

6 October 2014

The Manager  
ASX Market Announcements  
ASX Limited

### **Crowe Horwath Australasia Ltd and Findex Australia Pty Ltd enter into Scheme Implementation Agreement**

Further to the market update to the ASX on 13 August 2014, Crowe Horwath Australasia Ltd (ASX: **CRH**) ("**Crowe Horwath**") and Findex Australia Pty Ltd ("**Findex**") announce they have entered into a Scheme Implementation Agreement under which Findex proposes to acquire all of the shares in Crowe Horwath via a Scheme of Arrangement.

Under the terms of the proposed transaction, Findex will offer Crowe Horwath shareholders consideration of \$0.50 cash per Crowe Horwath share<sup>1</sup>. The acquisition price implies an equity value for Crowe Horwath of approximately \$137 million and represents an attractive premium to Crowe Horwath shareholders of:

- 32.0% to Crowe Horwath's 60 day VWAP; and
- 29.9% to Crowe Horwath's closing share price on 3 October 2014, being the last trading day prior to the announcement of this proposed transaction.

In the absence of a superior proposal and subject to an independent expert concluding that the Scheme is in the best interests of Crowe Horwath shareholders, the Board of Crowe Horwath unanimously recommends that Crowe Horwath shareholders vote in favour of the Scheme. Subject to those same qualifications, each director of Crowe Horwath intends to vote all the Crowe Horwath shares held or controlled by them in favour of the Scheme.

Crowe Horwath Chairman, Richard Grellman, said: "After careful consideration, the Board has unanimously concluded that the proposal from Findex is a compelling value proposition offering Crowe Horwath shareholders a significant premium to the market price and fair value". "The proposed transaction should further strengthen the level of service to our clients and opportunities for our staff", Mr Grellman said.

Findex CEO, Spiro Paule, said "Findex has a long-term strategy of growth through acquisition of quality businesses. We believe the Crowe Horwath businesses in Australia and New Zealand are a natural fit to the Findex stable because of the synergies between accounting practices, financial advice and financial services - a mix in which we have considerable experience". "We plan to maintain the Crowe Horwath brand, and to grow the business, which we believe will prosper under our systems, culture and guidance", Mr Paule said.

As part of the proposal, Crowe Horwath's major shareholder, Alceon, has agreed to enter into a contractual arrangement with Findex which provides Findex with the option to purchase Alceon's 19.87% shareholding in Crowe Horwath under certain circumstances at the same price of \$0.50 cash per share. Details of this arrangement will be separately disclosed to the ASX by Findex in due course with an initial substantial holder notice.

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<sup>1</sup> This amount will be reduced by the amount of any special dividend declared by Crowe Horwath prior to the date of the second court hearing.

The Scheme is subject to limited conditions, including:

- Receipt of all relevant regulatory approvals, including court approvals;
- Crowe Horwath shareholder approval;
- An Independent Expert concluding that the Scheme is in the best interests of Crowe Horwath shareholders; and
- Other customary conditions for transactions of this nature.

Full details of the conditions precedent to the Scheme are set out in the Scheme Implementation Agreement, attached to this release. The Scheme is not subject to a financing condition or a due diligence condition.

Crowe Horwath has suspended its dividend reinvestment plan in accordance with the terms of the Scheme Implementation Agreement.

### **Independent Expert**

The Directors have appointed Grant Samuel as Independent Expert to advise whether, in its opinion, the offer is in the best interests of Crowe Horwath shareholders.

The full Independent Expert's opinion and report will be contained in the Scheme Booklet.

### **Next Steps**

As detailed in the Scheme Implementation Agreement, Findex's acquisition of all the shares in Crowe Horwath is conditional upon approval from both 75% or more of the votes cast at the Scheme Meeting and 50% or more of the Crowe Horwath shareholders present in person or by proxy at the Scheme Meeting. In due course, Crowe Horwath shareholders will receive a comprehensive Scheme Booklet that will contain full details of the proposed transaction, including the full basis for the recommendation of Crowe Horwath's Board of Directors.

### **Indicative Timetable**

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

It is anticipated that the Scheme will progress according to the following timetable:

- 27 October 2014: Lodge Scheme Booklet with the Australian Securities and Investments Commission
- 11 November 2014: First Court Hearing
- 13 November 2014: Despatch Scheme Booklet to Shareholders
- 16 December 2014: Scheme Meeting of Shareholders
- 18 December 2014: Second Court Hearing
- 6 January 2015: Implementation Date

### **Advisers**

Crowe Horwath is being advised by Macquarie Capital (Australia) Limited and Thomson Geer.

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**Company Secretary**

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## Scheme Implementation Agreement

between

**Findex Australia Pty Ltd**  
ABN 40 128 588 714  
(**Bidder**)

and

**Crowe Horwath Australasia Ltd**  
ABN 93 006 650 693  
(**Target**)

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**This agreement** is made on 3 October 2014

between **Findex Australia Pty Ltd** ABN 40 128 588 714 of Level 23, 600 Bourke Street, Melbourne, Victoria 3000 (**Bidder**)

and **Crowe Horwath Australasia Ltd** ABN 93 006 650 693 of Level 17, 181 William Street, Melbourne, Victoria 3000 (**Target**)

## **Recitals**

- A Bidder proposes to acquire all of Target's issued ordinary shares pursuant to a members' scheme of arrangement under Part 5.1 of the Corporations Act.
- B Bidder and Target have agreed to implement the Scheme subject to and in accordance with the provisions of this agreement.

**Now it is agreed** as follows:

## **1 Definitions and interpretation**

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### **1.1 Definitions**

In this agreement:

**Announcement** means any press release or other public announcement (including any announcement to the ASX);

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

**ASX** means ASX Limited ACN 008 624 691 or as the context requires the securities exchange which it operates;

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

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

**Bidder Break Fee** means \$1.3 million;

**Bidder Group** means Bidder and its Subsidiaries prior to implementation of the Scheme;

**Bidder Scheme Booklet Information** means all information regarding the Bidder Group that is provided by or on behalf of Bidder to Target or any of its Representatives to enable the Scheme Booklet to be prepared and completed in accordance with clause 5.3 and any updates to that information prepared by or on behalf of Bidder. For the avoidance of doubt, Bidder Scheme Booklet Information does not include information about the Target Group (except to the extent it relates to any statement of intention relating to the Target Group following the Effective Date);

**Business Day** means:

- (a) for the purposes of receiving a Notice, a day which is not a Saturday, Sunday, public holiday or bank holiday in the city in which the Notice is to be received; and
- (b) for any other purposes, a day on which the banks are open for business in both Sydney and Melbourne other than a Saturday, Sunday or public holiday in either Sydney or Melbourne;

**Competing Proposal** means any proposed or possible transaction or arrangement pursuant to which, if ultimately completed, a Third Party would:

- (a) directly or indirectly, acquire a Relevant Interest in or become the holder of:

- (i) more than 20% of the shares on issue in Target;
- (ii) the whole or a substantial part or a material part of the business or assets of Target or the Target Group;
- (b) acquire control of Target, within the meaning of section 50AA of the Corporations Act; or
- (c) otherwise acquire or merge with Target (including but not limited to by a reverse takeover bid, reverse scheme of arrangement or dual-listed companies structure);

**Conditions Precedent** means each of the conditions precedent set out in clause 3.1;

**Confidentiality Deed** means the Confidentiality Deed between Bidder and Target dated 11 April 2014;

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

**Court** means the Supreme Court of Victoria or such other court of competent jurisdiction as agreed in writing between the parties;

**Deed Poll** means a deed poll to be executed by Bidder in favour of the Scheme Participants, substantially in the form set out in Annexure B or in such other form agreed between Bidder and Target in writing;

**Discretionary Special Dividend** means any dividend per Target Share which may be declared at Target's discretion prior to the Second Court Date in favour of Target Shareholders provided that:

- (a) the dividend is paid out of Target's retained earnings as at 30 June 2014; and
- (b) any franking of the dividend does not result in a franking deficit in Target's franking accounts;

**Dividend Reinvestment Plan** means the dividend reinvestment plan of Target, under which eligible Target Shareholders may elect to increase their shareholding in Target by reinvesting all, or part of, their dividends in additional Target Shares;

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

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

**End Date** means the date that is 6 months after the date of this agreement or such later date as Bidder and Target may agree in writing;

**Exempt Share Plan** means the exempt share plan under which eligible employees of Target may be offered Target Shares;

**Exclusivity Period** means the period commencing on the date of this agreement and ending on the earliest to occur of:

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

**Fairly Disclosed** means disclosed in sufficient detail so as to enable a reasonable and sophisticated person to identify the nature and scope of the relevant matter, event or circumstance;

**First Court Date** means the first day of hearing of an application made to the Court by Target for orders pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting

or, if the hearing of such application is adjourned or if the application is subject to appeal for any reason, means the first day of the adjourned hearing or the first day on which the appeal is heard (as the case may be);

**Governmental Agency** means any government, governmental, semi-governmental, administrative, fiscal or judicial body department, commission, authority, tribunal, agency or entity including ASIC, the ASX, the Takeovers Panel, the Australian Taxation Office and the Australian Competition and Consumer Commission;

**GST** means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply;

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

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

**Implementation Date** means the date that is 5 Business Days after the Record Date, or such other date as Target and Bidder may agree in writing or as may be required by the ASX;

**Independent Expert** means an independent expert to be engaged by Target to express an opinion on whether the Scheme is in the best interests of Target Shareholders;

**Independent Expert's Report** means the report from the Independent Expert commissioned by Target for inclusion in the Scheme Booklet, and any update to such report that the Independent Expert issues prior to the Scheme Meeting;

**Insolvency Event** means the occurrence of any one or more of the following events in relation to any party to this agreement:

- (a) a meeting has been convened, resolution proposed, petition presented or order made for the winding up of that party;
- (b) a receiver, receiver and manager, provisional liquidator, liquidator, or other officer of the court, or other person of similar function has been appointed regarding all or any material asset of the party;
- (c) a security holder, mortgagee or chargee has taken attempted or indicated an intention to exercise its rights under any security of which the party is the security provider, mortgagor or chargor;
- (d) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement);
- (e) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (b) or (d) above;
- (f) it is otherwise unable to pay its debts when they fall due; or
- (g) an event has taken place with respect to the party which would make, or deem it to be, insolvent under any law applicable to it;

**Material Adverse Event** means any event, occurrence or circumstance that individually, or when aggregated with all such events, occurrences or circumstances:

- (a) diminishes, or could reasonably be expected to diminish, the consolidated net assets of the Target Group by \$26.56 million or more; or
- (b) results or could reasonably be expected to result in a reduction of \$3.03 million or more to the consolidated EBITA for the Target Group (on an annualised basis),



other than any event, occurrence or circumstance that:

- (c) is required or expressly permitted to be done or procured by Target pursuant to the Transaction Documents;
- (d) arises from general changes after the date of this agreement in economic, political or business conditions or the financial or securities markets in Australia or New Zealand, to the extent that those changes do not have a materially disproportionate effect on Target relative to other participants in Target's industry or Australian or New Zealand companies generally;
- (e) arises from changes that affect the industry in which the Target Group conducts business to the extent that those changes do not have a materially disproportionate effect on Target relative to other participants in Target's industry or Australian or New Zealand companies generally;
- (f) comprises a change in any applicable law, regulation or policy required by law after the date of this agreement;
- (g) is Fairly Disclosed in the Target Disclosed Information, or is otherwise known to Bidder or its Representatives at the date of this agreement; or
- (h) is done with the prior written approval of Bidder;

**Notice** has the meaning given to that expression in clause 15.1(a);

**Policy** means the Target Group directors and officers insurance policies in effect at the date of this agreement;

**Prescribed Occurrence** means the occurrence of any of the following:

- (a) Target converting all or any of its securities into a larger or smaller number of securities;
- (b) Target resolving to reduce its capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its securities;
- (c) Target:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) Target making or declaring, or announcing an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie) other than the Discretionary Special Dividend;
- (e) a member of the Target Group issuing or agreeing to issue securities or convertible instruments, or granting an option (including a performance right) over its securities, or agreeing to make such an issue or grant such an option (including a performance right), other than pursuant to or consistently with arrangements between Target and the Managing Director of Target announced to ASX on 28 April 2014 and subject to approval by Target Shareholders at the annual general meeting of Target convened on 17 October 2014;
- (f) a member of the Target Group issuing or agreeing to issue debt securities or securities convertible into debt securities;
- (g) Target making any change or amendment to its constitution;
- (h) a member of the Target Group creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property other than in the ordinary course of business;

- (i) Target or a member of the Target Group acquires or disposes, or agrees to acquire or dispose, assets in excess of \$1 million in value;
- (j) other than an extension of trading terms granted in the ordinary course of business, a member of the Target Group providing financial accommodation other than to members of its group irrespective of what form that financial accommodation takes; or
- (k) an Insolvency Event occurring in relation to a member of the Target Group,

provided that a Prescribed Occurrence will not include a matter:

- (l) which is required or expressly permitted to be done or procured by the Target Group pursuant to the Transaction Documents;
- (m) that is done with the prior written approval of Bidder; or
- (n) that has been Fairly Disclosed in writing by Target to Bidder as part of the Target Disclosed Information;

**Record Date** means 5.00pm on the date that is 5 Business Days after the Effective Date, or such other date as may be agreed in writing between Bidder and Target or as may be required by the ASX;

**Regulator's Draft** means the draft of the Scheme Booklet in a form acceptable to both parties which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act;

**Regulatory Approvals** means those regulatory approvals referred to in clause 3.1(a);

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

**Regulatory Review Period** means the period commencing on the date on which the Regulator's Draft is submitted to ASIC and ending on the earlier of:

- (a) the date on which ASIC confirms that it does not intend to make any submissions at the Court hearing on the First Court Date or otherwise object to the Scheme; or
- (b) the First Court Date;

**Relevant Interest** has the meaning given to that expression in sections 608 and 609 of the Corporations Act;

**Representatives** means, in relation to an entity:

- (a) each of the entity's Related Bodies Corporate; and
- (b) each of the entity's directors, officers, employees, contractors, advisers (including legal, financial and other expert advisers) and agents, but excluding the Independent Expert;

**Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Participants substantially in the form set out in Annexure A to this agreement or as otherwise agreed by Bidder and Target in writing, subject to any alterations or conditions:

- (a) agreed to by Bidder and Target prior to the First Court Date; or
- (b) made or required by the Court and agreed to by Bidder and Target;

**Scheme Booklet** means the explanatory material to be prepared in respect of the Scheme in accordance with the terms of this agreement and to be despatched by Target to Target Shareholders, including the Independent Expert's Report, the Scheme, the Deed Poll, and the notice convening the Scheme Meeting;

**Scheme Consideration** means \$0.50 for each Scheme Share held by a Scheme Participant at the Record Date, less the amount of any Discretionary Special Dividends, payable by

Bidder to Scheme Participants in consideration for the transfer to Bidder of their Scheme Shares in accordance with the Transaction Documents;

**Scheme Meeting** means the meeting of Target Shareholders to be ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act in relation to the Scheme, and includes any adjournment of that meeting;

**Scheme Participant** means a person who is registered in the Target Register as a holder of Scheme Shares as at the Record Date;

**Scheme Share** means each Target Share on issue as at the Record Date;

**Second Court Date** means the first day of hearing of an application made to the Court by Target for orders pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned or if the application is subject to appeal for any reason, means the first day of the adjourned hearing or the first day on which the appeal is heard (as the case may be);

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

**Superior Proposal** means a Competing Proposal, which the Target Board determines, acting in good faith and after having taken advice from its legal and financial advisers:

- (a) is capable of being valued and completed, taking into account all aspects of the Competing Proposal, including its conditions; and
- (b) would, if completed substantially in accordance with its terms and viewed in aggregate, be more favourable to the Target Shareholders than the Scheme, taking into account all the terms and conditions of the Competing Proposal,

after taking into account a qualitative assessment of the identity, reputation and financial standing of the party making the Competing Proposal;

**Takeovers Panel** means the panel established by section 171 of the *Australian Securities and Investments Commission Act 1989* (Cth);

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

**Target Break Fee** means \$1.3 million;

**Target Disclosed Information** means:

- (a) the contents of the electronic data room maintained by Macquarie Capital on behalf of Target; and
- (b) information publicly disclosed by Target on its ASX announcement platform,

in each case as at 5.00pm on the date that is 2 Business Days prior to the date of this agreement;

**Target Group** means Target and its Subsidiaries;

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

**Target Scheme Booklet Information** means all information that is prepared by or on behalf of Target or any of its Representatives to enable the Scheme Booklet to be prepared and completed in accordance with clause 5.3 and any updates to that information prepared by or on behalf of Target, other than the Bidder Scheme Booklet Information and the Independent Expert's Report;

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

**Target Shareholder** means a person who is registered in the Target Register as a holder of Target Shares from time to time;

**Transaction Costs** means the total costs incurred by the Target Group in connection with the Scheme (including fees and disbursements payable to financial advisers, independent experts and legal counsel and other associated service providers);

**Timetable** means the indicative timetable for the implementation of the Scheme set out in Schedule 1, subject to any amendments as the parties may agree in writing;

**Third Party** means:

- (a) a person other than any member of the Bidder Group or its Representatives; or
- (b) a consortium, partnership, limited partnership, syndicate or other group in which no member of the Bidder Group has agreed in writing to be a participant; and

**Transaction Documents** means:

- (a) this agreement;
- (b) the Scheme; and
- (c) the Deed Poll.

## 1.2 Interpretation

In this agreement, unless the context otherwise requires:

- (a) a reference to:
  - (i) one gender includes the others;
  - (ii) the singular includes the plural and the plural includes the singular;
  - (iii) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this agreement and references to this agreement include any recital, schedule or annexure;
  - (iv) any contract (including this agreement) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
  - (v) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (vi) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
  - (vii) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
  - (viii) a group of persons is a reference to any 2 or more of them taken together and to each of them individually;
  - (ix) an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;
  - (x) a reference to a day or a month means a calendar day or calendar month; and

- (xi) money (including '\$', 'AUD' or 'dollars') is to Australian currency;
- (b) unless expressly stated, no party enters into this agreement as agent for any other person (or otherwise on their behalf or for their benefit);
- (c) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
- (d) headings and the table of contents are for convenience only and do not form part of this agreement or affect its interpretation;
- (e) if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day; and
- (f) a provision of this agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this agreement or the inclusion of the provision in this agreement.

## 2 Agreement to propose the Scheme

### 2.1 Proceed with Scheme

Target and Bidder agree to implement the Scheme upon and subject to the terms and conditions of this agreement.

### 2.2 Proposal of Scheme

- (a) Target agrees to propose and implement the Scheme on and subject to the terms of this agreement.
- (b) Bidder will assist Target to propose and implement the Scheme on and subject to the terms of this agreement.

## 3 Conditions Precedent

### 3.1 Conditions Precedent

Subject to this clause 3, Target's obligations under clause 5.1(n) and Bidder's obligation to provide the Scheme Consideration in accordance with the Deed Poll and clause 4.1 are not binding, until each of the following Conditions Precedent are either satisfied (or waived in accordance with clause 3.2):

1	2	3	4	5
Condition Precedent	Party responsible for satisfaction of the Condition Precedent (clause 3.3(a)(i))	Party entitled to benefit of the Condition Precedent (clauses 3.2(a) and 3.6(b)(iii))	Party entitled to exercise right to waive the Condition Precedent (clause 3.2(b))	Party whose certificate must refer to the Condition Precedent (clauses 3.7(a) and 3.7(b))
(a) <b>Regulatory approvals:</b>	Target and Bidder	Target and Bidder	Target and Bidder	Target and Bidder
(i) <b>ASIC and the ASX:</b> before 8.00am on the				

1	2	3	4	5
Condition Precedent	Party responsible for satisfaction of the Condition Precedent (clause 3.3(a)(i))	Party entitled to benefit of the Condition Precedent (clauses 3.2(a) and 3.6(b)(iii))	Party entitled to exercise right to waive the Condition Precedent (clause 3.2(b))	Party whose certificate must refer to the Condition Precedent (clauses 3.7(a) and 3.7(b))
<p>Second Court Date, ASIC and the ASX have issued or provided (and not withdrawn, revoked or varied) such consents, waivers, relief, modifications and/or approvals or have done such other acts which are necessary or reasonably desirable to implement the Scheme. If such consents, waivers, relief, modifications and/or approvals are subject to conditions those conditions must be acceptable to Bidder and Target;</p> <p>(ii) <b>FIRB approval:</b> prior to the Second Court Date, the Treasurer (or his delegate) has provided written advice that there are no objections in terms of Australia's foreign investment policy to the proposed Scheme, either on an unconditional basis or subject to conditions reasonably acceptable to Bidder; and</p> <p>(iii) <b>Other Governmental Agencies:</b> before 8.00am on the Second Court Date, all other approvals of a Governmental Agency which are necessary or reasonably desirable to implement any material aspect of the Scheme are obtained and those approvals are given</p>				

1	2	3	4	5
Condition Precedent	Party responsible for satisfaction of the Condition Precedent (clause 3.3(a)(i))	Party entitled to benefit of the Condition Precedent (clauses 3.2(a) and 3.6(b)(iii))	Party entitled to exercise right to waive the Condition Precedent (clause 3.2(b))	Party whose certificate must refer to the Condition Precedent (clauses 3.7(a) and 3.7(b))
either unconditionally or on conditions that are acceptable to Bidder and Target;				
(b) <b>Orders Convening Meeting:</b> prior to the Second Court Date, the Court makes orders under section 411(1) of the Corporations Act convening the Scheme Meeting;	Target and Bidder	Target and Bidder	None – Condition Precedent cannot be waived	None
(c) <b>Independent Expert's Report:</b> the Independent Expert's Report states that in the Independent Expert's opinion the Scheme is in the best interests of Target Shareholders, and the Independent Expert does not change its conclusion or withdraw the Independent Expert's Report by notice in writing to Target prior to 8.00am on the Second Court Date;	Target	Target	Target	Target
(d) <b>Target Shareholder approval:</b> before 8.00am on the Second Court Date, the Scheme is approved by the requisite majorities of Target Shareholders under section 411(4)(a)(ii) of the Corporations Act;	Target	Target and Bidder	None – Condition Precedent cannot be waived	Target
(e) <b>Court approval:</b> the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act;	Target and Bidder	Target and Bidder	None – Condition Precedent cannot be waived	None
(f) <b>No Governmental Agency challenge:</b> no Governmental Agency has commenced, or is threatening to commence, any action, lawsuit, or other legal proceeding seeking to obtain, pursuant to any law, a judgment, order, decree,	Target and Bidder	Target and Bidder	Target and Bidder	Target and Bidder – to the best of their respective knowledge

1	2	3	4	5
Condition Precedent	Party responsible for satisfaction of the Condition Precedent (clause 3.3(a)(i))	Party entitled to benefit of the Condition Precedent (clauses 3.2(a) and 3.6(b)(iii))	Party entitled to exercise right to waive the Condition Precedent (clause 3.2(b))	Party whose certificate must refer to the Condition Precedent (clauses 3.7(a) and 3.7(b))
temporary restraining order, preliminary or permanent injunction, restraint or prohibition, that would prohibit, materially restrict, make illegal or restrain the implementation of the Scheme, and no such judgment, order, decree, temporary restraining order, preliminary or permanent injunction, restraint or prohibition is in effect, as at 8.00am on the Second Court Date;				
(g) <b>Target representations and warranties:</b> the representations and warranties given by Target under clause 8.1 are true and correct in all material respects, in each case at the times set out in clause 8.3;	Target	Bidder	Bidder	Target
(h) <b>No Material Adverse Event:</b> no Material Adverse Event occurs between the date of this agreement and 8.00am on the Second Court Date;	Target	Bidder	Bidder	Target
(i) <b>No Prescribed Occurrence:</b> no Prescribed Occurrence occurs between the date of this agreement and 8.00am on the Second Court Date;	Target	Bidder	Bidder	Target
(j) <b>Bidder representations and warranties:</b> the representations and warranties given by Bidder under clause 8.2 are true and correct in all material respects, in each case at the times set out in clause 8.3; and	Bidder	Target	Target	Bidder
(k) <b>No termination:</b> this agreement has not been terminated in accordance with clause 13.	Target and Bidder	Target and Bidder	Target and Bidder	Target and Bidder



### 3.2 Waiver

- (a) Each Condition Precedent is for the benefit of the party listed alongside that Condition Precedent in column 3 of clause 3.1.
- (b) Any breach or non-fulfilment of a Condition Precedent may only be waived with the written consent of the party or parties listed alongside that Condition Precedent in column 4 of clause 3.1 and a waiver will be effective only to the extent specifically set out in that waiver and a waiver will be effective only to the extent specifically set out in that waiver.
- (c) A party entitled to waive the breach or non-fulfilment of a Condition Precedent pursuant to this clause 3.2 may do so in its absolute discretion.
- (d) If a waiver by a party of a Condition Precedent is itself expressed to be conditional and the other party accepts the conditions, the terms of the conditions apply accordingly. If the other party does not accept the conditions, the relevant Condition Precedent has not been waived.
- (e) If a party waives the breach or non-fulfilment of a Condition Precedent, that waiver will not preclude it from suing the other party for any breach of this agreement constituted by the same event that gave rise to the breach or non-fulfilment of the Condition Precedent.
- (f) Waiver of a breach or non-fulfilment in respect of one Condition Precedent does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition Precedent resulting from the same events or circumstances; or
  - (ii) a waiver of breach or non-fulfilment of that Condition Precedent resulting from any other event or circumstance.

### 3.3 Best endeavours and co-operation

- (a) Without prejudice to any other obligations of the parties under this agreement:
  - (i) each party must use its best endeavours to ensure that the Conditions Precedent for which it is listed in column 2 of clause 3.1 as having responsibility are satisfied as soon as practicable after execution of this agreement and in any event no later than the End Date, and continues to be satisfied at all times until the last time it is to be satisfied (as the case may be and unless otherwise agreed in writing by Bidder and Target); and
  - (ii) neither party will take any action that will or is likely to hinder or prevent the satisfaction of any Condition Precedent, except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by, a Transaction Document, or is required by law.
- (b) For the purposes of clause 3.3(a), the 'best endeavours' of a party will require that party to (among other things):
  - (i) observe and comply with this agreement; and
  - (ii) co-operate with the other party or a Governmental Agency or third party in good faith with a view to satisfying the Conditions Precedent, including providing all information reasonably required by the other party in relation to the Target Group or the Bidder Group (as applicable) in order to satisfy the Conditions Precedent and providing all information reasonably required by any Governmental Agency or other third party to such Governmental Agency or third party as appropriate.

### 3.4 Notifications

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent;
- (b) promptly notify the other party in writing if it becomes aware that any Condition Precedent has been satisfied, in which case the notifying party must also provide reasonable evidence that the Condition Precedent has been satisfied; and
- (c) promptly notify the other party in writing of a failure to satisfy a Condition Precedent or of any fact or circumstance that results in that Condition Precedent becoming incapable of being satisfied or that may result in that Condition Precedent not being satisfied in accordance with its terms (having regard to the obligations of the parties under clause 3.3).

### 3.5 Regulatory Approvals

Without limiting the generality of clauses 3.3 and 3.4:

- (a) each party must promptly apply for all relevant Regulatory Approvals 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
- (b) each party must in good faith and on a timely and pragmatic basis consult with the other in advance in relation to all material communications with any Governmental Agency relating to any Regulatory Approval or implementation of the Scheme.

### 3.6 Failure of Conditions Precedent

- (a) If:
  - (i) there is a breach or non-fulfilment of a Condition Precedent that is not waived in accordance with clause 3.2 before the End Date; or
  - (ii) a Condition Precedent becomes incapable of satisfaction, having regard to the obligations of the parties under clause 3.3 and the terms of clause 3.7 (and the breach or non-fulfilment of the Condition Precedent that would otherwise occur has not already been waived),

either party may serve notice on the other party (**CP Failure Notice**), and the parties must then consult in good faith with a view to determining whether:

- (iii) the Scheme may proceed by way of alternative means or methods;
  - (iv) to extend the relevant time or date for satisfaction of the Condition Precedent;
  - (v) to change the date of the application to be made to the Court for orders under the Corporations Act approving the Scheme or to adjourn that application (as applicable) to another date agreed by the parties; or
  - (vi) to extend the End Date.
- (b) If the parties are unable to reach agreement under clauses 3.6(a)(iii) to 3.6(a)(vi) by the earlier of:
  - (i) the 10<sup>th</sup> Business Day after the delivery of the CP Failure Notice; or
  - (ii) 5.00pm on the Business Day before the Second Court Date,

either party (**First Party**) may terminate this agreement by notice in writing to the other party (**Second Party**), provided that:

- (iii) the First Party is named in column 3 of clause 3.1 as having the benefit of the Condition Precedent to which the CP Failure Notice relates (whether or not that Condition Precedent is also for the benefit of the Second Party); and
- (iv) there has been no failure by the First Party to comply with its obligations under this agreement, where that failure directly and materially contributed to the Condition Precedent to which the CP Failure Notice relates becoming incapable of satisfaction, or being breached or not fulfilled before the End Date,

in which case clause 13.1(a) will have effect.

### 3.7 Certificates in relation to Conditions Precedent

- (a) If Target is listed in column 5 of clause 3.1 alongside a Condition Precedent as having to provide a certificate in respect of that Condition Precedent, then Target must provide to the Court on the Second Court Date a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8.00am on the Second Court Date that Condition Precedent has been satisfied or waived in accordance with this agreement.
- (b) If Bidder is listed in column 5 of clause 3.1 alongside a Condition Precedent as having to provide a certificate in respect of that Condition Precedent, then Bidder must provide to the Court on the Second Court Date a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8.00am on the Second Court Date that Condition Precedent has been satisfied or waived in accordance with this agreement.
- (c) Each party must provide to the other party a draft of the relevant certificate to be provided by it pursuant to this clause 3.7 by 5.00pm on the day that is 2 Business Days prior to the Second Court Date, and must provide to the other party on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

## 4 Scheme

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### 4.1 Outline of Scheme

- (a) The parties agree that the Scheme, if approved by the Court, will be subject to any alterations or conditions that are made or required by the Court and approved in writing by each party.
- (b) If the Scheme becomes Effective, at least 1 Business Day before the Implementation Date, Bidder must pay into an Australian dollar denominated interest bearing account nominated by Target an amount in cleared funds equal to the Scheme Consideration multiplied by the number of Scheme Shares. Those funds will be held on trust by Target for the Scheme Participants for the purposes of provision of the Scheme Consideration.
- (c) If the Scheme becomes Effective, then on the Implementation Date, subject to Bidder having complied with its obligations under clause 4.1(b):
  - (i) all of the Scheme Shares will be transferred to Bidder in accordance with the Scheme and Bidder accepts such transfer; and
  - (ii) the Scheme Participants will receive, from the account described in clause 4.1(b), the Scheme Consideration for each Scheme Share held by them at the Record Date.
- (d) Notwithstanding clause 4.1(c)(ii), where a Scheme Participant owes money to Target pursuant to a loan arrangement entered into prior to the date of this agreement, the

Target may apply the Scheme Consideration towards repayment of that loan arrangement.

#### 4.2 Timetable

- (a) The parties acknowledge the Timetable is an indicative timetable.
- (b) The parties must use their best endeavours to implement the Scheme and perform their respective obligations substantially in accordance with the Timetable.

#### 4.3 Access to people and Target information

Between the date of this agreement and the earlier of 5.00pm on the Business Day immediately before the Second Court Date and the date this agreement is terminated, Target must afford to Bidder and its Representatives reasonable access to information (subject to any existing confidentiality obligations owed to third parties), premises and senior executives of any member of the Target Group as reasonably requested by Bidder at mutually convenient times and afford Bidder reasonable co-operation for the sole purpose of:

- (a) implementation of the Scheme; and
- (b) Bidder obtaining an understanding of the operations of the Target Group's business, financial position, prospects and affairs in order to allow and facilitate the development and the implementation of the plans of Bidder for those businesses following implementation of the Scheme (including the provision of the Target Group's monthly management accounts promptly after they become available).

#### 4.4 Bidder's right to separate representation

- (a) Bidder is entitled to separate representation at all Court proceedings relating to the Scheme.
- (b) Nothing in this agreement is to be taken to give Target any right or power to make or give undertakings to the Court for or on behalf of Bidder.

### 5 Steps for Scheme implementation

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#### 5.1 Target's obligations

Target must use its best endeavours to propose and implement the Scheme as soon as is reasonably practicable after the date of this agreement and otherwise substantially in accordance with the Timetable, and in particular Target must:

- (a) **preparation of Scheme Booklet:** as soon as reasonably practicable after the date of this agreement, prepare the Scheme Booklet in accordance with clause 5.3;
- (b) **Independent Expert:** promptly appoint the Independent Expert (if the Independent Expert has not been appointed prior to the date of this agreement), and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (c) **Independent Expert's Report:** on receipt, provide Bidder with a copy of:
  - (i) the initial draft report received from the Independent Expert for factual checking; and
  - (ii) the draft report received from the Independent Expert for inclusion in the Scheme Booklet to be lodged with ASIC and any further drafts of the report from the Independent Expert and the final report;
- (d) **liaison with ASIC:** as soon as reasonably practicable after the date of this agreement, provide an advanced draft of the Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act, and to

Bidder, and keep Bidder reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet (and of any resolution of those matters), and use its best endeavours, in co-operation with Bidder, to resolve any such matters;

- (e) **indication of intent:** apply to ASIC for a letter indicating whether ASIC proposes to make submissions to the Court, or intervene to oppose the Scheme, on the First Court Date;
- (f) **approval of Scheme Booklet:** as soon as practicable after ASIC has provided its indication of intent in accordance with clause 5.1(e), procure that a meeting of the Target Board is convened to approve the Scheme Booklet for despatch to Target Shareholders (and provide Bidder with a copy of an extract of the applicable resolutions from the applicable minutes of meeting, as soon as practicable after those minutes have been prepared and signed);
- (g) **Court documents:** prepare all documents necessary for the Court proceedings (including any appeals) relating to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) in accordance with all applicable laws, and provide Bidder in advance with drafts of those documents for review and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments from Bidder and its Representatives on those drafts;
- (h) **first Court hearing:** lodge all documents with the Court and use its best endeavours to ensure that an application is heard by the Court for orders under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;
- (i) **registration of Scheme Booklet:** if the Court directs Target to convene the Scheme Meeting, as soon as practicable after such orders are made, 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) **Scheme Meeting:** comply with the orders of the Court, including, as required, despatching the Scheme Booklet to Target Shareholders, convening and holding the Scheme Meeting in accordance with the Court's orders, provided that if this agreement is terminated under clause 13 it may use its best endeavours to ensure the Scheme Meeting is not held;
- (k) **update Scheme Booklet:** if it becomes aware of information after the date of despatch of the Scheme Booklet, that is material for disclosure to Target Shareholders in deciding whether to approve the Scheme or that is required to be disclosed to Target Shareholders under any applicable law, as expeditiously as practicable inform Target Shareholders of the information in an appropriate and timely manner, and in accordance with applicable law;
- (l) **section 411(17)(b) statement:** if the Scheme is approved by the requisite majorities of Target Shareholders under section 411(4)(a)(ii) of the Corporations Act, apply to ASIC for the production of statements in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (m) **Court approval:** if the Scheme is approved by the requisite majorities of Target Shareholders under section 411(4)(a)(ii) of the Corporations Act, as soon as practicable after such time apply to the Court for orders approving the Scheme;
- (n) **implementation of the Scheme:** if the Court approves the Scheme:
  - (i) lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act, as soon as practicable after the Court makes those orders;
  - (ii) use its best endeavours to ensure that the ASX suspends trading in Target Shares with effect from the close of trading on the Effective Date;

- (iii) close the Target Register as at the Record Date to determine the identity of Scheme Participants and to determine their entitlements to the Scheme Consideration in accordance with the Scheme;
- (iv) subject to Bidder complying with its obligations under clause 4.1, register all transfers of the Scheme Shares to Bidder in accordance with the Scheme; and
- (v) promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (o) **keep Bidder informed:** from the First Court Date until the Implementation Date, promptly inform Bidder if it becomes aware (or ought reasonably to have become aware, after making all reasonable and diligent enquiries) that the Scheme Booklet contains a statement that, in the form and context in which it appears in the Scheme Booklet, is or has become misleading or deceptive in a material respect or that contains a material omission;
- (p) **Bidder Scheme Booklet Information:** at any time (even after the Bidder Scheme Booklet Information becomes publicly available) only use that information with the prior written consent of Bidder (not to be unreasonably withheld);
- (q) **suspension of Exempt Share Plan:** with effect from the date of this agreement, suspend (to the extent not suspended prior to the date of this agreement) the Exempt Share Plan;
- (r) **suspension of Dividend Reinvestment Plan:** with effect from the date of this agreement, suspend (to the extent not suspended prior to the date of this agreement) the Dividend Reinvestment Plan; and
- (s) **termination of Dividend Reinvestment Plan:** subject to Court approval of the Scheme, but with effect from the Implementation Date or such later date agreed by the parties acting reasonably, terminate the Dividend Reinvestment Plan.

## 5.2 Bidder's obligations

Bidder must use its best endeavours to implement the Scheme as soon as is reasonably practicable after the date of this agreement and otherwise substantially in accordance with the Timetable, and in particular Bidder must:

- (a) **preparation of Scheme Booklet:** provide all assistance and information reasonably requested by Target with the preparation of the Scheme Booklet in accordance with clause 5.3;
- (b) **Independent Expert information:** provide all assistance and information reasonably requested by Target or by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (c) **liaison with ASIC:** provide all assistance and information reasonably requested by Target to assist Target to resolve any matter raised by ASIC regarding the Scheme Booklet or the Scheme during ASIC's review of the Scheme Booklet;
- (d) **approval of Scheme Booklet:** as soon as practicable after ASIC has provided its indication of intent as contemplated in clause 5.1(e), procure that a meeting of the Bidder Board (or of a committee of the Bidder Board appointed for this purpose) is convened to approve those sections of the Scheme Booklet that comprise the Bidder Scheme Booklet Information as being in a form appropriate for despatch to Target Shareholders (and provide Target with a copy of an extract of the applicable resolutions from the applicable minutes of meeting, as soon as practicable after those minutes have been prepared and signed);
- (e) **keep Target informed:** from the First Court Date until the Implementation Date, promptly (in any event within one Business Day) inform Target if it becomes aware (or ought reasonably to have become aware, after making all reasonable and diligent



enquiries) that the Bidder Scheme Booklet Information contains a statement that, in the form and context in which it appears in the Scheme Booklet, is or has become misleading or deceptive in any material respect or that contains any material omission, and provide such further or new information as is required to ensure that such information is no longer misleading or deceptive in any material respect or does not contain any material omission;

- (f) **Court representation:** procure that, if requested by Target and reasonably considered necessary by Bidder, it is represented by counsel at the Court hearings convened in connection with the Scheme, at which, through its counsel and if requested by the Court, Bidder will undertake to do all such things and take all steps within its power as are necessary in order to ensure the fulfilment of its obligations under the Transaction Documents;
- (g) **Deed Poll:** at least 2 Business Days prior to the First Court Date, execute the Deed Poll; and
- (h) **Target Scheme Booklet Information:** at any time (even after the Target Scheme Booklet Information becomes publicly available) only use the Target Scheme Booklet Information with the prior written consent of Target (not to be unreasonably withheld).

### 5.3 Preparing of Scheme Booklet

- (a) **Target to prepare:** Subject to Bidder complying with its obligations under clause 5.3(d), Target must prepare the Scheme Booklet as soon as is reasonably practicable after the date of this agreement and otherwise substantially in accordance with the Timetable (but will provide drafts to and consult with the Bidder in accordance with clauses 5.1(d) and 5.3(e)).
- (b) **Compliance requirements:** Target must use its best endeavours to ensure that the Scheme Booklet complies with the requirements of the Corporations Act, the ASX Listing Rules and all ASIC Regulatory Guides applicable to members' schemes of arrangement under Part 5.1 of the Corporations Act, except that the obligation to do so in respect of the Bidder Scheme Booklet Information is subject to Bidder complying with its obligations under clauses 5.3(d) and 8.2(l).
- (c) **Content of Scheme Booklet:** Without limiting clause 5.3(b), the Scheme Booklet will include or be accompanied by the Scheme, the Deed Poll, the Independent Expert's Report, and the notice convening the Scheme Meeting.
- (d) **Bidder Scheme Booklet Information:** Bidder must provide the Bidder Scheme Booklet Information to Target as soon as is reasonably practicable after the date of this agreement and otherwise substantially in accordance with the Timetable, in a form that, together with the Target Scheme Booklet Information, includes in all material respects the information regarding the Bidder Group that is required by the Corporations Act, the ASX Listing Rules and all ASIC Regulatory Guides applicable to members' schemes of arrangement under Part 5.1 of the Corporations Act, including the information that would be required under sections 636(1)(c), (h), (i), (j), (k), (l) and (m) of the Corporations Act to be included in Bidder's statement if Bidder were offering the Scheme Consideration as consideration under a takeover bid, and must provide to Target such assistance as Target may reasonably request in order to adapt such information for inclusion in the Scheme Booklet.
- (e) **Review by Bidder:** Target must:
  - (i) make available in advance to Bidder a draft of the Scheme Booklet (excluding any draft of the Independent Expert's Report);
  - (ii) take the comments made by Bidder into account in good faith when producing a revised draft of the Scheme Booklet;
  - (iii) implement such changes to those parts of the Scheme Booklet relating to Bidder which are provided in accordance with this clause 5.2(e) as

reasonably requested by Bidder and prior to finalising the Regulator's Draft;  
and

- (iv) provide to Bidder a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable Bidder to review the Regulator's Draft for factual accuracy before its submission.
- (f) **Dispute as to Scheme Booklet:** If, after a reasonable period of consultation and compliance by Target with its obligations under clause 5.3(e), Bidder and Target, acting reasonably and in good faith, are unable to agree on the form or content of the Scheme Booklet, then, subject to applicable law:
  - (i) if the disagreement relates to the form or content of the Bidder Scheme Booklet Information (or any information solely derived from, or prepared solely in reliance on, the Bidder Scheme Booklet Information), Target will, acting in good faith, make such amendments to that information in the Scheme Booklet as Bidder may reasonably require; and
  - (ii) if the disagreement relates to the form or content of the Target Scheme Booklet Information, Target will, acting in good faith, decide the final form of that information in the Scheme Booklet.
- (g) **Consent of Bidder:** Without limiting clause 5.3(f), Target must obtain written consent from Bidder in relation to the form and context in which any Bidder Scheme Booklet Information (and any information solely derived from, or prepared solely in reliance on, the Bidder Scheme Booklet Information) is used, such consent not to be unreasonably withheld by Bidder.
- (h) **Verification:** Target must undertake appropriate verification processes in relation to the Target Scheme Booklet Information included in the Scheme Booklet, and Bidder must undertake appropriate verification processes in relation to the Bidder Scheme Booklet Information included in the Scheme Booklet.
- (i) **Regulatory Review Period:** during the Regulatory Review Period, Target must:
  - (i) promptly provide to Bidder, and include in a revised draft of the Scheme Booklet, any new information not included in the Regulator's Draft that is required by the Corporations Act, Corporations Regulations 2001 (Cth), ASIC Regulatory Guides 60 or 142 or the ASX Listing Rules to be included in the Scheme Booklet; and
  - (ii) keep Bidder informed of any matters raised by ASIC in relation to the Scheme Booklet and use its best endeavours, in co-operation with Bidder, to resolve any such matters.

#### 5.4 Mutual co-ordination

- (a) Target and Bidder must each use their best endeavours and utilise all necessary resources (including management, shareholder, marketing and corporate relations resources, as well as the resources of external advisers) to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable.
- (b) Each party must procure that its Representatives work (including by attending meetings and by providing information) in good faith and in a timely and co-operative fashion with the other parties to implement the Scheme and to prepare all documents required relating to the Scheme.

#### 5.5 Third party consents

- (a) Promptly following execution of this agreement, Bidder and Target must in good faith identify any material Target Group contract or arrangement for a which a consent or approval is required from a third party as a consequence of the implementation of the Scheme (**Third Party Consents**).



- (b) Without limiting any obligations of either party under this agreement in relation to obtaining the Regulatory Approvals, Target must use its best endeavours to ensure that Target and any other relevant Target Group members:
  - (i) apply to the relevant third parties for the consent or approval as soon as practicable after the date of this agreement;
  - (ii) obtain the consent or approval prior to the Effective Date; and
  - (iii) without limiting clause 5.5(b)(ii), procure that their Representatives work (including by attending meetings and by providing information) with Bidder and its Representatives in good faith and in a timely and co-operative fashion to obtain the Third Party Consents.
- (c) Target must use its reasonable endeavours to involve Bidder in meetings or discussions with third parties relating to the obtaining of the consent or approvals under clause 5.5(a), including by:
  - (i) keeping Bidder informed of relevant progress; and
  - (ii) promptly providing Bidder with copies of any written communications sent to or received from a third party in relation to the consent or approval.
- (d) For the avoidance of doubt, a failure to obtain a Third Party Consent will not of itself provide any party with a right to terminate this agreement in accordance with clause 13.

## 5.6 Appointment of officers

As soon as practicable after the Implementation Date, Target must use its best endeavours to procure:

- (a) the appointment of the persons nominated by Bidder to the Target Board; and
- (b) if and as requested by Bidder, the resignation of the directors on the Target Board (other than those nominated by Bidder).

## 6 Target Board recommendations

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Target represents and warrants as at the date of this agreement to Bidder, and otherwise undertakes, that it has been advised by each director of Target in office that he or she will:

- (a) recommend that Target Shareholders vote in favour of the Scheme in the absence of a Superior Proposal and subject to the Independent Expert expressing an opinion that the Scheme is in the best interests of Target Shareholders;
- (b) not subsequently change, withdraw or modify that recommendation before the date the Scheme is approved by Target Shareholders in the absence of a Superior Proposal and subject to the Independent Expert expressing an opinion that the Scheme is in the best interests of Target Shareholders;
- (c) include in Target's Announcement of the signing of this agreement, the Scheme Booklet and any material communications made to the public and the Target Shareholders about the Scheme, a statement to the effect of clause 6(a); and
- (d) not make any public statement or take any other action that contradicts the recommendation of the Scheme by the directors of Target to the effect of the statement in clause 6(a) in the absence of a Superior Proposal, subject to the Independent Expert expressing an opinion that the Scheme is in the best interests of Target Shareholders,

in each case, unless:

- (e) the Independent Expert opines that the Scheme is not in the best interests of Target Shareholders;
- (f) the directors of Target have unanimously:
  - (i) made a determination that Target has received a Superior Proposal; and
  - (ii) publicly recommended that the Superior Proposal is in the interests of the Target Shareholders; or
- (g) after diligently considering any relevant developments, the directors of Target unanimously make a determination in good faith that compliance or continued compliance with clauses 6(a) to 6(d) (inclusive) would involve a breach of Target directors' fiduciary or statutory duties.

## **7 Public announcements and confidentiality**

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### **7.1 Announcements with consent**

Subject to clauses 7.2 and 7.3, each party must not make any Announcements in connection with the Scheme without the prior written approval of the other party, with such approval not to be unreasonably withheld.

### **7.2 Announcements required by law of listing rules**

Subject to clause 7.3, where a party is required by applicable law, the ASX Listing Rules or any other applicable stock exchange regulation to make any announcement or to make any disclosure in connection with this agreement (including its termination) or the Scheme, it may do so only after it has given the other party as much notice as is reasonably practicable in the context of any deadlines imposed by law, the ASX Listing Rules or any other applicable stock exchange regulation, but in any event prior notice, and has consulted with the other party as to (and has given the other party a reasonable opportunity to comment on) the form and content of that announcement or disclosure and used its best endeavours to restrict that disclosure to the greatest extent possible. Nothing in this clause 7.2 requires the giving of prior notice or the taking of any action if doing so would lead to a party breaching an applicable law, the ASX Listing Rules or any other stock exchange regulation.

### **7.3 Disclosure on termination of this agreement**

The parties agree that, if this agreement is terminated under clause 13, either party may disclose by way of Announcement to the ASX the fact that this agreement has been terminated, where such disclosure is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed, and provided, where reasonably practicable, that party consults with the other party as to (and gives the other party a reasonable opportunity to comment on) the form and content of the Announcement prior to its disclosure.

### **7.4 Confidentiality Deed**

Except as set out in clause 7.3, the parties acknowledge and agree that:

- (a) they continue to be bound by the Confidentiality Deed after the date of this agreement; and
- (b) the rights and obligations of the parties under the Confidentiality Deed survive termination of this agreement.

### **7.5 Takeover bid**

In the event that:

- (a) there is any proposed or possible transaction or arrangement pursuant to which, if ultimately completed, a Third Party would directly or indirectly acquire an interest or Relevant Interest in or become the holder of more than 50% of Target Shares on issue, or all or substantially all of the business of Target; and
  - (b) Bidder terminates this agreement pursuant to clause 13,
- nothing in this agreement or the Confidentiality Deed precludes Bidder from:
- (c) making a takeover bid for Target at an offer price per Target Share which is at least equal to the Scheme Consideration; and
  - (d) disclosing any information which constitutes "Confidential Information" for the purposes of the Confidentiality Deed in a bidder's statement under the Corporations Act for this purpose and without complying with the procedure set out in clause 7, only to the extent reasonably required to comply with section 636(1) of the Corporations Act.

## 8 Representations and warranties

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### 8.1 Target representations and warranties

Target represents and warrants to Bidder that, except as consented to in writing by Bidder:

- (a) **incorporation:** it is a body corporate validly existing under the laws of its place of incorporation and each member of the Target Group is a corporation validly existing under the laws of its place of incorporation;
- (b) **power:** it has the corporate power to enter into and perform or cause to be performed its obligations under this agreement and to carry out the transactions contemplated by this agreement;
- (c) **corporate authorisations:** it has taken all necessary corporate action to authorise the entry into of this agreement and the Scheme and, subject to Target Shareholders approving the Scheme, has taken all necessary corporate action to authorise the performance of this agreement and the Scheme and to carry out the transactions contemplated by this agreement and the Scheme;
- (d) **binding obligations:** (subject to laws generally affecting creditors' rights and principles of equity) this agreement is valid and binding upon it;
- (e) **Target Scheme Booklet Information:** the Target Scheme Booklet Information provided in accordance with this agreement and included in the Scheme Booklet, as at the date of the Scheme Booklet, will comply in all material respects with the requirements of the Corporations Act, the ASX Listing Rules and all relevant regulatory guides, practice notes and other guidelines and requirements of ASIC;
- (f) **reliance:** the Target Scheme Booklet Information contained in the Scheme Booklet will be included in good faith and on the understanding that Bidder and its directors will rely on that information for the purposes of considering and approving the Bidder Scheme Booklet Information in the Scheme Booklet before it is despatched, approving the entry into the Bidder Deed Poll and implementing the Scheme;
- (g) **further information:** Target will, as a continuing obligation, provide to Bidder all such further or new information which may arise after the date of the Scheme Booklet until the date of the Scheme Meeting which may be necessary to ensure that there would be no breach of clause 8.1(e) if it applied as at the date upon which that information arose;
- (h) **continuous disclosure:** Target is not in breach of its continuous disclosure obligations under the ASX Listing Rules and is not relying on the carve-out in ASX Listing Rule 3.1A to withhold any information from disclosure;

- (i) **provision of information to Independent Expert:** all information provided by or on behalf of Target to the Independent Expert to enable the Independent Expert's report to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's report;
- (j) **compliance:** other than as Fairly Disclosed in the Target Disclosed Information, it and its Subsidiaries have complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over them and have all material licenses, permits and franchises necessary for them to conduct their respective businesses as presently being conducted;
- (k) **no litigation:** other than as Fairly Disclosed in the Target Disclosed Information and so far as Target is aware, neither it nor any of its Subsidiaries is a claimant or defendant in, or otherwise a party to, any material litigation, arbitration or mediation proceedings;
- (l) **costs:** the Transaction Costs do not exceed the amount Fairly Disclosed to the Bidder prior to the date of this agreement, and are not expected to exceed this amount following implementation of the Scheme;
- (m) **solvency:** no Insolvency Event has occurred in relation to any member of the Target Group;
- (n) **regulatory action:** except as contemplated in the Conditions Precedent, and other than as Fairly Disclosed in the Target Disclosed Information, no regulatory action of any nature has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this agreement;
- (o) **no default:** other than as Fairly Disclosed, this agreement does not conflict with or result in the breach of or default under any provision of Target's constitution, any material term or provision of any material agreement, or any writ, order or injunction, judgement, law, rule, regulation or instrument to which Target is party or subject or of which it or any member of the Target Group is bound;
- (p) **no Prescribed Occurrence:** no Prescribed Occurrence has occurred;
- (q) **not misleading:** all Target Disclosed Information and all information that is provided to Bidder in writing for the purposes of the preparation of the Scheme Booklet is complete, accurate and not misleading in any material respect and does not omit any material matters required to make the information provided to Bidder not misleading (when read as a whole); and
- (r) **issued securities as at date of this agreement:** the securities on issue in the capital of Target as at the date of this agreement are 273,005,429 Target Shares and the Target Group has not issued, or agreed to issue, any other securities or instruments which are still in force and may convert into Target Shares or any other securities in Target, other than pursuant to or consistently with arrangements between Target and the Managing Director of Target announced to ASX on 28 April 2014 and subject to approval by Target Shareholders at the annual general meeting of Target convened on 17 October 2014.

## 8.2 Bidder representations and warranties

Bidder represents and warrants to Target that, except as consented to in writing by Target:

- (a) **incorporation:** it is a body corporate validly existing under the laws of its place of incorporation and each member of the Bidder Group is a corporation validly existing under the laws of its place of incorporation;

- (b) **power:** it has the corporate power to enter into and perform or cause to be performed its obligations under this agreement and to carry out the transactions contemplated by this agreement;
- (c) **corporate authorisations:** it has taken all necessary corporate action to authorise the entry into of this agreement and the Scheme and has taken all necessary corporate action to authorise the performance of this agreement and the Scheme and to carry out the transactions contemplated by this agreement and the Scheme;
- (d) **binding obligations:** (subject to laws generally affecting creditors' rights and principles of equity) this agreement is valid and binding upon it;
- (e) **Bidder Scheme Booklet Information:** the Bidder Scheme Booklet Information provided in accordance with this agreement and included in the Scheme Booklet, as at the date of the Scheme Booklet, will comply in all material respects with the requirements of the Corporations Act, the ASX Listing Rules and all relevant regulatory guides, practice notes and other guidelines and requirements of ASIC;
- (f) **reliance:** the Bidder Scheme Booklet Information contained in the Scheme Booklet will be included in good faith and on the understanding that Target and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme;
- (g) **further information:** Bidder will, as a continuing obligation, provide to Target all such further or new information which may arise after the date of the Scheme Booklet until the date of the Scheme Meeting which may be necessary to ensure that there would be no breach of clause 8.2(e) if it applied as at the date upon which that information arose;
- (h) **compliance:** it and its Subsidiaries have complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over them and have all material licenses, permits and franchises necessary for them to conduct their respective businesses as presently being conducted;
- (i) **solvency:** no Insolvency Event has occurred in relation to any member of the Bidder Group;
- (j) **regulatory action:** except as contemplated in the Conditions Precedent, no regulatory action of any nature has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this agreement;
- (k) **no default:** other than as Fairly Disclosed, this agreement does not conflict with or result in the breach of or default under any provision of Bidder's constitution, any material term or provision of any material agreement, or any writ, order or injunction, judgement, law, rule, regulation or instrument to which Bidder is party or subject or of which it or any member of the Bidder Group is bound;
- (l) **not misleading:** all Bidder Scheme Booklet Information is complete, accurate and not misleading in any material respect and does not omit any material matters required to make the information provided to Target not misleading (when read as a whole);
- (m) **keep Target informed:** on the First Court Date and the Second Court Date, Bidder has complied in all material respects with its obligations under clause 5.2(e);
- (n) **cash at Second Court Date:** at 8.00am on the Second Court Date, Bidder will have sufficient cash on its balance sheet, or financial commitments available to it on an unconditional basis (other than conditions relating to the approval of the Court and related procedural matters or documentary requirements which, by their terms or nature, can only be satisfied or performed after the Second Court Date), to ensure that the Scheme Consideration is paid in accordance with the terms of the

Transaction Documents on the Business Day prior to the Implementation Date (as applicable);

- (o) **cash at Implementation Date:** on the day that is 1 Business Day prior to the Implementation Date, Bidder will have available to it sufficient cash amounts (including debt facilities) to ensure that the Scheme Consideration is paid in accordance with the terms of the Transaction Documents (as applicable); and
- (p) **shareholder approval:** no shareholder approval of Bidder is required to complete the Scheme.

### 8.3 Timing

Each representation and warranty made or given under clauses 8.1 and 8.2 is given:

- (a) at the date of the agreement and at 8.00am on the Second Court Date; or
- (b) where expressed, at the time at which the representation or warranty is expressed to be given.

### 8.4 Reliance by parties

Each party (**Representor**) acknowledges that:

- (a) in entering into this agreement the other party has relied on the representations and warranties provided by the Representor under this clause 8;
- (b) any breach of the representations and warranties provided by the Representor under this clause 8 after the Scheme becomes Effective cannot result in a termination of this agreement;
- (c) it has not entered into this agreement in reliance on any warranty or representation made by or on behalf of the other party except those warranties and representations set out in this agreement. This acknowledgment does not prejudice the rights any party may have in relation to the Target Scheme Booklet Information, the Bidder Scheme Booklet Information, or any information filed by the other party with the ASX or ASIC; and
- (d) neither Bidder nor Target, nor their respective Representatives, nor any other person acting on behalf of or associated with them, has made any representation, given any advice or given any warranty or undertaking, promise or forecast of any kind in relation to the business of either the Bidder Group or the Target Group, including in relation to future matters, including future or forecast costs, prices, revenues or profits.

### 8.5 Notifications

Each party will promptly advise the other party in writing if it becomes aware of any fact, matter or circumstance that constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 8.

### 8.6 Status of representations and warranties

Each representation and warranty in this clause 8:

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

## 9 Conduct of business

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### 9.1 Overview

From the date of this agreement up to and including the Implementation Date, Target must use its best endeavours to conduct its business in the ordinary and proper course and in substantially the same manner as previously conducted.

### 9.2 Specific obligations

Without limiting clause 9.1 and other than:

- (a) with the prior approval of Bidder (which approval must not be unreasonably withheld or delayed);
- (b) as required by this agreement; or
- (c) as Fairly Disclosed by Target in the Target Disclosed Information,

Target must, during the period contemplated by clause 9.1, use its best endeavours to:

- (d) maintain the condition of its business and assets, including maintaining at least its current level of insurances;
- (e) manage the working capital of the Bidder Group in the ordinary course and consistent with past practice;
- (f) keep available the services of its current officers and employees; and
- (g) preserve its relationships with customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings.

### 9.3 Prohibited actions

Other than:

- (a) with the prior approval of Bidder (which approval must not be unreasonably withheld or delayed);
- (b) as required by this agreement; or
- (c) as Fairly Disclosed by Target in the Target Disclosed Information,

Target must not, during the period contemplated by clause 9.1:

- (d) either:
  - (i) enter into a new employment contract with a potential employee of the Target Group (other than to replace an employee who has ceased to be an employee of the Target Group); or
  - (ii) enter into a new employment contract or amend (other than as part of any annual salary review conducted in the ordinary course) an existing employment contract with an existing employee of the Target Group,

in respect of which the total employment costs payable to that existing or potential employee is in excess of \$250,000 per annum;
- (e) settle any legal proceedings, claim, investigation, arbitration or other like proceeding where the settlement amount payable by one or more Target Group Members exceeds \$1 million and, for the avoidance of doubt, is not covered by insurance;



- (f) except for draw-downs on existing facilities, increase any facility limit or enter into any new debt facility or financial accommodation; or
- (g) agree to do any of the matters set out above.

## **10 Exclusivity**

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### **10.1 No existing discussions**

Target represents and warrants that, other than the discussions with Bidder in respect of the Scheme, it is not in negotiations or discussions in respect of any Competing Proposal with any person as at the date of this agreement.

### **10.2 No-shop restriction**

During the Exclusivity Period, Target must ensure that neither it nor any of its Representatives directly or indirectly solicits, invites, encourages or initiates any enquiries, negotiations or discussions with a view to obtaining any expression of interest, offer or proposal from a Third Party in relation to a Competing Proposal.

### **10.3 No-talk restriction**

During the Exclusivity Period, Target must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) responds to any enquiries or proposals; or
- (b) participates in negotiations or discussions,

with any Third Party in relation to a Competing Proposal (even if that person's Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Target or any of its Representatives or the person has publicly announced the Competing Proposal) unless the Target Board determines, acting in good faith and having received written legal and financial advice from Target's legal and financial advisers, that such enquiry or proposal constitutes a Superior Proposal or could reasonably be expected to result in a Superior Proposal being made having regard to steps that Target proposes to take and other relevant circumstances, and that failing to respond to such Competing Proposal would reasonably likely constitute a breach of the Target Board's fiduciary or statutory duties.

### **10.4 Notice of unsolicited approach**

During the Exclusivity Period, Target must promptly inform Bidder if it or any of its Representatives:

- (a) receives any approach with respect to any Competing Proposal, in which case Target must disclose to Bidder:
  - (i) the identity of the proposed bidder or acquirer;
  - (ii) the proposed price or implied value (including form of consideration); and
  - (iii) any material conditions or terms;
- (b) receives any request for information relating to Target or any of its Related Bodies Corporate or any of their businesses or operations or any request for access to the books or records of Target or any of its Related Bodies Corporate, which Target has reasonable grounds to suspect may relate to a current or future Competing Proposal; and
- (c) provides any information relating to Target or any of its Related Bodies Corporate or any of their businesses or operations to any person in connection with or for the purposes of a current or future Competing Proposal.



## 10.5 Bidder's right of last offer

- (a) Without limitation to any other part of this agreement, Target must:
  - (i) not enter into a binding implementation agreement which relates to a Competing Proposal (or any other agreement in relation to a Competing Proposal which provides for the payment of a break fee (or similar payment) to a Third Party) and
  - (ii) ensure that each member of the Target Board does not change its recommendation or voting intention in relation to the Scheme as a consequence of receiving a Competing Proposal,
 unless:
  - (iii) Target has complied with its obligations under this clause 10.5;
  - (iv) Target has determined that the Competing Proposal would be a Superior Proposal and has notified Bidder of this determination; and
  - (v) Target has provided Bidder with 3 clear Business Days to submit a written proposal to revise the Scheme. If Bidder submits a written proposal to revise the Scheme in this period (**Revised Proposal**), Target must ensure that the Target Board considers in good faith, and receives advice from Target's external legal and financial advisers in relation to, whether the proposed revisions would make the Scheme at least as favourable to Target Shareholders as the Competing Proposal. If it would, the parties must each use reasonable endeavours to, as soon as practicable, agree the necessary amendments to this agreement, and take all other necessary steps, to give effect to the change to the Scheme subject to any Superior Proposal.
- (b) For the avoidance of doubt:
  - (i) Bidder's right to submit a Revised Proposal will continue to apply until Target enters into a binding implementation agreement in relation to a Competing Proposal in accordance with clause 10.5(a); and
  - (ii) each successive modification of any offer or proposal for a Competing Proposal will constitute a new offer or proposal for a Competing Proposal for the purposes of the requirement under clause 10.4 and will initiate an additional 3 Business Day period under clause 10.5(a)(v).

## 10.6 No due diligence

During the Exclusivity Period, Target and its Representatives must not provide any assistance to any Third Party to enable that Third Party to conduct due diligence on Target, unless:

- (a) Target has first received an enquiry or proposal as contemplated in clause 10.3 which the Target Board determines, acting in good faith, is bona fide; and
- (b) the Target Board determines, acting in good faith and having received written legal and financial advice from Target's legal and financial advisers, that failing to provide such assistance would be likely to involve a breach of the fiduciary or statutory duties owed by a member of the Target Board.

## 10.7 Exceptions

Nothing in this clause 10 prevents Target or any of its Representatives from:

- (a) providing information to its Representatives;
- (b) providing information to any Governmental Agency or a Court;

- (c) providing information to its auditors, advisers, financiers, insurers, customers, joint venturers and suppliers acting in that capacity in the ordinary and usual course of business;
- (d) providing information required to be provided by law or any Governmental Agency (including to satisfy its obligations of disclosure in accordance with the ASX Listing Rules); or
- (e) making presentations to Third Parties approved by Bidder in writing (such consent not to be unreasonably withheld), shareholders, brokers, portfolio investors and analysts, in each case in the ordinary course of business in relation to the Scheme or its business generally.

## 11 Liability of directors and officers

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### 11.1 Liability of directors and employees

To the maximum extent permitted by law, each party to this agreement (**Receiving Party**) releases all rights against, and agrees that it will not make any claim against, any past or present director, officer or employee of the other party in relation to information provided to the Receiving Party in relation to the transactions contemplated by this agreement, provided that such director or employee has acted in good faith and has not engaged in wilful misconduct.

### 11.2 Directors' and officers' insurance

Bidder and Target each acknowledge and agree that Target will:

- (a) arrange for the cover provided under the Policy to continue in effect until the End Date;
- (b) subject to clause 11.2(c), by no later than the Implementation Date, arrange for the cover provided under the Policy to be amended so as to provide run off cover on no more favourable terms than the terms of the Policy for a 7 year period from the Implementation Date, and pay all premiums required so as to ensure that insurance cover is provided under the Policy on those terms until that date; and
- (c) inform Bidder of the proposed premium cost for arranging run-off cover under the Policy prior to taking out the run-off cover.

### 11.3 Obligations in relation to Policy

From the Implementation Date, Bidder must procure that Target does not:

- (a) vary or cancel the Policy; or
- (b) except to the extent required under the Policy, commit any act or omission that may prejudice any claim under the Policy as amended pursuant to clause 11.2(b) by a present or former director or officer of the Target Group in respect of whom the Policy applies.

### 11.4 Directors' and officers' indemnities

To the maximum extent permitted by law and without limiting any other term of this agreement, from the Effective Date, Bidder undertakes that it will use all reasonable endeavours to not do or do anything that would prejudice the rights or interests of a director or officer of a Target Group entity (**Indemnified Person**) under a deed of indemnity access and insurance made by a Target Group member in favour of an Indemnified Person in effect on the date of this agreement and to the extent that a Target Group entity which is party to such deed of indemnity access and insurance ceases to exist after the Implementation Date, each Indemnified Person has the benefit of an indemnity from Bidder on terms no less favourable than those contained in the deed of access indemnity and insurance as at the Effective Date.

## 11.5 **Benefit held on trust**

The parties acknowledge and agree that Bidder and Target hold the benefit of this clause 11 to the extent it relates to each director and officer of the Target Group on trust for them, and as such each such director or officer of a Target Group entity may enforce this clause 11 against Bidder and Target.

## 12 **Break fees**

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### 12.1 **Background**

- (a) The parties acknowledge that:
  - (i) the Scheme will provide benefits to Target, Target Shareholders and Bidder, and acknowledge that Bidder and Target will each incur significant costs in connection with performing their respective obligations under this agreement and the Scheme;
  - (ii) each has received legal advice on this agreement and the operation of this clause 12; and
  - (iii) each considers this clause 12 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 12.
- (b) In the circumstances referred to in clause 12.1(a):
  - (i) Bidder has requested that provision be made for the Target Break Fee, without which it would not have entered into this agreement and Target believes that it is appropriate to agree to the Target Break Fee in order to secure Bidder's participation in the Scheme; and
  - (ii) Target has requested that provision be made for the Bidder Break Fee, without which it would not have entered into this agreement and Bidder believes that it is appropriate to agree to the Bidder Break Fee in order to secure Target's participation in the Scheme.
- (c) The parties acknowledge that the amount they each agree to pay under this clause 12 is an amount which is appropriate to compensate the other for its reasonable external and internal costs and opportunity costs in connection with the Scheme, including:
  - (i) fees for legal and financial advice in planning and pursuing the Scheme;
  - (ii) reasonable opportunity costs incurred in engaging in the Scheme and in not engaging in other alternative acquisitions or strategic initiatives;
  - (iii) costs of management and directors' time in planning and pursuing the Scheme;
  - (iv) out-of-pocket expenses incurred in planning and pursuing the Scheme; and
  - (v) costs associated with the financing arrangements in respect of the Scheme.

### 12.2 **Target Break Fee**

- (a) Target must pay Bidder the Target Break Fee, without withholding or set off, if:
  - (i) Target is in material breach of this agreement (including a material breach of a representation or warranty made by Target under clause 8.1) and Bidder terminates this agreement in accordance with clause 13.1(b);
  - (ii) any member of the Target Board adversely changes, withdraws or modifies his or her recommendation of the Scheme and Bidder validly terminates this

agreement in accordance with clause 13.1(d), except where the Independent Expert concludes (whether in its original or any subsequent opinion) that the Scheme is not in the best interests of Target Shareholders other than because of the existence of a Superior Proposal;

- (iii) any member of the Target Board recommends, promotes or otherwise endorses to Target Shareholders a Competing Proposal and Bidder validly terminates this agreement in accordance with clause 13.1(d), except where the Independent Expert concludes (whether in its original or any subsequent opinion) that the Scheme is not in the best interests of Target Shareholders other than because of the existence of a Superior Proposal; or
- (iv) Bidder validly terminates this agreement under clause 13.1(a) as a consequence of the Condition Precedent in clause 3.1(i) (No Prescribed Occurrence) not being satisfied or waived, except where the Independent Expert concludes (whether in its original or any subsequent opinion) that the Scheme is not in the best interests of Target Shareholders other than because of the existence of a Superior Proposal,

provided that no amount will be payable under this clause 12.2 if the Scheme is implemented with Bidder.

- (b) Target must pay Bidder the Target Break Fee within 20 Business Days after receipt by Target from Bidder of a demand for payment.

#### 12.3 Bidder Break Fee

- (a) Bidder must pay Target the Bidder Break Fee, without withholding or set off, if Bidder is in material breach of this agreement (including a material breach of a representation or warranty made by Bidder under clause 8.2) and Target terminates this agreement in accordance with clause 13.1(b), provided that no amount will be payable under this clause 12.3 if the Scheme is implemented with Target.
- (b) Bidder must pay Target the Bidder Break Fee within 20 Business Days after receipt by Bidder from Target of a demand for payment.

#### 12.4 Exclusive remedy

Notwithstanding any other provision of this agreement, each party agrees that if an amount is paid by the other as required under this clause 12 in respect of an act or event referred to therein, that payment constitutes its sole and exclusive remedy for any liability arising under or in connection with this agreement in respect of that act or event except in relation to wilful misconduct or wilful default by a party, in which circumstances the other party will retain all rights and remedies it has or may have against the other in connection with this agreement in respect of that act or event in excess of any payment made under this clause 12.

#### 12.5 Compliance with law

- (a) A payment under this clause 12 is not required to be made or, if already made, is refundable, to the extent that making such payment is declared by the Takeovers Panel to constitute "unacceptable circumstances" or determined by a court to be unlawful or a breach of fiduciary or statutory duties of the party making the payment, and all reasonable avenues of appeal of such determination have been exhausted, provided that Target has complied with its other obligations under this clause 12, including clause 12.5(b).
- (b) The parties must not make or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a determination referred to in clause 12.5(a).

## 13 Termination

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### 13.1 Termination by either party

Either party (**terminating party**) may terminate this agreement by notice:

- (a) in accordance with clause 3.6;
- (b) by either party, at any time before 8.00am on the Second Court Date if the other party is in material breach of any clause of this agreement (including a material breach of a representation or warranty given by the other party under clause 8), provided that:
  - (i) the terminating party has given notice to the other party setting out the relevant circumstances and stating an intention to terminate this agreement; and
  - (ii) the relevant circumstances have continued to exist for 10 Business Days (or any shorter period ending at 5.00pm on the last Business Day before the Second Court Date) from the time such notice is given;
- (c) by either party, if such termination is mutually agreed upon by the other party;
- (d) by either party, if the Target Board adversely changes, withdraws or modifies its recommendation of the Scheme (including by attaching qualifications to) or withdraws its statement that it considers the Scheme to be in the best interests of Target Shareholders or its recommendation that Target Shareholders approve the Scheme, in either case in accordance with clause 6, or if the Target Board publicly recommends, promotes or otherwise endorses a Superior Proposal; or
- (e) by either party, if the Scheme has not become Effective by the End Date.

### 13.2 Notice of breach

Each party must give notice to the other as soon as practicable after it becomes aware of a breach by it of this agreement (including in respect of any representation or warranty).

### 13.3 Termination right

Any right to terminate this agreement ceases at the earlier of:

- (a) the moment when the Scheme becomes Effective; and
- (b) where expressed, the deadline specified in the relevant termination right set out in this clause 13.

### 13.4 Effect of termination

In the event of termination of this agreement by either Bidder or Target pursuant to clause 13.1, this agreement will have no further force or effect and the parties will have no further obligations under this agreement, provided that:

- (a) this clause 13 and clauses 1, 7.3, 7.4, 12, 14 and 15 will survive termination; and
- (b) each party will retain any accrued rights and remedies, including any rights and remedies it has or may have against the other party in respect of any past breach of this agreement.

## 14 GST

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This clause applies if a party to this agreement is, or becomes, liable to pay GST regarding any Taxable Supply of goods, services or anything else under this agreement.

#### 14.1 Definitions

Capitalised expressions which are not defined in this agreement but which have a defined meaning in the GST Act have the same meaning in this clause 14.

#### 14.2 GST payable in addition to consideration

If any consideration is paid or payable or liable to be provided by a party under this agreement for any Taxable Supply by the other party (**Supplier**) under this agreement, then the Recipient of the Taxable Supply must pay, in addition to the consideration, to the Supplier the GST payable on the Taxable Supply.

#### 14.3 Tax Invoice

Within 5 Business Days of a Taxable Supply being made under this agreement, the Supplier must provide to the Recipient a Tax Invoice or other documentation that complies with the requirements for a valid Tax Invoice under the GST Act.

#### 14.4 Payment of GST

Subject to the Supplier issuing a Tax Invoice to the Recipient as required under clause 14.3, the Recipient must pay the GST on the Taxable Supply under this agreement to the Supplier at the same time as the Recipient pays the consideration for the Taxable Supply to the Supplier.

#### 14.5 Reimbursement or indemnity

Despite any other provision of this agreement, if the whole or part of any consideration under this agreement is a reimbursement or an indemnity to one party of an expense, loss, outgoing or liability incurred or to be incurred by the other party, the consideration excludes any GST included in such expense, loss, outgoing or liability incurred or to be incurred for which the other party can claim an Input Tax Credit. The other party will be assumed to be entitled to a full Input Tax Credit unless it can establish otherwise.

#### 14.6 Adjustment Events

If an Adjustment Event occurs regarding a Taxable Supply under this agreement, the Supplier must issue to the Recipient an Adjustment Note regarding the Adjustment Event within 5 Business Days of the Supplier becoming aware of the Adjustment Event.

#### 14.7 Additional amount

If the Adjustment Note gives effect to an Increasing Adjustment, the Recipient must pay to the Supplier the GST component of the Increasing Adjustment not later than the 14<sup>th</sup> Business Day of the month following the month in which the Adjustment Note is issued to the Recipient.

#### 14.8 Credit or refund

If the Adjustment Note gives effect to a Decreasing Adjustment, the Supplier must pay to the Recipient the GST component of the Decreasing Adjustment not later than the 14<sup>th</sup> Business Day of the month following the month in which the Adjustment Note is issued to the Recipient.

### 15 General

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#### 15.1 Notices

- (a) In this agreement, a **Notice** means:
  - (i) a notice; or
  - (ii) a consent, approval or other communication required to be in writing,

under this agreement.

- (b) A Notice must be in writing and signed by or on behalf of the sender addressed to the recipient and:
  - (i) delivered by personal service;
  - (ii) sent by pre-paid mail; or
  - (iii) transmitted by facsimile,
 to the recipient's address set out in this agreement.
- (c) A Notice given to a person in accordance with this clause 15.1 is treated as having been given and received:
  - (i) if delivered in person, on the day of delivery if delivered before 5pm on a Business Day, otherwise on the next Business Day;
  - (ii) if sent by pre-paid mail within Australia, on the third Business Day after posting;
  - (iii) if sent by pre-paid airmail to an address outside Australia or from outside Australia, on the 5<sup>th</sup> Business Day (at the address to which it is posted) after posting; and
  - (iv) if transmitted by facsimile and a correct and complete transmission report is received on the day of transmission, on that day if the report states that transmission was completed before 5pm on a Business Day, otherwise on the next Business Day.
- (d) A party may change its address for service by giving Notice of that change to each other party.
- (e) The provisions of this clause 15.1 are in addition to any other mode of service permitted by law.

## 15.2 Bidder's address

Bidder's address for service, facsimile number and electronic mail address are:

Attention: Spiro Paule  
 Address: Level 23, 600 Bourke Street, Melbourne, Victoria 3000  
 Facsimile no: +61 3 9292 0102  
 Email address: spiro.paule@findex.com.au

## 15.3 Target's address

Target's address for service, facsimile number and electronic mail address are:

Attention: Bruce Paterson  
 Address: Level 17, 181 William Street, Melbourne, Victoria 3000  
 Facsimile no: +61 3 9522 0899  
 Email address: bruce.paterson@crowehorwath.com.au

**15.4 Partial exercising of rights**

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

**15.5 Approvals and consents**

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

**15.6 Construction**

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

**15.7 Stamp duty**

Bidder must pay all stamp duty (including any penalties) payable or assessed in connection with this agreement and any document required by or contemplated under this agreement.

**15.8 Legal costs**

Except as expressly stated otherwise in this agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this agreement.

**15.9 Governing law and jurisdiction**

- (a) This agreement is governed by and is to be construed in accordance with the laws applicable in Victoria, Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts 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.

**15.10 Severability**

- (a) Subject to clause 15.10(b), if a provision of this agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this agreement.
- (b) Clause 15.10(a) does not apply if severing the provision:
  - (i) materially alters the:
    - (A) scope and nature of this agreement; or
    - (B) the relative commercial or financial positions of the parties; or
  - (ii) would be contrary to public policy.

**15.11 Further steps**

Each party must promptly do whatever any other party reasonably requires of it to give effect to this agreement and to perform its obligations under it.

**15.12 Rights cumulative**

Except as expressly stated otherwise in this agreement, the rights of a party under this agreement are cumulative and are in addition to any other rights of that party.



**15.13 Waiver and exercise of rights**

- (a) A single or partial exercise or waiver by a party of a right relating to this agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- (c) A provision of this agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound. Where a party has a right under this agreement, that party may waive that right in its absolute discretion and may attach conditions to any such waiver at it sees fit.

**15.14 Survival**

The rights and obligations of the parties do not merge on completion of any transaction under this agreement.

**15.15 Amendment**

This agreement may only be varied or replaced by an agreement executed by the parties.

**15.16 Assignment**

- (a) Except as provided in clause 15.16(b), a party must not assign, novate or otherwise transfer its rights or obligations in this agreement without the prior written consent of the other parties.
- (b) Notwithstanding any other provision of this agreement, Bidder's rights under this agreement may be encumbered by way of security (whether by charge, mortgage or otherwise) for the benefit of each financial institution or group of financial institutions, bank or other provider of finance, including any agent or trustee acting on behalf of any of the foregoing, with which Bidder or any of its respective Related Bodies Corporate, incurs financial indebtedness from time to time, and any such security may be enforced or released.
- (c) Any purported dealing in breach of this clause 15.16 is of no effect.

**15.17 No representation or reliance**

Each party acknowledges that:

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

**15.18 Counterparts**

This agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one agreement. Satisfactory evidence of execution of this agreement will include evidence by facsimile of execution by the relevant party and in such case the executing party undertakes to provide the other party with an original of the executing party's counterpart as soon as reasonably practicable after execution.

**15.19 Entire understanding**

This agreement contains the entire understanding between the parties as to the subject matter of this agreement.

## Schedule 1

### Timetable

The following timetable is indicative only.

Event	Date
Lodge Scheme Booklet with ASIC and the ASX	27 October 2014
First Court Date	11 November 2014
Printing and despatch of Scheme Booklet	13 November 2014
Scheme Meeting held	16 December 2014
Second Court Date	18 December 2014
Lodge Court order with ASIC (Effective Date)	18 December 2014
Implementation Date	6 January 2015

**Executed as an agreement**

**Executed by Findex Australia Pty Ltd** ABN 40 128 588 714 in accordance with section 127 of the *Corporations Act 2001* (Cth):



\_\_\_\_\_  
\*Director/\*Company Secretary

Spiro Paule

\_\_\_\_\_  
Name of \*Director/\*Company Secretary  
(BLOCK LETTERS)  
\*please delete as appropriate



\_\_\_\_\_  
Director

Tony Roussos

\_\_\_\_\_  
Name of Director  
(BLOCK LETTERS)

**Executed by Crowe Horwath Australasia Ltd**  
ABN 93 006 650 693 in accordance with  
section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
\*Director/\*Company Secretary

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of \*Director/\*Company Secretary  
(BLOCK LETTERS)  
\*please delete as appropriate

\_\_\_\_\_  
Name of Director  
(BLOCK LETTERS)

**Executed** as an agreement

**Executed by Findex Australia Pty Ltd** ABN 40 128 588 714 in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
\*Director/\*Company Secretary

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of \*Director/\*Company Secretary  
(BLOCK LETTERS)  
\*please delete as appropriate

\_\_\_\_\_  
Name of Director  
(BLOCK LETTERS)

**Executed by Crowe Horwath Australasia Ltd**  
ABN 93 006 650 693 in accordance with  
section 127 of the *Corporations Act 2001* (Cth):





\_\_\_\_\_  
\*Director/\*Company Secretary

\_\_\_\_\_  
Director

Bruce Paterson

Christopher Price

\_\_\_\_\_  
Name of \*Director/\*Company Secretary  
(BLOCK LETTERS)  
\*please delete as appropriate

\_\_\_\_\_  
Name of Director  
(BLOCK LETTERS)

**Annexure A**  
**Scheme of Arrangement**

See over the page.

## Scheme of Arrangement

between

**Crowe Horwath Australasia Ltd**  
ABN 93 006 650 693  
(Target)

and

### Scheme Participants

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**This scheme** is made on

2014

between **Crowe Horwath Australasia Ltd** ABN 93 006 650 693 of Level 17, 181 William Street, Melbourne, Victoria 3000 (**Target**)

and **Scheme Participants**

## Recitals

- A Target:
- (i) is a public company limited by shares and incorporated in Victoria;
  - (ii) is admitted to the official list of ASX and each Target Share is quoted on the ASX; and
  - (iii) has [273,005,429] Target Shares on issue.
- B Bidder is a proprietary company limited by shares and incorporated in Victoria.
- C Bidder and Target have entered into the SIA, pursuant to which, amongst other things, Target has agreed to propose this Scheme to Target Shareholders and each of Target and Bidder have agreed to take certain steps to implement this Scheme.
- D If this Scheme becomes Effective, then in accordance with this Scheme and the Deed Poll:
- (i) all the Scheme Shares will be transferred to Bidder and Target will enter the name and address of Bidder in the Target Register as the holder of the Scheme Shares; and
  - (ii) Bidder and Target will provide, or procure the provision of, the Scheme Consideration to Scheme Participants.
- E Bidder has entered into the Deed Poll for the purpose of covenanting in favour of each Scheme Participant that it will observe and perform the obligations contemplated of it under this Scheme.

## 1 Definitions and interpretation

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### 1.1 Definitions

In this Scheme:

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

**ASX** means ASX Limited ACN 008 624 691 or as the context requires the securities exchange which it operates;

**Bidder** means Findex Australia Pty Ltd ABN 40 128 588 714;

**Business Day** means a day on which the banks are open for business in both Sydney and Melbourne other than a Saturday, Sunday or public holiday in either Sydney or Melbourne;

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

**Court** means the Supreme Court of Victoria or such other court of competent jurisdiction as agreed in writing between the parties;

**Deed Poll** means a deed poll executed by Bidder in favour of the Scheme Participants, in the form set out in Annexure A of this Scheme;

**Discretionary Special Dividend** means any dividend per Target Share which may be declared at Target's discretion prior to the Second Court Date in favour of Target Shareholders provided that:

- (a) the dividend is paid out of Target's retained earnings as at 30 June 2014; and
- (b) any franking of the dividend does not result in a franking deficit in Target's franking accounts;

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

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

**Encumbrance** means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, claim, covenant, profit à prendre, easement or any other security arrangement having the same effect;

**End Date** means the date that is 6 months after the date of the SIA or such later date as Bidder and Target may agree in writing;

**Implementation Date** means the date that is 5 Business Days after the Record Date, or such other date as Target and Bidder may agree in writing or as may be required by the ASX;

**Recitals** means the recitals in this Scheme;

**Record Date** means 5.00pm on the date that is 5 Business Days after the Effective Date, or such other date as may be agreed in writing between Bidder and Target or as may be required by the ASX;

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Participants as set out in this document, subject to any alterations or conditions:

- (a) agreed to by Bidder and Target prior to the First Court Date; or
- (b) made or required by the Court and agreed to by Bidder and Target;

**Scheme Consideration** means \$0.50 for each Scheme Share held by a Scheme Participant at the Record Date, less the amount of any Discretionary Special Dividends, payable by Bidder to Scheme Participants in consideration for the transfer to Bidder of their Scheme Shares in accordance with the Transaction Documents;

**Scheme Meeting** means the meeting of Target Shareholders to be ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act in relation to this Scheme, and includes any adjournment of that meeting;

**Scheme Participant** means a person who is registered in the Target Register as a holder of Scheme Shares as at the Record Date;

**Scheme Share** means each Target Share on issue as at the Record Date;

**Scheme Transfer** means, in relation to each Scheme Participant, a proper instrument of transfer of their Scheme Shares for the purpose of section 1071B of the Corporations Act, which may be a master transfer of all or part of all of the Scheme Shares;

**Second Court Date** means the first day of hearing of an application made to the Court by Target for orders pursuant to section 411(4)(b) of the Corporations Act approving this Scheme or, if the hearing of such application is adjourned or if the application is subject to appeal for any reason, means the first day of the adjourned hearing or the first day on which the appeal is heard (as the case may be);

**SIA** means the Scheme Implementation Agreement between Bidder and Target dated 3 October 2014;

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

**Target Group** means Target and its Subsidiaries;

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

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

**Target Share Registry** means Computershare Investor Services Pty Limited ACN 078 279 277 or the share registry of Target from time to time;

**Target Shareholder** means a person who is registered in the Target Register as a holder of Target Shares from time to time; and

**Transaction Documents** means:

- (a) the SIA;
- (b) this Scheme; and
- (c) the Deed Poll.

## 1.2 Interpretation

In this Scheme, unless the context otherwise requires:

- (a) a reference to:
  - (i) one gender includes the others;
  - (ii) the singular includes the plural and the plural includes the singular;
  - (iii) a Recital, clause or annexure is a reference to a clause of or Recital or annexure to this Scheme and references to this Scheme include any Recital or annexure;
  - (iv) any contract (including this Scheme) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
  - (v) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (vi) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
  - (vii) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
  - (viii) a group of persons is a reference to any 2 or more of them taken together and to each of them individually;
  - (ix) an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;
  - (x) a reference to a day or a month means a calendar day or calendar month; and

- (xi) money (including '\$', 'AUD' or 'dollars') is to Australian currency;
- (b) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
- (c) headings and the table of contents are for convenience only and do not form part of this Scheme or affect its interpretation;
- (d) if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day;
- (e) a provision of this Scheme must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Scheme or the inclusion of the provision in this Scheme; and
- (f) the Recitals form part of this Scheme and shall have effect as if set out in full in the body of this Scheme and accordingly any reference to this Scheme includes the Recitals.

### **1.3 Bidder obligations**

This Scheme attributes actions to Bidder, but does not itself directly impose an obligation on it to perform those actions as Bidder is not a party to this Scheme. Bidder has agreed, by executing the Deed Poll, to perform the actions attributed to it under this Scheme.

## **2 Conditions precedent**

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### **2.1 Conditions precedent**

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

- (a) as at 8:00am on the Second Court Date each of the conditions precedent set out in clause 3.1 of the SIA (other than the condition precedent relating to the approval of the Court set out in clause 3.1(e) of the SIA) has been satisfied or waived in accordance with the SIA;
- (b) as at 8:00am on the Second Court Date, the SIA has not been terminated;
- (c) as at 8:00am on the Second Court Date, the Deed Poll has not been terminated;
- (d) the Court makes orders approving this Scheme under section 411(4)(b) of the Corporations Act, including with such alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to Bidder and Target;
- (e) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme as are acceptable to Bidder and Target have been satisfied; and
- (f) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving this Scheme come into effect, pursuant to section 411(10) of the Corporations Act.

### **2.2 Certificate in relation to conditions**

Each of Target and Bidder will provide the Court at the hearing on the Second Court Date a certificate confirming whether all conditions in clause 2.1 of this Scheme (other than in relation to the conditions in clauses 2.1(d), 2.1(e) and 2.1(f) of this Scheme) have been satisfied or, as applicable, waived as at 8:00am on the Second Court Date.

### **2.3 Certificate constitutes conclusive evidence**

The giving of a certificate by each of Target and Bidder in accordance with clause 2.2 will be conclusive evidence for the purpose only of assessing whether the conditions precedent referred to in that certificate have been satisfied or waived as at 8:00am on the Second Court Date.

### **2.4 Termination**

If the SIA is terminated before the Implementation Date or this Scheme does not become Effective on or before the End Date:

- (a) this Scheme will lapse and be of no further force or effect; and
- (b) each of Target and Bidder are released from:
  - (i) any further obligation to take steps to implement this Scheme; and
  - (ii) any liability with respect to this Scheme.

## **3 Scheme becoming Effective**

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### **3.1 Effective Date of Scheme**

Subject to clause 2.4, this Scheme will take effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

### **3.2 Lodgement of Court order**

Subject to the satisfaction of all conditions in clause 2.1 (other than the condition in clause 2.1(f)), following the approval of this 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 no later than 5:00pm on the Business Day following that approval or such later time as may be agreed between Target and Bidder, lodge with ASIC under section 411(10) of the Corporations Act office copies of the Court orders under section 411(4)(b) of the Corporations Act approving this Scheme.

## **4 Implementation of Scheme**

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### **4.1 Pre-Implementation**

At least 1 Business Day before the Implementation Date, Bidder must pay into an Australian dollar denominated trust account nominated by Target an amount in cleared funds equal to the Scheme Consideration multiplied by the number of Scheme Shares. Those funds will be held on trust by Target for the Scheme Participants for the purposes of provision of the Scheme Consideration.

### **4.2 Scheme Consideration**

- (a) On the Implementation Date, subject to Bidder having complied with its obligations under clause 4.1 and providing evidence to Target that this has occurred, Target must:
  - (i) procure that all of the Scheme Shares be transferred to Bidder in accordance with clause 4.3; and
  - (ii) pay the Scheme Consideration to Scheme Participants for each Scheme Share held by them at the Record Date.
- (b) Target's obligations under this clause 4.2 will be deemed to be satisfied:

- (i) if notified by the Scheme Participant on or before the Record Date – by depositing into an Australian bank account with an ADI (as defined in the *Banking Act 1959* (Cth)) the Scheme Consideration payable to that Scheme Participant;
- (ii) if permitted under the terms of an agreement between the Scheme Participant and Target – by applying the Scheme Consideration payable to a Scheme Participant towards repayment of any loan amount owing to Target by that Scheme Participant; or
- (iii) in all other cases – by the dispatch of a cheque to the Scheme Participant by pre-paid post to that Scheme Participant's address (as recorded in the Target Register as at the Record Date) for the Scheme Consideration payable to that Scheme Participant, such cheque being drawn in the name of the Scheme Participant (or in the case of joint Scheme Participants, to the joint holder's name that appears first in the Target Register on the Record Date).

#### **4.3 Transfer of Scheme Shares**

On the Implementation Date, subject to Bidder having complied with its obligations under clause 4.1 and providing evidence to Target that this has occurred, 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 Participant (other than acts performed by Target or any of its directors and officers as attorney and agent for Scheme Participants under this Scheme), by Target effecting a valid transfer or transfers of the Scheme Shares to Bidder under section 1074D of the Corporations Act or, if that procedure is not available for any reason, by:

- (a) Target delivering to Bidder for execution duly completed and, if necessary, stamped Scheme Transfers to transfer all of the Scheme Shares to Bidder, duly executed by Target (or any of its directors and officers) as the attorney and agent of each Scheme Participant as transferor under clause 6.3;
- (b) Bidder executing the Scheme Transfers as transferee and delivering them to Target for registration; and
- (c) Target, immediately after receipt of the Scheme Transfers under clause 4.3(b), entering, or procuring the entry of, the name and address of Bidder in the Target Register as the holder of all of the Scheme Shares.

### **5 Dealings in Target Shares**

---

#### **5.1 Dealings by Scheme Participants**

For the purpose of establishing the persons who are Scheme Participants, dealings in Target Shares will be recognised by Target provided that:

- (a) 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 Target Shares by the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Target Share Registry on or before the Record Date, and Target will not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Participants, any transfer or transmission application in respect of Target Shares received after such times, or received prior to such times but not in registrable form.

#### **5.2 Target Register**

Target will, until the Scheme Consideration has been provided to Scheme Participants and the name and address of Bidder has been entered in the Target Register as the holder of all of the

Scheme Shares, maintain, or procure the maintenance of, the Target Register in accordance with this clause 5, and the Target Register in this form and the terms of this Scheme will solely determine relative entitlements to the Scheme Consideration as between Scheme Participants. As from the Record Date (and other than for Bidder following the Implementation Date), each entry in the Target Register as at the Record Date relating to Scheme Shares will cease to have any effect other than as evidence of the entitlements of Scheme Participants to the Scheme Consideration in respect of those Scheme Shares.

### **5.3 No disposals after Record Date**

If this Scheme becomes Effective, each Scheme Participant, and any person claiming through that Scheme Participant, must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect.

### **5.4 Effect of share certificates and holding statements**

As from the Record Date (and other than for Bidder following the Implementation Date), all share certificates and holding statements for Scheme Shares will cease to have effect as documents of title in respect of those Scheme Shares.

### **5.5 Details of Scheme Participants**

Within three Business Days after the Record Date, Target will ensure that details of the names, registered addresses and holdings of Scheme Shares for each Scheme Participant, as shown in the Target Register at 5.00pm on the Record Date, are available to Bidder in such form as Bidder reasonably requires.

### **5.6 Suspension and termination of quotation of Target Shares**

- (a) Target must apply to ASX for suspension of trading of the Target Shares on ASX with effect from the close of business on the Effective Date.
- (b) Target must apply to ASX for termination of official quotation of the Target Shares on ASX and the removal of Target from the official list of ASX with effect from the Business Day immediately following the Implementation Date.

## **6 General**

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### **6.1 Further assurances**

- (a) Each Scheme Participant and Target will do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of this Scheme and the transactions contemplated by it.
- (b) Without limiting Target's other powers under this Scheme, Target has power to do all things that it considers necessary or desirable to give effect to this Scheme and the SIA.

### **6.2 Scheme Participant's agreements and consents**

Each Scheme Participant:

- (a) irrevocably 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 terms of this Scheme; and
- (b) irrevocably consents to Target and Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of this Scheme and the transactions contemplated by it,

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



### 6.3 Appointment of Target as attorney for implementation of Scheme

Each Scheme Participant, without the need for any further act by that Scheme Participant, irrevocably appoints Target as that Scheme Participant's agent and attorney for the purpose of:

- (a) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of this Scheme and the transactions contemplated by it, including the effecting of a valid transfer or transfers (or the execution and delivery of any Scheme Transfers) under clause 4.3; and
- (b) enforcing the Deed Poll against Bidder,

and Target accepts such appointment. Target, as agent and attorney of each Scheme Participant, may sub-delegate its functions, authorities or powers under this clause 6.3 to all or any of its directors and officers (jointly, severally, or jointly and severally).

### 6.4 Appointment of Bidder as sole proxy

- (a) Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 4.2 of this Scheme, on and from the Implementation Date until Target registers Bidder as the holder of all of the Target Shares in the Target Register, each Scheme Participant:
  - (i) irrevocably appoints Target as attorney and agent (and directs Target in such capacity) to appoint Bidder and each of its directors from time to time (jointly and each of them individually) as its sole proxy and where applicable, corporate representative, to attend shareholders' meetings, exercise the votes attaching to Target Shares registered in its name and sign any shareholders resolution, 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 6.4(a)(i)); and
  - (ii) must take all other actions in the capacity of the registered holder of Target Shares as Bidder reasonably directs.
- (b) Target undertakes in favour of each Scheme Participant that it will appoint Bidder and each of its directors from time to time (jointly and each of them individually) as that Scheme Participant's proxy or, where applicable, corporate representative in accordance with clause 6.4(a)(i) of this Scheme.

### 6.5 Warranty by Scheme Participants

Each Scheme Participant is deemed to have warranted to Bidder, and, to the extent enforceable, to have appointed and authorised Target as that Scheme Participant's agent and attorney to warrant to Bidder, that all of their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the time of the transfer of them to Bidder pursuant to this Scheme, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to sell and to transfer their Scheme Shares (together with any rights and entitlements attaching to those Scheme Shares) to Bidder pursuant to this Scheme. Target undertakes in favour of each Scheme Participant that it will provide such warranty, to the extent enforceable, to Bidder on behalf of that Scheme Participant.

### 6.6 Title to Scheme Shares

On and from the provision of the Scheme Consideration to each Scheme Participant in the manner contemplated by clause 4.2, Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by Target of the name and address of Bidder in the Target Register as the holder of the Scheme Shares.

## **6.7 Transfer free of encumbrances**

To the extent permitted by law, all Scheme Shares (including any rights and entitlements attaching to the Scheme Shares) which are transferred to Bidder under this Scheme will, at the date of the transfer of them to Bidder, vest in Bidder free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind not referred to in this Scheme.

## **6.8 Variations, alterations and conditions to Scheme**

If the Court proposes to approve this Scheme subject to any variations, alterations or conditions, Target may, by its counsel or solicitors, and with the prior consent of Bidder, consent on behalf of all persons concerned, including each Target Shareholder, to those variations, alterations or conditions.

## **6.9 Binding effect of Scheme**

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

## **6.10 Enforcement of Deed Poll**

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

## **6.11 No liability when acting in good faith**

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

## **6.12 Notices**

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Target, it will not be deemed to be 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 by Target's share registry, as the case may be.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Shareholder shall not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

## **6.13 Costs and duty**

- (a) Subject to clause 6.13(b), each of Bidder and Target will pay their share of the costs of this Scheme in accordance with the SIA.
- (b) Bidder will pay all duty (including stamp duty and any related fines, penalties and interest) payable on or in connection with the transfer by Scheme Participants of the Scheme Shares to Bidder pursuant to this Scheme.

## **6.14 Governing law and jurisdiction**

- (a) This Scheme is governed by and is to be construed in accordance with the laws applicable in Victoria, Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts 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**

See over the page.

## Deed Poll

by

**Findex Australia Pty Ltd**  
ABN 40 128 588 714  
(Bidder)

in favour of

**Each Scheme Participant**

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**This deed poll** is made on

2014

by **Findex Australia Pty Ltd** ABN 40 128 588 714 of Level 23, 600 Bourke Street,  
Melbourne, Victoria 3000 (**Bidder**)

in favour of **Each Scheme Participant**

## **Recitals**

- A Bidder and Crowe Horwath Australasia Ltd ABN 93 006 650 693 (**Target**) have entered into a Scheme Implementation Agreement dated 3 October 2014 (**SIA**).
- B Pursuant to the SIA:
- (i) Bidder proposes to acquire all of Target's issued ordinary shares pursuant to a members' scheme of arrangement under Part 5.1 of the Corporations Act; and
  - (ii) Bidder and Target have agreed to implement the Scheme,  
subject to the satisfaction of certain conditions.
- C Bidder is entering into this deed poll to covenant in favour of the Scheme Participants that it will observe and perform its obligations under the Scheme.

**Now it is declared** as follows:

## **1 Definitions and interpretation**

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### **1.1 Definitions**

- (a) Each capitalised term used but not defined in this deed poll has the meaning given to that expression in the SIA, unless the context requires otherwise.
- (b) References in this deed poll to the SIA mean the SIA as amended from time to time.

### **1.2 Interpretation**

The provisions of clause 1.2 of the SIA form part of this deed poll as if set out in full in this deed poll, and on the basis that references to 'this agreement' in that clause are references to 'this deed poll'.

## **2 Nature of Deed Poll**

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Bidder acknowledges that:

- (a) this deed poll 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 as its agent and attorney to enforce this deed poll against Bidder on behalf of that Scheme Participant.

### 3 Condition Precedent

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#### 3.1 Condition Precedent

Bidder's obligations under this deed poll are subject to the Scheme becoming Effective.

#### 3.2 Termination

If the SIA is terminated or the Scheme does not become Effective on or before the End Date, the obligations of Bidder under this deed poll will automatically terminate and the terms of this deed poll will be of no further force or effect unless Target and Bidder otherwise agree.

#### 3.3 Consequences of termination

If this deed poll is terminated under clause 3.2, then, in addition and without prejudice to any other rights, powers or remedies available to Bidder:

- (a) Bidder is released from its obligations to further perform this deed poll, except those obligations under clauses 8.1 and 8.2 and any other obligations which by their nature survive termination; and
- (b) each Scheme Participant retains any rights, powers or remedies that the Scheme Participant has against Bidder in respect of any breach by Bidder of its obligations under this deed poll that occurred before termination of this deed poll.

### 4 Compliance with Scheme obligations

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#### 4.1 Performance of obligations generally

Subject to clause 3, Bidder must comply with its obligations under the SIA and must do all things necessary or desirable on its part to implement the Scheme.

#### 4.2 Obligations of Bidder

- (a) Subject to clause 3, in consideration for the transfer to Bidder of the Scheme Shares in accordance with the Scheme, Bidder covenants in favour of each Scheme Participant that it will, at least 1 Business Day before the Implementation Date, pay into an Australian dollar denominated interest bearing account nominated by Target an amount in cleared funds equal to the Scheme Consideration multiplied by the number of Scheme Shares.
- (b) Bidder's obligations under clause 4.2(a) will be satisfied by Bidder complying with its obligations under each of:
  - (i) clause 4.1(b) of the SIA; and
  - (ii) clause 4.1 of the Scheme.

### 5 Representations and warranties

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Bidder represents and warrants that:

- (a) **incorporation:** it is a body corporate validly existing under the laws of its place of incorporation;
- (b) **power:** it has the corporate power to enter into and perform or cause to be performed its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) **corporate authorisations:** it has taken all necessary corporate action to authorise the entry into of this deed poll and has taken all necessary corporate action to authorise



the performance of this deed poll and to carry out the transactions contemplated by this deed poll;

- (d) **binding obligations:** (subject to laws generally affecting creditors' rights and principles of equity) this deed poll is valid and binding upon it; and
- (e) **solvency:** no Insolvency Event has occurred in relation to it.

## 6 Continuing obligations

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This deed poll is irrevocable and remains in full force and effect until the earlier of:

- (a) Bidder having fully performed its obligations under this deed poll; and
- (b) termination of this deed poll under clause 3.2.

## 7 Further assurances

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Bidder will do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this deed poll and the transactions contemplated by it.

## 8 General

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### 8.1 Stamp duty

Bidder must pay all stamp duty (including any penalties) payable or assessed in connection with this deed poll and any document required by or contemplated under this deed poll.

### 8.2 Legal costs

Bidder must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this deed poll.

### 8.3 Governing law and jurisdiction

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

### 8.4 Rights cumulative

Except as expressly stated otherwise in this deed poll, the rights, powers and remedies of Bidder and each Scheme Participant under this deed poll are cumulative and are in addition to any other rights of that person.

### 8.5 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a Scheme Participant of a right relating to this deed poll does not prevent any other exercise of that right or the exercise of any other right.
- (b) No Scheme Participant is liable for any loss, cost or expense of Bidder caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

## 8.6 Amendment

This deed poll may only be amended if:

- (a) prior to the Second Court Date, the amendment is agreed to in writing by Bidder and Target (on behalf of each Scheme Participant); or
- (b) on or after the Second Court Date, the amendment is:
  - (i) agreed to in writing by Bidder and Target (on behalf of each Scheme Participant); and
  - (ii) approved by the Court,

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

## 8.7 Assignment

- (a) The rights and obligations of Bidder and of each Scheme Participant under this deed poll are personal and cannot 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.
- (b) Any purported dealing in breach of this clause 8.7 is of no effect.

**Executed** as a deed poll

**Executed** as a deed poll by **Findex Australia Pty Ltd** ABN 40 128 588 714 in accordance with section 127 of the *Corporations Act 2001* (Cth):

<hr/>	<hr/>
*Director/*Company Secretary	Director
<hr/>	<hr/>
Name of *Director/*Company Secretary (BLOCK LETTERS) *please delete as appropriate	Name of Director (BLOCK LETTERS)