



**DWS Limited**  
**ACN 085 656 088**

Manager Companies  
Company Announcements Office  
ASX Limited  
Level 4, Stock Exchange Centre  
20 Bridge Street  
SYDNEY NSW 2000

21 September 2020

Dear Sir/Madam

**HCL TECHNOLOGIES LIMITED TO ACQUIRE  
DWS IN A RECOMMENDED TRANSACTION**

- *Proposed Scheme of Arrangement under which HCL Australia Services Pty. Limited will acquire 100% of outstanding shares in DWS for A\$1.20 per DWS share, payable in cash, plus an additional A\$0.03 per share dividend as announced to the market on 24 August 2020.*
- *Implied share price of A\$1.23 per share represents a significant premium of 36.7% to the undisturbed closing price of A\$0.90 (as at 18 September 2020)*
- *Values DWS issued equity at A\$162.15 million*
- *Each member of the DWS Board recommends that DWS shareholders vote in favour of the Scheme in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of DWS shareholders (and not changing or qualifying that conclusion)*
- *As part of HCL Technologies Limited, DWS will leverage HCL's significant global resources and expertise to offer an expanded platform to its Australian clients*
- *DWS' largest shareholder, Danny Wallis, intends to vote all shares within his control (which currently represent 42.7% of the shares on issue) in favour of the scheme<sup>1</sup>*

DWS Limited (ASX: DWS) (**DWS or the Company**) is pleased to announce that DWS and HCL Australia Services Pty. Limited (**HCL**) have entered into a Scheme Implementation Agreement<sup>2</sup> under which it is proposed that HCL will acquire 100% of the shares in DWS by way of a Scheme of Arrangement (**the Scheme**). HCL Australia Services Pty. Limited is a wholly owned subsidiary of HCL Technologies Limited, which is a listed company on the National Stock Exchange of India (NSE) with a market capitalization that exceeds US\$29 billion<sup>3</sup> as at today's date.

Under the Scheme, DWS shareholders will receive total cash consideration of A\$1.20 per DWS share (**Scheme Consideration**) plus an additional A\$0.03 per share dividend (**Target Permitted Ordinary Dividend**). Following implementation of the Scheme, DWS will become a wholly-owned subsidiary of HCL.

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<sup>1</sup> Based on the disclosed terms of the Scheme, and subject to no Superior Proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of DWS shareholders (and not changing or qualifying that conclusion).

<sup>2</sup> All capitalised terms used, but not otherwise defined, in this announcement have the meaning given to them in the Scheme Implementation Agreement.

<sup>3</sup> Determined on the basis of an exchange rate of 1 INR = 0.0136 USD.

Total cash consideration including the dividend values DWS' issued equity at A\$162.15 million. The transaction will be 100% cash funded.

Each member of the DWS Board recommends that DWS shareholders vote in favour of the Scheme at the Scheme meeting in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of DWS shareholders and not changing or qualifying that conclusion. Subject to those same qualifications, each DWS Director intends to vote the DWS shares held or controlled by them in favour of the Scheme.

In addition, DWS' largest shareholder, Danny Wallis, who holds or controls DWS shares which represent 42.7% of the total shares on issue at the date of this announcement, has advised DWS that he intends to vote in favour of the resolutions to be put to DWS' shareholders to implement the Scheme in respect of all DWS shares controlled or held by or on behalf of him in the absence of a Superior Proposal that remains a Superior Proposal even after giving effect to any matching rights available to HCL under the Scheme Implementation Agreement, and subject to the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of DWS shareholders and not changing or qualifying that conclusion.

DWS Directors believe this is a compelling proposal for DWS shareholders for the following reasons:

- **Significant premium:** The total cash consideration of A\$1.23 per share (including dividends) represents:
  - 36.7% premium to the closing price of DWS shares on ASX of A\$0.90 per share on 18 September 2020<sup>4</sup>
  - 33.7% premium to the 30-day VWAP of DWS shares of A\$0.92 per share to 18 September 2020; and
  - 38.2% premium to the 60-day VWAP of DWS shares of A\$0.89 per share to 18 September 2020; and
  - 43.0% premium to the 90-day VWAP of DWS shares of A\$0.86 per share to 18 September 2020; and
  - 50.0% premium to the 120-day VWAP of DWS shares of A\$0.82 per share to 18 September 2020.
- **Certainty of value:** the 100% cash consideration provides DWS shareholders with certainty of value and the opportunity to realise their investment in full for cash.
- **Not subject to financing:** HCL's offer is all cash.

**DWS CEO & Managing Director, Danny Wallis, said:**

"The Scheme represents an outstanding outcome for all DWS stakeholders: shareholders, employees, clients and other business partners. The opportunity to realise certain value at a significant premium represents a great outcome for our shareholders, who have been supportive over the Company's long history of its strategy and direction."

**HCL's Executive Vice President & Country Manager, Australia & New Zealand, Michael Horton, said:**

"We are excited for this expansion of HCL Technologies in Australia and New Zealand and are confident that our combined strengths will further accelerate the digital transformation journeys of our clients and innovations for their customers. HCL has invested in the region for over 20 years and is committed to enabling digitisation and growing the local ecosystem. DWS has forged a sterling reputation, powered by highly talented consultants who enable organizations to be at the cutting edge of technology. We look forward to welcoming the DWS team to HCL and creating enhanced global learning and career opportunities for them."

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<sup>4</sup> 18 September 2020, being the last trading day prior to this announcement.

## Details of the Scheme Implementation Agreement

The Scheme Implementation Agreement entered into between HCL and DWS (**SIA**) contains customary terms and conditions on which DWS and HCL will implement the Scheme.

The Scheme is conditional on obtaining necessary regulatory approvals (including the approval of the Foreign Investment Review Board), approval of DWS shareholders, court approval, no material adverse changes and no prescribed occurrences, among other customary conditions. The Scheme is also conditional on Net Debt (as defined in the SIA) being no greater than \$62.5 million on the tenth business day before both the Scheme Meeting and the Second Court Date.

In addition, the SIA contains certain customary exclusivity provisions, including no shop restrictions, no talk restrictions, a notification obligation and a matching right. The SIA also contains limited circumstances under which DWS may be required to pay a break fee to HCL of approximately A\$1.58 million.

Full details of the conditions to the Scheme and other agreed terms are set out in the SIA, a copy of which is attached to this announcement.

## Indicative Timetable and Next Steps

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

A scheme booklet containing information relating to the Scheme, reasons for the DWS Directors recommendation, an Independent Expert's Report on whether the Scheme is in the best interests of DWS shareholders and details of the Scheme meeting, is expected be sent to DWS shareholders in October 2020.

Shareholders will then have the opportunity to vote on the Scheme at a court convened shareholder meeting, expected to be held in November 2020.

Subject to DWS shareholder approval being obtained by the requisite majorities and other conditions of the Scheme being satisfied, the Scheme is expected be implemented in early-December 2020. These dates are indicative and subject to change.

<b>Event</b>	<b>Indicative Date</b>
First court hearing	26 October
Dispatch of Scheme booklet to DWS shareholders	27 October
Shareholder meeting	27 November
Second court hearing	30 November
Effective date	01 December
Record date	03 December
Implementation date	08 December

## Advisers

LoftusLane Capital Partners is advising DWS on the transaction with SBA Law as legal advisers. DLA Piper is advising HCL as legal advisers.

## DWS Contacts:

Danny Wallis, CEO & Managing Director  
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## **About DWS Limited**

DWS is an ASX-listed Australian-based IT services company which provides a suite of integrated solutions, including consulting services, such as custom application development and project management and digital solutions, such as data automation and design services.

DWS was established in 1991 by current CEO, Danny Wallis, and was listed on the ASX in June 2006. DWS is headquartered in Melbourne with Australian-based offices located in Sydney, Brisbane, Adelaide and Canberra. As at 30 June 2020, DWS had approximately 770 full time equivalent staff.

DWS has an established customer base diversified across the sectors of Federal and State Government, banking and finance, telecommunications, media and technology, energy, resources and infrastructure.

## **About HCL**

HCL Technologies (HCL) empowers global enterprises with technology for the next decade today. HCL's Mode 1-2-3 strategy through its deep-domain industry expertise, customer-centricity and entrepreneurial culture of ideapreneurship™ enables businesses transform into next-gen enterprises.

HCL offers its services and products through three business units - IT and Business Services (ITBS), Engineering and R&D Services (ERS) and Products & Platforms (P&P). ITBS enables global enterprises to transform their businesses through offerings in areas of Applications, Infrastructure, Digital Process Operations and next generational digital transformation solutions. ERS offers engineering services and solutions in all aspects of product development and platform engineering while under P&P, HCL provides modernized software products to global clients for their technology and industry specific requirements. Through its cutting-edge co-innovation labs, global delivery capabilities and broad global network, HCL delivers holistic services in various industry verticals, categorized under Financial Services, Manufacturing, Technology & Services, Telecom & Media, Retail & CPG, Life Sciences & Healthcare and Public Services.

As a leading global technology company, HCL takes pride in its diversity, social responsibility, sustainability and education initiatives. As of 12 months ended June 30, 2020, HCL has a consolidated revenue of US\$9.93 billion and its 150,287 ideapreneurs operate out of 49 countries. For more information, visit <https://www.hcltech.com/>

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**DWS Ltd ABN 83 085 656 088**  
[www.dws.com.au](http://www.dws.com.au)

# Scheme Implementation Agreement

DWS Limited  
HCL Australia Services Pty. Limited

**SBA Law**

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## Parties

**HCL Australia Services Pty. Limited** (ACN 081 196 983) of Level 8, 1 Pacific Highway, North Sydney, New South Wales 2060 (**'Bidder'**)

**DWS Limited** ACN 085 656 088 of Level 4, 500 Collins Street, Melbourne, Victoria 3000 (**'Target'**)

## Background

- A The Bidder has agreed with the Target for the Bidder to acquire all of the issued ordinary shares of the Target by means of a scheme of arrangement.
- B The Target has agreed to propose the Scheme to the Target Shareholders.
- C The parties have agreed to implement the Scheme on and subject to the terms set out in this agreement.

## Agreed terms

### 1 Definitions

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#### 1.1 Definitions

In this agreement the following definitions apply:

**Actual Knowledge** means:

- (a) in respect of the Bidder, the actual knowledge and awareness of:

- (i) Swapan Johri;
- (ii) Stellar Tucker;
- (iii) Michael Horton; and
- (iv) Hemant Dhawan,

after due inquiry by each of those persons;

- (b) in respect of the Target, the actual knowledge and awareness of:

- (i) Danny Wallis; and
- (ii) Stuart Whipp,

after reasonable inquiry by each of those persons of their direct reports;

**Advisers** means, in relation to an entity, its legal, financial and other expert advisers in relation to the Transaction;

**Announcement** means the announcement relating to the Transaction in the form contained in Annexure C;

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

**Associate** in relation to each party, has the meaning given in sections 11, 12 and 16 of the Corporations Act;

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

**ASX Listing Rules** means the official listing rules of ASX;

**Bidder Board** means the board of directors of the Bidder;

**Bidder Group** means the Bidder and each of its Related Entities;

**Bidder Indemnified Parties** means each member of the Bidder Group and the Officers and employees of each of those entities;

**Bidder Information** means all information regarding the Bidder, the Bidder Group or the merged entity following implementation of the Scheme, as is required to be included in the Scheme Booklet by:

- (a) the Corporations Act and the *Corporations Regulations 2001* (Cth); or
  - (i) ASIC policy (including Regulatory Guide 60);
  - (ii) the ASX Listing Rules; or
  - (iii) other applicable laws,

to the extent such information is within the Bidder's knowledge, and for the avoidance of doubt, includes:

- (b) information regarding the Bidder's intentions on the matters referred to in paragraph 8310 of Schedule 8 of the Corporations Regulations; and
- (c) any other information on the above subjects which is within the Bidder's knowledge and is material to the Target Shareholders in making a decision on whether to vote in favour of the Scheme;

**Bidder Warranties** means each of the representations and warranties given by the Bidder to the Target as set out in Schedule 3;

**Bidder Break Fee** means \$790,800;

**Cash** means cash (whether in hand or credited to any account of Target or any member of the Target Group) with any financial institution or organisation or company deposits) and cash equivalents of Target or any member of the Target Group, on a consolidated basis including:

- (a) cheques received by, honoured and made payable to the Target or any member of the Target Group prior to the implementation of the Scheme; and
- (b) cash in transit as confirmed by banking statements/ bank transfer instructions,

but excluding:

- (c) any cash and cash equivalents held by Target or any member of the Target Group in escrow or trust for any other person;



- (d) any cash overdraft amounts, and the amounts required to cover any cheques or similar instruments issued on any accounts of Target or any member of the Target Group;
- (e) restricted cash i.e., cash reserved for specific purpose and therefore not readily available for immediate or general business (including, but not limited to, restricted cash for bank guarantees, funds deposited with vendors/suppliers, utility companies, any cash deposited under protest
- (f) corporate Tax receivables and accruals for deferred Taxes;
- (g) derivative or financial securities; and
- (h) the amount of any outstanding claim under any advances or loans;

**Change of Control Contracts** means each contract agreed between Bidder and Target in writing to be a "Change of Control Contract" prior to the date of this agreement.

**Claim** means any claim, demand, legal proceedings or cause of action including any claim, demand, legal proceedings or cause of action based in contract, tort (including misrepresentation or negligence), under common law or under statute and includes a claim, demand, legal proceeding or cause of action arising from any breach of warranty or indemnity;

**Condition** means a condition set out in clause 3;

**Confidentiality Deed** means the restated confidentiality deed dated on or about 19 July 2020 between the Target, HCL Technologies Limited and the Bidder as amended from time to time;

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

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

**Court** means the Federal Court of Australia or any other court nominated by the Target;

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

**Deed Poll** means a deed poll in the form of Annexure B or in such other form as agreed by the Bidder and the Target to be executed by the Bidder in favour of the Scheme Participants, under which the Bidder covenants in favour of each Scheme Participant to perform its obligations under the Scheme and this agreement as regards the implementation of the Scheme;

**Disputing Action** means, in respect of a Tax Demand, any action to cause the Tax Demand to be withdrawn, reduced or postponed or to avoid, resist, object to, defend, appear against or compromise the Tax Demand and any judicial or administrative proceedings arising out of that action.

**Duty** means any stamp, transaction or registration duty or similar charge whether in Australia or elsewhere and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them, but excludes any Tax.

**Effective** means the time at which the Scheme Order takes effect pursuant to section 411(10) of the Corporations Act;

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

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other

security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

**End Date** means 31 March 2021 or such later date as the Bidder and the Target agree in writing;

**Excluded Share** means a Target Share held by the Bidder or any of its Associates or by any person on behalf of, or for the benefit of, the Bidder or any of its Associates;

**Exclusivity Period** means the period from and including the date of this agreement to and including the earlier of the date this agreement is terminated in accordance with its terms, the Effective Date or the End Date;

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

**First Court Hearing** means the hearing of the application made to the Court for orders under section 411(1) of the Corporations Act that the Scheme Meeting be convened;

**Fundamental Warranties** means the warranties stated in clause 1, 4 and 5 of Target Warranties in Schedule 2;

**GST** has the meaning given to that term in the GST Act;

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) in the case of Australia, and the Goods and Services Tax Act 1985 in the case of New Zealand;

**GST Law** has the same meaning given 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 the Target Shareholders present and voting, either in person or by proxy;

**Implementation Date** means the third business day following the Record Date, or such other date as ordered by the Court or agreed between the Bidder and the Target;

**Independent Expert** means an independent determined by the Target;

**Independent Expert's Report** means the report in connection with the Scheme to be prepared by the Independent Expert in accordance with the Corporations Act, and ASIC policy and practice, for inclusion in the Scheme Booklet;

**Insolvency Event** means, in relation to a person:

- (a) anything which reasonably indicates that there is a significant risk that such person is or will become unable to pay its debts as and when they fall due, including each of the following:
  - (i) a meeting of the person's creditors being called or held;
  - (ii) a step being taken to make the person bankrupt;
  - (iii) an application being presented or an order made for the sequestration of the person's estate;
  - (iv) a step being taken to wind the person up;

- (v) a step being taken to have a receiver, receiver and manager, administrator, controller, liquidator or provisional liquidator appointed to the person or any of its assets;
  - (vi) the person entering into any type of agreement, composition or arrangement with, or assignment for, the benefit of all or any of its creditors; or
  - (vii) the person ceases or threatens to cease to carry on its main business; or
- (b) the appointment of a receiver, receiver and manager, administrator, controller, liquidator or provisional liquidator to the person or any of its assets;

**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 goodwill in those marks), business names, trade names, domain names, designs, 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;

**Investigating Accountant** means the accounting firm (if any) appointed by the Target for the purpose of reporting on the financial information included in the Scheme Booklet;

**Investigating Accountant's Report** means the report (if any) prepared by the Investigating Accountant to be included in the Scheme Booklet;

**ITAA 1936** means the *Income Tax Assessment Act 1936* (Cth);

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

**Loss** means all losses, liabilities, damages, costs, charges, expenses, debts, obligations, claims, demands, suits, actions and causes of actions, including attorneys' fees, other professionals' and experts' fees, and court or dispute resolution costs;

**Material Adverse Change** means:

- (a) any matter, event, change or circumstance that occurs after the date of this agreement (a 'Relevant Event') whether or not it becomes public, where that Relevant Event has, has had, or could reasonably be expected to have, individually or when aggregated with all other such matters, events, changes or circumstances that have occurred or are reasonably likely to occur:
  - (i) the net effect of diminishing the value of the net tangible assets of the Target Group taken as a whole by \$3 million or more, as compared to the value of the net tangible assets of the Target Group taken as a whole set out in its consolidated balance sheet as at 30 June 2020, other than as a result of payment of the Target Permitted Dividend;
  - (ii) the net effect of reducing the annualised earnings before interest, tax, depreciation and amortisation of the Target Group (before taking into account any significant or extraordinary items, including the impact of any non-cash impairment of intangible assets) (**EBITDA**) taken as a whole as at the end of a financial year, by \$1.8 million or more, as compared to the EBITDA which is set out in the Target Group's consolidated statement of

profit and loss and other comprehensive income (**P&L**), as at 30 June 2020; or

- (iii) the net effect of reducing the annualised revenue of the Target Group as at the end of a financial year, by \$16.85 million or more, as compared to the revenue set out in the Target Group's P&L, as at 30 June 2020; or
- (iv) the effect of ceasing or preventing the carrying on of the businesses and operations of the Target Group in substantially the same manner as those businesses and operations are carried on as at the date of this agreement,

other than a matter, change, event or circumstance:

- (v) expressly required or expressly permitted to be done or procured by the Target or its Related Entities pursuant to this agreement, the Scheme or the Deed Poll;
  - (vi) fairly disclosed by the Target to the Bidder prior to the date of this agreement;
  - (vii) undertaken or occurring with the prior written approval of the Bidder;
  - (viii) resulting from changes in law or relating to any material adverse change or disruption to the existing economic or business conditions in Australia occurring after the date of this agreement that impact the Target and its Australian competitors in a similar manner;
  - (ix) resulting from changes in generally accepted accounting principles or the interpretation of them;
  - (x) resulting from an act of God, act of war declared or undeclared, public disorder, riot, civil disturbance, insurrection, rebellion, sabotage, cyber-attack or act of terrorists, technical failure, cable transmission and/or satellite failure or degradation, accident, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide or adverse weather conditions occurring on or after the date of this agreement; or
  - (xi) resulting from any material adverse deterioration in equity markets or exchange rates that impact the Target and its Australian competitors in a similar manner; or
- (b) a breach of any Target Warranty which arises or is discovered before the Cut Off Time which is not remedied within 5 business days after such breach arises or is discovered or is not remedied by the Cut Off Time (whichever is earlier), and has, has had, or could reasonably be expected to have, individually or when aggregated with all other breaches of a Target Warranty, the effect on the Target Group described in paragraph (a)(i), (a)(ii), (a)(iii) or (a)(iv) of this definition;
- (c) after the date of this agreement, a failure to obtain from each of the Change of Control Contract counterparties:
- (i) written consent to the change of control or ownership of the Target that will arise from the implementation of the Scheme; or
  - (ii) written confirmation that it will not terminate the Change of Control Contract as a result of the fact that the change of control or ownership of the Target (or a Subsidiary of the Target) will arise from the implementation of the Scheme (and, where the contract provides for termination for convenience

or on notice, will not terminate the Change of Control Contract for convenience or with notice prior to, or on, implementation of the Scheme),

in each case, in a form satisfactory to the Bidder acting reasonably and such consent or confirmation is not withdrawn, cancelled or revoked where that failure, when combined with the effect of any other counterparty to a Material Contract advising the Target or Bidder that it does not intend to renew such Material Contract (or that it would only renew on amended terms that are materially adverse to the Target Group), has (or could reasonably be expected to have) the net effect of reducing the Target Group's:

- (iii) EBITDA as at the end of a financial year, by \$1.8 million or more as compared to the EBITDA which is set out in the Target Group's P&L, as at 30 June 2020; or
- (iv) revenue as at the end of a financial year, by \$16.85 million or more as compared to the revenue which is set out in the Target Group's P&L, as at 30 June 2020,

with the amount of such reduction to be determined after having regard to the amount of any EBITDA or revenue (as applicable) that is derived from or attributable to any Replacement Contracts;

- (d) after the date of this agreement, 10% or more of the employees of the Target Group as at the date of this agreement ceasing to be employed by the Target Group (or 10% or more of the employees of the Target Group as at the date of this agreement being subject to a notice that will result in those employees ceasing to be employed by the Target Group) where those cessations have (or could reasonably be expected to have) the net effect of reducing the Target Group's:
  - (i) EBITDA as at the end of a financial year, by \$1.8 million or more as compared to the EBITDA which is set out in the Target Group's P&L, as at 30 June 2020; or
  - (ii) revenue as at the end of a financial year, by \$16.85 million or more as compared to the EBITDA which is set out in the Target Group's P&L, as at 30 June 2020;

**Material Contracts** means all contracts, agreements and arrangements that did generate in the 2019-2020 financial year, generate, or are reasonably expected to generate, revenue of at least \$2 million in any subsequent financial year and that could reasonably be considered material to the Target Group;

**Maximum Net Debt Amount** means \$62,500,000;

**Net Debt** means Specified Indebtedness less Cash;

**Officer** means, in relation to an entity, its directors and senior executives;

**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 supplier of goods or services 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 approved in writing by Bidder;
- (h) any Encumbrance relating to any specific financial indebtedness that is agreed by Bidder as not being paid out in connection with implementation of the Scheme;
- (i) the Target Finance Documents; and
- (j) any Encumbrance which has been fairly disclosed;

**Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth).

**Privacy Laws** means any law in force in any jurisdiction (to the extent any member of the Target Group is subject to it) which affects privacy or any personal or health information (including the collection, storage, use or disclosure of such information) including the *Privacy Act 1988* (Cth) and any codes of conduct, recommendations, directives or orders made or issued under any such law;

**Projects Assured** means Projects Assured Pty Ltd (ACN 604 114 089) in its capacity as trustee for Projects Assured Trust;

**Projects Assured Sale Agreement** means the securities sale and purchase agreement dated on or around 25 June 2018 pursuant to which the Target acquired all of the securities of Projects Assured Pty Ltd and all of the units in the Projects Assured Trust;

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

**Prescribed Occurrence** means, other than:

- (a) as expressly required or expressly contemplated by this agreement; or
- (b) as expressly required or expressly contemplated under the Scheme or Deed Poll; or
- (c) with the express written consent of the Bidder; or
- (d) as fairly disclosed by the Target to the Bidder prior to the date of this agreement, the occurrence of any of the following:
  - (e) the Target converting all or any of its shares into a larger or smaller number of shares;
  - (f) any member of the Target Group resolving to reduce, or reducing, its share capital in any way, or reclassifying, redeeming, combining, splitting or repurchasing directly or indirectly any of its shares;
  - (g) any member of the Target Group resolving to buy back, or buying back, any of its shares, including by:
    - (i) entering into a buy-back agreement; or
    - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;

- (h) any member of the Target Group issuing shares, or granting an option over its shares, or agreeing to make such an issue, other than an issue of ordinary shares following the valid exercise of any options or performance rights on issue at the date of this agreement or any other security convertible into ordinary shares in the Target on issue at the date of this agreement, in all cases, the existence of which has been fairly disclosed to the Bidder;
- (i) any member of the Target Group issuing, or agreeing to issue, securities convertible into shares or debt securities (including any performance rights or options) other than in accordance with any of the Target's existing employee incentive plans, the terms of which have been fairly disclosed to the Bidder;
- (j) any member of the Target Group making or declaring any distribution whether by way of dividend or capital reduction or otherwise and whether in cash or in specie other than by way of a Target Permitted Dividend;
- (k) other than in the ordinary course of business and consistent with past practice or under any Target Finance Document, any 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;
- (l) any member of the Target Group becoming subject to an Insolvency Event;
- (m) any member of the Target Group:
  - (i) acquiring, leasing or disposing of;
  - (ii) agreeing to acquire, lease or dispose of; or
  - (iii) offering or proposing to acquire, lease or dispose of,

any material business, assets (other than trading inventories and consumables acquired, leased or disposed of in the ordinary and usual course of business, or pursuant to any contract or commitment to provide goods or services to a customer of a nature ordinarily provided by that member of the Target Group, or pursuant to any non-cash impairment of intangible assets) or entity, with a value in the aggregate greater than \$500,000, or entering into any joint venture, partnership or similar arrangement (for clarity, the \$500,000 threshold applies in the aggregate in relation to all of the items, matters and arrangements referred to in this paragraph (m));
- (n) any member of the Target Group adopting a new constitution or modifying or repealing its constitution or a provision of it or a similar constituent document;
- (o) any member of the Target Group making, or committing to, in aggregate, capital expenditure in excess of \$500,000 on projects not commenced or approved prior to the date of this agreement;
- (p) any member of the Target Group entering into any contracts or commitments involving expenditure in the aggregate of more than \$500,000 over the term of such contract(s) or commitment(s), other than:
  - (i) in the ordinary course of business and consistent with past practice; or
  - (ii) any contract or commitment to provide services to a customer of a nature ordinarily provided by that member of the Target Group; or
  - (iii) any contract or commitment in respect of an Adviser engaged by a member of the Target Group or in respect of any professional engaged to

produce the Independent Expert's Report (subject at all times to clause 6.2(i)),

(for clarity, the \$500,000 threshold referred to in this paragraph (p), applies in the aggregate in relation to all contracts or commitments by all members of the Target Group other than those contracts or commitments contemplated in (i), (ii) and (iii) of this paragraph);

- (q) any member of the Target Group:
  - (i) waiving any material third party default where the financial impact on the Target Group of that waiver will be in excess of \$500,000 (in aggregate); or
  - (ii) accepting as a compromise of a matter less than the full compensation due to a member of the Target Group where the financial impact of the compromise on the Target Group is more than \$500,000 (in aggregate); or
- (r) any member of the Target Group making any change in its accounting methods, principles or practices which would materially affect the reported consolidated assets, liabilities or results of operations of any member of the Target Group, other than as required to comply with any changes to generally accepted accounting principles, standards, guidelines or practices in the jurisdiction of the relevant entity's incorporation;
- (s) any member of the Target Group failing to pay an amount owing, whether to an employee, vendor or other service provider, where such failure results in an amount remaining unpaid for 7 or more days after the date by which such amount would have been paid in accordance with that Target Group member's historic payment practices, unless the amount owing is subject to a bona fide dispute in writing;
- (t) any member of the Target Group undertaking receivable factoring with recourse;
- (u) any member of the Target Group adopting a superannuation, pension scheme or funded health benefit plan to the detriment of the Target; or
- (v) any member of the Target Group failing to pay acquired and unpaid pre closing Taxes within the applicable payment period;

**Recommendation** has the meaning given in clause 5.9(a);

**Record Date** means 7.00pm on the second business day following the Effective Date or such other date and time as the Bidder and the Target agree;

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

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

**Regulator's Draft** means the draft of the Scheme Booklet provided to ASIC for review pursuant to section 411(2) of the Corporations Act;

**Regulatory Approval** means:

- (a) any approval, consent, waiver, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, approval, direction, declaration, authority or exemption from, by or with a Regulatory Authority; or



- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Regulatory Authority intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action;

**Regulatory Authority** means any Australian or foreign government or governmental, semi-governmental, administrative, fiscal, regulatory or judicial entity, commission, tribunal agency or authority or any Minister, department, office or delegate of any government. It includes a self-regulatory organisation established under statute or a stock exchange, ASIC, ASX, the Foreign Investment Review Board and the Australian Competition and Consumer Commission, the Australian Taxation Office, an Office of State Revenue, the New Zealand Inland Revenue and the New Zealand Overseas Investment Authority;

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

**Related Entity** means, in respect of a party, another entity which:

- (a) is a Related Body Corporate of the first entity;
- (b) is in any consolidated entity (as defined in section 9 of the Corporations Act) which contains the party; or
- (c) the party Controls;

**Relevant Interest** has the meaning given to that term in the Corporations Act;

**Replacement Contract** means any new contract, or the extension or variation of any existing contract, entered into by a member of the Target Group between the date of this agreement and the Cut Off Time for the provision of services to a customer or client that is agreed by the Bidder, acting in good faith and reasonably, to be a "Replacement Contract" for the purposes of this agreement after the Target has provided the Bidder with reasonable details in relation to such contracts (including such details as may be reasonably requested by Bidder for the purposes of paragraph (c) of the definition of Material Adverse Change);

**Representative** means, in relation to a party:

- (a) each of the party's Related Entities; and
- (b) each of the Officers, employees and Advisers of the party or of any of its Related Entities;

**Sanctioned Country** means any country or region that is currently or was in the last five years the subject or target of a comprehensive embargo under Sanctions Laws (including, without limitation, Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region of Ukraine);

**Sanctioned Person** means any person that is the subject or target of sanctions or restrictions under Sanctions Laws, including: (i) any person listed on any applicable U.S., Australian, or other non-U.S. sanctions list, including the U.S. Department of the Treasury's Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List; (ii) any person that is, in the aggregate, 50 percent or greater owned, directly or indirectly, or otherwise controlled by a person or persons described in (i); or (iii) any national of a Sanctioned Country;

**Sanctions Laws** means all U.S., Australian, and other non-U.S. laws relating to economic or trade sanctions, including the laws administered or enforced by the U.S. (including by U.S. Department of the Treasury's Office of Foreign Assets Control's or the U.S.

Department of State), the Australian Department of Foreign Affairs and Trade, and the United Nations Security Council;

**Scheme** means the proposed scheme of arrangement between the Target and the Scheme Participants under Part 5.1 of the Corporations Act in the form of Annexure A (or in such other form as agreed by the Bidder and the Target), subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed in writing by the Bidder and the Target;

**Scheme Booklet** means the information to be dispatched to the Target Shareholders and approved by the Court, including the Scheme, explanatory statement in relation to the Scheme issued pursuant to section 412 of the Corporations Act and registered with ASIC, the Independent Expert's Report, the Deed Poll, a summary of this agreement, the tax opinion and the notice convening the Scheme Meeting (together with proxy forms);

**Scheme Consideration** means, in respect of each Scheme Share held by a Scheme Participant, a cash amount equal to \$1.20 less the cash value of any Target Permitted Special Dividend paid;

**Scheme Meeting** means the meeting ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act in respect of the Scheme, including any 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 in relation to the Scheme;

**Scheme Participant** means each holder of Scheme Shares as at the Record Date;

**Scheme Shares** means the Target Shares other than the Excluded 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;

**Security Interest** includes a security interest within the meaning of section 12(1) and 12(2) of the PPSA and a mortgage, debenture, charge, encumbrance, lien, pledge or other security interest, and any agreement to grant or create any of the above;

**Specified Indebtedness** of the Target Group means, without duplication:

- (a) provision for all borrowings (including outstanding interest and bank fees) consistent with Australian accounting principles and the policies and practices of the Target Group adopted in the preparation of the Target's audited financial statements for the financial year ended 30 June 2020;
- (b) provision for the accrued long service leave and annual leave of the employees of the Target Group consistent with Australian accounting principles and the policies and practices of the Target Group adopted in the preparation of the Target's audited financial statements for the financial year ended 30 June 2020 tax effected at the Australian corporate Tax rate of 30% (that is, the gross provision for accrued long service leave and annual leave multiplied by 70%);
- (c) provision for all Transaction Costs;
- (d) provision for all interest rate swaps, currency or other hedging agreements consistent with Australian accounting principles and the policies and practices of

the Target Group adopted in the preparation of the Target's audited financial statements for the financial year ended 30 June 2020 tax effected at the Australian corporate Tax rate of 30% (that is, the gross provision multiplied by 70%);

- (e) provision for all net Tax liabilities consistent with Australian accounting principles and the policies and practices of the Target Group adopted in the preparation of the Target's audited financial statements for the financial year ended 30 June 2020 but excluding net GST liabilities and deferred Tax assets and deferred Tax liabilities;
- (f) provision for pre-billed and unearned income consistent with Australian accounting principles and the policies and practices of the Target Group adopted in the preparation of the Target's audited financial statements for the financial year ended 30 June 2020;
- (g) provision for any Employee loyalty bonuses which are or may become payable to employees of Projects Assured in accordance with clause 3.1(b) of the Projects Assured Sale Agreement consistent with Australian accounting principles and the policies and practices of the Target Group adopted in the preparation of the Target's audited financial statements for the financial year ended 30 June 2020; and
- (h) provision for earn out payments which may become payable by the Target to the persons from whom the Target purchased Projects Assured in respect of the financial years ending 30 June 2021, 30 June 2022 and 30 June 2023 consistent with Australian accounting principles and the policies and practices of the Target Group adopted in the preparation of the Target's audited financial statements for the financial year ended 30 June 2020;

**Subsidiary** has the meaning given to that term in the Corporations Act;

**Superior Proposal** means a publicly announced bona fide Third Party Proposal received or arising after the date of this agreement which the Target Board acting in good faith and reasonably (after consultation with its external legal and financial advisers) determines:

- (a) is reasonably capable of being completed on a timely basis taking into account all aspects of the Third Party Proposal; and
- (b) would, if completed substantially in accordance with the offered terms, be more favourable to the Target Shareholders (as a whole) than the Scheme, taking into account, among other things, all legal, financial, regulatory and other aspects of the Third Party Proposal and the identity of the offeror;

**Takeovers Panel** means the Panel as defined under section 5 of the *Australian Securities and Investments Commission Act 2001*, being the primary forum for resolving disputes about takeovers;

**Target Board** means the board of directors of the Target;

**Target Break Fee** means \$1,581,600;

**Target Director** means a director of the Target;

**Target Disclosure Materials** means the information disclosed by the Target to the Bidder prior to the date of this agreement and made available by way of electronic data room managed by Ansarada and titled "Project Wave", the index of which has been provided by the Target to the Bidder and agreed between the parties for identification prior to or on the date of this agreement;

**Target Finance Documents** means:

- (a) the facilities agreement between the Target (as borrower), other members of the Target Group (as obligors) and National Australia Bank (as lender) dated 26 April 2017 as varied, amended, amended and restated or replaced from time to time; and
- (b) all guarantees, indemnities and securities granted to National Australia Bank or its security trustee from time to time by any member of the Target Group pursuant to or in connection with that facilities agreement; and
- (c) all other documents between any Target Group member and National Australia Bank or its security trustee from time to time contemplated by or entered into for the purpose of that facilities agreement;

**Target Group** means the Target and each of its Related Entities;

**Target Indemnified Parties** means each member of the Target Group and the Officers, employees and Advisers of each of those entities;

**Target Information** means all information contained in the Scheme Booklet and 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, but does not include the Bidder Information, the Independent Expert's Report, the Scheme or the Deed Poll or any other expert report included in the Scheme Booklet;

**Target Permitted Dividend** means the Target Permitted Ordinary Dividend and the Target Permitted Special Dividend;

**Target Permitted Ordinary Dividend** means a fully franked dividend in the amount of \$0.03 per Target Share, which is payable in respect of the financial year ended 30 June 2020, or such other amount agreed between the parties;

**Target Permitted Special Dividend** means a dividend actually paid on the Target Shares as a special dividend, pursuant to the Target's discretion to do so under clause 6.3;

**Target Permitted Special Dividend Payment Date** means the date determined by the Target to be the payment date in respect of a Target Permitted Special Dividend, provided that such date is no later than the Implementation Date;

**Target Permitted Special Dividend Record Date** means the date determined by the Target to be the record date in respect of a Target Permitted Special Dividend, provided that such date is no later than the Record Date;

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

**Target Shareholder** means each person who is registered in the Register as the holder of the Target Shares;

**Target Suspension Date** means the date identified in the Timetable as the Target Suspension Date;

**Target Warranties** means each of the representations and warranties given by the Target to the Bidder as set out in Schedule 2;

**Target Warranty or Indemnity Claim** means any Claim:

- (a) arising out of a breach of any Target Warranty; or

- (b) any Claim under the Target's indemnities in clause 10.1(a)(ii), 10.1(b), 10.1(c) and 10.1(d);

**Tax** means any tax, levy, charge, impost, fee, deduction, goods and services tax (including GST), compulsory loan, deduction or withholding, that is now, or that may be in the future, assessed, levied, imposed or collected by any Regulatory Authority whether in Australia or elsewhere 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 Costs** means all costs and expenses incurred in:

- (a) managing an inquiry; or
- (b) conducting any Disputing Action in relation to a Tax Demand;

**Tax Demand** means:

- (a) a demand or assessment from a Regulatory Authority requiring the payment of any Tax or Duty for which Target may be liable under this agreement;
- (b) any document received from a Regulatory Authority administering any Tax or Duty assessing, imposing, claiming or indicating an intention to claim any Tax or Duty;
- (c) 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 1997; and
- (d) a lodgment of a Tax or Duty return or a request for an amendment to a lodged Tax or Duty return;

**Tax Law** means any law relating to either Tax or Duty as the context requires;

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

**Third Party Account** means an Australian dollar denominated trust account operated by Boardroom Pty Ltd or such other person agreed between the parties from time to time for the purposes of the payment of the Scheme Consideration;

**Third Party Proposal** means:

- (a) a transaction which, if completed, would result in any Third Party (alone or together with its Associates) directly or indirectly:
  - (i) acquiring all or a substantial part of the assets or business of the Target Group;
  - (ii) acquiring a Relevant Interest in or having a right to acquire a legal, beneficial or economic interest in 50% or more of the Target's voting shares or of the share capital of any Related Body Corporate of the Target; or
  - (iii) entering into any cash settled equity swap or other derivative contract arrangement in respect of 50% or more of the share capital of the Target or of any Related Body Corporate of the Target; or
  - (iv) acquiring Control of the Target;

- (b) a takeover bid, scheme of arrangement, amalgamation, merger, capital reconstruction, consolidation, purchase of main undertaking or other business combination involving the Target and/or its Related Bodies Corporate;
- (c) a transaction involving the formation of a dual listed company structure, stapled security structure or other form of synthetic merger having the same or substantially the same effect as a takeover bid for, or scheme of arrangement in respect of, the Target and/or its Related Bodies Corporate; or
- (d) any agreement, arrangement or understanding requiring the Target to abandon, or otherwise fail to proceed with, the Transaction;

**Timetable** means the indicative timetable set out in Schedule 1 or such other timetable as may be agreed in writing by the parties or their Advisers;

**Transaction** means the acquisition by the Bidder of all of the Scheme Shares through the implementation of the Scheme, in return for the payment of the Scheme Consideration;

**Transaction Costs** means the Adviser, share registry and other costs payable, management fees, incentives and bonuses for Target Group employees incurred by Target in respect of the Transaction calculated on a basis consistent with Australian accounting principles and the policies and practices of the Target Group adopted in the preparation of the Target's audited financial statements for the financial year ended 30 June 2020, in each case exclusive of GST, but excluding any insurance premia for the directors' and officers' run-off insurance run-off cover described in clause 12(a) and all costs associated with any Third Party Proposal;

**Voting Intention** has the meaning given in clause 5.9(b)(ii);

**W&I Policy** means any policy of warranty and indemnity insurance issued to the Bidder in respect of the Warranty or Indemnity Claims that complies with the requirements in clause 9.9(a)(iii); and

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

## 1.2 Interpretation

In the interpretation of this agreement, unless the context otherwise requires:

- (a) all references to dollars or '\$' are references to Australian currency and all amounts payable are payable in Australian dollars;
- (b) a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (c) a reference to a clause, part, Schedule or attachment is a reference to a clause, part, Schedule or attachment of or to this agreement;
- (d) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- (e) a reference to a person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency;
- (f) where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;

- (g) a word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other gender;
- (h) a reference to the word 'include' or 'including' is to be interpreted without limitation;
- (i) headings are inserted for convenience only and do not affect interpretation;
- (j) any Schedules, Annexures and attachments form part of this agreement;
- (k) no clause will be construed to the disadvantage of a party because that party was responsible for the preparation of this agreement or that clause or the inclusion of the provision in the agreement; and
- (l) a reference to "fairly disclosed" in this agreement has the meaning given in clause 1.3.

### **1.3 Fairly disclosed**

- (a) A matter has been fairly disclosed by Target to Bidder only if:
  - (i) the matter was disclosed prior to the date of this agreement:
    - (A) by way of ASX announcement in the past 2 years; or
    - (B) in the Target Disclosure Materials,

in each case in sufficient detail so as to enable a reasonable person experienced in transactions similar to the Transaction and experienced in operating a business similar to the business conducted by the Target, to identify the nature, import and scope of the relevant matter; or
  - (ii) the matter would have been disclosed or become known to the Bidder had the Bidder conducted searches on the date that is 5 business days before the date of this agreement (except in the case of subclause 1.3(ii)(C), in which case the relevant dates specified in that clause) of:
    - (A) public records maintained by ASIC;
    - (B) the register established under the PPSA;
    - (C) public records maintained by the register of the High Court of Australia (on 30 July 2020), Federal Court of Australia (on 24 July 2020) and the Supreme Courts of each of New South Wales (on 6 August 2020), Victoria (on 27 July 2020), South Australia (on 3 August 2020) and the Australian Capital Territory (on 31 July 2020); and
    - (D) public records maintained by IP Australia.
- (b) A matter has been fairly disclosed by Bidder to Target only if it was disclosed in writing to Target or its Representatives prior to the date of this agreement in sufficient detail so as to enable a reasonable person experienced in transactions similar to the Transaction and experienced in operating a business similar to the business conducted by Bidder, to identify the nature, import and scope of the relevant matter.

### **1.4 Business days and time**

In the interpretation of this agreement, unless the context otherwise requires:

- (a) a reference to time is to the time in Melbourne, Australia;
- (b) a reference to a business day means a day on which all banks are open for business generally in Melbourne, Australia, other than a Saturday, Sunday or public holiday; and
- (c) if the day on which any act, matter or thing is to be done is not a business day, that act, matter or thing may be done on the next business day.

## 2 Implementation of the Scheme

The Target agrees to propose, and (if the Scheme becomes Effective) the parties agree to implement, the Scheme on the terms set out in this agreement.

## 3 Conditions Precedent

### 3.1 Conditions

The Scheme will not become Effective, and the respective obligations of the parties under clauses 4 and 5 are not binding unless and until each of the conditions in column 1 of the following table has been satisfied or waived in accordance with clause 3.4:

Condition	Party responsible for satisfying Condition
<p>(a) <b>FIRB Approval</b></p> <p>Before 8:00am on the Second Court Date, one of the following has occurred:</p> <ul style="list-style-type: none"> <li>(i) the Bidder has received written notice under the <i>Foreign Acquisitions and Takeovers Act 1975 (Cth)</i> ('<b>FATA</b>'), by or on behalf of the Treasurer of the Commonwealth of Australia ('<b>Treasurer</b>'), advising that the Commonwealth Government has no objections to the Transaction, either unconditionally or on terms that are acceptable to the Bidder acting reasonably; or</li> <li>(ii) the Treasurer becomes precluded by the passage of time from making an order in relation to the Transaction under the FATA; or</li> <li>(iii) where an interim order is made under the FATA in respect of the Transaction, the subsequent period for making a final order prohibiting the Transaction elapses without a final order being made.</li> </ul>	Bidder
<p>(b) <b>OIO Approval</b></p> <p>Before 8:00am on the Second Court Date, the Bidder receiving an unconditional direction order, on terms acceptable to the Bidder, issued under the emergency notification regime contained in the <i>Overseas Investment</i></p>	Bidder



	<i>Act 2005</i> (as amended by the <i>Overseas Investment (Urgent Measures) Amendment Act 2020</i> ) allowing the Transaction evidenced by this agreement to be given effect to.	
(c)	<b>Court Orders</b>  No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition being in effect at the Cut Off Time which prevents or restrains the consummation of any aspect of the Transaction.	Bidder and Target
(d)	<b>No Material Adverse Change</b>  No Material Adverse Change occurs or becomes apparent to the Bidder between (and including) the date of this agreement and the Cut Off Time.	Target
(e)	<b>No Prescribed Occurrence</b>  No Prescribed Occurrence occurs between (and including) the date of this agreement and the Cut Off Time.	Target
(f)	<b>Target Shareholder approval</b>  The Target Shareholders (other than any holder of Excluded Shares) approve the Scheme by the necessary majorities at the Scheme Meeting.	Target
(g)	<b>Court approval of Scheme</b>  The Court approves the Scheme under section 411(4)(b) of the Corporations Act and an office copy of the Scheme Order is lodged with ASIC as contemplated by section 411(10) of the Corporations Act.	Bidder and Target
(h)	<b>Maximum Net Debt Amount</b>  On the tenth business day before each of (i) the Scheme Meeting and (ii) the Second Court Date (each a <b>Relevant Date</b> ) the Target provides written evidence to Bidder that establishes to Bidder's reasonable satisfaction that as at the Relevant Date Target's Net Debt is equal to or less than the Maximum Net Debt Amount.	Target

### 3.2 Commercially reasonable endeavours

Each party must use its commercially reasonable endeavours to procure that:

- (a) each of the Conditions for which it is responsible (as indicated in column 2 of the table in clause 3.1) is satisfied as soon as practicable after the date of this agreement, or continues to be satisfied at all times until the last time it is to be satisfied (as the case may require), with a view to the Effective Date occurring on or before the End Date; and
- (b) there is no event or circumstance within the reasonable control or influence of that party that would prevent the Conditions being satisfied or delay the satisfaction of the Conditions.

### 3.3 Regulatory Approvals

- (a) Without limiting the generality of clause 3.2 each party must:
  - (i) promptly apply for all relevant Regulatory Approvals, providing a copy to the other party of all such applications, and take all steps it is responsible for as part of the approval process for the Scheme, including responding to requests for information at the earliest practicable time; and
  - (ii) (as far as practicable and lawful) consult with the other in advance in relation to all material communications (whether written or oral, and whether direct or through an Adviser) with any Regulatory Authority relating to any Regulatory Approval and provide the other party with all information reasonably requested in connection with the application for any Regulatory Authority and, without limitation:
    - (A) provide the other party with drafts of any material written communications to be sent to a Regulatory Authority and consider in good faith any reasonable amendments as the other party suggests (and which are received in a timely matter); and
    - (B) provide copies of any written communications sent to or received from a Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be).
- (b) Nothing in clauses 3.2 or 3.3 requires a party (**'Discloser'**) to disclose to the other party (**'Recipient'**) any information, document, submission or other material that, or to permit the Recipient or its Representatives to attend meetings the subject matter of which:
  - (i) is materially commercially sensitive;
  - (ii) is privileged;
  - (iii) the Discloser is prevented from disclosing due to confidentiality obligations owed to any third party; or
  - (iv) may cause a breach of the Competition and Consumer Act 2010 (Cth),  
provided the Discloser discloses such information, document(s), submission(s) or other material(s) or permits the Recipient or its Representatives to attend meetings:
  - (v) to the fullest extent it is reasonably able to do so, including by permitting the Recipient or its Representatives to attend part of meetings or by redacting portions and/or by disclosing on an agreed limited basis only to certain Representatives of the Recipient; and
  - (vi) in its complete form, with redactions only of any information of the sort referred to in clauses 3.3(b)(ii), 3.3(b)(iii) or 3.3(b)(iv), to the Recipient's external and/or internal lawyers on a counsel-only basis.

### 3.4 Benefit and waiver of certain Conditions

- (a) The Bidder has the benefit of the Conditions in clauses 3.1(d), 3.1(e) and 3.1(h). Any breach or non-fulfilment of those Conditions can only be waived with the written consent of the Bidder.
- (b) The Conditions in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(f) and 3.1(g) cannot be waived.

- (c) A party entitled to waive a Condition under this clause 3.4 may elect to do so in its absolute discretion.
- (d) If a waiver by a party of a Condition is itself conditional and the other party accepts the condition, the terms of that condition apply accordingly. If the other party does not accept a conditional waiver of the Condition, the Condition has not been waived.
- (e) If a party waives the breach or waives non-fulfilment of any of the Conditions, that waiver will not preclude it from suing the other party for any breach of this agreement, including a breach that resulted in the non-fulfilment of the Condition that was waived.
- (f) Unless specified in the waiver, a waiver of the breach or waiver of the non-fulfilment of any Condition will not constitute:
  - (i) a waiver of breach or waiver of non-fulfilment of any other Condition resulting from events or circumstances giving rise to the breach or non-fulfilment of the first Condition; or
  - (ii) a waiver of breach or waiver of non-fulfilment of that Condition resulting from any other event or circumstance.

### **3.5 Notification of certain events**

- (a) Each party must:
  - (i) promptly and reasonably inform the other party either directly or through its Advisers of the steps it has taken and of its progress towards satisfaction of the Conditions (including responding to a party's reasonable requests regarding such matters);
  - (ii) promptly notify the other party if it becomes aware that any Condition has been satisfied;
  - (iii) promptly notify the other party if it becomes aware that any Condition has failed to be satisfied or has become incapable of being satisfied or is not reasonably capable of being satisfied by the End Date or of any circumstances which may reasonably be expected to lead to such a state of affairs; and
  - (iv) after having given or received a notice in accordance with clause 3.5(a)(iii) in relation to a Condition that it is entitled under clause 3.4 to waive, give notice to the other party as soon as possible (and in any event no later than five business days or such shorter time to ensure that notice is given before 5.00pm on the last business day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of the relevant Condition, specifying the Condition in question.
- (b) Subject to the satisfaction or waiver of the Conditions, the Bidder and the Target must each provide the Court on the Second Court Date with a certificate that all of the Conditions (other than the Condition requiring Court approval of the Scheme) are satisfied, or if not satisfied, are waived.
- (c) The giving of a certificate by each of the Bidder and the Target under clause 3.5(b) will in the absence of manifest error, be conclusive evidence of the satisfaction or waiver of the Conditions referred to in the certificate.

### **3.6 Scheme voted down**

If the Scheme is not approved by the Target Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test, and the Bidder or the Target considers, acting reasonably, that one or more the Target Shareholders have split their holdings of Scheme Shares into two or more parcels which may have caused, or materially contributed to, the Headcount Test not having been satisfied then the Target must:

- (a) seek the Scheme Order, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as counsel engaged by the Target to represent it in all Court proceedings related 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 to disregard the Headcount Test.

### **3.7 Consultation if Conditions not met**

If:

- (a) there is a breach or non-fulfilment of a Condition which is not waived in accordance with this agreement by the time or date specified in this agreement for its satisfaction; or
- (b) there is an act, failure to act, event or occurrence which will prevent a Condition being satisfied by the time or date specified in this agreement for its satisfaction (and the breach or non-fulfilment of the Condition which would otherwise occur has not already been waived); or
- (c) the Scheme does not become Effective by 5:00pm on the business day before the End Date,

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

- (d) the Transaction may proceed by way of alternative means or methods and, if so, to agree on the terms of such alternative means or methods;
- (e) to extend the relevant time or date for satisfaction of the Conditions;
- (f) to change the date of the application to be made to the Court for the Scheme Order or adjourning that application (as applicable) to another date agreed by the parties; or
- (g) to extend the End Date.

### **3.8 Failure to agree**

- (a) If the parties are unable to reach agreement under clause 3.7 within five business days (or any shorter period ending at 5.00pm on the business day before the Second Court Date), then unless that Condition is waived in accordance with clause 3.4, a party entitled to the benefit of that Condition may (subject to clause 3.8(b)) terminate this agreement.
- (b) A party will not be entitled to terminate this agreement pursuant to clause 3.8(a) if the relevant Condition has not been satisfied as a result of:
  - (i) a breach of this agreement by that party; or

- (ii) a deliberate act or omission of that party which either alone or together with other circumstances prevents that condition being satisfied.
- (c) Termination of this agreement under clause 3.8(a) does not affect any accrued rights of either party arising from any breach of this agreement prior to termination.

## **4 Scheme**

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### **4.1 Scheme**

The Target must propose the Scheme to the Target Shareholders on and subject to the terms of this agreement.

### **4.2 Scheme Consideration**

- (a) Subject to the terms of the Scheme, the Bidder covenants in favour of the Target and of each Scheme Participant that in consideration for the transfer to the Bidder of the Scheme Shares held by each Scheme Participant under the terms of the Scheme, the Bidder will:
  - (i) accept that transfer on the Implementation Date; and
  - (ii) in accordance with the Deed Poll, the Scheme and this agreement, provide to each Scheme Participant the Scheme Consideration.
- (b) The Target acts in the Target's own right and separately as trustee or nominee for each of the Scheme Participants for the purposes of clause 4.2(a)(ii).

### **4.3 Provision of Scheme Consideration**

- (a) In satisfaction of its obligation under clause 4.2(a)(ii), the Bidder must, by no later than 5:00pm on the business day before the Implementation Date, deposit in cleared funds an amount equal to the aggregate amount of the Scheme Consideration payable to Target Shareholders, into the Third Party Account.
- (b) On the Implementation Date, subject to funds having been deposited in accordance with clause 4.3(a), the Target must pay or procure the payment from the Third Party Account of the Scheme Consideration to each Target Shareholder based on the number of Target Shares held by each such Target Shareholder as set out in the Register on the Record Date.
- (c) The obligations of the Target under clause 4.3(b) will be satisfied by the Target (in its absolute discretion):
  - (i) where a Target Shareholder has, before the Record Date, made a valid election in accordance with the requirements of the Target's registry to receive dividend payments from the Target by electronic funds transfer to a bank account nominated by the Target Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
  - (ii) otherwise, whether or not the Target Shareholders has made an election referred to in clause 4.3(c)(i), dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Target Shareholder by prepaid post to their address shown in the Register on the Record Date, such cheque being drawn in the name of the Target Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 4.4).

- (d) To the extent that, following satisfaction of the Target's obligations under clause 4.3(b), there is surplus in the amount held by the Target as trustee for the Target Shareholders in the Third Party Account, that surplus shall be paid by the Target to the Bidder.

#### **4.4 Joint holders**

In the case of Target Shares held in joint names:

- (a) subject to clause 4.3(c), the Scheme Consideration is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of the Target, the holder whose name appears first in the Register as at the Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of the Target, the holder whose name appears first in the Register as at the Record Date or to the joint holders.

#### **4.5 Unclaimed monies**

- (a) The Target may cancel a cheque issued under this clause 4 if the cheque:
  - (i) is returned to the Target; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Implementation Date, on request in writing from a Target Shareholders to the Target, the Target must reissue a cheque that was previously cancelled under clause 4.5(a).
- (c) 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)*).

#### **4.6 Orders of a court or Regulatory Authority**

If a written notice is given to the Target of an order, direction or notice made by a court of competent jurisdiction or by another Regulatory Authority that, or if a law applicable to the Target otherwise:

- (a) requires consideration to be provided to a third party in respect of Target Shares held by a particular Target Shareholder, which would otherwise be payable to that Target Shareholder by the Target in accordance with this clause 4, then the Target shall be entitled to procure that provision of that consideration is made in accordance with that order, law or direction;
- (b) prevents the Target from providing consideration to any particular Target Shareholder in accordance with this clause 4, or the payment is otherwise prohibited by applicable law, the Target shall be entitled to (as applicable) retain an amount, in Australian dollars, equal to the number of Target Shares held by that Target Shareholder multiplied by the Scheme Consideration until such time as provision of the Scheme Consideration in accordance with this clause 4 is permitted by that (or another) order or direction or otherwise by law.

## 5 Steps for implementation

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### 5.1 Target's obligations

The Target must execute all documents and do all acts and things within its power as may be necessary or desirable for the implementation and performance of the Scheme in a timely manner and on a basis consistent with this agreement, and in particular, the Target must:

- (a) immediately after execution of this agreement release (and not withdraw or qualify except in accordance with clause 5.9) the Announcement, including stating that each member of the Target Board:
  - (i) considers that the Scheme is in the best interests of the Target and the Target Shareholders and recommends that the Target Shareholders vote in favour of all resolution(s) to be proposed at the Scheme Meeting to approve the Scheme;
  - (ii) who holds the Target Shares intends to vote their Target Shares in favour of the resolution(s) to be proposed at the Scheme Meeting to approve the Scheme,

qualified only by words to the effect of:

- (iii) 'subject to the Independent Expert concluding that the Scheme is in the best interests of Target Shareholders and not subsequently changing or qualifying that conclusion'; and
  - (iv) 'in the absence of a Superior Proposal';
- (b) prepare the Scheme Booklet in accordance with clause 5.3;
- (c) appoint the Independent Expert (and any other specialist expert required) and provide all assistance and information reasonably requested by the Independent Expert (and any other specialist expert) in connection with the preparation of the necessary report(s) for inclusion in the Scheme Booklet and, on receipt, provide the Bidder with a copy of any draft of the Independent Expert's Report (and any other specialist report);
- (d) as soon as 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 a duly appointed committee of the Target Board) is convened to resolve to approve that draft as being in a form appropriate for provision to ASIC for review;
- (e) as soon as practicable after the resolution referred to in clause 5.1(d) is passed, provide the Regulator's Draft, to ASIC, and:
  - (i) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet; and
  - (ii) keep the Bidder reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet;
- (f) as soon as practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Target Board (or a duly appointed committee of the Target Board) is convened to approve the Scheme Booklet in the form approved by ASIC and also to approve an application to the Court for an order that the Scheme Meeting be convened;

- (g) apply to ASIC for the production of:
  - (i) an indication of intent letter stating that ASIC does not intend to appear at the First Court Hearing; and
  - (ii) a statement in writing pursuant to section 411(17)(b) of the Corporations Act, stating that ASIC has no objection to the Scheme;
- (h) promptly after receiving the statement referred to in clause 5.1(g)(i):
  - (i) apply to the Court for an order under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meeting; and
  - (ii) take all steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to the Target Shareholders and holding the Scheme Meeting;
- (i) 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;
- (j) if the resolution submitted to the Scheme Meeting is passed by the necessary majorities and once the Conditions are satisfied or waived, promptly apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme and if that approval is obtained:
  - (i) promptly lodge with ASIC an office copy of the Scheme Order in accordance with section 411(10) of the Corporations Act;
  - (ii) close the Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme and Deed Poll;
  - (iii) execute proper instruments of transfer on behalf of Scheme Participants, and, subject to the Bidder providing the Scheme Consideration, effect and register the transfer, of the Scheme Shares in accordance with the Scheme; and
  - (iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (k) use its best endeavours to ensure that the Target Shares continue to be quoted on the official list conducted by ASX until the Target Suspension Date;
- (l) allow, and not oppose, any application by the Bidder for leave of the Court to be represented, or the separate representation of the Bidder by counsel, at the First Court Hearing and the Second Court Hearing;
- (m) as soon as they become available, publish on its website the First Court Date and the Second Court Date, the date of the Scheme Meeting, and the text of all announcements made to ASX in connection with the Transaction; and
- (n) do everything reasonably within its power to ensure that the Transaction is effected in accordance with all laws and regulations applicable in relation to the Transaction.

## 5.2 Bidder's obligations

The Bidder must execute all documents and do all acts and things within its power as may be necessary or desirable for the implementation and performance of the Scheme in a



timely manner and on a basis consistent with this agreement and in particular the Bidder must:

- (a) prepare the Bidder Information in accordance with clause 5.4 and provide the Bidder Information to the Target for inclusion in the Scheme Booklet;
- (b) provide all assistance and information reasonably requested by the Independent Expert (and any other specialist expert required) in connection with the preparation of all necessary report(s) for the purposes of the Scheme Booklet;
- (c) provide all assistance and information reasonably requested by any Investigating Accountant;
- (d) provide any assistance or information reasonably requested by the Target in connection with the preparation of the Scheme Booklet and any other document to be sent to the Target Shareholders in order to facilitate satisfaction of the Condition in clause 3.1(f);
- (e) as soon as practicable after the preparation of an advanced draft of the Bidder Information suitable for review by ASIC, procure that a meeting of the Bidder Board (or a duly appointed committee of the Bidder Board) is convened to approve the Bidder Information provided to the Target as being in a form appropriate for provision to ASIC for review;
- (f) as soon as practicable after the conclusion of the review by ASIC of the Scheme Booklet:
  - (i) procure that a meeting of the Bidder Board (or a duly appointed committee of the Bidder Board) is convened to approve the inclusion of the Bidder Information in the Scheme Booklet; and
  - (ii) provide to the Target, the Bidder's unconditional written consent to the inclusion of the Bidder Information in the Scheme Booklet;
- (g) procure that the Bidder is represented by counsel at the First Court Hearing and the Second Court Hearing, at which, through its counsel, the Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be necessary to ensure the fulfilment of its obligations under the Scheme, and, to the extent that leave of the Court is required for the Bidder to be represented at the First Court Hearing or the Second Court Hearing, apply for that leave;
- (h) during the period until the Target Information becomes publicly available, not use the Target Information for any purposes other than those expressly contemplated by this agreement or the Scheme;
- (i) prior to the business day which is immediately before the First Court Date, execute the Deed Poll and deliver an original executed copy of that Deed Poll to the Target;
- (j) if the Scheme becomes Effective, provide the Scheme Consideration in accordance with the Deed Poll, the Scheme and clause 4.3 of this agreement;
- (k) if the Scheme becomes Effective, accept a transfer of the Scheme Shares on the Implementation Date in accordance with the Scheme and clause 4.2 of this agreement; and
- (l) do everything reasonably within its power to ensure that the Transaction is effected in accordance with all laws and regulations applicable in relation to the Transaction.

### **5.3 Preparation of the Scheme Booklet**

- (a) The Target will prepare the Scheme Booklet and will act in good faith to attempt to ensure that the Scheme Booklet complies with the requirements of:
  - (i) the Corporations Act and the Corporations Regulations 2001 (Cth);
  - (ii) ASIC Regulatory Guide 60; and
  - (iii) the ASX Listing Rules.
- (b) The Target must, until the date of the Scheme Meeting, continue to update the Scheme Booklet with all such further or new information which may arise or become known to the Target after the Scheme Booklet has been despatched, and which is necessary to ensure that the Scheme Booklet complies with the standards referred to in clause 5.3(a);
- (c) The Target must:
  - (i) provide to the Bidder a working draft of the Scheme Booklet as soon as practicable after such draft is substantially complete;
  - (ii) provide to the Bidder a draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised to enable the Bidder to review the Regulator's Draft at least five business days before its submission to ASIC;
  - (iii) consult with the Bidder in relation to the content of the Regulator's Draft (including inclusion of any Bidder Information); and
  - (iv) consider in good faith, for the purpose of amending the Regulator's Draft, any comments received from the Bidder and its Representatives.
- (d) If, after a reasonable period of consultation, there is a dispute in relation to the content or form of the draft Scheme Booklet:
  - (i) where the dispute relates to the Bidder Information, the Bidder will make the final determination as to the content and form of the Bidder Information to be included in the Scheme Booklet; and
  - (ii) in all other circumstances, the Target will make the final determination as to the content and form of the Scheme Booklet,

provided that nothing in this clause requires the Target or any Officer of the Target to include anything in the Scheme Booklet which the Target or relevant Officer of the Target considers to be materially incorrect, misleading or deceptive, or to omit any information, the omission of which would, in the opinion of the Target or the relevant Officer cause the Scheme Booklet to be defective in any material respect.

### **5.4 Preparation of the Bidder Information**

- (a) The Bidder must:
  - (i) as soon as reasonably practicable after the date of this agreement, prepare the Bidder Information and provide that the Bidder Information to the Target for inclusion in the Scheme Booklet;
  - (ii) consult with the Target in relation to the content of the Bidder Information;

- (iii) consider in good faith, for the purpose of amending the Bidder Information, any comments received from the Target and its Representatives;
  - (iv) ensure that the Bidder Information is not misleading or deceptive in any material respect (whether by omission or otherwise); and
  - (v) provide to the Target all such further or new information which may arise or become known to the Bidder after the Scheme Booklet has been despatched 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 (whether by omission or otherwise).
- (b) The Bidder must on each of:
- (i) the business day which is immediately prior to the day on which a meeting of the Target Board is Scheduled to be convened to approve the matters described in clause 5.1(f);
  - (ii) the business day which is immediately prior to the day on which the Scheme Booklet is proposed by the Target to be dispatched to the Target Shareholders; and
  - (iii) the business day which is immediately prior to the day of the Scheme Meeting;
- (each a 'Verification Point') verify all statements forming part of the Bidder Information, and any statements directly derived from the Bidder Information, contained in the Scheme Booklet. The Bidder will provide such documentation to evidence its verification that the Target may reasonably request, including a verification certificate signed by Representatives of the Bidder responsible for verification.
- (c) The Bidder will ensure that the Bidder Information, and all information provided by or on its behalf to the Independent Expert, is not misleading or deceptive in any material respect (whether by omission or otherwise) as at each Verification Point.

## 5.5 Responsibility statements

The Scheme Booklet will contain statements to the effect that:

- (a) the Bidder is responsible for the Bidder Information contained in the Scheme Booklet; and
- (b) the Target is responsible for all the Target Information contained in the Scheme Booklet.

## 5.6 Compliance with obligations

The Target and the Bidder each agree to use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external Advisers) to comply with their respective obligations in this clause 5 and to produce the Scheme Booklet in accordance with the Timetable.

## 5.7 Court proceedings

- (a) If the Court refuses to make an order convening the Scheme Meeting or approving the Scheme, at the Bidder's request, the Target must appeal the Court's decision to the fullest extent possible (except to the extent that the parties agree otherwise, or an independent senior counsel indicates that, in his or her view, an appeal

would have a less than 50% prospect of success, in which case either party may terminate this agreement).

- (b) Each of the Bidder and the Target must vigorously defend, or must cause to be vigorously defended, any lawsuits or other claims or proceedings (including any Takeovers Panel proceedings) brought against it (or any member of the Bidder Group or the Target Group) challenging this agreement or the completion of the Transaction. Neither the Bidder nor the Target may settle or compromise (or permit any member of the Bidder Group or the Target Group to settle or compromise) any claim brought in connection with this agreement without the prior written consent of the other, such consent not to be unreasonably withheld.
- (c) Any costs incurred as a result of the operation of this clause will be borne equally by the Bidder and the Target.

## **5.8 Board and management changes**

As soon as practicable after the Bidder provides the Scheme Consideration in accordance with the Deed Poll:

- (a) the Target must cause the appointment as directors of the Target (and directors of the other members of the Target Group) nominated by the Bidder (with effect from and subject to implementation of the Scheme) provided that:
  - (i) the Target has received consents to act in that capacity from the Bidder's nominee; and
  - (ii) the Bidder's nominee is eligible to act in that capacity; and
- (b) the Target must ensure that:
  - (i) all existing members of the Target Board (and such directors of the other members of the Target Group as nominated by Bidder) resign from the Target Board; and
  - (ii) Daniel Wallis resigns as Chief Executive Officer of the Target,

with effect from and subject to implementation of the Scheme, and that each such director and officer provides written notice to the effect that they have no Claim for loss of office against any member of the Target Group and which confirms that no monies are owing to them by any member of the Target Group (whether by way of fees, salary, expenses, compensation for loss of office or otherwise).

## **5.9 Target Directors' recommendation**

- (a) The Target represents and warrants to the Bidder that it has been advised by each Target Director in office as at the date of this agreement that he or she will, as at the date of the Announcement, recommend that Target 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 Target Shareholders and not subsequently changing or qualifying that conclusion (**Recommendation**).
- (b) Subject to clause 5.9(c), the Target must ensure that the Scheme Booklet includes:
  - (i) a statement that the Target Directors unanimously recommend that Target Shareholders vote in favour of the Scheme in the absence of a Superior Proposal, or the Independent Expert subsequently changing or qualifying their conclusion; and

- (ii) a statement by each Target Director that he or she will vote in favour of the Scheme, in respect of all Target Shares controlled or held by or on behalf of that director in the absence of a Superior Proposal or the Independent Expert subsequently changing or qualifying their conclusion (**Voting Intention**).
- (c) The Target must ensure that no Target Director:
  - (i) changes, withdraws or modifies his or her recommendation that Target Shareholders vote in favour of the Scheme; or
  - (ii) makes a public statement or takes any action that is inconsistent with his or her recommendation that Target Shareholders vote in favour of the Scheme,
 in each case except where:
  - (iii) the Target receives a Third Party Proposal and Target Directors determine, after all of the Bidder's rights under clause 7.6 have been exhausted, that the Third Party Proposal constitutes a Superior Proposal; or
  - (iv) the Independent Expert concludes that the Scheme is not in the best interests of Target Shareholders.

#### **5.10 Change of control provisions**

As soon as reasonably practicable after the date of this agreement the parties must together seek to identify any change of control or unilateral termination rights in any Material Contract, any Target Finance Document or any material property leases which may be triggered by or exercised in response to the implementation of the Transaction. In respect of those Material Contracts, Target Finance Documents and material property leases:

- (a) the parties will agree a proposed course of action having regard to any applicable legal restrictions, which must include a request for any consent or confirmation required from the relevant counterparty and, unless the parties otherwise agree, either:
  - (i) joint correspondence from the Bidder and the Target to the relevant counterparty; or
  - (ii) a joint meeting or teleconference between the Bidder, the Target and the relevant counterparty;
- (b) the Target must take all commercially reasonable action necessary to obtain such consents or confirmations as expeditiously as reasonably practicable, including by promptly providing any information reasonably required by the counterparties;
- (c) the Bidder must take all commercially reasonable action to provide information reasonably requested by counterparties to support the Target in gaining the consents or confirmations referred to in clause 5.8(b);
- (d) Target must keep Bidder informed of the status and progress of obtaining the consents and confirmation; provide Bidder with copies of any material correspondence given to or received from relevant counterparties; respond to Bidder's reasonable requests regarding the process and status; and consult with Bidder in respect of the process; and

- (e) provided that the Target has used all commercially reasonable endeavours, a failure by a member of the Target Group to obtain any third party consent or confirmation, or the exercise of a termination right by a counterparty, will not constitute a breach of this agreement by the Target (and, for the avoidance of doubt, this clause 5.10(e) is without prejudice to the operation of limb (c) in the definition of Material Adverse Change).

#### **5.11 No unauthorised contact**

For a period up to and including the Implementation Date, the Bidder and its Representatives must not, without the prior written consent of the Target, initiate, accept or engage in any communication or contact of any kind with any officer, employee, supplier, customer or client of any member of the Target Group to discuss, or for any purpose relating to, the management and affairs of the Target Group, those persons' dealings with the Target Group or the transaction contemplated by this agreement. For avoidance of doubt, the Bidder and its Representatives are not otherwise prohibited from engaging in any communication or contact with any officer, employee, supplier, customer or client of any member of the Target Group in its ordinary course of business with respect to its other business interests.

### **6 Conduct of business**

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#### **6.1 Conduct of business – general obligations**

From the date of this agreement up to and including the earlier of the Implementation Date and the date of termination of this agreement, the Target must conduct and must procure that each member of the Target Group conducts its business in the ordinary and usual course generally consistent with the manner in which the business has been conducted during the period beginning on the date that is 12 months prior to the date of this agreement and ending on the date of this agreement, including (without limitation) ensuring that the Target and each member of the Target Group:

- (a) comply in all material respects with all applicable laws and regulations;
- (b) maintain its businesses and assets;
- (c) keep available the services of its Officers and employees employed as at the date of this agreement;
- (d) preserve its relationships with customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings;
- (e) keep the Bidder reasonably and promptly informed of (including providing Bidder with copies of any material documentation reasonably requested by the Bidder, including customer correspondence), and reasonably consider the Bidder's views about, material developments in the business of the Target Group;
- (f) promptly notify Bidder in writing of (and provide any material correspondence relating to) any of the following matters of which the Target becomes aware, and such written notification must include a reasonable summary of the relevant matter:
  - (i) events, facts, matters or circumstances which would or would be reasonably be expected to:
    - (A) constitute a Material Adverse Change or Prescribed Occurrence;
    - or

- (B) have a material adverse effect on the financial or operational performance, or the reputation, of the Target Group or the Target Group's relationships with any Regulatory Authority or any counterparty to a Material Contract; or
- (ii) any breach of, or default under, any law, contract, arrangement, permit, licence or authorisation that is binding on any member of the Target Group of which the Target becomes aware and which is reasonably likely to result in a material liability for any member of the Target Group (save that Target is not obliged to provide any information to the extent that doing so would breach any existing obligations of confidence to which a member of the Target Group is subject or result in the loss of legal privilege);
- (g) make reasonable efforts to:
  - (i) preserve its relationships with customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings;
  - (ii) keep available the services of the current officers and employees of the Target Group; and
  - (iii) maintain and preserve the Target Group's relationships with partners, customers (including counterparties to the Material Contracts), suppliers, Regulatory Authorities, licensors, licensees and others with whom it has material business dealings,

except:

- (h) where expressly contemplated by this agreement, the Scheme or the Deed Poll; or
- (i) as expressly agreed by Bidder and Target in writing.

## 6.2 Conduct of business – specific obligations

From the date of this agreement up to and including the earlier of the Implementation Date and the termination of this agreement, the Target must not (and must procure that each member of the Target Group does not):

- (a) renew, materially amend or terminate, or agree to renew or materially amend (in a manner adverse to Target) or terminate, any material contract with a person (other than another member of the Target Group) that: (i) could reasonably be expected to incur expenditure (or that contemplates expenditure) by the Target Group in excess of \$100,000 in any 12 month period (or increases an amount of expenditure by 5% or more in respect of an existing contract); or (ii) that has a term of more than 3 years;
- (b) enter into any new contract (which, to avoid doubt, is not a renewal of an existing contract) with a person (other than another member of the Target Group) in relation to the supply of goods or services to any member of the Target Group other than in the ordinary course of business that: (i) could reasonably be expected to incur expenditure (or that contemplates expenditure) by the Target Group in excess of \$100,000 in any 12 month period (or increases an amount of expenditure by 5% or more in respect of an existing contract); or (ii) that has a term of more than 3 years;
- (c) undertake any action or fail to undertake any action that would have the effect of amending an existing restrictive covenant (or in the case of a new contract contains such a restrictive covenant) or otherwise has the effect of imposing additional restrictions on the future business activities of the Target Group;

- (d) enter into an employment contract with a new employee of the Target Group where: (i) in respect of an employee whose work is fully chargeable to a customer, the total fixed employment cost payable to that new or existing employee exceeds or would exceed \$275,000 per annum; and (ii) in respect of all other new employees, the total fixed employment cost payable to that new employee exceeds or would exceed \$150,000 per annum;
- (e) enter into a new employment contract with, or materially amend (in a manner adverse to the Target) or terminate without cause an existing key personnel, promote, or make an internal transfer of, an existing key personnel of the Target Group, except as required by law or provided for in an existing contract in place as at the date of this agreement;
- (f) increase any employee's base salary by more than 5% (except for salary increases provided for in an existing contract in place as at the date of this agreement or required by law);
- (g) accelerate the rights of any director or key personnel to compensation or benefits of any kind;
- (h) pay or agree to pay any of its directors or key personnel a bonus, termination payment or any other increase in fees or benefits, except:
  - (i) as required by law;
  - (ii) as required in accordance with an existing contract or other binding commitment in place at the date of this agreement; or
  - (iii) in accordance with salary sacrifice arrangements in the ordinary course of business;
- (i) pay, incur or agree to pay or incur Transaction Costs in excess of, in aggregate, \$7 million;
- (j) incur any additional indebtedness or issue any additional indebtedness by way of borrowings, loans or advances other than:
  - (i) in accordance with the Target Finance Documents (for avoidance of doubt any indebtedness incurred in accordance with the Target Finance Documents will be included in the calculation of Net Debt); or
  - (ii) any indebtedness relating to credit card expenditure or trade credit of the Target Group incurred in the ordinary course of business, each of which is to be considered and accounted for in the financial statements according to the same principles as used in preparing the audited annual accounts of the Target Group as declared for the period ending 30 June 2020;
- (k) settle or offer to settle any legal proceedings, claim, investigation, arbitration or other like proceeding where any member of the Target Group is or would be required to pay a settlement amount that exceeds \$200,000;
- (l) accept as a compromise of a matter less than the full compensation due to it or any other member(s) of the Target Group where the compromise is more than \$200,000 (in the aggregate), or waive any material Third Party default or non-payment where the financial impact upon the Target Group would be in excess of \$200,000 (in the aggregate);
- (m) change any accounting policy applied by it to report its financial position other than any change in policy required by a change in accounting standards or law;



- (n) enter into or resolve to enter into a transaction with any related party of the Target (other than a related party which is a member of the Target Group) as defined in section 228 of the Corporations Act;
- (o) offer any volume discounts to Target Group customers or clients other than in the ordinary course of business and consistent with past practice; or
- (p) authorise, procure or commit or agree to do any of the matters set out above.

### **6.3 Target Permitted Special Dividend**

- (a) Subject to clauses 6.3(b) and 6.3(c), the Target may, in its sole discretion, determine and pay to the Target Shareholders who are recorded in the Register as a holder of the Target Shares at the Target Permitted Special Dividend Record Date the Target Permitted Special Dividend (which shall be fully franked) on the Target Permitted Special Dividend Payment Date.
- (b) The amount per the Target Share of the Target Permitted Special Dividend shall not exceed such amount as can be fully franked utilising the franking account balance of the Target.
- (c) The parties agree to consult and cooperate with each other in respect of the timing and mechanics associated with the Target Permitted Special Dividend with a view to ensuring that the dividend can be fully franked.
- (d) For the avoidance of doubt, it is agreed that:
  - (i) the decision whether to pay a Target Permitted Special Dividend is entirely within the discretion of the Target Board and the Bidder shall have no right to influence that decision;
  - (ii) the Scheme is not conditional on payment or otherwise of the Target Permitted Special Dividend;
  - (iii) the Target Permitted Special Dividend must be paid entirely from the Target Group's accumulated/retained earnings reserve and must not be debited against the Target's share capital account; and
  - (iv) the Bidder must not in any way finance, assist or facilitate the payment of the Target Permitted Special Dividend.

### **6.4 Target Permitted Ordinary Dividend**

The Target may pay the Target Permitted Ordinary Dividend at any time without any reduction in the Scheme Consideration.

## **7 Exclusivity**

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### **7.1 No current discussions**

The Target represents and warrants to Bidder that, as at the date of this agreement, neither it nor any of its Representatives:

- (a) has received any offer, proposal or expression of interest from any person which is capable of acceptance, or is otherwise participating, directly or indirectly, in any discussions or negotiations with any persons that may reasonably be expected to lead to a Third Party Proposal;

- (b) is a party to any agreement, arrangement or understanding with any person which has not expired (or otherwise terminated) in relation to a Third Party Proposal or a possible Third Party Proposal (including but not limited to a Third Party Proposal that prevents it from entering into this agreement, or may prevent it from complying with its obligations under this agreement); or
- (c) no due diligence right has been granted to any person (or continues to be granted to any person) for any purposes in connection with a Third Party Proposal or any purposes which may reasonably be expected to lead to a Third Party Proposal.

## **7.2 No shop restriction**

During the Exclusivity Period, the Target must ensure that neither it nor any of its Representatives, directly or indirectly, solicits, initiates or invites any enquiries, negotiations, proposals or discussions in relation to, or with a view to obtaining, or which may reasonably be expected to encourage or lead to the making of, any expression of interest, offer or proposal from any person in relation to a Third Party Proposal, or communicate to any person an intention to do any of the foregoing.

## **7.3 No talk**

Subject to clause 7.7, during the Exclusivity Period, the Target must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) facilitates, enters into, continues or otherwise participates in any negotiations or discussions with any person regarding a Third Party Proposal or which may reasonably be expected to lead to a Third Party Proposal;
- (b) communicates to any person any intention to do any of the things referred to in clause 7.3(a); or
- (c) approves or recommends a Third Party Proposal,

even if the Third Party Proposal was not directly or indirectly solicited, encouraged or initiated by the Target or any of its Representatives, or the Third Party Proposal has been publicly announced.

## **7.4 No due diligence**

Without limiting clause 7.3, during the Exclusivity Period, except with the prior written consent of Bidder, the Target must not and must ensure that its Representatives do not, directly or indirectly:

- (a) solicit, initiate, invite or encourage or (subject to clause 7.7) facilitate or permit any person other than Bidder to undertake due diligence investigations in respect of the Target or any of its Related Bodies Corporate or any of their businesses or operations in connection with or for the purposes of an actual, proposed or potential Third Party Proposal or any circumstance which may reasonably be expected to lead to a Third Party Proposal; or
- (b) subject to clause 7.7, make available to any person other than Bidder or its Representatives or permit any such person:
  - (i) to receive any non-public information relating to the Target or any of its Related Bodies Corporate or any of their businesses or operations;
  - (ii) to have access to (in the course of due diligence investigations or otherwise) any premises used, leased, licenced or owned by the Target or any of its Related Bodies Corporate; or

- (iii) to have access to, (in the course of due diligence investigations or otherwise) any officers or employees of the Target or its Related Bodies Corporate,

in each case in connection with or for the purposes of an actual, proposed or potential Third Party Proposal or any circumstance which may reasonably be expected to lead to a Third Party Proposal; or

- (c) facilitate anything contemplated by clause 7.4(b).

## **7.5 Notification of approaches**

- (a) During the Exclusivity Period, the Target must as soon as reasonably practicable (and in any event within 2 business days) notify Bidder in writing of the fact of:
  - (i) any approach, inquiry or proposal made by any person to the Target or any of its Representatives, to initiate any discussions or negotiations that concern, or that may reasonably be expected to lead to, a Third Party Proposal; and
  - (ii) any request made by any person to the Target or any of its Representatives, for any information or access relating to the Target, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Third Party Proposal or possible Third Party Proposal,

whether oral or in writing.

- (b) A notice given under clause 7.5(a) must be accompanied by:
  - (i) the material terms and conditions (including price, conditions precedent, timetable, due diligence requirements, break fee (if any)) of any Third Party Proposal or any proposed Third Party Proposal (to the extent then known to the Target); and
  - (ii) the following details that are known to the Target regarding the relevant proponent:
    - (A) the industry in which the proponent operates;
    - (B) whether the proponent primarily operates within Australia or globally; and
    - (C) an indication of the financial standing of the proponent (by providing details of either the net assets, annualised revenue or EBITDA of the proponent),

provided always that the Target is not required to identify the relevant proponent or to provide any details or information pursuant to this clause 7.5(b) in relation to the relevant proponent that would allow the Bidder, after conducting due and careful enquiry to identify the proponent.

- (c) During the Exclusivity Period, the Target must promptly provide the Bidder with:
  - (i) in the case of written materials, a copy of; or
  - (ii) in any other case, a written statement of,

any information relating to the Target, its Related Bodies Corporate, or any of their businesses and operations made available by the Target to any person in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Third Party Proposal (or possible Third Party Proposal).

## 7.6 Target's response to Rival Acquirer and the Bidder's right to respond

- (a) If the Target is permitted by virtue of clause 7.7 to engage in activity that would otherwise breach any of clauses 7.3 and 7.4(a), the Target must enter into a confidentiality agreement with the person who has made the applicable Third Party Proposal (**Rival Acquirer**) on customary terms (but without prejudice to Target's obligations to Bidder under the provisions in this clause 7).
- (b) If the Target receives a Third Party Proposal and as a result:
  - (i) any Target Director proposes to change, withdraw or modify his Recommendation or Voting Intention; or
  - (ii) the Target proposes to enter into any agreement, commitment, arrangement or understanding relating to the Third Party Proposal (other than a confidentiality agreement contemplated by clause 7.6(a)),

the Target must not take any of the actions referred to in clause 7.6(b)(i) or take any step in relation to entering into any agreement, commitment, arrangement or understanding set out in clause 7.6(b)(ii):

  - (iii) unless the Third Party Proposal is bona fide; and
  - (iv) until each of the following has occurred:
    - (A) the Target Directors have made the determination contemplated by clause 7.7 in respect of that Third Party Proposal;
    - (B) the Target has given the Bidder written notice (**Relevant Notice**) of the proposal to take the action referred to in clauses 7.6(b)(i) or 7.6(b)(ii);
    - (C) the Target has given the Bidder all information that would be required by clause 7.5(b); and
    - (D) the Target Directors have made the determination contemplated by clause 7.7 in respect of that Third Party Proposal after evaluation of any Counter Proposal and the exhaustion of the Bidder's rights under and in accordance with clause 7.6(c).
- (c) If the Target gives a Relevant Notice to the Bidder under clause 7.6(b)(iv)(B), the Bidder will have the right, but not the obligation, at any time during the period of five business days after the day on which the Bidder receives the Relevant Notice, to propose to amend the terms of the Transaction including by increasing the amount of consideration offered under the Transaction or proposing any other form of transaction (each a '**Counter Proposal**'), and if it does so then the Target must procure that the Target Directors review the Counter Proposal in good faith. If the Target Directors (acting reasonably and in good faith) determine that the Counter Proposal would be more favourable, or at least no less favourable, to the Target Shareholders than the Third Party Proposal (having regard to the matters noted in clause 7.7), then the Target and Bidder must as soon as reasonably practicable and acting in good faith use their best endeavours to agree the amendments to this agreement that are reasonably necessary to reflect the Counter Proposal and to

enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal, and the Target Directors must recommend the Counter Proposal to the Target Shareholders and not recommend the applicable Third Party Proposal.

## **7.7 Fiduciary carve-out**

In respect of a bona fide written Third Party Proposal received by the Target without any breach of its obligations under this clause 7, the Target may undertake any action that would otherwise be prohibited by clauses 7.3, 7.4(a) and 7.4(b) if (and only to the extent that) the Target Board determines, acting in good faith:

- (a) the Third Party Proposal is bona fide and is made by or on behalf of a person that the Target Directors reasonably consider is of sufficient commercial standing to implement the Third Party Proposal;
- (b) the Third Party Proposal is, or may reasonably be expected to lead to a, Superior Proposal, having received advice to that effect from the Target's external financial and corporate advisers; and
- (c) failing to take the action or refusing to take the action (as the case may be) with respect to the Third Party Proposal would be reasonably likely to constitute a breach of the fiduciary or statutory obligations of the Target Directors, having received advice to that effect from the Target's legal advisers.

## **7.8 Revisions to a Third Party Proposal**

Any material modification to any Third Party Proposal will be deemed to make that proposal a new Third Party Proposal in respect of which the Target must comply with its obligations under clauses 7.5 and 7.6 and the Bidder may exercise its rights in relation to a Counter Proposal in clause 7.6(c).

## **7.9 Legal advice**

The Target warrants to the Bidder that, prior to entering into this agreement, the Target has received legal advice on this agreement and the operation of this clause 7, it and the Target Board consider this clause 7 to be fair and reasonable and that it is appropriate to agree to the terms of this clause in order to secure the significant benefits to the Target and Target Shareholders resulting from the transactions contemplated by this agreement.

# **8 Break Fee**

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## **8.1 Background**

This clause 8 has been agreed to in circumstances where:

- (a) each of the Bidder and Target believes it and its shareholders and investors will derive significant benefits from the implementation of the Scheme;
- (b) each of the Bidder and Target has incurred, and will further incur significant costs in connection with the Scheme, which will include significant opportunity cost if the Scheme is not implemented;
- (c) each of the Bidder and Target has requested that provision be made for the payment of the Bidder Break Fee and the Target Break Fee (as applicable), and neither would have entered into this agreement had such relevant payment obligation not been included;

- (d) each of the Bidder and Target believes that it is appropriate to agree to the payment which it agrees to under this clause 8 to secure the other party's entry into this agreement; and
- (e) each of the Bidder and Target has received legal advice in relation to this agreement and the operation of this clause 8.

The Bidder and Target each acknowledge and agree that the costs referred to in clause 8.1(b) are of such a nature that they cannot be precisely quantified, but that the amount of the applicable payment under this clause 8 is a genuine and reasonable pre-estimate of those costs and not a penalty of any sort.

## **8.2 Payment of Target Break Fee**

Subject to clauses 8.4 and 8.7, the Target must pay the Bidder the Target Break Fee, without set-off or withholding and within 10 business days after receipt of a written demand from Bidder, if any of the following events occur:

- (a) at any time before the Second Court Date, a Third Party Proposal is made or announced by a Third Party or Target, and, within 12 months thereafter:
  - (i) a Third Party acquires Control of, or merges with, Target; or
  - (ii) a Third Party acquires voting power of (or an economic interest in) 50% or more of Target Shares or acquires or obtains an economic interest in all or a substantial part of the assets of the Target Group (as a whole);
- (b) at any time before termination of this agreement under clause 15, Target enters into a scheme implementation agreement or a scheme process agreement with a Third Party in respect of a Third Party Proposal under which that Third Party and Target agree to implement such Third Party Proposal;
- (c) the Bidder terminates this agreement under clause 15.3(a) or 15.3(e);
- (d) prior to the End Date, any Target Director publicly:
  - (i) withdraws or adversely changes his or her Recommendation or Voting Intention; or
  - (ii) makes any public statement to the effect that the Scheme is not, or is no longer, recommended,

other than:

  - (iii) where the Independent Expert concludes either in the Independent Expert's Report or in any written update to that report that the Scheme is not in the best interests of Target Shareholders, except where the reason for that conclusion is a Third Party Proposal;
  - (iv) in circumstances where the Target has terminated this agreement under clause 15.2(c); or
  - (v) in circumstances where a party has terminated this agreement under clause 3.8(a) in respect of the FIRB Approval condition in clause 3.1(a) or in respect of the OIO Approval condition in clause 3.1(b).

### **8.3 Payment of Bidder Break Fee**

Subject to clauses 8.4 and 8.7, the Bidder must pay the Target the Bidder Break Fee, without set-off or withholding and within 10 business days after receipt of a written demand from Target, if the Target terminates this agreement under clause 15.2(c).

### **8.4 Payment conditions**

- (a) Notwithstanding the occurrence of any event described in clause 8.2 or 8.3, no amount will be payable under this clause 8 if the Scheme becomes Effective. If an amount has been paid and then the Scheme subsequently becomes Effective, such amount must immediately be refunded by the payee to payor.
- (b) Any amount payable by the Target or Bidder under this clause 8 (as applicable) is only payable once.

### **8.5 Exclusive remedy**

- (a) Subject to clause 8.5(d), each party acknowledges and agrees that the amount payable to it under clause 8.2 or clause 8.3 (as the case may be) is the sole and exclusive remedy in respect of the matter giving rise to the payment and otherwise in respect of the Scheme or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by a party in respect of such matter or the Scheme or in connection with this agreement.
- (b) Subject to clause 8.5(d), the maximum aggregate amount that Target or Bidder is required to pay to the other party in respect of the Scheme or in connection with this agreement (including any breach of this agreement or entry into this agreement) is the amount of the Target Break Fee or Bidder Break Fee (as the case may be) and in no event will the aggregate liability of Target or Bidder to the other party in respect of the Scheme or in connection with this agreement exceed the amount of the Target Break Fee or Bidder Break Fee (as the case may be).
- (c) Subject to clause 8.5(d), notwithstanding any clause in this agreement, if an amount is paid under clause 8.2 or clause 8.3, that amount is received in complete settlement of any and all Claims, whether known (actually or constructively) or unknown to any party and/or their Related Entities at the date of receipt, that the party receiving the Target Break Fee or Bidder Break Fee (as the case may be) may have against the party paying the relevant amount in respect of the Scheme or in connection with this agreement. If the Bidder Break Fee is paid to Target under this agreement, Target cannot make any claim against Bidder or the other Bidder Indemnified Parties in relation to any matter, event or occurrence in relation to this agreement. If the Target Break Fee is paid to the Bidder under this agreement, Bidder cannot make any claim against Target or the other Target Indemnified Parties in relation to any matter, event or occurrence in relation to this agreement.
- (d) For the avoidance of doubt, nothing in clauses 8.5(a), 8.5(b) or 8.5(c) limits or restricts the Bidder's ability to make a Claim under the W&I Policy in the manner contemplated by clause 9.

### **8.6 Nature of payment**

Each of the Bidder and Target acknowledges that any amount payable by it under this clause 8 is an amount to compensate the other party for the following costs and expenses:

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

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

## **8.7 Compliance with law**

This clause 8 imposes obligations on the Target and Bidder only to the extent that the performance of those obligations:

- (a) does not constitute unacceptable circumstances as declared by the Australian Takeovers Panel;
- (b) does not breach the fiduciary or statutory duties of any Target Director or Bidder director; and
- (c) is not otherwise unlawful or held to be unenforceable by a court.

If any of clause 8.7(a), 8.7(b) or 8.7(c) applies, the applicable amount payable under this clause 8 (the **Applicable Amount**) will be deemed to be reduced by the relevant amount for the purposes of this clause 8 and, if the Applicable Amount has already been paid, the payee must immediately reimburse the payor for the amount of the reduction to the Applicable Amount.

## **9 Warranties**

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### **9.1 Target Warranties**

The Target represents and warrants to the Bidder that each of the Target Warranties is true and correct at the date of this agreement and is true and correct on the date of the Scheme Meeting, at the Cut Off Time and on the Implementation Date, unless the Target Warranty is expressed to be given only at a particular time in which case it is given only at that time.

### **9.2 Bidder Warranties**

The Bidder represents and warrants to the Target that each of the Bidder Warranties is true and correct at the date of this agreement and will be true and correct on the date of the Scheme Meeting, at the Cut Off Time and on the Implementation Date, unless the Bidder Warranty is expressed to be given only at a particular time in which case it is given only at that time.

### **9.3 Acknowledgement**

Each party acknowledges that the other party has entered into this agreement in reliance on the warranties given by it under this clause 9.

### **9.4 Warranties separate**

Each of the Bidder Warranties and the Target Warranties is separate and independent and, except as expressly provided to the contrary in this agreement, is not limited by reference to any other one of the Bidder Warranties or Target Warranties (as the case may be).



## **9.5 Qualifications**

- (a) Each of the Target Warranties (other than the Fundamental Warranties) is given subject to:
  - (i) any matter that has been fairly disclosed by the provider of such warranties to the other party, and the Bidder is not entitled to make a Claim for a breach of a Target Warranty (other than the Fundamental Warranties) in respect of any matter that has been fairly disclosed; and
  - (ii) any relevant information of which the Bidder has Actual Knowledge as at the date of this agreement which:
    - (A) is inconsistent with, or constituting a breach of, the Target Warranty (other than the Fundamental Warranties); or
    - (B) could form the basis of a Claim for a breach of a Target Warranty (other than the Fundamental Warranties).
- (b) Without prejudice to clause 9.5(a), in respect of a Target Warranty or Bidder Warranty given by Target or Bidder respectively (as applicable) that is expressly qualified by reference to the knowledge or awareness of Target or Bidder (as applicable), such warranty will be deemed to comprise only those matters or circumstances within the Actual Knowledge of the party giving the warranty (as applicable) as at the date that the warranty is given.

## **9.6 Notification of breach**

The Bidder and the Target will respectively promptly advise each other in writing of:

- (a) a representation or warranty provided in this agreement by it becoming false in a material respect; or
- (b) a material breach of this agreement by it.

## **9.7 Compliance certificate**

By 5.00pm on the business day immediately before each of (i) Scheme Meeting and (ii) the Second Court Date, each of the Bidder and the Target must execute and deliver to the other party a certificate signed by a director that, having made all relevant enquiries and except as previously disclosed:

- (a) it has complied in all material respects with its obligations under this agreement; and
- (b) the representations and warranties given by it under clause 9 remain true and correct in all material respects.

## **9.8 Termination only remedy**

- (a) Notwithstanding clause 9.10, the parties acknowledge and agree that the only remedy:
  - (i) available to the Target against the Bidder for a breach of a Bidder Warranty; or
  - (ii) available to the Bidder against the Target for a breach of a Target Warranty,

whether under contract, common law, in equity, tort (including negligence), statute or otherwise will be to terminate this agreement where the right to do so arises under clause 15 (a '**Permitted Action**'), and each party releases its rights with respect to any Claim other than the Permitted Action, and agrees that it will not make such a Claim.

- (b) Nothing in this clause 9.8 or this agreement prejudices Bidder's right to make a claim under the W&I policy.

## **9.9 W&I Policy and limitations on Claims**

- (a) Subject to clause 9.8:
    - (i) 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 Target Warranty or Indemnity Claim against any Target Indemnified Party, except after the Scheme has been implemented and then only to the extent:
      - (A) required to permit a Claim under the W&I Policy (if any) and then only on the basis that the Bidder's sole and only recourse and remedy would be under the W&I Policy (and under the Target Break Fee, if payable) and no Target Indemnified Party will have any liability whatsoever for or in respect of such Claim; or
      - (B) in respect of a Claim against a Target Indemnified Party, such Claim arises as a result of fraud by that Target Indemnified Party;
    - (ii) the Bidder covenants in favour of the Target that, prior to the Scheme being implemented and subject to the Bidder taking out a W&I Policy, it will:
      - (A) not do anything which causes any right of the insured under the W&I Policy not to have full force and effect upon its terms;
      - (B) not novate or assign its rights under the W&I Policy other than where permitted by the terms of the W&I Policy; and
      - (C) comply with the terms of the W&I Policy relating to the deliverables required to satisfy conditions in the W&I Policy;
    - (iii) the Bidder will make commercially reasonable endeavours to ensure that any W&I Policy it takes out includes terms to the effect that:
      - (A) the insurer irrevocably waives its rights to bring any Claim against any Target Indemnified Party by way of subrogation, Claim for contribution or otherwise, except Claims by way of subrogation against:
        - (1) the Target to the extent that the relevant Loss arose out of fraud by the Target; or
        - (2) a Target Director as at the date of this agreement to the extent that the relevant Loss arose out of fraud by that director,
- and only to the extent of the rights of recovery relating directly to fraud by the Target or the relevant Target Director (as applicable); and

- (B) 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 and as agent of each Target Indemnified Party;
- (iv) the Bidder acknowledges and agrees that:
- (A) there is no excess, premium or any other amount payable by any Target Indemnified Party under the W&I Policy (if any);
  - (B) clause 9.9(a)(i) applies:
    - (1) notwithstanding whether or not it takes out a W&I Policy; and
    - (2) 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 Target Warranty or Indemnity Claim;
  - (C) 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, other than any Target Indemnified Party to the extent that the relevant Loss or Claim arose out of fraud by that Target Indemnified Party. The applicable Target Indemnified Party must use all reasonable endeavours to recover any such loss under an applicable policy of insurance (including any applicable directors and officers indemnity insurance); and
  - (D) in the event that it takes out a W&I Policy, it will promptly provide Target with a copy of such policy, subject to keeping the terms of such policy confidential, including in accordance with the terms of the Confidentiality Deed; and
- (v) the Target acknowledges and agrees that:
- (A) the Bidder intends to purchase the W&I Policy but is under no obligation to take out a W&I Policy;
  - (B) it will cooperate with the Bidder and provide all reasonable assistance requested by the Bidder in connection with the purchase of the W&I Policy, including by:
    - (1) arranging for management to be available to respond to any queries and responding in writing to any reasonable written 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, provided that the Bidder has first considered those queries and responded to them to the extent that it is reasonably able to; and

- (2) providing access to the "Project Coast" online data room maintained by the Target to the insurance broker engaged by the Bidder, any underwriter of the W&I Policy, or any of their respective advisers (in each case in a timely manner when requested by the Bidder, but subject to the proviso that each such person first enters into a non-disclosure agreement with the Target on reasonable and customary terms); and
- (C) if the Bidder takes out a W&I Policy and provides a copy of such policy to the Target, the Target shall keep the terms of such policy confidential, including in accordance with the Confidentiality Deed.

## **9.10 Survival of representations and Warranties**

Each Target Warranty and Bidder Warranty in this agreement:

- (a) is severable;
- (b) survives termination of this agreement; 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 agreement.

# **10 Indemnities**

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## **10.1 Target's indemnities**

Subject at all times to clause 9.9:

- (a) the Target agrees with the Bidder (on its 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 which a Bidder Indemnified Party may suffer or incur by reason of or in relation to (and the Target must pay the Bidder Indemnified Parties on demand in respect of the indemnity in this clause 10.1):
  - (i) any breach by the Target of this agreement or the Scheme (other than any breach of the Target Warranties);
  - (ii) any breach of the Target Warranties; and
- (b) the Target indemnifies the Bidder against, and must pay the Bidder on demand the amount of any Losses attributable to:
  - (i) Tax or Duty payable by a member of the Target Group (whether payable before on or after implementation of the Scheme) as a result of a Tax Demand to the extent that such Tax or Duty relates to:
    - (A) any period, or part period, up to and including implementation of the Scheme; or
    - (B) any act, transaction, event or omission, or any misstatement, executed, performed or made on or prior to implementation of the Scheme,

excluding any Duty payable by the Bidder under clause 18.1;

- (c) 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 due to prior changes in the control or ownership of the Target Group; or
- (d) 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 clauses 10.1(b) and 10.1(c),

in each case except to the extent that the Target's liability is limited or qualified under clause 9.5.

## 10.2 Bidder's indemnity

The Bidder agrees with the Target (on its 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 which a Target Indemnified Party may suffer or incur by reason of or in relation to any breach by the Bidder of this agreement or the Scheme, other than a breach of any Bidder Warranty.

## 10.3 Reading down

The parties acknowledge and agree that clauses 10.1 and 10.2 must be read down to the extent necessary to ensure that there is no breach of section 199A of the Corporations Act.

# 11 Releases

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## 11.1 Releases

- (a) The Bidder releases and forever discharges each of the Target Indemnified Parties (other than the Target and its Related Bodies Corporate) (collectively, '**Target Released Parties**') from and against all Claims of whatever nature and howsoever arising which it now has or at any time in the future may have, or but for the execution of this agreement, could or might have against any of the Target Released Parties, in connection with, incidental or in any way related to:

- (i) any breach of a Target Warranty; or
- (ii) any disclosure containing any statement which is false or misleading whether in content or by omission,

except where the Target Released Party has engaged in wilful misconduct or fraud.

- (b) The Target releases and forever discharges each of the Bidder Indemnified Parties (other than the Bidder and its Related Bodies Corporate) (collectively, '**Bidder Released Parties**') from and against all Claims of whatever nature and howsoever arising which it now has or at any time in the future may have, or but for the execution of this agreement, could or might have against any of the Bidder Released Parties, in connection with, incidental or in any way related to:

- (i) any breach of a Bidder Warranty; or
- (ii) any disclosure containing any statement which is false or misleading whether in content or by omission,

except where the Bidder Released Party has engaged in wilful misconduct or fraud.

## **11.2 Benefits held on trust**

The parties agree that insofar as clause 11.1 provides a release and discharge for the benefit of a Target or Bidder Released Party (as applicable):

- (a) the Bidder or Target (as applicable) holds the benefit of clause 11.1 insofar as it relates to a that party's Bidder or Target Released Party (as applicable) on trust for each such Target or Bidder Released Party (as applicable); and
- (b) the Target or Bidder Released Party (as applicable) may enforce this agreement on behalf of any Target or Bidder Released Party (as applicable).

## **11.3 Bar to proceedings**

The parties acknowledge and agree that each Target Released Party or Bidder Released Party (as applicable) may plead this agreement as a bar to any proceedings commenced, continued or taken against it by the Bidder or Target (as applicable) related in any way to the matters the subject of the releases in clause 11.1.

## **11.4 Reading down**

The parties acknowledge and agree that clause 11 must be read down to the extent necessary to ensure that there is no breach of section 199A of the Corporations Act.

# **12 Target Directors and Officers**

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- (a) Subject to clause 12(b), the Scheme becoming Effective and the Transaction completing, the Bidder undertakes in favour of the Target and each other person who is a Target Indemnified Party that it will:
  - (i) for a period of 7 years from the Implementation Date, ensure that the constituent documents of the Target and each other Target Group member continue to contain such rules as are contained in those constituent documents at the date of this agreement that provide for each company 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 the company to any person other than a Target Group member; and
  - (ii) procure that the Target and each other Target Group member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that directors' and officers' run-off insurance cover for such directors and officers is maintained for a period of 7 years from the date that such director or officer has ceased to hold office provided that such obligations shall be subject to any limitation imposed by the certificate of incorporation or its constituent documents as in effect on the date of this date and as imposed from time to time under applicable law.
- (b) By no later than 15 business days before the Second Court Date, the Target Group must have obtained prepaid 'tail' and 'runoff' policies for each Target Group director and officer for the period referred to in clause 12(a)(i), such policies to include cover in respect of the transactions contemplated by this agreement (and the Target will promptly provide (and procure the provision of) copies of such policies obtained by the Target Group to the Bidder). The Bidder will procure that the Target and any other relevant Target Group member maintains such policies in

full force and effect for their full term, and continues to honour the obligations thereunder.

- (c) The undertakings in clauses 12(a) and 12(b) are subject to any Corporations Act restriction, or any restriction in the law of a jurisdiction in which a Target Group member is incorporated, and will be read down accordingly.
- (d) The Target holds the benefit of clauses 12(a) and 12(b), to the extent it relates to other Target Indemnified Parties, as trustee for them.

## **13 Confidentiality**

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Each party must comply, and must procure that its Representatives comply, with the terms of the Confidentiality Deed governing use and disclosure of confidential information. For the purposes of the Confidentiality Deed, each party consents to the use of, and the disclosure on a confidential basis to a Regulatory Authority of, its confidential information for the purposes of satisfying any Condition and the implementation of the transactions contemplated by this agreement.

## **14 Public announcements**

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### **14.1 Announcement of Transaction**

Immediately after execution of this agreement, the Target will issue the Announcement.

### **14.2 Public announcements**

Subject to clause 14.3, no public announcement or disclosure (including any briefing to analysts, the media or shareholders) of the Transaction or any other transaction the subject of this agreement may be made other than in a form approved by each party (acting reasonably), but each party must use all reasonable endeavours to provide such approval as soon as practicable.

### **14.3 Required disclosure**

Where a party is required by law, ASX Listing Rules or the rules of any applicable securities exchange to make any announcement or to make any disclosure in connection with the Transaction or any other transaction the subject of this agreement, it may do so only after it has given at least one business day's notice, or such lesser period as may be required or permitted to comply with its legal or regulatory responsibilities, but in any event prior notice, to the other party and has taken all reasonable steps to consult with the other party and its legal advisers and to take account of all reasonable comments received from the other party. Nothing in this clause shall require any party to act, or to delay acting, in a way that would place it in breach of ASX Listing Rule 3.1 or the rules of any applicable securities exchange.

### **14.4 Statements on termination**

The parties must act in good faith and use all reasonable endeavours to issue an agreed statement or statements in respect of any termination provided for in this agreement and will make no statements or disclosure in respect of the termination of this agreement except in accordance with clauses 14.2 and 14.3.

## 15 Termination

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### 15.1 Termination by either party

This agreement may be terminated with immediate effect by either party giving notice in writing to the other party if:

- (a) the resolution to approve the Scheme submitted to the Scheme Meeting is not approved by the requisite majorities of the Target Shareholders and, if the Scheme is not approved by reason only of the non-satisfaction of the Headcount Test, a Scheme Order has not, in accordance with clause 3.6, been made within 5 business days of the Scheme Meeting;
- (b) the Effective Date has not occurred on or before the End Date other than as a result of any breach of this agreement by the party purporting to terminate;
- (c) the Independent Expert concludes that the Scheme is not in the best interests of the Target Shareholders;
- (d) any court, the Takeovers Panel or Regulatory Authority has issued any order, decree or ruling or taken any other action permanently enjoining, restraining or otherwise prohibiting the Scheme, or has refused to do anything necessary to permit the Scheme, and either:
  - (i) such decision has become final and is incapable of appeal; or
  - (ii) the parties fail to agree on conducting on appeal within five business days.

### 15.2 Termination by the Target

The Target may terminate this agreement by written notice to the Bidder at any time before the Cut Off Time if:

- (a) an Insolvency Event occurs in relation to the Bidder or HCL Technologies Limited; or
- (b) the Target receives a Third Party Proposal which a majority of the Target Directors consider to be a Superior Proposal (as evidenced by a written resolution of those Target Directors to that effect); or
- (c) the Bidder is in breach of any of its material obligations under this agreement at any time before the Cut Off Time (other than any breach of a representation or warranty provided under this agreement) and either:
  - (i) the breach is not capable of remedy; or
  - (ii) where the breach is capable of remedy, the Bidder has failed to remedy the breach within three business days of receipt by it of written notice from the Target notifying the Bidder of the breach (or such shorter period ending at 5.00pm on the last business day before the Second Court Hearing); or
- (d) the Target becomes entitled to do so under clauses 3.8(a) or 5.7.

### 15.3 Termination by the Bidder

The Bidder may terminate this agreement by written notice to the Target at any time before the Cut Off Time if:

- (a) a Prescribed Occurrence occurs; or



- (b) a Material Adverse Change occurs; or
- (c) an Insolvency Event occurs in relation to any member of the Target Group; or
- (d) any Target Director withdraws his or her recommendation that Target shareholders vote in favour of the Scheme Resolutions or publicly recommends, promotes or otherwise endorses a Third Party Proposal;
- (e) the Target is in breach of any of its material obligations under this agreement at any time before the Cut Off Time (other than any breach of a representation or warranty provided under this agreement) and either:
  - (i) the breach is not capable of remedy; or
  - (ii) where the breach is capable of remedy, the Target has failed to remedy the breach within three business days of receipt by it of written notice from the Bidder notifying the Target of the breach (or such shorter period ending at 5.00pm on the last business day before the Second Court Hearing); or
- (f) the Bidder becomes entitled to do so under clauses 3.8(a) or 5.7.

#### **15.4 Effect of termination**

If this agreement is terminated by a party under this clause 15:

- (a) each party will be released from its obligations under this agreement except its obligations under clauses 9, 10, 11, 12, 13, 14, 16 and 18 (other than 18.7) which will survive termination;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this agreement; and
- (c) in all other respects, all future obligations of the parties under this agreement will immediately terminate and be of no further force or effect, including without limitation any further obligations in respect of the Scheme.

#### **15.5 No other termination**

Neither party may terminate or rescind this agreement except as specifically provided for in this clause 15.

### **16 Goods and services tax**

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#### **16.1 Interpretation**

In this clause 16, a word or expression defined in the GST Act has the meaning given in that act.

#### **16.2 Consideration exclusive of GST**

All consideration provided under this agreement is exclusive of GST, unless it is expressed to be GST-inclusive.

#### **16.3 Recovery of GST on supplies and adjustments under this agreement**

- (a) Where a party ('**Supplier**') makes a supply to another party ('**Recipient**') under or in connection with this agreement that is a taxable supply, the Recipient must pay to the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for that taxable supply is expressly stated to include

GST). The additional amount must be paid by the Recipient at the later of the following:

- (i) the date when any consideration for the taxable supply is first paid or provided; and
  - (ii) the date when the Supplier issues a tax invoice to the Recipient.
- (b) If, under or in connection with this agreement, the Supplier has an adjustment for a supply under the GST Act that varies the amount of GST payable by the Supplier, the Supplier will adjust the amount payable by the Recipient to take account of the varied GST amount and an adjustment note must be provided to the Recipient.

#### **16.4 Other GST matters**

- (a) Subject to an express provision in this agreement to the contrary, any payment, amount, reimbursement or indemnity required to be made to a party ('**Payee**') under this agreement that includes any calculation by reference to a cost, expense, liability or other amount paid or payable by the Payee to a third party ('**Expense**') will be calculated by reference to that Expense inclusive of GST, less the amount of any input tax credit which the Payee is entitled to claim on that Expense.
- (b) Any reference in this agreement to sales, revenue, income, value or similar amount ('**Revenue**') is a reference to that Revenue exclusive of GST (unless that Revenue is expressed to be GST inclusive).
- (c) If part of a supply is a separate supply under the GST Law (including for the purpose of attributing GST payable to tax periods), that part is a separate supply for the purposes of this clause.
- (d) Where the context requires, a reference to the Supplier, Recipient or Payee in this clause includes the representative member of a GST Group of which the Supplier, Recipient or Payee respectively is a member.

## **17 Notices**

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### **17.1 Notices must be given by authorised signatories**

Any notice given or made by a party under or in connection with this agreement must be in writing and signed by that party by an authorised signatory of that party. A person is an authorised signatory if he or she is a Director of the relevant party or is authorised in writing by that party. Any notice by email is taken to be signed by the named sender.

### **17.2 Giving notices**

Any notice given under this agreement is only given if it is in writing and delivered or posted to that party at its address and marked for the attention of the relevant department or person (if any) set out below or sent by email to that party at its email address and marked for the attention of the relevant department or person (if any) set out below.

#### **Target**

Address: Level 4, 500 Collins Street, Melbourne Victoria 3000  
Email: stuart.whipp@dws.com.au  
Attention: Stuart Whipp

#### **Bidder**

Address: Level 5, 2 Mill Street, Perth, WA 6000  
Email: geo.legal@hcl.com  
Attention: Legal Team

With a copy to:

Address: DLA Piper, L22/1 Martin Pl, Sydney NSW 2000  
Email: david.ryan@dlapiper.com  
Attention: David Ryan

### **17.3 Change of address or email address**

If a party gives each other party three business days' notice of a change of its address or email address, any notice is only given to that party if delivered or posted to its latest address or email address.

### **17.4 Time notice is given**

Any notice is to be treated as given at the following time:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, three (or in the case of a notice posted to another country, nine) business days after it is posted; or
- (c) if sent by email, on the date of transmission, or if sent on a non-business day to the recipient's address, on the next business day, and provided that the sender's email software from which the email was sent records a successful transaction.

If any notice is given on a day that is not a business day or after 5.00pm on a business day in the place of the party to whom it is sent, it is to be treated as having been given at the beginning of the next business day. If the sender's email software indicates that the notice was received after 5.00pm it shall be deemed to have been received on the following day.

## **18 General**

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### **18.1 Duty**

- (a) The Bidder as between the parties is liable for, must pay, and indemnify the other parties for, all stamp duty, duty, or like duties or imposts (**'Duty'**) (including any fine, interest or penalty) payable or assessed on or in connection with:
  - (i) this agreement;
  - (ii) the Scheme, the Deed Poll and any document executed under or required by or contemplated by any of these documents; and
  - (iii) any transaction evidenced, effected or contemplated by a document referred to in clause 18.1(a)(i) or clause 18.1(a)(ii).
- (b) If a party other than the Bidder pays any Duty referred to in clause 18.1(a) (including any fine, interest or penalty), in whole or in part, the Bidder must reimburse the paying party without set-off or deduction immediately on demand.

### **18.2 Assignment**

A party must not assign this agreement or any rights or obligations under this agreement without the prior written consent of each other party.

### **18.3 Costs**

Unless otherwise agreed by the parties in writing, each party must pay its own costs in relation to preparing, negotiating and executing this agreement and any related document and in respect of the transactions contemplated by this agreement and any other related document.

### **18.4 Entire agreement**

- (a) This agreement and the Confidentiality Deed contain the entire understanding between the parties as to the subject matter of this agreement. To the extent of any inconsistency between this agreement and the Confidentiality Deed, the provisions in this agreement prevail.
- (b) Other than the Confidentiality Deed, all previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this agreement are merged in and superseded by this agreement and are of no effect. No party is liable to any other party in respect of those matters.

### **18.5 Execution of separate documents**

This agreement is properly executed if each party executes either this agreement or an identical document. In the latter case, this agreement takes effect when the separately executed documents are exchanged between the parties. Delivery of an executed counterpart of this agreement by PDF file (portable document file) will be effective as manual delivery of an executed counterpart of this agreement.

### **18.6 Exercise of rights**

A party may exercise a right, power or remedy separately or concurrently with another right, power or remedy available to it at Law or under this agreement. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy and a failure by a party to exercise, or delay by a party in exercising, a right, power or remedy does not prevent its exercise.

### **18.7 Further acts**

Each party must at its own expense promptly execute all documents and do, or use reasonable endeavours to cause a third party to do, all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this agreement and all transactions incidental to it.

### **18.8 Governing law and jurisdiction**

This agreement is governed by the Law of Victoria, Australia. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

### **18.9 Indemnities**

Except as otherwise set out in this agreement, each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the indemnifying party and survives termination of this agreement.

### **18.10 No authority to act**

Except as otherwise set out in this agreement, no party has any power or authority to act for or to assume any obligation or responsibility on behalf of another party, to bind another

party to any agreement, negotiate or enter into any binding relationship for or on behalf of another party or pledge the credit of another party.

**18.11 Relationship**

Except as otherwise set out in this agreement, this agreement does not create a relationship of employment, trust, agency or partnership between the parties.

**18.12 Rights cumulative**

Except as otherwise set out in this agreement, the rights of a party under this agreement are cumulative with and in addition to any other rights available to that party under this agreement, any other document or by Law and nothing in this agreement excludes any such rights.

**18.13 Set off**

No party may set off against a payment due to another party under this agreement an amount which is payable by that other party under this agreement.

**18.14 Severability**

Each provision of this agreement is individually severable. If any provision is, or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this agreement in the relevant jurisdiction, but the rest of this agreement is not affected and the legality, validity and enforceability of the provision in any other jurisdiction is not affected.

**18.15 Successors and assigns**

This agreement continues for the benefit of, and binds, a successor in title of a party, including a person to whom a party's rights and obligations are assigned in accordance with the requirements of this agreement.

**18.16 Variation**

No variation of this agreement will be of any force or effect unless it is in writing and signed by the Target and the Bidder.

**18.17 Waiver**

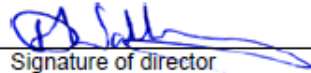
A waiver of any right, power or remedy under this agreement must be in writing signed by the party granting it. A waiver only affects the particular obligation or breach for which it is given. It is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion.

## Execution and date

Executed as an agreement

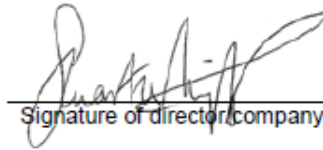
Date 21 September 2020

Executed by DWS Limited ACN 085 656 088 in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

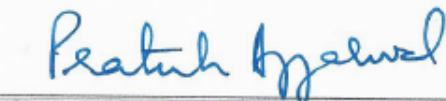
Daniel Benedict Wallis  
Name of director (print)



Signature of director/company secretary

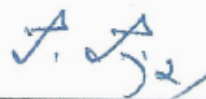
Stuart Whipp  
Name of director/company secretary (print)

Executed by HCL Australia Services Pty. Limited ACN 081 196 983 in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

Prateek Aggarwal  
Name of director (print)



Signature of director

S. SRIDHARAN  
Name of director (print)

## Schedule 1 – Timetable

Event	Date
Scheme Implementation Agreement Executed	21 September 2020
Scheme Implementation Agreement Announced	21 September 2020
Lodge Scheme Booklet with ASIC for review and comment	09 October 2020
First Court Date	26 October 2020
Scheme Booklet Registered by ASIC and Released on ASX	26 October 2020
Dispatch of Scheme booklet to Target Shareholders	27 October 2020
Scheme Meeting	27 November 2020
Second Court Date	30 November 2020
Effective Date – lodge office copy of Court order approving the Scheme with ASIC	01 December 2020
Target Suspension Date	Close of Trade on ASX on 01 December 2020
Record Date	03 December 2020
Implementation Date:	08 December 2020
▪ Pay Scheme Consideration to Scheme Shareholders	

## Schedule 2 – Target Warranties

### 1 Target

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- (a) The Target and each other Target Group member:
  - (i) (which is a corporation) is a body corporate duly incorporated under the laws of its jurisdiction of incorporation or formation; and
  - (ii) has the power to own its assets and to carry on its business as now conducted or contemplated.
- (b) The Target has taken all necessary action to authorise the execution, delivery and performance of this agreement in accordance with its terms. The Target has full power to enter into and perform its obligations under this agreement and can do so without the consent of any other person.
- (c) Subject to satisfaction of the Conditions in clause 3.1 (including FIRB Approval and OIO Approval in clauses 3.1(a) and 3.1(b) respectively) as they apply to the Target, the execution and performance by it of its obligations under this agreement and each transaction contemplated by this agreement and the Transaction does not violate in any material respect a provision of a law or treaty or a judgment, ruling, order or decree of a Regulatory Authority binding on the Target or its constitution.
- (d) On execution of this agreement the obligations of the Target under this agreement will be valid, binding and enforceable (subject to FIRB Approval and OIO Approval in clauses 3.1(a) and 3.1(b) respectively).
- (e) The Target is not party to or involved in, and has not been threatened with, any Claim which could have a material adverse effect on the Target's ability to perform its obligations under the agreement and, so far as the Target is aware, there are no facts, matters or circumstances likely to give rise to any such Claim.
- (f) The Target enters into this agreement in its personal capacity and not as trustee of a trust or as the agent, trustee, nominee, attorney or representative of any other person.
- (g) Each member of the Target Group is able to pay its debts as and when they become due and payable, is not the subject of an Insolvency Event, and there are no facts, matters or circumstances likely to cause or result in any member of the Target Group being the subject of an Insolvency Event.
- (h) No approval from any Regulatory Authority is required to be obtained by the Bidder in order to execute and perform this agreement, other than the FIRB Approval and OIO Approval in clauses 3.1(a) and 3.1(b) respectively.
- (i) So far as the Target is aware, as a result of the entry into this agreement and the implementation of the Scheme, no Third Party intends to:
  - (i) exercise a right to terminate a contract which is material to the business of the Target Group (as a whole) or vary the performance of any material obligation of Target under any such contract; or
  - (ii) exercise a right to acquire, or require the disposal of, any material assets of the Target Group (as a whole).



## 2 Continuous disclosure

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The Target:

- (a) has materially complied with its obligations under chapter 3 of the ASX Listing Rules and the information disclosed to ASX is true and correct in all material respects;
- (b) is not relying on the carve out in ASX Listing Rule 3.1A to withhold any material information from public disclosure; and
- (c) is not aware of any information relating to any member of the Target Group or their respective businesses or operations that has or could reasonably be expected to give rise to a Material Adverse Change that has not been reasonably and accurately disclosed to the Bidder.

## 3 Target Disclosure Materials

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- (a) The Target Disclosure Materials have been collated and prepared in good faith, and Target is not aware of any information contained in the Target Disclosure Materials that is false or misleading in any material respect (including by omission).
- (b) Target has not intentionally withheld from the Target Disclosure Materials any information which would reasonably be expected to be material to a reasonable and sophisticated buyer's evaluation of the Target Group and the merits of the Transaction (including details of all material liabilities of the Target Group and the aggregate amount of all fees, costs and expenses which Target (or any other member of the Target Group) has paid or agreed to pay, or may become liable to pay, to advisers in connection with the Transaction).

## 4 Target Information

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- (a) The Target Information:
  - (i) included in the Scheme Booklet will be included in good faith and on the understanding that the Bidder and each of the directors and officers of the Bidder will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet and approving the entry by the Bidder into the Deed Poll, and that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report; and
  - (ii) included in the Scheme Booklet will comply in all material respects with the requirements of the Corporations Act, the ASX Listing Rules and all relevant policy statements, practice notes and other guidelines and requirements of ASIC and the Takeovers Panel;
  - (iii) included or incorporated by reference in the Scheme Booklet will not, as at the date of despatch of the Scheme Booklet to the Target Shareholders, contain any statement which is misleading or deceptive in any material respect (by omission or otherwise).
- (b) To the extent the Target Information includes forward looking statements, those forward looking statements are based on assumptions which Target believes, as at the date the information was provided, and continues to believe, to be reasonable.

- (c) No document or announcement which Target or any of its Related Bodies Corporate has lodged or filed with, or otherwise given to, any Regulatory Authority (or which has been so lodged, filed or given on its behalf or on behalf of any of its related bodies corporate) since the date 3 years prior to the date of this agreement, and which is currently publicly available or otherwise in the public domain (each a **Target Public Document**), was misleading or deceptive in any material respect (whether by omission or otherwise) as at the date the Target Public Document was lodged or filed with or given to the Regulatory Authority, or the information contained in the Target Public Document was otherwise expressed to be given.

## 5 Capital structure

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- (a) The Target has the following securities on issue:
- (i) 131,831,328 Target Shares;
  - (ii) nil options; and
  - (iii) nil performance rights,
- and no member of the Target Group is under any obligation to issue any shares or securities convertible into the Target Shares to any person and no option exists nor is any member of the Target Group subject to any actual or contingent obligation to issue or convert securities (whether such obligation or right is conditional or otherwise).
- (b) The Target has not issued any other Target Shares or other securities, rights or instruments which are still outstanding and may convert into, or give the holder the right to be issued, Target Shares.

## 6 Subsidiaries

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The Target is the beneficial owner of all the issued share capital in each of its Subsidiaries and there is no obligation (contingent or otherwise) to transfer, or issue new shares in any of those companies to third parties.

## 7 Compliance with laws

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Each member of the Target Group has complied with applicable laws and regulations in all material respects and holds all material licences, authorisations and permits necessary for them to conduct their business as presently conducted and is not in breach of, or default under, any such licences, authorisations or permits.

## 8 Change of control

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The Target Disclosure Materials contain, for each Third Party to whom a member of the Target Group is required to give notice, or from whom a member of the Target Group is required to obtain consent or approval under a contract to which a member of the Target Group is party (including without limitation any Material Contract, Target Finance Document or material property lease), in connection with this agreement or the transactions contemplated by it (including in respect of the change in control of Target resulting from implementation of the Scheme), either a copy of such contract or sufficient information (which is accurate) for the Bidder to identify such Third Party, except where the failure to give such notice to or obtain such consent or approval from (as applicable) the

relevant Third Party could not reasonably be expected to give rise to a material liability on the part of any member of the Target Group.

## 9 Target Group

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- (a) The structure diagram in Schedule 4 lists all members of the Target Group and the details included are true and correct in all respects.
- (b) No member of the Target Group 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 (other than an entity identified in Schedule 4).

## 10 Financial information

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- (a) The Target's audited financial statements for the financial year ended 30 June 2020:
  - (i) comply with applicable statutory requirements and were prepared in accordance with the Accounting Standards;
  - (ii) give a true and fair view of the financial position and the assets and liabilities of the Target Group as at 30 June 2020;
  - (iii) are not misleading or deceptive (in each case whether by omission or otherwise); and
  - (iv) are not affected by any unusual, abnormal, extraordinary or non-recurring items, other than those items specifically disclosed in those financial statements.

For the purposes of this warranty 10(a), Accounting Standards means: (i) requirements of the Corporations Act about the preparation and contents of the financial reports; and (ii) the accounting standards approved under the Corporations Act, being the Australian Accounting Standards and any authoritative interpretation issued by the Australian Accounting Standards Board.

- (b) The Target's unaudited management accounts (having regard to the purpose for and basis on which they were prepared) for the period between 30 June 2020 and the date of this agreement:
  - (i) show a materially accurate view of:
    - (A) the financial position and state of affairs of the Target Group as at the date to which they have been prepared; and
    - (B) the financial performance of the Target Group for the period in respect of which they have been prepared;
  - (ii) are not misleading or deceptive (in each case whether by omission or otherwise) in a material respect; and
  - (iii) have been prepared in good faith and with reasonable care and diligence.

## 11 Conduct of business since Accounts Date

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- (a) Since 30 June 2020, the Target Group has conducted its businesses and operations:
  - (i) in the ordinary course;
  - (ii) in accordance with legal and contractual obligations, in all material respects; 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 30 June 2020.
- (b) Between 30 June 2020 and the date of this agreement, no Material Adverse Change has occurred.

## 12 Material contracts and other arrangements

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- (a) The Disclosure Materials include documents that reasonably and accurately set out the current terms and conditions of all Material Contracts, Target Finance Documents and material property leases to the extent that such documents are in the possession or control of the Target as at the date of this agreement.
- (b) Any copies of Material Contracts, Target Finance Documents and material property leases that are included in the Target Disclosure Materials are current, accurate and complete (when considered with any and all amendments, variations, supplements, addendums, annexures, appendices, extensions and/or renewals in respect of such Material Contracts, Target Finance Documents and material property leases that are also included in the Target Disclosure Materials).
- (c) Each Material 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.
- (d) No member of the Target Group has received or given any notice in respect of any actual, alleged or potential breach of any Material Contract, and so far as Target is aware, there are no facts, matters or circumstances which may reasonably be expected to result in such a notice being given.
- (e) No party to any Material Contract has given any notice terminating or intending to terminate any Material Contract, and so far as Target is aware, there are no facts, matters or circumstances which may reasonably be expected to result in such a notice being given.
- (f) No member of the Target Group is in material default under any Material 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 Material Contract, Target Finance Documents or material property lease:
  - (i) is not on arm's length terms;
  - (ii) was not entered into in the ordinary course of business; or

- (iii) other than as expressly set out in the terms of contracts disclosed in the Target Disclosure Materials, contains a non-compete undertaking or exclusivity restriction.
- (h) No member of the Target Group has received any notice, advice or correspondence from a counterparty to a Material Contract:
  - (i) with respect to the non-renewal or non-extension of the term of that Material Contract; or
  - (ii) confirming or suggesting that that Material Contract will be renewed or extended only on materially amended terms.
- (i) In respect of each Material Contract entered into by the Target Group with the Department of Defence (**Defence Contracts**), the relevant member of the Target Group complies with all applicable security policies, frameworks, principles and requirements (**Defence Security Requirements**) as at the date of this agreement.
- (j) The Target Group holds all applicable accreditations, clearances and memberships required for the purpose of the Defence Security Requirements to the extent applicable to the Defence Contracts.

## 13 Financing arrangements

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- (a) On the Implementation Date and other than pursuant to any Target Finance Document, there will be 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 financial indebtedness (whether contingent or otherwise) or the granting of Encumbrances or 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 financial 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) Other than pursuant to any Target Finance Document, 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 (such arrangements, **Financing Arrangements**).
- (d) So far as 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) So far as the Target is aware, 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 Arrangements.
- (f) Where a member of the Target Group has received funding or financial support from a Government Agency, 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.

#### 14 Material Contract counterparty and agent relationships

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No member of the Target Group has been notified in writing by any Material Contract, Target Finance Document or material property lease counterparty or agent that such Material Contract, Target Finance Document or material property lease counterparty or agent (as applicable) intends to cease or materially alter the nature of its commercial or business dealings with the Target Group (or any member thereof), where the cessation or alteration of such commercial or business dealings could be reasonably expected to have a material adverse effect on the operational or financial performance of the Target Group (taken as a whole).

#### 15 Properties

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- (a) No member of the Target Group owns, or holds the freehold title in respect of, any real property.
- (b) The Target Disclosure Materials include copies of all agreements or other documents pursuant to which a member of the Target Group leases (or sub-leases) or licences any 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 Target Disclosure Materials 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.

- (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 Leased Properties.
- (e) None of the Leased Properties, other than the property that is the subject of the lease dated on or about 3 December 2018 of the premises located at 33 Torrens Street, Braddon, ACT in respect of which Projects Assured is the tenant, is subject to any restrictive covenant or exception or reservation which may adversely affect its use in the manner in which it is presently used in the Target Group's business.
- (f) Each of the Property Leases is valid, binding, enforceable and subsisting, and (where necessary to be binding and enforceable against successors in title) registered or otherwise the subject of a registered caveat.
- (g) No member of the Target Group has received:
  - (i) any notice to vacate or notice to quit in respect of any of the Leased Properties;
  - (ii) any notice in respect of the compulsory acquisition or resumption of any of the Leased 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 Leased Properties;
  - (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 Leased 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 Leased Properties or the use thereof, nor is Target aware of any facts, matters or circumstances which may result in any such notice, order, direction or proposal being given.
- (h) 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 Target is not aware of any grounds for termination, rescission, avoidance or repudiation of any Property Lease.
- (i) 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 Leased Properties (including under the Property Leases).
- (j) The relevant members of the Target Group have exclusive occupation and right of quiet enjoyment in respect of each of the Leased Properties and none of the Leased Properties is subject to any sublease, licence, tenancy or right of occupation in favour of any person other than a member of the Target Group or any agreement that otherwise restricts the conduct of the Target Group's business.
- (k) So far as Target is aware:
  - (i) there are no disputes, Claims or actions involving a member of the Target Group relating to any of the Leased 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 any increase that is contemplated in, or permitted under, the terms of the Property Lease.

## 16 Assets

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- (a) All the material tangible assets of the Target Group are:
  - (i) the absolute property of a member of the Target Group free and clear of all encumbrances (other than any Permitted Encumbrances) or used by 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 a **Relevant 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 a Relevant Contract, not the subject of any agreements or arrangements to dispose or not dispose or that otherwise restrict their use or disposal.
- (b) The Target Group owns, or has the right to use, all of the assets that are necessary for the carrying on of the businesses and operations of the Target Group as such businesses and operations are currently carried on.
- (c) 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 Target aware of any facts, matters or circumstances which may result in such a notice being given.
- (d) 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;
  - (ii) has been properly serviced throughout its life;
  - (iii) is in good repair and condition and satisfactory working order for its age;
  - (iv) has been maintained in accordance with industry best practice standards; and
  - (v) 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.



- (a) The Target Disclosure Materials disclose 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) other than as expressly set out in the terms of contracts disclosed in the Target Disclosure Materials:
    - (A) no member of the Target Group has assigned or otherwise disposed of or allowed to lapse any right, title or interest in such Business Intellectual Property;
    - (B) no member of the Target Group is obliged to assign or otherwise dispose of any right in respect of such Business Intellectual Property to any Third Party;
  - (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 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
  - (v) so far as Target is aware:
    - (A) no member of the Target Group is currently the subject of any unresolved 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
    - (B) no Third Party:
      - (1) has infringed, attacked or opposed, in the 7 years prior to the date of this agreement, or is infringing, attacking or opposing, as at the date of this agreement, such Business Intellectual Property; or
      - (2) 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

- (3) has threatened to allege or has alleged in the 7 years prior to the date of this agreement, or is threatening to allege or is alleging as at the date of this agreement, 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) 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 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.

## 18 Employees and contractors

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- (a) The details set out in the Target Disclosure Materials in relation to the commencement date, period of service (including prior service with any predecessor in business of a member of the Target Group), position title,

employing entity, remuneration package (including current salary, bonuses, profit share, and Employee incentive plan entitlements), applicable allowances, redundancy and termination entitlement, applicable enterprise agreement (if any), modern award coverage (if any), and accrued long service leave, annual leave, leave loading and personal leave for employees of a member of the Target Group (**Employee**) are reasonable and accurate, in all material respects, as at the relevant dates specified in such disclosure and no changes to any of these entitlements have been promised or agreed to by any member of the Target Group.

- (b) No member has material undisclosed liabilities in respect of employee wages or entitlements.
- (c) No member of the Target Group is involved in bargaining for a proposed enterprise agreement except as disclosed in the Target Disclosure Materials.
- (d) 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:
  - (i) beyond the amounts and entitlements specified in the Target Disclosure Materials; or
  - (ii) except as a result of any promotion, seniority or salary band progression or as a result of any Employee assuming higher or further duties (as a result of there being a vacancy in their team or otherwise),

other than in circumstances where the commitment, increase or supplement is not restricted by clause 6.2(h) of this agreement.

- (e) Each member of the Target Group has complied in all material respects with, and during the past 6 years has complied in all material respects with, its obligations under all applicable laws and regulations relating to Employees (including employment and industrial laws, anti-discrimination laws, modern slavery laws and work health and safety laws), policies and procedures, contracts of employment and any applicable industrial agreements and awards, including Professional Employees Award and the Clerks Private Sector Award.
- (f) Each member of the Target Group has kept adequate and suitable records regarding the service of its Employees and, in respect of each member of the Target Group incorporated in Australia, such records meet such member of the Target Group's record keeping obligations under the Fair Work Act 2009 (Cth) (if any).
- (g) The employment records of each member of the Target Group, which relate to Employees and their employment, that are contained in the Disclosure Material are, in all material respects, reasonable and accurate, including in relation to any service-related entitlements.
- (h) 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.

- (i) No member of the Target Group has been involved in any labour or industrial dispute with any union or industrial organization, labour organisation, works council, group of Employees or Employee at any time within the 3 years preceding the date of this agreement.
- (j) No member of the Target Group has been involved in any employment or industrial law-related litigation, arbitration, proceedings or dispute with any union or Employee at any time within the 12 months preceding the date of this agreement that has given rise to, or will or would reasonably be likely to give rise to, any material liability for any member of the Target Group.
- (k) There is no actual or, so far as the Target is aware, pending or threatened Claim, demand, dispute, legal proceedings or cause of action by an Employee or union 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 material Claim, demand, dispute, charge, complaint, audit, investigation, legal proceeding or cause of action against any member of the Target Group.
- (l) The Target Disclosure Materials reasonably and accurately disclose details of all current Claims and legal proceedings made against a member of the Target Group by current or past employees that remain unresolved. There has no material Claims or legal proceedings made against a member of the Target Group by current or past employees during the 3 year period prior to the date of this agreement that have not been covered by insurance policies of the Target Group.
- (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 any individual as a senior executive, or as an independent contractor) who would be categorised as a member of key management personnel for the purposes of the Corporations Act for payment of \$275,000 or more per annum, that remains capable of acceptance and that cannot be terminated without penalty on less than 1 months' notice.
- (n) No member of the Target Group is a party to any oral or 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 Target Disclosure Materials.
- (o) The Target Disclosure Materials contain copies of the current employment agreements of each current member of key management personnel for the purposes of the Corporations Act.
- (p) No Employee is, or may become, entitled to any bonus, compensation, payment or other benefit:
  - (i) in connection with this agreement or the transactions contemplated hereby; or
  - (ii) of an amount or value exceeding two times that Employee's base salary which is triggered by a change of control of Target, or by the termination or cessation of that Employee's employment with the relevant member of the Target Group,

other than in circumstances where the bonus, compensation, payment or other benefit is a Transaction Cost or is not restricted by clause 6.2(h) of this agreement.
- (q) No member of the Target Group operates or has adopted, or has resolved or agreed to operate or adopt, any equity incentive plan in which Employees participate or may participate.

- (r) There are no commission, bonus or incentive plans or agreements with any Employee or contractor of the Target Group other than those disclosed in the Target Disclosure Materials.
- (s) Each employee of a member of the Target Group is, and at all material times has been, employed pursuant to a contract of employment which is materially in the form of a template contract of employment disclosed in the Target Disclosure Materials.
- (t) Phoenix IT & T Consulting Pty Ltd (ACN 090 249 255) does not employ any employees.
- (u) Details of all current investigations or Claims involving a member of the Target Group that remain unresolved as at the date of this agreement relating to health and safety issues which have occurred, been made or carried out in the last 3 years before the date of this agreement and affecting any member of the Target Group or any Employees have been reasonably and accurately disclosed in the Target Disclosure Materials.
- (v) The members of the Target Group have complied with all their obligations to make FBT, payroll taxes, superannuation or pension contributions, including Kiwi super, which they are required to make on behalf of Employees and contractors.
- (w) The prescribed minimum level of superannuation support for each Employee and contractor 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).
- (x) There are no overdue contributions due to be paid on the part of any member of the Target Group or any Employee or contractor that are outstanding and unpaid.
- (y) Any persons designated by a member of the Target Group as a casual employee is a casual employee at law and for the purposes of the Fair Work Act 2009 (Cth).
- (z) Provisions have been made by each member of the Target Group for any outstanding and unpaid superannuation benefits currently due to an Employee or his or her dependants or beneficiaries.
- (aa) 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.
- (bb) Each member of the Target Group:
  - (i) has not been subject to a Work Safety Authority inspection in the last 3 years;
  - (ii) is not subject to any current complaints, recommendations or inquiries that remain unresolved in respect to workplace health or safety matters;
  - (iii) has not been subject to any material investigation, audit, proceedings or prosecution by any Regulatory Authority in relation to workplace health or safety matters in the last 3 years;
  - (iv) has not at any time received an improvement notice or prohibition notice from a Work Safety Authority in respect of work health and safety; and

- (v) is not currently subject to an investigation or prosecution by a Work Safety Authority and, so far as Target is aware, no facts, matters or circumstances exist which may give rise to any such investigation or prosecution.
- (cc) Each member of the Target Group:
  - (i) has workers compensation insurance in place, and has paid its workers compensation insurance up to date;
  - (ii) has held valid workers compensation insurance at all times over the last 3 years;
  - (iii) has not been subject to any material external audit or investigation by a regulatory body in relation to workers' compensation matters in the last 3 years; and
  - (iv) is not the subject of any current workers compensation claim and Target is not aware of any future claim or any facts, matters or circumstances which may give rise to a future claim, and details of all material workers compensation claims during the last 3 years have been reasonably and accurately disclosed in the Target Disclosure Materials.
- (dd) Each member of the Target Group has materially complied with applicable legislation, including any Tax Laws and any agreement binding on it, in respect of independent contractors.
- (ee) No person (nor any employees or agents of such person) designated by a member of the Target Group as a contractor or consultant is an employee of any member of the Target Group (or is or was entitled to be treated as one) at law.
- (ff) Any person designated by a member of the Target Group as a contractor or consultant (and any employees or agents of such person) have validly assigned and have no right, title or interest in any material intellectual property developed during the course of their engagement with any member of the Target Group.
- (gg) Each member of the Target Group has paid all wages, salaries, bonuses, commissions, allowances, entitlements, penalties, 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 pursuant to any law, contract, or policy.
- (hh) During the 2 year period immediately preceding the date of this agreement, each member of the Target Group has complied, in all material respects, with the terms of any contracts that require it to conduct background checks of employees (and to the extent there has been any non-compliance in relation to such requirements, such non-compliance does not amount to a material breach of the relevant customer contract(s) or otherwise materially adversely impact on the status of such contract(s)). Each member of the Target Group uses of information obtained from such background checks had been compliant in all material respects with all applicable law and background check reports and verifications have been maintained consistent in all material respects with all applicable law, including applicable privacy and data security laws.

## 19 Information technology, cyber security and privacy

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- (a) The data, records and information technology and telecommunications systems, hardware and software owned by or validly licensed (under a current, enforceable

licence) to the Target Group (collectively, the **Systems**) comprise all the data, records and information technology and telecommunications systems, hardware and software necessary for the carrying on of the businesses and operations of the Target Group (including the supply of services to customers) as such businesses and operations are currently carried on.

- (b) The Target Group is in possession of an adequate number and type of licences for software and software services as are necessary for the carrying on of the businesses and operations of the Target Group (including the supply of services to customers) as such businesses and operations are currently carried on.
- (c) Other than as set out in the Target Disclosure Materials, no member of the Target Group has been appointed as a reseller or distributor of any material software or software services.
- (d) All reasonable precautions have been taken to preserve the security and integrity of the Systems and the data and information stored on them, and, so far as Target is aware, there has been no:
  - (i) unauthorised access to the Systems, including any form of cyber attack;
  - (ii) malware, ransomware, harmful code, viruses or similar introduced into the Systems; or
  - (iii) unauthorised access to or disclosure of any of the Target Group's or any of the Target Group's customers' data or information.
- (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 agreement.
- (f) No member of the Target Group is in breach of any material 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 (either permanently or temporarily) or being required to pay any material additional fees or charges.
- (g) So far as Target is aware, the software utilised by the Target Group:
  - (i) is free of material defects and complies with all applicable laws; and
  - (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.
- (h) Each member of the Target Group has complied, in all material respects, with the requirements of all Privacy Laws and all contractual requirements imposed on it in respect of the collection, storage, use and disclosure of Personal Information.
- (i) All Personal Information held by or under the control of Target or by any other member of the Target Group is able to be used by the applicable member of the Target Group in the manner in which it is currently used by that Target Group member without any breach of the Privacy Laws.
- (j) No member of the Target Group is subject to a current investigation by the Office of the Australian Information Commission or equivalent Regulatory Authority of any other applicable jurisdiction that remains unresolved.

- (k) Except as set out in the Target Disclosure Materials, there are no unresolved material complaints or disputes concerning the collection, storage, use or disclosure of Personal Information in respect of any member of the Target Group.

## 20 Litigation and disputes

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- (a) Other than the matters disclosed in the Target Disclosure Materials, no litigation, prosecution, arbitration, mediation, or other proceedings (including any investigation by a Regulatory Authority) relating to the Target Group has been commenced in the 3 years prior to the date of this agreement that is still outstanding and which is reasonably likely to have a material adverse effect on the operational or financial performance, or the reputation, of the Target Group (taken as a whole) (**Material Proceedings**).
- (b) So far as Target is aware, no Material Proceedings are pending or threatened against a member of the Target Group and Target is not aware of any facts, matters or circumstances that may give rise to a Material Proceeding.
- (c) So far as Target is aware, 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 (including any Regulatory Authority responsible for competition law or antitrust law related oversight (**Competition Authority**)).
- (d) No member of the Target Group has given any undertaking or assurance (whether legally binding or otherwise) to any court or Regulatory Authority (including any Competition Authority) under any competition or antitrust law.
- (e) There are no unsatisfied or outstanding judgments, awards, orders, decrees, Claims or demands against any member of the Target Group.

## 21 Insurance

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- (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 Target Disclosure Materials fairly disclose 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 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 agreement:
  - (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 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.

## 22 Taxes and duties

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- (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 (other than the Scheme itself); 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 save for any Tax or Duty which is provided for in the Management Accounts.
- (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) DWS (New Zealand) Limited has complied with its statutory obligations in relation to employee entitlements, including its obligation under the Holidays Act 2003 (New Zealand).
- (d) 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.
- (e) 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.
- (f) So far as Target is aware, any information, notice, computation and return that has been submitted by any member of the Target Group to a Government Agency 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.
- (g) There are no outstanding Taxes or Duties in respect of any Tax or Duty audit, reviews, investigation or other enquiries of a Regulatory Authority relating to any member of the Target Group, and all material information in respect of any such audit, reviews, investigation or other enquiries has been provided by the relevant member of the Target Group to the Regulatory Authority in writing.
- (h) Target is not aware of any current, pending or threatened Tax or Duty audit, reviews or investigation relating to any member of the Target Group.
- (i) There are no disputes between any member of the Target Group and any Regulatory Authority in respect of any Tax or Duty and 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.
- (j) 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, transaction or omission 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 tax or a similar Tax at or after the Implementation Date.
- (k) 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.
- (l) All transactions and other dealings between any member of the Target Group or with related parties for the purposes of the Tax Law have been (and can be demonstrated to have been) conducted at arm's length.
- (m) 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.
- (n) 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.
- (o) No member of the Target Group has, in the five year period prior to the Implementation Date, applied for any rulings, determinations or relief from any Regulatory Authority in respect of Tax or Duty
- (p) Within the period of five years prior to the Implementation Date, 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 Government

Agency (excluding, for the avoidance of doubt, requests by Target for extensions of time for tax filings or payments).

- (q) 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.
- (r) Within the period of five years prior to the Implementation Date, each member of the Target Group has at all relevant times appointed a public officer, pursuant to section 252 of the ITAA 1936, where required under the applicable Tax Laws.
- (s) Within the period of five years prior to the Implementation Date, 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, other than pursuant to customary Tax gross up clauses ordinarily entered into by a member of the Target Group in its ordinary course of business.
- (t) Any tax losses and net capital losses of a member of the Target Group as disclosed in the most recent lodged corporate income tax return for the member of the Target Group are available for use just before Implementation Date and have not been, and are not required to be as a result of any transaction, act or omission on or before the Implementation Date, reduced as a result of the application of any Tax Laws.
- (u) In respect of each member of the Target Group that is a trust:
  - (i) The trustee has made the beneficiaries of the trust presently entitled to all income of the trust in accordance of the trust deed of the trust and Division 6 of the ITAA 1936, before the end of each income year that occurred before Implementation Date; and
  - (ii) The trustee of that trust has not been assessed or otherwise been liable to Tax in respect of the income of the trust under any Tax Laws.
- (v) No member of the Target Group has ever made an interposed entity election pursuant to the trust loss provisions in Schedule 2F of the ITAA 1936. No member of the Target Group has a tainted share capital account or a share capital account that is taken to be tainted under any Tax Law and no member of the Target Group has taken any action, up to and including the Implementation Date, that would cause such member of the Target Group's 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 any member of the Target Group's share capital account.
- (w) No member of the Target Group has been in breach of the benchmark franking percentage rules.
- (x) To the best of Target's knowledge, 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 document, 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.
- (y) To the best of Target's knowledge, 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.

- (z) No member of the Target Group has ever been a member of a “consolidated group” or “MEC group” as those phrases are defined in the ITAA 1997. The Target is the only entity in the Target Group that is, and has been the representative member of the GST group under GST Law, of which Wallis Nominees Computing Pty Ltd, DWS (NSW) Pty Ltd, Phoenix IT&T Consulting Pty Ltd and Symplicit Pty Ltd are members.
- (aa) All GST for which the representative member (as defined in the GST Act) is liable has been imposed, obtained and remitted to the Regulatory Authority in accordance with its commitments under the GST legislation. The representative member has complied with its obligations under the GST legislation and other legislation associated with the introduction of the GST.
- (bb) Each member of the GST Group complied with all obligations and liabilities under the GST Act and properly claimed all benefits, refunds or credits to which it is entitled under the GST Law, including for the avoidance of doubt, remitting GST on supplies to the Regulatory Authority and claiming input tax credits (as defined in the GST Act).
- (cc) No member of the Target Group has ever been a party to any Tax sharing agreement as defined in the Tax Law or any Tax funding agreement. 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
  - (iv) has adequate systems established for it to ensure it complies with the GST Law.
- (dd) 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.
- (ee) All documents, instruments, contracts, agreements, deeds or transactions which are liable to Duty, or necessary to establish the title of each member of the Target Group to an asset, have had Duty paid in full in accordance with all applicable Tax Laws, and there is no requirement to upstamp on account of an interim assessment.
- (ff) No event has occurred, or will occur, as a result of anything provided for in this agreement, or as a result of this agreement 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.

- (gg) Less than 50% of the market value of the Target Group's assets is attributable to *taxable Australian real property* as defined in section 855-20 of the Income Tax Assessment Act 1997.

## 23 Compliance

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- (a) No member of the Target Group or present director or officer of any member of the Target Group (acting for and on behalf of a member of a Target Group) is currently or (so far as Target is aware) has in the past 5 years been:
- (i) directly or indirectly engaged in any activity that would violate any applicable anti-money laundering laws, anti-bribery laws or anti-corruption laws, including the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the Australian laws implemented pursuant to the OECD Anti-Bribery Convention, in each case in any applicable jurisdiction (such laws, the **Relevant Laws**);
  - (ii) a Sanctioned Person, or engaged in any dealings or transactions with any Sanctioned Person or in any Sanctioned Country, to the extent such activities violate Sanctions Laws, or in violation of Sanctions Laws or U.S. anti-boycott laws (such laws, the **Trade Control Laws**);
  - (iii) the subject of any allegation, investigation, notice, inquiry or proceeding regarding any offence or alleged offence or wrongdoing under any Relevant Laws or Trade Control Laws, and so far as Target is aware:
    - (A) no such allegation, investigation, inquiry or proceeding has been threatened or is pending; and
    - (B) there are no facts, matters or circumstances which are reasonably likely to give rise to any such allegation, investigation, notice, inquiry or proceeding; or
  - (iv) the subject of any voluntary or involuntary disclosure to a Regulatory Authority, regarding any offence or alleged offence under any Relevant Laws or Trade Control Laws, and so far as Target is aware:
    - (A) no such voluntary or involuntary disclosure is to a Regulatory Authority pending; and
    - (B) there are no facts, matters or circumstances which are reasonably likely to give rise to any such voluntary or involuntary disclosure to a Regulatory Authority.

## Schedule 3 – Bidder Warranties

### 1 Bidder

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- (a) The Bidder:
  - (i) is a body corporate duly incorporated under the laws of its jurisdiction of incorporation or formation; and
  - (ii) has the power to own its assets and to carry on its business as now conducted or contemplated.
- (b) The Bidder has taken all necessary action to authorise the execution, delivery and performance of this agreement in accordance with its terms. The Bidder has full power to enter into and perform its obligations under this agreement and can do so without the consent of any other person.
- (c) Subject to satisfaction of the Conditions in clause 3.1 as they apply to the Bidder (including FIRB Approval and OIO Approval in clauses 3.1(a) and 3.1(b) respectively), the execution and performance by it of its obligations under this agreement and each transaction contemplated by this agreement and the Transaction did not and will not violate in any material respect a provision of a law or treaty or a judgment, ruling, order or decree of a Regulatory Authority binding on the Bidder or its constitution.
- (d) On execution of this agreement the obligations of the Bidder under this agreement will be valid, binding and enforceable (subject to FIRB Approval and OIO Approval in clauses 3.1(a) and 3.1(b) respectively).
- (e) The Bidder is not party to or involved in, and has not been threatened with, any Claim which could have a material adverse effect on the Bidder's ability to perform its obligations under the agreement and, so far as the Bidder is aware, there are no facts, matters or circumstances likely to give rise to any such Claim.
- (f) The Bidder enters into this agreement in its personal capacity and not as trustee of a trust or as the agent, trustee, nominee, attorney or representative of any other person.
- (g) The Bidder is able to pay its debts as and when they become due and payable, is not the subject of an Insolvency Event, and there are no facts, matters or circumstances likely to cause or result in the Bidder being the subject of an Insolvency Event.
- (h) No approval from any Regulatory Authority is required to be obtained by the Bidder in order to execute and perform this agreement, other than the FIRB Approval and OIO Approval in clauses 3.1(a) and 3.1(b) respectively.
- (i) Neither the Bidder nor 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 any Third Party Proposal.
- (j) Neither the Bidder nor any of its Associates has any agreement, arrangement or understanding with any director or employee of the Target relating in any way to the Transaction or operations of the Target after the Effective Date.

- (k) By 8:00 am on the Second Court Date, the Bidder will have available to it on an unconditional basis (other than conditions relating to the approval of the Court) sufficient cash reserves (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy the Bidder's obligations to pay the Scheme Consideration in accordance with its obligations under this agreement, the Scheme and the Deed Poll.

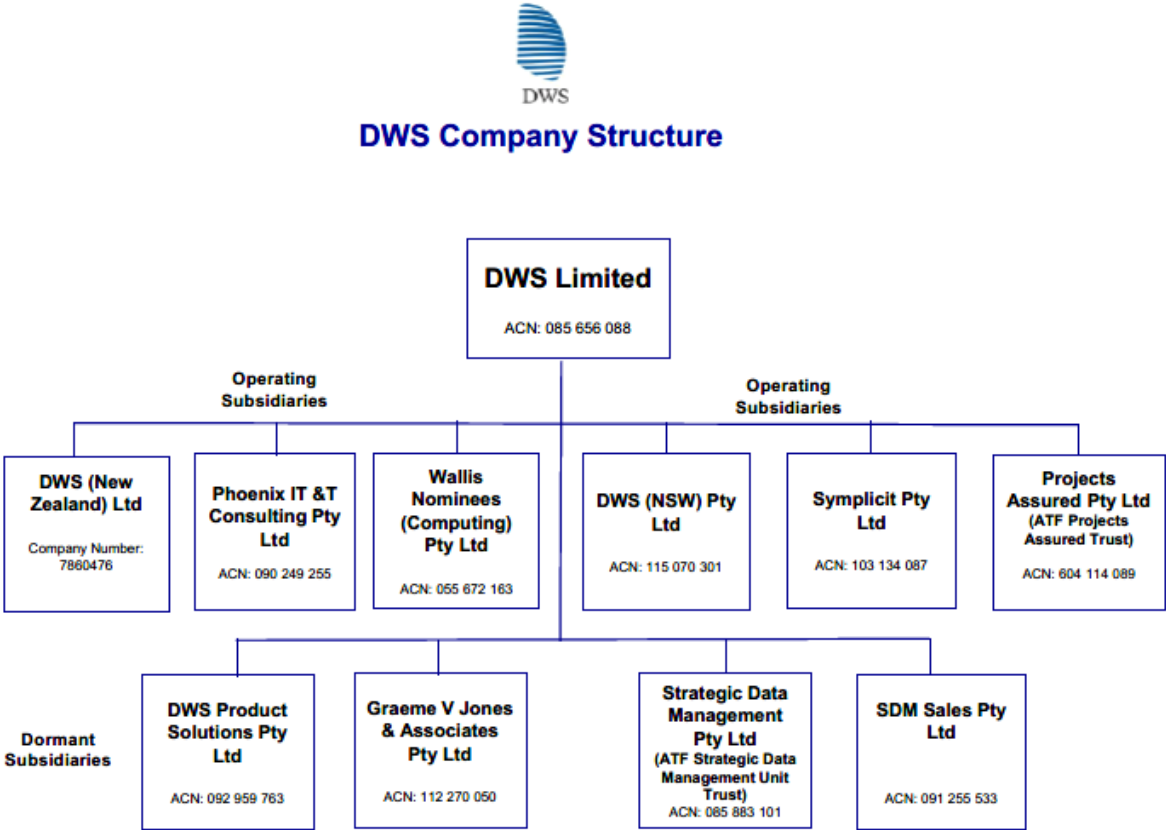
## 2 Bidder Information

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The Bidder Information:

- (a) included in the Scheme Booklet will be included in good faith and on the understanding that the Target and each of the directors and officers of the Target will rely on that information for the purposes of considering and approving the Target Information in the Scheme Booklet and that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report; and
- (b) included in the Scheme Booklet will comply in all material respects with the requirements of the Corporations Act, the ASX Listing Rules and all relevant policy statements, practice notes and other guidelines and requirements of ASIC and the Takeovers Panel;
- (c) included or incorporated by reference in the Scheme Booklet will not, as at the date of despatch of the Scheme Booklet to the Target Shareholders, contain any statement which is misleading or deceptive in any material respect (by omission or otherwise).

Schedule 4 – Structure Diagram





## Annexure A – Scheme

# Scheme of Arrangement

Pursuant to section 411 of the Corporations Act

DWS Limited  
Scheme Participants

**SBA Law**

Level 15, 607 Bourke Street  
Melbourne, Victoria 3000  
Tel: +61 3 9614 7000  
Fax: +61 3 9614 7100  
DX: 31315 Midtown  
[www.sbalaw.com](http://www.sbalaw.com)

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## Parties

**DWS Limited** ACN 085 656 088 of Level 4, 500 Collins Street, Melbourne, Victoria 3000 ('**Target**')

## Scheme Participants

## Agreed terms

### 1 Definitions and interpretation

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#### 1.1 Definitions

In this document the following definitions apply:

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

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

**ASX Listing Rules** means the official listing rules of ASX;

**Bidder** means HCL Australia Services Pty. Limited ACN 081 196 983 of Level 8, 1 Pacific Highway, North Sydney, New South Wales 2060;

**CHESS** means the Clearing House Electronic Subregister System, which facilitates electronic security transfer in Australia, operated by ASX Settlement and Transfer Corporation Pty Limited ACN 008 504 532;

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

**Court** means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act determined by Target;

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

**Deed Poll** means the deed poll to be executed by Bidder in favour of the Scheme Participants, a copy of which is to be annexed to the Scheme Booklet, under which Bidder covenants in favour of each Scheme Participant to comply with all of Bidder's obligations under the Scheme Implementation Agreement and to perform the actions attributed to Bidder under this Scheme, including to provide the Scheme Consideration in accordance with this Scheme;

**Effective** means the time at which the Scheme Order takes effect pursuant to section 411(10) of the Corporations Act;

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

**End Date** means 31 March 2021 or such later date as Bidder and Target agree in writing;

**Excluded Share** means a Target Share held by Bidder or a Related Body Corporate of Bidder;

**GST** means the meaning given to that term in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth);

**Implementation Date** means the third business day following the Record Date or such other date as ordered by the Court or agreed between Bidder and Target;

**Independent Expert** means an independent expert determined by Target;

**Record Date** means 7.00 pm on the second business day following the Effective Date or such other date and time as Target and Bidder agree;

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

**Regulatory Authority** means any Australian or foreign government or governmental, semi-governmental, administrative, fiscal, regulatory or judicial entity, commission, tribunal agency or authority or any Minister, department, office or delegate of any government. It includes a self-regulatory organisation established under statute or a stock exchange, ASIC, ASX, the Foreign Investment Review Board and the Australian Competition and Consumer Commission;

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

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

**Scheme Booklet** means the information to be dispatched to Target Shareholders for the purposes of the Scheme Meeting, including the Scheme, explanatory statement in relation to the Scheme issued pursuant to section 412 of the Corporations Act and registered with ASIC, an independent expert's report prepared by the Independent Expert, the Deed Poll, any report of an investigating accountant procured by Target and notices convening the Scheme Meeting (together with proxy forms);

**Scheme Consideration** means in respect of each Scheme Share held by a Scheme Participant a cash amount equal to \$1.20 less the cash value of any Target Permitted Special Dividend paid;

**Scheme Implementation Agreement** means the scheme implementation agreement between Bidder and Target dated 21 September 2020;

**Scheme Meeting** means the meeting to be ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act in respect of the Scheme;

**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 Scheme Shares as at the Record Date;

**Scheme Shares** means all the Target Shares on issue on the Record Date other than the Excluded Shares;

**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;

**Target Option** means an option to acquire Target Shares;

**Target Register** means the register of members of Target maintained by or on behalf of Target in accordance with the Corporations Act and **Target Registry** has a corresponding meaning;

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

**Target Shareholder** means each person who is registered in the Target Register as the holder of Target Shares;

**Target Permitted Ordinary Dividend** means the meaning set out in the Scheme Implementation Agreement;

**Target Permitted Special Dividend** means a dividend actually paid on Target Shares as a special dividend, pursuant to Target's discretion to do so under clause 6.3 of the Scheme Implementation Agreement; and

**Third Party Account** means an Australian dollar denominated trust account operated by Boardroom Pty Ltd or such other person agreed between the parties from time to time for the purposes of the payment of the Scheme Consideration in accordance with this Scheme.

## 1.2 Interpretation

In the interpretation of this document, unless the context otherwise requires:

- (a) words and phrases have the same meaning (if any) given to them in the Corporations Act;
- (a) all references to dollars or '\$' are references to Australian currency and all amounts payable are payable in Australian dollars;
- (b) a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (c) a reference to a clause or part is a reference to a clause or part of this document;
- (d) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time and despite any change in the identity of the parties;
- (e) a reference to a person:
  - (i) includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency;
  - (ii) includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
- (f) where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (g) a word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other gender;
- (h) a reference to the word 'include' or 'including' is to be interpreted without limitation;
- (i) headings are inserted for convenience only and do not affect interpretation;

- (j) no clause will be construed to the disadvantage of a party because that party was responsible for the preparation of this document or that clause or the inclusion of the provision in the agreement;
- (k) a reference to a holder includes a joint holder;
- (l) a reference to an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (m) a reference to a right includes a benefit, remedy, discretion or power;
- (n) a reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
- (o) where Target is obliged to “procure” Bidder to take any action or to refrain from taking any action, that obligation will be fully discharged by Target or its directors or officers taking all reasonable available steps to enforce the Deed Poll against Bidder as the attorney and agent of any Scheme Participant.

### **1.3 Business days and time**

In the interpretation of this document, unless the context otherwise requires:

- (a) a reference to time is to the time in Melbourne, Australia;
- (b) a reference to a business day means a day on which all banks are open for business generally in Melbourne, Australia, other than a Saturday, Sunday or public holiday; and
- (c) if the day on which any act, matter or thing is to be done is not a business day, that act, matter or thing may be done on the next business day.

## **2 Preliminary**

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### **2.1 Target**

- (a) Target is a public company incorporated in Australia and registered in Victoria, having its registered office at Level 4, 500 Collins Street, Melbourne, Victoria 3000.
- (b) Target is a public company limited by shares under section 112(1) of the Corporations Act.
- (c) Target is admitted to the official list of ASX and fully paid Target Shares are quoted on the official list of ASX.
- (d) As at the date of the Scheme Implementation Agreement:
  - (i) 131,831,328 Target Shares were on issue;
  - (ii) no performance rights which may convert into Target Shares were on issue; and
  - (iii) no Target Options which may convert into Target Shares were on issue.

### **2.2 Bidder**

- (a) Bidder is a proprietary company incorporated in Australia and registered in New South Wales, having its registered office at the offices of Mitchell and Partners, Suite 3, Level 2 66 Clarence Street, Sydney, New South Wales 2000.

- (b) Bidder is a proprietary company limited by shares under section 112(1) of the Corporations Act and a wholly owned subsidiary of HCL Technologies Limited.
- (c) HCL Technologies Limited is a public company limited by shares, incorporated in India, and has been admitted to the National Stock Exchange of India and to BSE (formerly the Bombay Stock Exchange).

## **2.3 Summary of the Scheme**

If the Scheme becomes Effective, but subject to clauses 3.1, 3.5, 3.6 and 3.7, then:

- (a) in consideration of the transfer of the Scheme Shares to Bidder, Bidder will provide to each Scheme Participant the Scheme Consideration in respect of each Scheme Share held by the Scheme Participant;
- (b) subject to Bidder's compliance with its obligations to provide the Scheme Consideration to each Scheme Participant, all of the Scheme Shares and all rights attaching to them as at the Implementation Date (other than the right to receive the Target Permitted Ordinary Dividend and any Target Permitted Special Dividend), will be transferred to Bidder; and
- (c) Target will enter the name and address of Bidder in the Target Register as the holder of the Scheme Shares transferred to Bidder,

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

## **2.4 Scheme Implementation Agreement**

Bidder and Target have agreed, by executing the Scheme Implementation Agreement, to implement the terms of the Scheme and to perform their respective obligations under the Scheme.

## **2.5 Deed Poll**

This Scheme attributes actions to Bidder but does not itself impose an obligation on Bidder to perform those actions. Bidder has executed the Deed Poll in favour of the Scheme Participants pursuant to which it has covenanted to perform the actions attributed to Bidder under the Scheme, including to provide to each Scheme Participant the Scheme Consideration to which such Scheme Participant is entitled under the Scheme and to carry out its other obligations under the Scheme Implementation Agreement.

# **3 Conditions**

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## **3.1 Conditions of Scheme**

The Scheme is conditional upon, and will have no force or effect until the satisfaction of, each of the following conditions precedent:

- (a) all of the conditions precedent in clause 3.1 of the Scheme Implementation Agreement (other than the condition precedent in the Scheme Implementation Agreement relating to Court approval of the Scheme) having been satisfied or, if capable of waiver under the Scheme Implementation Agreement, waived in accordance with the terms of the Scheme Implementation Agreement, by the Cut Off Time;
- (b) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms as at the Cut Off Time;



- (c) the Court having approved the Scheme pursuant to section 411(4)(b) of the Corporations Act, without modification or with modifications which are acceptable to both Target and Bidder;
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act as are acceptable to Bidder and Target being satisfied; and
- (e) 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.

### **3.2 Effect of conditions**

The fulfilment of the conditions in clause 3.1 is a condition precedent to the operation of the provisions of clauses 4, 5, 6 and 8.

### **3.3 Certificate**

Target and Bidder must each provide to the Court at the Second Court Date, a certificate authorised by their respective board of directors and signed by at least one of their respective directors (or such other evidence as the Court may request) stating whether or not all the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied, or if not satisfied and capable of waiver, are waived, as at the Cut Off Time.

### **3.4 Conclusive evidence**

The giving of a certificate by each of Target and Bidder in accordance with clause 3.3 constitutes conclusive evidence of the matters referred to in the certificate.

### **3.5 Termination of Scheme Implementation Agreement**

Without limiting rights under the Scheme Implementation Agreement, if the Scheme Implementation Agreement is terminated in accordance with its terms before the Cut Off Time, Target and Bidder are each released from:

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

provided that Target and Bidder retain the rights they have against each other in respect of any prior breach of the Scheme Implementation Agreement.

### **3.6 Effective Date**

This Scheme takes effect on the Effective Date.

### **3.7 End Date**

The Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the End Date.

## **4 Scheme**

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### **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, Target will, as soon as possible and in any event by no later than 5.00 pm on the first business day after the Court approves this 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 in consideration of and subject to provision by Bidder of the Scheme Consideration in accordance with clauses 5.1 and 5.2 and subject to Bidder having provided written confirmation thereof to Target, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at that date other than the right to receive the Target Permitted Ordinary Dividend and any Target Permitted Special Dividend, will be transferred to Bidder without the need for any further acts by any Scheme Participant (other than acts performed by Target as attorney and agent for Scheme Participants under clause 6) by:

- (a) Target delivering to Bidder a duly completed Scheme Transfer executed by Target as attorney for the Scheme Participants for execution by Bidder; and
- (b) Bidder duly executing the Scheme Transfer, attending to any necessary stamping, and delivering the Scheme Transfer to Target.

#### **4.3 Transfer documentation**

As soon as practicable after receipt by Target of the Scheme Transfer duly executed by Bidder as transferee pursuant to clause 4.2(b), but in any event on the Implementation Date, Target must (subject to any necessary stamping) register Bidder in the Target Register as the holder of all of the Scheme Shares.

#### **4.4 Beneficial entitlement by Bidder**

From the time of the provision of the Scheme Consideration to the Scheme Participants in accordance with clauses 5.1, 5.2(a) and 5.2(b), Bidder will be beneficially entitled to the Scheme Shares (together with all rights and entitlements attached to the Scheme Shares other than the right to receive the Target Permitted Ordinary Dividend and any Target Permitted Special Dividend) to be transferred to it under the Scheme pending registration of Bidder in the Target Register as the holder of those Scheme Shares.

#### **4.5 Enforcement of Deed Poll**

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

### **5 Scheme Consideration**

---

#### **5.1 Entitlement to Scheme Consideration**

In consideration for the transfer to Bidder of the Scheme Shares:

- (a) Bidder will pay the Scheme Consideration in accordance with clause 5.2(a) and 5.2(b); and
- (b) each Scheme Participant will be entitled to receive, the Scheme Consideration in respect of each of their Scheme Shares in accordance with clause 5.2(b).

#### **5.2 Provision of Scheme Consideration**

- (a) Bidder must by no later than 5.00 pm on the business day immediately before the Implementation Date deposit in cleared funds an amount equal to the aggregate of the Scheme Consideration payable to all Scheme Participants into the Third Party Account to be held by Target as trustee for Scheme Participants.

- (b) On the Implementation Date, subject to funds having been deposited in accordance with clause 5.2(a), Target must pay or procure the payment from the Third Party Account of the Scheme Consideration to each Scheme Participant based on the number of Target Shares held by each such Scheme Participant as set out in the Target Register on the Record Date.
- (c) The obligations of Target under clause 5.2(b) will be satisfied by Target (in its absolute discretion) taking the following actions on the Implementation Date:
  - (i) where a Scheme Participant has, before the Record Date, made a valid election in accordance with the requirements of Target Registry to receive dividend payments from 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; or
  - (ii) otherwise, whether or not the Scheme Participant has made an election referred to in clause 5.2(c)(i), dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Participant by prepaid post to their address shown in the Target Register on the Record Date, such cheque being drawn in the name of the Scheme Participant (or in the case of joint holders, in accordance with the procedures set out in clause 5.3).
- (d) To the extent that, following satisfaction of Target's obligations under clause 5.2(b), there is surplus in the amount held by Target as trustee for Scheme Participants in the Third Party Account, that surplus shall be paid by Target to Bidder.

### **5.3 Joint holders**

In the case of Scheme Shares held in joint names:

- (a) subject to clause 5.2(c), the Scheme Consideration is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of Target, the holder whose name appears first in the Register as at the Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of Target, the holder whose name appears first in the Target Register as at the Record Date or to the joint holders.

### **5.4 Unclaimed monies**

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

## **5.5 Orders of a court or Regulatory Authority**

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

- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Participant, which would otherwise be payable or required to be provided or issued to that Scheme Participant by Target in accordance with this clause 5, then Target shall be entitled to procure that provision of such consideration is made in accordance with the relevant order or direction; or
- (b) prevents Target from providing consideration to any particular Scheme Participant in accordance with this clause 5, or the payment or issuance of such consideration is otherwise prohibited by applicable law, Target shall be entitled to retain an amount, in Australian dollars, equal to the Scheme Consideration to which that Scheme Participant would otherwise be entitled to under this clause 5 until such time as provision of the consideration in accordance with this clause 5 is permitted by that order or direction or otherwise by law.

## **6 Scheme Participants**

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### **6.1 Appointment of Bidder as sole proxy**

From the Implementation Date until Target registers Bidder as the holder of all the Scheme Shares in the Target Register, each Scheme Participant:

- (a) is deemed to have irrevocably appointed Bidder as its attorney and agent (and directed Bidder in such capacity) to appoint such officer or agent nominated by Bidder to be its sole proxy and, where applicable, corporate representative, to attend shareholders' meetings of Target, exercise the votes attaching to Scheme Shares registered in its name and sign any shareholders' resolution, whether in person, by proxy or by corporate representative, and no Scheme Participant may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 6.1(a)); and
- (b) must take all other actions in the capacity of the registered holder of Scheme Shares as Bidder directs.

### **6.2 Appointment of Target as sole attorney and agent**

Each Scheme Participant, without the need for any further act, irrevocably appoints Target and each of the directors and officers of Target, jointly and severally, as the Scheme Participant's attorney and agent for the purpose of:

- (a) enforcing the Deed Poll against Bidder;
- (b) executing any document necessary or expedient to give effect to the Scheme (including executing a Scheme Transfer and any instrument appointing Bidder as sole proxy for or, where applicable, corporate representative of each Scheme Participant as contemplated by clause 6.1); or
- (c) doing any other act necessary or desirable to give full effect to the Scheme and the transactions contemplated by it.

### **6.3 Scheme Participant's consent**

Each Scheme Participant:

- (a) consents to Target doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of the Scheme and Target, as agent of each Scheme Participant, may sub-delegate its functions under this clause 6.3 to any of its directors and officers, severally; and
- (b) agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares to Bidder, in accordance with the Scheme.

### **6.4 Warranties by Scheme Participants**

Each Scheme Participant is deemed to have warranted to Target, in its own right and for the benefit of Bidder, and taken to have warranted to Bidder, and appointed and authorised Target as its attorney and agent to warrant to Bidder, that:

- (a) all of their Scheme Shares (including any rights and entitlements attaching to those shares) which are transferred to Bidder under the Scheme will be transferred to Bidder fully paid and free from all mortgages, pledges, charges, liens, encumbrances, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise and restrictions on transfer of any kind;
- (b) they have full power and capacity to sell and transfer their Scheme Shares to Bidder (including any rights and entitlements attaching to those shares); and
- (c) as at the Record Date, it has no existing right to be issued any other Shares or any other form of Target securities.

Target undertakes that it will provide such warranty to Bidder as agent and attorney of each Scheme Participant.

## **7 Dealings in Target Shares**

---

### **7.1 Determination of Scheme Participants**

- (a) For the purpose of establishing the persons who are the Scheme Participants, dealings in Scheme Shares will only be recognised if:
  - (i) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Target Register as the holder of the relevant Scheme Shares at the Record Date; and
  - (ii) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received at or before 5.00pm on the day on which the Record Date occurs at the place where the Target Register is kept.
- (b) Target must register registrable transmission applications or transfers of the kind referred to in clause 7.1(a)(ii) by or as soon practicable after the Record Date.
- (c) Target will not accept for registration or recognise for any purpose any transmission applications or transfers in respect of Scheme Shares received after 5.00pm on the day on which the Record Date occurs or received prior to that time,

but not in registrable form, other than a transfer to Bidder in accordance with the Scheme and any subsequent transfer by Bidder, or its successors in title.

- (d) If the Scheme becomes Effective, a holder of Target Shares (and any person claiming through that holder) must not dispose of or purport to agree to dispose of any Target Shares or any interest in them after the Record Date other than in accordance with this Scheme, and any such disposal will be void and of no legal effect whatsoever.

## **7.2 Maintenance of Target Register**

- (a) For the purpose of determining entitlements to the Scheme Consideration, Target will, until the Scheme Consideration has been provided, maintain the Target Register in accordance with the provisions of this clause 7 and the Target Register in this form will solely determine entitlements to the Scheme Consideration.
- (b) All certificates and holding statements for Scheme Shares (other than holding statements in favour of Bidder and its successors in title after the Implementation Date) will cease to have any effect from the Record Date as documents of title in respect of those Scheme Shares. Subject to provision of the Scheme Consideration by Bidder and registration of the transfer to Bidder of the Scheme Shares contemplated by clause 4.2, after the Record Date, each entry current at that date on the Target Register relating to Scheme Shares will cease to be of any effect other than as evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.

## **7.3 Information to be made available to Bidder**

Target will procure that, as soon as reasonably practicable after the Record Date, details of the names, Registered Addresses and holdings of Scheme Shares of every Scheme Participant as shown in the Target Register as at the Record Date are made available to Bidder in such form as Bidder or the Bidder Registry reasonably requires.

## **8 Quotation of Target Shares**

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Target will apply for termination of the official quotation of Target Shares on ASX and the removal of Target from the official list of ASX with effect from the business day after the date on which all transfers of the Scheme Shares to Bidder have been duly registered by Target in accordance with the Scheme.

## **9 Notices**

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### **9.1 General**

Any notice, transfer, transmission, application, direction, demand, consent or other communication (**Notice**) given or made under this document must be in writing in English and signed by the sender or a person duly authorised by the sender.

### **9.2 Communications by post**

Subject to clause 9.3, where a Notice referred to in this document is sent by post to Target, it will not be deemed to have been received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at Target's registered office or at the Target Registry.

### **9.3 After hours communications**

If a Notice is given:

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

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

## **10 General**

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### **10.1 Target and Scheme Participants bound**

The Scheme binds Target and all Scheme Participants (including Scheme Participants who do not attend the Scheme Meeting, do not vote at that meeting or vote against the Scheme) and will, for all purposes, to the extent of any inconsistencies and permitted by law, have effect notwithstanding any provision in the constitution of Target.

### **10.2 Further assurances**

Subject to clause 10.3, Target will execute all documents and do all acts and things (on its own behalf and on behalf of each Target Shareholder) necessary or expedient for the implementation of, and performance of its obligations under, the Scheme.

### **10.3 Alterations and conditions**

Target may, with the consent of Bidder, by its counsel consent on behalf of all Scheme Participants to any modifications or conditions which the Court thinks fit to impose, provided that in no circumstances will Target be obliged to do so. Each Scheme Participant agrees to any such modifications or conditions which counsel for Target has consented to.

### **10.4 GST**

Target must pay to the Scheme Participants an amount equal to any GST for which the Scheme Participants are liable on any supply by the Scheme Participants under or in connection with the Scheme, without deduction or set off of any other amount.

### **10.5 Costs**

Bidder must:

- (a) pay all stamp duties and any related fines and penalties in connection with the transfer of Scheme Shares under the Scheme; and
- (b) indemnify each Scheme Participant on demand against any liability arising from Bidder's failure to comply with clause 10.5(a).

### **10.6 Governing law and jurisdiction**

- (a) This document is governed by and is to be construed in accordance with the laws applicable in the State of Victoria, Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of Victoria, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

## Annexure B – Deed Poll



## Deed Poll

HCL Australia Services Pty. Limited

**SBA Law**

Level 15, 607 Bourke Street  
Melbourne, Victoria 3000  
Tel: +61 3 9614 7000  
Fax: +61 3 9614 7100  
DX: 31315 Midtown  
[www.sbalaw.com](http://www.sbalaw.com)

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## This deed poll is made

By: **HCL Australia Services Pty. Limited** (ACN 081 196 983) of Level 8, 1 Pacific Highway, North Sydney, New South Wales 2060 (**'Bidder'**)

in favour of: Each Scheme Participant

## Background

- A Bidder and Target have entered into the Scheme Implementation Agreement under which Target agreed, subject to the satisfaction or waiver of certain conditions, to propose the Scheme to Scheme Participants.
- B Under the Scheme Implementation Agreement, Bidder agreed, subject to the satisfaction or waiver of certain conditions, to do all things within its power necessary or desirable on its part to implement the Scheme, including providing the Scheme Consideration.
- C Bidder is entering into this document for the purpose of covenanting in favour of Scheme Participants to perform all of Bidder's obligations under the Scheme Implementation Agreement, subject to the satisfaction or waiver of certain conditions.

## Operative Provisions

### 1 Definitions and interpretation

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#### 1.1 Definitions

In this document the following definitions apply:

**Scheme** means the scheme of arrangement under section 411 of the Corporations Act between Target and the Scheme Participants the form of which is attached to the Scheme Implementation Agreement, subject to any alterations or conditions agreed in writing between Target and Bidder or made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed in writing by Target and Bidder;

**Scheme Implementation Agreement** means the scheme implementation agreement dated 21 September 2020 between Target and Bidder; and

**Target** means DWS Limited ACN 085 656 088.

#### 1.2 Scheme and Scheme Implementation Agreement

- (a) The rules specified in clauses 1.2 and 1.3 of the Scheme apply in interpreting or construing this document, unless the context requires otherwise.
- (b) Words and phrases defined in the Scheme or the Scheme Implementation Agreement have the same meaning in this document unless the context requires otherwise.

## 2 Nature of this deed poll

---

Bidder acknowledges that:

- (a) this document may be relied on and enforced by any Scheme Participant 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 Target and any of Target's directors and officers (jointly and each of them severally) as its agent and attorney, inter alia, to enforce this document against Bidder.

## 3 Conditions precedent and termination

---

### 3.1 Conditions precedent

The obligations of Bidder in respect of the Scheme pursuant to this document are subject to the Scheme becoming Effective.

### 3.2 Termination

If:

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

Bidder's obligations under this document will automatically terminate, unless Bidder and Target otherwise agree in writing in accordance with the Scheme Implementation Agreement.

### 3.3 Consequences of termination

If this document is terminated under clause 3.2 then, in addition and without prejudice to any other rights, powers or remedies available to Scheme Participants:

- (a) Bidder is released from its obligations to further perform this document, except those obligations contained in clause 7 and any other obligations which by their nature survive termination; and
- (b) each Scheme Participant retains any rights, power or remedies it has against Bidder in respect of any breach of this document by Bidder which occurred before termination of this document.

## 4 Scheme Consideration

---

### 4.1 Performance of obligations generally

Subject to clause 3, Bidder undertakes in favour of each Scheme Participant to perform the actions attributed to it under, and otherwise comply with, the Scheme as if it were a party to the Scheme.

## **4.2 Provision of Scheme Consideration**

Subject to clause 3, in consideration of the transfer of each Scheme Share to Bidder, Bidder undertakes in favour of each Scheme Participant to provide or procure the provision of the Scheme Consideration to each Scheme Participant in accordance with the terms of the Scheme.

## **5 Representations and warranties**

---

Bidder represents and warrants in favour of each Scheme Participant that:

- (a) Bidder is a company validly existing under the laws of the State of New South Wales, Australia;
- (b) Bidder has the corporate power to enter into and perform its obligations under this document and to carry out the transactions contemplated by this document;
- (c) Bidder has taken all necessary corporate action to authorise the entry into of this document and has taken or will take all necessary corporate action to authorise the performance of this document and to carry out the transactions contemplated by this document;
- (d) this document is Bidder's valid and binding obligation enforceable in accordance with its terms, subject to any necessary stamping; and
- (e) this document does not conflict with or result in the breach of, or any default under:
  - (i) any provision of Bidder's constitution; or
  - (ii) any writ, order or injunction, judgement, law, rule or regulation to which Bidder is subject or by which Bidder is bound,

and Bidder is not otherwise bound by any agreement that would prevent, restrain or restrict Bidder from entering into or performing any of its obligations or undertakings contained in this document.

## **6 Continuing obligations**

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This document is irrevocable and, subject to clause 3, remains in full force and effect until:

- (a) Bidder has completely performed its obligations under this document; or
- (b) this document is terminated in accordance with clause 3,

whichever comes first.

## **7 Stamp duty**

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Bidder will:

- (a) pay all stamp duties and any related fines and penalties in connection with 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 7(a).

## 8 Notices

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### 8.1 General

Any notice, transfer, transmission, application, direction, demand, consent or other communication (**Notice**) given or made to Bidder under this document must be in writing in English and signed by the sender or a person duly authorised by the sender.

### 8.2 How to give a Notice

A Notice must be given to Bidder by being:

- (a) personally delivered;
- (b) left at Bidder's current delivery address for notices; or
- (c) sent to Bidder's current delivery address for notices or current registered office by pre-paid ordinary mail.

### 8.3 Particulars for delivery of notices

The particulars for delivery of Notices to Bidder are:

Attention: Legal Team  
Address: Level 5, 2 Mill Street, Perth, WA 6000  
Email: [geo.legal@hcl.com](mailto:geo.legal@hcl.com)

With a copy to:

Attention: David Ryan  
Address: DLA Piper, L22/1 Martin Pl, Sydney NSW 2000  
Email: [david.ryan@dlapiper.com](mailto:david.ryan@dlapiper.com)

### 8.4 Communications by post

Subject to clause 8.5, a Notice is given if posted:

- (a) within Australia to an Australian postal address, three business days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten business days after posting.

### 8.5 After hours communications

If a Notice is given:

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

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

## **8.6 Process service**

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this clause 8 or in accordance with any applicable law.

## **9 General**

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### **9.1 Waiver**

Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this document by any person will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other rights, power or remedy provided by law or under this document. A waiver is not valid or binding on the person granting that waiver unless made in writing.

### **9.2 Cumulative rights**

The rights, defences, powers and remedies of Bidder and of each Scheme Participant under this document are cumulative and do not exclude any other rights, defences, powers or remedies provided by contract (including the Scheme Implementation Agreement), law or equity independently of this document.

### **9.3 Amendment**

A provision of this document may not be varied unless:

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

in which event Bidder must enter into a further deed poll in favour of the Scheme Participants giving effect to that amendment.

### **9.4 Assignment**

The rights and obligations of Bidder and of each Scheme Participant under this document 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 Bidder and Target.

### **9.5 Severability**

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause 9.5 has no effect if the severance alters the basic nature of this document or is contrary to public policy.

### **9.6 Further assurances**

Bidder will execute and deliver all documents and do all acts and things (on its own behalf and on behalf of each Scheme Participant) necessary or desirable to give full effect to this document and the transactions contemplated by it.

**9.7 Governing law and jurisdiction**

- (a) This document is governed by and is to be construed in accordance with the laws applicable in the State of Victoria, Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of Victoria, Australia, and any courts which have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.



## Execution and date

Executed as a deed poll in the State of Victoria, Australia.

Date

**Executed by HCL Australia Services Pty.  
Limited** ACN 081 196 983 in accordance  
with section 127 of the *Corporations Act 2001*  
(Cth):

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Signature of director

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Signature of director/company secretary

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Name of director (print)

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Name of director/company secretary (print)

## Annexure C – Announcement



**DWS Limited**  
**ACN 085 656 088**

Manager Companies  
Company Announcements Office  
ASX Limited  
Level 4, Stock Exchange Centre  
20 Bridge Street  
SYDNEY NSW 2000

21 September 2020

Dear Sir/Madam

**HCL TECHNOLOGIES LIMITED TO ACQUIRE  
DWS IN A RECOMMENDED TRANSACTION**

- *Proposed Scheme of Arrangement under which HCL Australia Services Pty. Limited will acquire 100% of outstanding shares in DWS for A\$1.20 per DWS share, payable in cash, plus an additional A\$0.03 per share dividend as announced to the market on 24 August 2020.*
- *Implied share price of A\$1.23 per share represents a significant premium of 36.7% to the undisturbed closing price of A\$0.90 (as at 18 September 2020)*
- *Values DWS issued equity at A\$162.15 million*
- *Each member of the DWS Board recommends that DWS shareholders vote in favour of the Scheme in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of DWS shareholders (and not changing or qualifying that conclusion)*
- *As part of HCL Technologies Limited, DWS will leverage HCL's significant global resources and expertise to offer an expanded platform to its Australian clients*
- *DWS' largest shareholder, Danny Wallis, intends to vote all shares within his control (which currently represent 42.7% of the shares on issue) in favour of the scheme<sup>1</sup>*

DWS Limited (ASX: DWS) (**DWS or the Company**) is pleased to announce that DWS and HCL Australia Services Pty. Limited (**HCL**) have entered into a Scheme Implementation Agreement<sup>2</sup> under which it is proposed that HCL will acquire 100% of the shares in DWS by way of a Scheme of Arrangement (**the Scheme**). HCL Australia Services Pty. Limited is a wholly owned subsidiary of HCL Technologies Limited, which is a listed company on the National Stock Exchange of India (NSE) with a market capitalization that exceeds US\$29 billion<sup>3</sup> as at today's date.

Under the Scheme, DWS shareholders will receive total cash consideration of A\$1.20 per DWS share (**Scheme Consideration**) plus an additional A\$0.03 per share dividend (**Target Permitted Ordinary Dividend**). Following implementation of the Scheme, DWS will become a wholly-owned subsidiary of HCL.

<sup>1</sup> Based on the disclosed terms of the Scheme, and subject to no Superior Proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of DWS shareholders (and not changing or qualifying that conclusion).

<sup>2</sup> All capitalised terms used, but not otherwise defined, in this announcement have the meaning given to them in the Scheme Implementation Agreement.

<sup>3</sup> Determined on the basis of an exchange rate of 1 INR = 0.0136 USD.

Total cash consideration including the dividend values DWS' issued equity at A\$162.15 million. The transaction will be 100% cash funded.

Each member of the DWS Board recommends that DWS shareholders vote in favour of the Scheme at the Scheme meeting in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of DWS shareholders and not changing or qualifying that conclusion. Subject to those same qualifications, each DWS Director intends to vote the DWS shares held or controlled by them in favour of the Scheme.

In addition, DWS' largest shareholder, Danny Wallis, who holds or controls DWS shares which represent 42.7% of the total shares on issue at the date of this announcement, has advised DWS that he intends to vote in favour of the resolutions to be put to DWS' shareholders to implement the Scheme in respect of all DWS shares controlled or held by or on behalf of him in the absence of a Superior Proposal that remains a Superior Proposal even after giving effect to any matching rights available to HCL under the Scheme Implementation Agreement, and subject to the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of DWS shareholders and not changing or qualifying that conclusion.

DWS Directors believe this is a compelling proposal for DWS shareholders for the following reasons:

- **Significant premium:** The total cash consideration of A\$1.23 per share (including dividends) represents:
  - 36.7% premium to the closing price of DWS shares on ASX of A\$0.90 per share on 18 September 2020<sup>4</sup>
  - 33.7% premium to the 30-day VWAP of DWS shares of A\$0.92 per share to 18 September 2020; and
  - 38.2% premium to the 60-day VWAP of DWS shares of A\$0.89 per share to 18 September 2020; and
  - 43.0% premium to the 90-day VWAP of DWS shares of A\$0.86 per share to 18 September 2020; and
  - 50.0% premium to the 120-day VWAP of DWS shares of A\$0.82 per share to 18 September 2020.
- **Certainty of value:** the 100% cash consideration provides DWS shareholders with certainty of value and the opportunity to realise their investment in full for cash.
- **Not subject to financing:** HCL's offer is all cash.

**DWS' CEO & Managing Director, Danny Wallis, said:**

"The Scheme represents an outstanding outcome for all DWS stakeholders: shareholders, employees, clients and other business partners. The opportunity to realise certain value at a significant premium represents a great outcome for our shareholders, who have been supportive over the Company's long history of its strategy and direction."

**HCL's Executive Vice President & Country Manager, Australia & New Zealand, Michael Horton, said:**

"We are excited for this expansion of HCL Technologies in Australia and New Zealand and are confident that our combined strengths will further accelerate the digital transformation journeys of our clients and innovations for their customers. HCL has invested in the region for over 20 years and is committed to enabling digitisation and growing the local ecosystem. DWS has forged a sterling reputation, powered by highly talented consultants who enable organizations to be at the cutting edge of technology. We look forward to welcoming the DWS team to HCL and creating enhanced global learning and career opportunities for them."

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<sup>4</sup> 18 September 2020, being the last trading day prior to this announcement.

## Details of the Scheme Implementation Agreement

The Scheme Implementation Agreement entered into between HCL and DWS (**SIA**) contains customary terms and conditions on which DWS and HCL will implement the Scheme.

The Scheme is conditional on obtaining necessary regulatory approvals (including the approval of the Foreign Investment Review Board), approval of DWS shareholders, court approval, no material adverse changes and no prescribed occurrences, among other customary conditions. The Scheme is also conditional on Net Debt (as defined in the SIA) being no greater than \$62.5 million on the tenth business day before both the Scheme Meeting and the Second Court Date.

In addition, the SIA contains certain customary exclusivity provisions, including no shop restrictions, no talk restrictions, a notification obligation and a matching right. The SIA also contains limited circumstances under which DWS may be required to pay a break fee to HCL of approximately A\$1.58 million.

Full details of the conditions to the Scheme and other agreed terms are set out in the SIA, a copy of which is attached to this announcement.

## Indicative Timetable and Next Steps

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

A scheme booklet containing information relating to the Scheme, reasons for the DWS Directors recommendation, an Independent Expert's Report on whether the Scheme is in the best interests of DWS shareholders and details of the Scheme meeting, is expected be sent to DWS shareholders in October 2020.

Shareholders will then have the opportunity to vote on the Scheme at a court convened shareholder meeting, expected to be held in November 2020.

Subject to DWS shareholder approval being obtained by the requisite majorities and other conditions of the Scheme being satisfied, the Scheme is expected be implemented in early-December 2020. These dates are indicative and subject to change.

<b>Event</b>	<b>Indicative Date</b>
First court hearing	26 October
Dispatch of Scheme booklet to DWS shareholders	27 October
Shareholder meeting	27 November
Second court hearing	30 November
Effective date	01 December
Record date	03 December
Implementation date	08 December

## Advisers

LoftusLane Capital Partners is advising DWS on the transaction with SBA Law as legal advisers. DLA Piper is advising HCL as legal advisers.

## DWS Contacts:

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## **About DWS Limited**

DWS is an ASX-listed Australian-based IT services company which provides a suite of integrated solutions, including consulting services, such as custom application development and project management and digital solutions, such as data automation and design services.

DWS was established in 1991 by current CEO, Danny Wallis, and was listed on the ASX in June 2006. DWS is headquartered in Melbourne with Australian-based offices located in Sydney, Brisbane, Adelaide and Canberra. As at 30 June 2020, DWS had approximately 770 full time equivalent staff.

DWS has an established customer base diversified across the sectors of Federal and State Government, banking and finance, telecommunications, media and technology, energy, resources and infrastructure.

## **About HCL**

HCL Technologies (HCL) empowers global enterprises with technology for the next decade today. HCL's Mode 1-2-3 strategy through its deep-domain industry expertise, customer-centricity and entrepreneurial culture of ideapreneurship™ enables businesses transform into next-gen enterprises.

HCL offers its services and products through three business units - IT and Business Services (ITBS), Engineering and R&D Services (ERS) and Products & Platforms (P&P). ITBS enables global enterprises to transform their businesses through offerings in areas of Applications, Infrastructure, Digital Process Operations and next generational digital transformation solutions. ERS offers engineering services and solutions in all aspects of product development and platform engineering while under P&P, HCL provides modernized software products to global clients for their technology and industry specific requirements. Through its cutting-edge co-innovation labs, global delivery capabilities and broad global network, HCL delivers holistic services in various industry verticals, categorized under Financial Services, Manufacturing, Technology & Services, Telecom & Media, Retail & CPG, Life Sciences & Healthcare and Public Services.

As a leading global technology company, HCL takes pride in its diversity, social responsibility, sustainability and education initiatives. As of 12 months ended June 30, 2020, HCL has a consolidated revenue of US\$9.93 billion and its 150,287 ideapreneurs operate out of 49 countries. For more information, visit <https://www.hcltech.com/>

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