



26 July 2018

EagleView to Acquire Spookfish in a Unanimously Recommended Transaction

Highlights

- **Spookfish Limited (“Spookfish”) (ASX:SFI)** has entered into a Scheme Implementation Agreement (“SIA”) with its largest shareholder, Eagle View Technologies Inc. (“EagleView”), under which EagleView has agreed to acquire all of the remaining issued ordinary shares in Spookfish that it does not already own for a cash price of A\$0.08 per share (“Scheme Consideration”) (the “Proposal”).
- The Scheme Consideration values Spookfish’s fully diluted equity at approximately A\$121.6 million⁽¹⁾.
- The Scheme Consideration represents an attractive premium of 56.9% to the last closing price on Wednesday, 25 July 2018, 55.9% to the 15 trading day volume weighted average price (“VWAP”) and 60.9% to the 30 trading day VWAP⁽²⁾.
- The Proposal will be implemented by a scheme of arrangement (“Scheme”). The Directors of Spookfish unanimously recommend that Spookfish shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to the Independent Expert concluding the Scheme is in the best interests of Spookfish’s shareholders.
- The Scheme is subject to standard regulatory conditions, including approval from the Australian Foreign Investment Review Board (“FIRB”), certain specified arrangements not being terminated or amended (or any rights under those arrangements being waived), and other customary conditions.
- Spookfish shareholders do not need to take any action at this time. A Scheme Booklet containing information relating to the Proposal, an Independent Expert’s Report, the reasons for the Spookfish Board’s unanimous recommendation and details of the Scheme meeting, is expected to be despatched to shareholders in mid September 2018.

Transaction Overview

Spookfish’s Board announces that Spookfish has entered into a SIA with EagleView, under which EagleView is proposing to acquire all of the issued ordinary shares in Spookfish that it does not already own for a cash price of A\$0.08 per share, by way of a Scheme.

EagleView currently holds approximately 10.46% of the issued ordinary shares in Spookfish, and is Spookfish’s largest shareholder. EagleView has been instrumental in partnering with

¹ Calculated based on a diluted basis of 1,520,516,594 ordinary shares of Spookfish, which includes 1,250,110,523 ordinary shares, 11,176,208 performance rights that will automatically vest and be exercised in accordance with their terms and conditions if the Scheme is approved, 114,553,570 options of Spookfish that are “in the money” as a result of the A\$0.08 per share consideration offered under the Scheme, 576,293 performance rights that are yet to be granted, 5,000,000 options that are yet to be granted but will be “in the money” and 139,100,000 shares that Spookfish is contractually obligated to issue upon a “Successful Takeover”.

² Based on the closing price of A\$0.051 of Spookfish on Wednesday, 25 July 2018, being the closing price before the Scheme was announced.



Spookfish to realise the commercialisation of Spookfish’s technology in the United States of America. EagleView is a leading provider of aerial imagery and data analytics and implementation of the Proposal would give it the opportunity to enter new markets and increase value in existing market segments.

Board Recommendation and Benefits of the Scheme

Spookfish’s Board unanimously recommends that Spookfish shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of Spookfish’s shareholders. Each Director of Spookfish intends to vote all Spookfish shares in which he or she has a relevant interest in favour of the Scheme, subject to those same qualifications.

The Board believes that the Proposal is compelling for Spookfish shareholders for the following reasons:

- The Scheme Consideration represents an attractive premium of:
 - 56.9% to the last closing price of A\$0.051 per share on 25 July 2018;
 - 55.9% to the 15 trading day VWAP; and
 - 60.9% to the 30 trading day VWAP.
- The Scheme Consideration is 100% cash, providing Spookfish shareholders with certainty of value and the opportunity to realise their investment for cash, in full.
- The Scheme is not subject to financing or due diligence conditions, and except as described below the other conditions to the Scheme are customary for a transaction such as this.

Commenting on the Proposal, Spookfish’s Chairman, Jason Marinko said:

“The Board of Spookfish has carefully considered the Proposal by EagleView. The Board believes this is a compelling offer given the 100% cash consideration and the attractive premium to recent trading prices, and provides certainty of value for Spookfish shareholders. The recommended acquisition of Spookfish by EagleView represents an excellent outcome for our shareholders and staff.”

This offer follows an initial investment in Spookfish by EagleView in May 2016, and more than two years of joint development work to optimise Spookfish’s image capture technology.

Commenting on the Proposal, EagleView’s CEO, Rishi Daga said:

“We are excited to welcome Spookfish’s technology, solutions and personnel to the EagleView portfolio. After two years of rigorously developing and testing aerial cameras with our partners at Spookfish, we have unequivocally determined that this is the best capture solution for the next decade. With this technology we will reset the bar for aerial image quality and be able to enter new markets that require higher image resolution than is available today.”



Details of the SIA

The implementation of the Scheme is subject to a number of customary regulatory and other conditions, including the approval of Spookfish shareholders, the Court and FIRB, there being no material adverse change or prescribed occurrence, an Independent Expert's Report concluding that the Scheme is in the best interests of Spookfish shareholders (and not changing or publicly withdrawing that conclusion) and a condition relating to certain specified arrangements described below. There is no financing or due diligence condition.

The SIA contains customary exclusivity provisions including no-shop, no-talk and no due diligence restrictions, a reimbursement fee that may be payable by either Spookfish or EagleView depending on the circumstances, as well as a notification obligation and a matching right. The no-talk and no due diligence restrictions and the notification obligation are subject to the Spookfish Directors' fiduciary obligations.

Full details of the conditions to the Scheme, as well as the other terms that have been agreed, are set out in the SIA. A copy of the SIA is attached to this announcement.

As noted above, the implementation of the Scheme is subject to certain specified arrangements not being terminated or amended (or any rights under those arrangements being waived). These arrangements relate to:

- the existing Innovaero Service Provider Agreement with InnovAero Pty Ltd (Michael von Bertouch is a principal and shareholder of InnovAero Pty Ltd);
- the existing Development, License and Royalty Agreement with EagleView ("Licence Agreement"), subject to certain amendments which have been agreed with EagleView as referred to below; and
- the employment arrangements with certain key executives.

Arrangements with EagleView

Spookfish and EagleView have agreed to amend the existing License Agreement to ensure that any further exercise of the 2 consecutive 5 year options to extend the agreement is at the sole discretion of EagleView in consideration for EagleView making certain payments totalling an aggregate A\$15 million by 30 September 2018.

Indicative Timetable and Next Steps

Spookfish shareholders do not need to take any action at this time.

A Scheme Booklet containing information relating to the Proposal, the reasons for the Spookfish Directors' unanimous recommendation, an Independent Expert's Report, and details of the Scheme meeting will be prepared and is expected to be sent to Spookfish shareholders in mid September 2018.

Shareholders will then have the opportunity to vote on the Scheme at a Court-convened Scheme meeting. Subject to shareholder approval and the other conditions of the Scheme being satisfied (or, to the extent permitted, waived), the Scheme is expected to be implemented in the fourth quarter of 2018.



Set out below is an indicative timetable for the Scheme:

Event	Date
Lodge Scheme Booklet with ASIC	Late August 2018
First Court date	Mid September 2018
Scheme meeting	Mid October 2018
Second Court date	Late October 2018
Record date	Early November 2018
Implementation date	Mid November 2018

Advisers

Euroz Securities Limited is acting as financial adviser and Clayton Utz as legal adviser to Spookfish in relation to the Proposal.

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About Spookfish

Spookfish Limited (ASX:SFI) is an Australian listed public company focused on the development and commercialisation of premium next generation geospatial imagery products and services. By starting from a clean sheet and challenging what was thought impossible, Spookfish's revolutionary technology enables rapid imaging of vast areas in high resolution from a multitude of angles at a fraction of the cost of contemporary systems. Spookfish aims to use these capabilities to make it easy for organisations of all sizes to gain access to premium imagery content and pervasive 3D models allowing concise, accurate and cost effective decision-making.

About EagleView

EagleView is the leading provider of high-resolution aerial imagery, property data analytics and structural measurements for government agencies, insurance carriers, roofing contractors and energy utilities. Using patented image capture techniques, 3D aerial measurement software and machine learning processes, EagleView helps customers answer questions related to millions of properties throughout the world. With a sixty-petabyte library of oblique and orthogonal Pictometry® aerial imagery dating back to 2001 and the capacity to process tens of thousands of roof measurement reports per day, EagleView enables organizations to reduce



field visits and adopt faster, safer and more cost-effective workflows. For more information, contact (866) 659-8439 or visit www.EagleView.com.

EXECUTION VERSION

Scheme Implementation Agreement

Eagle View Technologies, Inc.
Bidder

Spookfish Limited
Target

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Scheme implementation agreement

Date 26 July 2018

Parties **Spookfish Limited ACN 123 511 017** of 10 Brodie Hall Drive, Technology Park, Bentley, Western Australia, 6102, Australia (**Target**)

Eagle View Technologies, Inc. of 3700 Monte Villa Parkway, Suite 200, Bothell, WA 98201, United States of America (**Bidder**)

Background

- A. Bidder proposes that it will acquire all of the Target Shares pursuant to a scheme of arrangement under section 411 of the Corporations Act between Target and the holders of Target Shares (other than Bidder).
- B. Target has agreed to propose the Scheme and issue the Scheme Booklet at the request of Bidder, and Target and Bidder have agreed to implement the Scheme on the terms and conditions of this agreement.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this agreement:

Acceptable Confidentiality Agreement means a confidentiality agreement between Target and any Third Party that contains provisions that are no less favourable in the aggregate to Target than those contained in the Confidentiality Agreement, and does not impose any obligations or restrictions that would prevent Target from complying with its obligations to Bidder under this agreement.

Agreed Form means a document that has been agreed in writing by Bidder and Target on or before the date of this agreement and has been initialled by or on behalf of Bidder and Target or acknowledged via email, in each case for the purposes of identification.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in section 12 of the Corporations Act.

ASX means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it known as the Australian Securities Exchange.

Bidder Executive Team means Rishi Daga, James P. Hickey, Matt Quilter and Adrian Alonso.

Bidder Group means Bidder and each of its Subsidiaries.

Bidder Indemnified Parties means Bidder and its Related Bodies Corporate and their respective directors, officers and employees.

Bidder Information means:

- (a) all information regarding Bidder and its Related Bodies Corporate and the Scheme Consideration that is required by the Corporations Act and the Regulatory Guides to be included in the Scheme Booklet including all the information that would be required under sections 636 of the Corporations Act to be included in a bidder's statement if Bidder were offering the Scheme Consideration as consideration under a takeover bid; and
- (b) any other information that the parties agree is Bidder Information for the purposes of this agreement, but does not include the Target Information or the Independent Expert's Report.

Bidder Nominee has the meaning given in clause 2.3.

Bidder Payment means the amount equal to \$1,180,000 (representing the amounts referred to in clause 10.1(c)).

Bidder Warranties means the representations and warranties made by Bidder set out in Schedule 1.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Perth, Western Australia.

CGT Withholding Amount has the meaning given in clause 5.1(c).

Change of Control Contract means each Material Document or contract with a supplier to, or customer of, the Target Group which contains a change of control provision or unilateral termination right that may be triggered by or exercised in response to the implementation of the Scheme, including the reconstitution of the Target Board and the boards of each Subsidiary of Target as contemplated by this agreement.

Competing Proposal means any offer, proposal, transaction or arrangement (whether by way of takeover, share acquisition, scheme of arrangement, reverse takeover, synthetic merger, capital reconstruction, sale, licensing or acquisition of assets, sale or issue of securities, dual listed structure, joint venture or otherwise), whether existing before, on or after the date of this agreement, which, if implemented, could result in a Third Party, whether alone or together with its Associates, (either directly or indirectly):

- (a) acquiring a Relevant Interest in any Target Shares, as a result of which the Third Party, together with any Associates, will have a Relevant Interest in 20% or more of the Target Shares in aggregate;
- (b) acquiring or having a right to acquire, or obtaining an economic interest in all or a substantial or material part of the business, assets or undertakings of the Target Group;
- (c) acquiring Control of any member of the Target Group;
- (d) otherwise acquiring or merging with any member of the Target Group; or
- (e) entering into an agreement or understanding with one or more members of the Target Group requiring the abandonment, or otherwise the failure to proceed with, the Transaction.

Condition means each condition specified in clause 3.1.

Confidentiality Agreement means the confidentiality agreement dated 22 May 2018 between Bidder, Target and Vista Equity Partners Management, LLC.

Consultancy Rights means Kaizen Capital Pty Ltd's right to be issued up to 5,000,000 Target Options subject to and in accordance with the Consultancy Agreement dated on or about 18 May 2018 between Target and Kaizen Capital Pty Ltd.

Control has the meaning given in the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cth).

Court means the Federal Court of Australia or such other court of competent jurisdiction as Target and Bidder agree in writing.

Deed Poll means a deed poll to be executed by Bidder in favour of the Scheme Shareholders, substantially in the form set out in Annexure B or in such other form as Target and Bidder agree in writing.

Development, License and Royalty Agreement means the development, license and royalty agreement between Bidder and Target dated 17 May 2016 (as supplemented by a supplementary agreement dated 31 May 2017 and amended by the Agreed Form second supplementary agreement on or about the date of this agreement).

Disclosed means fairly disclosed to Bidder:

- (a) in the Target Due Diligence Materials; or
- (b) in any announcement made by Target on ASX on or after 25 November 2014 but prior to the date of this agreement.

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.

Employment Contracts means:

- (a) the employment contracts between Target and each of the Founders (excluding Michael von Bertouch), as amended by Agreed Form deeds of variation dated on or about the date of this agreement;
- (b) the Agreed Form deeds of restraint between each Founder, Target and Bidder dated on or about the date of this agreement; and
- (c) the Agreed Form deed of termination and restraint between Target, Spookfish Innovations Pty Ltd (ACN 160 841 341), Structured Design Pty Ltd (ACN 119 030 161), Michael von Bertouch and Bidder dated on or about the date of this agreement.

Encumbrance means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

End Date means the date 6 months after signing this agreement or such other date agreed in writing between Target and Bidder.

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

- (a) the End Date;

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

First Court Date means the first day of the hearing of an application made to the Court for an order pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

Founders means Simon Cope, Michael von Bertouch and Guy Perkins.

Implementation Date means the date that is 5 Business Days after the Record Date or such other date as Target and Bidder agree in writing.

Independent Expert means the independent expert (as selected by Target) 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 (including any supplementary reports) from the Independent Expert in respect of whether the Scheme is in the best interests of Target Shareholders.

Innovaero Service Provider Agreement means the service provider agreement entered into between Target and Innovaero Pty Ltd (ACN 150 607 373) dated 2014 (as amended by a letter agreement on 19 December 2014 and by the Agreed Form Innovaero Deed between Target, Innovaero Pty Ltd and Michael von Bertouch dated on or about the date of this agreement).

Insolvency Event means in relation to an entity:

- (a) the entity resolving that it be wound up or the making of an application or order for the winding up or dissolution of the entity, other than where the application or order (as the case may be) is set aside within 14 days;
- (b) a liquidator or provisional liquidator of the entity being appointed;
- (c) a court making an order for the winding up of the entity;
- (d) an administrator of the entity being appointed;
- (e) the entity being or becoming unable to pay its debts when they fall due;
- (f) the entity being 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);
- (g) the entity is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (h) the entity is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject);
- (i) the entity executing a deed of company arrangement; or
- (j) a receiver, or a receiver and manager, being appointed in relation to the entity, or a substantial part, of the property of the entity.

Intellectual Property Rights means all intellectual property rights, including all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, know-how, confidential information, patents, inventions, discoveries, business names and domain names and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Listing Rules means the official listing rules of ASX.

Material Documents means those contracts, licences, approvals, certificates or authorisations listed in the Agreed Form "List of Material Documents".

Milestone Rights means the rights granted to certain persons to be issued up to 214,000,000 Target Shares (in aggregate under normal circumstances or 139,100,000 Target Shares in aggregate upon a "Successful Takeover") under the:

- (a) Option Agreement dated on or about 7 July 2014 between Target and Spookfish Pty Ltd (and related letter agreements);
- (b) Share Sale Agreement dated on or about 7 July 2014 between Target and Oaktone Nominees Pty Ltd and others; and
- (c) Facilitation Letter dated 24 November 2014 between Target and Alto Capital Pty Ltd, Forrest Capital Pty Ltd and Ventnor Capital Pty Ltd.

Policy means any Target Group directors and officers insurance policy in effect at the date of this agreement.

Recommendation has the meaning in clause 7.1(a)(i).

Record Date means 5:00 pm on the date that is 5 Business Days after the Effective Date or such other time and date agreed in writing between Bidder and Target.

Regulator's Draft has the meaning given in clause 4.2(i).

Regulatory Authority means:

- (a) any government or local authority, any department, minister or agency of any government and any other governmental, administrative, fiscal, monetary or judicial body; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

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

Regulatory Review Period means the period from the date on which Target provides the Regulator's Draft to ASIC in accordance with clause 4.2(i) to the date on which ASIC provides a letter indicating whether or not it proposes to appear to make submissions, or will intervene to oppose the Scheme, when the application made to the Court for orders under section 411(1) of the Corporations Act convening the Scheme Meeting to consider the Scheme is heard.

Related Body Corporate of a corporation means a related body corporate of that corporation within the meaning of section 50 of the Corporations Act.

Relevant Interest has the meaning given in the Corporations Act.

Representatives means, in relation to a party, its Related Bodies Corporate, and all directors, officers, employees, professional advisers (including financiers, financial advisers, corporate advisers, legal advisers or technical or other expert advisers or consultants) and agents of the party or any of its Related Bodies Corporate and, for the avoidance of doubt, in the case of Bidder, includes Vista Equity Partners Management, LLC.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders substantially in the form set out in Annexure A or in such other form as Target and Bidder agree in writing.

Scheme Booklet means the Scheme Booklet to be prepared by Target pursuant to section 412 of the Corporations Act in respect of the Scheme in accordance with the terms of this agreement and to be dispatched to Target Shareholders.

Scheme Consideration means the amount of cash which a Scheme Shareholder is entitled to receive under the Scheme, being \$0.08 for each Scheme Share subject to adjustment in accordance with clause 5.

Scheme Meeting means the meeting of Target Shareholders to be convened by the Court in relation to the Scheme pursuant to section 411(1) of the Corporations Act.

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

Scheme Shareholder means each person registered in the Target Share Register as the holder of the Scheme Shares as at the Record Date.

Second Court Date means the first day of the hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

Security Interest has the meaning given in section 12 of the Personal Property Securities Act 2009 (Cth).

Specified Arrangements means each of:

- (a) the Employment Contracts;
- (b) the Innovaero Service Provider Agreement; and
- (c) the Development, License and Royalty Agreement.

Specified Events means an event, occurrence or matter that:

- (a) occurs or fails to occur after the date of this agreement;
- (b) occurred or failed to occur before the date of this agreement but is only announced or publicly disclosed after the date of this agreement; or
- (c) will occur after the date of this agreement and which has not been publicly announced prior to the date of this agreement.

Subsidiary has the meaning given in the Corporations Act.

Superior Proposal means a bona fide Competing Proposal which in the determination of the Target Board, acting in good faith in the interests of Target and its shareholders, and in order to satisfy what the Target Board reasonably considers to be its fiduciary or statutory duties, after receiving written advice from its external legal advisers and advice from its external financial advisers:

- (a) is reasonably capable of being completed taking into account all aspects of the Competing Proposal, including its conditions, the identity, reputation and financial condition of the person making such proposal, and legal, regulatory and financial matters; and
- (b) is of a higher financial value to Target Shareholders and would, if it is completed, result in a transaction that is more favourable to Target Shareholders (as a whole) than the Transaction,

in each case taking into account all aspects of the Competing Proposal, including:

- (c) the value and form of the consideration payable to Target Shareholders under the Competing Proposal and the Tax consequences related to payment of that consideration (as compared to the consideration available under the Transaction and the Tax consequences related to payment of that consideration);
- (d) the conditions of the Competing Proposal, the likelihood of those conditions being satisfied and the level of certainty in respect of the funding required for the Competing Proposal (as compared to the nature and status of outstanding Conditions and whether those Conditions are likely to be satisfied or waived, and the level of certainty in respect of the funding required for the Transaction); and
- (e) the level of certainty and the likely timing required to implement or complete the Competing Proposal (as compared to the Transaction).

TAA means the Taxation Administration Act 1953 (Cth).

Target Announcement means an announcement of the Scheme by Target in the Agreed Form.

Target Board means the board of directors of Target.

Target Due Diligence Materials means the written information in relation to the Target Group provided by or on behalf of Target to Bidder and its Representatives prior to 5:00 pm on 25 July 2018 and identified in the Agreed Form "Due Diligence index".

Target Executive Team means Jason Marinko, Shannon Robinson, Simon Cope, Jason Waller, Michael von Bertouch and Guy Perkins.

Target Group means Target and each of its Subsidiaries.

Target Indemnified Parties means Target and its Related Bodies Corporate and their respective directors, officers and employees.

Target Information means all information included in the Scheme Booklet, other than the Bidder Information and the Independent Expert's Report.

Target IP means all Intellectual Property Rights owned by the Target Group.

Target Long Term Incentive Plan means the "Spookfish Limited Performance Rights Plan" operated by Target.

Target Material Adverse Change means a Specified Event which, individually or when aggregated with all such similar events, occurrences or matters, has, has had or which could reasonably be expected to have:

- (a) a material adverse effect on the condition (financial or otherwise), assets, liabilities, business, operations, trading or financial position (including cash flow, profitability, reputation and prospects) of the Target Group; or

- (b) without limiting the generality of paragraph (a):
 - (i) the effect of reducing the value of the consolidated net assets of the Target Group by at least \$2,200,000 against what it would reasonably have been expected to have been but for the Specified Event; or
 - (ii) the effect of reducing the value of the consolidated annual earnings before interest, tax, depreciations and amortisation of the Target Group by at least \$1,600,000 against what it would reasonably have been expected to have been but for the Specified Event,

other than an event, occurrence or matter:

- (c) arising as a consequence of an action taken by Bidder (to the extent that it is a direct consequence);
- (d) expressly contemplated or required to be done or procured by a member of the Target Group pursuant to the Transaction Documents;
- (e) resulting directly or indirectly from:
 - (i) the actual or anticipated change of control of Target contemplated by the Transaction; or
 - (ii) a change in:
 - A. any legislation or regulation (including any generally accepted accounting principles or the interpretation of them), any judicial or administrative interpretation of the law or any practice or policy of a Regulatory Authority which do not have a disproportionate impact on the Target Group when compared to other similarly situated businesses that operate in the industry of the Target Group; or
 - B. general political or economic conditions which do not have a disproportionate impact on the Target Group when compared to other similarly situated businesses that operate in the industry of the Target Group; or
- (f) that has been Disclosed.

Target Options means options in respect of Target Shares.

Target Payment means \$1,180,000 (representing the amounts referred to in clause 10.1(c)).

Target Performance Rights means performance rights in respect of Target Shares issued pursuant to the Target Long Term Incentive Plan.

Target Prescribed Occurrence means the occurrence of any of the following events:

- (a) Target converting all or any of its securities into a larger or smaller number of securities;
- (b) Target or another member of the Target Group (other than a wholly-owned Subsidiary of Target) resolving to reduce its capital in any way or resolving to re-classify, combine, split, redeem or re-purchase directly or indirectly any of its shares;
- (c) Target or another member of the Target Group (other than a wholly-owned Subsidiary of 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) any member of the Target Group issuing shares, or granting an option or a performance right over its shares or agreeing to make such an issue or grant such an option or a performance right (other than in respect of the Milestone Rights, Consultancy Rights or Unissued Convertible Securities, or the conversion of Target Performance Rights or exercise of Target Options, pursuant to their terms as at the date of this agreement, or otherwise in accordance with the Work Plan);
- (e) any member of the Target Group issuing, or agreeing to issue, convertible notes or any other security convertible into shares or debt securities;
- (f) arrangements are not in place by 5:00 pm on the Business Day immediately prior to the Second Court Date so that there will be no outstanding Target Options, Target Performance Rights, Milestone Rights, Consultancy Rights or Unissued Convertible Securities on the Record Date (and that no person has any residual entitlement to Target Shares or Target Options or any other consideration under or arising from any Milestone Rights, Consultancy Rights or Unissued Convertible Securities on that date);
- (g) any member of the Target Group agreeing to pay, declaring or paying a dividend or any other form of distribution of profits or return of capital to its members other than the declaration and payment by a member of the Target Group of a dividend where the recipient of that dividend is Target or a wholly-owned Subsidiary of Target;
- (h) any member of the Target Group disposing of the whole, or a substantial part, of its business or property;
- (i) any member of the Target Group acquiring or agreeing to acquire any securities, business, asset, entity or undertaking in a single or series of related transactions, the value of which is material to the Target Group as a whole;
- (j) any member of the Target Group creating, or agreeing to create, any Encumbrance over, or declaring itself the trustee of, any part of its business or property which is material to the Target Group as a whole;
- (k) an Insolvency Event occurring in relation to any member of the Target Group which is material to the Target Group as a whole;
- (l) Target adopts a new constitution or modifies or repeals its constitution or a provision of it;
- (m) any member of the Target Group grants any licence, assignment or other right or interest in respect of any Target IP, other than in the ordinary and usual course of business, or allows any Target IP that is the subject of an application or registration to expire or lapse;
- (n) any member of the Target Group undertakes or agrees to undertake any capital expenditure in excess of \$250,000 in aggregate other than in the ordinary course of business;
- (o) any member of the Target Group:
- (i) increases the remuneration of (including with regard to superannuation benefits) or benefits provided to or pay any bonus (other than in accordance with existing arrangements and in the ordinary and usual

course) or otherwise vary the arrangements with, any of its directors, employees or consultants;

- (ii) accelerates the rights of any of its directors, employees or consultants to compensation or benefits of any kind (including under any Target executive or employee share plans);
 - (iii) pays any of its directors, employees or consultants a termination or retention payment (otherwise than in accordance with an existing contract in place at the date of this agreement); or
 - (iv) fails to enforce the material terms of any arrangement with any of its directors, employees or consultants; or
- (p) any member of the Target Group authorises or agrees to do, or makes any representation or warranty regarding doing, authorising or agreeing to do, any of the matters set out above,

other than an event:

- (q) expressly contemplated or required to be done or procured by a member of the Target Group pursuant to the Transaction Documents;
- (r) to which Bidder has provided its prior written consent; or
- (s) that has been Disclosed.

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

Target Share Registry means Computershare Investor Services Pty Limited (ACN 078 279 277) (or any replacement provider of share registry services to Target).

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

Target Shares means fully paid ordinary shares in the capital of Target.

Target Warranties means the representations and warranties made by Target set out in this agreement, including Schedule 2.

Tax means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax (including royalty withholding tax), impost or withholding obligation of whatever nature, whether direct or indirect, (including any tax payable under a country's foreign source income attribution or anti-tax-deferral rules) by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges in any country or jurisdiction.

Taxation Condition means a condition imposed by the Treasurer under section 74(2) of the Foreign Acquisitions and Takeovers Act 1975 (Cth) in the form of the conditions in the "Taxation conditions of certain no objection decisions" in Attachment A to the Foreign Investment Review Board Guidance Note 47 (or any other replacement or substitute taxation conditions that may be issued by the Treasurer from time to time).

Third Party means a person other than Bidder, Target, or their respective Related Bodies Corporate.

Timetable means the indicative timetable in relation to the Scheme set out in Schedule 3, or such other indicative timetable as Target and Bidder agree in writing.

Transaction means the acquisition by Bidder of the Scheme Shares for the Scheme Consideration pursuant to the Scheme and transactions contemplated by the Specified Arrangements.

Transaction Documents means:

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

Transaction Implementation Committee means a committee to be made up of:

- (a) representatives of each of Target and Bidder;
- (b) representatives from each of the legal advisers of Target and Bidder; and
- (c) such other persons as the parties may agree from time to time.

Treasurer means the Treasurer of the Commonwealth of Australia.

Trust Account means an Australian dollar denominated trust account operated by Target as trustee for the Scheme Shareholders, as nominated by Target and notified to Bidder at least 5 Business Days prior to the Implementation Date, being the account into which Bidder will deposit an amount equal to the total Scheme Consideration in accordance with clause 5.1.

Unissued Convertible Securities means the:

- (a) 20,000,000 Target Options agreed to be granted to Jason Waller, subject to and in accordance with his executed services agreement with Spookfish dated 4 September 2017; and
- (b) 576,293 Target Performance Rights agreed to be granted to certain persons, subject to and in accordance with the offer letters from Spookfish dated 21 May 2018.

Voting Intention has the meaning in clause 7.1(a)(ii).

Work Plan means the Agreed Form "Work Plan for Target Options, Target Performance Rights, Milestone Rights, Consultancy Rights and Unissued Convertible Securities".

1.2 Best and reasonable endeavours

Any provision of this agreement which requires a party to use best endeavours or reasonable endeavours to procure that something is performed or occurs or does not occur does not include any obligation to:

- (a) pay any money or to provide any financial compensation, or any other incentive to or for the benefit of any person in the form of an inducement or consideration except for the payment of:
 - (i) any applicable fee for the lodgement or filing of any relevant application with any Regulatory Authority; or
 - (ii) immaterial expenses or costs, including costs of advisers, the Independent Expert, the Target Share Registry, typesetting, printing and despatching the Scheme Booklet and any supplementary disclosure,

establishing and operating any shareholder information line, placing advertisements regarding the Court process, and hiring a venue for the Scheme Meeting,

to procure the relevant thing; or

- (b) commence or defend any legal action or proceeding against any person,

except, in each case, where that provision expressly specifies otherwise and, for the avoidance of doubt, that party will not breach the relevant provision requiring the use of best or all endeavours where the party does not procure that the thing is performed or occurs or does not occur as a result of matters outside the control or influence of the party.

1.3 Business Day

If the day on which any act to be done under this agreement is a day other than a Business Day, that act must be done on the immediately preceding Business Day except where this agreement expressly specifies otherwise.

1.4 Interpretation

In this agreement headings and labels used for definitions are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment, or annexure is a reference to a party, clause, schedule, exhibit, attachment, or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments, and annexures to it;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to an event, occurrence or matter being **fairly disclosed** in particular information means disclosed in sufficient detail so that the nature, scope and effect

of the relevant event, occurrence, matter or fact on the Target Group could reasonably have been deduced or concluded from that information;

- (k) a reference to a party being **aware** of certain information, having **knowledge** of certain information, having an **awareness** of certain information or to certain information being **known** to a party, at a particular time, in any Bidder Warranties or Target Warranties is a reference to:
- (i) in respect of Bidder, a member of the Bidder Executive Team having actual knowledge or awareness of that information at the relevant time, or circumstances where a member of the Bidder Executive Team would have had actual knowledge or awareness of that information at the relevant time had they made due enquiries of people who might reasonably be expected to have knowledge or awareness of that information, but only to the extent that member of the Bidder Executive Team was employed by Bidder at the relevant time; and
 - (ii) in respect of Target, a member of the Target Executive Team having actual knowledge or awareness of that information at the relevant time, or circumstances where a member of the Target Executive Team would have had actual knowledge or awareness of that information at the relevant time had they made due enquiries of people who might reasonably be expected to have knowledge or awareness of that information, but only to the extent that member of the Target Executive Team was employed by Target at the relevant time,

and in clauses 12.2 and 12.5 is a reference to:

- (iii) in respect of Bidder, a member of the Bidder Executive Team having actual knowledge or awareness of that information at the relevant time; and
 - (iv) in respect of Target, a member of the Target Executive Team having actual knowledge or awareness of that information at the relevant time;
- (l) a reference to **\$** or **dollar** is to Australian currency;
 - (m) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this agreement;
 - (n) a reference to a date or time is to that date or time in Perth, Australia;
 - (o) this agreement or any clause in this agreement must not be construed adversely to a party just because that party prepared it or caused it to be prepared;
 - (p) a reference to accounting standards is a reference to accounting standards, principles and practices generally accepted in the relevant place, consistently applied; and
 - (q) a reference to an accounting term in an accounting context is a reference to that term as it is used in relevant accounting standards.

2. Obligations in relation to Scheme

2.1 Target to propose Scheme

- (a) Target agrees to propose the Scheme on and subject to the terms and conditions of this agreement.

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

2.2 Target and Bidder to implement Scheme

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

2.3 Nomination of acquirer

At any time prior to the Business Day before the First Court Date, Bidder may nominate a wholly owned Subsidiary of Bidder (**Bidder Nominee**) to pay the Scheme Consideration and/or to which the Scheme Shares are to be transferred in accordance with the Scheme by providing a written notice which sets out the details of Bidder Nominee to Target. If Bidder decides to nominate Bidder Nominee to acquire the Target Shares:

- (a) the parties must procure that the Scheme Shares transferred under the Scheme are transferred to Bidder Nominee rather than Bidder;
- (b) Bidder must procure that Bidder Nominee:
- (i) complies with this agreement as if Bidder Nominee were a party to it in place of Bidder; or
 - (ii) executes and delivers to Target a deed poll of accession in favour of Target under which Bidder Nominee agrees to comply with this agreement as if it were a party to it in place of Bidder; and
- (c) any such nomination will not relieve Bidder of its obligations under this agreement, including the obligation to pay or procure payment of the Scheme Consideration as contemplated by the terms of this agreement and the Scheme (provided that Bidder will not be in breach of this agreement if it does not discharge an obligation where that obligation has been fully discharged by Bidder Nominee).

3. Conditions precedent

3.1 Conditions

Subject to this clause 3, the Scheme will not become Effective and the obligations of the parties to complete the implementation of the Scheme, are not binding, unless and until each of the conditions listed in the first column of the following table are either satisfied or waived in accordance with clause 3.5:

Condition	Right to benefit and waive	Responsibility to satisfy
(a) (Scheme shareholder approval) Target Shareholders approve the Scheme by the majorities required under section 411(4)(a)(ii) of the Corporations Act;	None	Target
(b) (Court approval of Scheme) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;	None	Target
(c) (FIRB approval) before the Scheme Meeting, the Treasurer has either:	None	Bidder

Condition	Right to benefit and waive	Responsibility to satisfy
<p>(i) provided written notice that there is no objection under the Foreign Acquisitions and Takeovers Act 1975 (Cth) to the proposed acquisition by the Buyer of the Shares, with the notice of no objection being either unconditional or subject only to:</p> <p>A. the Taxation Conditions; and/or</p> <p>B. other conditions which are reasonably acceptable to Bidder; or</p> <p>(ii) become precluded from exercising any power to make an order under the Foreign Acquisitions and Takeovers Act 1975 (Cth) in relation to the Scheme;</p>		
<p>(d) (Regulatory approvals) on or before 8:00 am on the Second Court Date, all consents, waivers and regulatory approvals which Bidder and Target (acting reasonably) agree are necessary or desirable to implement the Scheme (other than the approval in Conditions 3.1(c)) are granted or obtained and those consents, waivers and regulatory approvals are not withdrawn, cancelled or revoked.</p> <p>To avoid doubt, this includes, but is not limited to, ASIC and ASX having issued or provided such consents or approvals or having done such other acts which Bidder and Target agree (acting reasonably) are necessary or desirable to implement the Scheme, or Bidder having done such other acts which Bidder and Target (acting reasonably) agree are necessary or desirable to implement the Scheme.</p> <p>If such consents, approvals or other acts are subject to conditions, those conditions must be acceptable to Bidder and Target (acting reasonably);</p>	<p>Bidder and Target</p>	<p>In respect of each regulatory approval, the party who has the legal obligation to obtain that regulatory approval</p>
<p>(e) (No restraint) no temporary restraining order, preliminary or permanent injunction or other temporary, preliminary or final order issued by any court of competent jurisdiction, no preliminary or final decision, determination, notice of objection, or order issued by any Regulatory Authority or any other legal restraint preventing any of the transactions contemplated by this agreement is in effect at</p>	<p>Bidder and Target</p>	<p>Bidder and Target</p>

Condition	Right to benefit and waive	Responsibility to satisfy
8:00 am on the Second Court Date;		
(f) (Independent Expert's Report) the Independent Expert's Report concluding that the Scheme is in the best interests of Target Shareholders on or before the date on which the Scheme Booklet is registered by ASIC under the Corporations Act and the Independent Expert does not change or publicly withdraw this conclusion prior to 8:00 am on the Second Court Date;	Target	Target
(g) (No Target Material Adverse Change) no Target Material Adverse Change occurs or becomes known to Bidder between the date of this agreement and 8:00 am on the Second Court Date;	Bidder	Target
(h) (Target Prescribed Occurrence) no Target Prescribed Occurrence has occurred or becomes known to Bidder between the date of this agreement and 8:00 am on the Second Court Date;	Bidder	Target
(i) (Target Warranties) the Target Warranties are true and correct in all material respects as at the time they are given or made;	Bidder	Target
(j) (Bidder Warranties) the Bidder Warranties are true and correct in all material respects as at the time they are given or made; and	Target	Bidder
(k) (Specified Arrangements) none of the Specified Arrangements have been terminated or amended, or any rights under the Specified Arrangements waived, before 8:00 am on the Second Court Date.	Bidder	Target

3.2 General obligations in relation to Conditions

Without prejudice to any other obligations of the parties under this agreement, in respect of any given Condition:

- (a) if one party is specified in the third column of the table in clause 3.1 opposite that Condition (or specified in respect of a particular regulatory approval in the case of the Condition in clause 3.1(d)), that party must use its best endeavours to procure that that Condition is satisfied (only to the extent of the particular regulatory approval in the case of the Condition in clause 3.1(d)) as soon as practicable after the date of this agreement and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require);
- (b) if both parties are specified in the third column of a table in clause 3.1 opposite that Condition, both parties must, to the extent that it is within their respective control or influence, use their best endeavours to procure that that Condition is satisfied as

soon as practicable after the date of this agreement and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require); and

- (c) each party must, to the extent that it is within its respective control or influence, use its best endeavours to procure that there is no occurrence that would prevent the Condition being satisfied and no party shall take any action that will or is likely to hinder or prevent the satisfaction of the Condition except to the extent that such action is required to be done or procured pursuant to the Transaction Documents or is required by law.

3.3 Obligations in relation to regulatory approvals

Without limiting clause 3.2, to the extent a party is required to use best endeavours to procure that a regulatory consent, waiver or approval is obtained, that party must:

- (a) at the earliest practicable time prepare and, subject to clause 3.3(b), lodge each notice or application required to be given by that party for the purposes of procuring that the regulatory consent, waiver or approval is obtained and take all procedural steps it is responsible for as part of such consent, waiver or approval process, including responding to requests for information at the earliest practicable time and using its best endeavours to obtain such consents, waivers or approvals as soon as practicable after the date of this agreement;
- (b) consult with the other party, in advance and before sending any communications, submissions or applications, in relation to all communications with, or submissions or applications to, any Regulatory Authority relating to any regulatory consent, waiver or approval and provide the other party with a draft copy of such communications, submissions or applications as soon as practicable and consider in good faith any reasonable comments received from the other party;
- (c) keep the other party informed of progress in relation to each such regulatory consent, waiver or approval and of any material matters raised by, or conditions, material actions or other arrangements proposed by, or to, any Regulatory Authority which relate to any such regulatory consent, waiver or approval; and
- (d) provide copies, on a confidential basis, to the other party of all documents and other communications provided to and received from each relevant Regulatory Authority in relation to each such regulatory consent, waiver or approval (including before the date of this agreement),

provided that:

- (e) the party applying for the consent, waiver or approval may withhold or redact information or documents if and to the extent that they are confidential to a Third Party;
- (f) nothing in this clause 3.3 or any other provision of this agreement requires a party to disclose materially commercially sensitive information to the other party and so such information can be redacted; and
- (g) the party applying for the consent, waiver or approval will not be prevented from taking procedural steps or communicating with or providing documents to a Regulatory Authority if the other party has not responded promptly under clause 3.3(b).

The other party must provide the applicant for a regulatory consent, waiver or approval with all assistance and information reasonably requested by the applicant in connection with the application and submissions for obtaining the consent, waiver or approval and must review and provide any comments on any submissions or other materials prepared by the party applying for the regulatory consent, waiver or approval.

3.4 Notice in relation to satisfaction of Conditions

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;
- (b) in relation to any Condition, promptly notify the other party in writing upon becoming aware of:
 - (i) the satisfaction of that Condition, in which case the notifying party must also provide reasonable evidence that the Condition has been satisfied; or
 - (ii) any fact or circumstance that it becomes aware of which results in, or may result in, that Condition becoming incapable of satisfaction or may result in that Condition not being satisfied in accordance with its terms; and
- (c) in relation to any Condition, promptly notify the other party in writing of a breach or non-fulfilment of a Condition or any occurrence or event that will prevent a Condition from being satisfied, and where a party is entitled to waive that Condition upon receipt or delivery of such a notice (as applicable) that party must notify the other party in accordance with clause 3.5 as soon as reasonably practicable after receipt of that notice (in any event before 6:00 pm on the Business Day immediately before the Second Court Date) as to whether the party waives the breach or non-fulfilment of the Condition resulting from the occurrence or event.

3.5 Waiver of Conditions

- (a) A Condition is only for the benefit of:
 - (i) if one party is specified in the second column of the table in clause 3.1 opposite that Condition, that party; or
 - (ii) if both parties are specified in the second column of the table in clause 3.1 opposite that Condition, both parties.
- (b) A Condition may be waived and may only be waived:
 - (i) if the Condition is for the benefit of one party, by that party by written notice to the other party; or
 - (ii) if the Condition is for the benefit of both parties, by written agreement between the parties.
- (c) A party entitled to waive or to agree to waive a Condition under this clause 3.5 may do so in its absolute discretion subject to the provision of written notice to the other party.
- (d) A party that waives or agrees to waive a Condition is not prevented from bringing a claim against any other party in respect of any breach of this agreement that caused that Condition not to be satisfied.
- (e) Waiver of a breach or non-fulfilment in respect of one Condition does not constitute:
 - (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or

- (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event.

3.6 Consultation on failure of Conditions

If:

- (a) there is a breach or non-fulfilment of a Condition which is not waived in accordance with this agreement by the time or date specified in this agreement for the satisfaction of the Condition;
- (b) there is an act, failure to act, event or occurrence which will, or which either party becomes aware will prevent a Condition being satisfied by the time or date specified in this agreement for the satisfaction of the Condition (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this agreement); or
- (c) the Scheme has not become Effective by the End Date,

then the parties must consult, acting reasonably and in good faith, with a view to determining whether:

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

3.7 Failure to agree

If the parties are unable to reach agreement under clause 3.6 within 5 Business Days (or any shorter period ending at 6:00 pm on the Business Day immediately before the Second Court Date):

- (a) subject to clauses 3.7(b) and 3.8, either party may terminate this agreement (and such termination will be in accordance with the termination event in clause 14.2(a) or 14.3(a) (as applicable)); or
- (b) if a Condition may be waived and exists for the benefit of one party only, that party may only waive that Condition or terminate this agreement (and such termination will be in accordance with termination event in clause 14.2(a) or 14.3(a) (as applicable)),

in each case before 8:00 am on the Second Court Date.

3.8 Exception

A party will not be entitled to terminate this agreement pursuant to clause 3.7 if the relevant Condition has not been satisfied or agreement cannot be reached as a result of:

- (a) a breach of this agreement by that party; or
- (b) a deliberate act or omission of that party for the purpose of frustrating satisfaction of the Condition.

4. Implementation of the Scheme

4.1 General obligations

Target and Bidder must each:

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

to produce the Scheme Booklet and implement the Scheme as soon as is reasonably practicable after the date of this agreement in accordance with this clause 4, clause 8 and the Timetable. Each party must keep the other reasonably informed about their progress and promptly notify the other if it believes that there will be any delay in achieving any of the milestones by the required time(s) set out in the Timetable.

4.2 Target's obligations

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

- (a) **(Scheme Booklet)** as soon as reasonably practicable after the date of this agreement, prepare the Scheme Booklet (excluding the Bidder Information and the Independent Expert's Report) in accordance with all applicable laws and in particular the requirements of the Corporations Act, the Listing Rules and the Regulatory Guides;
- (b) **(Review of Bidder Information)** as soon as reasonably practicable after receiving a draft of the Bidder Information pursuant to clause 4.3(a), review and provide comments on the form and content of the Bidder Information promptly and in good faith to Bidder;
- (c) **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet;
- (d) **(Consultation with Bidder)** consult with Bidder as to the content and presentation of the Scheme Booklet, which includes:
 - (i) providing Bidder with drafts of the Scheme Booklet in a timely manner, and allowing Bidder a reasonable opportunity to review and make comments on drafts of the Scheme Booklet;
 - (ii) acting reasonably and in good faith, taking any comments made by Bidder and its Representatives on those drafts into account when producing revised drafts of the Scheme Booklet; and
 - (iii) providing to Bidder a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised;
- (e) **(Provide draft Independent Expert's Report)** provide a draft of the Independent Expert's Report to Bidder no later than 2 Business Days prior to provision of the Regulator's Draft to ASIC (accepting that any review of the Independent Expert's Report is limited to review for factual accuracy, including those parts that include information relating to Bidder);

- (f) **(Directors' Recommendation)** state in the Scheme Booklet and the Target Announcement the Recommendation and Voting Intention of each of the Target directors in accordance with clause 7.1;
- (g) **(Directors' votes)** use its reasonable endeavours to procure that each Target director:
- (i) confirms their intention to vote any Target Shares in which they have a Relevant Interest in favour of the Scheme and any other resolution submitted to Target Shareholders for their approval in connection with the Scheme, provided that the Target director has not changed or in any way qualified their Recommendation or Voting Intention in accordance with clause 7.1(b);
 - (ii) votes any Target Shares in which they have a Relevant Interest in favour of the Scheme and any other resolution submitted to Target Shareholders for their approval in connection with the Scheme, provided that the Target director has not changed or in any way qualified their Recommendation or Voting Intention in accordance with clause 7.1(b); and
 - (iii) does not change that Voting Intention (except to the extent permitted by clause 7.1(b));
- (h) **(Approval of draft Scheme Booklet)** procure that a meeting of the Target Board is convened to approve the draft Scheme Booklet to be provided to ASIC for its review;
- (i) **(ASIC review)** as soon as reasonably practicable provide an advanced draft of the Scheme Booklet (**Regulator's Draft**) to ASIC, for its review and approval for the purposes of section 411(2) of the Corporations Act, and to Bidder and:
- (i) liaise with ASIC as necessary during the Regulatory Review Period; and
 - (ii) promptly notify, and consult with, Bidder in relation to any matters raised by ASIC in connection with the Scheme Booklet or the Scheme and any presentation or submission to, or at any proposed meeting with, ASIC, and co-operate and consult with Bidder to resolve any such matters;
- (j) **(Section 411(17)(b) statement)** apply to ASIC for the production of:
- (i) a statement in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme; and
 - (ii) a letter stating that ASIC does not intend to appear at the First Court Hearing;
- (k) **(Court documents)** consult with Bidder in relation to the content of the documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith comments on, and suggested amendments to, those documents from Bidder and its Representatives;
- (l) **(First Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that an application is heard by the Court for an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;

- (m) **(proxy reports)** keep Bidder reasonably informed on the status of proxy forms received for the Scheme Meeting, including over the period commencing 10 Business Days before the Scheme Meeting and ending on the deadline for receipt of proxy forms, and such other information as Target or its Representatives may receive concerning the voting intentions of Target Shareholders;
- (n) **(Approval of Scheme Booklet)** procure that a meeting of the Target Board is convened to approve the Scheme Booklet for registration with ASIC and dispatch to Target Shareholders;
- (o) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report);
- (p) **(Register Scheme Booklet)** request to ASIC that the explanatory statement included in the Scheme Booklet in relation to the Scheme be registered in accordance with section 412(6) of the Corporations Act;
- (q) **(Compliance with Court orders)** take all reasonable steps necessary to comply with the orders of the Court including, as required, dispatching the Scheme Booklet to Target Shareholders and convening and holding the Scheme Meeting, provided that, before dispatch, Target must obtain the written consent of Bidder to the inclusion of the Bidder Information in the Scheme Booklet, in the form and context in which it appears (such consent not to be unreasonably withheld or delayed);
- (r) **(Update Scheme Booklet)** if it becomes aware of information after the date of dispatch of the Scheme Booklet, which is required to be disclosed to Target Shareholders under any applicable law, as expeditiously as practicable:
 - (i) consult with Bidder in good faith as to the form of any supplementary disclosure to Target Shareholders (and to the extent it is reasonably practicable to do so, also provide Bidder with drafts of any documents that it proposes to issue to Target Shareholders under this clause 4.2(r)); and
 - (ii) make the supplementary disclosure to Target Shareholders in an appropriate and timely manner, and in accordance with applicable law;
- (s) **(ASX listing)** use its best endeavours to ensure that Target continues to be admitted to ASX, and that the Target Shares continue to be quoted for trading (and not permanently suspended) on ASX, until the close of business on the Business Day after the Implementation Date;
- (t) **(Suspension)** apply to ASX to have trading in Target Shares suspended from the close of trading on the Effective Date;
- (u) **(Court approval application)** if the resolution submitted to the Scheme Meeting in relation to the Scheme is passed by the requisite majorities required under section 411(4)(a)(ii) of the Corporations Act and subject to all other Conditions (other than the Condition in clause 3.1(b)) being satisfied or waived in accordance with this agreement, apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (v) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b)) have been satisfied or waived in accordance with this agreement and provide a draft of that certificate to Bidder by 5:00 pm on the Business Day immediately prior to the Second Court Date;
- (w) **(Implementation of Scheme)** if the Scheme is approved by the Court:

- (i) promptly lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act;
- (ii) close the Target Share Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme;
- (iii) provide to Bidder all information about the Scheme Shareholders that Bidder reasonably requires in order for Bidder to provide, or procure the provision of, the Scheme Consideration in accordance with the Scheme; and
- (iv) subject to Bidder satisfying its obligations under clause 5.1(a)(ii), on the Implementation Date (or as soon as practicable thereafter):
 - A. execute proper instruments of transfer and effect the transfer of Scheme Shares to Bidder (or Bidder Nominee) in accordance with the Scheme; and
 - B. register all transfers of Scheme Shares to Bidder (or Bidder Nominee) in accordance with the Scheme;
- (x) **(Promote merits of Transaction)** participate in efforts reasonably requested by Bidder to promote the merits of the Transaction and the Scheme Consideration to Target Shareholders, including meeting with key Target Shareholders and communicating with employees, customers and suppliers at the reasonable request of Bidder; and
- (y) **(Other things)** promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

4.3 Bidder's obligations

Bidder (or if applicable, Bidder Nominee) must use its best endeavours to assist Target to implement the Scheme as soon as is reasonably practicable after the date of this agreement in accordance with the Timetable and, in particular, Bidder must:

- (a) **(Draft of Bidder Information)** provide to Target a draft of the Bidder Information as soon as reasonably practicable after the date of this agreement and consult with Target in relation to the content of drafts of the Bidder Information and (acting reasonably and in good faith) take into account any comments from Target and its Representatives on those drafts;
- (b) **(Final form of Bidder Information)** provide to Target the Bidder Information in a form appropriate for inclusion in the Scheme Booklet;
- (c) **(Review Scheme Booklet)** review the drafts of the Scheme Booklet provided by Target and provide comments on those drafts promptly and in good faith;
- (d) **(Independent Expert)** promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare its report for inclusion in the Scheme Booklet;
- (e) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Bidder Information and provide to Target all evidence of such processes as may be reasonably requested;
- (f) **(Approval of Bidder Information)** as soon as reasonably practicable after receipt from Target of the draft of the Scheme Booklet that Target proposes to dispatch to Target Shareholders, confirm in writing to Target that the Bidder Information (other

than to the extent it consists of information relating to Target that was provided by or on behalf of Target) in the form and context in which it appears in the draft of the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission and is in a form appropriate for dispatch to Target Shareholders (subject to the approval of the Court);

- (g) **(Keep Target informed)** promptly inform Target if it becomes aware after the despatch of the Scheme Booklet that the Bidder Information 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 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 contains any material omission;
- (h) **(Deed Poll)** by the Business Day prior to the First Court Date, enter into the Deed Poll and deliver the executed Deed Poll to Target;
- (i) **(Representation)** procure that, if requested by Target, it is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel and if requested by the Court, Bidder will undertake to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme;
- (j) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b)) have been satisfied or waived in accordance with this agreement and provide a draft of that certificate to Target by 5:00 pm on the Business Day immediately prior to the Second Court Date;
- (k) **(Scheme Consideration)** if the Scheme becomes Effective, provide, or procure the provision of, the Scheme Consideration on the Implementation Date in accordance with clause 5 and the terms of the Scheme and Deed Poll;
- (l) **(Promote merits of Transaction)** participate in efforts reasonably requested by Target to promote the merits of the Transaction and the Scheme Consideration, including meeting with key Target Shareholders at the reasonable request of Target;
- (m) **(CGT declarations)** not, despite anything else in this agreement, require any Scheme Shareholder to provide any warranty, representation or declaration under section 14-225 of Schedule 1 to the TAA; and
- (n) **(Other things necessary)** promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

4.4 Dispute as to Scheme Booklet

If, after a reasonable period of consultation, the parties, each acting reasonably and in good faith, are unable to agree on the form or content of the Scheme Booklet, then:

- (a) if the disagreement relates to the form or content of the Bidder Information (or any information solely derived from, or prepared solely in reliance on, the Bidder Information), Target will make such amendments to that information in the Scheme Booklet as Bidder may reasonably require; and
- (b) if the disagreement relates to the form or content of the Target Information (or any information solely derived from, or prepared solely in reliance on, information provided by or on behalf of Target, or extracted from announcements made by

Target to ASX regarding the Target Group), Target will decide the final form of that information in the Scheme Booklet.

4.5 Responsibility statement

The Scheme Booklet will contain a responsibility statement to the effect that:

- (a) Bidder is responsible for the Bidder Information contained in the Scheme Booklet;
- (b) Target is responsible for the Target Information contained in the Scheme Booklet; and
- (c) the Independent Expert is responsible for the Independent Expert's Report.

4.6 Reconstitution of Target Board

On the Implementation Date, but subject to Bidder having provided the Scheme Consideration in accordance with clause 5, Target must:

- (a) cause the appointment to the Target Board and to the boards of each Subsidiary of Target of such persons as nominated by Bidder, subject to those persons being appointed having provided a consent to act as directors of the relevant companies; and
- (b) procure that the Target directors and the directors of each Subsidiary of Target which Bidder nominates resign from the Target Board and the board of each subsidiary of Target and provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against the Target Group in respect of holding or ceasing to hold office (provided that nothing in this clause 4.6 requires any such director to forego any rights they may have under any deed of indemnity, access and insurance referred to in clause 11.4 or under the Policy).

4.7 Discharge of contractual obligations

Subject to the Scheme becoming Effective but prior to the Target Board changes required under clause 4.6, Target will discharge any contractual obligations which are due and payable to any employees, contractors or third parties (including, inter alia, any financial adviser mandates or other professional advisory fees).

4.8 Removal of Target from official list of ASX

If directed by Bidder in writing, Target must take all steps necessary for Target to be removed from the official list of ASX on the day immediately following the Implementation Date, including by lodging a request for removal with ASX prior to the Implementation Date, and Target and/or Bidder must satisfy any conditions reasonably required by ASX for it to act on that request.

4.9 Court representation

Without limiting clause 4.3(i) above:

- (a) Bidder is entitled to separate representation at all Court proceedings relating to the Scheme at its own cost; and
- (b) Target must support any application by Bidder for leave of the Court to be represented, or the separate representation of Bidder, at any hearing held by the Court in relation to the Scheme whether following a request by Target or otherwise.

4.10 Appeal process

- (a) If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, Target must appeal the Court's decision to the fullest extent possible (and Bidder must provide, or procure that Bidder Nominee provides, all reasonable assistance) except to the extent that:
- (i) the parties agree in writing otherwise; or
 - (ii) an independent senior counsel of the Western Australian bar advises that, in their opinion, an appeal would have no reasonable prospect of success before the End Date,
- in which case either party may terminate this agreement (and such termination will be in accordance with termination event in clause 14.2(a) or 14.3(a) (as applicable)).
- (b) Bidder and Target share in equal proportions all costs incurred by either of them in Australia as a result of the operation of this clause 4.10, including all legal and other professional expenses (including any counsel fees) and excluding Bidder's legal fees outside Australia.

4.11 Transaction Implementation Committee

The parties must establish a Transaction Implementation Committee as soon as reasonably practical after the date of this agreement. The role of the Transaction Implementation Committee will be to act as a forum to:

- (a) oversee and coordinate the performance of the parties respective obligations to implement the Transaction in accordance with this clause 4 and clause 8, including to oversee the preparation of, and monitor progress by the parties against, step plans and tasklists in the form(s) agreed by the Transaction Implementation Committee; and
- (b) subject to clause 4.12, consult with each other and plan to ensure the smooth transition of the management of the business and the affairs of the Target Group to the Bidder Group following the implementation of the Scheme, including to oversee and coordinate the matters set out in clause 6.

4.12 No partnership or joint venture

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

5. Scheme Consideration

5.1 Obligations in respect of the Scheme Consideration

- (a) Subject to the Scheme becoming Effective, Bidder agrees in favour of Target (in Target's own right and separately as trustee for each of the Scheme Shareholders) that in consideration of the transfer to Bidder (or Bidder Nominee) of each Scheme Share held by a Scheme Shareholder under the terms of the Scheme, Bidder (or Bidder Nominee) will:
 - (i) accept that transfer; and

- (ii) provide, or procure the provision of, the Scheme Consideration to that Scheme Shareholder for each of their Scheme Shares in accordance with the terms of the Scheme.
- (b) Subject to the Scheme becoming Effective but before the Scheme Shares are transferred to Bidder (or Bidder Nominee) under the Scheme, Bidder must, by no later than the Business Day before the Implementation Date, deposit an amount equal to the total Scheme Consideration in cleared funds into the Trust Account.
- (c) Notwithstanding any other provision of this agreement, if Bidder determines (acting reasonably) that an amount is required to be withheld under Subdivision 14-D of Schedule 1 of the TAA from the Scheme Consideration payable to a Scheme Shareholder, Bidder:
- (i) may withhold and remit to the Australian Taxation Office a sum equal to 12.5% (or some lesser rate expressly approved by the Commissioner of Taxation in writing) of the Scheme Consideration payable to that Scheme Shareholder (**CGT Withholding Amount**); and
 - (ii) is taken to have paid the Withholding Amount to the Scheme Shareholder for the purposes of this agreement and the Scheme,
- provided that:
- (iii) the Bidder has given Target, at least 10 Business Days prior to the Implementation Date, information which is to Target's satisfaction (acting reasonably), which identifies the reasons as to why a liability arises under Subdivision 14-D of Schedule 1 of the TAA, and the basis of the calculation of the CGT Withholding Amount; and
 - (iv) Target has not, at least 5 Business Days prior to the Implementation Date, given information to the Bidder which demonstrates (to Target's satisfaction, acting reasonably) that the CGT Withholding Amount should be nil.

5.2 Fractional entitlements and share splitting or division

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration results in a fractional entitlement to a cent, then the entitlement of that Scheme Shareholder must be rounded up or down to the nearest cent (with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole cent and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole cent).
- (b) If Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 5.2(a)) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, Bidder may give notice to those Scheme Shareholders:
- (i) setting out their names and registered addresses as shown in the Target Share Register;
 - (ii) stating that opinion; and
 - (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares will, for the purposes of the other provisions of the Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the other provisions of the Scheme, be taken to hold no Scheme Shares. Bidder in complying with the other provisions of the Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of the Scheme.

6. Conduct of business

6.1 Required conduct

From the date of this agreement up to and including the Implementation Date, Target must, and must procure that each other member of the Target Group:

- (a) conducts its business and operations in the ordinary and usual course and substantially consistent (subject to any applicable laws, regulations and licence conditions) with the manner in which its business and operations were conducted in the 12 months prior to the date of this agreement, including:
 - (i) maintaining the condition of its business and assets;
 - (ii) maintaining (and if necessary, renewing) each consent, registration, filing, contract, notice of non-objection, notarisation, certificate, licence, approval, permit, authority or exemption issued or granted by a Regulatory Authority or relevant industry body, in each case which is necessary to conduct its business;
 - (iii) maintaining (and if necessary, renewing) each of its insurance policies and promptly notifying Bidder if any renewal proposal is not accepted by the insurer;
 - (iv) using reasonable endeavours to preserve its current business organisation, the services of its current officers and employees and its current relationships with third parties (including governmental agencies, rating agencies, customers, suppliers, licensors, licensees and others having business dealings with it); and
 - (v) not taking actions outside of the ordinary and usual course of business that would detrimentally affect that company's levels of cash, indebtedness or working capital;
- (b) conducts its business and operations in accordance with all material applicable laws and regulations; and
- (c) ensures that no Target Prescribed Occurrence occurs.

6.2 Prohibited actions

Without limiting clause 6.1, Target must not, and must procure that each other member of the Target Group does not, during the period referred to in clause 6.1:

- (a) **(Material Document):** vary or terminate a Material Document, fail to enforce a material breach of the terms of any Material Documents, or do anything or omit to do anything which might result in the variation or termination of, or materially impact the ability to enforce, any Material Documents;

- (b) **(Commitments and settlements)** breach in any material respect any Material Document or do anything which is or would with the giving of notice or lapse of time constitute an event of default or similar event, or give another party a termination right or right to accelerate any right or obligation, under a Material Document, or waive any material third party default, or institute or accept as a settlement or compromise of a material matter an amount that is less than the full compensation due to Target or a Subsidiary of Target;
- (c) **(New agreements)** enter into new agreements, arrangements or commitments that would involve a member of the Target Group incurring expenditure or other liabilities outside the ordinary and usual course of business;
- (d) **(Waiver)** waive any third party default that would otherwise be material and outside the ordinary and usual course of business or settle or compromise any claim or action for an amount that is materially less than the full compensation due to the relevant Target Group member;
- (e) **(Information technology)** take any action in respect of its material software or information technology systems (including to enter into, vary or terminate any contract or commitment relating to the use or development of that software or those systems) which would have a material impact on the use of that software or those systems; or
- (f) **(Agree)** authorise or agree to do, or make any representation or warranty regarding doing, authorising or agreeing to do, any of the matters set out above.

6.3 Exceptions to conduct of business provisions

Nothing in this clause 6 restricts the ability of Target or any other Target Group member to take any action that:

- (a) is expressly contemplated or required to be done or procured by a member of the Target Group pursuant to the Transaction Documents;
- (b) has been consented to in writing by Bidder (and Bidder will consider in good faith, acting reasonably, any request for consent from Target where Target has provided reasonable details of the matter (including any material terms) in writing to Bidder, and will not unreasonably withhold or delay its response to any such request);
- (c) is required as a result of any court or Regulatory Authority order, injunction or undertaking or otherwise required in order to comply with applicable law; or
- (d) has been Disclosed, but for the avoidance of doubt the parties agree that any proposed variation or termination of the Innovaero Service Provider Agreement has not been Disclosed.

6.4 Access

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

- (a) as soon as reasonably practicable provide Bidder and its officers and advisers with any documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) reasonably requested by them; and
- (b) provide Bidder and its officers and advisers with reasonable, non-disruptive access during normal business hours and on reasonable notice to Target's officers and advisers which Bidder reasonably requires for the purposes of:

- (i) understanding Target's financial position (including its cash flow and working capital position), trading performance and management control systems;
- (ii) implementing the Scheme;
- (iii) preparing for carrying on the business of the Target Group following implementation of the Scheme; and
- (iv) any other purpose which is agreed in writing between the parties,

provided in every case that such access is reasonably necessary to Bidder and, in the reasonable opinion of Target, does not place an unreasonable burden on the ability of Target to run its business.

6.5 Change of control

- (a) Target and Bidder will as soon as reasonably practicable agree a proposed course of action in relation to all Change of Control Contracts and then Target will initiate contact, including joint discussions if required by Bidder, with the relevant counterparty and request that they provide any consents or confirmations required or appropriate.
- (b) Target must take all reasonable action necessary to obtain such consents or confirmations as expeditiously as possible, including by promptly providing any information reasonably required by counterparties.
- (c) Bidder agrees to provide reasonable assistance to Target to obtain such consents or confirmations as expeditiously as possible, including by promptly providing any information reasonably required by counterparties.

7. Recommendation, intentions and announcements

7.1 Target Board Recommendation and Voting Intention

- (a) Target must ensure that the Target Announcement and the Scheme Booklet state that each Target director:
 - (i) recommends that Target Shareholders vote in favour of the resolution to approve the Scheme (**Recommendation**); and
 - (ii) intends to cause any Target Shares in which they have a Relevant Interest to be voted in favour of the resolution to approve the Scheme (**Voting Intention**),

which statements must not be qualified in any way other than by words to the effect of "in the absence of a Superior Proposal" and (in the case of the Target Announcement) "subject to the Independent Expert concluding that the Scheme is in the best interests of Target Shareholders" and (in the case of the Scheme Booklet) "subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Target Shareholders".

- (b) Bidder acknowledges that, subject to clause 9 and the other terms of this agreement, each Target director may publicly (or otherwise) withdraw, change or in any way qualify their Recommendation or Voting Intention if:
 - (i) a Superior Proposal is made; or

- (ii) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or any subsequent update of its report) that the Scheme is not in the best interests of Target Shareholders.

7.2 Withdrawal or change of Recommendation

Without limiting clause 9, other than in the circumstances described in clauses 7.1(b)(i) and 7.1(b)(ii), if Target receives notice from (or is otherwise aware that) a Target director proposes to withdraw or change their Recommendation:

- (a) Target must notify Bidder in writing as soon as reasonably practicable; and
- (b) the parties must consult in good faith in order to consider and determine whether the Recommendation of that Target director can be maintained and any associated implications.

7.3 Confirmation

Target represents and warrants to Bidder that each Target director has confirmed their agreement not to do anything inconsistent with their Recommendation and Voting Intention (including withdrawing, changing or in any way qualifying their Recommendation or Voting Intention) other than in the circumstances referred to in clauses 7.1(b)(i) and 7.1(b)(ii).

7.4 Announcements

- (a) Immediately after the execution of this agreement (or any other time the parties agree), Target and Bidder must each issue a public announcement of the proposed Transaction in a form agreed between Target and Bidder before the execution of this agreement.
- (b) Where a party is required by any applicable law or any Listing Rule to make any announcement or make any disclosure in connection with the Transaction, it must use all reasonable endeavours, to the extent possible, to consult with the other party prior to making the relevant disclosure. For the avoidance of doubt, this clause 7.4(b) does not prevent Target from making immediate disclosure if required by the Listing Rules.
- (c) Subject to clause 7.4(a) and (b) no party may make any public announcement or disclosure in connection with the Transaction (including disclosure to a Regulatory Authority) other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable.

8. Performance rights, options and other rights

- (a) Target must give effect to the treatment of the Target Options, Target Performance Rights, Milestone Rights, Consultancy Rights and Unissued Convertible Securities in accordance with the Work Plan and Bidder must promptly provide all necessary assistance in accordance with the Work Plan, including agreeing to cancel or allowing to lapse any of its Target Options on or before the Record Date in accordance with the Work Plan.
- (b) By 5:00 pm on the Business Day immediately prior to the Second Court Date, Target must ensure that arrangements are in place so that there will be no outstanding Target Options, Target Performance Rights, Milestone Rights, Consultancy Rights or Unissued Convertible Securities on the Record Date (and that no person has any residual entitlement to Target Shares or Target Options or any other consideration under or arising from any Milestone Rights, Consultancy Rights or Unissued Convertible Securities on that date), and for the avoidance of

doubt, any failure to have these arrangements in place will constitute a material breach.

- (c) Target must:
- (i) keep Bidder promptly and reasonably informed of the steps taken by Target and of its progress towards implementation of the Work Plan;
 - (ii) promptly notify Bidder in writing of any event that will prevent any of the arrangements contemplated by the Work Plan and clause 8(b) being in place by 5:00 pm on the Business Day immediately prior to the Second Court Date; and
 - (iii) if requested by Bidder, provide Bidder with confirmation and reasonable supporting materials that all of the arrangements contemplated by the Work Plan and clause 8(b) have been put in place by no later than 5:00 pm on the Business Day immediately prior to the Second Court Date.

9. Exclusivity arrangements

9.1 No existing discussions

- (a) Target represents and warrants that, other than the discussions with Bidder and its Representatives in respect of the Transaction, as at the date of this agreement, neither Target nor any of its Representatives is currently in negotiations or discussions in respect of any Competing Proposal with any person.
- (b) From the date of this agreement, Target must promptly enforce the terms of any confidentiality agreement entered into with any person (other than Bidder or its Representatives) in relation to any Competing Proposal in the 12 months before the execution of this agreement, and must promptly request, or must procure that the relevant Target Group company requests, the return or destruction of the Target Group's confidential information in accordance with the terms of that confidentiality agreement, and terminate their access to the Target Group's confidential information under that confidentiality agreement. Target agrees not to waive, and to enforce, any standstill obligations of any such person (other than Bidder or its Representatives).

9.2 No shop

During the Exclusivity Period, Target must not, and must ensure that its Representatives do not, except with the prior written consent of Bidder, directly or indirectly solicit, invite, initiate or encourage any Competing Proposal or any inquiry, expression of interest, offer, proposal, negotiations or discussions by or with any Third Party in relation to, or that may reasonably be expected to encourage or lead to the making of, a Competing Proposal, or communicate any intention to any person to do any of those things.

9.3 No talk and no due diligence

Subject to clause 9.4, during the Exclusivity Period, Target must not, and must ensure that its Representatives do not, except with the prior written consent of Bidder, directly or indirectly:

- (a) enter into, continue or participate in any negotiations or discussions with any Third Party in relation to; or accept or enter into, or offer to accept or enter into, a Competing Proposal or any agreement, arrangement or understanding in relation to, or that may reasonably be expected to lead to, a Competing Proposal;
- (b) directly or indirectly make available to any Third Party, or permit any Third Party to receive, any non-public information relating to any member of the Target Group or their businesses or operations; or

- (c) communicate to any person an intention to do anything referred to in this clause 9.3.

9.4 Limitation to no talk and no due diligence

Clause 9.3 does not apply to the extent that it restricts Target or its Representatives from taking any action that would otherwise be prohibited by clause 9.3 in relation to a proposed bona fide Competing Proposal (which was not solicited invited, initiated or encouraged by Target or its Representatives in contravention of clause 9.3 and was not otherwise brought about as a result of any breach by Target of its obligations under this clause 9), where the Target Board, has determined, acting reasonably and in good faith, that:

- (a) after consultation with the Target Board's financial advisers, such a proposed bona fide Competing Proposal is, or could reasonably be considered to become, a Superior Proposal; and
- (b) after receiving written advice from the Target Board's external legal advisers, that not undertaking that act in response to the proposed bona fide Competing Proposal would:
 - (i) be reasonably likely to constitute a breach of the fiduciary or statutory duties owed by the Target directors; or
 - (ii) otherwise be unlawful.

Notwithstanding anything in this agreement to the contrary, if the Target Board determines, acting reasonably and in good faith, that clause 9.3 does not apply, Target must enter into an Acceptable Confidentiality Agreement with the relevant Third Party before taking any action set out in clauses 9.3(b).

9.5 Notification of approaches

- (a) During the Exclusivity Period, Target must notify Bidder in writing as soon as reasonably practicable, and in any event within 2 Business Days, if it, or any of its Representatives, receives or becomes aware of any:
 - (i) approach or proposal, whether written or otherwise, made to Target or any of its Representatives in connection with a Competing Proposal, including the fact that such approach or proposal has been made, details of the party making the approach or proposal (and if different, details of the proposed bidder or acquirer), the terms of the proposal and any material updates to the proposal, and provide Bidder with true and complete copies of the foregoing including written proposals, draft agreements and financing papers; or
 - (ii) provision by Target or any of its Representatives of 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 the person formulating, developing or finalising a current or future Competing Proposal.
- (b) The obligations in this clause 9.5 do not apply to the extent that it requires Target to provide information if the Target Board has determined, acting reasonably and in good faith and after having considered written advice from the Target Board's external legal advisers, that the consequences of providing the relevant information would:
 - (i) be reasonably likely to constitute a breach of the fiduciary or statutory duties owed by the Target directors; or

- (ii) otherwise be unlawful.

9.6 Matching right

- (a) Without limiting clauses 9.2 and 9.3, during the Exclusivity Period, Target:
 - (i) must use its reasonable endeavours to procure that none of its directors withdraw or change their Recommendation or otherwise make a public statement to endorse or recommend a Competing Proposal; and
 - (ii) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, Target or both proposes or propose to undertake or give effect to a Competing Proposal,

unless:

 - (iii) the Competing Proposal is a Superior Proposal;
 - (iv) Target has provided Bidder with written notification of the material terms and conditions of the Competing Proposal (including details of the price and the Third Party making or proposing to undertake or give effect to the Competing Proposal);
 - (v) Target has given Bidder at least 3 Business Days after the date of the provision of the information referred to in paragraph (iv) above to provide a matching or superior proposal to the terms of the relevant Competing Proposal on terms which Bidder considers in good faith to be no less favourable to Target Shareholders (as a whole) to the relevant Competing Proposal (based on the information provided to Bidder by Target under clause 9.5); and
 - (vi) Bidder has not provided a matching or superior proposal to the terms of the relevant Competing Proposal in the time period referred to in clause 9.6(a)(v) that the Target Board determines in accordance with clause 9.6(b) would deliver an equivalent or superior outcome for Target Shareholders (as a whole) compared with the relevant Competing Proposal.

Target acknowledges and agrees that each modification of any Competing Proposal which materially affects the material terms and conditions of that Competing Proposal will constitute a new Competing Proposal for the purposes of the requirements under this clause 9.6 and accordingly Target must comply with clause 9.6(a)(i) and clause 9.6(a)(ii) in respect of any new Competing Proposal unless clauses 9.6(a)(iii) to 9.6(a)(vi) (inclusive) apply.

- (b) If Bidder proposes to Target, or announces amendments to the Scheme or a new proposal that constitute a matching or superior proposal to the terms of the Competing Proposal (**Bidder Counter Proposal**), Target must procure that the Target Board, within 3 Business Days of receiving the Bidder Counter Proposal, consider any Bidder Counter Proposal and, if the Target Board determines, acting reasonably and in good faith, that the Bidder Counter Proposal would deliver an equivalent or superior outcome for Target Shareholders (as a whole) compared with the relevant Competing Proposal (taking into account all aspects of the Bidder Counter Proposal as compared to all aspects of the relevant Competing Proposal), then Target and Bidder must each use their reasonable endeavours to agree and enter into such documentation as is necessary to reflect and implement the Bidder Counter Proposal as soon as reasonably practicable, and Target must use its reasonable endeavours to procure that each of its directors makes a public statement recommending the Bidder Counter Proposal to Target Shareholders.

9.7 Normal provision of information

Nothing in this clause 9.7 prevents Target from:

- (a) providing information to its Representatives for the purposes of, or in connection with, the Transaction;
- (b) providing information to its auditors, consultants, customers and suppliers acting in that capacity in the ordinary and usual course of business;
- (c) providing information required to be provided by law or any Regulatory Authority; or
- (d) making normal presentations to brokers, portfolio investors or analysts in the ordinary and usual course of business in relation to the Transaction or its business generally.

10. Reimbursement of Costs

10.1 Rationale

Each party acknowledges and agrees for the purposes of this clause 10 as follows:

- (a) each party has required the inclusion of this clause 10 in the absence of which it would not have entered into this agreement (and the other relevant Transaction Documents) or otherwise agreed to implement the Transaction, subject to the terms and conditions in this agreement;
- (b) Target and Bidder each believe that the Transaction will provide significant benefits to it and its shareholders, and that it is reasonable and appropriate that Target (in respect of the Target Payment) and Bidder (in respect of the Bidder Payment) agrees to the inclusion of this clause 10 and the relevant payment referred to in this clause, in order to secure the other party's execution of this agreement (and the other relevant Transaction Documents) and agreement to implement the Transaction, subject to the terms and conditions in this agreement; and
- (c) the amount payable by Target (in respect of the Target Payment) pursuant to clause 10.2 and by Bidder (in respect of the Bidder Payment) pursuant to clause 10.3 is to be purely and strictly compensatory in nature so as to compensate Bidder (in respect of the Target Payment) and Target (in respect of the Bidder Payment) for the following:
 - (i) advisory costs relating to the Transaction;
 - (ii) costs of management and directors' time;
 - (iii) out-of-pocket expenses relating to the Transaction;
 - (iv) reasonable opportunity costs incurred by Bidder or Target (as applicable) in pursuing the Transaction and in not pursuing other alternative acquisitions or strategic initiatives which Bidder or Target (as applicable) could have developed to further its business and objectives; and
 - (v) damage to Bidder's or Target's (as applicable) reputation associated with a failed transaction and the implications of that damage to Bidder's or Target's (as applicable) business.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified, and that a genuine pre-estimate of the costs to be incurred by each of Bidder and Target would equal or exceed the compensatory amount payable under clause 10.2 and clause 10.3, respectively.

Both parties have received legal advice on this agreement and the operation of clause 9 and this clause 10.

10.2 Target Payment

Target agrees to pay Bidder the Target Payment without deduction, set-off or withholding if, at any time after the date of this agreement:

- (a) **(Competing Proposal)** 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 12 months of such announcement, the Third Party proposing or participating in the Competing Proposal (or any Associate of that Third Party):
 - (i) completes a Competing Proposal of a kind referred to in any of the paragraphs (b), (c) or (d) of the definition of Competing Proposal;
 - (ii) acquires a Relevant Interest in more than 50% of the Target Shares; or
 - (iii) enters into an agreement, arrangement or understanding with one or more members of the Target Group or Target directors of the kind referred to in paragraph (e) of the definition of Competing Proposal;
- (b) **(Change of recommendation)** any of the Target directors fails to make the Recommendation, withdraws their Recommendation, adversely changes or qualifies their Recommendation or Voting Intention or otherwise makes a public statement indicating that he or she no longer supports the Scheme or publicly recommends a Competing Proposal, except following the receipt of the Independent Expert's Report which states (either in its initial report or any subsequent update of its report) that, in the opinion of the Independent Expert, the Scheme is not in the best interests of Target Shareholders (other than where the reason for that conclusion is a Competing Proposal);
- (c) **(Independent Expert)** Target validly terminates this agreement in accordance with clause 3.7 or 14.3(b)(iii) due to the Independent Expert concluding in the Independent Expert's Report (either in its initial report or any subsequent update of its report) that, in the opinion of the Independent Expert, the Scheme is not in the best interests of Target Shareholders where the reason for that conclusion is a Competing Proposal; or
- (d) **(Termination)** Bidder validly terminating this agreement in accordance with clauses 14.2(b)(i) or 14.2(b)(ii) and, in the case of valid termination under clause 14.2(b)(i), at such time Target does not have a right to terminate this agreement under clause 14.3(b)(i).

10.3 Bidder Payment

Bidder agrees to pay Target the Bidder Payment without deduction, set-off or withholding if:

- (a) at any time after the date of this agreement, the Scheme does not proceed because Target validly terminates this agreement in accordance with clause 14.3(b)(i) and at such time Bidder does not have a right to terminate this agreement under clause 14.2(b); or
- (b) Bidder does not pay or procure the payment of the Scheme Consideration in accordance with the terms and conditions of this agreement or the Deed Poll.

10.4 Timing of payment

- (a) A demand by a party for payment of the Target Payment under clause 10.2 or the Bidder Payment under clause 10.3 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 Bidder or a Subsidiary into which Target is to pay the Target Payment, or Target or a Subsidiary into which Bidder is to pay the Bidder Payment (as applicable); and
- (b) Target must pay the Target Payment into the account nominated by Bidder, and Bidder must pay the Bidder Payment into the account nominated by Target (as applicable), without deduction, set-off or withholding, within 5 Business Days after receiving a valid demand for payment where Bidder is entitled under clause 10.2 to the Target Payment or Target is entitled under clause 10.3 to the Bidder Payment (as applicable).

10.5 Compliance with law

- (a) This clause 10 does not impose an obligation on Target to pay the Target Payment or on Bidder to pay the Bidder Payment (as applicable) to the extent (and only to the extent) that, after all reasonable avenues of appeal and review, judicial and otherwise, have been exhausted, it is finally determined that the obligation to pay the Target Payment or Bidder Payment (as applicable), or all or any part of the relevant amount payable:
- (i) is declared by the Takeovers Panel to constitute "unacceptable circumstances" within the meaning of the Corporations Act; or
 - (ii) is determined to be unenforceable or unlawful by a Court.
- (b) If Bidder or Target has received any such part of the payment due under clause 10.2 or clause 10.3 (as applicable), it must refund it within 10 Business Days of such final determination.
- (c) 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 declaration or determination referred to in this clause 10.5.

10.6 No Payment if Scheme Effective

Despite anything to the contrary in this agreement (including the occurrence of any event in clause 10.2 or clause 10.3), neither the Target Payment nor the Bidder Payment will be payable if the Scheme becomes Effective and is implemented, and if any amount has already been paid under clause 10.2 or clause 10.3, it must be refunded by Bidder or Target (as applicable) within 10 Business Days after the Scheme becomes Effective.

10.7 Survival

Any accrued obligations under this clause 10 survive termination of this agreement.

11. Liability of directors, officers and employees

11.1 Liability of directors, officers and employees

To the maximum extent permitted by law, each party releases its rights against, and agrees that it will not make any claim against, the respective past or present Representatives,

affiliates, controlling persons or stockholders of the other party (other than the other party's Related Bodies Corporate) in relation to:

- (a) information provided to the first party in relation to the Transaction; or
- (b) any breach of any representations, covenants and warranties of the other party in this agreement,

except to the extent that the relevant Representative has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 11.1 limits a party's rights to terminate this agreement under clause 14 or the limitations of liability in clauses 14.8 and 14.9.

11.2 Directors and officers insurance

Bidder acknowledges that Target will, 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 in accordance with 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 the end of that 7 year period.

11.3 Obligations in relation to directors and officers insurance

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

- (a) vary or cancel the Policy; or
- (b) unless required under the Policy, commit any act or omission that may prejudice any claim under the Policy as extended pursuant to clause 11.2 above.

11.4 Directors and officers indemnities

- (a) Subject to the Scheme becoming Effective, and without limiting any other term of this agreement, from the Implementation Date, Bidder undertakes to Target that it will, in respect of each deed of indemnity, access and insurance (**Relevant Deed**) made by a Target Group entity (**Relevant Entity**) in favour of a director, officer or employee of any Target Group entity, whether past or present, (**Indemnified Person**) from time to time procure that:
 - (i) the Relevant Entity complies with the Relevant Deed; and
 - (ii) to the extent that the Relevant Entity ceases to exist after the Implementation Date, each Indemnified Person has the benefit of a deed from Bidder on terms no less favourable to the Indemnified Person than those contained in the Relevant Deed as at the Effective Date.
- (b) This clause 11.4 applies to the maximum extent permitted by the Corporations Act and will (if and to the extent required) be read down accordingly.

11.5 Compliance with law and benefit

- (a) Clause 11.1 is subject to any restriction under the Corporations Act and will (if and to the extent required) be read down accordingly.
- (b) The parties agree that:
 - (i) Target holds the benefit of this clause 11 to the extent it relates to each Target Indemnified Party as agent and trustee for them, and, as such, each such Target Indemnified Party may enforce this clause 11 against Bidder; and

- (ii) Bidder holds the benefit of this clause 11 to the extent it relates to each Bidder Indemnified Party as agent and trustee for them, and, as such, each such Bidder Indemnified Party may enforce this clause 11 against Target.

12. Representations, warranties and indemnities

12.1 Representations and warranties by Bidder

Bidder represents and warrants to Target (on its own behalf and separately as agent and trustee for each of the Target Indemnified Parties) that each of the Bidder Warranties is true and correct in all material respects:

- (a) as at the date of this agreement; and
- (b) as at 5:00 pm on the Business Day immediately prior to the Second Court Date,

unless the relevant Bidder Warranty is expressed to be given only at a particular time in which case it is given as at that time.

12.2 Qualification of Bidder Warranties

The Bidder Warranties and the indemnity under clause 12.3, are subject to matters which as at the date of this agreement are within the knowledge of Target or any of Target's Representatives who have been directly involved in the assessment and/or negotiation of the transactions contemplated by the Transaction Documents before the date of this agreement, including matters that were disclosed by Bidder to Target in writing prior to the date of this agreement.

12.3 Bidder indemnity

- (a) Bidder acknowledges that in entering into this agreement Target and the Target Indemnified Parties have relied on the Bidder Warranties.
- (b) Bidder indemnifies Target (on its own behalf and separately as agent and trustee for each of the Target Indemnified Parties) against any loss suffered or incurred by reason of any breach of any of the Bidder Warranties.

12.4 Representations and warranties by Target

Target represents and warrants to Bidder (on its own behalf and separately as agent and trustee for each of Bidder Indemnified Parties) that each of the Target Warranties is true and correct in all material respects:

- (a) as at the date of this agreement; and
- (b) as at 5:00 pm on the Business Day immediately prior to the Second Court Date,

unless the relevant Target Warranty is expressed to be given only at a particular time in which case it is given as at that time.

12.5 Qualification of Target Warranties

The Target Warranties and the indemnity under clause 12.6, are subject to matters which:

- (a) as at the date of this agreement are within the knowledge of Bidder or any of Bidder's Representatives who have been directly involved in the assessment and/or negotiation of the transactions contemplated by the Transaction Documents before the date of this agreement; or

- (b) were Disclosed.

12.6 Target indemnity

- (a) Target acknowledges that in entering into this agreement Bidder and the Bidder Indemnified Parties have relied on the Target Warranties.
- (b) Target indemnifies Bidder (on its own behalf and separately as agent and trustee for each of the Bidder Indemnified Parties) against any loss suffered or incurred by reason of any breach of any of the Target Warranties.

12.7 Notifications

Each party will promptly (and in any event, within 2 Business Days) advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may reasonably constitute or result in a breach of any of the representations or warranties given by it under this clause 12, with such notice to include details of the relevant circumstances and any actions taken to remedy the actual or potential breach.

12.8 Status of representations and warranties

Each representation and warranty in this clause 12:

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

12.9 Status and enforcement of indemnities

- (a) Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this agreement.

12.10 Necessary tense changes

For the purposes of clauses 12.1 and 12.4, the Bidder Warranties and Target Warranties shall be read with any necessary adjustments to the tense used in the relevant warranty.

13. Confidentiality

13.1 Confidentiality Agreement

Each party acknowledges and agrees that they continue to be bound by the Confidentiality Agreement after the date of this agreement in respect of all information received by it from the other party on, before or after the date of this agreement and that the terms of this agreement will prevail over the terms of the Confidentiality Agreement to the extent of any inconsistency.

13.2 Survival of obligations

The rights and obligations of the parties under the Confidentiality Agreement survive termination of this agreement.

13.3 Disclosure on termination of agreement

The parties agree that, if this agreement is terminated under clause 14, any party may disclose:

- (a) the fact that this agreement has been terminated, where such disclosure is required by the Listing Rules or is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed; and
- (b) the fact that this agreement has been terminated to ASIC.

14. Termination and remedies

14.1 Limited termination events

This agreement may only be terminated by either party in the circumstances contemplated by clauses 14.2 and 14.3, or if the parties agree in writing to terminate this agreement.

14.2 Termination by Bidder

Bidder may terminate this agreement at any time before 8:00 am on the Second Court Date:

- (a) in accordance with and pursuant to clauses 3.7 or 4.10; or
- (b) by notice in writing to Target if:
 - (i) Target is in material breach of any clause of this agreement, including if any of the Target Warranties are not true and correct in all material respects or as a result of a Target Prescribed Occurrence (but excluding a breach of clause 7.1, clause 7.3 or clause 7.4(a)), provided that Bidder has given notice to Target setting out the relevant circumstances and stating an intention to terminate and the relevant circumstances have continued to exist and not been remedied within 5 Business Days (or any shorter period ending at 6:00 pm on the Business Day immediately before the Second Court Date) after the time such notice is given;
 - (ii) Target is in breach of clause 7.1, clause 7.3 or clause 7.4(a) of this agreement (including due to any of the Target directors failing to make the Recommendation); or
 - (iii) any of the Target directors withdraws their Recommendation, adversely changes or qualifies their Recommendation or Voting Intention or otherwise makes a public statement indicating that he or she no longer supports the Scheme or publicly recommends a Competing Proposal, for any reason, whether or not permitted to do so under this agreement.

14.3 Termination by Target

Target may terminate this agreement at any time before 8:00 am on the Second Court Date:

- (a) in accordance with and pursuant to clauses 3.7 or 4.10; or
- (b) by notice in writing to Bidder if:
 - (i) Bidder is in material breach of any clause of this agreement (including if any of the Bidder Warranties are not true and correct in all material respects) provided that Target has given notice to Bidder setting out the relevant circumstances and stating an intention to terminate and the relevant circumstances have continued to exist and not been remedied

within 5 Business Days (or any shorter period ending at 6:00 pm on the Business Day immediately before the Second Court Date) after the time such notice is given;

- (ii) a majority of Target directors publicly adversely change or withdraw their Recommendation or Voting Intention or publicly recommend a Competing Proposal that is a Superior Proposal, provided that the Competing Proposal was not solicited or facilitated by Target or its Representatives in breach of Target's obligations in clause 9; or
- (iii) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or a subsequent update of its report) that the Scheme is not in the best interests of Target Shareholders.

14.4 Termination

Where a party has a right to terminate this agreement, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this agreement.

14.5 Effect of termination

If this agreement is terminated, the provisions of this agreement (and all further obligations of the parties under this agreement) shall cease to have effect except for the provisions of (and obligations set out in) this clause and clauses 1, 10, 11, 12.9, 14.4, 14.6 and 15 to 17 (inclusive), 18.1 to 18.13 (inclusive), 18.15 to 18.18 (inclusive) and 19 which will survive termination, provided that, subject to clauses 14.8 and 14.9, nothing in this clause releases any party from liability for any pre-termination wilful breach of this agreement.

14.6 Remedies

The parties acknowledge that damages may not be a sufficient remedy for breach of this agreement, and that specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law may be available as a remedy for a breach or threatened breach of this agreement by any party, notwithstanding the ability of the other party to terminate this agreement or seek damages for such a breach or threatened breach or to demand payment of the Target Payment or Bidder Payment (as the case may be).

14.7 Damages

Subject to clauses 14.8 and 14.9 in addition to the right of termination under clauses 14.1, 14.2 and 14.3, where there is no appropriate remedy for the breach of this agreement (other than termination), the non-defaulting party is entitled to damages for losses suffered by it and expenses incurred by it as a result of the breach of the terms of this agreement.

14.8 Target's limitation of liability

Notwithstanding any other provision of this agreement:

- (a) the maximum aggregate liability of Target, its Representatives, affiliates, stockholders and controlling persons to Bidder under or in connection with this agreement, including the negotiation, execution and performance of this agreement and any losses suffered or expenses incurred by Bidder as a result of the breach of the terms of this agreement, will be the amount of the Target Payment and in no event will the aggregate liability of Target, its Representatives, affiliates, stockholders and controlling persons under or in connection with this agreement exceed an amount equal to the Target Payment; and
- (b) once the Target Payment (or an amount equal to the Target Payment) is paid to or at the direction of Bidder, no further damages, fees, expenses or reimbursements

of any kind will be payable by any of Target, its Representatives, affiliates, stockholders or controlling persons under or in connection with this agreement,

and in no event shall Bidder be entitled to seek or obtain any monetary recovery, award or fees of any kind in excess of the Target Payment against Target, its Representatives, affiliates, stockholders and controlling persons, including damages for, or with respect to, this agreement or the transactions contemplated hereby, the termination of this agreement, the failure to consummate the Transaction or any claims or actions under applicable law arising out of any such breach, termination or failure.

The parties agree that Target holds the benefit of this clause 14.8 to the extent it relates to its Representatives, affiliates, stockholders and controlling persons as agent and trustee for them, and, as such, each such person may enforce this clause 14.8 against Bidder.

14.9 Bidder's limitation of liability

Notwithstanding any other provision of this agreement:

- (a) the maximum aggregate liability of Bidder, its Representatives, affiliates, stockholders and controlling persons to Target under or in connection with this agreement, including the negotiation, execution and performance of this agreement and any losses suffered or expenses incurred by Target as a result of the breach of the terms of this agreement, will be the amount of the Bidder Payment and in no event will the aggregate liability of Bidder, its Representatives, affiliates, stockholders and controlling persons under or in connection with this agreement exceed an amount equal to the Bidder Payment; and
- (b) once the Bidder Payment (or an amount equal to the Bidder Payment) is paid to or at the direction of Target, no further damages, fees, expenses or reimbursements of any kind will be payable by any of Bidder, its Representatives, affiliates, stockholders or controlling persons under or in connection with this agreement,

and in no event shall Target be entitled to seek or obtain any monetary recovery, award or fees of any kind in excess of the Bidder Payment against Bidder, its Representatives, affiliates, stockholders and controlling persons, including damages for, or with respect to, this agreement or the transactions contemplated hereby, the termination of this agreement, the failure to consummate the Transaction or any claims or actions under applicable law arising out of any such breach, termination or failure.

The parties agree that Bidder holds the benefit of this clause 14.9 to the extent it relates to its Representatives, affiliates, stockholders and controlling persons as agent and trustee for them, and, as such, each such person may enforce this clause 14.9 against Target.

15. Notices

15.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) may be given by personal service, post or email;
- (b) must be in writing;

(c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

(i) if to Target:

Address: 10 Brodie Hall Drive, Technology Park, Bentley,
Western Australia, 6102, Australia

Email: jason.marinko@spookfish.com

Attention: The Chairman (Jason Marinko)

with a copy (for information purposes only) in each case to:

Email: mpaganin@claytonutz.com

(ii) if to Bidder, each of the following:

Address: 3700 Monte Villa Parkway
Bothell WA 98021
UNITED STATES OF AMERICA

Email: jhickey@vistaequitypartners.com

Attention: Chief Executive Officer

with a copy (for information purposes only) in each case to:

Name: Phoenix Holdco LLC

Address: c/o Vista Equity Partners III, LLC
Four Embarcadero Center, 20th Floor
San Francisco CA 94111
UNITED STATES OF AMERICA

Email: dbreach@vistaequitypartners.com
jhickey@vistaequitypartners.com

Attention: David A. Breach and James P. Hickey

Name: King & Wood Mallesons

Address: Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
AUSTRALIA

Email: meredith.paynter@au.kwm.com
mark.vanderneut@au.kwm.com

Attention: Meredith Paynter and Mark Vanderneut

Name: Kirkland & Ellis LLP

Address: 555 California Street, Suite 2700
San Francisco CA 94104
UNITED STATES OF AMERICA

Email: casillas@kirkland.com
joshua.zachariah@kirkland.com
abtin.jalali@kirkland.com

Attention: Stuart Casillas, Joshua Zachariah and Abtin Jalali

- (d) (in the case of personal service or post) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (e) (in the case of email) must state that the email is a communication under this agreement; and
- (f) must be delivered by hand or posted by prepaid post to the address or sent by email to the email address of the addressee in accordance with this clause 15.1.

15.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the sixth day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the tenth day after the date of posting by airmail;
- (c) (in the case of delivery by hand) on delivery; and
- (d) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of clause 15.1, 24 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a Business Day or after 6:00 pm, it is taken to be received at 9:00 am on the next Business Day.

16. GST

16.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (c) To the extent any consideration for a supply is expressly specified to be inclusive of GST, that consideration must not be taken into account in calculating the GST payable under clause 16.4(a) in relation to that supply.

16.2 GST exclusive

Unless this agreement expressly states otherwise, all consideration to be provided under this agreement is exclusive of GST.

16.3 Reimbursements and similar payments

Any payment or reimbursement required to be made under this agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity (or the representative member of the GST group of which the entity seeking reimbursement is a member of) is entitled for the acquisition to which the cost, expense or amount relates.

16.4 GST payable

- (a) If GST is payable in relation to a taxable supply made under or in connection with this agreement then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must, subject to clause 16.1(c), pay an additional amount to the Supplier equal to the amount of that GST at the same times as other consideration is to be provided for that supply.
- (b) No payment of any amount pursuant to clause 16.4(a) is required until the Supplier has provided a valid tax invoice to the Recipient.
- (c) Where additional amounts are payable between parties to this agreement pursuant to clause 16.4(a), amounts so payable, to the extent they are equivalent in amount, shall be set off against each other as if paid and each party shall be obliged only to provide the tax invoice referred to in clause 16.4(b) no later than the time at which any consideration is to be first provided for that supply.
- (d) If the GST payable in relation to a supply made under or in connection with this agreement varies from the additional amount paid by the Recipient under clause 16.4(a) then the Supplier must promptly issue an adjustment note to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 16.4(a).
- (e) Clauses 16.4(a) to 16.4(d) do not apply to the extent that the consideration for the supply is subject to a reverse-charge.

17. Entire agreement

The Transaction Documents and the Confidentiality Agreement constitute the entire agreement between the parties in relation to their subject matter and supersede all previous agreements and understandings between the parties in relation to their subject matter.

18. General

18.1 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this agreement, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that 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.

- (c) Each party acknowledges that clauses 18.1(a) and 18.1(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

18.2 Amendments

This agreement may only be varied by a document signed by or on behalf of each party.

18.3 Assignment

A party may not assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

18.4 Consents, approvals or waivers

By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstances in connection with the subject matter of the consent, approval or waiver.

18.5 Conflict of interest

Each party may exercise their rights, powers and remedies in connection with this agreement even if this involves a conflict of duty or they have a personal interest in their exercise.

18.6 Consents

Unless this agreement expressly provides otherwise, a consent under this agreement may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

18.7 Remedies cumulative

The rights, powers and remedies in connection with this agreement are in addition to other rights, powers and remedies given by law independently of this agreement.

18.8 Indemnities and reimbursement obligations

Any indemnity, reimbursement or similar obligation in this agreement.

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this agreement, any settlement or any other thing;
- (b) is independent of any other obligations under this agreement; and
- (c) continues after this agreement, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this agreement

18.9 Inconsistent law

To the extent the law permits, this agreement prevails to the extent it is inconsistent with any law.

18.10 Supervening law

Any present or future law which operates to vary the obligations of a party in connection with this agreement with the result that another party's rights, powers or remedies are adversely

affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

18.11 No liability for loss

Unless this agreement expressly states otherwise, a party is not liable for any loss, liability or costs arising in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this agreement.

18.12 Costs

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing each Transaction Document.

18.13 Counterparts

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

18.14 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this agreement.

18.15 No merger

A party's rights and obligations do not merge on completion of any transaction contemplated by this agreement.

18.16 Severance

If any provision or part of a provision of this agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of violability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

18.17 Stamp duties

Bidder must pay all stamp duties and any related fines and penalties in respect of this agreement, the performance of this agreement and each transaction effected by or made under or in connection with this agreement and is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

18.18 Waivers

Without limiting any other provision of this agreement, the parties agree that:

- (a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement;
- (b) a waiver given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party; and

- (c) no waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.

19. Governing law, jurisdiction and service of process

19.1 Governing law

This agreement is governed by the law applying in Western Australia.

19.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia, Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 19.2(a).

19.3 Appointment of process agent

Without preventing any method of service allowed under any relevant law, Bidder:

- (a) irrevocably appoints Dabserv Corporate Services Pty Ltd (ACN 001 824 111) (**Initial Process Agent**) as its process agent to receive any document in an action in connection with this agreement; and
- (b) agrees that failure by a process agent to notify Bidder of any document in an action in connection with this agreement does not invalidate the action concerned.

If for any reason the Initial Process Agent ceases to be able to act as process agent, Bidder agrees to appoint another person as its process agent in Sydney, New South Wales, Australia and ensure that the replacement process agent accepts its appointment and confirms its appointment to Bidder.

The Initial Process Agent has accepted its appointment as the process agent.

Bidder agrees that service of documents on its process agent at the following address is sufficient service on it:

Dabserv Corporate Services Pty Ltd
Attention: Meredith Paynter
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
AUSTRALIA

Schedule 1 Bidder Warranties

Bidder represents and warrants to Target (on its own behalf and separately as agent and trustee for each of the Target Indemnified Parties) that:

- (a) **(Validly existing)** it is a company properly incorporated and validly existing under the laws of its place of incorporation;
- (b) **(Authority)** the execution and delivery by Bidder of the Transaction Documents to which Bidder is party has been properly authorised by all necessary corporate action and Bidder has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
- (c) **(Binding and enforceable)** the Transaction Documents to which Bidder is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms;
- (d) **(No default)** the Transaction Documents to which Bidder is party (and Bidder's entry into and compliance with those Transaction Documents) do not conflict with or result in a breach of or default under:
 - (i) the constitution or equivalent constituent documents of Bidder or any of its Subsidiaries; or
 - (ii) any writ, order or injunction, judgment, law, rule, obligation or regulation to which Bidder or any of its Subsidiaries is party, or by which Bidder or any of its Subsidiaries is bound;
- (e) **(No approvals)** as far as Bidder is aware, other than as expressly contemplated by clause 3.1, no shareholder or Regulatory Authority approvals are required to be obtained by any member of the Bidder Group in order for Bidder to execute and perform the Transaction Documents to which it is a party;
- (f) **(Bidder Information)** as at the First Court Date, the date of the Scheme Meeting and the Second Court Date:
 - (i) the Bidder Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that Target and the Target Indemnified Parties have relied, and will rely, on that information for the purposes of considering and approving the Target Information in the Scheme Booklet;
 - (ii) the Bidder Information complies in all material respects with relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides and other requirements of ASIC);
 - (iii) the Bidder Information (other than to the extent that it consists of information relating to the Target Group that was provided by or on behalf of Target, or has been extracted from announcements made by Target to ASX regarding the Target Group) in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission;
 - (iv) any statement of opinion or belief contained in the Bidder Information is honestly held and there are reasonable grounds for holding the opinion or belief;
 - (v) Bidder has complied with its obligations under clause 4.3(g); and
 - (vi) all information provided by or on behalf of Bidder to the Independent Expert to be prepared has been prepared and provided in good faith and on the understanding that the Independent Expert has relied, and will continue to rely, on the information for the purposes of preparing the Independent Expert's Report;

- (g) **(Funding commitments)** Bidder (or Bidder Nominee, if one has been nominated in accordance with clause 2.3 to pay the Scheme Consideration) will have sufficient cash on their balance sheets, or financial commitments available to them 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), at 8:00 am on the Second Court Date to ensure that the Scheme Consideration is paid to Scheme Shareholders in accordance with the terms of this agreement, the Scheme and the Deed Poll;
- (h) **(Sufficient cash)** Bidder (or Bidder Nominee, if one has been nominated in accordance with clause 2.3 to pay the Scheme Consideration) will have sufficient cash available to them on the Implementation Date to pay the Scheme Consideration in accordance with the Bidder's (or if applicable, the Bidder Nominee's) obligations under this agreement, the Scheme and the Deed Poll; and
- (i) **(Insolvency)** no Insolvency Event has occurred in relation to Bidder (or Bidder Nominee, if one has been nominated in accordance with clause 2.3).

Schedule 2 Target Warranties

Target represents and warrants to Bidder (on its own behalf and separately as agent and trustee for each of Bidder Indemnified Parties) that:

- (a) **(Validly existing)** it is a company properly incorporated and validly existing under the laws of its place of incorporation;
- (b) **(Authority)** the execution and delivery by Target of the Transaction Documents to which Target is party has been properly authorised by all necessary corporate action and Target has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
- (c) **(Binding and enforceable)** the Transaction Documents to which Target is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms;
- (d) **(No default)** the Transaction Documents to which Target is party (and Target's entry into and compliance with those Transaction Documents) do not conflict with or result in a breach of or default under:
 - (i) the constitution or equivalent constituent documents of Target or any of its Subsidiaries; or
 - (ii) any writ, order or injunction, judgment, law, rule, obligation or regulation to which Target or any of its Subsidiaries is party, or by which Target or any of its Subsidiaries is bound;
- (e) **(No approvals)** as far as Target is aware, other than as expressly contemplated by clause 3.1, no shareholder or Regulatory Authority approvals are required to be obtained by the Target Group in order for Target to execute and perform the Transaction Documents to which it is a party;
- (f) **(Capital structure)** as at the date of this agreement, there are:
 - (i) 1,250,110,523 Target Shares on issue;
 - (ii) 221,470,399 Target Options on grant; and
 - (iii) 11,176,208 Target Performance Rights on grant,

and Target has not issued (and is not required to issue and has not agreed to issue) any other securities or instruments or rights which may convert into Target Shares which are still outstanding (or may become outstanding) other than the Milestone Rights, Unissued Convertible Securities and Consultancy Rights;
- (g) **(Target Information)** as at the First Court Date, the date of the Scheme Meeting and the Second Court Date:
 - (i) the Target Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that Bidder and the Bidder Indemnified Parties have relied, and will rely, on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet;
 - (ii) the Target Information complies in all material respects with relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides and other requirements of ASIC);
 - (iii) the Target Information (as well as any Bidder Information to the extent that it consists of information relating to the Target Group that was provided to Bidder by or on behalf of Target or has been extracted from announcements made by Target

to ASX regarding the Target Group) does not contain a statement which is misleading or deceptive in any material respect and does not contain any material omission;

- (iv) any statement of opinion or belief contained in the Target Information is honestly held and there are reasonable grounds for holding the opinion or belief; and
 - (v) all information provided by or on behalf of Target to the Independent Expert has been prepared and provided in good faith and on the understanding that the Independent Expert has relied, and will continue to rely, on the information for the purposes of preparing the Independent Expert's Report;
- (h) **(Target Due Diligence Materials)** it has:
- (i) prepared, compiled and made available to Bidder and its Representatives the Target Due Diligence Materials in good faith; and
 - (ii) collated the Target Due Diligence Materials with reasonable care and skill,
- and, to the best of its knowledge, the information included in the Target Due Diligence Materials is not misleading or deceptive in any material respect (including by omission);
- (i) **(Disclosure)** Target is in compliance with all of the disclosure requirements under the Listing Rules, including its continuous disclosure obligations under Listing Rule 3.1 and, as at the date of this agreement, following the making by Target of the Target Announcement to ASX pursuant to clause 7.4, will not be withholding any information pursuant to Listing Rule 3.1A;
- (j) **(Reasonable assumptions)** to the extent any Target Due Diligence Materials include forward looking statements, those forward looking statements are based on assumptions which Target believes, as at the date the information was provided, were determined with reasonable care and skill;
- (k) **(Compliance)** no member of the Target Group has breached in any material respect, or received notice from any Australian or foreign Regulatory Authority having jurisdiction over it that it has breached in any material respect, any Australian or foreign law applicable to it or order of any Regulatory Authority having jurisdiction over it that has or could reasonably be expected to have a materially adverse effect on:
- (i) the conduct of the business of the Target Group;
 - (ii) the value of the Target Group;
 - (iii) the reputation of the Target Group, including any implication in relation to its good standing with any Regulatory Authority having jurisdiction over the Target Group or the conduct of business of the Target Group; or
 - (iv) the satisfaction or fulfilment of any Condition;
- (l) **(Intellectual Property Rights):**
- (i) a member of the Target Group is the sole legal and beneficial owner of all right, title and interest in and to the Target IP;
 - (ii) the Target Group has not licensed, assigned or otherwise disposed of any right, title or interest in the Target IP and there is no obligation for the Target Group to grant a licence, assignment or other right in respect of any Target IP to any third party (including companies related to the Target Group, other than to Target or its Subsidiaries);

- (iii) the Target IP comprises all the Intellectual Property Rights used by the Target Group to operate its business as it has been operated in the 12 months before the date of this agreement;
 - (iv) no member of the Target Group has received notice from any person alleging that the business of the Target Group infringes any Intellectual Property Rights of a third party in any material respect; and
 - (v) as far as Target is aware no person has infringed or otherwise violated the Target IP in any material respect;
- (m) **(Licences)** as far as Target is aware, the Target Group has all material licences, permits and approvals necessary for it to conduct its business in the manner in which it is conducted as at the date of this agreement;
- (n) **(Material Documents)** as at the date of this agreement:
- (i) neither it nor any of its Subsidiaries is in material breach of any Material Document to which a member of the Target Group is a party nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default or similar event, or give another party a termination right or right to accelerate any right or obligation, under a Material Document; and
 - (ii) as far as Target is aware, no other party to any Material Document is in material breach of that Material Document, and nothing has occurred which is or would be with the giving of notice or lapse of time constitute an event of default or similar event, or give another party a termination right or right to accelerate any right or obligation, under a Material Document;
- (o) **(Material information)** as at the date of this agreement, Target is not aware of any material information relating to the Target Group's business, liabilities, assets, financial or trading position, prospects or profitability that has not been Disclosed and is objectively reasonably necessary for Bidder to make an informed decision as to whether to enter into this agreement or proceed with the Transaction, including any:
- (i) material off-balance sheet liabilities or underestimated liabilities or provisions;
 - (ii) undisclosed material contingencies;
 - (iii) pending or outstanding litigation processes; or
 - (iv) other liabilities due to non-compliance with laws;
- (p) **(No Encumbrances)** there are no Encumbrances over all or any of the Target Group's assets or revenues;
- (q) **(Insolvency)** no Insolvency Event has occurred in relation to a member of the Target Group;
- (r) **(No litigation)** as at the date of this agreement, neither Target nor any of its Subsidiaries is the subject of:
- (i) any actual or pending action, dispute, cause of action, claim, demand, investigation, inquiry, prosecution, litigation, proceeding, suit, arbitration, mediation, or dispute resolution; or
 - (ii) any ruling, judgement, order or decree by any Regulatory Authority or any other person,

which may have a material adverse effect upon Target or any of its Subsidiaries;

- (s) **(Anti-bribery)** no member of the Target Group or any director, officer or employee of the Target Group, or to the knowledge of Target, any other person acting on behalf of any member of the Target Group, has:
- (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity;
 - (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; or
 - (iii) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment,

in each case, in violation of any applicable domestic or foreign anti-bribery laws in Australia, the United States of America or any other jurisdiction which is applicable to the Target Group, including, to the extent applicable, the United States Foreign Corrupt Practices Act of 1977;

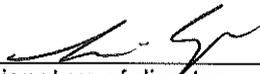
- (t) **(Money laundering laws)** the operations of the Target Group are and have been conducted at all times in compliance with all applicable money laundering legislation of Australia and any other jurisdiction which is applicable to the Target Group, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Regulatory Authority in those jurisdictions;
- (u) **(OFAC)** no member of the Target Group or any director, officer or employee of the Target Group, or to the knowledge of Target, any other person acting on behalf of any member of the Target Group, is or has been in the past 6 years subject to any United States of America sanctions or restrictions administered by the Office of Foreign Assets Control of the United States Treasury Department (**OFAC**) (including the designation as a "specially designated national" or "blocked person" thereunder), the U.S. Department of Commerce, the U.S. Department of State, or any similar Australian sanctions administered by the Commonwealth of Australia or is currently or has been in the past 6 years subject to any similar sanctions administered by Her Majesty's Treasury in the United Kingdom or the European Union;
- (v) **(Export Controls)** the Target Group has at all times conducted its operations and activities in compliance with all applicable export control laws and regulations of Australia and other jurisdictions which are applicable to the Target Group; and
- (w) **(Not Indirect Australian Real Property Interests)** none of the Target Shares, the Target Options or the Target Performance Rights held by the Scheme Shareholders are indirect Australian real property interests within the meaning of section 855-25 of the Income Tax Assessment Act 1997 (Cth).

Schedule 3 Timetable

Event	Date
Send Scheme Booklet to ASIC	Late August 2018
First Court Date	Mid September 2018
Scheme Meeting	Mid October 2018
Second Court Date	Late October 2018
Effective Date	Late October 2018
Record Date	Early November 2018
Implementation Date	Mid November 2018

Executed as an agreement.

Executed by Spookfish Limited in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

SIMON JOHN COPE

Full name of director



Signature of company secretary/director

JASON TODD MARINKO

Full name of company secretary/director

Signed for and on behalf of Eagle View Technologies, Inc. by its authorised signatory in the presence of:

Signature of witness

Full name of witness

Signature of authorised signatory

Full name of authorised signatory

Executed as an agreement.

Executed by **Spookfish Limited** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Signed for and on behalf of **Eagle View Technologies, Inc.** by its authorised signatory in the presence of:



Signature of witness



Signature of authorised signatory

Anna Wahlman

Full name of witness

Rishi Daga

Full name of authorised signatory

Annexure A Scheme

**ANNEXURE TO THE SCHEME
IMPLEMENTATION AGREEMENT**

Scheme of Arrangement

Pursuant to section 411 of the Corporations Act

Spookfish Limited
Target

The registered holders of fully paid ordinary shares in the capital of Target
as at the Record Date (other than Bidder)

Clayton Utz
Level 27 QV.1
250 St Georges Terrace
Perth WA 6000
GPO Box 9806
Perth WA 6848
Tel +61 8 9426 8000
Fax +61 8 9481 3095
www.claytonutz.com

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

Date

Parties **Spookfish Limited ACN 123 511 017** of 10 Brodie Hall Drive, Technology Park, Bentley, Western Australia, 6102, Australia (**Target**)

The registered holders of fully paid ordinary shares in the capital of Target as at the Record Date (other than Bidder) (**Scheme Shareholders**)

Background

- A. Target is a public company limited by shares and is admitted to the official list of ASX.
- B. Eagle View Technologies, Inc. of 3700 Monte Villa Parkway, Suite 200, Bothell, WA 98201, United States of America (**Bidder**) is a private company incorporated in the State of Washington, United States of America.
- C. Target and Bidder have entered into the Implementation Agreement pursuant to which, amongst other things, Target has agreed to propose this Scheme to Target Shareholders, and each of Target and Bidder has agreed to take certain steps to give effect to the Scheme.
- D. If the Scheme becomes Effective, then subject to the terms of the Scheme:
 - (a) all the Scheme Shares will be transferred to Bidder and the Scheme Consideration will be provided to the Scheme Shareholders; and
 - (b) Target will enter the name and address of Bidder in the Target Share Register as the holder of the Scheme Shares.
- E. Bidder has entered into the Deed Poll for the purpose of covenanting in favour of Scheme Shareholders to perform the obligations contemplated of it under the Scheme.

1. Definitions and interpretation

1.1 Definitions

In this document, unless the contrary intention appears or the context requires otherwise:

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it known as the Australian Securities Exchange.

Bidder Nominee has the meaning given in clause 4.1.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Perth, Western Australia.

CHESS means the clearing house electronic sub-register system for the electronic transfer of securities operated by ASX Settlements Pty Limited ABN 49 008 504 532.

Condition means each condition to this Scheme set out in clause 2.1.

Corporations Act means the Corporations Act 2001 (Cth).

Court means the Federal Court of Australia or such other court of competent jurisdiction as Target and Bidder agree in writing.

Deed Poll means the deed poll dated [insert] executed by Bidder [and Bidder Nominee] in favour of the Scheme Shareholders (subject to any amendments permitted by its terms).

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 26 January 2019 or such other date agreed in writing between Target and Bidder.

Implementation Agreement means the scheme implementation agreement dated 26 July 2018 between Target and Bidder under which, amongst other things, Target has agreed to propose the Scheme to Scheme Shareholders, and each of Bidder and Target has agreed to take certain steps to give effect to the Scheme.

Implementation Date means the date that is 5 Business Days after the Record Date or such other date as Target and Bidder agree in writing.

Listing Rules means the official listing rules of ASX.

Record Date means 5:00 pm on the date that is 5 Business Days after the Effective Date or such other time and date agreed in writing between Bidder and Target.

Registered Address means in relation to a Target Shareholder, the address shown in the Target Share Register.

Regulatory Authority means:

- (a) any government or local authority, any department, minister or agency of any government and any other governmental, administrative, fiscal, monetary or judicial body; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

Scheme means the scheme of arrangement under part 5.1 of the Corporations Act between Target and Scheme Shareholders as set out in this document, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to by Bidder and Target.

Scheme Consideration means the amount of cash which a Scheme Shareholder is entitled to receive under the Scheme, being \$0.08 for each Scheme Share subject to adjustment in accordance with clause 4.8.

Scheme Meeting means the meeting of Target Shareholders to be convened by the Court in relation to the Scheme pursuant to section 411(1) of the Corporations Act.

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

Scheme Shareholder means each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date.

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

Second Court Date means the first day of the hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

Security Interest has the meaning given in section 12 of the Personal Properties Securities Act 2009 (Cth).

Subsidiary has the meaning given to it in the Corporations Act.

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

Target Share Registry means Computershare Investor Services Pty Limited ACN 078 279 277.

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

Target Shares means fully paid ordinary shares in the capital of Target.

Trust Account means an Australian dollar denominated trust account operated by Target as trustee for the Scheme Shareholders, as nominated by Target and notified to Bidder at least 5 Business Days prior to the Implementation Date, being the account into which Bidder will deposit an amount equal to the total Scheme Consideration in accordance with clause 4.4.

1.2 Interpretation

In this Scheme headings and labels used for definitions are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) references to paragraphs or clauses are to a paragraph or clause of this document;
- (g) a reference to a document (including this Scheme) is to that document as varied, novated, ratified or replaced from time to time;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;

- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this Scheme;
- (k) a reference to a date or time is to that date or time in Perth, Australia; and
- (l) this Scheme or any clause in this Scheme must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

1.3 Business Day

Except where otherwise expressly provided, where under this document the day on which or by which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing shall be done on the immediately preceding Business Day.

2. Conditions

2.1 Conditions to the Scheme

The Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions, and the provisions of clauses 3 and 4 will not come into effect unless and until each of these conditions have been satisfied:

- (a) as at 8:00 am on the Second Court Date each of the conditions set out in clause 3.1 of the Implementation Agreement (other than the condition relating to the approval of the Court set out in clause 3.1(b) of the Implementation Agreement) has been satisfied or waived in accordance with the terms of the Implementation Agreement;
- (b) as at 8:00 am on the Second Court Date neither the Implementation Agreement nor the Deed Poll has been terminated;
- (c) the Court approves this Scheme under section 411(4)(b) of the Corporations Act with or without modification acceptable to Bidder and Target (each acting reasonably);
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme as are acceptable to Bidder and Target (each acting reasonably) have been satisfied or waived; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to the Scheme.

2.2 Certificates in relation to Conditions

On the Second Court Date:

- (a) Target must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not the Conditions set out in clauses 2.1(a) and 2.1(b) have been satisfied or waived; and

- (b) Bidder must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not the Conditions set out in clauses 2.1(a) and 2.1(b) have been satisfied or waived.

2.3 Termination of Implementation Agreement

Without limiting any rights under the Implementation Agreement, in the event that the Implementation Agreement is terminated in accordance with its terms before 8:00 am on the Second Court Date, Target and Bidder are each released from:

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

3. Scheme

3.1 Effective Date of the Scheme

Subject to clause 3.2, the Scheme will take effect on and from the Effective Date.

3.2 End Date

The Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the End Date, unless Target and Bidder agree in writing.

4. Implementation of Scheme

4.1 Bidder Nominee

- (a) Pursuant to clause 2.3 of the Implementation Agreement, Bidder may nominate a wholly owned Subsidiary of Bidder (**Bidder Nominee**) to pay the Scheme Consideration and/or to which the Scheme Shares are to be transferred in accordance with clause 4.3 of this Scheme.
- (b) If Bidder nominates a Bidder Nominee, then clause 2.3 of the Implementation Agreement provides that:
 - (i) Bidder and Target must procure that the Scheme Shares transferred under the Scheme are transferred to Bidder Nominee rather than Bidder;
 - (ii) Bidder must procure that Bidder Nominee:
 - A. complies with the Implementation Agreement as if Bidder Nominee were a party to it in place of Bidder; or
 - B. executes and delivers to Target a deed poll of accession in favour of Target under which Bidder Nominee agrees to comply with the Implementation Agreement as if it were a party to it in place of Bidder; and
 - (iii) any such nomination will not relieve Bidder of its obligations under the Implementation Agreement, including the obligation to pay or procure payment of the Scheme Consideration as contemplated by the terms of the Implementation Agreement and this Scheme (provided that Bidder will not be in breach of the Implementation Agreement or Deed Poll if it does not discharge an obligation where that obligation has been fully discharged by Bidder Nominee).

- (c) If Bidder validly nominates a Bidder Nominee in accordance with the Implementation Agreement and Bidder Nominee provides the deed poll described in clause 4.1(b)(ii)B of this Scheme, references in this Scheme to "Bidder" will be read as "Bidder or Bidder Nominee (as applicable)" to the extent necessary to achieve the objective stated in clause 4.1(a). For the avoidance of doubt, such deemed reading does not of itself relieve Bidder of any of the obligations attributed to it under this Scheme.

4.2 Lodgement of Court Orders with ASIC

If the Conditions (other than the Condition set out in clause 2.1(e)) are satisfied, Target must promptly lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving the Scheme, and in any event by no later than 5:00 pm on the Business Day following the date on which the Court approves the Scheme or such other Business Day as Target and Bidder agree in writing.

4.3 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clauses 4.4 and 4.5 and Bidder having provided Target with written confirmation thereof, all of the Scheme Shares will, together with all rights and entitlements attaching to the Scheme Shares, be transferred to Bidder without the need for any further act by any Scheme Shareholder (other than acts performed by Target or its directors as attorney or agent for Scheme Shareholders under this Scheme) by:
- (i) Target delivering to Bidder a completed Scheme Transfer duly executed on behalf of the Scheme Shareholders in accordance with clause 7.1 of this Scheme; and
 - (ii) Bidder delivering to Target a completed Scheme Transfer, duly executed by Bidder, and attending to the stamping of the Scheme Transfer (if required); and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.3(a), Target must enter, or procure the entry of, the name and address of Bidder in the Target Share Register as the holder of all of the Scheme Shares.

4.4 Provision of Scheme Consideration

- (a) By no later than the Business Day before the Implementation Date, Bidder will deposit (or procure the deposit of) an amount equal to the total Scheme Consideration in cleared funds into the Trust Account (provided that any interest on the amount deposited (less bank fees and other charges) will be credited to Bidder's account).
- (b) On the Implementation Date, subject to funds having been deposited in accordance with clause 4.4(a), Target must pay or procure the payment of the Scheme Consideration from the Trust Account to each Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Target Share Register on the Record Date, which obligation will be satisfied by:
- (i) where a Scheme Shareholder has, before the Record Date, made a valid election in accordance with the requirements of the Target Share Registry to receive dividend payments from Target by electronic funds transfer to a bank nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or

- (ii) otherwise, whether or not the Scheme Shareholder has made an election referred to in clause 4.4(b)(i), dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Shareholder by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 4.5).
- (c) To the extent that there is a surplus in the amount held by Target as trustee for the Scheme Shareholders in the Trust Account, that surplus may be paid by Target to Bidder.

4.5 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be paid to Scheme Shareholders will be payable to the joint holders; and
- (b) any other document required to be sent under this Scheme will be issued in the names of the joint holders,

and will be forwarded to the holder whose name appears first in the Target Share Register as at the Record Date.

4.6 Unclaimed monies

- (a) Target may cancel a cheque issued under this clause 4 if the cheque:
 - (i) is returned to Target; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Target (or the Target Share Registry) (which request may not be made until that date which is 10 Business Days after the Implementation Date), Target must reissue a cheque that was previously cancelled under this clause 4.6.
- (c) The Unclaimed Money Act 1990 (WA) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of that Act).

4.7 Orders of a court or Regulatory Authority

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

- (a) requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which sum would otherwise be payable to that Scheme Shareholder by Target in accordance with this clause 4, then Target will be entitled to make that payment (or procure that it is made) in accordance with that order or direction; or
- (b) prevents Target from making a payment to a particular Scheme Shareholder in accordance with clause 4.4(b), or such payment is otherwise prohibited by applicable law, Target will be entitled to retain an amount, in Australian dollars, equal to the amount of the relevant payment until such time as payment in

accordance with this clause 4 is permitted by that order or direction or otherwise by law.

4.8 Fractional entitlements and share splitting or division

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration results in a fractional entitlement to a cent, then the entitlement of that Scheme Shareholder must be rounded up or down to the nearest cent (with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole cent and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole cent).
- (b) If Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 4.8(a)) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, Bidder may give notice to those Scheme Shareholders:
- (i) setting out their names and registered addresses as shown in the Target Share Register;
 - (ii) stating that opinion; and
 - (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares will, for the purposes of the other provisions of the Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the other provisions of the Scheme, be taken to hold no Scheme Shares. Bidder in complying with the other provisions of the Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of the Scheme.

5. Dealings in Target Shares

5.1 Dealings in Target Shares by Scheme Shareholders

For the purposes of establishing the identity of Scheme Shareholders, dealings in Target Shares or other alterations to the Share Register will only be recognised by Target provided that:

- (a) in the case of dealings of the type to be effected on CHESSE, the transferee is registered in the Target Share 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 at or before the Record Date at the place where the Target Share Register is kept,

and Target will not accept for registration, or recognise for any purpose (except a transfer to Bidder pursuant to this Scheme and any subsequent transfer by Bidder or its successors in title), any transmission application or transfer in respect of Target Shares received on or after the Record Date, or received prior to the Record Date but not in registrable or actionable form.

5.2 Target Share Register

Target will, until the Scheme Consideration has been paid and Bidder has been entered in the Target Share Register as the holder of all of the Scheme Shares, maintain the Target Share Register in accordance with the provisions of this clause 5 and the Target Share Register in this form and the terms of this Scheme will solely determine entitlements to the Scheme Consideration.

5.3 Information to be made available to Bidder

Target must procure that as soon as practicable following the Record Date, details of the names, registered addresses and holdings of Target Shares of every Scheme Shareholder shown in the Target Share Register at the Record Date are made available to Bidder in such form as Bidder may reasonably require.

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 the Scheme Shares will cease to have effect as documents of title, and each entry on the Target Share Register at that date will cease to have any effect other than as evidence of entitlement to the Scheme Consideration.

5.5 No disposals after Record Date

If the Scheme becomes Effective, a Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date.

6. Suspension and termination of quotation

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

7. General Scheme provisions

7.1 Appointment of agent and attorney

Each Scheme Shareholder, without the need for any further act, irrevocably appoints Target as its agent and attorney for the purpose of:

- (a) executing any document or form or doing any other act necessary to give effect to the terms of the Scheme including, without limitation, the execution of the Scheme Transfer to be delivered under clause 4.2 and the giving of the Scheme Shareholders' consent under clause 7.3; and
- (b) enforcing the Deed Poll against Bidder,

and Target accepts such appointment. Target, as agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 7.1 to all or any of its directors and officers (jointly, severally, or jointly and severally).

7.2 Enforcement of Deed Poll

Target undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against Bidder (as applicable on behalf of and as agent and attorney for the Scheme Shareholders).

7.3 Scheme Shareholders' consent

Each Scheme Shareholder irrevocably:

- (a) consents to Target and Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of the Scheme; and
- (b) acknowledges that the Scheme binds Target and all of the Scheme Shareholders (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against the Scheme).

7.4 Scheme Shareholder's agreements and warranties

- (a) Each Scheme Shareholder:
 - (i) agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those Scheme Shares in accordance with this Scheme;
 - (ii) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
 - (iii) agrees to, on the direction of Bidder, destroy any holding statements or share certificates relating to their Scheme Shares; and
 - (iv) is deemed to have warranted to Bidder and, to the extent enforceable, appointed and authorised Target as its agent to warrant to Bidder that all its Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to Bidder, be fully paid and free from all security interests (including mortgages, charges, liens, encumbrances, pledges, Security Interests and interests of third parties of any kind, whether legal or otherwise, and from any restrictions on transfer of any kind, and that it has full power and capacity to sell and to transfer those Scheme Shares together with any rights and entitlements attaching to such shares to Bidder under the Scheme.

7.5 Title to Scheme Shares and transfer free from encumbrance

- (a) Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by Target of Bidder in the Target Share Register as the holder of the Scheme Shares.
- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under the Scheme to Bidder, will, at the time of transfer to Bidder, vest in Bidder free from all security interests (including mortgages, charges, liens, encumbrances, pledges, Security Interests and interests of third parties of any kind, whether legal or otherwise, and from any restrictions on transfer of any kind).

7.6 Appointment of Bidder as sole proxy

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 4.4 of this Scheme, on and from the Implementation Date until Target registers

Bidder as the holder of all of the Scheme Shares in the Target Share Register, each Scheme Shareholder:

- (a) 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 Schemes Shares registered in its name and sign any shareholders resolution, and no Scheme Shareholder 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 clause 7.6(a); and
- (b) must take all other actions in the capacity of the registered holder of Scheme Shares as Bidder reasonably directs.

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 7.6 of this Scheme.

7.7 Consent to alterations

If the Court proposes to approve this Scheme subject to any alterations or conditions, Target may, by its counsel or solicitors, and with the consent of Bidder, consent on behalf of all persons concerned, including a Scheme Shareholder, to any modification of or amendment to the Scheme which the Court thinks fit to impose.

7.8 Notices

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in the 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 at the Target Share Registry as the case may be.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a Target Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

7.9 Inconsistencies

This Scheme binds Target and all Target Shareholders, and to the extent of any inconsistency, overrides the Target constitution.

7.10 Further assurance

Target will execute all documents and do all acts and things as may be necessary or expedient for the implementation of, and performance of its obligations under, the Scheme.

7.11 No liability when acting in good faith

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

7.12 Stamp Duty

Bidder:

- (a) will pay all stamp duty and any related fines and penalties in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under this Scheme and the Deed Poll; and
- (b) indemnifies each Scheme Shareholder against any liability arising from failure to comply with clause 7.12(a).

7.13 Governing Law

- (a) This Scheme is governed by the law applying in Western Australia.
- (b) Each party irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7.13(b)(i).

Annexure B Deed Poll

*ANNEXURE TO THE SCHEME
IMPLEMENTATION AGREEMENT*

Deed Poll

(in respect of the Scheme)

Eagle View Technologies, Inc.
Bidder

In favour of each registered holder of fully paid ordinary shares in the capital of Target as at the Record Date (other than Bidder)

Clayton Utz
Level 27 QV.1
250 St Georges Terrace
Perth WA 6000
GPO Box 9806
Perth WA 6848
Tel +61 8 9426 8000
Fax +61 8 9481 3095
www.claytonutz.com

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Deed poll made on

2018

Parties **Eagle View Technologies, Inc.** of 3700 Monte Villa Parkway, Suite 200, Bothell, WA 98201, United States of America (**Bidder**)

In favour of Each registered holder of fully paid ordinary shares in the capital of Spookfish Limited ACN 123 511 017 (**Target**) on issue as at the Record Date (other than Bidder) (**Scheme Shareholders**)

Background

- A. Target and Bidder have entered into the Implementation Agreement.
- B. Target has agreed in the Implementation Agreement to propose a scheme of arrangement between Target and the Scheme Shareholders, the effect of which will be that Bidder acquires all of the Scheme Shares from Scheme Shareholders for the Scheme Consideration, subject to the satisfaction of certain conditions.
- C. In accordance with clause 4.3(h) of the Implementation Agreement, Bidder is entering into this deed poll to covenant in favour of the Scheme Shareholders that it will observe and perform its obligations under the Scheme.

1. Definitions and interpretations

1.1 Definitions

In this deed poll:

First Court Date means the first day of the hearing of an application made to the Court for an order pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

Implementation Agreement means the scheme implementation agreement dated 26 July 2018 between Target and Bidder under which, amongst other things, Target has agreed to propose the Scheme to Scheme Shareholders, and each of Bidder and Target has agreed to take certain steps to give effect to the Scheme.

Scheme means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders, a copy of which is annexed to this deed poll, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to by Bidder and Target.

Capitalised terms have the meaning given to them in the Scheme, unless the context requires otherwise.

1.2 Interpretation

In this deed poll headings and labels used for definitions are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (a) references to paragraphs or clauses are to a paragraph or clause of this document;
- (f) a reference to a document (including this deed poll) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (h) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (i) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this deed poll;
- (j) a reference to a date or time is to that date or time in Perth, Australia; and
- (k) this deed poll or any clause in this deed poll must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

1.3 Nature of deed poll

Bidder acknowledges that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder appoints Target as its agent and attorney to enforce this deed poll against Bidder.

2. Conditions

2.1 Conditions Precedent

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

2.2 Termination

Bidder's obligations under this deed poll will automatically terminate and the terms of this deed poll will be of no further force or effect if:

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

unless Target and Bidder otherwise agree in accordance with the Implementation Agreement.

2.3 Consequences of termination

If this deed poll is terminated under clause 2.2, then in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Bidder is released from its obligations to further perform this deed poll except those obligations under clause 6.1 and any other obligations which by their nature survive termination; and
- (b) each Scheme Shareholder retains the rights they have against Bidder in respect of any breach of this deed poll which occurs before it was terminated.

3. Scheme obligations

Subject to clause 2, Bidder undertakes in favour of each Scheme Shareholder to:

- (a) deposit (or procure the deposit of) an amount equal to the total Scheme Consideration in cleared funds into the Trust Account by no later than the Business Day before the Implementation Date; and
- (b) undertake all other actions attributed to it under, and otherwise comply with, the Scheme, as if named as a party to the Scheme,

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

4. Warranties

Bidder represents and warrants that:

- (a) it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) the execution and delivery by it of this deed poll has been properly authorised by all necessary corporate action and it has full corporate power and lawful authority to perform or cause to be performed its obligations under this deed poll and to carry out or cause to be carried out the transactions contemplated by this deed poll;
- (c) this deed poll constitutes legally, valid and binding obligations on it enforceable in accordance with its terms (subject to any necessary stamping) and does not conflict with or result in a breach of or default under:
 - (i) the constitution or equivalent constituent documents of it or any of its Related Bodies Corporate (as defined in the Implementation Agreement); or
 - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is party, or by which it is bound; and
- (d) it is solvent and no resolutions have been passed nor has any other step been taken or legal action or proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets.

5. Continuing obligations

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

- (a) Bidder has fully performed its obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.2.

6. General

6.1 Stamp duty

Bidder:

- (a) will pay or procure the payment of all stamp duties and any related fines and penalties in respect of this deed poll, the performance of this deed poll and each transaction effected by or made under this deed poll; and
- (b) indemnifies each Scheme Shareholder against any liability arising from failure to comply with clause 6.1(a).

6.2 Notices

Any notice or other communication to Bidder in connection with this deed poll:

- (a) may be given by personal service, post or email;
- (b) must be in writing;
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

Address: 3700 Monte Villa Parkway
Bothell WA 98021
UNITED STATES OF AMERICA

Email: jhickey@vistaequitypartners.com

Attention: Chief Executive Officer

with a copy (for information purposes only) in each case to:

Name: Phoenix Holdco LLC

Address: c/o Vista Equity Partners III, LLC
Four Embarcadero Center, 20th Floor
San Francisco CA 94111
UNITED STATES OF AMERICA

Email: dbreach@vistaequitypartners.com
jhickey@vistaequitypartners.com

Attention: David A. Breach and James P. Hickey

Name: King & Wood Mallesons

Address: Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
AUSTRALIA

Email: meredith.paynter@au.kwm.com
mark.vanderneut@au.kwm.com

Attention: Meredith Paynter and Mark Vanderneut

Name: Kirkland & Ellis LLP

Address: 555 California Street, Suite 2700
San Francisco CA 94104
UNITED STATES OF AMERICA

Email: casillas@kirkland.com
joshua.zachariah@kirkland.com
abtin.jalali@kirkland.com

Attention: Stuart Casillas, Joshua Zachariah and Abtin Jalali

- (d) (in the case of personal service or post) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (e) (in the case of email) must state that the email is a communication under this deed; and
- (f) must be delivered by hand or posted by prepaid post to the address or sent by email to the email address of the addressee in accordance with this clause 6.2.

6.3 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the sixth day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the tenth day after the date of posting by airmail;
- (c) (in the case of delivery by hand) on delivery; and
- (d) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of clause 6.2, 24 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5:00 pm, it is taken to be received at 9:00 am on the next Business Day.

6.4 Waiver

- (a) Waiver of any right arising from a breach of this deed poll or of any right, power, authority, discretion or remedy arising upon default under this deed poll must be in writing and signed by the party granting the waiver. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) A failure or delay in exercise, partial exercise, or enforcement of:
 - (i) any right, power or remedy provided by law or under this deed poll; or
 - (ii) any right, power, authority, discretion or remedy created or arising upon default under this deed poll,

by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed poll.

- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this deed poll or on a

default under this deed poll as constituting a waiver of that right, power, authority, discretion or remedy.

- (d) A party may not rely on any conduct of another party as a defence to the exercise of a right, power, authority, discretion or remedy by that other party.
- (e) This clause 6.4 may not itself be waived except in writing.

6.5 Variation

A provision of this deed poll may not be varied unless:

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

in which event Bidder will enter into a further deed poll in favour of the Scheme Shareholders giving effect to such variation.

6.6 Cumulative rights

The rights, powers and remedies of Bidder and each Scheme Shareholder under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by the law independently of this deed poll.

6.7 Assignment

The rights and obligations of Bidder and the rights of each Scheme Shareholder under this deed poll are personal and must not be assigned, charged or otherwise dealt with at law or in equity.

6.8 Further action

Bidder will, at its own expense, promptly do all things and execute and deliver all further documents required by law to give effect to this deed poll and the transactions contemplated by it.

6.9 Appointment of process agent

Without preventing any method of service allowed under any relevant law, Bidder:

- (a) irrevocably appoints Dabserv Corporate Services Pty Ltd (ACN 001 824 111) (**Initial Process Agent**) as its process agent to receive any document in an action in connection with this deed poll; and
- (b) agrees that failure by a process agent to notify Bidder of any document in an action in connection with this deed poll does not invalidate the action concerned.

If for any reason the Initial Process Agent ceases to be able to act as process agent, Bidder agrees to appoint another person as its process agent in Sydney, New South Wales, Australia and ensure that the replacement process agent accepts its appointment and confirms its appointment to Bidder.

The Initial Process Agent has accepted its appointment as the process agent.

Bidder agrees that service of documents on its process agent at the following address is sufficient service on it:

Dabserv Corporate Services Pty Ltd
Attention: Meredith Paynter
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
AUSTRALIA

7. Governing law and jurisdiction

- (a) This deed poll is governed by the law applying in Western Australia.
- (b) Bidder irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to for any proceedings in connection with this deed poll.
- (c) Bidder waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7(b).

Executed as a deed poll.

Signed, sealed and delivered for and on behalf of **Eagle View Technologies, Inc.** by its authorised signatory in the presence of:

Signature of witness

Signature of authorised signatory

Full name of witness

Full name of authorised signatory