

13 November 2020

The Manager
Markets Announcement Office
Australian Securities Exchange
4th floor, 20 Bridge Street
Sydney NSW 2000

ELECTRONIC LODGEMENT

Dear Sir or Madam

OPTICOMM LTD – SCHEME OF ARRANGEMENT LEGALLY EFFECTIVE

I attach an update for immediate release to the market.

Authorised for lodgement by the Board.



John Phillips
Chief Financial Officer & Company Secretary

Investor Relations

Tel: +61 3 9024 9503; 0418 530 478
investors@opticomm.net.au

13 November 2020

SCHEME OF ARRANGEMENT LEGALLY EFFECTIVE

Scheme of Arrangement

Further to its announcement on Thursday, 12 November 2020, OptiComm Ltd (**OptiComm**) is pleased to announce that an official copy of the orders made by the Federal Court of Australia (**Court**) approving the scheme of arrangement in relation to the proposed acquisition by Uniti Group Limited (**Uniti**) of OptiComm (**Scheme**) has been lodged with the Australian Securities and Investments Commission pursuant to section 411(10) of the *Corporations Act 2001* (Cth).

Accordingly, the Scheme is now legally effective. A copy of the Court orders is attached to this announcement.

It is expected that trading in OptiComm's shares will be suspended from close of trading today.

Release of Voluntary Escrow Shares

Pursuant to ASX Listing Rule 3.10A, OptiComm advises that 49,411,749 fully paid ordinary shares voluntarily escrowed from 21 August 2019 (**Escrowed Shares**) will be released from escrow on 20 November 2020. The Escrowed Shares are currently quoted on the ASX.

For further information contact:

Investor Relations

Tel: +61 3 9024 9503; 0418 530 478
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Federal Court of Australia
District Registry: Victoria
Division: General

No: VID405/2020

IN THE MATTER OF OPTICOMM LIMITED

OPTICOMM LIMITED

Applicant

ORDER

JUDGE: JUSTICE ANDERSON

DATE OF ORDER: 12 November 2020

WHERE MADE: Melbourne

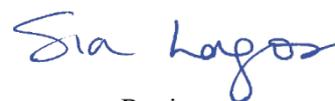
OTHER MATTERS:

- A. There has been produced to the Court a statement in writing by the Australian Securities and Investments Commission (**ASIC**) in accordance with s 411(17)(b) of the *Corporations Act 2001* (Cth) stating that ASIC has no objection to the Scheme of Arrangement referred to in this order.

THE COURT ORDERS THAT:

1. Pursuant to s 411(4)(b) of the *Corporations Act 2001* (Cth) (the **Act**), the Scheme of Arrangement between the Plaintiff and its members other than Uniti Group Limited ACN 158 957 889 agreed to by the said members at the meeting held on 6 November 2020 (the terms of which are as set out in Annexure A to these orders) (**Scheme**) be and is hereby approved.
2. Pursuant to s 411(12) of the Act, the Plaintiff be exempted from compliance with s 411(11) of the Act in relation to the Scheme.

Date that entry is stamped: 12 November 2020


Registrar



Annexure A

Scheme



**LANDER
& ROGERS**

Scheme of Arrangement

OPTICOMM LTD

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

Level 12 Bourke Place
600 Bourke Street
Melbourne VIC 3000

GPO Box 1842
Melbourne
VIC 3001

DX 370
Melbourne VIC

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ABN 58 207 240 529
LR: 2084479



Scheme of Arrangement

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

PARTIES

OptiComm Ltd ACN 117 414 776 of Level 1, 22 Salmon Street, Port Melbourne VIC 3207 (**Target**)

and

Each person registered as a holder of fully paid ordinary shares in Target as at the Scheme Record Date other than Bidder (Scheme Shareholders)

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Scheme the following words and phrases have the following meanings unless the context indicates otherwise:

Aggregate Cash Consideration means the aggregate value of the Scheme Consideration payable to Scheme Shareholders in cash under the Scheme.

Aggregate Scrip Consideration means the aggregate number of Bidder Shares to be issued to Scheme Shareholders as Scheme Consideration under the Scheme.

Agreed Dividend means a dividend of \$0.10 per Target Share, which, if declared, must be declared prior to the Implementation Date by Target and paid on the Implementation Date.

All Cash Consideration means \$6.67 less the amount per Target Share paid by Target as the Agreed Dividend for each Scheme Share.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ACN 008 624 691) or, if the context requires, the financial market operated by it.

Bidder means Uniti Group Limited (ACN 158 957 889).

Bidder Option means an option to acquire a Bidder Share.

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

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

Cash Consideration means \$5.20 less the amount per Target Share paid by Target as the Agreed Dividend for each Scheme Share.

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

CHESS Holding has the meaning given in the Settlement Rules.



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

Court means the Federal Court of Australia (Victorian registry) or any other court of competent jurisdiction under the Corporations Act as Target and Bidder may agree in writing.

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

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

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

Effective Date, with respect to the Scheme, means the date on which the Scheme becomes Effective.

End Date means the later of:

- (a) 15 March 2021; and
- (b) such other date and time agreed in writing between Bidder and Target.

Government Agency means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX, the Takeovers Panel and any regulatory organisation established under statute or any stock exchange.

Immediately Available Funds means a bank cheque or other form of cleared funds acceptable to Target (acting reasonably).

Implementation Date means, with respect to the Scheme, the fifth Business Day, or such other Business Day as Bidder and Target agree, following the Scheme Record Date for the Scheme.

Ineligible Foreign Shareholder means a Scheme Shareholder whose address shown in the Target Share Register at 7.00pm on the Scheme Record Date is a place outside Australia and its external territories.

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

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

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

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 approved in writing by Bidder and Target.



Scheme Consideration means in respect of:

- (a) Scheme Shareholders who are Ineligible Foreign Shareholders, the All Cash Consideration; and
- (b) all other Scheme Shareholders, the Cash Consideration and the Scrip Consideration,

subject to the terms of the Scheme.

Scheme Implementation Deed means the scheme implementation deed dated 14 June 2020, as amended, between Bidder and Target relating to (among other things) the implementation of the Scheme.

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

Scheme Record Date means, in respect of the Scheme, 7.00pm on the second Business Day (or such other Business Day as Bidder and Target agree in writing) following the Effective Date.

Scheme Share means a Target Share on issue as at the Scheme Record Date other than a Target Share held by Bidder.

Scheme Shareholder means each person, other than Bidder, registered in the Target Share Register as the holder of one or more Scheme Shares as at the Scheme Record Date.

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

Scrip Consideration means 1.07 Bidder Shares for each Scheme Share.

Second Court Date means:

- (a) the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme was heard or scheduled to be heard; or
- (b) if the application was adjourned or subject to appeal for any reason, the first day on which the adjourned or appealed application was heard or scheduled to be heard.

Second Court Hearing means the hearing of the application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme.

Settlement Rules means the official operating rules of ASX Settlement Pty Ltd.

Takeovers Panel means the Takeovers Panel constituted under the *Australian Securities and Investments Commission Act 2001* (Cth).

Target Incentive Plan means Target's long term incentive plan adopted on 15 July 2019.



Target Performance Right means a right to be issued a Target Share under the Target Incentive Plan.

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

Target Share Register means the register of members of Target maintained by or on behalf of Target in accordance with section 168(1) of the Corporations Act.

Target Share Registry means Link Market Services Limited.

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

Transaction has the meaning given in the Scheme Implementation Deed.

Trust Account means an Australian dollar denominated trust account which:

- (a) attracts interest at a commercial rate; and
- (b) is operated by Target, or by the Target Share Registry on behalf of Target, as trustee for the Scheme Shareholders.

Unclaimed Money Act means the *Unclaimed Money Act 2008 (Vic)*.

1.2 Interpretation

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

- (a) a term or expression starting with a capital letter:
 - (i) which is defined in clause 1.1 has the meaning given to it in clause 1.1; and
 - (ii) which is defined in the Corporations Act, but is not defined in the clause 1.1, has the meaning given to it in the Corporations Act;
- (b) headings are for convenience only and do not affect the interpretation of the Scheme;
- (c) the singular includes the plural and vice versa;
- (d) words that are gender neutral or gender specific include each gender;
- (e) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (f) the words "include", "including" and similar expressions are not words of limitation and do not limit what else might be included;
- (g) a reference to:
 - (i) a person includes a natural person, estate of a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate or entity (as that term is defined in section 64A of the Corporations Act);



- (ii) a thing (including a chose in action or other right) includes a part of that thing;
- (iii) a party includes its agents, successors and permitted assigns;
- (iv) a document includes all amendments or supplements to that document;
- (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or a party, schedule or attachment to, this Scheme (as applicable);
- (vi) this deed includes all schedules and attachments to it;
- (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a Listing Rule and is a reference to that law as amended, consolidated or replaced;
- (viii) a statute includes any regulation, ordinance, by-law or other subordinate legislation made under it;
- (ix) an agreement, other than the Scheme, includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing;
- (x) a monetary amount is in Australian dollars; and
- (xi) time is to Melbourne, Australia time;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Scheme or any part of it.

2. PRELIMINARY MATTERS

2.1 Target

- (a) Target is an Australian public company limited by shares.
- (b) Target is admitted to the official list of ASX and Target Shares are officially quoted for trading on ASX.
- (c) As at 17 July 2020, Target had the following securities on issue:
 - (i) 104,074,986 Target Shares; and
 - (ii) 220,336 Target Performance Rights.

2.2 Bidder

- (a) Bidder is an Australian public company limited by shares.
- (b) Bidder is admitted to the official list of ASX and Bidder Shares are officially quoted for trading on ASX.



- (c) As at 17 July 2020, Bidder had the following securities on issue:
 - (i) 517,826,105 Bidder Shares; and
 - (ii) 18,100,104 Bidder Options.

2.3 Scheme Implementation Deed

Bidder and Target have entered into the Scheme Implementation Deed in respect of (among other things) the implementation of this Scheme.

2.4 Deed Poll

- (a) The Scheme attributes actions to Bidder but does not itself impose any obligations on it to perform those actions.
- (b) By executing the Deed Poll, Bidder has agreed to perform:
 - (i) the actions attributed to it under the Scheme; and
 - (ii) its obligations under the Deed Poll, including the provision of the Scheme Consideration in accordance with the terms of the Scheme.

3. CONDITIONS

3.1 Conditions precedent

This Scheme is conditional on and will not become Effective until and unless the following conditions precedent are satisfied:

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

3.2 Conditions precedent and operation of clauses 4.2 and 5

The satisfaction of each condition of clause 3.1 of the Scheme is a condition precedent to the operation of clause 4.3 and clause 5 of the Scheme.



3.3 Joint Certificate

- (a) Target and Bidder will provide a joint certificate to the Court at the Second Court Hearing confirming whether or not the conditions precedent in clause 3.1(a) and clause 3.1(b) have been satisfied or waived as at the Delivery Time on the Second Court Date in accordance with the terms of the Scheme Implementation Deed.
- (b) Unless the Court requires otherwise, the joint certificate given by Target and Bidder constitutes conclusive evidence that the conditions precedent in clause 3.1(a) and clause 3.1(b) have been satisfied or waived as at the Delivery Time on the Second Court Date in accordance with the terms of the Scheme Implementation Deed.

3.4 Termination and End Date

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

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

then the Scheme will lapse and each of Bidder and Target are released from any further obligation to take steps to implement the Scheme.

4. IMPLEMENTATION OF THIS SCHEME

4.1 Lodgement of Court orders with ASIC

If the conditions precedent set out in clause 3.1 of this Scheme (other than the condition precedent in clause 3.1(e)) are satisfied, Target must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the order made by the Court under section 411(4)(b) of the Corporations Act approving this Scheme before:

- (a) 5:00pm on the Business Day following the day on which such office copy is received by Target; or
- (b) such later date agreed in writing between Bidder and Target.

4.2 Consequences of the Scheme becoming Effective

If this Scheme becomes Effective:

- (a) it will override the constitution of the Target to the extent of any inconsistency;
- (b) Bidder must provide or procure the provision of the Scheme Consideration to Scheme Shareholders in accordance with this Scheme and the Deed Poll;
- (c) subject to the provision of the Scheme Consideration as contemplated by clause 4.2(b), all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, will be transferred to Bidder; and
- (d) Target will enter the name of the Bidder in the Target Share Register in respect of all the Scheme Shares.



4.3 Transfer of Scheme Shares

Subject to the Scheme becoming Effective, the following will occur in the order set out below:

- (a) on or before the Implementation Date, Bidder confirming in writing to Target that:
 - (i) the Aggregate Cash Consideration has been provided in accordance with clause 5.6(b); and
 - (ii) the Scrip Consideration has been provided in accordance with clause 5.8;
- (b) on the Implementation Date, payment by Target of the Aggregate Cash Consideration in the manner contemplated by clause 5.6(c); and
- (c) subject to the matters in clause 4.3(a) and clause 4.3(b) being satisfied, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Bidder without the need for any further act by any Scheme Shareholder (other than acts performed by Target as attorney and agent for Scheme Shareholders under clause 8 of the Scheme) by:
 - (i) Target delivering to Bidder a duly completed and executed Scheme Transfer, executed on behalf of the Scheme Shareholders by Target as their attorney and agent; and
 - (ii) Bidder duly executing the Scheme Transfer and delivering the executed and, if necessary, stamped Scheme Transfer to Target for registration; and
 - (iii) immediately following receipt of the duly executed Scheme Transfer in accordance with clause 4.3(c)(ii), Target entering, or procuring the entry of, the name of Bidder in the Target Share Register in respect of all of the Scheme Shares.

5. SCHEME CONSIDERATION

5.1 Entitlement to Scheme Consideration

Subject to the terms of this Scheme, on the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, each Scheme Shareholder will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clauses 5.2 to 5.12 and the Deed Poll.

5.2 Scheme Consideration for Ineligible Foreign Shareholders

- (a) If a Target Shareholder is an Ineligible Foreign Shareholder that Target Shareholder will be entitled to receive the All Cash Consideration.
- (b) Bidder has no obligation to provide, and will not provide under the Scheme, any Bidder Shares as Scheme Consideration to Ineligible Foreign Shareholders.



5.3 Scheme Consideration for other Scheme Shareholders

Scheme Shareholders who are not Ineligible Foreign Shareholders will be entitled to receive the Cash Consideration and the Scrip Consideration.

5.4 Fractional entitlements

Where the calculation of the Scheme Consideration to be issued to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to:

- (a) a fraction of a cent, the fractional entitlement will be rounded down to the nearest whole cent; and/or
- (b) a fraction of a Bidder Share, the fractional entitlement will be rounded down to the nearest whole number of Bidder Shares.

5.5 Bidder Shares

- (a) Bidder undertakes in favour of Target (in its own right and on behalf of each Target Shareholder) that on and from their issue, the Bidder Shares issued as Scrip Consideration will:
 - (i) rank equally in all respects with all other Bidder Shares in the same class; and
 - (ii) be fully paid, duly and validly issued in accordance with all applicable laws and free from any Encumbrance.
- (b) Subject to the Scheme becoming Effective, Bidder must use all reasonable endeavours to ensure that the Bidder Shares to be issued as Scrip Consideration are, from the Business Day following the Effective Date (or such later date as ASX requires), quoted for trading on ASX initially on a deferred settlement basis and thereafter on an ordinary settlement basis as required by the Listing Rules.

5.6 Provision of Aggregate Cash Consideration

- (a) Unless otherwise agreed between Bidder and Target, Target must notify Bidder of the details of the Trust Account no later than 5 Business Days before the Implementation Date.
- (b) The obligation of Bidder to provide the Aggregate Cash Consideration under the Scheme and the Deed Poll will be satisfied by Bidder, no later than the Business Day before the Implementation Date, depositing (or procuring the deposit), in Immediately Available Funds, the Aggregate Cash Consideration into the Trust Account (except that the amount of any interest on the amount deposited, less bank fees and other charges, will be credited to Bidder's account), such amount to be held by Target on trust for the purpose of paying the All Cash Consideration and the Cash Consideration to Scheme Shareholders who are entitled to receive such pursuant to clause 5.6(c).
- (c) On the Implementation Date, and subject to receipt of the Aggregate Cash Consideration from Bidder in accordance with clause 5.6(b), and subject to clauses 5.11 and 5.12, Target must pay (or procure payment) from the Trust Account to each Scheme Shareholder, an amount equal to the applicable amount of All Cash Consideration or Cash Consideration that the



Scheme Shareholder is entitled to for each Scheme Share held by that Scheme Shareholder.

- (d) Target's obligation under clause 5.6(c) will be satisfied by Target:
- (i) where a Scheme Shareholder has, before the Scheme Record Date, made an election in accordance with the requirements of the Target Share Registry to receive dividend payments from Target by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
 - (ii) whether or not a Scheme Shareholder has made an election referred to in clause 5.6(d)(i), dispatching, or procuring the dispatch of, a cheque in Australian currency for the relevant amount to the Scheme Shareholder by prepaid post to their Registered Address, such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with clause 5.9).
- (e) In the event that:
- (i) a Scheme Shareholder does not have a Registered Address and no account has been notified in accordance with clause 5.6(d)(i) or a deposit into such an account is rejected or refunded; or
 - (ii) a cheque issued under this clause 5 has been cancelled in accordance with clause 5.7(a),

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

- (f) Until such time as an amount referred to in clause 5.6(e) is dealt with in accordance with the Unclaimed Money Act, Target must hold the amount on trust for the relevant Scheme Shareholder, but any interest or other benefit accruing from the amount will be to the benefit of Bidder.
- (g) An amount credited to the Separate Account or Trust Account (as applicable) in accordance with clause 5.6(e) is to be treated as having been paid to the Scheme Shareholder when credited to the Separate Account or Trust Account (as applicable). Target must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.
- (h) To the extent that there is a surplus in the amount held by Target as the trustee for the Scheme Shareholders in the Trust Account after the process in clauses 5.6(e) to 5.6(g) has completed, that surplus may be paid by Target as the trustee for the Scheme Shareholders to Bidder following the satisfaction of Target's obligations as the trustee for the Scheme Shareholders under this clause 5.6.



5.7 Cancellation and re-issue of cheques

- (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 Shareholder to Target or the Target Share Registry (which request may not be made until the date which is 5 Business Days after the Implementation Date), a cheque that was previously cancelled under clause 5.7(a) must be reissued.

5.8 Provision of Scrip Consideration

- (a) Subject to clauses 5.11 and 5.12, Bidder must, before no later than 12:00 noon (or such later time as Bidder and Target may agree in writing) on the Implementation Date, procure that the name of each Scheme Shareholder entitled to be issued Bidder Shares under this Scheme is entered in Bidder's register of shareholders (as maintained by Bidder or its agent) as the holder of those Bidder Shares with the same holding name and address and other details as the holding of the relevant Target Shares.
- (b) On the Implementation Date, Bidder must send or procure the sending of a share certificate or holding statement (or equivalent document) to the Registered Address of each Scheme Shareholder to whom Bidder Shares are issued under this Scheme, reflecting the issue of such Bidder Shares.

5.9 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any Bidder Shares to be issued as Scheme Consideration are to be registered in the names of the joint holders;
- (b) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to the holder whose name appears first in the Target Share Register as at the Scheme Record Date; and
- (c) any other document required to be sent under this Scheme will be forwarded to the holder whose name appears first in the Target Share Register as at the Scheme Record Date.

5.10 Unclaimed monies

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



5.7 Cancellation and re-issue of cheques

- (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 Shareholder to Target or the Target Share Registry (which request may not be made until the date which is 5 Business Days after the Implementation Date), a cheque that was previously cancelled under clause 5.7(a) must be reissued.

5.8 Provision of Scrip Consideration

- (a) Subject to clauses 5.11 and 5.12, Bidder must, before no later than 12:00 noon (or such later time as Bidder and Target may agree in writing) on the Implementation Date, procure that the name of each Scheme Shareholder entitled to be issued Bidder Shares under this Scheme is entered in Bidder's register of shareholders (as maintained by Bidder or its agent) as the holder of those Bidder Shares with the same holding name and address and other details as the holding of the relevant Target Shares.
- (b) On the Implementation Date, Bidder must send or procure the sending of a share certificate or holding statement (or equivalent document) to the Registered Address of each Scheme Shareholder to whom Bidder Shares are issued under this Scheme, reflecting the issue of such Bidder Shares.

5.9 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any Bidder Shares to be issued as Scheme Consideration are to be registered in the names of the joint holders;
- (b) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to the holder whose name appears first in the Target Share Register as at the Scheme Record Date; and
- (c) any other document required to be sent under this Scheme will be forwarded to the holder whose name appears first in the Target Share Register as at the Scheme Record Date.

5.10 Unclaimed monies

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



5.11 Orders of a court or Government Agency or law restricting payment

If written notice is given to Target (or the Target Share Registry) of an order or direction made by a court of competent jurisdiction or by another Government Agency, or Target is aware of any law, 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 Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder by Target or Bidder in accordance with this clause 5, then Target or Bidder (as applicable) will be entitled to pay or issue that consideration (or procure that it is paid or issued), in accordance with that order, direction or law; or
- (b) prevents Target or Bidder from providing consideration to a particular Scheme Shareholder in accordance with this clause 5, Target or Bidder will be entitled to (as applicable):
 - (i) retain an amount, in Australian dollars, equal to the amount of the consideration that Scheme Shareholder would be entitled to in the form of All Cash Consideration or Cash Consideration; and/or
 - (ii) not to issue (or direct Bidder not to issue), or to issue to a trustee or nominee, such number of Bidder Shares, equal to the amount of the consideration that Scheme Shareholder would be entitled to in the form of Scrip Consideration,

until such time as payment in accordance with this clause 5 is permitted by that order, direction or law.

5.12 Foreign resident capital gains withholding

- (a) If Bidder determines that it must pay an amount to the Commissioner of Taxation (**Commissioner**) under Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) (**TAA**) with respect to the acquisition of the Scheme Shares from a Scheme Shareholder, Bidder will, for any such Scheme Shareholder:
 - (i) determine the amount to be paid to the Commissioner (**Payment Amount**);
 - (ii) remit the Payment Amount to the Commissioner within the time required under the TAA; and
 - (iii) pay an amount equal to the Scheme Consideration less the Payment Amount to the Scheme Shareholder.
- (b) Bidder will, for the purposes of the Scheme Implementation Deed, the Scheme and the Deed Poll, be deemed to have satisfied its obligations to pay the Scheme Consideration to a Scheme Shareholder if the amount paid to the Scheme Shareholder is the amount of the Scheme Consideration that would have otherwise been payable to the Scheme Shareholder pursuant to the Scheme, less the Payment Amount for that Scheme Shareholder.



6. DEALINGS IN TARGET SHARES

6.1 Determination of Scheme Shareholders

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

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

and Target must not accept for registration, nor recognise for any purpose (except a transfer to Bidder pursuant to this Scheme and any subsequent transfer by Bidder or its successors in title), any transfer or transmission application or other request received after the Scheme Record Date, or received at or before the Scheme Record Date but not in registrable or actionable form.

6.2 Target Share Register

- (a) Target must register registrable transfer or transmission applications of Target Shares received in accordance with clause 6.1(b) at or before the Scheme Record Date, or as soon as reasonably practicable after receipt with effect as at the Scheme Record Date, provided that nothing in this clause 6.2(a) requires Target to register a transfer that would result in a Target Shareholder holding a parcel of Target Shares that is less than a 'marketable parcel' (as defined in the operating rules of ASX).
- (b) If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and Target will be entitled to disregard any such disposal, purported disposal or agreement.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Target must maintain the Target Share Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been provided to the Scheme Shareholders in accordance with the Scheme. The Target Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for Target Shares, other than statements of holding in favour of Bidder or its successors in title, will cease to have effect after the Scheme Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Target Share Register, other than entries in respect of Bidder or its successors in title, will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Target Shares relating to that entry.
- (e) As soon as possible after the Scheme Record Date, and in any event within one Business Day after the Scheme Record Date, Target will ensure that details of the names, Registered Addresses and holdings of Target Shares



for each Scheme Shareholder as shown in the Target Share Register as at the Scheme Record Date are available to Bidder in the form Bidder reasonably requires.

7. QUOTATION OF TARGET SHARES

- (a) Target will apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date.
- (b) Target will apply:
 - (i) for termination of the official quotation of Target Shares on the ASX; and
 - (ii) to have itself removed from the official list of ASX,in each case with effect on and from the close of trading on the trading day immediately following, or shortly after, the Implementation Date.
- (c) Target must use its best endeavours to ensure that such termination of official quotation and removal from the official list of ASX does not occur before the Implementation Date.

8. GENERAL SCHEME PROVISIONS

8.1 Consent to amendments to this Scheme

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

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

8.2 Scheme Shareholders' agreements and warranties

- (a) Each Scheme Shareholder:
 - (i) agrees to the transfer of their Scheme Shares to Bidder together with all rights and entitlements attaching to those shares in accordance with the Scheme;
 - (ii) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from the Scheme;
 - (iii) who holds their Target Shares in a CHES Holding agrees to the conversion of those Target Shares to an Issuer Sponsored Holding and irrevocably authorises Target to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion
 - (iv) agrees:
 - (A) that after the transfer of the Scheme Shares to Bidder, any share certificate relating to the Scheme Shares will not constitute evidence of title to those Scheme Shares; and



- (B) at the direction of Bidder, to destroy any share certificates relating to the Scheme Shares; and
- (v) acknowledges that the Scheme binds Target and all Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting).
- (b) Each Target Shareholder who is issued Bidder Shares under this Scheme agrees to:
 - (i) become a shareholder of Bidder; and
 - (ii) be bound by the terms of the constitution of Bidder.
- (c) Each Scheme Shareholder is taken to have warranted to Target and Bidder on the Implementation Date, and appointed and authorised Target as its attorney and agent to warrant to Bidder on the Implementation Date, that:
 - (i) all their Scheme Shares (including any rights and entitlements attaching to their Scheme Shares) which are transferred under this Scheme will, at the time of the transfer of them to Bidder, be fully paid and free from all:
 - (A) mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Properties Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise; and
 - (B) restrictions on transfer of any kind; and
 - (ii) they have full power and capacity to transfer their Scheme Shares to Bidder together with any rights attaching to those Scheme Shares; and
 - (iii) except as otherwise provided for or contemplated in the Scheme Implementation Deed, they have no existing right to be issued any Target Shares, or any other Target securities.
- (d) Target undertakes that it will provide the warranties in clause 8.2(c) to Bidder as agent and attorney for each Scheme Shareholder.

8.3 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme will, at the time of transfer of them to Bidder, vest in Bidder free from all:
 - (i) mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Properties Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise; and
 - (ii) restrictions on transfer of any kind.



- (b) Upon the provision of the Scheme Consideration to each Scheme Shareholder in accordance with clause 5.6 and clause 5.8, Bidder will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending registration by Target of Bidder in the Target Share Register as the holder of the Scheme Shares.

8.4 Appointment of sole proxy

Upon the provision of the Scheme Consideration to each Scheme Shareholder in accordance with clause 5.6 and clause 5.8 and until Target registers Bidder as the holder of all Scheme Shares in the Target Share Register, each Scheme Shareholder:

- (a) is deemed to have irrevocably appointed Bidder as attorney and agent (and directed Bidder in each such capacity) to appoint any director, officer, secretary or agent nominated by Bidder as:
 - (i) its sole proxy; and
 - (ii) where applicable or appropriate, corporate representative, to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution whether in person, by proxy or by corporate representative;
- (b) must not attend or vote at any shareholders' meetings or sign any shareholders' resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.4(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers conferred by clause 8.4(a), Bidder and any director, officer, secretary or agent nominated by Bidder under clause 8.4(a) may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

8.5 Authority given to Target

- (a) On the Effective Date, each Scheme Shareholder, without the need for any further act, irrevocably appoints Target and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney for the purpose of:
 - (i) enforcing the Deed Poll against Bidder; and
 - (ii) executing any document, or doing or taking any other act, necessary, desirable or expedient to give full effect to this Scheme and the transactions contemplated by it, including executing and delivering the Scheme Transfer,and Target accepts such appointment.
- (b) Target, as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.5 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).



8.6 Enforcement of Deed Poll

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

8.7 Instructions and elections

If not prohibited by law (and including where permitted or facilitated by relief granted by a Government Agency), all instructions, notifications or elections by a Scheme Shareholder to Target which are binding or deemed binding between the Scheme Shareholder and Target relating to Target or Target Shares, including instructions, notifications or elections relating to:

- (a) whether dividends are to be paid by cheque or into a specific bank account;
- (b) payments of dividends on Target Shares; and
- (c) notices or other communications from Target (including by email),

will be deemed from the Implementation Date (except to the extent determined otherwise by Bidder in its sole discretion), by reason of this Scheme, to be made by the Scheme Shareholder to Bidder and to be a binding instruction, notification or election to, and accepted by, Bidder in respect of the new Bidder Shares issued to that Scheme Shareholder until that instruction, notification or election is revoked or amended in writing addressed to Bidder at its registry.

8.8 Binding effect of this Scheme

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

9. GENERAL

9.1 Stamp duty

- (a) Bidder will:
 - (i) pay all stamp duty (if any) and any related fines and penalties payable on or in respect of the transfer by the Scheme Shareholders of the Scheme Shares to Bidder pursuant to the Scheme or its actions under the Deed Poll; and
 - (ii) indemnify each Scheme Shareholder against any liability incurred by the Scheme Shareholder arising from failure to comply with clause 9.1(a)(i).
- (b) Bidder is authorised to apply for and retain the proceeds of any refund due in respect of any stamp duty paid under this clause.

9.2 Consent

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



9.3 Notices

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

9.4 Further action

Target must do all things and execute all documents (on its own behalf and/or on behalf of each Scheme Shareholder) necessary to give full effect to the Scheme and the transactions contemplated by it.

9.5 No liability when acting in good faith

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

9.6 Governing law and jurisdiction

- (a) The Scheme is governed by the laws in force in Victoria.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria and courts competent to determine appeals from those courts in respect of any proceedings arising out of or in connection with the Scheme.
- (c) The parties irrevocably waive any objection to the venue of any legal process in the courts referred to in clause 9.6(b) on the basis that the process has been brought in an inconvenient forum.