

29th August 2022



Market Announcement

THIESS

MACA Founders and Directors accept Revised Recommended Takeover Offer from Thiess

HIGHLIGHTS

- Thiess has increased the offer price from \$1.025 cash per MACA Share to \$1.075¹ cash per MACA Share
- Increased offer price represents a premium of 49.2% to the MACA one month VWAP as at 25 July 2022 (the day prior to announcement of Thiess' Offer)
- All MACA shareholders who accept the Offer, including those MACA shareholders who have already accepted the Offer, are entitled to receive the increased Offer Price
- MACA Board maintains its recommendation of Thiess' Offer in the absence of a superior proposal and subject to the Independent Expert continuing to conclude the Thiess Offer is fair and reasonable, or not fair but reasonable, to MACA Shareholders.
- MACA founders and Directors holding shares representing in aggregate 9.43% of ordinary shares in MACA have entered into written acceptance deeds with Thiess
- Including the acceptances received from MACA founders and MACA Directors, Thiess' total relevant interest in MACA is currently 15.90%
- With the satisfaction of the ACCC condition on 26 August 2022, the Offer is only subject to FIRB approval, no Prescribed Occurrences, no issue of convertible securities, derivatives or other rights, and 90% minimum acceptances

MACA Limited (MLD:ASX) (**MACA**) and Thiess Group Investments Pty Ltd (ACN 659 649 055) (**Thiess**) announce that both parties have entered into an Amendment Deed to the Bid Implementation Deed (**Amendment Deed**) in relation to Thiess' off-market takeover to acquire all of the issued shares in MACA.

Thiess has increased the Offer Price for its off-market takeover offer (**Offer**) to acquire all of the ordinary shares of MACA Limited (**MACA**) from A\$1.025 cash per share (**Initial Offer Price**) to \$1.075 cash per share (**Revised Offer Price**). The Revised Offer Price represents a premium of 49.2% to the MACA one month VWAP as at 25 July 2022 and a 4.9% increase on the Initial Offer Price.

¹ The Offer Price of \$1.075 per MACA share is subject to the Offer terms outlined in the Bidder's Statement. The Offer Price will be reduced by the amount or value of any 'Rights' attaching to the MACA shares in respect of which the Offer is accepted, which arise or are paid on or after the Announcement Date, which the Bidder does not receive (noting that a Right include a dividend but does not include any attaching franking credit). See section 9.8 of the Bidder's Statement for further details regarding the treatment of dividends and other entitlements.

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The founding shareholders of MACA, including Geoff Baker, Frank Maher and James Moore, have entered into written acceptance deeds with Thies (Shareholder Bid Acceptance Deeds). In accordance with the terms of the Shareholder Bid Acceptance Deeds, the founding shareholders have agreed to accept the revised Offer (as varied to the Revised Offer Price (Revised Offer)) in respect of any MACA Shares they own or control, which represent in aggregate approximately 9.41% of the issued and outstanding ordinary shares in MACA. The founding shareholders have agreed to exercise voting rights as directed by Thies and not to withdraw those acceptances for the duration of the Offer Period.

In addition, the other director of MACA who holds an interest in MACA shares, Robert Ryan, has entered (via his company which holds shares) into a written acceptance deed with Thies (Director Bid Acceptance Deed) where in accordance with the terms of the Director Bid Acceptance Deed, that company has agreed to accept the Revised Offer in respect of any MACA Shares it owns or controls, which represent in aggregate approximately 0.02% of the issued and outstanding ordinary shares in MACA, and agreed to exercise voting rights as directed by Thies and not to withdraw those acceptances for the duration of the Offer Period.

In total, and including other acceptances received to date, Thies' current relevant interest in MACA is 15.90%.

Geoff Baker, Non-Executive Chairman and co-founder of MACA, provided the following comment:

"Thies' increased offer is compelling and an attractive price representing a strong premium to recent trading prices prior to the announcement of the Thies Offer. My fellow founding shareholders and my fellow MACA director, Mr Rob Ryan have agreed to accept the Revised Offer Price and have agreed not to withdraw those acceptances for the duration of the Offer period. I am pleased that all MACA shareholders who accept Thies' offer will receive an additional \$0.05 cash per share compared to the Initial Offer Price if and when Thies' Revised Offer becomes unconditional."

Michael Wright, Executive Chair and Chief Executive Officer of Thies, commented:

"We are delighted that the MACA founders and directors have accepted our offer. This is further endorsement of the value offered to MACA Shareholders and we are pleased to have 15.90% of MACA's ordinary shares accepted into our bid. Thies announced last week that we have fulfilled the no objection from the ACCC condition and we encourage MACA Shareholders to accept our offer which is currently scheduled to close on 12 September 2022."

The MACA and Thies businesses are aligned in strategy and values, and we truly look forward to the opportunity of working with the MACA team, clients, communities and stakeholders in the future."

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A SUBSTANTIAL PREMIUM

The Revised Offer Price represents a substantial premium to historical trading prices of MACA Shares on the ASX and provides certain value to MACA Shareholders.

The Revised Offer Price represents:

- a 34.4% premium to the Last Close Price, being the price of MACA Shares on ASX at the close of trading on 25 July 2022, the Trading Day prior to the Announcement Date, of \$0.80 per MACA Share;
- a 49.2% premium to the MACA one month VWAP as at 25 July 2022, of \$0.72 per MACA Share;
- a 44.1% premium to the MACA three month VWAP as at 25 July 2022, of \$0.75 per MACA Share;
- a 38.6% premium to the MACA twelve month VWAP as at 25 July 2022, of \$0.78 per MACA Share;
- a 4.9% premium to the Initial Offer Price of \$1.025 cash per MACA Share.

MACA BOARD RECOMMENDS MACA SHAREHOLDERS ACCEPT THIESS' OFFER

The MACA Board unanimously recommends that MACA Shareholders accept the Revised Offer in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Offer is fair and reasonable, or not fair but reasonable, to MACA Shareholders (Favourable).

REVISED BID IMPLEMENTATION DEED

MACA and Thiess have entered into an Amendment Deed for the Bid Implementation Deed under which Thiess agrees to make the Revised Offer at the Revised Offer Price and the MACA Board agrees to unanimously recommend the Revised Offer to MACA shareholders in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Offer (as revised) is fair and reasonable, or not fair but reasonable, to MACA Shareholders. The Amendment Deed for the Bid Implementation Deed contains customary exclusivity provisions, including no shop, no talk, a matching right and a break fee payable in certain circumstances detailed in the Amendment Deed.

A full copy of the Amendment Deed to the Bid Implementation Deed is attached to this announcement.

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OFFER CONDITIONS

The Offer remains subject to limited conditions including FIRB approval, no Prescribed Occurrences, no issue of convertible securities, derivatives or other rights, and a 90% minimum acceptance condition.

TIMING AND OTHER INFORMATION

MACA Shareholders should refer to the Bidder's Statement for further information including actions required, how to accept the Revised Offer, the time of the offer period, and details of Thiess' funding.

Thiess' Revised Offer is supported by its shareholders, subsidiaries of CIMIC Group Limited and entities affiliated with or managed by Elliott Investment Management L.P., who have agreed to make equity funding available to Thiess, adding to existing shareholder support.

Thiess' Revised Offer is currently scheduled to close on 12 September 2022 unless otherwise extended.

ADVISERS

MACA's corporate adviser is Salient Corporate and its legal adviser is Thomson Geer.

Macquarie Capital (Australia) Limited and Lisle Group Pty Ltd are acting as financial advisers and Squire Patton Boggs is acting as legal adviser to Thiess in relation to the Offer.

This ASX announcement has been authorised for release by the Board of MACA Limited.

This announcement is an announcement by Thiess Group Investments Pty Ltd and has been authorised for release by the Thiess Board of Directors.

For further information please contact:

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THIESS

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ENDS

About MACA | MACA Limited is an ASX-listed contracting group providing services to the mining and construction industries. Employing in excess of 3,000 people, MACA specialises in contract mining and crushing, civil construction and infrastructure maintenance, and mineral processing solutions.

About Thiess | Thiess partners with its clients to deliver excellence in open cut and underground mining in Australia, Asia and the Americas. For more than 85 years, Thiess has operated in diverse commodities, geologies, environments and cultures. The team uses that global insight to optimise solutions and create value for each project, positioning them for optimal efficiency, productivity and cost performance, backed by how they meet our commitments. Thiess is committed to being at the forefront of sustainable mining, leveraging the power of its people and technology to support clients in their journey to more sustainable enterprises.

Important notice

Forward Looking Statements

This announcement may include certain forward looking statements and statements of current intention. As such statements relate to future matters, they are subject to various inherent risks and uncertainties. These risks and uncertainties include factors and risks specific to the industries in which Thiess, the Thiess group and MACA operate as well as matters such as general economic conditions, many of which are outside the control of Thiess, the Thiess group and MACA and their respective directors and officers. These factors may cause the actual results, performance or achievements of Thiess, the Thiess group and MACA to differ, perhaps materially, from the results, performance or achievements expressed or implied by any such forecasts or forward looking statements. The past performance of Thiess, the Thiess group and MACA is not a guarantee of future performance.

Any forward looking statements do not constitute a representation that any such matter will be achieved in the amounts or by the dates indicated and are presented as a guide. Any such forward looking statements are based on information available to Thiess at the date of this announcement. None of Thiess, the officers of Thiess, any persons named in this announcement or any person involved in the preparation of this announcement, makes any representation or warranty (express or implied) as to the accuracy or likelihood of fulfilment of any forward looking statement, or any events or results expressed or implied in any forward looking statement, except to the extent required by law.

AMENDMENT DEED – BID IMPLEMENTATION DEED

DETAILS

Date 29 August 2022

Parties

Name **Thiess Group Investments Pty Ltd** ACN 659 649 055
Short form name **Bidder**
Notice details Level 5, 179 Grey Street
South Bank
Queensland 4101
Attention: Company Secretary

Name **MACA Limited** ACN 144 745 782
Short form name **Target**
Notice details 45 Division Street
Welshpool
Western Australia 6106
Attention: Company Secretary

BACKGROUND

- A The Parties entered into a Bid Implementation Deed on 26 July 2022 (**Bid Implementation Deed**).
- B The Parties have agreed to amend the terms of the Bid Implementation Deed in accordance with the terms of this deed.

AGREED TERMS

1. DEFINED TERMS & INTERPRETATION

In this deed unless the context otherwise requires, a word or expression defined in the Bid Implementation Deed has the meaning given to it in the Bid Implementation Deed. In this deed and in the Bid Implementation Deed:

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of the Corporations Act included a reference to this deed and the Target was the designated body and Associated has a corresponding meaning;

ASX means ASX Limited ABN 98 008 624 691;

Agreed Announcement means the announcement as set out in Annexure A;

Amendment Deed means this deed;

Bidder Group Member means:

- (i) the Bidder;
- (ii) each entity that is a Subsidiary of the Bidder;
- (iii) each other entity that is a Related Body Corporate of the Bidder; and
- (iv) any entity that, directly or indirectly through one or more intermediaries, is Controlled by, the Bidder, or by any Related Body Corporate of the Bidder, from time to time,

and a reference to a **Bidder Group Member** is to any of them;

Confidentiality Agreement means the non-disclosure deed between the Bidder and the Target dated 12 August 2022;

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

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

Exclusivity Period means the period from the date when the Bidder varies the terms of the Offer in accordance with clause 2A.1 of the Bid Implementation Deed, as inserted by this deed, until:

- (i) the date of termination of the Bid Implementation Deed;
- (ii) the end of the Offer Period; or
- (iii) the date which is six months after the date of the Bid Implementation Deed, whichever is earliest;

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity or any minister of the Crown in right of the Commonwealth of Australia or any State, any other federal, state, provincial, or local government, and including any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions, and the ASX or any other stock exchange;

Listing Rules means the official listing rules of the ASX;

Related Persons means in respect of the Target:

- (i) each Target Group Member; and
- (ii) each Representative of any Target Group Member;

Relevant Interest has the meaning given in the Corporations Act;

Representative means in relation to a party, its directors, employees, officers and advisers;

Reimbursement Fee means \$1.5 million;

Related Body Corporate has the meaning given in the Corporations Act;

Subsidiary has the meaning given in the Corporations Act, but an entity will also be taken to be a Subsidiary of an entity if it is Controlled by that entity and:

- (i) a trust may be a Subsidiary of an entity, for the purposes of which a unit or other beneficial interest will be regarded as a share;

(iii) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a company; and

(iii) where a trust is a Subsidiary, the trustee of that trust (acting in that capacity) will also be a Subsidiary;

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

Target Group Member means:

(i) the Target; and

(ii) each entity that is a Subsidiary of the Target; and

(iii) any entity that, directly or indirectly through one or more intermediaries, is Controlled by, the Target from time to time,

and a reference to a **Target Group Member** is to any of them; and

Third Party means a person other than the Bidder, any other Bidder Group Member and any Associate of any Bidder Group Member.

2. AMENDMENTS TO THE BID IMPLEMENTATION DEED

2.1 AMENDMENTS

On and with effect from the date of this deed, in accordance with clause 8.1 of the Bid Implementation Deed, the Bid Implementation Deed is amended as follows:

The definition of "**Competing Proposal**" in clause 1 is replaced as follows:

"Competing Proposal means any offer, proposal, transaction or arrangement by a Third Party that, if entered into or completed, would result in a Third Party (either alone or together with any Associate):

(a) acquiring a Relevant Interest in more than 25% of the voting shares of Target or any of its material Subsidiaries;

(b) acquiring Control of Target (including by way of a takeover bid or scheme of arrangement) or any material Subsidiary of Target;

(c) directly or indirectly acquiring or become the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a substantial part of Target's business or assets or the business or assets of a material Target Group Member;

(d) otherwise directly or indirectly acquiring or merging with Target or a material Subsidiary of Target; or

(e) requiring Target to abandon, or otherwise fail to proceed with, the Bid, whether by way of takeover bid, members' or creditors' scheme of arrangement, shareholder approved acquisition or other transaction or arrangement."

New Clause 2A Revised Offer Price is inserted as follows:

“2A.1 Revised Offer Price

The Bidder agrees to vary the terms of the Offer, by no later than 29 August 2022, by increasing the Offer Price to \$1.075 per Target Share.

2A.2 Public Announcement

Subject to the Bidder varying the terms of the Offer in accordance with clause 2A.1:

(a) the Target agrees to, as soon as reasonably practicable, make a public announcement in respect of the Offer in the form of the Agreed Announcement; and

(b) contemporaneously with the making of the Agreed Announcement under paragraph (a), the Target Directors agree to publicly state their intention to irrevocably accept or procure the acceptance of the Offer in respect of any Target Share that they own or control.”

Clause 4.1(a) is replaced as follows:

“until either or both of clause 4.2(a) or clause 4.2(b) applies, must recommend (in the Target's Statement and in any other public statements relating to the Bid, made by the Target after the execution of the Amendment Deed) that Target Shareholders accept the revised Offer (in accordance with the terms of the Amendment Deed) in the absence of a Superior Proposal and subject to the Independent Expert concluding, and continuing to conclude, that the Bid is Favourable; and”.

Clause 4.3 is replaced as follows:

“Target represents and warrants to Bidder that each Target Director who holds Target Shares as at the date of the Amendment Deed has indicated their intention to, subject to the Bidder varying the terms of the Offer in accordance with clause 2A.1:

(a) as soon as reasonably practicable accept the Offer made in respect of any Target Share that they own or control;

(b) not withdraw their acceptance of the Offer; and

(c) not otherwise dispose or otherwise deal with any Target Share that they own or control.”

New Clause 5A Exclusivity is inserted as follows:

“5A.1 No shop and no talk

During the Exclusivity Period, the Target must not, and must ensure that each of its Related Persons do not, directly or indirectly:

(a) (no shop) solicit, invite or initiate any inquiry, expression of interest, offer proposal, negotiations or discussions by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, a Competing Proposal or communicate to any person an intention to do anything referred to in this clause 5A.1(a); or

(b) (no talk and no due diligence) subject to clause 5A.3:

(i) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer or proposal by any person to make, or which would reasonably be expected to lead to the making of, a Competing Proposal or participate in or continue any negotiations or discussions with respect to any Competing Proposal;

(ii) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding a Competing Proposal (other than with one or more Bidder Group Member or Associate of any Bidder Group Member); or

(iii) disclose or otherwise provide or make available any non-public information about the business or affairs of the Target Group to a Third Party (other than in accordance with applicable law or the Listing Rules or to a Government Agency that has the right to obtain that information) in connection with or with a view to obtaining the formulation, receipt or announcement of, a Competing Proposal (including providing such information for the purposes of the conduct of due diligence investigations in respect of the Target Group) whether by that Third Party or another person,

(iv) communicate to any person an intention to do anything referred to in the preceding paragraphs of this clause 5A.1(b),

but nothing in this clause 5A.1 prevents the Target or any of its Related Persons from:

(c) providing information as required by any applicable law or the Listing Rules or to any Government Agency;

(d) providing information to its auditors, advisers, customers, suppliers, financiers or other third parties in the ordinary course of business;

(e) making normal presentations to brokers, portfolio investors and analysts in the ordinary course of business or promoting the merits of the Bid; or

(f) communicating with Target Shareholders in accordance with its ordinary investor communications practices.

5A.2 Notification of approaches

(a) During the Exclusivity Period, the Target must notify the Bidder immediately (and in any event within 48 hours) if the Target or any of its Related Persons becomes aware of the occurrence on or after the date of the Amendment Deed of any:

(i) negotiations or discussions, approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate any negotiations or discussions in respect of any inquiry, expression of interest, offer, proposal or discussion in relation to an actual, proposed or potential Competing Proposal;

(ii) proposal made to Target or any of its Related Persons, in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal; or

(iii) provision by the Target or any of its Related Persons of any non-public information concerning the business or operations of the Target or the Target Group to any Third Party (other than a Government Agency) in connection with an actual, proposed or potential Competing Proposal,

whether direct or indirect, solicited or unsolicited, or in writing or otherwise.

(b) A notification given under clause 5A.2(a) must include:

(i) the identity of the relevant person making or proposing the relevant Competing Proposal; and

(ii) all material terms and conditions of the Competing Proposal (including the implied offer price per Target Share).

5A.3 Fiduciary exception

Clauses 5A.1(b) and 5A.2 (in relation to the latter clause, only to the extent it requires disclosure of information referred to in clause 5A.2(b)(i)) do not apply, and do not prohibit any action or inaction by the Target or any of its Related Persons in relation to a Competing Proposal, if, in the opinion of the Target Board, formed in good faith after receiving written legal advice from its external legal adviser and advice from its financial advisers, the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal and compliance with one or more of those provisions would constitute, or would be reasonably likely to constitute, a breach of any of the fiduciary or statutory duties of the directors of the Target, provided that:

(a) the Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of clause 5A.1(a); and

(b) to the extent that the Target or its Related Persons propose to provide information to the Third Party proposing the Competing Proposal to which clause 5A.2(a)(iii) applies, the Target has entered into a binding confidentiality agreement with the relevant Third Party and either:

(i) the terms of that confidentiality agreement are no less favourable to the Target than the Confidentiality Agreement; or

(ii) the Target agrees to amend the terms of the Confidentiality Agreement such that the obligations imposed on the Bidder under that agreement are no less favourable than the obligations imposed on the relevant Third Party.

5A.4 Matching right

(a) Without limiting clause 5A.1, during the Exclusivity Period, the Target:

(i) must not, and must procure that each Target Group Member does not, enter into any legally binding agreement (whether or not in writing) pursuant to which one or more of a Third Party, the

Target or any Target Group Member proposes or propose to undertake or give effect to a Competing Proposal; and

(ii) must use reasonable endeavours to procure that none of its directors withdraw their recommendation in favour of the Bid, publicly recommend a Competing Proposal (or recommend against the Bid) or make any public statement to the effect that they may do so at a future point (provided that a statement that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board and its advisers shall not contravene this clause),

unless:

(iii) the Target Board, acting in good faith and in order to satisfy what the Target Directors consider to be their statutory or fiduciary duties (having received written legal advice from their external legal adviser), determine that the Competing Proposal would be or would be reasonably likely to be a Superior Proposal;

(iv) the Target has provided the Bidder with the material terms and conditions of the Competing Proposal, including price and, subject to clause 5A.3 (on the same basis as that clause applies to clause 5A.2(b)(i)), the identity of the Third Party making the Competing Proposal;

(v) the Target has given the Bidder at least five Business Days after the date of the provision of the information referred to in clause 5A.4(a)(iv) to provide a matching or superior proposal to the terms of the Competing Proposal; and

(vi) the Bidder has not announced a matching or superior proposal to the terms of the Competing Proposal by the expiry of the five Business Day period in clause 5A.4(a)(v).

*(b) If the Bidder announces amendments to the Bid or a new proposal that constitutes a matching or superior proposal to the terms of the Competing Proposal (**Bidder Counterproposal**) by the expiry of the five Business Day period in clause 5A.4(a)(v), the Target must procure that the Target Board consider the Bidder Counterproposal and if the Target Board, acting reasonably and in good faith, determine that the Bidder Counterproposal would provide an equivalent or superior outcome for Target Shareholders as a whole (other than, to the extent any are Target Shareholders, the Bidder Group Members and any Associates of Bidder Group Members) compared with the Competing Proposal, taking into account all of the terms and conditions of the Bidder Counterproposal, then the Target and the Bidder must use reasonable endeavours to agree the amendments to this deed and the Bid (as applicable) that are reasonably necessary to reflect the Bidder Counterproposal, as soon as reasonably practicable, and the Target must use reasonable endeavours to procure that each of the directors of the Target continue to recommend the Bid (as modified by the Bidder Counterproposal) to Target Shareholders in the absence of a Superior Proposal and subject*

to the Independent Expert continuing to conclude that the Bid is Favourable.

5A.5 No discussions

The Target represents and warrants that, as at the date of the Amendment Deed:

(a) no Target Group Member is participating in any discussions or negotiations relating to any actual, proposed or potential Competing Proposal; and

(b) no person proposing any Competing Proposal to the Target's knowledge has access to the Target's confidential information.

5A.6 Legal advice

The Target represents and warrants to the Bidder that:

(a) prior to entering into this agreement it has received legal advice on this agreement and the operation of this clause 5A; and

(b) it and the Target Board consider this clause 5A to be fair and reasonable and appropriate to agree in order to secure the significant benefits to it and Target Shareholders resulting from the transactions contemplated within.

5A.7 Compliance with law

(a) If it is finally determined by a court, or the Takeovers Panel, that the agreement by the parties under this clause 5A or any part of it:

(i) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the Target Board;

(ii) constituted, or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the Corporations Act; or

(iii) was, or is, or would be, unlawful for any other reason, then, to that extent (and only to that extent) the Target will not be obliged to comply with that provision of clause 5A.

(b) The parties must not make, or cause to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in paragraph (a)."

New Clause 5B Reimbursement Fee is inserted as follows:

"5B.1 Background to Reimbursement Fee

(a) The Target acknowledges that, if the Bidder enters into this deed and the Bid is subsequently not implemented, the Bidder will incur significant costs, including those set out in clause 5B.4.

(b) In these circumstances, the Bidder has requested that provision be made for the payments outlined in clause 5B.2, without which the Bidder would not have entered into the Amendment Deed.

(c) The Target Board believes, having taken advice from their external legal adviser and financial advisers, that the implementation of the Bid will provide benefits to Target and that it is appropriate for the Target to

agree to the payments referred to in clause 5B.2 in order to secure the Bid.

5B.2 Reimbursement Fee triggers

Subject to this clause 5B, the Target must pay the Reimbursement Fee to the Bidder if:

(a) during the Exclusivity Period, a majority, or all of, the Target Directors:

(i) fails to recommend that the Target shareholders accept the Bid in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Bid is Favourable;

(ii) withdraws, adversely revises or adversely qualifies their recommendation that the Target Shareholders accept the Bid in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Bid is Favourable; or

(iii) recommends that the Target Shareholders accept or vote in favour of, or otherwise supports or endorses (including support by way of accepting or voting, or by way of stating an intention to accept or vote, in respect of any Target Shares that they own or control), a Competing Proposal that is announced (whether or not such proposal is stated to be subject to any pre-conditions) during the Exclusivity Period,

unless the Target is entitled to terminate this deed pursuant to clause 7.1(a) or 7.1(c);

(b) a Competing Proposal of any kind is announced during the Exclusivity Period (whether or not such proposal is stated to be subject to any pre-conditions) and, within 6 months of the date of such announcement, the Third Party or any Associate of that Third Party:

(i) completes a Competing Proposal of a kind referred to in paragraphs (b) or (d) of the definition of Competing Proposal;

(ii) enters into a binding agreement with the Target or another Target Group Member to undertake or give effect to a Competing Proposal; or

(iii) without limiting clause 5B.2(b)(i) or 5B.2(b)(ii), acquires (either alone or in aggregate) a relevant interest in, and an unconditional right to acquire, more than 50% of the Target Shares; or

(c) the Bidder has validly terminated this deed pursuant to clause 7.1(a) of this deed due to an unremedied material breach of this deed by the Target which occurs after the date of the Amendment Deed.

5B.3 Payment of Reimbursement Fee

(a) A demand by the Bidder for payment of the Reimbursement Fee under clause 5B.2 must:

(i) be in writing;

(ii) be made after the occurrence of the event in that clause giving rise to the right to payment;

(iii) state the circumstances which give rise to the demand; and

(iv) nominate an account in the name of the Bidder into which the Target is to pay the Reimbursement Fee.

(b) The Target must pay the Reimbursement Fee into the account nominated by Bidder, without set-off or withholding, within five Business Days after receiving a demand for payment where the Bidder is entitled under clause 5B.2 to the Reimbursement Fee.

5B.4 Basis of Reimbursement Fee

The Reimbursement Fee has been calculated to reimburse Bidder for costs including the following:

(a) fees for legal, financial and other professional advice in planning and implementing the Bid (excluding success fees);

(b) reasonable opportunity costs incurred in engaging in the Bid or in not engaging in other alternative acquisitions or strategic initiatives;

(c) costs of management and directors' time in planning and implementing the Bid; and

(d) out of pocket expenses incurred by Bidder and Bidder's employees, advisers and agents in planning and implementing the Bid,

and the parties agree that:

(e) the costs actually incurred by Bidder will be of such a nature that they cannot all be accurately ascertained; and

(f) the Reimbursement Fee is a genuine and reasonable pre-estimate of those costs,

and the Target represents and warrants that it has received legal advice from its legal adviser in relation to the operation of this clause 5B.

5B.5 Compliance with law

(a) This clause 5B does not impose an obligation on the Target to pay the Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the Reimbursement Fee:

(i) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or

(ii) is determined to be unenforceable or unlawful by a court,

and Bidder will refund to the Target, within five Business Days any amount in excess of its obligation under this clause that has already been paid when that declaration or determination is made. For the avoidance of doubt, any part of the Reimbursement Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid.

(b) The parties must not make, or cause to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 5B.5(a).

5B.6 Reimbursement Fee payable only once

Where the Reimbursement Fee becomes payable under this clause 5B and is actually paid, Bidder cannot make any claim against Target for payment of any subsequent Reimbursement Fee.

5B.7 Limitation of Target liability

Notwithstanding any other provision of this deed, but subject to clause 5B.8, and without expanding the circumstances in which the Reimbursement Fee is payable under this deed:

(a) the maximum potential liability of Target under or in connection with this deed (including in respect of any breach of this deed) will be, in aggregate, the Reimbursement Fee;

(b) a payment by Target of the Reimbursement Fee, if required in accordance with this clause 5B, represents the sole and absolute liability of Target under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by Target under or in connection with this deed; and

(c) the amount of the Reimbursement Fee paid to Bidder under this clause shall be reduced by the amount of any loss or damage recovered by Bidder (in its own right and separately as trustee or nominee for any other person) in relation to a breach of this deed.

5B.8 Refund

(a) Notwithstanding the occurrence of any event described in clause 5B.2:

(i) the Reimbursement Fee will not be payable by Target if Bidder acquires Control of Target or if Target terminates this deed under clause 7.1(a) or 7.1(c); and

(ii) if the Reimbursement Fee has been paid by Target and Bidder subsequently acquires Control of Target or Target subsequently terminates this deed under clause 7.1(a) or 7.1(c), the Reimbursement Fee must be immediately refunded by Bidder to Target.

(b) This clause 5B.8 is given for the benefit of, and may be enforced by the Target or by any Target Shareholder (other than, to the extent any are Target Shareholders, the Bidder Group Members and any Associates of Bidder Group Members)."

2.2 CONFIRMATION OF BID IMPLEMENTATION DEED

The Bid Implementation Deed Parties agree that on and from the date of this deed, they will be bound by the terms and conditions of the Bid Implementation Deed as amended pursuant to clause 2.1 and will comply with the terms and conditions of the Bid Implementation Deed as varied by clause 2.1 of this deed.

2.3 CONTINUED FORCE AND EFFECT OF BID IMPLEMENTATION DEED

Except as amended under clause 2.1, the Bid Implementation Deed continues in full force and effect.

3. MISCELLANEOUS

3.1 PRESERVATION OF RIGHTS AND LIABILITY

Nothing in this deed:

- (a) affects any right, power, authority, discretion or remedy which arose under or in connection with the Bid Implementation Deed; or
- (b) discharges, releases or otherwise affects any liability or obligation which arose under or in connection with the Bid Implementation Deed,

in each case, prior to their variation in accordance with this deed.

3.2 GOVERNING LAW AND JURISDICTION

- (a) This deed (and any non-contractual obligations arising out of or in connection with it) is governed by the law of New South Wales, Australia.
- (b) Except where the parties have agreed a particular method of resolving disputes under particular provisions of this deed, each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

Signing page

EXECUTED as a deed.

Bidder

Executed by Thiess Group Investments Pty Ltd ACN 659 649 055 in accordance with Section 127 of the *Corporations Act 2001*

[Redacted signature]

Signature of director

Michael J M Wright

Name of director (print)

[Redacted signature]

Signature of director/company secretary
(Please delete as applicable)

Craig S Morton

Name of director/company secretary
(print)

Target

Executed by MACA Limited ACN 144 745 782 in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary
(print)

Signing page

EXECUTED as a deed.

Bidder

Executed by Thiess Group Investments Pty Ltd ACN 659 649 055 in accordance with Section 127 of the *Corporations Act 2001*

Signature of director


Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary
(print)

Target

Executed by MACA Limited ACN 144 745 782 in accordance with Section 127 of the *Corporations Act 2001*



Signature of director

Geoffrey Baker

Name of director (print)



Signature of company secretary

Peter Gilford

Name of company secretary (print)

Annexure A – Form of Agreed Announcement