

16 August 2016

ASX Market Announcements Office
ASX Limited
20 Bridge Street
SYDNEY NSW 2000

By electronic lodgement

Recapitalisation Implementation Deed

McAleese Limited (ASX: MCS) (the **Company**) refers to its previously announced recapitalisation.

Attached is the executed form of the Recapitalisation Implementation Deed referred to in the Notice of Meeting released by the Company earlier today.

Ends



HERBERT
SMITH
FREEHILLS

Deed

Execution
version

Recapitalisation Implementation Deed

McAleese

Investors

Rowsthorn Interests

Contents

Table of contents

1	Definitions and interpretation	3
1.1	Definitions	3
1.2	Interpretation	15
1.3	Business Days	16
1.4	Interpretation of inclusive expressions	16
1.5	Deed components	16
1.6	Investors acknowledgement	16
2	Agreement to proceed with the Recapitalisation	17
2.1	Implementation, Timetable and Completion Steps Plan	17
3	Conditions Precedent	17
3.1	Conditions precedent to the Equity Restructure	17
3.2	Conditions precedent to calling of General Meeting	17
3.3	Condition precedent to Notes Issue Completion	18
3.4	Reasonable endeavours	18
3.5	Waiver of Conditions Precedent	18
3.6	Certain notices relating to Conditions Precedent	18
4	Shareholder documentation	19
4.1	Shareholder documentation	19
4.2	Process and responsibility for Shareholder Documentation	19
4.3	Responsibility Statements in Explanatory Memorandum	22
5	Implementation of the Recapitalisation	23
5.1	Obligations of the parties	23
6	Conduct of business	25
6.1	Conduct of business generally	25
6.2	Permitted acts	25
6.3	Competing Proposal	26
7	Board representation and Shareholder information	26
7.1	Board representation	26
7.2	Proposed amendment to constitution	28
7.3	Shareholder information	29
8	McAleese Board recommendation	29
9	Consultation between the Company, Rowsthorn Interests and the Investors	29
9.1	McAleese shareholders do not approve Recapitalisation Resolutions	29
9.2	Investment by Rowsthorn Interests	30
10	Representations and warranties	30
10.1	Representations and warranties	30
10.2	Additional McAleese representations and warranties	31
10.3	Qualifications on McAleese's Representations and Warranties	32
10.4	McAleese's awareness	32

10.5	Survival of representations and warranties	32
10.6	Timing of representations and warranties	32
11	Releases	33
11.1	McAleese directors and officers.....	33
11.2	Investors directors and officers	33
11.3	Rowsthorn Interests directors and officers	33
12	Public announcement	34
12.1	Announcement of the Recapitalisation	34
12.2	Public announcements	34
13	Confidentiality	34
14	Termination	34
14.1	Termination for material breach	34
14.2	Effect of termination	35
14.3	Termination	35
14.4	No other termination	35
15	Duty, costs and expenses	36
15.1	Stamp duty	36
15.2	Costs and expenses	36
16	GST	36
17	Lender Trustee Limitation of liability	37
18	Notices	38
18.1	How to give a notice.....	38
18.2	When a notice is given.....	39
19	General	39
19.1	Governing law	39
19.2	Giving effect to this deed	39
19.3	Waiver of rights	39
19.4	Operation of this deed	40
19.5	Inconsistency with other documents.....	40
19.6	Amendment.....	40
19.7	No assignment.....	40
19.8	Counterparts	40
19.9	Attorneys	40
19.10	Discretion in exercising rights	40
19.11	Extent of obligations	40
19.12	No liability for loss	41
19.13	Conflict of interest	41
19.14	Consents	41
19.15	Survival	41
19.16	No bias against the drafter.....	41

Schedules

Schedule 1

Notice details	43
-----------------------	-----------

Schedule 2	
Investors	45
Schedule 3	
Index of Disclosure Materials	46
Schedule 4	
DoCA Proposal Terms	47
Schedule 5	
Timetable	48
Signing page	49
Signing page	50
Signing page	51
Signing page	52

Herbert Smith Freehills owns the copyright in this document and using it without permission is strictly prohibited.



Implementation deed

Date ►

Between the parties

McAleese or Company	McAleese Limited ACN 156 354 068 of Level 4, 697 Burke Road, Camberwell VIC 3124
------------------------	--

McAleese Borrower	McAleese Finance Pty Ltd ACN 156 099 204 of Level 4, 697 Burke Road, Camberwell VIC 3124
-------------------	---

Investors	The parties listed in Column B of the table in Schedule 2 of the address listed next to that party's name in Column C of that table (each an Investor and together, the Investors)
-----------	---

Rowsthorn Interests	Mark Rowsthorn of Unit 1306, 38 St Kilda Road, Melbourne VIC 3024 and Mostia Dion Nominees Pty Ltd ACN 005 499 945 of level 2, 428 Little Burke Street, Melbourne VIC 3000 Supertara Pty. Limited in its personal capacity and in its capacity as trustee of the Supertara Trust ACN 006 859 178 of Floor 2, 428 Little Burke Street, Melbourne VIC 3000 Contento Investments Pty Ltd in its personal capacity and in its capacity as trustee for Contento Investments Trust ACN 612 918 260 of Floor 2, 428 Little Burke Street, Melbourne VIC 3000 (Mark Rowsthorn, Mostia Dion and Supertara Pty. Limited in its personal capacity and in its capacity as trustee of the Supertara Trust and Contento Investments Pty Ltd in its personal capacity and in its capacity as trustee of the Contento Investments Trust, together, the Rowsthorn Interests).
---------------------	---

Recitals

- 1 On 7 June 2016, the parties, among others, entered into the HoA.
- 2 Contemporaneously with entry into this deed, the Investors propose to acquire the Existing Senior Debt from the Existing Financiers by entering into the Senior Debt Acquisition Agreement.
- 3 The parties have agreed to propose various transactions, which together will comprise a Recapitalisation of the McAleese Group.
- 4 The parties have agreed in good faith to implement the Recapitalisation on the terms and conditions of this deed.

This deed witnesses as follows:

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
ASIC	the Australian Securities and Investments Commission.
Amendment Letters	letters from the Company and others to Australia and New Zealand Banking Group Limited, ANZ Fiduciary Services Pty Limited and the Existing Financiers dated on each of 24 September 2015, 4 December 2015, 14 March 2016, 14 April 2016, 21 April 2016, 29 April 2016, 5 May 2016, 13 May 2016, 19 May 2016, 27 May 2016, 31 May 2016, 1 June 2016, 6 June 2016 and 8 June 2016.
Associate	has the meaning set out in section 12 of the Corporations Act, as if subsection 12(1) of the Corporations Act included a reference to this deed and McAleese was the designated body.
ASX	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.
Backstop Date	19 July 2016.
Business Day	a day that is not a Saturday, Sunday, a public holiday or bank holiday in Melbourne.
CFAL	Capital Finance Australia Limited ABN 23 069 663 136 of Level 6, 150 Collins Street, Melbourne VIC 3000.
Commence or Commencement	in relation to the Equity Restructure, means lodgement of the Prospectus with ASIC.
Competing Proposal	any proposal, agreement, arrangement or transaction, which, if entered into or completed, would mean a Third Party (either alone or together with any Associate) may: <ol style="list-style-type: none"> 1 acquire the Existing Senior Debt under the SFA; 2 provide a refinancing solution to McAleese which would result in any material reduction of its total debt levels, deferment of debt payment obligations or other material improvement in McAleese's

Term	Meaning
	<p>debt terms;</p> <p>3 (other than in the case of Mark Rowsthorn and his associates in respect of an equity underwriting arrangement) directly or indirectly acquire a Relevant Interest in, or have a right to acquire, a legal, beneficial or economic interest in, or control of 20% or more of the McAleese Shares or of the share capital of any material Subsidiary of McAleese; or</p> <p>4 acquire control of McAleese.</p>
Completion Steps Plan	has the meaning given in clause 2.1(c).
Condition Precedent	each of the conditions set out in clauses 3.1, 3.2 and 3.3.
Confidentiality Deed	the confidentiality deed between SC Lowy Financial (HK) Limited and McAleese dated 26 November 2015.
Control	has the meaning given in section 50AA of the Corporations Act.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Corporations Regulations	the <i>Corporations Regulations 2001</i> (Cth).
Debt Acquisition Date	the date upon which the Existing Senior Debt is transferred by the Existing Financiers to the Investors in accordance with the terms of the Senior Debt Acquisition Agreement.
Deed of Amendment and Forbearance	the document entitled "Deed of Amendment and Forbearance – SFA" dated on or around the date of this document between, amongst others, the Company and ANZ Fiduciary Services Pty Ltd.
Delisting	the removal of the Company from the official list of ASX and Delisted has a corresponding meaning.
Disclosure Materials	<p>1 the documents and information contained in the Project Morrison Data Room made available by McAleese to the Investors and its Related Persons prior to the date of the HoA, the index of which is set out in Schedule 3; and</p> <p>2 written responses from McAleese and its Related Persons given</p>



Term	Meaning
	prior to the date of the HoA to requests for further information made by the Investors and its Related Persons.
Drawdown Date	the date upon which the McAleese Borrower draws down the entire amount of funds available under the New Senior Debt Facility in accordance with the terms and conditions of the New Senior Debt Facility Agreement, as contemplated by clause 5.1(d)(1)(A).
Equity Restructure	means: <ol style="list-style-type: none">1 the Options Issue;2 the Notes Issue;3 the Management Incentivisation Arrangements;4 the payment of the Underwriting Fee; and5 the Delisting.
Equity Restructure Documents	the documents to be entered into in connection with the Equity Restructure and setting out the terms and conditions of the Equity Restructure, including: <ol style="list-style-type: none">1 the Option Terms of Issue;2 the Notes Terms of Issue;3 the Underwriting Agreement;4 the Explanatory Memorandum; and5 the Offer Documents.
Execution Date	the date of execution of this deed.
Existing Financiers	each of: <ol style="list-style-type: none">1 Australia and New Zealand Banking Group Limited;2 HSBC Bank Australia Limited; and3 Westpac Banking Corporation Limited.
Existing Senior Debt	has the meaning given to that term in the Deed of Amendment and Forbearance.
Explanatory Memorandum	the explanatory memorandum to be prepared by McAleese in respect of the Recapitalisation Resolutions in accordance with clause 4.2, which must include a notice of meeting and proxy form, to be despatched to McAleese Shareholders, in advance of the General

Term	Meaning
	Meeting.
Finance Leases	each finance lease between CFAL and a member of the McAleese Group in place as at the date of this deed.
Financial Advisor	any financial advisor retained by a party in relation to the Recapitalisation from time to time.
General Meeting	the meeting of McAleese Shareholders to consider and vote on the Recapitalisation Resolutions and includes any meeting convened following any adjournment or postponement of that meeting.
Government Agency	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.
HoA	the binding heads of agreement between the Company, the McAleese Borrower, Mark Rowsthorn, Mostia Dion Nominees Pty Ltd, the Investors, the Existing Financiers, CFAL and the Security Trustee executed on 7 June 2016.
Independent Expert	the independent expert in respect of the Recapitalisation appointed by McAleese for the purposes of the approvals sought under the Recapitalisation Resolutions under item 7 of section 611 of the Corporations Act.
Independent Expert's Report	the report to be issued by the Independent Expert in connection with the Recapitalisation.
Investors' Information	information regarding the Investors provided by the Investors to McAleese in writing for inclusion in the Shareholder Documentation.
Insolvency Event	means, in relation to an entity: <ol style="list-style-type: none"> the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity (other than where the order is set aside within 14 days); a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its

Term	Meaning
	<p>assets;</p> <p>3 the entity executing a deed of company arrangement;</p> <p>4 the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;</p> <p>5 the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation); or</p> <p>6 the entity being deregistered as a company or otherwise dissolved.</p>
Investors Released Parties	the directors and officers of each Investor.
Listing Rules	the official listing rules of ASX.
Management Incentive Arrangements	the form (or forms) of equity rights or similar instruments or arrangements in respect of capital in McAleese Group, which may be issued to certain senior executives of McAleese Group on the occurrence or satisfaction of certain conditions, as more particularly described in the Shareholder Documentation.
McAleese Board	the board of directors of McAleese and a 'McAleese Board Member' means any director of McAleese comprising part of the McAleese Board.
McAleese Group	McAleese and each of its Subsidiaries, and a reference to a 'McAleese Group Member' or a 'member of the McAleese Group' is to McAleese or any of its Subsidiaries.
McAleese Information	information regarding the McAleese Group prepared by McAleese for inclusion in the Shareholder Documentation, which for the avoidance of doubt does not include the Investors Information, the Rowsthorn Interests Information, in the case of the Explanatory Memorandum, the Independent Expert's Report or any description of the taxation effect of the Recapitalisation on McAleese Shareholders which may be prepared by an external adviser to McAleese.
McAleese Registry	Link Market Services Limited ACN 083 214 537.
McAleese Released Parties	the directors and officers of McAleese.



Term	Meaning
McAleese Representations and Warranties	the representations and warranties of McAleese set out in clause 10.2.
McAleese Share	a fully paid ordinary share in the capital of McAleese.
McAleese Share Register	the register of members of McAleese maintained in accordance with the Corporations Act.
McAleese Shareholder	each person who is registered as the holder of a McAleese Share in the McAleese Share Register.
McAleese Specified Executive	means each of: <ol style="list-style-type: none">1 Mark Rowsthorn;2 John Russell;3 Judith Mamora; and4 Andrew Simpson.
Meeting Sunset Date	9 September 2016, or such other date agreed between the parties acting reasonably.
Modified SFA	the SFA as varied by the terms of the Deed of Amendment and Forbearance.
New Senior Debt Facility	the "Facility" as defined in the New Senior Debt Facility Agreement.
New Senior Debt Facility Agreement	the document entitled "Syndicated Loan Note Subscription Agreement (McAleese)" between, among others, the Company, the McAleese Borrower and the Investors as original lenders entered into on or about the date of this deed.
New Working Capital Facility	the "Facility" as defined in the New Working Capital Facility Agreement.
New Working Capital Facility Agreement	the document entitled "Working Capital Loan Note Subscription Agreement" between, among others, the Company and SC Lowy Primary Investments, Ltd entered into on or about the date of this deed.



Term	Meaning
Note Proceeds Account	the account subject to the document entitled "Blocked Account Control Deed – Note Proceeds Account" dated on or about the date of this document between Australia New Zealand Banking Group Limited, ANZ Fiduciary Services Pty Ltd and the Company.
Notes	has the meaning given to that term in the Underwriting Agreement.
Notes Issue	the issue of Notes pursuant to the Prospectus.
Notes Issue Completion	has the same meaning as given to "Completion" in the Underwriting Agreement.
Notes Issue Completion Date	the date upon which Notes Issue Completion occurs.
Notes Terms of Issue	the terms attached as Schedule 2 to the Underwriting Agreement.
Note Trustee	has the meaning given to the term "Trustee" in the Underwriting Agreement.
Offer Documents	the Prospectus and an Entitlement and Acceptance Form, each as defined in the Underwriting Agreement.
Option	an option exercisable into a new McAleese Share, pursuant to the Option Terms of Issue.
Option Deed	the option deed entered into between the Company and the Investors on or about the date of this deed.
Option Issue	the issue of Options to the Investors, under the Option Deed, such that, on exercise of those options the Investors will hold, in aggregate, 35% of the McAleese Shares on issue on a post-Recapitalisation basis, subject to adjustment in accordance with the Option Terms of Issue.
Option Terms of Issue	the terms attached as Schedule 3 to the Option Deed.

Term	Meaning
Prescribed Occurrence	<p>other than as:</p> <ol style="list-style-type: none"> 1 required or permitted by this deed, the Recapitalisation or the transactions contemplated by either; 2 fairly disclosed in the Disclosure Materials; 3 agreed to in writing by the Investors; or 4 fairly disclosed by McAleese in an announcement made by McAleese to ASX, or a document lodged by it with ASIC prior to the date of the HoA, <p>the occurrence of any of the following:</p> <ol style="list-style-type: none"> 1 McAleese converting all or any of its shares into a larger or smaller number of shares; 2 a member of the McAleese Group resolving to reduce its share capital in any way; 3 a member of the McAleese Group: <ul style="list-style-type: none"> • entering into a buy-back agreement; or • resolving to approve the terms of a buy-back agreement under the Corporations Act; 4 a member of the McAleese Group issuing shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option, other than: <ul style="list-style-type: none"> • to a directly or indirectly wholly-owned Subsidiary of McAleese; or • the issue of shares, or performance rights or options convertible into shares, under any McAleese Group executive or employee incentive plan or arrangement; 5 a member of the McAleese Group issuing or agreeing to issue securities convertible into shares; 6 a member of the McAleese Group disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property; 7 a member of the McAleese Group granting a Security Interest, or agreeing to grant a Security Interest, in the whole, or a substantial part, of its business or property other than a lien which arises by operation of law or legislation securing an obligation that is not yet due; or 8 an Insolvency Event occurs in relation to a member of the McAleese Group.
Project Morrison Data Room	<p>the online data room accessed at: https://dataroom.ansarada.com/projectmorrison.</p>
Prospectus	<p>has the meaning given to that term in the Underwriting Agreement.</p>

Term	Meaning
Recapitalisation	<p>the recapitalisation of the McAleese Group in a manner consistent in all material respects with the Recapitalisation Documents, involving, among other things, the following:</p> <ol style="list-style-type: none"> 1 the acquisition by the Investors of the Existing Senior Debt on the terms of the Senior Debt Acquisition Agreement; 2 the continuation of the Finance Leases with CFAL; 3 the establishment of the New Senior Debt Facility; 4 the establishment of the New Working Capital Facility; 5 the continuation of the Company's existing bank guarantee facility with ANZ and rollover of existing bank guarantees into that facility; 6 the continuation of the existing transactional banking facilities with ANZ; 7 the compromise of the Existing Senior Debt by way of extinguishment of the Modified SFA; and 8 the Equity Restructure.
Recapitalisation Documents	<ol style="list-style-type: none"> 1 this deed; 2 the Senior Debt Acquisition Agreement; 3 the New Senior Debt Facility Agreement; 4 the New Working Capital Facility Agreement; 5 the Equity Restructure Documents; 6 the Deed of Amendment and Forbearance; and 7 the Modified SFA.
Recapitalisation Resolutions	<p>the following resolutions to be put to McAleese Shareholders at the General Meeting, in relation to implementing the Equity Restructure, including:</p> <ol style="list-style-type: none"> 1 an ordinary resolution for the purposes of Listing Rule 7.1 in relation to the Options Issue; 2 an ordinary resolution for the purposes of item 7 of section 611 of the Corporations Act in relation to the Options Issue and the conversion of the Notes held by the Rowsthorn Interests; 3 subject to consultation with ASX, an ordinary resolution approving the Notes Issue; 4 an ordinary resolution for the purposes of section 254H of the Corporations Act, to the extent that a consolidation of McAleese Shares is agreed to be undertaken by McAleese and the Investors in advance of McAleese conducting the Notes Issue; 5 an ordinary resolution for the purposes of Listing Rule 10.11 in relation to the proposed payment of the Underwriting Fee (by way of the issue of Notes to the Rowsthorn Interests); 6 if the McAleese Board is unable to determine to resolve that the

Term	Meaning
	<p>transactions comprising the Recapitalisation constitute permitted financial assistance for the purposes of section 260A of the Corporations Act, a special resolution for the purposes of section 260B of the Corporations Act;</p> <p>7 subject to consultation with ASX, an ordinary resolution for the purposes of ASX Listing Rule 17.11 in relation to the proposed Delisting; and</p> <p>8 an ordinary resolution for the purposes of ASX Listing Rule 10.11 to the extent that the Management Incentive Arrangements involve the issue of a form of equity in McAleese Group to Mark Rowsthorn,</p> <p>and any other resolution that either of ASIC or ASX considers necessary, or a party otherwise considers desirable (acting reasonably), in relation to implementing the Equity Restructure.</p>
Regulatory Approval	an approval or consent set out in clause 3.1(a).
Related Bodies Corporate	has the meaning set out in section 50 of the Corporations Act.
Related Entity	<p>in respect of an entity, another entity which is related to that first entity within the meaning of section 50 of the Corporations Act or is in any economic entity (as defined in any approved accounting standard) which contains the first.</p> <p>Where the context requires, Mark Rowsthorn will be treated as “an entity” for the purposes of limb (1) of this definition and the definition will apply to him accordingly.</p>
Related Person	in respect of a party or its Related Bodies Corporate, each director, officer, employee, advisor, agent or representative of that party or Related Body Corporate.
Relevant Interest	has the meaning given in sections 608 and 609 of the Corporations Act.
RG74	ASIC Regulatory Guide 74: <i>Acquisitions approved by members</i> .
Rowsthorn Agent	the Facility Agent under the Rowsthorn Loan.
Rowsthorn Interests Information	information regarding the Rowsthorn Interests provided by the Rowsthorn Interests to McAleese, in writing, for inclusion in the Shareholder Documentation.

Term	Meaning
Rowsthorn Loan	has the meaning given to that term in the Underwriting Agreement.
Rowsthorn Interests Released Parties	the directors and other officers of each of the Rowsthorn Interests including Mark Rowsthorn but only in his capacity as a director or other officer of the relevant Rowsthorn Interest.
Security Interest	has the meaning given in section 51A of the Corporations Act.
Security Trustee	ANZ Fiduciary Services Pty Ltd in its capacity as 'Security Trustee' under, and as defined in, the SFA.
Senior Debt Acquisition Agreement	has the meaning given to that term in the Deed of Amendment and Forbearance and includes the "Deed of Assignment" (as defined in the Deed of Amendment and Forbearance).
Senior Debt Documents	each Finance Document (as defined in the SFA) and includes the Modified SFA.
Settlement Date	has the meaning given to that term in the Underwriting Agreement.
SFA	the document entitled "Multi-Option Syndicated Facility Agreement" dated 27 November 2013 between, among others, McAleese Finance Pty Ltd, McAleese and ANZ Fiduciary Services Pty Ltd as amended and restated by deed on 24 September 2015 between, among others, McAleese Finance Pty Ltd, McAleese, and ANZ Fiduciary Services Pty Ltd and as further amended by the Waiver Letters and the Amendment Letters.
SFA Limited Guarantee	The document entitled "SFA Limited Guarantee" dated on or around the date of this document between, among others, Mark Rowsthorn and SC Lowy Financial (HK) Limited in relation to the obligations of the McAleese Borrower under the Modified SFA and the New Senior Debt Facility Agreement.
Shareholder	a holder of a McAleese Share recorded in the McAleese Share Register.
Shareholder Documentation	the Explanatory Memorandum and the Prospectus.

Term	Meaning
Subsidiary	has the meaning given in Division 6 of Part 1.2 of the Corporations Act.
Sunset Date	the last date by when the Notes are to be issued, being 30 November 2016 or any later date to the extent necessary to comply with any applicable regulatory requirements or, such later date as the parties may agree to in writing.
Superior Proposal	<p>a bona fide Competing Proposal which the McAleese Board, acting in good faith, and after receiving written legal advice from its legal advisor and written advice from its financial advisor, determines:</p> <ol style="list-style-type: none"> 1 is reasonably capable of being valued and completed taking into account all aspects of the Competing Proposal including any timing considerations, any conditions precedent and the identity of the proponent; and 2 would, if completed substantially in accordance with its terms, be more favourable to McAleese Shareholders (as a whole) than the Recapitalisation, taking into account all terms and conditions of the Competing Proposal.
Supplementary Prospectus	has the meaning given to that term in the Underwriting Agreement.
Third Party	a person other than the Investors and its Associates.
Timetable	the indicative timetable for the implementation of the Recapitalisation set out in Schedule 5.
Tranche A	has the meaning given to that term in the Rowsthorn Loan.
Trust Deed	has the meaning given to that term in the Underwriting Agreement.
Underwriter	Contento Investments Pty Ltd in its personal capacity and in its capacity as trustee for Contento Investments Trust ACN 612 918 260.
Underwriting Agreement	the underwriting agreement entered into between the Company and the Underwriter on or about the date of this deed.
Underwriting Fee	the arrangement between the Company and the Rowsthorn Interests

Term	Meaning
	described in clause 7.1 of the Underwriting Agreement.
Waiver Letters	a letter dated 25 August 2015 from the Company and others to Australia and New Zealand Banking Group Limited and ANZ Fiduciary Services Pty Limited, a letter dated 28 January 2016 from the Company and others to Australia and New Zealand Banking Group Limited and ANZ Fiduciary Services Pty Limited, a letter dated 21 April 2016 from the Company and others to Australia and New Zealand Banking Group Limited and ANZ Fiduciary Services Pty Limited, a letter dated 29 April 2016 from the Company and others to Australia and New Zealand Banking Group Limited and ANZ Fiduciary Services Pty Limited.

1.2 Interpretation

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation.

Unless the contrary intention appears, in this deed:

- (a) a reference to document or agreement (including this deed) includes any variation or replacement of it;
- (b) a reference to legislation includes regulations and other instruments under it and any variation or replacement of any of them;
- (c) a reference to a section, Chapter, Part or Division is a reference to a section, Chapter, Part or Division of the Corporations Act;
- (d) the singular includes the plural and vice versa;
- (e) the word 'person' includes an individual, a body corporate, a partnership, a joint venture, an unincorporated body, an association and a Government Agency;
- (f) a reference to a particular person includes the person's executors, administrators and permitted substitutes (including persons taking by novating) and assigns;
- (g) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (h) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually, except that in the case of the Investors, an agreement in relation to the Investors' Information is several only and applies to an Investor only in relation to the Investors' Information relating to that Investor;
- (i) a group of persons or things is a reference to any two or more of them jointly and to each of them individually, except that in the case of the Investors, a reference in relation to the Investors' Information is several only and applies to an Investor only in relation to the Investors' Information relating to that Investor;
- (j) a reference to dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (k) a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;



- (l) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or 'such as' or similar expressions;
- (m) a reference to a time of the day is a reference to time in Melbourne, Australia;
- (n) the word agreement includes an undertaking or other binding arrangement or understanding, whether or not in writing;
- (o) the words subsidiary or related body corporate have the same meanings as in the Corporations Act; and
- (p) references to applicable law include all laws applicable to the Issuer and the Offer within or outside Australia (such as the Corporations Act) and includes the Listing Rules and policies, guidelines, official directives or requests of or by any Government Agency, whether or not having the force of law.

1.3 Business Days

If the day on or by which a person must do something under this agreement is not a Business Day, then:

- (q) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (r) in any other case, the person must do it on or by the previous Business Day.

1.4 Interpretation of inclusive expressions

Specifying anything in this deed after the words 'include' or 'for example' or similar expressions does not limit what else is included.

1.5 Deed components

This deed includes any schedule.

1.6 Investors acknowledgement

Each Investor, in its capacity as a proposed holder of the Existing Senior Debt, acknowledges that in no circumstances shall:

- (a) the entry by any of the parties into this deed;
- (b) the performance of any obligation or carrying out of any step or otherwise acting consistently with this deed by any of the parties; or
- (c) any Change of Control (as defined in the SFA or the Modified SFA) resulting from the performance of any obligation or carrying out of any step in accordance with this deed,

be treated as or is a breach of, or an event of default, potential event of default or misrepresentation (in each case howsoever described in the Senior Debt Documents) under or in respect of, the Senior Debt Documents.

2 Agreement to proceed with the Recapitalisation

2.1 Implementation, Timetable and Completion Steps Plan

- (a) Each party agrees to implement the Recapitalisation on, and subject to, the terms and conditions of this deed and the Recapitalisation Documents.
- (b) Each party must use all reasonable endeavours to progress the Recapitalisation in accordance with the Timetable (included as Schedule 5).
- (c) Promptly after the Execution Date, the parties must use reasonable endeavours to develop a completion steps plan that sets out the completion steps necessary to give effect to the transactions contemplated by this deed (**Completion Steps Plan**).
- (d) The parties will consult reasonably to agree any changes to the Timetable which may be necessary or desirable.

3 Conditions Precedent

3.1 Conditions precedent to the Equity Restructure

Subject to this clause 3, the Company will not Commence the Equity Restructure, unless and until each of the following Conditions Precedent is satisfied to the extent and in the manner set out in this clause 3.

- (a) **Regulatory Approvals – ASIC and ASX:** ASIC and ASX issue or provide all consents, approvals, waivers and modifications, and do all other acts, necessary, or which McAleese and the Investors agree are desirable, to implement the Recapitalisation and such consents, approvals or other acts (as the case may be) have not been withdrawn, suspended or revoked.
- (b) **Shareholder approval of Recapitalisation Resolutions:** McAleese Shareholders approve the Recapitalisation Resolutions (other than the resolution numbered 5 and 8 in the definition of "Recapitalisation Resolutions" in clause 1.1) at the General Meeting by the requisite majorities.
- (c) **Independent Expert:** the Independent Expert issues an Independent Expert's Report to McAleese before the time when the Explanatory Memorandum is dispatched.

3.2 Conditions precedent to calling of General Meeting

Subject to this clause 3, the Company is not required to procure that the McAleese Board calls the General Meeting, unless and until each of the following Conditions Precedent is satisfied or waived to the extent and in the manner set out in this clause 3.

- (a) **Property rental reduction:** McAleese secures from TTPH Pty Ltd a reduction in its annual real property rental costs, in respect of those properties for which TTPH is the landlord, in an aggregate amount of at least \$2 million per year.
- (b) **Atlas Iron waiver:** if required as a consequence of the final structure of the Recapitalisation, Atlas Iron Limited delivers to McAleese a signed copy of the waiver letter (such letter having been provided to Atlas Iron Limited by McAleese prior to the date of the HoA).



3.3 Condition precedent to Notes Issue Completion

Subject to this clause 3, the Company is not required to issue the Notes unless and until the following Condition Precedent is satisfied or waived to the extent and in the manner set out in this clause 3.

- (a) **Underwriting Agreement:** all conditions precedent to the Underwriting Agreement have been satisfied or waived in accordance with the terms of the Underwriting Agreement by, and there is no other matter subsisting which would prevent Notes Issue Completion occurring in accordance with the terms of the Underwriting Agreement as at, 10:00am on the Settlement Date.

3.4 Reasonable endeavours

- (a) McAleese must, to the extent it is within its power to do so, use its reasonable endeavours to procure that each of the Conditions Precedent in clauses 3.1, 3.2 and 3.3 is satisfied as soon as practicable after the date of this deed and continues to be satisfied at all times until the last time that the relevant clause provides that it is to be satisfied.
- (b) Each party must, to the extent it is within their power to do so, use its reasonable endeavours to procure that there is no occurrence within its control or the control of any of its Subsidiaries that would prevent any of the Conditions Precedent in clause 3.1, which that party (alone or together with the other party) must use reasonable endeavours to satisfy, being or remaining satisfied.
- (c) Without limiting this clause 3.2, each party must:
 - (1) promptly apply for all relevant Regulatory Approvals (as applicable) at the Company's cost and provide to the other parties a copy of all those applications;
 - (2) take all steps it is responsible for as part of the Regulatory Approval process, including responding to requests for information from the relevant Government Agencies at the earliest practicable time;
 - (3) provide the other parties with all information reasonably requested in connection with the applications for the Regulatory Approvals;
 - (4) consult with the other parties in advance in relation to the progress of obtaining the Regulatory Approvals; and
 - (5) provide the other parties with all assistance and information that it reasonably requests in connection with an application for a Regulatory Approval to be lodged by that other party.

3.5 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clause 3.1 cannot be waived.
- (b) The Conditions Precedent in clauses 3.2 and 3.3 are for the benefit of the Company and the Rowsthorn Interests and may only be waived by the Company and the Rowsthorn Interests in writing to the Investors.

3.6 Certain notices relating to Conditions Precedent

- (a) McAleese must promptly advise each other party, orally and in writing, of satisfaction of a Condition Precedent.

- (b) If, before the time and date specified for satisfaction of a Condition Precedent, an event or occurrence that will prevent that Condition Precedent being satisfied occurs, the party with knowledge of that event must give the other party written notice of that event or occurrence as soon as possible.

4 Shareholder documentation

4.1 Shareholder documentation

- (a) The Company is required to issue the Explanatory Memorandum in relation to seeking approval of McAleese Shareholders to the Recapitalisation Resolutions. The Recapitalisation Resolutions will not be inter-conditional.
- (b) The Notes are to be offered to McAleese Shareholders under the Prospectus in accordance with the Timetable.
- (c) Taken together, the Explanatory Memorandum and the Prospectus are referred to as the '**Shareholder Documentation**'.

4.2 Process and responsibility for Shareholder Documentation

Each of McAleese, the Investors and the Rowsthorn Interests must procure that its representatives work together in good faith and in a timely (having regard to clause 2.1) and co-operative manner with one another to prepare the Shareholder Documentation, including in accordance with the following:

- (a) **McAleese obligations:**
 - (1) **preparation of Explanatory Memorandum:** prepare and despatch the Explanatory Memorandum in accordance with RG74 and all applicable laws (including the Corporations Act and the Corporations Regulations) and the Listing Rules;
 - (2) **preparation of Prospectus:** prepare and despatch the Prospectus in accordance with all applicable laws, including Part 6D of the Corporations Act;
 - (3) **directors' recommendation in Explanatory Memorandum:** include in the Explanatory Memorandum a statement by the McAleese Board recommending that McAleese Shareholders vote in favour of the Recapitalisation Resolutions, in the absence of a Superior Proposal, unless there has been a change of recommendation permitted by clause 8(b);
 - (4) **consultation with the Investors and the Rowsthorn Interests in relation to Shareholder Documentation:** consult with the Investors and the Rowsthorn Interests as to the content and presentation of the Shareholder Documentation including:
 - (A) providing to the Investors and the Rowsthorn Interests drafts of the Shareholder Documentation and the Independent Expert's Report for the purpose of enabling the Investors and the Rowsthorn Interests to review and comment on those draft documents. In relation to the Independent Expert's Report, the Investors' and the Rowsthorn Interests' review is to be limited to a factual accuracy review;

- (B) taking material comments made by the Investors and the Rowsthorn Interests into account in good faith when producing a revised draft of the Shareholder Documentation; and
 - (C) obtaining written consent from the Investors and the Rowsthorn Interests for the form and content in which the Investors Information and the Rowsthorn Interests Information appears in the Shareholder Documentation;
 - (5) **ASIC/ASX review:** keep the Investors and the Rowsthorn Interests informed of any material matters raised by ASIC or ASX in relation to the Shareholder Documentation or the Recapitalisation, and use reasonable endeavours to take into consideration, in resolving such matters, any issues raised by the Investors and the Rowsthorn Interests;
 - (6) **Independent Expert:** promptly appoint the Independent Expert to prepare the Independent Expert's Report for inclusion in the Explanatory Memorandum and provide all assistance and information reasonably requested by them in connection with the preparation of the Independent Expert's Report for inclusion in the Explanatory Memorandum (including any updates to such report) and any other materials to be prepared by them for inclusion in the Explanatory Memorandum (including any updates thereto);
 - (7) **update Explanatory Memorandum:** until the date of the General Meeting, promptly update the Explanatory Memorandum with any information that arises after the Explanatory Memorandum has been despatched that is necessary to ensure that the Explanatory Memorandum does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement; and
 - (8) **issue Supplementary Prospectus:** if required, issue a Supplementary Prospectus in accordance with the Underwriting Agreement.
- (b) **Investors obligations:**
- (1) **Investors Information:** prepare and provide to McAleese the Investors Information for inclusion in the:
 - (A) Explanatory Memorandum, including all information regarding the Investors required by all applicable laws (including the Corporations Act and the Corporations Regulations), RG 74 and the Listing Rules, and consent to the inclusion of that information (other than any information provided by McAleese to the Investors or obtained from McAleese's public filings on ASX regarding the McAleese Group) in the Explanatory Memorandum; and
 - (B) Prospectus, including all information regarding the Investors required by all applicable laws (including the Corporations Act and the Corporations Regulations), consent to the inclusion of that information (other than any information provided by McAleese to the Investors or obtained from McAleese's public filings on ASX regarding the McAleese Group) and consent to be named as reasonably required in the form and context in which each Investor is named, in the Prospectus;



HERBERT
SMITH
FREEHILLS

- (2) **review of Shareholder Documentation:** review the drafts of the Shareholder Documentation prepared by McAleese and provide comments on those drafts in good faith;
 - (3) **Independent Expert's Report:** provide any assistance or information reasonably requested by McAleese or by the Independent Expert in connection with the preparation of the Independent Expert's Report to be sent together with the Explanatory Memorandum;
 - (4) **accuracy of Investors Information:** confirm in writing to McAleese that the Investors Information in the Shareholder Documentation (other than any information regarding the McAleese Group contained in, or used in the preparation of, the information regarding McAleese following completion of the Recapitalisation) is materially accurate and is not misleading or deceptive in a material respect including by omission; and
 - (5) **update Investors Information:** until:
 - (A) the date of the General Meeting, in the case of the Explanatory Memorandum, provide to McAleese any information that arises after the Explanatory Memorandum has been despatched of which it becomes aware that is necessary to ensure that the Investors Information contained in the Explanatory Memorandum does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement; and
 - (B) the Notes Issue Completion Date, in the case of the Prospectus, inform McAleese of any misleading or deceptive statement (or omission) within the Investors Information that arises after the Commencement of the Equity Restructure of which it becomes aware, that may require McAleese to issue a Supplementary Prospectus under section 719 of the Corporations Act, and provide all such reasonable updates to McAleese in relation to the Investors Information to ensure that McAleese may comply with that section.
- (c) **Rowsthorn Interests obligations:**
- (1) **Rowsthorn Interests Information:** prepare and provide to McAleese the Rowsthorn Interests Information for inclusion in the:
 - (A) Explanatory Memorandum, including all information regarding the Rowsthorn Interests required by all applicable laws (including the Corporations Act and the Corporations Regulations), RG 74 and the Listing Rules, and consent to the inclusion of that information (other than any information provided by McAleese to the Rowsthorn Interests or obtained from McAleese's public filings on ASX regarding the McAleese Group) in the Explanatory Memorandum; and
 - (B) Prospectus, including all information regarding the Rowsthorn Interests required by all applicable laws (including the Corporations Act and the Corporations Regulations), consent to the inclusion of that information (other than any information provided by McAleese to the Rowsthorn Interests or obtained from McAleese's public filings on ASX regarding the McAleese Group) and consent to be named as reasonably required in the form and context

in which each Rowsthorn Interest is named, in the Prospectus;

- (2) **review of Shareholder Documentation:** review the drafts of the Shareholder Documentation prepared by McAleese and provide comments on those drafts in good faith;
- (3) **Independent Expert's Report:** provide any assistance or information reasonably requested by McAleese or by the Independent Expert in connection with the preparation of the Independent Expert's Report to be sent together with the Explanatory Memorandum;
- (4) **accuracy of Rowsthorn Interests Information:** confirm in writing to McAleese that the Rowsthorn Interests Information in the Shareholder Documentation (other than any information regarding the McAleese Group contained in, or used in the preparation of, the information regarding McAleese following completion of the Recapitalisation) is materially accurate and is not misleading or deceptive in a material respect including by omission; and
- (5) **update Rowsthorn Interests Information:** until:
 - (A) the date of the General Meeting, in the case of the Explanatory Memorandum provide to McAleese any information that arises after the Explanatory Memorandum has been despatched of which it becomes aware that is necessary to ensure that the Rowsthorn Interests Information contained in the Explanatory Memorandum does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement; and
 - (B) the Notes Issue Completion Date, in the case of the Prospectus, inform McAleese of any misleading or deceptive statement (or omission) within the Rowsthorn Interests Information that arises after the Commencement of the Equity Restructure of which it becomes aware, that may require McAleese to issue a Supplementary Prospectus under section 719 of the Corporations Act, and provide all such reasonable updates to McAleese in relation to the Rowsthorn Interests Information to ensure that McAleese may comply with that section.

4.3 Responsibility Statements in Explanatory Memorandum

- (a) The Explanatory Memorandum will contain a responsibility statement to the effect that:
 - (1) the Investors are responsible for the Investors Information (other than any information provided by McAleese to the Investors or obtained from McAleese's public filings on ASX regarding the McAleese Group contained in, or used in the preparation of, the information regarding McAleese following completion of the Recapitalisation) contained in the Explanatory Memorandum (as relevant) but are not otherwise responsible for any information in the Explanatory Memorandum;
 - (2) the Rowsthorn Interests are responsible for the Rowsthorn Interests Information (other than any information provided by McAleese to the Rowsthorn Interests or obtained from McAleese's public filings on ASX regarding the McAleese Group contained in, or used in the

preparation of, the information regarding McAleese following completion of the Recapitalisation) contained in the Explanatory Memorandum (as relevant) but are not otherwise responsible for any information in the Explanatory Memorandum; and

- (3) McAleese is responsible for the McAleese Information contained in the Explanatory Memorandum (as relevant) and is also responsible for the information contained in the Explanatory Memorandum (as relevant) provided by McAleese to the Investors or the Rowsthorn Interests or obtained from McAleese's public filings on ASX regarding the McAleese Group contained in, or used in the preparation of, the information regarding McAleese following completion of the Recapitalisation.
- (b) If after a reasonable period of consultation, McAleese, the Investors and the Rowsthorn Interests are unable to agree on the form or content of the Explanatory Memorandum:
 - (1) where the determination relates to Investors Information, the Investors will make the final determination as to the form and content of the Investors Information;
 - (2) where the determination relates to Rowsthorn Interests Information, the Investors will make the final determination as to the form and content of the Investors Information; and
 - (3) in any other case, McAleese will make the final determination as to the form and content of the Explanatory Memorandum (as relevant).

5 Implementation of the Recapitalisation

5.1 Obligations of the parties

The parties must take all reasonable steps to implement the Recapitalisation as soon as is reasonably practicable and, without limiting anything contained in this paragraph, use all reasonable endeavours to ensure that each step in the Timetable and the Completion Steps Plan is met by the relevant date set out beside that step (and the parties must consult with each other on a regular basis about its progress in that regard), and including each of the following:

- (a) **General Meeting:** the Company must convene the General Meeting, and the Company and the Rowsthorn Interests must seek McAleese Shareholders' approval of the Recapitalisation Resolutions, by no later than the Meeting Sunset Date;
- (b) **Notes Issue:**
 - (1) the Company must enter into the Trust Deed and appoint the Note Trustee for the purposes of section 283AA(1) of the Corporations Act and otherwise, so far as relevant to the Notes Issue, comply with Chapter 2L of the Corporations Act;
 - (2) subject to clause 3.1, the Company must use all reasonable endeavours to Commence the Notes Issue within 10 Business Days of the satisfaction of the Conditions Precedent contained in clause 3.1;

- (3) the Company must procure that all proceeds received by it from the Notes Issue (including pursuant to the Underwriting Agreement) are deposited into the Note Proceeds Account;
 - (4) subject to clause 3.2, the Company must use all reasonable endeavours to procure that Notes Issue Completion occurs no later than 20 Business Days after the date upon which the Notes Issue is Commenced and in any case no later than the Sunset Date;
 - (5) subject to clause 3.1, the Rowsthorn Interests must deliver to the Rowsthorn Agent each condition precedent to the draw down of Tranche A (other than the conditions precedent in clause 2.3) in form and substance satisfactory to the Rowsthorn Agent or procure the delivery of such conditions precedent;
 - (6) subject to the satisfaction or waiver of the conditions precedent to the draw down of Tranche A, Supertara Pty. Limited in its personal capacity and as the trustee of the Supertara Trust must, immediately draw down under Tranche A an amount equal, in aggregate, to the Underwriter's:
 - (A) Entitlement payment obligation under clause 6.6(a) of the Underwriting Agreement; and
 - (B) Shortfall Notes payment obligation under clause 6.6(b) of the Underwriting Agreement,
 (together, **Payment Obligations**) and apply the aggregate amount drawn in satisfaction of the Underwriter's Payment Obligations under the Underwriting Agreement (which amount must be drawn and paid directly into the Note Proceeds Account, and the Underwriter irrevocably instructs Supertara Pty. Limited in its capacity as the trustee of the Supertara Trust to pay the amount directly into the Note Proceeds Account); and
 - (7) subject to the Notes Issue Completion occurring, the Company must pay the Underwriting Fee to the Underwriter.
- (c) **Option Issue:**
- (1) contemporaneously with the Notes Issue Completion, the Company must issue the Options to the Investors on the Notes Issue Completion Date.
- (d) **Draw down under New Senior Debt Facility:**
- (1) before 10:00am on the Notes Issue Completion Date, the McAleese Borrower must:
 - (A) draw the entire amount of funds available under the New Senior Debt Facility in accordance with the terms and conditions of the New Senior Debt Facility Agreement;
 - (B) apply the entire proceeds of the drawing referred to in clause 5.1(d)(1)(A) towards partially paying the amount of the Existing Senior Debt.
- (e) **Compromise of Existing Senior Debt by way of the extinguishment of Modified SFA:**
- (1) immediately following the steps listed in clauses 5.1(b), 5.1(c) and 5.1(d) being completed the Existing Senior Debt will be extinguished in accordance with and subject to the terms of the Deed of Amendment and Forbearance.

- (f) **Management Incentive Arrangements:**
 - (1) subject to clause 3.1, the Company must give effect to the Management Incentive Arrangements in the form agreed between the parties prior to the Execution Date.
- (g) **Delisting:**
 - (1) subject to clause 3.1, the Company must request to ASX in writing that the Company be Delisted on a date agreed by the Investors and McAleese and approved in writing by ASX.

The steps listed in paragraphs 5.1(b)(6) to 5.1(f) above must occur on the same day on the Notes Issues Completion Date, in the order set out in this clause 5.1.

6 Conduct of business

6.1 Conduct of business generally

Subject to clauses 6.2 and 6.3, from the Execution Date up to and including the Notes Issue Completion Date, and without limiting any other obligations of McAleese under this deed, McAleese must:

- (a) conduct its businesses and operations, and must cause each other McAleese Group Member to conduct its respective business and operations, in the ordinary and usual course generally consistent with the manner contemplated in the financial budget for the financial year ending 30 June 2017 in relation to the McAleese Group including forecast EBITDA and which remains subject to board approval and the Capital Expenditure budget for the McAleese Group for the financial year ending 30 June 2017 and which remains subject to board approval;
- (b) ensure that between (and including) the date of this deed and 8.00am on the Notes Issue Completion Date, no Prescribed Occurrence occurs; and
- (c) use reasonable efforts, and procure that each other McAleese Group Member makes all reasonable efforts, to:
 - (1) retain the services of current directors, officers and employees of each member of the McAleese Group; and
 - (2) preserve their relationships with Government Agencies, customers, suppliers and others having business dealings with any McAleese Group Member.

6.2 Permitted acts

Nothing in clause 6.1 restricts the ability of McAleese to:

- (a) undertake, or commit to undertake, any expenditure contemplated in the Disclosure Materials provided such expenditure is permitted under the Modified SFA or the New Senior Debt Facility Agreement; or
- (b) dispose of, or agree to or offer to dispose of, any asset which is contemplated to be disposed of in the Modified SFA or the New Senior Debt Facility Agreement,

nor to take any action:

- (c) which is required or permitted by this deed or the Recapitalisation;
- (d) which has been agreed to in writing by the Investors and the Rowsthorn Interests; or
- (e) which is fairly disclosed in the Disclosure Materials, in McAleese's announcements to ASX or a document lodged with ASIC prior to the date of the HoA (including, for the avoidance of doubt and without limitation, any asset sales so disclosed); or
- (f) which is conducted in the ordinary course of business by McAleese.

6.3 Competing Proposal

For the avoidance of doubt, nothing in this clause 6 restricts the ability of McAleese to respond to a Competing Proposal.

7 Board representation and Shareholder information

7.1 Board representation

- (a) Nomination of directors by the Investors:
 - (1) Subject to the Corporations Act, the Listing Rules and the McAleese constitution in force from time to time, for so long as the Investors or their Related Entities are Option holders or McAleese Shareholders, they may nominate, and the Company must procure that the McAleese Board appoints, collectively one director to the McAleese Board for each 15% shareholding, in aggregate, in McAleese held by the Investors or their Related Entities.
 - (2) Prior to the exercise of the Options, the calculation of the percentage shareholdings referred to in this clause 7.1(a) will apply as if all of the Options had been exercised and McAleese Shares issued and all of the Notes had been converted and McAleese Shares issued but ignoring any McAleese Shares issued pursuant to the Management Incentive Arrangements and which are held by the members of management to which they were issued.
 - (3) If at any time the Investors and their Related Entities do not hold at least 15% of the McAleese Shares for each of their nominee directors, then the Investors must procure that a director, or directors, who is a nominee of the Investors promptly resigns from the McAleese Board, following such shareholding level falling below 15% for each of their nominee directors (subject to the Company meeting the Corporations Act requirements for the minimum number of directors).
- (b) Election and re-appointment of the Investors nominee directors:
 - (1) At any time at which the Investors are entitled to nominate one or more nominee directors under clause 7.1, McAleese must procure that the McAleese Board puts and recommends a resolution to its shareholders for the election of each Investors nominee as a non-executive director of the Company at the first annual general meeting (**AGM**) following their appointment and at each subsequent AGM at which they would be required to retire in accordance with the Company's constitution.

- (2) At any time at which the Investors are entitled to appoint one or more nominee directors under clause 7.1, if an Investors nominee is not elected or re-elected at any AGM at which a resolution is put proposing their election or re-election, the Company must procure that the McAleese Board appoints an alternative nominee director proposed by the Investors immediately following that AGM.
- (c) Nomination of directors by the Rowsthorn Interests:
 - (1) Subject to the Corporations Act, the Listing Rules and the McAleese constitution in force from time to time, for so long as any of the Rowsthorn Interests or their Related Entities are Note holders or McAleese Shareholders, they may nominate, and McAleese must procure that the McAleese Board will appoints, collectively one director to the McAleese Board for each 15% shareholding, in aggregate, in McAleese.
 - (2) Prior to the conversion of the Notes, the calculation of the percentage shareholdings referred to in clause 7.1(c) will apply as if all of the Options had been exercised and McAleese Shares issued and all of the Notes had been converted and McAleese Shares issued but ignoring any McAleese Shares issued pursuant to the Management Incentive Arrangements and which are held by the management to which they were issued
 - (3) If at any time any of the Rowsthorn Interests and their Related Entities do not hold at least 15% of the McAleese Shares for each of their nominee directors, then the Rowsthorn Interests must procure that a director, or directors, who is a nominee of the Rowsthorn Interests promptly resigns from the McAleese Board, following such shareholding level falling below 15% for each of their nominee directors (subject to the Company meeting the Corporations Act requirements for the minimum number of directors).
- (d) Election and re-appointment of the Rowsthorn Interests' nominee directors:
 - (1) At any time at which any of the Rowsthorn Interests are entitled to nominate one or more nominee directors under clause 7.1(c)(1), the Company must procure that the McAleese Board puts and recommends a resolution to its shareholders for the election of the Rowsthorn Interests' nominee as a non-executive director of the Company at the first AGM following their appointment and at each subsequent AGM at which they would be required to retire in accordance with the Company's constitution.
 - (2) At any time at which the Rowsthorn Interests are entitled to appoint one or more nominee directors under clause 7.1(c)(1), if a Rowsthorn Interests' nominee is not elected or re-elected at any AGM at which a resolution is put proposing their election or re-election, the Company must procure that the McAleese Board appoints an alternative nominee director proposed by the Rowsthorn Interests immediately following that AGM.
- (e) Appointment of directors following Notes Issue Completion:

Subject to clauses 7.1(a)(1) and 7.1(c)(1), the Company must, as soon as practicable following Notes Issue Completion, take all actions to procure that each director nominated in writing by the Investors or the Rowsthorn Interests, respectively, at least 5 Business Days before the Notes Issue Completion Date is appointed to the McAleese Board provided that:



- (1) such nominations are made in compliance with clause 7.1(a)(1) and 7.1(c)(1), respectively; and
 - (2) such persons sign consents to act as a director of the Company.
- (f) Voting in favour of director nominees

The Company has been advised by the McAleese Board that the McAleese Board will, subject to customary criminal and bankruptcy checks appropriate for a director prior to their appointment and receipt of signed consents to act as a director, vote in favour of the appointment of directors nominated by the Investors in accordance with this clause 7.1.
- (g) Observers for Investors:
 - (1) For so long as clause 7.1(a)(1) applies, the Company must procure that the McAleese Board permits:
 - (A) where there is a right to nominate more than one director under clause 7.1(a)(1), one person nominated by an Investor (or Investors); and
 - (B) where there is a right to nominate only one director under clause 7.1(a)(1), up to two persons nominated by an Investor (or Investors),

and notified in writing to the Company to attend any meeting of the McAleese Board, each as an observer, and the Company must procure that notice of any McAleese Board meeting is given to each such person at the same time as notice is given to the McAleese Board.
 - (2) Where there is no right to nominate a director under clause 7.1(a)(1), where an Investor or a Related Entity of an Investor holds, in aggregate, at least 5% of the McAleese Shares, the Company must procure that the McAleese Board permits a person nominated by that Investor and notified in writing to the Company to attend any meeting of the McAleese Board, as an observer, and the Company must procure that notice of any McAleese Board meeting is given to such person at the same time as notice is given to the McAleese Board.
 - (3) The Company must pay an Investor all reasonable travelling expenses incurred by or on behalf of an observer nominated by an Investor in relation to attending and returning from meetings of the McAleese Board.

7.2 Proposed amendment to constitution

Within 12 months of the Delisting, McAleese will propose a special resolution to the McAleese Shareholders to amend the constitution of McAleese (at that time) by way of including:

- (a) a provision which would require, the McAleese Board, to consider pursuing a listing (including a compliance listing) of McAleese on or about 24 months after the date of the Delisting; and
- (b) provisions which incorporate into the constitution the rights of the Investors and the Rowsthorn Interests under clause 7.1.

7.3 Shareholder information

For so long as an Investor is a Shareholder, the Investor will be entitled to receive, and the Company must provide to the Investor in relation to the McAleese Group:

- (a) on a confidential basis, a monthly management report for the preceding month by the last day of each month including:
 - (1) accounts by division and group; and
 - (2) CAPEX report; and
- (b) annual audited accounts consolidated within 90 days of the end of the financial year.

8 McAleese Board recommendation

- (a) McAleese must use all reasonable endeavours to procure that, subject to clause 8(b), the McAleese Board recommends that McAleese Shareholders vote in favour of the Recapitalisation Resolutions at the General Meeting, in the absence of a Superior Proposal and subject to the Independent Expert issuing the Independent Expert's Report to McAleese, and that the Explanatory Memorandum include a statement by the McAleese Board to that effect.
- (b) McAleese must use its best endeavours to procure that the McAleese Board does not change, withdraw or modify its recommendation to vote in favour of the Recapitalisation Resolutions unless:
 - (1) the Independent Expert provides a report to McAleese (including either the Independent Expert's Report or any update, addendum or variation to it) that considers the Options Issue or the conversion of the Notes held by the Rowsthorn Interests within the context of the Recapitalisation is not fair and not reasonable; or
 - (2) McAleese has received a Superior Proposal.

For the purposes of this clause, customary qualifications and explanations contained in the Explanatory Memorandum in relation to a recommendation to vote in favour of the Recapitalisation to the effect that the recommendation is made in the absence of a superior proposal from a third party will not be regarded as a failure to make or withdraw the making of a recommendation in favour of the Recapitalisation.

9 Consultation between the Company, Rowsthorn Interests and the Investors

9.1 McAleese shareholders do not approve Recapitalisation Resolutions

If the Condition Precedent in clause 3.1(b) (Shareholder approval) is not satisfied or the Investors terminate this deed under clause 14.1, the parties must consult in good faith to:

- (a) consider and, if agreed, determine whether the Recapitalisation may proceed by way of an alternative form of transaction, substantially on the terms set out in Schedule 4;

- (b) negotiate and agree any modifications to the Recapitalisation or the Recapitalisation Documents to reflect and allow implementation of the Recapitalisation by way of an alternative form of transaction, substantially on the terms set out in Schedule 4;
- (c) consider and, if agreed, extend the Sunset Date.

9.2 Investment by Rowsthorn Interests

The Rowsthorn Interests agree that, as part of any alternative form of transaction on terms agreed between the Company, the Investors and the Rowsthorn Interests under clause 9.1:

- (a) **(investment in equity position)** they will invest \$26 million into an equity position in a recapitalised McAleese Group with a secured debt structure substantially the same as if the Recapitalisation (excluding the Equity Restructure) had occurred; or
- (b) **(acquire portion of the Existing Senior Debt)** to the extent the Rowsthorn Interests are not able to invest \$26 million into an equity position in a recapitalised McAleese Group, if the Rowsthorn Interests make a payment of up to \$26 million under the SFA Limited Guarantee (the **Guarantee Payment**):
 - (1) before the Drawdown Date, the Investors will transfer to the Rowsthorn Interests at the cost of the Rowsthorn Interests, an amount of the Existing Senior Debt calculated as follows (the aggregate amount of the Existing Senior Debt then outstanding, multiplied by the amount of the Guarantee Payment/X where X is equal to \$91,300,000 *plus* the aggregate amount of all interest which has accrued under the Modified SFA in accordance with the terms of the Modified SFA from the Debt Acquisition Date); or
 - (2) after the Drawdown Date, the Investors will transfer to the Rowsthorn Interests at the cost of the Rowsthorn Interests, an amount of the debt owing under the New Senior Debt Facility Agreement equal to the amount of the Guarantee Payment; and
 - (3) in the case of either of clauses 9.2(b)(1) or 9.2(b)(2) applying, the Rowsthorn Interests will enter into a subordination agreement at their cost in a form and substance acceptable to the Investors in respect of that debt.

10 Representations and warranties

10.1 Representations and warranties

Each party (other than Mark Rowsthorn in respect only of clauses 10.1(a) - 10.1(c)) represents and warrants that:

- (a) **validly existing**: it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) **authority**: the execution and delivery of this deed has been properly authorised by all necessary corporate action of the Investor;
- (c) **power**: it has full capacity, corporate power and lawful authority to execute, deliver and perform its obligations under this deed;

- (d) **no default:** this deed does not conflict with or result in the breach of or a default under:
- (1) any provision of the party's constituent documents; or
 - (2) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other members of an Investors corporate group is bound
- and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed; and
- (e) **deed binding:** this deed is a valid and binding obligation on it, enforceable in accordance with its terms.

10.2 Additional McAleese representations and warranties

In addition to the representations and warranties in clause 10.1, McAleese represents and warrants that:

- (a) **McAleese Information:** the McAleese Information contained in the Explanatory Memorandum, as at the:
- (1) date the Explanatory Memorandum is despatched to McAleese Shareholders, will so far as McAleese is aware, not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement; and
 - (2) date the Prospectus is lodged with ASIC and the Notes Issue Completion Date, will so far as McAleese is aware, not contain any misleading or deceptive statements, including by way of omission;
- (b) **basis of McAleese Information:** the McAleese Information:
- (1) will be prepared and included in the Explanatory Memorandum in good faith and on the understanding that the Investors and each other Investors Released Party and the Rowsthorn Interests and each other Rowsthorn Interests Released Party will rely on that information; and
 - (2) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations and the Listing Rules,
- and all information provided by McAleese to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (c) **new information:** it will, as a continuing obligation (but in respect of the Investors Information, only to the extent that the Investors provide McAleese with updates to the Investors Information and in respect of the Rowsthorn Interests Information, only to the extent that the Rowsthorn Interests provide McAleese with updates to the Rowsthorn Interests Information), ensure that the Explanatory Memorandum is updated to include all further or new information which arises after the:
- (1) date the Explanatory Memorandum has been despatched to McAleese Shareholders until the date of the General Meeting which is necessary to ensure that the Explanatory Memorandum is not misleading or deceptive (including by way of omission); and



- (2) date the Prospectus is lodged with ASIC and at the Notes Issue Completion Date, will not contain any misleading or deceptive statements, including by way of omission;
- (d) **continuous disclosure:** McAleese has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and, other than for this Recapitalisation, it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure; and
- (e) **Disclosure Materials:** it has collated and prepared the Disclosure Materials in good faith for the purposes of a due diligence process and in this context, as far as McAleese is aware, the Disclosure Materials have been collated with all reasonable care and skill.

10.3 Qualifications on McAleese's Representations and Warranties

The McAleese Representations and Warranties in clause 10.2 are each subject to matters that have been fairly disclosed in (or which ought reasonably to have been expected to arise from a matter, event or circumstance which was so disclosed in):

- (a) the Disclosure Materials; and
- (b) McAleese's announcements to ASX, or a document lodged with ASIC prior to the date of the HoA.

10.4 McAleese's awareness

Where a McAleese Representation and Warranty is given "to the best of McAleese's knowledge" or "so far as McAleese is aware" or with a similar qualification as to McAleese's awareness or knowledge, McAleese's awareness or knowledge is limited to and deemed only to include those facts, matters or circumstances of which a McAleese Specified Executive is actually aware as at the date of this deed and as at the date the relevant McAleese Representation and Warranty is given.

10.5 Survival of representations and warranties

Each representation and warranty in clauses 10.1 and 10.2:

- (a) is severable; and
- (b) is given with the intention that liability under it is not confined to breaches that are discovered before the date of termination of this deed.

10.6 Timing of representations and warranties

Each representation and warranty made or given under clauses 10.1 and 10.2 is given:

- (a) at the date of this deed; and
- (b) at 8.00am on the Notes Issue Completion Date,

unless that representation or warranty is expressed to be given at a particular time, in which case it is given at that time.

11 Releases

11.1 McAleese directors and officers

- (a) Each of the Investors and the Rowsthorn Interests release their rights, and agree with McAleese that they will not make a claim, against any McAleese Released Party as at the date of this deed and from time to time in connection with:
 - (1) any breach of any representations and warranties of McAleese or any other member of the McAleese Group in this deed; or
 - (2) any disclosures containing any statement which is false or misleading whether in content or by omission,whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the McAleese Released Party has engaged in wilful misconduct or fraud.
- (b) This clause is subject to any Corporations Act restriction and will be read down accordingly.
- (c) McAleese receives and holds the benefit of this clause as trustee for each McAleese Released Party.

11.2 Investors directors and officers

- (a) Each of McAleese, the McAleese Borrower and the Rowsthorn Interests release their rights, and agree with the Investors that they will not make a claim, against any Investors Released Party as at the date of this deed and from time to time in connection with:
 - (1) any breach of any representations and warranties of any of the Investors; or
 - (2) any disclosure containing any statement which is false or misleading whether in content or by omission,whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Investors Released Party has engaged in wilful misconduct or fraud.
- (b) This clause is subject to any Corporations Act restriction and will be read down accordingly.
- (c) The Investors receive and hold the benefit of this clause as trustee for each Investors Released Party.

11.3 Rowsthorn Interests directors and officers

- (a) Each of McAleese, the McAleese Borrower and the Investors release their rights, and agree with the Rowsthorn Interests that they will not make a claim, against any Rowsthorn Interests Released Party as at the date of this deed and from time to time in connection with:
 - (1) any breach of any representations and warranties of the Rowsthorn Interests; or
 - (2) any disclosure containing any statement which is false or misleading whether in content or by omission,



whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Rowsthorn Interests Released Party has engaged in wilful misconduct or fraud.

- (b) This clause is subject to any Corporations Act restriction and will be read down accordingly.
- (c) The Rowsthorn Interests receive and hold the benefit of this clause as trustee for each Rowsthorn Interests Released Party.

12 Public announcement

12.1 Announcement of the Recapitalisation

Immediately after the execution of this deed, McAleese must issue public announcements in a form previously agreed to in writing between McAleese, the Investors and the Rowsthorn Interests.

12.2 Public announcements

McAleese, the McAleese Borrower and the Rowsthorn Interests:

- (a) must use all reasonable endeavours to consult with, and take into account the reasonable comments of, the Investors with respect to public releases and announcements concerning this deed and the transactions contemplated in this deed; and
- (b) must not, unless required to do so by the Listing Rules or any applicable law, make any statement concerning this deed or the transactions contemplated in this deed without the prior written consent of the Investors such consent not to be unreasonably withheld.

13 Confidentiality

McAleese and the Investors acknowledge and agree that they continue to be bound by the Confidentiality Deed after the date of this deed. The rights and obligations of the parties under the Confidentiality Deed survive termination of this deed.

14 Termination

14.1 Termination for material breach

- (a) Any party may terminate this deed by written notice to each other party at any time before 8.00am on the Settlement Date if a party has materially breached this deed (**defaulting party**), any of the other parties entitled to terminate has given written notice to the party in breach of this deed setting out the relevant circumstances and stating an intention to terminate this deed, and the defaulting party has failed to remedy the breach within 10 Business Days after the date on which the notice is given.
- (b) The Investors may terminate this deed by written notice to McAleese:



- (1) at any time before 8:00am on the date of the General Meeting, if the McAleese Board fails to recommend the Recapitalisation or withdraws, or in the reasonable opinion of the Investors, adversely revises or adversely modifies the McAleese Board's recommendation that McAleese Shareholders vote in favour of the Recapitalisation (provided that where the Investors intend to terminate on the basis of their "reasonable opinion" the Investors have provided at least 2 Business Days written notice to McAleese of its intention to rely on this clause, and McAleese has failed to remedy the situation to the reasonable satisfaction of the Investors within 2 Business Days after the date upon which the notice is given by the Investors); or
- (2) at any time before 8:00am on the Settlement Date, if McAleese enters into an arrangement to implement a Competing Proposal.
- (c) McAleese may terminate this deed by written notice to the Investors:
 - (1) at any time before 8:00am on the date of the General Meeting, if the McAleese Board fails to recommend the Recapitalisation or withdraws, adversely revises or adversely modifies the McAleese Board's recommendation that McAleese Shareholders vote in favour of the Recapitalisation, as permitted under clause 8; or
 - (2) at any time before 8:00am on the Settlement Date if the McAleese Board recommended a Competing Proposal.

14.2 Effect of termination

If this deed is terminated by any party under clause 14.1:

- (a) each party will be released from its obligations under this deed, except that this clause 14.2, and clauses 1, 9, 13, 15, 16, 17 and 19, will survive termination and remain in force;
- (b) each party will retain the rights it has or may have against any of the other parties in respect of any past breach of this deed; and
- (c) in all other respects, all future obligations of the parties under this deed will immediately terminate and be of no further force and effect including any further obligations in respect of the Recapitalisation.

14.3 Termination

Where a party has a right to terminate this deed, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other parties stating that it terminates this deed and the provision under which it is terminating the deed.

14.4 No other termination

No party may terminate or rescind this deed except as permitted under clause 14.1.

15 Duty, costs and expenses

15.1 Stamp duty

The Company must pay all stamp duties and any fines and penalties with respect to stamp duty in respect of this deed or the Recapitalisation or the steps to be taken under this deed or the Recapitalisation.

15.2 Costs and expenses

McAleese must pay or reimburse all costs and expenses (including legal costs and expenses) incurred by the Investors in connection with the negotiation, execution and completion of this deed and any other documents referred to in this deed and any other transaction documents to be signed after the date of this deed on the Debt Acquisition Date (in respect of those costs incurred up to that date) and on the date 5 Business Days after the Shareholders approve the Note Issue then outstanding. In addition, if the Debt Acquisition Date does not occur by the Backstop Date for any reason whatsoever McAleese must, promptly following receipt of demand to do so, pay or reimburse all costs and expenses (including legal costs and expenses) incurred by the Investors in connection with the negotiation, execution and completion of this deed and any other documents referred to in this deed and any other transaction documents to be signed after the date of this deed. The Investors must provide, or procure the provision of, weekly updates to McAleese of all legal costs and expenses incurred by the Investors for the week prior.

16 GST

- (a) Any consideration or amount payable under this deed, including any non-monetary consideration (as reduced in accordance with clause 16(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this deed, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under clause 16(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 16(b):
 - (1) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
 - (2) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
 - (3) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the



amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.

- (e) Despite any other provision in this deed if an amount payable under or in connection with this deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (g) Any term starting with a capital letter that is not defined in this deed has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

17 Lender Trustee Limitation of liability

- (a) Remagen Nominees Pty Limited (ACN 164 784 409) (the **Lender Trustee**) enters into, and performs its obligations under, this document and the transactions contemplated by it only as trustee of the Remagen Lending Trust 2016-11 (the **Lender Trust**), except where expressly stated otherwise.
- (b) The Lender Trustee's liability (including for negligence) under or in connection with this document and the transactions contemplated by this document is limited to the extent it can be satisfied out of the property subject to the Lender Trust (the **Lender Trust Property**). The Lender Trustee need not pay any such liability out of other property. If a party makes a claim against the Lender Trustee, the Lender Trustee must seek and make all reasonable endeavours to obtain indemnification out of the Lender Trust Property in respect of that claim.
- (c) In respect of any liability incurred by the Lender Trustee under or in connection with this document, the transactions contemplated by this document, and the exercise by the Lender Trustee of its rights, powers and discretions under them, another party may only do the following (but any resulting liability remains subject to this clause 17):
 - (1) prove and participate in, and otherwise benefit from, the winding up of the Lender Trustee or any form of insolvency administration of the Lender Trustee but only with respect to the Lender Trust Property;
 - (2) exercise rights and remedies with respect to the Lender Trust Property, including in respect of any Security Interest or any right of set-off;
 - (3) enforce and exercise contractual rights (all of which will be subject to this clause 17); and
 - (4) bring any other proceedings against the Lender Trustee, seeking relief or orders that are not inconsistent with the limitations in this clause 17,



and may not otherwise:

- (5) bring proceedings against the Lender Trustee;
 - (6) take any steps to have the Lender Trustee wound up or placed into any form of insolvency administration (but this does not prevent the appointment of a receiver, or a receiver and manager, in respect of the Lender Trust or the Lender Trust Property); or
 - (7) seek by any means (including set-off) to have a liability of the Lender Trustee to that party (including for negligence) satisfied out of any assets of the Lender Trustee other than the Lender Trust Property.
- (d) Paragraphs (a) to (c) (inclusive) apply despite any other provision in this document but do not apply with respect to any liability of the Lender Trustee to any other party (including for negligence):
- (1) to the extent that the Lender Trustee has no right or power to have the Lender Trust Property applied towards satisfaction of that liability, or its right or power to do so is subject to a limitation, reduction, deduction, obligation to make good or to clear accounts, in any case because the Lender Trustee has acted beyond power or improperly in relation to the Lender Trust or because the Lender Trustee has acted with fraud, wilful misconduct or gross negligence; or
 - (2) in connection with any other provision which expressly binds the Lender Trustee other than as trustee of the Lender Trust (whether or not it also binds it as trustee of the Lender Trust).
- (e) The limitation of liability in paragraph (b) is to be disregarded for the purposes (but only for the purposes) of the rights and remedies described in paragraph (c), and interpreting this document, including in determining the following:
- (1) whether amounts are to be regarded as payable (and for this purpose damages or other amounts will be regarded as payable if the Lender Trustee would have been liable to pay them but for the limitation of liability in paragraph (b)); or
 - (2) the calculation of amounts owing,
- but any resulting liability will be subject to the limitations in this clause 17.

18 Notices

18.1 How to give a notice

A notice, consent or other communication under this agreement is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (1) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address set out or referred to in Schedule 1; or
 - (2) sent by fax to that person's fax number set out or referred to in Schedule 1 and the machine from which it is sent produces a report that states that it was sent in full; or



- (3) sent by email to that person's email address set out or referred to in Schedule 1.

18.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is delivered or sent by email, when sent by the sender unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee;
- (b) if it is delivered or sent by fax:
 - (4) by 5.00pm (local time in the place of receipt) on a Business Day - on that day; or
 - (5) after 5.00pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
- (c) if it is sent by pre-paid mail - at 9.00am (addressee's time) on the third Business Day after the date of posting if sent locally or on the fifth Business Day after the date of posting if sent internationally.

19 General

19.1 Governing law

- (a) This deed is governed by the law in force in Victoria.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, and any court that may hear appeals from any of those courts, for any proceedings in connection with this deed, and waives any right it might have to claim that those courts are an inconvenient forum.

19.2 Giving effect to this deed

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this deed.

19.3 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (c) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (d) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (e) the exercise of a right does not prevent any further exercise of that right or of any other right.



19.4 Operation of this deed

- (a) This deed and the Recapitalisation Documents constitute the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.
- (b) Any right that a person may have under this deed is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this agreement enforceable, unless this would materially change the intended effect of this deed.

19.5 Inconsistency with other documents

If this deed is inconsistent with any other document or agreement between the parties, the New Senior Debt Facility Agreement prevails to the extent of the inconsistency.

19.6 Amendment

This deed can only be amended, supplemented, replaced or novated by another agreement signed by the parties.

19.7 No assignment

A party may not assign, novate, dispose of, declare a trust over or otherwise create an interest in its rights under this deed, except that an Investor may assign some or all of its rights under clause 7.1 to a Related Entity of the Investor that is an Option holder or McAleese Shareholder.

19.8 Counterparts

This deed may be executed in counterparts. If so, the signed copies are treated as making up the one document and the date on which the last counterpart is executed will be the date of the deed.

19.9 Attorneys

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

19.10 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions) unless this deed expressly states otherwise.

19.11 Extent of obligations

If any payment under this deed becomes void by any statutory provision or otherwise, the obligations of the party that made the payment will be taken not to have been discharged in respect of that payment and the parties will be restored to the rights which each respectively would have had if that payment had not been made.



19.12 No liability for loss

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this deed.

19.13 Conflict of interest

The parties' rights and remedies under this deed may be exercised even if this involves a conflict of duty or a party has a personal interest in their exercise.

19.14 Consents

If the doing of any act, matter or thing under this deed is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion, unless otherwise stated.

19.15 Survival

The representations, warranties and indemnities given by a party under this deed do not merge upon completion of the transactions contemplated by this deed.

19.16 No bias against the drafter

No provision of this deed is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

Schedules

Table of contents

Notice details	43
Investors	45
Index of Disclosure Materials	46
DoCA Proposal Terms	47
Timetable	48



Schedule 1

Notice details

Party	Address	Addressee	Fax	Email
McAleese	4/697 Burke Road, Camberwell Vic 3124	Rohan Abeyewardene	+61 3 9882 4399	Rohan.Abeyewardene@mcaleesegroup.com.au
<i>Copy to</i>	Herbert Smith Freehills Level 42, 101 Collins Street, Melbourne VIC 2000	Tim McEwen / Courtney Dixon	+61 3 9288 1567 / +61 2 9288 5804	Tim.McEwen@hsf.com / Courtney.Dixon@hsf.com
McAleese Borrower	4/697 Burke Road, Camberwell Vic 3124	Rohan Abeyewardene	+61 3 9882 4399	Rohan.Abeyewardene@mcaleesegroup.com.au
<i>Copy to</i>	Herbert Smith Freehills Level 42, 101 Collins Street, Melbourne VIC 2000	Tim McEwen / Courtney Dixon	+61 3 9288 1567 / +61 2 9288 5804	Tim.McEwen@hsf.com / Courtney.Dixon@hsf.com
Rowsthorn Interests	Level 2, 428 Little Bourke Street, Melbourne, 3000 VIC	Mark Rowsthorn	03 8602 6101	Mark.Rowsthorn@mcaleesegroup.com.au
<i>Copy to:</i>		Anna Grace / Marcus Clark / Jim Hunwick	03 9509 1875	'AnnaG@marcplan.com.au' / Marcus.Clark@jws.com.au /



jim.hunwick@jws.com.au

Investors Those
addresses
set out in
column C of
Schedule 2

<i>Copy to</i>	Henry Davis York	Patrick O'Grady /	02 9947 6999	patrick.ograde@hdy.com. au /
	44 Martin Place Sydney NSW 2000	Cameron Cheetham		Cameron.Cheetham@hdy .com.au



Schedule 2

Investors

No (A)	Investor (B)	Notice details (C)
1	SC Lowy Primary Investments, Ltd	Suite 1401-02, Central Tower, 28 Queen's Road, Central, Hong Kong
2	Cadbury Hedge Fund Alternatives Portfolio	227 Elgin Avenue, P.O. Box 852, Grand Cayman, KY1-1103, Cayman Islands
3	Sainsbury's Credit Opportunities Fund, Ltd	227 Elgin Avenue, P.O. Box 852, Grand Cayman, KY1-1103, Cayman Islands
4	Investment Partners IV (A), LLC	601 Union Street, 56 th Floor, Seattle, WA 98101
5	Remagen Nominees Pty Limited (as trustee for Remagen Lending Trust 2016-11)	Level 10, 67 Castlereagh Street, Sydney, NSW 2000

Schedule 3

Index of Disclosure Materials



Schedule 4

DoCA Proposal Terms

Proposal for Deed of Company Arrangement – McAleese Limited ACN 156 354 068 & McAleese Finance Pty Ltd ABN 63 156 099 204.

Purpose of DOCA	<ul style="list-style-type: none"> To restructure and recapitalise the businesses of McAleese Limited (Administrators Appointed) (MCS) and McAleese Finance Pty Ltd (Administrators Appointed) (together McAleese) so as to continue McAleese as a going concern in conjunction with a secured debt compromise and an equity transfer.
Administrator of DOCA	<ul style="list-style-type: none"> The administrators of the proposed deed of company arrangement (DOCA) would be [insert] (DOCA Administrators).
DOCA Proponent	<ul style="list-style-type: none"> [Rowsthorn Entities or such other party(s) as agreed]
Participating Creditors	<ul style="list-style-type: none"> All unsecured creditors of McAleese who had claims as at the date of the appointment of administrators; The Continuing Secured Creditors¹ of McAleese who had claims as at the date of appointment of the administrators who vote in favour of the DOCA and would each be bound by it, in accordance with the DOCA's terms, including under the²: <ul style="list-style-type: none"> Finance Leases;³ New Guarantee Facility; New Working Capital Facility; and Deferred Consideration Deed, (together the Continuing Secured Creditor Contracts). The Continuing Secured Creditors' security⁴ and the moneys secured thereby are not affected by the DOCA except (i) to the extent that the Continuing Secured Creditors are subject to a standstill on enforcement of their security where the right to such enforcement is based on events of default subsisting as at the date of the DOCA to allow the DOCA to complete; and (ii) they acknowledge and agree to a waiver of such events of default (see below); The Investors who had claims as at the date of the appointment of the administrators would each vote in favour of the DOCA and would each be bound by it, in accordance

¹ Continuing Secured Creditors means ANZ, WBC, HSBC, CFAL and Assetsecure

² This list will be revised subject to Moelis providing a complete list of creditors of MCS.

³ Terms not defined in this document have the meaning set out in the Heads of Agreement dated ##

⁴ The Continuing Secured Creditors' security is detailed in the Heads of Agreement.

	<p>with the DOCA's terms;</p> <p>The Investors' security⁵ and the moneys secured thereby are not affected in any way by the DOCA except to the extent that the Investors would accept the DOCA Fund Payment and Investors' Share Transfer in return for the Investors' Debt Compromise to allow the DOCA to complete.</p>
Contribution to DOCA Fund by the Rowsthorn Entities.	<ul style="list-style-type: none"> • The Rowsthorn Entities would make a contribution (Rowsthorn DOCA Contribution) of \$26 million (DOCA Fund Amount) to a fund to be held by the DOCA Administrators (DOCA Fund); • McAleese would contribute an amount sufficient to pay the DOCA Administrators remuneration & disbursements for the administration of the DOCA; • For the avoidance of doubt, the balance of the property of McAleese would not form part of the DOCA Fund.
Payment from DOCA Fund	<p>The DOCA Fund would be applied under the DOCA in the following priority:</p> <ul style="list-style-type: none"> • Payment of the DOCA Administrators remuneration & disbursements for the administration of the DOCA; and • Payment of the DOCA Fund Amount to the Investors.
Convening period	<p>It is expected that the Administrators would make an application to the court under section 447A to:</p> <ul style="list-style-type: none"> • Dispense with the first meeting of creditors; • Convene the second meeting of creditors earlier than s439A of the <i>Corporations Act 2001</i> (Cth) (Act) permits. The Investors and Rowsthorn Entities would use their best endeavours to ensure the second meeting of creditors is held and not adjourned any later than [insert date].
Investors' Debt Compromise	<p>In consideration of the Investors agreeing to compromise the total amount outstanding under the New Facility Agreement to \$[insert figure] (Investors' Debt Compromise), the DOCA would provide for:</p> <ul style="list-style-type: none"> • the DOCA Fund Amount to be paid the Investors; and • a transfer to the Investors of 35% of the current issued share capital of MCS (Investor Share Transfer).
Rowsthorn Share Transfer	<p>In consideration of the Rowsthorn DOCA Contribution, the DOCA would provide for a transfer to the Rowsthorn Entities of 65% of the current issued share capital of MCS (Rowsthorn Share Transfer).</p>
Conditions Precedent	<p>The DOCA would be subject to the following conditions precedent:</p> <ul style="list-style-type: none"> • The court granting leave to the Investor Share Transfer and the Rowsthorn Share Transfer under s444GA of the Act; • each Continuing Secured Creditor acknowledging and agreeing

⁵ The Investors' security is detailed in the Heads of Agreement.

		that any existing defaults under the relevant Continuing Secured Creditor Contracts having been waived or remedied (or would be upon completion of the DOCA) and that on this basis each Continuing Secured Creditor Contract would remain on foot after termination of the DOCA.
Adjudication of claims	•	The adjudication of claims (if any) would follow the provisions applicable in a liquidation.
Moratorium	•	A moratorium upon actions against McAleese as outlined in section 444E of the Act is proposed to apply during the period of the DOCA.
Release of creditors' claims	•	McAleese would not be released from any claims of the Participating Creditors except to the extent of the Investors' Debt Compromise and as the DOCA otherwise provides in relation to specific unsecured claims (proposed by the Rowsthorn Entities). The Continuing Secured Creditor Contracts (including the Deferred Consideration Deed) and any continuing agreement or contract between McAleese and an unsecured creditor (Continuing Unsecured Creditor Contract) would otherwise remain on foot and all other creditors' claims would not be released.
Waiver of events of default	•	Each of the Continuing Secured Creditors and the Investors acknowledge and agree that any existing defaults under any of the Continuing Secured Creditor Contracts or Finance Documents have been remedied (or would be upon completion of the DOCA) and that on this basis each Continuing Secured Creditor Contract or Facility Document would remain on foot;
	•	The Continuing Unsecured Creditors would accept in full satisfaction of any claim their rights and entitlements conferred by the DOCA and that on this basis each Continuing Unsecured Creditor Contract would remain on foot after termination of the DOCA.
Termination of the DOCA		The DOCA would terminate upon the earlier of: <ul style="list-style-type: none"> • After the distribution of the DOCA Fund; • If the DOCA is set aside or terminated (other than a termination by way of effectuation); or • By order of the Court.
Other matters		The provisions of Schedule 8A of the Act would be incorporated into the deed of company arrangement to the extent not inconsistent with the terms outlined above.



Schedule 5

Timetable

Event	Date
Explanatory Memorandum (and Independent Expert's Report) provided to ASIC in draft	13 July 2016
Explanatory Memorandum (and Independent Expert's Report) dispatched to McAleese Shareholders	29 July 2016
General Meeting	29 August 2016
Prospectus lodged with ASIC and Commencement of Notes Issue	1 September 2016
Meeting Sunset Date	9 September 2016
Settlement Date	29 September 2016
Notes Issue Completion Date	29 September 2016
Sunset Date	30 November 2016

Executed as a deed

McAleese

Signed sealed and delivered by
McAleese Limited
by

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____

McAleese Borrower

Signed sealed and delivered by
McAleese Finance Pty Limited
by

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____



Signing page

Rowsthorn Interests

Signed sealed and delivered by
Mark Rowsthorn

sign here ► _____

print name _____

in the presence of

sign here ► _____
Witness

print name _____

print address _____

Rowsthorn Interests

Signed sealed and delivered by
Mostia Dion Nominees Pty Ltd
by

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____



Signing page

Rowsthorn Interests

Signed sealed and delivered by
Supertara Pty. Limited
by

sign here ► _____
Sole Director/Secretary

print name _____

Rowsthorn Interests

Signed sealed and delivered by
Contento Investments Pty Ltd
by

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____



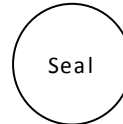
Signing page

Investor

SC Lowy Primary Investments, Ltd

Signed on behalf of, and sealed and delivered by

SC Lowy Primary Investments, Ltd
in the presence of



Authorised signatory

Witness

Name

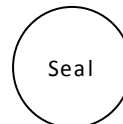
Name

Investor

Cadbury Hedge Fund Alternatives Portfolio

Signed on behalf of, and sealed and delivered by

BlackRock Financial Management, Inc., its investment manager in the presence of



Authorised signatory

Witness

Name

Name

Authorised signatory

Witness

Name

Name

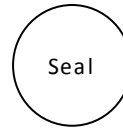


Investor

Sainsbury's Credit Opportunities Fund, Ltd.

Signed on behalf of, and sealed and
delivered by

**BlackRock Financial Management,
Inc., its investment manager** in the
presence of



Authorised signatory

Witness

Name

Name

Authorised signatory

Witness

Name

Name

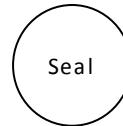


Investor

Investment Partners IV (A), LLC

Signed on behalf of, and sealed and delivered by

BlackRock Financial Management, Inc., its investment manager in the presence of



Authorised signatory

Witness

Name

Name

Authorised signatory

Witness

Name

Name

Investor

Signed, sealed and delivered by
Remagen Nominees Pty Ltd as trustee for
the **Remagen Lending Trust** by:

Signature of director/company secretary

Signature of director

Print name

Print name