amounts.
- (b) When a Share has been forfeited, the Company must give notice in writing of the forfeiture to the Shareholder registered as its holder before the forfeiture and record the forfeiture with the date of forfeiture in the Register. Failure by the Company to comply with any requirement in this Article does not invalidate the forfeiture.
- (c) A statement in writing from the Company that is signed by a Director or Secretary that a Share was forfeited on a specified date is sufficient evidence of the forfeiture of that Share and the right and title of the Company to sell, dispose or reissue that Share.
- (d) Subject to the Corporations Act, the Company may by resolution of the Board waive any or all of its rights pursuant to Article 24 or this Article 25 on any terms the Board resolves, and at any time before a sale, disposition, reissue or cancellation of a forfeited Share, cancel the forfeiture on any terms as the Board resolves.

26. Liens on Shares

- (a) Unless the terms of issue of a Share provide otherwise, the Company has a first ranking lien on a Share, the proceeds of sale of that Share, and all dividends and entitlements determined in respect of that Share, for:
 - (i) any amount due and unpaid in respect of that Share which has been called or is payable on a fixed date;

- (ii) any amount which remains outstanding under loans made by the Company to acquire that Share under an employee incentive scheme, to the extent permitted by the Corporations Act;
 - (iii) all amounts that the Company is required by law to pay, and has paid, in respect of that Share; and
 - (iv) all interest and expenses due and payable to the Company in respect of the unpaid amounts.
- (b) The Company may by resolution of the Board waive any or all of its rights pursuant to Article 26(a) on any terms that the Board resolves.
 - (c) The Company's lien on a Share is released if a transfer of that Share is registered by the Company without the Company giving written notice of the lien to the transferee of that Share.

27. Company payments

- (a) A Shareholder or the Personal Representative of a deceased Shareholder must pay to the Company on written demand an amount equal to all payments that the Company makes to a government or taxation authority in respect of the Shareholder, the death of the Shareholder, the Shareholder's Shares or any distributions made in respect of the Shareholder's Shares (including dividends), where the Company is either:
 - (i) obliged by law to make the relevant payment; or
 - (ii) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxation authority that the Company is obliged by law to make the relevant payment.
- (b) The Company is not obliged to notify a Shareholder in advance of its intention to make a payment pursuant to Article 27(a).
- (c) An amount payable by a Shareholder to the Company pursuant to Article 27(a) is treated for the purposes of this Constitution as if it is a call properly made by the Board of which notice has been given on the date on which the written demand is given by the Company to the Shareholder or the Personal Representative of a deceased Shareholder.
- (d) The Company may refuse to register a transfer of any Share by a Shareholder or that Shareholder's Personal Representative until all amounts paid or payable by the Company in respect of that Share pursuant to any law has been paid to the Company by the Shareholder or the Shareholder's Personal Representative.
- (e) Nothing in this Article 27 affects any right or remedy which any law confers on the Company.

28. Dealing with Shares

- (a) The Company may sell, otherwise dispose of or reissue, a Share which has been forfeited to any person on any terms and in any manner as the Board resolves.
- (b) Subject to the Corporations Act, the Company may cancel a Share which has been forfeited pursuant to the terms on which the Share is on issue.

- (c) For the purposes of enforcing a lien, the Company may sell the Shares which are subject to the lien in any manner the Board resolves, with or without giving any notice to the Shareholder of those Shares.
- (d) Nothing in this Article 28 affects any right or remedy which any law confers on the Company.

29. Proceeds of sale

- (a) The Company must apply the proceeds of any sale of any Shares pursuant to Article 28(a) and 28(c) in the following order:
 - (i) the expenses of the sale;
 - (ii) the amounts due and unpaid in respect of those Shares; and
 - (iii) subject to the terms of issue of the Shares and any lien pursuant to Article 26 for an amount unpaid in respect of the Shares, the balance (if any) to or at the direction of the person entitled to the Shares immediately prior to the sale, on delivery by that person of any evidence of ownership of or entitlement to those Shares as the Board requires.
- (b) The Company is not required to pay interest on any amount payable pursuant to Article 29(a)(iii).

30. Sale procedure

- (a) The Company may:
 - (i) effect a transfer of Shares sold pursuant to Article 28; and
 - (ii) receive the consideration (if any) given for Shares sold pursuant to Article 28.
- (b) The validity of the sale of Shares pursuant to Article 28 may not be called into question by any person after the transfer has been registered, and the buyer of the Shares need not enquire as to the validity of the sale or the application of the sale proceeds by the Company.
- (c) The title of the buyer of Shares sold pursuant to Article 28 is not affected by any irregularity or invalidity in connection with the sale.
- (d) The sole remedy (if any) of any person aggrieved by a sale of Shares pursuant to Article 28 is in damages only and against the Company exclusively.
- (e) A certificate in writing from the Company signed by a Director or Secretary that a Share was sold, disposed of or reissued in accordance with Article 28 is conclusive evidence of those matters.

Transfer of Shares

31. Transfers

- (a) Subject to this Constitution, the Shareholders Deed, each Incentive Plan and any restrictions attached to a Share, a Shareholder may transfer one or more Shares that Shareholder holds by a written instrument of transfer in any usual form or in any other form approved by the Board that is otherwise permitted by law. A Shareholder must comply with the Shareholders Deed or the relevant Incentive Plan (as applicable to the Shareholder and the Shares which are being transferred) when transferring Shares in the Company.
- (b) An instrument of transfer of a Share referred to in Article 31(a) must be:
 - (i) executed by or on behalf of the transferor and the transferee, unless the Board has resolved that the execution of the transferee is not required;
 - (ii) duly stamped, if required by law; and
 - (iii) delivered to the Company, at the place where the Register is kept, together with the certificate (if any) of the Share to be transferred and any other evidence as the Board may require to prove the title of the transferor to that Share, the right of the transferor to transfer that Share, and the proper execution of the instrument of transfer.
- (c) A person transferring a Share remains the registered holder of that Share until a transfer for that Share has been registered and the transferee is entered in the Register as the holder of that Share.
- (d) The Company must not charge a fee to register a transfer of a Share in accordance with this Constitution.

32. Refusal to register transfers

- (a) The Company may refuse to register a transfer of Shares where the Corporations Act permits the Company to do so and the Board so resolves.
- (b) If permitted by the Corporations Act and the Board so resolves, the Company may refuse to register an instrument of transfer of Shares where:
 - (i) the transfer is not in registrable form;
 - (ii) the Company has a lien on any of the Shares transferred;
 - (iii) the registration of the transfer may breach an Australian law or a court order;
 - (iv) the transfer does not comply with the terms of an Incentive Plan; or
 - (v) the Company is otherwise permitted or required to do so pursuant to the terms of issue of the Shares.
- (c) The Company must refuse to register a transfer of Shares where the Corporations Act or a law about stamp duty requires the Company to do so.
- (d) Failure by the Company to give notice of refusal to register any transfer as may be required pursuant to the Corporations Act does not invalidate the refusal to register the transfer.

(e) Subject to Article 32(f), but not withstanding Articles 32(a) and 32(b) or any other provision of this Constitution, other than Article 32(c), the Company may not refuse to register a transfer of Shares if the transfer is to:

- (i) a person entitled to the benefit of a mortgage, charge, pledge or other security interest or encumbrance (**Security Interest**) over the Share (whether or not as an agent, trustee or nominee for a person entitled to the benefit of the Security Interest); or
- (ii) a person who purchases the Share from the holder of that Share or person entitled to the benefit of a Security Interest (or person acting as agent, trustee or nominee on its behalf),

pursuant to or in connection with the enforcement of that Security Interest in respect of the Share, provided that the Company receives an instrument of transfer signed by the transferee and the holder of the Security Interest as referred to in this Article and otherwise in accordance with Article 31 of this Constitution.

(f) If the Shareholders Deed is in force, and notwithstanding Articles 32(a) and 32(b) or any other provision of this Constitution, other than Articles 32(c), the Company must not decline to register a transfer of a Share that complies with the terms of the Shareholders Deed, and must not register a transfer that does not comply with the terms of the Shareholders Deed.

Transmission of Shares

33. Transmission on death

- (a) If the registered holder of a Share which is not Jointly Held dies, the Company must recognise only the Personal Representative of that registered holder as having any title to or interest in, or any benefits accruing in respect of, that Share.
- (b) If a registered holder of a Share which is Jointly Held dies, the Company must recognise only the surviving registered holders of that Share as having any title to or interest in, or any benefits accruing in respect of, that Share.
- (c) The estate of a deceased Shareholder is not released from any liability in respect of the Shares that are registered in the name of that Shareholder.
- (d) Where 2 or more persons are jointly entitled to any Share as a consequence of the death of the registered holder of that Share, they are taken to be Joint Holders of that Share.
- (e) Notwithstanding Articles 33(a) and 33(b), the Company may register or give effect to a transfer of Shares to a transferee who dies before the transfer is registered or given effect to by the Company.

34. Transmission Events

- (a) Subject to the Bankruptcy Act 1966 (Commonwealth) and the Corporations Act, a person who establishes to the satisfaction of the Board that it is entitled to a Share because of a Transmission Event may:
 - (i) elect to be registered as a Shareholder in respect of that Share by giving a signed notice in writing to the Company; or
 - (ii) transfer that Share to another person.

- (b) A transfer pursuant to Article 34(a) is subject to all of the provisions of this Constitution, the Shareholders Deed and each Incentive Plan (as applicable) relating to transfers of Shares.

Proceedings of Shareholders

35. Written resolutions of Shareholders

While the Company has only one Shareholder, the Company may pass a resolution by that Shareholder signing a record in writing of that resolution.

36. Annual general meeting

Annual general meetings of the Company are to be held in accordance with the Corporations Act.

37. Calling meetings of Shareholders

- (a) The Company may by resolution of the Board call a meeting of Shareholders to be held at the time and place (including 2 or more venues using technology which gives Attending Shareholders as a whole a reasonable opportunity to participate) and in the manner that the Board resolves.
- (b) No Shareholder may call or arrange to hold a meeting of Shareholders except where permitted by the Corporations Act.

38. Notice of meetings of Shareholders

- (a) Where the Company has called a meeting of Shareholders, notice of the meeting and any proxy form for the meeting may be given in the form and in the manner in which the Board resolves, subject to any requirements of the Corporations Act.
- (b) A person may waive notice of any meeting of Shareholders by written notice to the Company.
- (c) A person who has not duly received notice of a meeting of Shareholders may, before or after the meeting, notify the Company of the person's agreement to anything done or resolution passed at the meeting.
- (d) A person's attendance at a meeting of Shareholders waives any objection which that person may have had to a failure to give notice, or the giving of a defective notice, of the meeting, unless the person at the beginning of the meeting objects to the holding of the meeting.
- (e) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Shareholders is not invalid because either or both a person does not receive notice of the meeting or a proxy form, or the Company accidentally does not give notice of the meeting or a proxy form to a person.

39. Quorum

- (a) No business may be transacted at a meeting of Shareholders except, subject to Article 40, the election of the chairperson of the meeting unless a quorum for a meeting of Shareholders is present at the time when the meeting commences.
- (b) If the Shareholders Deed is in force, a quorum for a meeting of Shareholders is as set out in the Shareholders Deed. Otherwise, a quorum for a meeting of Shareholders consists of:
 - (i) if the number of Shareholders entitled to vote is 2 or more - 2 of those Shareholders;
 - (ii) if only one Shareholder is entitled to vote - that Shareholder,
 present at the meeting.
- (c) Each individual present may only be counted once towards a quorum. If a Shareholder has appointed more than one proxy or attorney or Corporate Representative, only one of them may be counted towards a quorum.
- (d) If the Shareholders Deed is in force, if a quorum for a meeting of Shareholders, including a re-convened meeting of Shareholders, is not present within the time stipulated in the Shareholders Deed, the relevant provisions in the Shareholders Deed will apply. Otherwise, if a quorum is not present within 30 minutes after the time appointed for the commencement of:
 - (i) a meeting of Shareholders, the meeting is dissolved unless the chairperson of the meeting or the Board adjourn the meeting to a date, time and place determined by that chairperson or the Board; and
 - (ii) an adjourned meeting of Shareholders, the meeting is dissolved.

40. Chairperson of meetings of Shareholders

- (a) Subject to Articles 40(b) and 40(c), the chairperson of the Board must chair each meeting of Shareholders.
- (b) If at a meeting of Shareholders:
 - (i) there is no chairperson of the Board; or
 - (ii) the chairperson of the Board is not present within 15 minutes after the time appointed for the commencement of a meeting of Shareholders or is not willing to chair all or part of the meeting,
 the Directors who are or will be present at the meeting may (by majority vote) elect one of their number or, in the absence of all the Directors or if none of the Directors present is willing to act, the Attending Shareholders may elect one of their number, to chair that meeting.
- (c) A chairperson of a meeting of Shareholders may, for any item of business at that meeting or for any part of that meeting, vacate the chair in favour of another person nominated by him or her (**Acting Chair**). Where an instrument of proxy appoints the chairperson as proxy for part of proceedings for which an Acting Chair has been nominated, the instrument of proxy is taken to be in favour of the Acting Chair for the relevant part of the proceedings.

41. Conduct of meetings of Shareholders

- (a) Subject to the Corporations Act, the chairperson of a meeting of Shareholders is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The chairperson of a meeting of Shareholders may make rulings without putting the question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting.
- (c) The chairperson of a meeting of Shareholders may determine the procedures to be adopted for proper and orderly discussion or debate at the meeting, and the casting or recording of votes at the meeting.
- (d) The chairperson of a meeting of Shareholders may determine any dispute concerning the admission, validity or rejection of a vote at the meeting.
- (e) The chairperson of a meeting of Shareholders may, subject to the Corporations Act, at any time terminate discussion or debate on any matter being considered at the meeting and require that matter be put to a vote.
- (f) The chairperson of a meeting of Shareholders may refuse to allow debate or discussion on any matter which is not business referred to in the notice of that meeting or is not business of the meeting permitted pursuant to the Corporations Act without being referred to in the notice of meeting.
- (g) The chairperson of a meeting of Shareholders may refuse any person admission to, or require a person to leave and remain out of, the meeting if that person:
 - (i) in the opinion of the chairperson, is not complying with the reasonable directions of the chairperson;
 - (ii) has any audio or visual recording or broadcasting device;
 - (iii) has a placard or banner;
 - (iv) has an article the chairperson considers to be dangerous, offensive or liable to cause disruption;
 - (v) behaves or threatens to behave in a dangerous, offensive or disruptive manner;
 - (vi) refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession; or
 - (vii) is not entitled pursuant to the Corporations Act, the Shareholders Deed, each Incentive Plan or this Constitution to attend the meeting.
- (h) If the chairperson of a meeting of Shareholders considers that there are too many persons present at the meeting to fit into the venue where the meeting is to be held, the chairperson may nominate a separate meeting place using any technology that gives Attending Shareholders as a whole a reasonable opportunity to participate.
- (i) The chairperson of a meeting of Shareholders may delegate any power conferred by this Article 41 to any person.
- (j) Nothing contained in this Article 41 limits the powers conferred by law on the chairperson of a meeting of Shareholders.

42. Attendance at meeting of Shareholders

- (a) Subject to this Constitution, the Shareholders Deed and any rights and restrictions attached to a class of Shares, a Shareholder who is entitled to attend and cast a vote at a meeting of Shareholders, may attend and vote in person or by proxy, by attorney or, if the Shareholder is a body corporate, by Corporate Representative.
- (b) The chairperson of a meeting of Shareholders may require a person acting as a proxy, attorney or Corporate Representative at that meeting to establish to the chairperson's satisfaction that the person is the person who is duly appointed to act. If the person fails to satisfy this requirement, the chairperson may exclude the person from attending or voting at the meeting.
- (c) A Director is entitled to receive notice of and to attend all meetings of Shareholders and all meetings of a class of Shareholders and is entitled to speak at those meetings.
- (d) A person who is requested by the Board to attend a meeting of Shareholders or a meeting of a class of Shareholders is, regardless of whether that person is a Shareholder, entitled to attend that meeting and, at the request of the chairperson of the meeting, is entitled to speak at that meeting.

43. Authority of Attending Shareholders

- (a) Unless otherwise provided in the document or resolution appointing a person as proxy, attorney or Corporate Representative of a Shareholder, the person so appointed has the same rights to speak, demand a poll, join in demanding a poll or act generally at a meeting of Shareholders to which the appointment relates, as the appointing Shareholder would have had if that Shareholder was present at the meeting.
- (b) Unless otherwise provided in the document or resolution appointing a person as proxy, attorney or Corporate Representative of a Shareholder, the appointment is taken to confer authority to:
 - (i) vote on any amendment moved to a proposed resolution and on any motion that a proposed resolution not be put or any similar motion; and
 - (ii) vote on any procedural motion, including any motion to elect the chairperson of the meeting of Shareholders to which the appointment relates, to vacate the chair or to adjourn the meeting,

even though the appointment may refer to specific resolutions and may direct the proxy, attorney or Corporate Representative how to vote on particular resolutions.
- (c) Unless otherwise provided in the document or resolution appointing a person as proxy, attorney or Corporate Representative of a Shareholder, the appointment is taken to confer authority to attend and vote at a meeting which is rescheduled, postponed or adjourned to another time or changed to another place, even though the appointment may refer to a specific meeting to be held at a specified time or place.

44. Multiple appointments

- (a) If more than one attorney or Corporate Representative appointed by a Shareholder is present at a meeting of Shareholders and the Company has not received notice of any revocation of any of the appointments:

- (i) an attorney or Corporate Representative appointed to act at that particular meeting may act to the exclusion of an attorney or Corporate Representative appointed pursuant to a standing appointment; and
 - (ii) subject to Article 44(a)(i), an attorney or Corporate Representative appointed pursuant to the most recent appointment may act to the exclusion of an attorney or Corporate Representative appointed earlier in time.
- (b) An appointment of a proxy of a Shareholder is revoked (or, in the case of a standing appointment, suspended for that particular meeting of Shareholders) if the Company receives a further appointment of a proxy from that Shareholder which would result in there being more than 2 proxies of that Shareholder entitled to act at the meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this Article 44(b).
 - (c) The appointment of a proxy for a Shareholder is not revoked by an attorney or Corporate Representative for that Shareholder attending and taking part in a meeting of Shareholders to which the appointment relates, but if that attorney or Corporate Representative votes on a resolution at that meeting, the proxy is not entitled to vote, and must not vote, as the Shareholder's proxy on that resolution.

45. Voting at meeting of Shareholders

- (a) A resolution put to the vote at a meeting of Shareholders must be decided on a show of hands, unless a poll is demanded in accordance with Article 48 and that demand is not withdrawn.
- (b) The Board may determine that Shareholders entitled to attend and vote at a meeting of Shareholders or at a meeting of a class of Shareholders may vote at that meeting without an Attending Shareholder in respect of that person being present at that meeting (and voting in this manner is referred to in this Article 45(b) as direct voting). The Board may determine rules and procedures in relation to direct voting, including the class of Shareholders entitled to cast a direct vote, the manner in which a direct vote may be cast, the circumstances in which a direct vote will be valid and the effect of a Shareholder casting both a direct vote and a vote in any other manner. Where a notice of meeting specifies that direct voting may occur by eligible Shareholders, a direct vote cast by an eligible Shareholder is taken to have been cast by that person at the meeting if the rules and procedures for direct voting determined by the Board (whether set out in the notice of meeting or otherwise) are complied with.
- (c) Subject to this Constitution, the Shareholders Deed and any rights or restrictions attached to a class of Shares, on a show of hands at a meeting of Shareholders, each Attending Shareholder having the right to vote on the resolution has one vote, provided that where a person is entitled to vote in more than one capacity, that person is entitled only to one vote.
- (d) Subject to this Constitution, the Shareholders Deed and any rights or restrictions attached to a class of Shares, on a poll at a meeting of Shareholders, each Attending Shareholder having the right to vote on the resolution has one vote for each fully paid up Share held by that Attending Shareholder or by the Shareholder that the Attending Shareholder represents.
- (e) Subject to this Constitution, the Shareholders Deed and any rights or restrictions attached to a class of Shares, where the Board has determined other means (including electronic) permitted by law for the casting and recording of votes by Shareholders on any resolution to be put at a meeting of Shareholders, each Shareholder having a right to vote on the resolution has one vote for each fully paid up Share that the Shareholder holds.

- (f) An objection to a right to vote at a meeting of Shareholders or to a determination to allow or disregard a vote at the meeting may only be made at that meeting (or any resumed meeting if that meeting is adjourned). Any objection pursuant to this Article 45(f) must be decided by the chairperson of the meeting of Shareholders, whose decision, made in good faith, is final and conclusive.
- (g) Subject to the Shareholders Deed, except where a resolution at a meeting of Shareholders requires a special majority pursuant to the law, the Shareholders Deed or each Incentive Plan, the resolution is passed if more votes are cast by Shareholders entitled to vote in favour on the resolution than against it.
- (h) In the case of an equality of votes on a resolution at a meeting of Shareholders, the chairperson of that meeting does not have a casting vote on that resolution.
- (i) Unless a poll is demanded and the demand is not withdrawn, a determination by the chairperson of a meeting of Shareholders following a vote on a show of hands that a resolution has been passed or not passed is conclusive, without proof of the number or proportion of the votes recorded in favour or against the resolution.

46. Voting by representatives

- (a) A person who is entitled to be registered as the holder of a Share because of a Transmission Event may vote in respect of that Share at a meeting of Shareholders provided that person has satisfied the Board of that entitlement not less than 48 hours before the time appointed for the commencement of that meeting. Any vote by that person so entitled must be accepted to the exclusion of the vote of the registered holder of that Share.
- (b) The parent or guardian of an infant Shareholder may vote at a meeting of Shareholders upon production of any evidence of the relationship or of the appointment of the guardian as the Board may require and any vote so made by the parent or guardian of an infant Shareholder must be accepted to the exclusion of the vote of the infant Shareholder.
- (c) The validity of any resolution passed at a meeting of Shareholders is not affected by the failure of any proxy or attorney to vote in accordance with directions (if any) of the appointing Shareholder.
- (d) If a proxy of a Shareholder purports to vote in a way or circumstances that contravene the Corporations Act, on a show of hands the vote of that proxy is invalid and the Company must not count it. If a poll is demanded, votes which the Corporations Act require a proxy of a Shareholder to cast in a given way must be treated as cast in that way.
- (e) Subject to this Constitution and the Corporations Act, a vote cast at a meeting of Shareholders by a person appointed by a Shareholder as a proxy, attorney or Corporate Representative is valid despite:
 - (i) a Transmission Event occurring in respect of that Shareholder; or
 - (ii) the revocation of the appointment (or the authority pursuant to which the appointment was executed),
 if no notice in writing of that matter has been received by the Company before the time appointed for the commencement of that meeting.
- (f) A vote cast at a meeting of Shareholders by a person appointed by a Shareholder as a proxy, attorney or Corporate Representative is valid despite the transfer of the Share in respect of which the appointment is made, if the transfer is not registered before the commencement of that meeting.

47. Restrictions on voting rights

- (a) If there is more than one Shareholder of a Jointly Held Share present at a meeting of Shareholders (either in person, by proxy, attorney or Corporate Representative), only the vote by the Shareholder who is present (either in person, by proxy, attorney or Corporate Representative) whose name appears first in the Register in respect of that Share will count.
- (b) The authority of a proxy or attorney for a Shareholder to speak or vote at a meeting of Shareholders in respect of the Shares to which the authority relates is suspended while the Shareholder is present in person at that meeting.
- (c) If a Shareholder has appointed two proxies in respect of a meeting of Shareholders and each proxy attends that meeting, neither of those proxies may vote:
 - (i) on a show of hands; or
 - (ii) on a poll if the number or proportion of the Shareholder's vote for which the proxies have been appointed exceeds the total number or proportion of votes that could be cast by the Shareholder.
- (d) An Attending Shareholder is not entitled to vote on any resolution in respect of any Shares on which any calls due and payable in respect of those Shares have not been paid.
- (e) An Attending Shareholder is not entitled to vote on a resolution at a meeting of Shareholders where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (f) The Company must disregard any vote on a resolution at a meeting of Shareholders purported to be cast by an Attending Shareholder where that person is not entitled to vote on that resolution. A failure by the Company to disregard a vote on a resolution as required by this Article 47(f) does not invalidate that resolution or any act, matter or thing done at the meeting, unless that failure occurred by wilful default of the Company or of the chairperson of that meeting.

48. Polls

- (a) A poll on a resolution at a meeting of Shareholders may be demanded by a Shareholder only in accordance with the Corporations Act or by the chairperson of that meeting.
- (b) No poll may be demanded at a meeting of Shareholders on the election of a chairperson of that meeting, or unless the chairperson of the meeting otherwise determines, the adjournment of that meeting.
- (c) A demand for a poll may be withdrawn.
- (d) A poll demanded on a resolution at a meeting of Shareholders for the adjournment of that meeting must be taken immediately. A poll demanded on any other resolution at a meeting of Shareholders must be taken in the manner and at the time and place the chairperson of the meeting directs.
- (e) The result of a poll demanded on a resolution of a meeting of Shareholders is a resolution of that meeting.
- (f) A demand for a poll on a resolution of a meeting of Shareholders does not prevent the continuance of that meeting or that meeting dealing with any other business.

49. Proxies

- (a) A Shareholder who is entitled to attend and vote at a meeting of Shareholders may appoint a person as proxy to attend and vote for the Shareholder in accordance with the Corporations Act but not otherwise.
- (b) A proxy appointed in accordance with the Corporations Act to attend and vote may only exercise the rights of the Shareholder on the basis and subject to the restrictions provided in the Corporations Act.
- (c) A form of appointment of proxy is valid if it is in accordance with the Corporations Act or in any other form (including electronic) which the Board may determine or accept.
- (d) If the name of the proxy or the name of the office of the proxy in a proxy appointment of a Shareholder is not filled in, the proxy of that Shareholder is:
 - (i) the person specified by the Company in the form of proxy in the case that Shareholder does not choose; or
 - (ii) if no person is so specified, the chairperson of that meeting.

50. Receipt of appointments

- (a) An appointment of proxy or attorney for a meeting of Shareholders is effective only if the Company receives the appointment (and any authority pursuant to which the appointment was signed or a certified copy of the authority) not less than 48 hours before the time appointed for the commencement of the meeting or, in the case of an adjourned meeting, resumption of the meeting.
- (b) Where a notice of meeting specifies an electronic address or other electronic means by which a Shareholder may give the Company a proxy appointment, a proxy given at that electronic address or by that other electronic means is taken to have been given by the Shareholder and received by the Company if the requirements set out in the notice of meeting are complied with.

51. Adjournments

- (a) Subject to the Shareholders Deed, the chairperson of a meeting of Shareholders may at any time during the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered at the meeting or any discussion or debate, either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the chairperson.
- (b) If the chairperson of a meeting of Shareholders exercises the right to adjourn that meeting pursuant to Article 51(a), the chairperson may (but is not obliged to) obtain the approval of Attending Shareholders to the adjournment.
- (c) No person other than the chairperson of a meeting of Shareholders may adjourn that meeting.
- (d) The Company may give such notice of a meeting of Shareholders resumed from an adjourned meeting as the Board resolves. Failure to give notice of an adjournment of a meeting of Shareholders or the failure to receive any notice of the meeting does not invalidate the adjournment or anything done (including the passing of a resolution) at a resumed meeting.

- (e) Only business left unfinished is to be transacted at a meeting of Shareholders which is resumed after an adjournment.

52. Cancellations and postponements

- (a) Subject to the Corporations Act and the Shareholders Deed, the Company may by resolution of the Board cancel or postpone a meeting of Shareholders or change the place for the meeting, prior to the date on which the meeting is to be held.
- (b) Article 52(a) does not apply to a meeting called in accordance with the Corporations Act by Shareholders or by the Board on the request of Shareholders, unless those Shareholders consent to the cancellation or postponement of the meeting.
- (c) The Company may give such notice of a cancellation or postponement or change of place of a meeting of Shareholders as the Board resolves. Failure to give notice of a cancellation or postponement or change of place of a meeting of Shareholders or the failure to receive any notice of the meeting does not invalidate the cancellation, postponement or change of place of a meeting or anything done (including the passing of a resolution) at a postponed meeting or the meeting at the new place.

53. Meetings of a class of Shareholders

Subject to the Shareholders Deed, all the provisions of this Constitution relating to a meeting of Shareholders apply so far as they are capable of application and with any necessary changes to a meeting of a class of Shareholders required to be held pursuant to this Constitution or the Corporations Act except that:

- (a) a quorum is 2 Attending Shareholders who hold (or whose Shareholder that they represent holds) Shares of the class, or if only one person holds all the Shares of the class, that person (or an Attending Shareholder representing that person); and
- (b) any Attending Shareholder who holds (or whose Shareholder that they represent holds) Shares of the class may demand a poll.

Directors

54. Appointment and removal of Directors

- (a) The number of Directors (not counting alternate directors of the Company) must be not less than 3 nor more than:
 - (i) if the Shareholders Deed is in force, the maximum number of directors permitted under the Shareholders Deed; or
 - (ii) in any other circumstance, unless the Company resolves otherwise, 10 Directors.
- (b) Subject to Article 54(a) if the Shareholders Deed is in force, a director may only be appointed or removed in accordance with the applicable provisions of the Shareholders Deed. Otherwise:
 - (i) the Company may by resolution appoint or remove a director; and
 - (ii) the Board may appoint any natural person to be a director, either to fill a casual vacancy or as an additional Director.
- (c) Subject to the Shareholders Deed, the Company in general meeting may by resolution remove a Director from office as a Director provided that if the Director

was appointed to represent the interests of particular Shareholders, the resolution to remove the Director does not take effect until a replacement Director to represent those Shareholders' interests has been appointed.

- (d) A Director need not be a Shareholder.

55. Termination of office

A person ceases to be a Director if the person:

- (a) fails to attend Board meetings (either personally or by an alternate director) for a continuous period of 3 months without the consent of the Board;
- (b) resigns by notice in writing to the Company;
- (c) retires and is not re-elected;
- (d) is removed from office pursuant to the Corporations Act;
- (e) is an Executive Director and ceases to be an employee of the Company or of a related body corporate of the Company;
- (f) becomes an insolvent under administration;
- (g) becomes of unsound mind or a person whose property is liable to be dealt with pursuant to a law about mental health; or
- (h) is not permitted to be a director, or to manage a corporation, pursuant to the Corporations Act.

56. Alternate directors

- (a) Subject to the Shareholders Deed, a Director may:
 - (i) without the need for approval of other Directors, appoint another Director; and
 - (ii) with the approval of a majority of the other Directors, appoint a person who is not a Director,
 as an alternate director of that Director for any period. An alternate director need not be a Shareholder.
- (b) The appointing Director may terminate the appointment of his or her alternate director at any time.
- (c) A notice of appointment, or termination of appointment, of an alternate director by the appointing Director is effective only if the notice is in writing and signed by that Director and is effective when given to the Company.
- (d) An alternate director is entitled to receive notice of Board meetings and, subject to this Constitution and the Corporations Act, to attend, count in the quorum of, speak at, and vote at a Board meeting at which his or her appointing Director is not present.
- (e) Subject to this Constitution, the Shareholders Deed, the Corporations Act, and the instrument of appointment of an alternate director, an alternate director may exercise all the powers (except the power pursuant to Article 56(a)) of a Director, to the extent that that his or her appointing Director has not exercised them.

- (f) The office of an alternate director is terminated if the appointing Director ceases to be a Director.
- (g) Subject to Article 57(g), the Company is not required to pay any remuneration or benefit to an alternate director.
- (h) An alternate director is an officer of the Company and not an agent of his or her appointing Director.

57. Remuneration and benefits of Directors

- (a) Subject to the Shareholders Deed, the Company may pay or provide to the Non-Executive Directors fees in an amount or value determined by the Board which does not in any financial year exceed in aggregate the amount last determined by the Company in general meeting (or until so determined, as the Board determines). This Article does not apply to any payments made pursuant to Articles 57(f), 57(g), 57(h), 57(i) and 61.
- (b) The fees pursuant to Article 57(a) may be a fixed sum for attendance at each Board meeting or may be a share of the fixed amount or value determined by the Board pursuant to Article 57(a). If the fees are a share of such fixed amount or value, those fees are to be allocated among the Non-Executive Directors on an equal basis having regard to the proportion of the relevant year for which each of them held office, or as the Board otherwise resolves.
- (c) The fees pursuant to Article 57(a) may be provided in cash or any other manner agreed between the Company and the relevant Non-Executive Director. The Board must determine the manner in which the value of any non-cash benefit is to be calculated.
- (d) The fees of a Non-Executive Director are taken to accrue from day to day, except that fees in the form of a non-cash benefit are taken to accrue at the time the benefit is provided to the Director, subject to the terms on which the benefit is provided.
- (e) Subject to the Shareholders Deed and any agreement with the Company, the Company may pay to each Executive Director an amount of remuneration determined by the Board.
- (f) If any Director, with the approval of the Board, performs extra or special services, the Company may, subject to the Corporations Act and the Shareholders Deed, pay additional remuneration or provide benefits to that Director as the Board resolves.
- (g) Subject to the Shareholders Deed, the Company must pay all reasonable travelling, accommodation and other expenses that a Director or alternate director properly incurs in attending meetings of the Board, committees of the Board, meetings of Shareholders, or otherwise in connection with the business of the Company.
- (h) Subject to the Corporations Act and the Shareholders Deed, the Company may establish and contribute to a fund, trust or scheme for the benefit of:
 - (i) past or present employees or Directors of the Company or a related body corporate of the Company; or
 - (ii) the dependants of, or persons connected with or nominated by, any person referred to in Article 57(h)(i).
- (i) Subject to the Corporations Act and the Shareholders Deed, the Company may, or may agree to, pay provide or make any payment or other benefit to a Director, a director of a related body corporate of the Company or any other person in

connection with that person's or someone else's retirement, resignation from or loss of office, or death while in office.

58. Interests of Directors

- (a) If:
 - (i) the Shareholders Deed is in force; and
 - (ii) the Shareholders Deed includes provisions governing the rights and obligations of interested directors,
 then:
 - (iii) these provisions will apply as if set out in this Article 58; and
 - (iv) the remainder of this Article 58 will continue to apply to the extent that it is not inconsistent with the terms of the Shareholders Deed.
- (b) A Director is not disqualified by reason only of being a Director (or the fiduciary obligations arising from that office) from:
 - (i) holding an office (except auditor) or place of profit or employment in the Company or a related body corporate of the Company;
 - (ii) holding an office or place of profit or employment in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest;
 - (iii) being a member, creditor or otherwise be interested in any body corporate (including the Company), partnership or entity, except auditor of the Company;
 - (iv) entering into any agreement or arrangement with the Company; or
 - (v) acting in a professional capacity (or being a member of a firm which acts in a professional capacity) for the Company, except as auditor of the Company.
- (c) Each Director must comply with Corporations Act in relation to the disclosure of the Director's interests.
- (d) Subject to the Shareholders Deed, a Director who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered at the meeting nor vote on the matter, except where permitted by the Corporations Act.
- (e) Subject to the Shareholders Deed, if a Director has an interest in a matter, then subject to Article 58(d), Article 58(f) and this Constitution:
 - (i) that Director may be counted in a quorum at the Board meeting that considers matters that relate to the interest provided that Director is entitled to vote on at least one of the resolutions to be proposed at that Board meeting;
 - (ii) that Director may participate in and vote on matters that relate to the interest;

- (iii) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
 - (iv) the Director may retain the benefits pursuant to any transaction that relates to the interest even though the Director has the interest; and
 - (v) the Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (f) If an interest of a Director is required to be disclosed pursuant to Article 58(c), Article 58(e)(iv) applies only if the interest is disclosed before the transaction is entered into.

Officers

59. Managing Director

- (a) The Board may appoint one or more Directors as a managing director of the Company, for any period and on any terms (including, subject to Article 57, as to remuneration) as the Board resolves. Subject to any agreement between the Company and the managing director, the Board may vary or terminate the appointment of a managing director of the Company at any time, with or without cause.
- (b) The Board may delegate any of its powers to a managing director of the Company for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power delegated to a managing director of the Company.
- (c) A managing director of the Company must exercise the powers delegated to him or her in accordance with any directions of the Board.
- (d) A person ceases to be a managing director if the person ceases to be a Director.

60. Secretary

The Board must appoint at least one Secretary and may appoint additional Secretaries. The Board may appoint Secretaries for any period and on any terms (including as to remuneration) as the Board resolves. Subject to any agreement between the Company and the Secretary, the Board may vary or terminate the appointment of a Secretary at any time, with or without cause.

61. Indemnity and insurance

- (a) To the extent permitted by law, the Company must indemnify each Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (b) The indemnity pursuant to Article 61(a):
 - (i) is enforceable without the Relevant Officer having first to incur any expense or make any payment;
 - (ii) is a continuing obligation and is enforceable by the Relevant Officer even though the Relevant Officer may have ceased to be an officer of the Company; and

- (iii) applies to Liabilities and Legal Costs incurred both before and after this Article became effective.
- (c) To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.
- (d) To the extent permitted by law, the Company may:
 - (i) enter into, or agree to enter into; or
 - (ii) pay, or agree to pay, a premium for,

a contract insuring a Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (e) To the extent permitted by law, the Company may enter into an agreement or deed with a Relevant Officer or a person who is, or has been, an officer of the Company or a subsidiary of the Company, pursuant to which the Company must do all or any of the following:
 - (i) keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed;
 - (ii) indemnify that person against any Liability and Legal Costs of that person;
 - (iii) make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs of that person; and
 - (iv) keep that person insured in respect of any act or omission by that person while a Relevant Officer or an officer of the Company or a subsidiary of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

Powers of the Board

62. General powers

- (a) The Board has the power to manage the business of the Company and may exercise to the exclusion of the Company in general meeting all powers of the Company which are not, by the law or this Constitution or the Shareholders Deed, required to be exercised by the Company in general meeting.
- (b) Subject to the Shareholders Deed, a power of the Board can only be exercised by a resolution passed at a meeting of the Board in accordance with Article 67, a resolution passed by signing a document in accordance with Article 66, or in accordance with a delegation of the power pursuant to Article 59, 64 or 65. A reference in this Constitution to the Company exercising a power by a resolution of the Board includes an exercise of that power in accordance with a delegation of the power pursuant to Article 59, 64 or 65.

63. Execution of documents

- (a) If the Company has a common seal, the Company may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by one Director and either another Director, a Secretary, or another person appointed by the Board for that purpose.

- (b) The Company may execute a document without a common seal if the document is signed by one Director and either another Director, a Secretary, or another person appointed by the Board for that purpose.
- (c) The Board may determine the manner in which and the persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable or transferable instruments in the name of or on behalf of the Company, and receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed.

64. Committees and delegates

- (a) Subject to the Shareholders Deed, the Board may delegate any of its powers to a committee of the Board, a Director, an employee of the Company or any other person. A delegation of those powers may be made for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power so delegated.
- (b) A committee or delegate must exercise the powers delegated in accordance with any directions of the Board.
- (c) Subject to the terms of appointment or reference of a committee, Article 67 applies with the necessary changes to meetings and resolutions of a committee of the Board.

65. Attorney or agent

- (a) The Board may appoint any person to be attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to the terms of appointment of an attorney or agent of the Company, the Board may revoke or vary that appointment at any time, with or without cause.
- (b) The Board may delegate any of their powers (including the power to delegate) to an attorney or agent. The Board may revoke or vary any power delegated to an attorney or agent.

Proceedings of Directors

66. Written resolutions of Directors

- (a) Subject to the Shareholders Deed, the Board may pass a resolution without a Board meeting being held if notice in writing of the resolution is given to all Directors and a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of Directors) sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) A resolution pursuant to Article 66(a) may consist of several documents in the same form each signed by one or more Directors and is effective when signed by the last of the Directors constituting the majority of the Directors. A facsimile transmission or other document produced by electronic means under the name of a Director with the Director's authority is taken to be a document signed by the Director for the purposes of Article 66(a) and is taken to be signed when received by the Company in legible form.

- (c) For the purposes of Article 66(a), the reference to Directors includes any alternate director who is appointed by a Director who is at the relevant time on leave of absence approved by the Board but does not include any other alternate directors.

67. Board Meetings

- (a) Subject to this Constitution, the Board may meet, adjourn and otherwise regulate its meetings as required by the Shareholders Deed and, in other cases, as it thinks fit.
- (b) A Director may call a Board meeting at any time. On request of any Director, a Secretary of the Company must call a meeting of the Directors. If the Shareholders Deed is in force, the convening of a meeting must comply with the Shareholders Deed in respect of notice or any other requirements.
- (c) Notice of a Board meeting must be given to each Director (except a Director on leave of absence approved by the Board) and an alternate director appointed by a Director on leave of absence approved by the Board. Notice of a Board meeting may be given in person, or by post or by telephone, fax or other electronic means.
- (d) A Director or alternate director may waive notice of a Board meeting by giving notice to that effect to the Company in person or by post or by telephone, fax or other electronic means.
- (e) A person who attends a Board meeting waives any objection that person and:
 - (i) if the person is a Director, any alternate director appointed by that person; or
 - (ii) if the person is an alternate director, the Director who appointed that person as alternate director,
 may have to a failure to give notice of the meeting.
- (f) Anything done (including the passing of a resolution) at a Board meeting is not invalid because either or both a person does not receive notice of the meeting or the Company accidentally does not give notice of the meeting to a person.
- (g) For the purposes of the Corporations Act, each Director, by consenting to be a Director or by reason of the adoption of this Constitution, consents to the use of each of the following technologies for the holding of a Board meeting:
 - (i) telephone;
 - (ii) video;
 - (iii) any other technology which permits each Director to communicate with every other participating Director; or
 - (iv) any combination of these technologies.
 A Director may withdraw the consent given pursuant to this Article 67(g) in accordance with the Corporations Act.
- (h) If a Board meeting is held in 2 or more places linked together by any technology:
 - (i) a Director present at one of the places is taken to be present at the meeting unless and until the Director states to the chairperson of the meeting that the Director is discontinuing his or her participation in the meeting; and

- (ii) the chairperson of that meeting may determine at which of those places the meeting will be taken to have been held.
- (i) If the Shareholders Deed is in force, a quorum for a meeting of the Board is as set out in the applicable provisions of the Shareholders Deed. Otherwise, until otherwise determined by the Board, a quorum for a Board meeting is 2 Directors entitled to vote on a resolution that may be proposed at that meeting. A quorum for a Board meeting must be present at all times during the meeting. Each individual present is counted towards a quorum in respect of each appointment as an alternate director of another Director in addition (if applicable) to being counted as a Director.

68. Chairperson of the Board

- (a) The appointment, removal and replacement of the chairperson is as determined by the Shareholders Deed..
- (b) Subject to Article 68(c), the chairperson of the Board must chair each Board meeting.
- (c) If at a Board meeting:
 - (i) a chairperson has not been elected pursuant to Article 68(a); or
 - (ii) the chairperson of the Board is not present within 15 minutes after the time appointed for the holding of a Board meeting or is not willing to chair all or part of that meeting,

the deputy chairperson of the Board (if any) must, or if there is no deputy chairperson or the deputy chairperson is not willing to act, the Directors present must elect one of their number to, chair that meeting or part of the meeting.
- (d) A person does not cease to be a chairperson of the Board or deputy chairperson of the Board if that person retires as a Director at a meeting of Shareholders and is re-elected as a Director at that meeting (or any adjournment of that meeting).

69. Board resolutions

- (a) Subject to the Shareholders Deed, a resolution of the Board is passed if more votes are cast by Directors entitled to vote in favour of the resolution than against it.
- (b) Subject to the Shareholders Deed and Articles 56 and 58 and this Article 69, each Director present in person or by his or her alternate director has one vote on a matter arising at a Board meeting.
- (c) Subject to the Corporations Act and the Shareholders Deed, the chairperson of a Board meeting will not have a casting vote in addition to any vote the chairperson has in his or her capacity as a Director.

70. Valid proceedings

- (a) An act at any Board meeting or a committee of the Board or an act of any person acting as a Director is not invalidated by:
 - (i) a defect in the appointment or continuance in office of a person as a Director, a member of the committee or of the person so acting; or
 - (ii) a person so appointed being disqualified or not being entitled to vote,

if that circumstance was not known by the Board, committee or person (as the case may be) when the act was done.

- (b) If the number of Directors is below the minimum required by this Constitution, the Board must not act except in emergencies, to appoint Directors up to that minimum number or to call and arrange to hold a meeting of Shareholders.

Dividends and Profits

71. Determination of dividends

- (a) Subject to the Corporations Act, the Shareholders Deed, this Constitution and the rights or restrictions attached to a class of Shares, the Board may determine that a dividend is payable on Shares. The Board may fix the amount of the dividend, the time for determining entitlements to the dividend, the time for the payment of the dividend and the method of payment of the dividend.
- (b) Subject to the Shareholders Deed and the rights or restrictions attached to a class of Shares, the Board may determine that dividends be paid on Shares of one class but not another class, and at different rates for different classes of Shares.
- (c) The Company is not required to pay any interest on a dividend.

72. Entitlements to dividends

- (a) A dividend in respect of a Share must be paid to the person whose name is entered in the Register as the holder of that Share as at the time the Board has fixed for that purpose, or if no such time is fixed, on the date on which the Dividend is paid.
- (b) Subject to any rights or restrictions attached to a class of Shares and Article 72(c), the person entitled to a dividend on a Share is entitled to:
 - (i) if the Share is fully paid (whether the issue price of the Share was paid or credited or both), the entire dividend; or
 - (ii) if the Share is partly paid, a proportion of that dividend equal to the proportion which the amount paid on that Share bears to the total issue price of that Share. Any amounts paid up in advance of the applicable due date for payment are ignored when calculating the proportion.
- (c) If an amount is paid on a Share during the period to which a dividend relates, the Board may resolve that only the proportion of that amount equal to the proportion which the period from the date of payment to the end of the period to which the dividend relates bears to the total period to which the dividend relates, counts as part of the amount for the time being paid on the Share, unless the terms of issue of the Shares provides otherwise.
- (d) If a transfer of a Share is registered after the time determined for entitlements to a dividend on that Share but before the dividend is paid, the person transferring that Share is entitled to that dividend.
- (e) The Company may retain the whole or part of any Dividend on which the Company has a lien and apply that amount in total or part satisfaction of any amount secured by that lien.

73. Dividend plans

- (a) Subject to the Shareholders Deed, the Company may establish a bonus share plan on any terms as the Board resolves, pursuant to which participants may elect in respect of all or part of their Shares to be issued financial products of the Company or another body corporate or trust credited as fully paid instead of receiving a cash dividend from the Company in respect of those Shares.
- (b) Subject to the Shareholders Deed, the Company may establish a dividend reinvestment plan on any terms as the Board resolves, pursuant to which participants may elect in respect of all or part of their Shares to apply the whole or any part of a dividend from the Company, or any other amount paid or payable to Shareholders, in subscribing for or purchasing financial products of the Company or another body corporate or trust.
- (c) The Board is under no obligation to admit any Shareholder as a participant in any plan nor to comply with any request made by a Shareholder who is not admitted as a participant in a plan.
- (d) The Board may implement, amend, suspend or terminate a plan established pursuant to this Article 73.

74. Capitalisation of profits

- (a) Subject to the Corporations Act, the Shareholders Deed and the rights or restrictions attached to a class of Shares, the Company may by resolution of the Board:
 - (i) capitalise any amount, being the whole or part of profits of the Company or otherwise available for distribution to Shareholders; and
 - (ii) apply that amount for the benefit of Shareholders in full satisfaction of their interest in the capitalised amount, in the same proportions as the Shareholders would be entitled to receive it if distributed by way of dividend or in accordance with either the terms of issue of any Shares or the terms of any plan for the issue of Shares or other securities for the benefit of officers or employees of the Company.
- (b) The Board may fix the time for determining entitlements to an application of a capitalised amount pursuant to Article 74(a). The Board may decide to apply a capitalised amount pursuant to Article 74(a) in any or all of the following ways:
 - (i) in paying up an amount unpaid on Shares already issued;
 - (ii) in paying up in full any unissued Shares or other securities in the Company;
 - (iii) any other method permitted by law.
- (c) The Board may do all things necessary to give effect to a resolution pursuant to Article 74(a) and 74(b), including:
 - (i) making cash payments in cases where Shares or other securities become issuable in fractions or ignore amounts or fractions less than a particular value;
 - (ii) vesting any cash or assets in a trustee on trust for the Shareholders entitled to an application of a capitalised amount pursuant to Article 74(a); and

- (iii) authorising any person to make, on behalf of all Shareholders entitled to a application of a capitalised amount pursuant to Article 74(a), an agreement with the Company providing for either or both the issue of securities or the payment by the Company on their behalf of an amount pursuant to Article 74(b), and in executing any such document the person acts as agent and attorney for those Shareholders.

75. Distributions of assets

- (a) Subject to the Shareholders Deed, the method of payment by the Company of a dividend or a return of capital by a reduction of capital, a share buy-back or otherwise, may include any or all of the payment of cash, the issue of shares or other financial products and the transfer of assets (including shares or other financial products in another body corporate or trust).
- (b) Subject to the Shareholders Deed, if the Board has determined that the Company pay a dividend or return capital by a reduction of capital, a share buy-back or otherwise, wholly or partly by the distribution (either generally or to specific Shareholders) of specific assets (including by the issue or transfer of shares or other financial products), the Board may:
 - (i) settle any issue concerning the distribution in any way the Board resolves;
 - (ii) round amounts up or down to the nearest whole number, or ignore amounts or fractions less than a particular value;
 - (iii) value assets for distribution and determine that the Company pay cash to any Shareholder on the basis of that valuation;
 - (iv) vest assets in a trustee on trust for the Shareholders entitled to any financial products as a result of that distribution; and
 - (v) authorise any person to make, on behalf of all Shareholders entitled to any financial products as a result of that distribution, an agreement with the relevant body corporate or trust providing for the issue or transfer to them of those financial products (including an agreement to become a member of that body corporate) and, in executing any such document, the person acts as agent and attorney for those Shareholders.

76. Payments

- (a) Subject to the Shareholders Deed, the Company may pay a person entitled to an amount payable in respect of a Share (including a dividend) by any of the following means, in the Board's discretion, at the sole risk of the person so entitled:
 - (i) crediting an account nominated in writing by that person and acceptable to the Board;
 - (ii) cheque made payable to bearer, to the person entitled to the amount or any other person the entitled person directs in writing and who is acceptable to the Board; or
 - (iii) any other manner as the Board resolves.
- (b) If the Company decides to make a payment by crediting accounts and an account is not nominated by a Shareholder in accordance with Article 76(a)(i), the Company may hold the amount payable in a separate account of the Company until the Shareholder nominates an account in accordance with Article 76(a)(i).

- (c) The Company may post a cheque referred to in Article 76(a)(ii) to:
 - (i) the address in the Register of the Shareholder of the Share, or in the case of a Jointly Held Share, the address of the Shareholder whose name appears first in the Register in respect of the Share; or
 - (ii) any other address which the entitled person directs in writing.
- (d) The Company may make a payment of an amount payable in respect of a Share (including a dividend) in Australian dollars or any other currency determined by the Board. The Company may make payments in different currencies to different Shareholders. The Board may determine the appropriate exchange rate and time of calculation of the amount of a payment made in a currency other than Australian dollars. A determination of the Board pursuant to this Article 76(d) is final in the absence of manifest error.
- (e) If more than one Shareholder of a Jointly Held Share gives a permitted nomination or direction pursuant to Article 76(a), only the nomination or direction by the Shareholder whose name appears first in the Register in respect of that Share is valid.
- (f) Any one of the Shareholders of a Jointly Held Share may give receipt of any payment to those Shareholders in respect of that Share.

Notices

77. Notices to Shareholders

- (a) The Company may give Notice to a Shareholder or a person entitled to a Share because of a Transmission Event by any of the following means in the Board's discretion:
 - (i) delivering it to that Shareholder or person;
 - (ii) delivering it or sending it by post to the address of the Shareholder in the Register or the alternative address (if any) nominated by that Shareholder or person for that purpose;
 - (iii) sending it to the fax number or electronic address (if any) nominated by that Shareholder or person for that purpose;
 - (iv) if permitted by the Corporations Act, notifying that Shareholder of the notice's availability by an electronic means nominated by the Shareholder for that purpose; or
 - (v) any other means permitted by the Corporations Act.
- (b) The Company must send all documents to a Shareholder whose address for Notices is not within Australia by air-mail, air courier, fax or electronic transmission.
- (c) Any Notice given or document delivered by the Company to the Shareholder whose name appears first in the Register in respect of a Jointly Held Share is taken to be notice or delivery to all holders of that Share.
- (d) Notice to a person entitled to a Share because of a Transmission Event is taken to be notice to the registered holder of that Share.

- (e) Subject to the Corporations Act, a Notice to a Shareholder is sufficient, even if:
 - (i) a Transmission Event occurs in respect of that Shareholder (regardless of whether that person is a registered holder of a Jointly Held Share); or
 - (ii) that Shareholder is an externally administered body corporate,
 and regardless of whether the Company has notice of that event.
- (f) A person entitled to a Share because of a transfer, Transmission Event or otherwise, is bound by every Notice given in respect of that Share.
- (g) Any Notice required or allowed to be given by the Company to one or more Shareholders by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.

78. Notice to Directors

The Company may give Notice to a Director or alternate director by:

- (a) delivering it to that person;
- (b) sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person for that purpose;
- (c) sending it to the fax number or electronic address (if any) nominated by that person for that purpose; or
- (d) any other means agreed between the Company and that person.

79. Notice to the Company

A person may give Notice to the Company by:

- (a) delivering it or by sending it by post to the registered office of the Company;
- (b) delivering it or by sending it by post to a place nominated by the Company for that purpose;
- (c) sending it to the fax number at the registered office of the Company nominated by the Company for that purpose;
- (d) sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (e) any other means permitted by the Corporations Act.

80. Time of service

- (a) A Notice sent by post or air-mail is taken to be given on the day after the date it is posted.
- (b) A Notice sent by fax or other electronic transmission is taken to be given when the transmission is sent provided that in the case of notice to the Company or a Director or an alternate director, the sender meets any action required by the recipient to verify the receipt of the document by the recipient.

- (c) A Notice given in accordance with Article 77(a)(iv) is taken to be given on the day after the date on which the Shareholder is notified that the Notice is available.
- (d) A certificate by a Director or Secretary to the effect that a Notice by the Company has been given in accordance with this Constitution is conclusive evidence of that fact.

81. Notice requirements

The Board may specify, generally or in a particular case, requirements in relation to Notices given by any electronic means, including requirements as to:

- (a) the classes of, and circumstances in which, Notices may be sent;
- (b) verification (whether by encryption code or otherwise); and
- (c) the circumstances in which, and the time when, the Notice is taken to be given.

82. Winding up

- (a) Subject to any rights or restrictions attached to a class of Shares, on a winding up of the Company, any surplus assets of the Company remaining after the payment of its debts must be divided among the Shareholders in the proportions which the amount paid (including amounts credited) on the Shares of a Shareholder is of the total issue price of the Shares of all Shareholders.
- (b) Subject to any rights or restrictions attached to a class of Shares, on a winding up of the Company, the liquidator may, with the sanction of a special resolution:
 - (i) distribute among the Shareholders the whole or any part of the property of the Company; and
 - (ii) decide how to distribute the property as between the Shareholders or different classes of Shareholders.
- (c) The liquidator of the Company may settle any issue concerning a distribution pursuant to this Article 82 in any way. This may include:
 - (i) rounding amounts up or down to the nearest whole number or ignoring fractions;
 - (ii) valuing assets for distribution and paying cash to any Shareholder on the basis of that valuation; and
 - (iii) vesting assets in a trustee on trust for the Shareholders entitled to the distribution.
- (d) A Shareholder need not accept any property, including shares or other securities, in respect of which there is any liability on the part of the Shareholder.