



# ASX ANNOUNCEMENT

## PROPOSED SCHEME OF ARRANGEMENT EXTENDED TO PREFERENCE SHARES

26 August 2016

On 1 July 2016, the independent directors of PAYCE Consolidated Limited (ASX:PAY) (**PCL**) (being Chris Gabriel and Roger Short) (**Independent Directors**) announced that PCL had entered into a Scheme Implementation Deed with Bellawest Pty Limited (**Bellawest**) and Lanox Pty Limited (**Lanox**) (both being entities associated with Brian Boyd), pursuant to which Bellawest proposed to acquire all of the ordinary shares in PCL other than those held by Lanox and Bellawest by way of a Court approved scheme of arrangement (**Ordinary Scheme**).

The Ordinary Scheme did not extend an offer to the preference shares on issue in PCL.

After further discussions between the Independent Directors and Bellawest, the Independent Directors are pleased to announce that PCL has entered into an amended and restated Scheme Implementation Deed with Bellawest and Lanox, pursuant to which, at the same time as the Ordinary Scheme is implemented, PCL will cancel all of the existing preference shares, and will provide consideration to the preference shareholders for that cancellation by way of a Court approved scheme of arrangement (**Preference Proposal**).

The Preference Proposal is in addition to the Ordinary Scheme and no changes have been made to the Ordinary Scheme as a result to the Preference Proposal being made, other than to make the Ordinary Scheme conditional on the Preference Proposal being implemented.

If the Preference Proposal is implemented, preference shareholders will be entitled to receive, for each preference share in PCL (**Preference Share**) held on the record date:

- One unsecured note issued by PCL with a face value of \$6.50, 4 year maturity and attaching a coupon of 7.5% per annum; and
- A cash payment of \$1 plus an additional amount calculated to reflect the dividend payable on the Preference Share up to the Preference Scheme Implementation Date.

The Preference Proposal will require the following shareholder approvals in addition to those required for the Ordinary Scheme:

- approval of the cancellation of the Preference Shares at a general meeting of the ordinary shareholders, and at a general meeting of the preference shareholders;
- approval of a scheme of arrangement to issue each preference shareholder with unsecured notes in PCL as part consideration for the above cancellation, at a scheme meeting of the preference shareholders.

The Independent Directors unanimously recommend that preference shareholders (and ordinary shareholders, to the extent required) vote in favour of the Preference Proposal:

- in the absence of a superior proposal; and
- subject to the independent expert concluding that the Preference Proposal is fair and reasonable and in the best interests of preference shareholders.

## Amended and Restated Scheme Implementation Deed

The form of the amended and restated Scheme Implementation Deed which contains full details of the proposed transaction, including the conditions precedent for the Ordinary Scheme and the Preference Proposal (**Schemes**) to become effective, is attached to this announcement. By way of summary, the Schemes are inter-conditional and subject to certain conditions precedent including, amongst other things:

- ordinary shareholders (other than bidder associates) approving the Ordinary Scheme at a scheme meeting of shareholders by the requisite majorities;
- preference shareholders (other than bidder associates) approving the Preference Proposal at a scheme meeting of shareholders by the requisite majorities;
- receipt of all required regulatory and court approvals;
- the Independent Expert concluding that the Schemes are both fair and reasonable, and in the best interests of the relevant shareholders;
- no prescribed occurrences;
- the financial assistance resolution and capital reduction resolution (required for the Preference Proposal) being approved by ordinary shareholders at a general meeting; and
- the capital reduction resolution being approved by preference shareholders at a separate general meeting.

The financial assistance and exclusivity provisions in the Implementation Deed have not been amended.

In considering the Schemes, shareholders should be aware that there are a number of risk factors, both general and specific, associated with the Schemes. These risks will be set out in full detail in the Scheme Booklet, expected to be provided to shareholders in late September 2016. Shareholders should read the Scheme Booklet carefully and seek appropriate advice before making a decision in respect of the Proposed Transaction.

## Revised Indicative Timetable

Due to the extension of the proposal to include the preference shares, the original indicative timetable that was released has been extended. A revised indicative timetable for the Schemes is set out below:

Event	Target date
First Court Hearing	23 September 2016
Mailing of Scheme Booklet	29 September 2016
Scheme Meeting	31 October 2016
Second Court Hearing	3 November 2016
Preference Proposal Implementation Date	22 November 2016
Ordinary Scheme Implementation Date	25 November 2016

**Final buy-back payment**

The final instalment payment of \$0.70 payable to shareholders that accepted the equal access buy-back (set out in the offer document issued by PCL and dated 4 May 2015) (**Buy-back**) is due to be paid on 3 December 2016. If the Ordinary Scheme and the Preference Proposal are implemented, PCL will pay the final instalment payment on the earlier of 3 December 2016 and the Preference Proposal Implementation Date.

**Further Information**

For all Media Enquiries, please contact Mark Sutton on 0407 918 836

**PAYCE CONSOLIDATED LIMITED**  
**ACN 001 566 310**

AND

**BELLAWEST PTY LIMITED**  
**ACN 612 757 829**

AND

**LANOX PTY LTD**  
**ACN 077 164 884**

**DEED OF RESTATEMENT AND AMENDMENT**  
**(SCHEME IMPLEMENTATION DEED)**

**Pistilli Simmons**

**Pistilli Simmons**  
Lawyers

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Sydney NSW 2000  
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[www.pistillisimmons.com](http://www.pistillisimmons.com)

Liability limited by a scheme approved under Professional Standards Legislation

DATE: 26 August 2016

## **PARTIES**

**Target**                      **Name:** PAYCE CONSOLIDATED LIMITED ACN 001 566 310

**Address:** Level 37, The Chifley Tower, 2 Chifley Square, Sydney, New South Wales, 2000

**Bidder**                      **Name:** BELLAWEST PTY LIMITED ACN 612 757 829

**Address:** 84 Cawarra Rd, Caringbah, New South Wales, 2229

**Guarantor**                **Name:** LANOX PTY LIMITED ACN 077 164 884

**Address:** 84 Cawarra Rd, Caringbah, New South Wales, 2229

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this document, unless the context requires otherwise capitalised terms have the meaning set out in the Principal Agreement as defined below and:

"**Effective Date**" means the date of this document.

"**Principal Agreement**" means the document entitled "Scheme Implementation Deed" dated on or about 1 July 2016 between the parties.

### **1.2 Interpretation**

In this document, unless the context requires otherwise, the provisions set out in clauses 1.2, 1.3 and 1.4 of the Principal Agreement apply to the interpretation and construction of this Deed.

## **2. AMENDMENT AND RESTATEMENT**

### **2.1 Amendment and restatement**

On and from the Effective Date, the Principal Agreement is amended and restated as set out in Schedule 1.

### **2.2 Amendments not to affect validity**

- (a) Each party agrees that the amendments to the Principal Agreement under clause 2.1 do not affect the validity or enforceability of the Principal Agreement.
- (b) Subject to clause 2.2(c) nothing contained in or effected by this document abrogates, prejudices, diminishes or otherwise adversely affects any power, right, authority, discretion, remedy or obligation of any of the parties under the Principal Agreement arising before the Effective Date.

- (c) Each party agrees that it has suffered no prejudice or loss arising from any matter intended under the Principal Agreement to have been undertaken or to have occurred prior to the Effective Date not having been undertaken or to have occurred.

### **3. REPRESENTATIONS AND WARRANTIES**

#### **3.1 Representations and warranties - Bidder**

The Bidder repeats each of the representations and warranties provided for in clause 6.1 of the Principal Agreement on the date of this document.

#### **3.2 Representations and warranties – Target**

The Target repeats each of the representations and warranties provided for in clause 6.3 of the Principal Agreement on the date of this document.

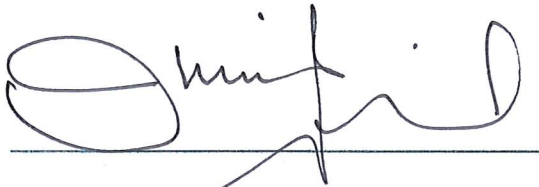
### **4. GENERAL**

Clause 13 of the Principal Agreement shall apply to this document as if it were set out in this document with the necessary changes.

**EXECUTED** by the parties:

**Executed** as a deed and delivered on the date shown on the first page.

**Executed by Payce Consolidated Limited** )  
)  
)



Signature of director

Christopher Ian Gibson

Name of director (print)

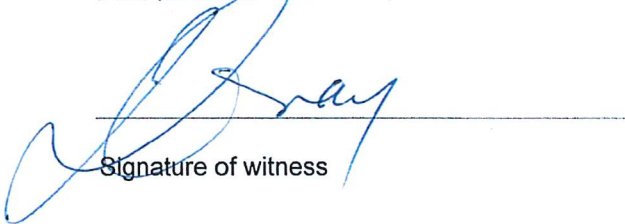


Signature of director / company secretary  
(delete as applicable)

Brian Bailison

Name of director / company secretary (print)

**Executed by Bellawest Pty Limited** by its )  
attorney under power of attorney dated )  
24 August 2016 in the presence of: )



Signature of witness

Jane Ann Gray

Name of witness (print)

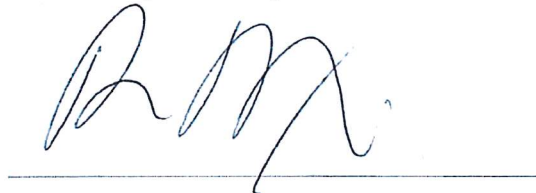


By executing this document the attorney  
states that the attorney has received no  
notice of revocation of the power of attorney

Daniel Simmons

Name of attorney (print)

**Executed by Lanox Pty Limited** )  
)  
)



Signature of sole director and secretary

Brian Boyd

Name (print)

**SCHEDULE 1 - AMENDED AND RESTATED SCHEME IMPLEMENTATION DEED**



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# **Scheme Implementation Deed**

**Payce Consolidated Limited**

**Bellawest Pty Limited**

**Lanox Pty Limited**

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# Table of Contents

1.	Defined terms and interpretation .....	2
2.	Agreement to propose the Scheme .....	10
3.	Conditions precedent and pre-implementation steps .....	10
4.	Transaction steps .....	13
5.	Implementation .....	14
6.	Representations and warranties .....	19
7.	Public announcements and Confidentiality .....	20
8.	Exclusivity .....	21
9.	Reimbursement of costs .....	22
10.	Guarantee .....	23
11.	Termination .....	24
12.	Duty, costs, expenses and GST .....	24
13.	General.....	25
	Schedule 1 – Bidder Representations and Warranties .....	28
	Schedule 2 – Target Representations and Warranties.....	29
	Schedule 3 – Target Capital Structure .....	30
	Attachment 1 – Indicative Timetable – elections etc, financial assistance.....	32
	Attachment 2 – Ordinary Scheme .....	33
	Attachment 3 – Preference Scheme .....	34
	Attachment 4 – Deed Poll .....	35
	Attachment 5: Summary of Bidder Note Terms .....	36
	Attachment 6: Summary of Target Note Terms .....	37

## DETAILS

**Date:** 1 July 2016 and amended and restated on

### Parties

**(1) Payce Consolidated Limited (Target)**

ACN 001 566 310  
Address Level 37, The Chifley Tower  
2 Chifley Square  
Sydney NSW 2000

**(2) Bellawest Pty Limited (Bidder)**

ACN 612 757 829  
Address 84 Cawarra Road  
Caringbah NSW 2229

**(3) Lanox Pty Limited (Guarantor)**

ACN 077 164 884  
Address 84 Cawarra Road  
Caringbah NSW 2229

### Recitals

- A. Target has agreed to propose two interdependent schemes of arrangement under Part 5.1 of the Corporations Act as follows:
- a. Ordinary Scheme: pursuant to which Bidder will acquire all of the Target Ordinary Shares other than those held by the Guarantor and the Bidder; and
  - b. Preference Scheme: pursuant to which Target will undertake a selective reduction of capital and cancel all the Target Preference Shares.
- B. Bidder will be issuing Bidder Notes (as defined below) pursuant to the Ordinary Scheme.
- C. Target will be issuing Target Notes (as defined below) pursuant to the Preference Scheme.
- D. The parties have agreed to implement the Ordinary Scheme and the Preference Scheme on the terms of this deed.
- E. The Guarantor has agreed to guarantee the obligations of the Bidder under this deed.

## Operative Parts

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### 1. Defined terms and interpretation

#### 1.1 Defined terms

The following definitions apply unless the context requires otherwise.

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

**Associate** has the meaning set out in section 12 of the Corporations Act.

**ASX** means ASX Limited ACN 008 624 691.

**Bidder Associate** means the Guarantor, Ruz Pty Ltd (ACN 109 273 305) (**Ruz**) and any other Target Shareholder which is a member of the Bidder Group or which holds a Target Share on behalf of or for the benefit of the Bidder or a member of the Bidder Group, the Guarantor or Ruz.

**Bidder Group** means the Bidder and each of its Related Bodies Corporate but excluding any member of the Target Group.

**Bidder Indemnified Parties** means each member of the Bidder Group and each of their directors, officers and employees.

**Bidder Information** means information regarding the Bidder Group provided by the Bidder to the Target in writing for inclusion in the Scheme Booklet, including information regarding the arrangements the Bidder has in place to fund the Ordinary Scheme Consideration and the Bidder's intentions with respect to the assets, business and employees of the Target if the Schemes are implemented.

**Bidder Note** means an unsecured note with a face value of \$12.60 to be issued by the Bidder pursuant to the Trust Deed between the Bidder and a trustee for holders of Bidder Notes substantially on the terms summarised in Attachment 5 to be entered into on or before 31 August 2016 or such other date as the Bidder and the Target agree and in accordance with the Election Forms, the Scheme and the Deed Poll.

**Bidder Representations and Warranties** means the representations and warranties of the Bidder set out in Schedule 1.

**Business Day** means a business day as defined in the Listing Rules.

**Capital Reduction Resolution** means a resolution of Target Shareholders required under section 256C(2)(a) of the Corporations Act to approve the reduction of the Preference Scheme Shares pursuant to the Preference Scheme.

**Cancellation Resolution** means a resolution of Target Preference Shareholders required under section 256C(2) of the Corporations Act to approve the reduction of the Preference Scheme Shares pursuant to the Preference Scheme.

**Competing Proposal** has the meaning set out in clause 8.1(a).

**Condition Precedent** means each of the conditions set out in clause 3.1.

**Controller** has the meaning it has in the Corporations Act.

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

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

**Court** means the Federal Court of Australia such other court of competent jurisdiction under the Corporations Act agreed to in writing by the Target and the Bidder.

**Deed Poll** means a deed poll substantially in the form of Attachment 4 under which the Bidder covenants in favour of the Ordinary Scheme Shareholders to perform certain obligations attributed to it under the Ordinary Scheme.

**Dividend Payment Date** has the meaning set out in the terms of issue of the Target Preference Shares.

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

**Effective Date** means, in relation to a Scheme, the date on which that Scheme becomes Effective.

**Election Form** has the meaning set out in clause 4.3(c).

**Election Time** means 5pm on the date which is 8 Business Days after the Effective Date of the Ordinary Scheme or such other time as agreed between the Bidder and Target in writing.

**End Date** means 31 December 2016, or such other date as agreed in writing between the Bidder and the Target.

**Excluded Shareholder** means the Bidder and any Bidder Associate.

**Exclusivity Period** means the period from and including the date of this deed to the earlier of:

- (a) the termination of this deed under clause 3.4 or 11; and
- (b) the End Date.

**Financial Assistance** means the Financing Subsidiary providing financial assistance to the Bidder to acquire the Ordinary Scheme Shares pursuant to the Loan Agreement.

**Financial Assistance Resolution** means a resolution of the Target to approve the Financial Assistance.

**Financing Subsidiary** means Payce Finance Pty Ltd (ACN 000 378 861) a wholly owned subsidiary of Target.

**Financing Subsidiary Assistance Resolution** means approval of the Financial Assistance by the Financing Subsidiary in accordance with section 260B(1) of the Corporations Act.

**First Court Date** means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act convening the Scheme Meetings to consider the Schemes is heard.

**Government Agency** includes:

- (a) ASX, ASIC, the Australian Competition and Consumer Commission;

- (b) any regulatory organisation established under statute; and
- (c) 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, or any other federal, state, provincial, local or other government, whether foreign or Australian.

**Implementation Date** means the Ordinary Scheme Implementation Date and the Preference Scheme Implementation Date.

**Independent Directors** means the Target Board other than Brian Boyd.

**Independent Expert** means the independent expert in respect of the Schemes appointed by the Target.

**Independent Expert's Report** means the report to be issued by the Independent Expert in connection with the Schemes.

**Ineligible Foreign Shareholder** means an Ordinary Scheme Shareholder or a Preference Scheme Shareholder whose address shown in the Share Register is a place outside Australia and its external territories or New Zealand unless the Bidder determines that it is lawful and not unduly onerous or impracticable to issue that Ordinary Scheme Shareholder or Preference Scheme Shareholder with Notes when the Schemes become Effective.

**Insolvent** means a person is insolvent if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this deed); or
- (d) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (e) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act; or
- (f) it is otherwise unable to pay its debts when they fall due; or
- (g) something having a substantially similar effect to (a) to (f) happens in connection with that person under the law of any jurisdiction.

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

**Loan Agreement** means the loan agreement in respect of an unsecured loan from Financing Subsidiary to the Bidder in an amount nominated by the Bidder to Financing Subsidiary in writing two Business Days before the Implementation Date being an amount calculated by reference to the cash required to pay Ordinary Scheme Shareholders who have elected cash consideration under the Ordinary Scheme up to a maximum amount of \$120,000,000, repayable by the Bidder no later than three years from the date of drawdown, with interest payable quarterly in arrears at an interest rate of 6%, such loan agreement to

be entered into on or before 31 August 2016 or such other date as agreed by the Bidder and the Target.

**Meetings** means the Ordinary Meetings and the Preference Meetings.

**Notes** means the Target Notes and the Bidder Notes.

**Ordinary Meetings** means:

- (a) the Ordinary Scheme Meeting; and
- (b) a general meeting of the Target at which relevant Target Shareholders will consider the Financial Assistance Resolution (relevant Target Shareholders are Target Ordinary Shareholders other than the Excluded Shareholders); and
- (c) a general meeting of the Target at which relevant Target Shareholders will consider the Capital Reduction Resolution (relevant Target Shareholders are Target Ordinary Shareholders and Target Preference Shareholders but any vote cast in favour of the resolution by a Target Preference Shareholder or its Associates will be disregarded).

**Ordinary Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Ordinary Scheme Shareholders, substantially in the form attached as Attachment 2, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Bidder and the Target.

**Ordinary Scheme Consideration** means the consideration to be provided by the Bidder to Ordinary Scheme Shareholders and/or to the Target on behalf of Ordinary Scheme Shareholders for the transfer to the Bidder of each Ordinary Scheme Share.

**Ordinary Scheme Implementation Date** means, subject to the prior implementation of the Preference Scheme on the Preference Scheme Implementation Date, the tenth Business Day after the Scheme Record Date or such other day as the Bidder and Target agree.

**Ordinary Scheme Meeting** means the meeting of Target Ordinary Shareholders (other than Excluded Shareholders) ordered by the Court to be convened under section 411(1) of the Corporations Act at which relevant Target Ordinary Shareholders will vote on the Ordinary Scheme.

**Ordinary Scheme Share** means a Target Ordinary Share held by an Ordinary Scheme Shareholder as at the Scheme Record Date.

**Ordinary Scheme Shareholders** means Target Ordinary Shareholders (other than the Guarantor and the Bidder) as at the Scheme Record Date.

**Preference Meetings** means:

- (a) the Preference Scheme Meeting; and
- (b) a general meeting of Preference Shareholders at which Target Preference Shareholders will consider the Cancellation Resolution.

**Preference Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Preference Scheme Shareholders and substantially in the form attached as Attachment 3, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Bidder and the Target.

**Preference Scheme Consideration** means the consideration to be provided by the Target to Preference Scheme Shareholders for the selective reduction of the Target's capital and the cancellation of all Preference Scheme Shares calculated in accordance with the Preference Scheme.

**Preference Scheme Implementation Date** means the seventh Business Day after the Scheme Record Date or such other day as the parties agree.

**Preference Scheme Meeting** means the meeting of Target Preference Shareholders (other than Excluded Shareholders) ordered by the Court to be convened under section 411(1) of the Corporations Act at which such Target Preference Shareholders will vote on the Preference Scheme.

**Preference Scheme Share** means a Target Preference Share held by a Preference Scheme Shareholder as at the Scheme Record Date.

**Preference Scheme Shareholder** means a Target Preference Shareholder as at the Scheme Record Date.

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

- (a) the Target converting all or any of its shares into a larger or smaller number of shares;
- (b) any member of the Target Group (other than a direct or indirect wholly owned subsidiary of the Target) resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) any member of the Target Group (other than a direct or indirect wholly owned subsidiary of the Target):
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) a member of the Target Group (other than a direct or indirect wholly owned subsidiary of the Target) declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members (other than a dividend paid pursuant to the terms of the Preference Shares);
- (e) a member of the Target Group issuing securities, including without limitation shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option, other than to the Target or to a direct or indirect wholly owned subsidiary of the Target;
- (f) a member of the Target Group issuing or agreeing to issue securities convertible into shares, other equity or any debt securities;
- (g) a member of the Target Group making any change to its constitution;
- (h) a member of the Target Group disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;
- (i) a member of the Target Group granting or agreeing to grant, a security interest in the whole, or a substantial part, of its business or property;



- (j) a member of the Target Group resolving to be wound up;
- (k) a liquidator or provisional liquidator being appointed to a member of the Target Group;
- (l) a court making an order for the winding up of a member of the Target Group;
- (m) an administrator of a member of the Target Group, being appointed under the Corporations Act;
- (n) a member of the Target Group executing a deed of company arrangement;
- (o) a receiver, or a receiver and manager, being appointed in relation to the whole, or a substantial part, of the property of a member of the Target Group,

other than:

- (p) where the occurrence was required to be done in order to implement a Scheme;
- (q) where the occurrence was approved by the Target Board, and Brian Boyd voted in favour of the matter in his capacity as a director of the Target Board;
- (r) where the occurrence was in the ordinary course of implementing a transaction that was approved by the Target Board and Brian Boyd voted in favour of implementing that transaction in his capacity as a director of the Target Board; or
- (s) with the prior written consent of the Bidder.

**Public Authority** means any Government Agency or any self-regulating organisation established under statute or any stock exchange.

**Recipient** has the meaning set out in clause 12.3(c).

**Recommendation** has the meaning set out in clause 5.4(a)(i).

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

**Regulatory Review Period** means the period from the date on which the Regulators Draft is submitted to ASIC to the date on which ASIC confirms that it does not intend to make any submissions at the Court hearing on the First Court Date or otherwise object to either of the Schemes.

**Related Bodies Corporate** has the meaning set out in the Corporations Act.

**Relevant Interest** has the meaning set out in the Corporations Act.

**Representative** means in respect of a party or its Related Bodies Corporate, each director, officer, employee, adviser, agent or representative of that party or Related Body Corporate.

**RG 60** means Regulatory Guide 60 issued by ASIC in September 2011 relating to schemes of arrangement, the application of section 411(17) of the Corporations Act and ASIC review of schemes of arrangement.

**Scheme Booklet** means the information described in clause 5.1(a) to be approved by the Court and despatched to the Target Shareholders and which must include the Ordinary Scheme, the Preference Scheme, relevant explanatory statements (complying with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing

Rules), an independent expert's report in respect of each Scheme, notices of meeting and proxy forms.

**Scheme Consideration** means the Ordinary Scheme Consideration and the Preference Scheme Consideration.

**Scheme Meeting** means the Ordinary Scheme Meeting and the Preference Scheme Meeting.

**Scheme Record Date** means 5.00pm on the fifth Business Day after the Effective Date or such other date as agreed in writing by the Target and the Bidder.

**Scheme Share** means an Ordinary Scheme Share and a Preference Scheme Share held by a Scheme Shareholder as at the Scheme Record Date.

**Schemes** means the Ordinary Scheme and the Preference Scheme.

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

**Second Deferred Portion of Cash Consideration** means \$0.70 per ordinary share accepted into the equal access buy-back as set out in the offer document dated 4 May 2015 (**Buy-Back Offer**), being the final consideration payment in satisfaction of the Target's obligations under the Buy-Back Offer.

**Share Register** means the register of members of the Target maintained in accordance with the Corporations Act.

**Subsidiary** has the meaning set out in the Corporations Act.

**Superior Proposal** means a bona fide proposal under which a Third Party may acquire control of the Target which is received by the Target, and the Independent Directors, acting in good faith and having regard to the conditions and circumstances of the proposal, including whether it is supported by the Excluded Shareholders, determine that proposal is more favourable to Target Shareholders than the Transaction.

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

**Target Group** means the Target and each of its Subsidiaries.

**Target Indemnified Parties** means each member of the Target Group and their respective directors, officers and employees.

**Target Information** means the contents of the Scheme Booklet other than the Bidder Information and the Independent Expert's Report.

**Target Note** means an unsecured note with a face value of \$6.50 to be issued by the Target pursuant to the Trust Deed between the Target and a trustee for holders of Target Notes substantially on the terms summarised in Attachment 6 to be entered into on or before 31 August 2016 or such other date as the Bidder and Target agree and in accordance with the Preference Scheme.

**Target Registry** means Boardroom Pty Limited of Grosvenor Place, Level 12, 225 George Street Sydney.

**Target Representations and Warranties** means the representations and warranties of the Target set out in Schedule 2.

**Target Ordinary Share** means a fully paid ordinary share of the Target.

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

**Target Preference Share** means a preference share in the Target issued pursuant to the offer document dated 4 May 2015.

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

**Target Shares** means the Target Ordinary Shares and the Target Preference Shares.

**Target Shareholders** means the Target Ordinary Shareholders and the Target Preference Shareholder.

**Target Transaction Costs** means \$350,000 (exclusive of any GST).

**Third Party** a person other than the Bidder and its Associates.

**Timetable** means the indicative timetable for the implementation of the Transaction set out in Attachment 1.

**Transaction** means the cancellation of the Preference Shares followed by the acquisition of the Target by Bidder through implementation of the Preference Scheme and the Ordinary Scheme in accordance with the terms of this deed.

**Ultimate Approval** means the approval by the ultimate holding company of Target immediately after the acquisition by Bidder funded by the Financial Assistance.

**Voting Intention** has the meaning set out in clause 5.4(a)(ii).

## 1.2 Interpretation

In this deed, headings are for convenience only and do not affect interpretation and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (d) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership, a trust and any Government Agency;
- (e) a reference to a clause, party, attachment, exhibit or schedule is a reference to a clause of, and a party, attachment, exhibit and schedule to this deed, and a reference to this deed includes any attachment, exhibit and schedule;
- (f) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, whether passed by the same or another Government

Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;

- (g) a reference to any document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (h) the word "includes" in any form is not a word of limitation;
- (i) a reference to "\$", "A" or "dollar" is to Australian currency;
- (j) a reference to any time is, unless otherwise indicated, a reference to the time in Sydney, New South Wales;
- (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) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (m) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this deed; and
- (n) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

### **1.3 Business Day**

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

### **1.4 Contra proferentem excluded**

No term or condition of this deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or a provision of it.

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## **2. Agreement to propose the Scheme**

- (a) The Target agrees to propose the Ordinary Scheme and the Preference Scheme on and subject to the terms of this deed.
- (b) The Bidder agrees with the Target to assist the Target to propose the Ordinary Scheme and the Preference Scheme on and subject to the terms of this deed.
- (c) The parties agree to implement the Transaction on the terms and conditions of this deed.

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## **3. Conditions precedent and pre-implementation steps**

### **3.1 Conditions precedent**

Subject to this clause 3, a Scheme will not become Effective, and the obligations under clause 4 of the Bidder in respect of the Ordinary Scheme, and of the Target in respect of the Preference Scheme, will not become binding, until each of the following conditions precedent is satisfied or waived to the extent and in the manner set out in clause 3.3:

- (a) **Regulatory Approvals:** before 5:00pm on the Business Day before the Second Court Date:
  - (i) **ASIC and ASX:** ASIC and ASX have issued or provided such consents or approvals or have done such other acts which the parties agree in writing are reasonably necessary or desirable to implement the Transaction.
  - (ii) **Government Agency:** all other approvals of a Government Agency which the Bidder and the Target agree in writing are necessary or desirable to implement the transaction are obtained.
- (b) **Shareholder approval:**
  - (i) Target Ordinary Shareholders (other than Excluded Shareholders) agree to the Ordinary Scheme at the Ordinary Scheme Meeting by the requisite majorities under the Corporations Act;
  - (ii) the Financial Assistance Resolution is approved in accordance with section 260B of the Corporations Act;
  - (iii) the Capital Reduction Resolution is approved in accordance with section 256C(2)(a) of the Corporations Act;
  - (iv) Target Preference Shareholders (other than Excluded Shareholders) agree to the Preference Scheme at the Preference Scheme Meeting by the requisite majorities under the Corporations Act; and
  - (v) the Cancellation Resolution is approved in accordance with section 256C(2) of the Corporations Act.
- (c) **Court approval:** the Court approves each Scheme in accordance with section 411(4)(b) of the Corporations Act.
- (d) **Restraints:** no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or Government Agency or other legal restraint or prohibition preventing the Transaction is in effect, and no steps have been taken by any Court or Government Agency to effect any of the above, in each case as at 8.00am on the Second Court Date.
- (e) **Independent Expert:** the Independent Expert issues a report which concludes that each Scheme is both fair and reasonable, and is in the best interests of the participating Target Shareholders in each case (other than the Guarantor and the Bidder) before the date on which the Scheme Booklet is lodged with ASIC (and the Independent Expert does not withdraw or adversely change that conclusion prior to 8.00am on the Second Court Date).
- (f) **No Prescribed Occurrence:** no Prescribed Occurrence occurs between the date of this deed and 8:00am on the Second Court Hearing Date.

### 3.2 Reasonable endeavours

Each party must use its reasonable endeavours to procure that:

- (a) each of the conditions precedent in clause 3.1 is satisfied as soon as possible after the date of this deed, and continue to be satisfied at all times until the last time they are to be satisfied (as the case may be); and

- (b) there is no occurrence within the control of the Target or the Bidder (as the context requires) that would prevent any of the conditions precedent in clause 3.1, which such party must use reasonable endeavours to satisfy, being satisfied.

### 3.3 **Waiver of conditions precedent**

The conditions precedent in:

- (a) clauses 3.1(a), 3.1(d) and 3.1(e) are for the benefit of all parties and can only be waived by all parties;
- (b) clause 3.1(f) is for the benefit of the Bidder and can only be waived by the Bidder;
- (c) clauses 3.1(b) and 3.1(c) cannot be waived.

### 3.4 **Termination on failure of condition precedent**

- (a) If any event occurs which would prevent any of the conditions precedent in clause 3.1 being satisfied, or there is an occurrence that will prevent any of the conditions precedent being satisfied by the time and date specified in this deed for its satisfaction or if the Schemes have not become Effective by the End Date the parties must consult in good faith to:
  - (i) consider and if agreed determine whether the Transaction may proceed by way of alternative means or methods;
  - (ii) consider and if agreed change the date of the application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Schemes or adjourning that application (as applicable) to another date agreed to in writing by the Bidder and the Target (being a date no later than 5 Business Days before the End Date); or
  - (iii) consider and if agreed extend the relevant date or End Date.
- (b) Subject to clause 3.4(d), if the parties are unable to reach agreement under clause 3.4(a) within 5 Business Days of becoming aware of the relevant occurrence or relevant date or by the End Date, then unless that condition precedent has been waived as provided in clause 3.3, then either party may terminate this deed by notice in writing to the other party without any liability to the other party because of that termination, unless the relevant occurrence or the failure of the condition precedent to be satisfied, or the failure of the Schemes to become Effective, arises as a direct result of a breach of clauses 3.2 or 3.5 in which case the party in breach will not be entitled to so terminate (for the avoidance of doubt, in such circumstances, the party which is not the party in breach of clauses 3.2 or 3.5 is entitled to terminate this deed).
- (c) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination (including by virtue of clause 11), on termination of this deed, no party shall have any rights against or obligations to any other party under this deed except for those rights and obligations which accrued prior to termination.
- (d) If a condition precedent set out in sub-clause 3.1(b)(i) or 3.1(b)(ii) is not satisfied only because of a failure to obtain the majority required by section 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice within 3 Business Days after the date of the conclusion of the relevant Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that section, provided the party has in good faith formed the view that the prospect of

the Court exercising its discretion in that way is reasonable, in which case the other party may not terminate this deed until such time as the Court has made a determination not to grant such approval.

### 3.5 Certain notices

- (a) If, before the time specified for satisfaction of a condition precedent, an event that will prevent that condition precedent being satisfied occurs, the party with knowledge of that event must promptly give the other party written notice of that event.
- (b) The Target and the Bidder (as the case may be) must promptly advise each other orally and in writing of any change or event causing, or which, so far as can reasonably be foreseen, would cause:
  - (i) a breach or non-fulfilment of any of the conditions precedent; or
  - (ii) a material breach of this deed by a relevant party.
- (c) The Target and the Bidder (as the case may be) must promptly notify the other of satisfaction of a condition precedent.

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## 4. Transaction steps

### 4.1 Schemes

Subject to clause 3.1, in accordance with the terms of the Schemes:

- (a) all of the Preference Scheme Shares will be cancelled and the Preference Scheme Shareholders will be entitled to receive the Preference Scheme Consideration in accordance with the Preference Scheme; and
- (b) all of the Ordinary Scheme Shares will be transferred to Bidder and the Ordinary Scheme Shareholders will be entitled to receive the Ordinary Scheme Consideration in accordance with the terms of the Ordinary Scheme.

### 4.2 No amendment to the Schemes without consent

The Target must not consent to any modification of, or amendment to, or the making or imposition by a court of any condition in respect of, the Ordinary Scheme or the Preference Scheme without the prior written consent of the Bidder.

### 4.3 Ordinary Scheme Consideration

- (a) Each Ordinary Scheme Shareholder is entitled to receive the Ordinary Scheme Consideration of \$12.60 per Ordinary Scheme Share held by that Ordinary Scheme Shareholder, in accordance with the terms of this deed, the Ordinary Scheme and the Deed Poll.
- (b) Ordinary Scheme Shareholders (other than Ineligible Foreign Shareholders) will be entitled to elect to receive the Ordinary Scheme Consideration in cash, Bidder Notes or a combination of cash and Bidder Notes in accordance with the election process outlined in the Ordinary Scheme.
- (c) The Target must ensure that the Scheme Booklet is accompanied by a form of election (**Election Form**) in a form agreed between the parties under which each Ordinary Scheme Shareholder (other than Ineligible Foreign Shareholders) is requested to elect to receive cash, Bidder Notes or a combination of cash and

Bidder Notes in respect of all of their Target Ordinary Shares, including that if no election is made the Ordinary Scheme Shareholder will be taken to have elected to receive cash only.

- (d) In order to facilitate the provision of the Ordinary Scheme Consideration, the Target must provide to the Bidder:
  - (i) written updates of the elections that have been received in the period up to the Election Time; and
  - (ii) written details of the final elections made by each Ordinary Scheme Shareholder, within one Business Day after the Election Time.

#### 4.4 **Preference Scheme Consideration**

Each Preference Scheme Shareholder (other than an Ineligible Foreign Shareholder) is entitled to receive the cash component of the Preference Scheme Consideration plus one Target Note per Preference Scheme Share held by that Preference Scheme Shareholder, in accordance with the terms of this deed and the Preference Scheme.

#### 4.5 **Deed Poll**

The Bidder and the Guarantor covenant in favour of the Target (in its own right and separately as trustee for each Target Shareholder) to:

- (a) execute and deliver the Deed Poll prior to the First Court Date; and
- (b) to perform their obligations under the Deed Poll subject to its terms.

#### 4.6 **Ineligible Foreign Shareholders**

Ineligible Foreign Shareholders will only be entitled to receive their Scheme Consideration in cash.

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### 5. **Implementation**

#### 5.1 **Target's obligations**

The Target must take all steps reasonably necessary to implement the Schemes as soon as is reasonably practicable and without limiting the foregoing use reasonable endeavours to ensure that each step in the Timetable is met by the relevant date set out beside that step, including doing any acts it is authorised and able to do, on behalf of the Target Shareholders, and must do each of the following:

- (a) **preparation of Scheme Booklet:** subject to clause 5.1(s), prepare as required for the purposes of the Schemes and despatch, a Scheme Booklet in accordance with all applicable laws, update information in the Scheme Booklet as required by all applicable laws and in particular:
  - (i) in accordance with the Corporations Act (including section 260B and section 256C), the Corporations Regulations, RG 60 and the Listing Rules; and
  - (ii) as may be necessary to ensure that the Target Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission);



- (b) **Independent Director's recommendation:** include in the Scheme Booklet and the public announcement contemplated by clause 7.1, a statement by the Independent Directors unanimously recommending that Target Shareholders (other than Excluded Shareholders) vote in favour of each Scheme and the Financial Assistance Resolution on the terms set out in clause 5.4;
- (c) **section 411(17)(b) statement:** apply to ASIC for the production of:
  - (i) an indication of intent letter stating that ASIC does not intend to appear before the Court on the First Court Date; and
  - (ii) a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to either Scheme;
- (d) **Court direction:** apply to the Court for orders pursuant to section 411(1) of the Corporations Act directing the Target to convene the Scheme Meetings;
- (e) **Registration of explanatory statements:** request ASIC to register the explanatory statements included in the Scheme Booklet in relation to the Schemes in accordance with section 412(6) of the Corporations Act;
- (f) **ASIC lodgement:** lodge the Scheme Booklet with ASIC pursuant to:
  - (i) section 411(2) of the Corporations Act;
  - (ii) section 260B(5) of the Corporations Act; and
  - (iii) section 256C(5) of the Corporations Act;
- (g) **Send Scheme Booklet:** send the Scheme Booklet to Target Shareholders as soon as practicable after the Court orders the Target to convene the Scheme Meetings;
- (h) **Meetings:** convene the Meetings to agree to the Schemes in accordance with the orders made by the Court pursuant to section 411(1) of the Corporations Act and otherwise to approve the Financial Assistance Resolution, the Capital Reduction Resolution and the Cancellation Resolution in accordance with the Corporations Act;
- (i) **Financing Subsidiary Assistance Resolution:** ensure that the Financing Subsidiary Assistance Resolution is passed no later than the date of the Scheme Meetings;
- (j) **Notify ASIC:**
  - (i) notify ASIC pursuant to section 256C(3) that the capital reduction for the Preference Scheme has been approved in accordance with the requirements of section 256(C)(2) of the Corporations Act; and
  - (ii) subject to the Ultimate Approval, notify ASIC pursuant to section 260B(6) that the Financial Assistance has been approved in accordance with the requirements of section 260B of the Corporations Act;
- (k) **Court documents:** consult with the Bidder in relation to the content of the documents required for the purpose of each of the Court hearings held for the purpose of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Schemes (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith, for the purpose of amending drafts of

those documents, comments from the Bidder and its Representatives on those documents;

- (l) **Court approval:** (subject to all conditions precedent in clause 3.1, other than the condition in clause 3.1(c) being satisfied or waived in accordance with this deed) apply to the Court for orders approving the Schemes as agreed to by the relevant Target Shareholders at the Meetings;
- (m) **Certificate:** at the hearing on the Second Court Date provide to the Court a certificate confirming whether or not the conditions precedent in clause 3.1, other than the condition in clause 3.1(c), have been satisfied or waived in accordance with this deed. A draft of that certificate must be provided by the Target to the Bidder by 4.00pm on the Business Day prior to the Second Court Date;
- (n) **lodge copy of Court orders:** lodge with ASIC an office copy of the Court orders in accordance with section 411(10) of the Corporations Act approving the Schemes no later than 10.00am on the next Business Day after the orders are made (or such later time as agreed in writing by the Bidder);
- (o) **Scheme Consideration:** close the Share Register as at the Scheme Record Date and determine entitlements to the Scheme Consideration in accordance with the the Schemes including, in respect of the Ordinary Scheme, the Election Forms and the Deed Poll;
- (p) **Loan:** procure that the Financing Subsidiary provides the loan to the Bidder in accordance with the Loan Agreement;
- (q) **implementation:** implement the Schemes in accordance with the terms of the Schemes including:
  - (i) issue the Preference Scheme Consideration in accordance with the Preference Scheme and cancel the Preference Scheme Shares on the Preference Share Implementation Date; and
  - (ii) subject to the Bidder having issued the Ordinary Scheme Consideration in accordance with the Election Forms, Scheme and Deed Poll, register all transfers of Target Ordinary Shares held by Ordinary Scheme Shareholders to the Bidder on the Ordinary Scheme Implementation Date;
- (r) **early payment of final buy-back consideration:** if the Preference Share Implementation Date occurs prior to 3 December 2016, pay the Second Deferred Portion of Cash Consideration on the Preference Scheme Implementation Date; and
- (s) **consultation with the Bidder:** consult with the Bidder as to the content and presentation of the Scheme Booklet including:
  - (i) providing to the Bidder drafts of the Scheme Booklet for the purpose of enabling the Bidder to review and comment on those draft documents;
  - (ii) taking all comments made by the Bidder into account in good faith when producing a revised draft of the Scheme Booklet;
  - (iii) providing to the Bidder a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised;

- (iv) implement such changes to those parts of the Scheme Booklet relating to the Bidder which are provided in accordance with clauses 5.1(s)(i) to 5.1(s)(iii) as reasonably requested by the Bidder and prior to finalising the Regulator's Draft; and
- (v) obtaining written approval from the Bidder for the form and content in which the Bidder Information appears in the Scheme Booklet, and the Target will not lodge the Scheme Booklet with ASIC until such approval is obtained from the Bidder;
- (t) **information:** provide all information, or procure that the Target Registry provides all information, in each case in a form reasonably requested by the Bidder, about the Schemes, the Scheme Shareholders, the Target Shareholders and the Share Register (including any sub register) to the Bidder and its Representatives which the Bidder reasonably requests in order to solicit votes at the Scheme Meetings and facilitate the provision of the Scheme Consideration;
- (u) **ASIC and ASX review:** during the Regulatory Review Period, promptly provide to the Bidder, and include in the Scheme Booklet, any new information not included in the Regulator's Draft which is required by the Corporations Act, Corporations Regulations, RG 60 or the Listing Rules to be included;
- (v) **Independent Expert:** promptly appoint the Independent Expert to be appointed in connection with the preparation of the Independent Expert's report, and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's report for inclusion in the Scheme Booklet (including any updates to such report) and any other materials to be prepared by the Independent Expert for inclusion in the Scheme Booklet (including any updates thereto);
- (w) **Provide a copy of the report:** subject to obtaining the consent of the Independent Expert, promptly provide the Bidder with a copy of any draft and final report received from the Independent Expert;
- (x) **compliance with laws:** do everything reasonably within its power to ensure that the tasks or obligations required to be performed by the Target in relation to the Transaction are effected in accordance with all laws and regulations applicable in relation to the Transaction;
- (y) **Prescribed Occurrence:** ensure that no Prescribed Occurrence occurs between the date of this deed and 8.00am on the Second Court Date; and
- (z) **Dividend payments on Preference Shares:** if any Dividend Payment Date occurs during the period beginning on (and including) the date of this deed and ending on (but excluding) the Preference Scheme Implementation Deed, pay any declared dividends in cash on the Dividend Payment Date subject to clause 3.1(b) and otherwise in accordance with the terms of issue of the Preference Shares.

## 5.2 Bidder's obligations

The Bidder must take all steps reasonably necessary to implement the Schemes as soon as is reasonably practicable and without limiting the foregoing use reasonable endeavours to ensure (including to commit necessary resources) that each step in the Timetable is met by the date set out beside that step (and consult with the Target on a regular basis about its progress in that regard), including doing each of the following:

- (a) **Bidder Information:** prepare and provide to the Target a draft of the Bidder Information for inclusion in the Scheme Booklet as required by all applicable

Australian laws, and in particular by the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules;

- (b) **review of Scheme Booklet:** review the drafts of the Scheme Booklet prepared by the Target and provide comments (if any) as soon as practicable;
- (c) **Independent Expert's report:** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's report to be included in the Scheme Booklet;
- (d) **representation:** procure that the Guarantor and Bidder are represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act, at which through their counsel, the Bidder and the Guarantor will undertake (if requested by the Court) to do all such things and take all such steps within their power as are necessary in order to ensure the fulfilment of their respective obligations under this deed and the Schemes (as applicable);
- (e) **Deed Poll:** by not later than the Business Day prior to the First Court Date, enter into the Deed Poll;
- (f) **accuracy of the Bidder Information:** ensure the Bidder Information in the Scheme Booklet is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (g) **further Bidder Information:** disclose to the Target such further or new Bidder Information as may arise after the Scheme Booklet has been sent until the date of the Scheme Meetings as may be necessary to ensure that the Bidder Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission);
- (h) **Ultimate Approval:** to procure the Ultimate Approval no later than the date of the Scheme Meetings;
- (i) **Share transfer:** if the Schemes become Effective, accept a transfer of the Ordinary Scheme Shares;
- (j) **compliance with laws:** do everything reasonably within its power to ensure that the tasks or obligations required to be performed by it in relation to the Transaction are effected in accordance with all laws and regulations applicable in relation to the Transaction; and
- (k) **Bidder Scheme Consideration:** if the Schemes become Effective and subject to the Target complying with clause 5.1(p), procure the provision of the Ordinary Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Ordinary Scheme.

### 5.3 Conduct of business

From the date of this deed up to and including the Implementation Date, the Target must conduct its business, and must cause each member of the Target Group to conduct their respective businesses, in the ordinary and proper course and make all reasonable efforts to:

- (a) keep available the services of their directors, officers and employees; and
- (b) maintain and preserve their relationships with customers, suppliers, Government Agencies, licensors, licensees and others having business dealings with any member of the Target Group.

#### 5.4 **Board recommendation**

- (a) The Target represents and warrants to the Bidder that each Independent Director has confirmed (by way of a unanimous resolution of the Independent Directors) that:
  - (i) his recommendation in respect of the Schemes is that relevant Target Shareholders vote in favour of the Schemes and all of the resolutions in the Scheme Booklet (**Recommendation**); and
  - (ii) he intends to vote, or cause to be voted all Target Shares in which he has a Relevant Interest in favour of the Schemes and all of the resolutions in the Scheme Booklet (**Voting Intention**),

in each case in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Schemes are fair and reasonable and in the best interests of Target Shareholders (other than the Guarantor and the Bidder).

- (b) The Target must use reasonable endeavours to procure that no Independent Director withdraws, changes or modifies his Recommendation, or his Voting Intention, unless:
  - (i) a Superior Proposal is made; or
  - (ii) the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Schemes are either not fair, not reasonable, or not in the best interests of Target Shareholders (other than the Guarantor and the Bidder).

#### 5.5 **Responsibility statement**

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

- (a) the Bidder is responsible for the Bidder Information contained in the Scheme Booklet; and
- (b) the Target is responsible for the Target Information contained in the Scheme Booklet.

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### 6. **Representations and warranties**

#### 6.1 **Bidder's representations**

The Bidder represents and warrants to the Target (in its own right and separately as trustee or nominee for each of the other Target Indemnified Parties) that each of the Bidder Representations and Warranties is true and correct.

#### 6.2 **Bidder's indemnity**

The Bidder agrees with the Target (in its own right and separately as trustee or nominee for each of the other Target Indemnified Parties) to indemnify the Target Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising which the Target or any of the other Target Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Bidder Representations and Warranties.

### **6.3 Target's representations**

The Target represents and warrants to the Bidder (in its own right and separately as trustee or nominee for each of the other Bidder Indemnified Parties) that each of the Target Representations and Warranties is true and correct.

### **6.4 Target's indemnity**

The Target agrees with the Bidder (in its own right and separately as trustee or nominee for each Bidder Indemnified Party) to indemnify the Bidder Indemnified Parties from any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising which the Bidder or any of the other Bidder Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Target Representations and Warranties.

### **6.5 Survival of representations**

Each representation and warranty referred to in clauses 6.1 and 6.3:

- (a) is severable; and
- (b) survives the termination of this deed.

### **6.6 Survival of indemnities**

Each indemnity in this deed (including those in clauses 6.2 and 6.4):

- (a) is severable;
- (b) is a continuing obligation;
- (c) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and
- (d) survives the termination of this deed.

### **6.7 Timing of warranties**

Each representation and warranty made or given under clauses 6.1 and 6.3 is given:

- (a) at the date of this deed and again at 8.00am on the Second Court Date; or
- (b) where expressed to be given at a particular time, at that time.

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## **7. Public announcements and Confidentiality**

### **7.1 Announcement of transaction**

Immediately after the execution of this deed, the parties must issue public announcements in a form previously agreed to in writing between them.

### **7.2 No announcement or other disclosure of transaction**

Except as permitted by clause 7.1 or 7.3, the parties must keep confidential, and must procure that each of their respective Representatives keeps confidential, all negotiations between the parties in relation to the subject matter of this deed and all other information given to it under, or in connection with, this deed or the Scheme.

### 7.3 Permitted disclosure

Clause 7.2 does not prevent a person from disclosing matters referred to therein:

- (a) if disclosure is required to be made by applicable law, by a Public Authority or by the Listing Rules and the party whose obligation it is to keep matters confidential or procure that those matters are kept confidential:
  - (i) has not through any voluntary act or omission (other than the execution of this deed and the performance by the parties of their obligations under it) caused the disclosure obligation to arise; and
- (b) if disclosure is made by way of a written announcement the terms of which have been agreed in writing by the parties prior to the making of the announcement of the Scheme;
- (c) if disclosure is reasonably required to enable a party to perform its obligations or enforce its rights under this deed;
- (d) under corresponding obligations of confidence as imposed by this clause, to a Related Body Corporate of the party, and the officers and employees of such persons to the extent the person considers that the disclosure is necessary or desirable for the purposes of the Schemes and disclosure is only made to that extent;
- (e) to any professional adviser of a party who has been retained to advise in relation to the Schemes or to the auditor of a party;
- (f) with the prior written approval of each party other than the party whose obligation it is to keep those matters confidential or procure that those matters are kept confidential; or
- (g) where the matter has come into the public domain or the lawful possession of the party otherwise than as a result of a breach by the party of this deed.

### 7.4 Survival of obligations

The rights and obligations of the parties under this clause 7 survive termination of this deed.

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## 8. Exclusivity

### 8.1 No-shop

During the Exclusivity Period, Target must not, and must ensure that its Representatives do not:

- (a) directly or indirectly solicit, initiate or invite enquiries, discussions or proposals in relation to, or which may reasonably be expected to lead to, a proposal under which a Third Party may acquire control of the Target (**Competing Proposal**); or
- (b) communicate to any person any intention to do any of the things referred to in clause 8.1(a).

### 8.2 No-talk

- (a) Subject always to clause 8.2(b), during the Exclusivity Period, Target must not, and must ensure that its Representatives do not:

- (i) directly or indirectly participate in any discussions or negotiations in relation to, or which may reasonably be expected to lead to, a Competing Proposal;
  - (ii) disclose any non-public information about the business or affairs of the Target to a Third Party with a view to obtaining or which may reasonably be expected to lead to receipt of a Competing Proposal, other than in the ordinary course of business or as required by law; or
  - (iii) communicate to any person any intention to do any of the things referred to in clauses 8.2(a)(i) or 8.2(a)(ii).
- (b) In respect of a bona fide Competing Proposal that is or may be received by, or become known to, the Target without any breach by the Target of its obligations under clause 8.2(a), the Target may undertake any action (prohibited action) that would otherwise be prohibited by clause 8.2(a) if (and only to the extent that) the Target Board determines, acting in good faith and after obtaining legal advice, that not undertaking the prohibited action, or undertaking the required action, would be likely to result in a breach by any Target Director of his fiduciary or statutory duties.

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## **9. Reimbursement of costs**

### **9.1 Background**

This clause 9 has been agreed to in circumstances where:

- (a) the parties believe the implementation of the Schemes will provide significant benefits to the Bidder, the Target and their respective shareholders, and the parties acknowledge that, if they enter into this deed and the Schemes are subsequently not implemented, the Target will incur significant costs;
- (b) each party requested provision be made for the payments outlined in this clause 9, without which the Target would not have entered into this deed;
- (c) each of the parties believe that it is reasonable and appropriate for both parties to agree to the payments referred to in this clause 9 to secure the Target's entry into this deed and the benefits to Target Shareholders from participation in the Transaction; and
- (d) each of the parties have received legal advice in relation to this deed and the operation of this clause 9.

### **9.2 Payment of Target Transaction Costs by the Bidder**

- (a) Subject to clause 9.4 and subject to the Target complying with its obligations under this deed, the Bidder must pay the Target Transaction Costs to the Target, without set-off or withholding, if for any reason the Schemes do not become Effective on or before the End Date.
- (b) If the Target Transaction Costs are payable by the Bidder to the Target, then the Bidder must pay the Target Transaction Costs to the Target within 10 Business Days after the date of receiving a written demand from the Target.

### **9.3 Nature of payments**

The amount payable by the Bidder to the Target under clause 9.2 is an amount to compensate the Bidder for advisory costs (including costs of advisers other than success fees) and out-of-pocket expenses.



#### **9.4 Compliance with law**

- (a) This clause 9 does not impose an obligation on the Bidder to pay the Target Transaction Costs to the extent that the obligation to pay the Target Transaction Costs (as the case may be):
  - (i) constitutes unacceptable circumstances as declared by the Takeovers Panel; or
  - (ii) is held by a court to be unlawful; or
  - (iii) involves a breach of directors duties.
- (b) The parties must not make, cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in clause 9.4(a).

---

### **10. Guarantee**

#### **10.1 Consideration and solvency**

The Guarantor represents and warrants to the Target that:

- (a) it has received valuable consideration for entering into this deed;
- (b) it considers that it will benefit commercially by entering into this deed; and
- (c) there are no reasonable grounds to suspect that, after entering into this deed, it will be unable to pay its debts as and when they fall due.

#### **10.2 Obligations guaranteed**

The Guarantor unconditionally and irrevocably guarantees to the Target, on demand, the due and punctual performance of each of the Bidder's obligations under this deed, including without limitation the obligation of the Bidder to pay the Target Transaction Costs pursuant to clause 9.2 ("Payment of Target Transaction Costs by the Bidder")

#### **10.3 Preservation of Guarantor's obligations**

The Guarantor's obligations in this deed are absolute, unconditional and irrevocable. The liability of the Guarantor under this deed extends to and is not affected by any circumstance, act or omission which, but for this subclause, might otherwise affect it at law or in equity and the Guarantor irrevocably waives any right it may have to claim that its liability has been so affected.

#### **10.4 Continuity**

This guarantee is a continuing security, and remains in full force until the all obligations of the Bidder under this deed have been irrevocably performed in full despite any transaction or other thing, including a settlement of account or intervening payment.

---

## **11. Termination**

### **11.1 Termination**

- (a) Without prejudice to any other rights of termination under this deed, either the Bidder or the Target party may terminate this deed by written notice to the other party:
  - (i) at any time before 8.00am on the Second Court Date if the other party has materially breached any provision of this deed, the party wishing to terminate has given written notice to the other party in a timely manner setting out the relevant circumstances and stating an intention to terminate this deed, and the relevant circumstances continue to exist 10 Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date) after the date on which the notice is given;
  - (ii) in the circumstances set out in, and in accordance with, clause 3.4;
  - (iii) at any time before 8.00am on the Second Court Date if the other party or any of their Related Bodies Corporate is or becomes Insolvent; or
  - (iv) the Independent Directors or a majority of the Independent Directors have withdrawn or adversely changed or modified their recommendation of the Transaction;
- (b) The Bidder may terminate this deed by written notice to the Target if at any time before 8.00am on the Second Court Date a Prescribed Occurrence occurs, is announced or otherwise becomes apparent to the Bidder.

### **11.2 Effect of termination**

If this deed is terminated by either party under clauses 3.4(b) or 11.1, except to the extent that the termination results from a breach by either party of its obligations under this deed, this deed will become void and have no further force or effect, without any liability or obligation on the part of any party, other than in relation to rights and obligations that accrued prior to termination and other than in relation to the provisions of this clause 11 and of clauses 6.5 to 6.7, 7, 9, 12, 13.2, 13.4 and 13.5, which will remain in force after termination.

### **11.3 Termination**

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

### **11.4 Terminable in writing**

This deed is terminable if agreed to in writing by the Target and the Bidder.

---

## **12. Duty, costs, expenses and GST**

### **12.1 Stamp duty**

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

## 12.2 **Costs and expenses**

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this deed and the proposed, attempted or actual implementation of this deed and the Transaction.

## 12.3 **GST**

- (a) Any term starting with a capital letter in this clause 12.3 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).
- (b) Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST.
- (c) To the extent that any supply made by a party to another party (**Recipient**) under or in connection with this deed is a taxable supply, the Recipient must pay, in addition to the consideration to be provided under this deed for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of the supply.
- (d) The amount of GST payable in accordance with this clause 12.3 will be payable at the same time and in the same manner as the consideration otherwise payable for the supply is provided.

---

## 13. **General**

### 13.1 **No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation, warranty or other inducement to it to enter into this deed, except for representations, warranties or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges that it has performed its own searches, enquiries, investigations and evaluations prior to entering into this deed and has formed its own views on the Transaction, with no targets, projections, forecasts or other forward looking statements having been relied on by that party.
- (c) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation, warranty or other inducement by or on behalf of any other party, except for any representation, warranty or inducement expressly set out in this deed.

### 13.2 **No merger**

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

### 13.3 **Consents**

Any consent referred to in, or required under, this deed from any party may be given in that party's absolute discretion (even if unreasonably withheld), unless this deed expressly provides for that consent to not be unreasonably withheld.

#### 13.4 Notices

A notice or other communication including, but not limited to, a request, demand, consent or approval, to or by a party to this deed:

- (a) must be in legible writing and in English; and
- (b) must be addressed as shown below:

Party	Address	Addressee
Target	Level 37, Chifley Plaza, 2 Chifley Square, Sydney 2000	Brian Bailison
Bidder or Guarantor	c/- Danny Simmons of Pistilli Simmons by email ( <a href="mailto:ds@pistillisimmons.com">ds@pistillisimmons.com</a> )	Brian Boyd

or as specified to the sender by the other party by notice;

- (c) must be signed by the party making the communication or by a person duly authorised by that party; and
- (d) is regarded as received by the addressee if delivered by hand, on delivery at the address of the addressee as provided in clause 13.4(b), unless delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be regarded as received at 9.00am on the next Business Day.

#### 13.5 Governing law and jurisdiction

- (a) This deed is governed by the laws of New South Wales, Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and courts competent to hear appeals from those courts.

#### 13.6 Waivers

- (a) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party does not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by any party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

#### 13.7 Variation

This deed may only be varied by a document signed by or on behalf of each of the parties.

#### 13.8 Assignment

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

### 13.9 **Acknowledgement**

Each party acknowledges that the remedy of damages may be inadequate to protect the interests of the parties for a breach of any provision of this deed and that:

- (a) the Bidder is entitled to seek and obtain without limitation injunctive relief if the Target breaches any provision of this deed; and
- (b) the Target is entitled to seek and obtain without limitation injunctive relief if the Bidder breaches any provision of this deed.

### 13.10 **No third party beneficiary**

This deed shall be binding on and inure solely to the benefit of each party to it and each of their respective permitted successors and assigns, and nothing in this deed, express or implied, is intended to or shall confer on any other person, other than the Bidder Indemnified Parties and the Target Indemnified Parties, to the extent set forth in clause 6, any third party beneficiary rights.

### 13.11 **Further action**

Each party will do all things and execute all further documents required by law or reasonably requested by the other party to give full effect to this deed.

### 13.12 **Entire agreement**

This deed supersedes all previous agreements, understandings, negotiations or deeds in respect of its subject matter and embodies the entire agreement between the parties.

### 13.13 **Counterparts**

- (a) This deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this deed by signing any counterpart.

## Schedule 1 – Bidder Representations and Warranties

The Bidder represents and warrants to the Target (in its own right and separately as trustee or nominee for each of the other Target Indemnified Parties) that:

- (a) **Bidder Information:** the Bidder Information contained in the Scheme Booklet:
  - (i) will be prepared and included in the Scheme Booklet in good faith; and
  - (ii) will comply in all material respects with the requirements of the Corporations Act, Corporations Regulations, listing rules and relevant ASIC regulatory guides;
- (b) **Information provided to the Independent Expert:** all information provided by it 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 purposes of preparing its report for inclusion in the Scheme Booklet;
- (c) **Scheme Booklet:** the Bidder Information provided for inclusion in the Scheme Booklet (other than any information regarding the Target Group contained in, or used in the preparation of, the Bidder Information), as at the date of the Scheme Booklet, will not contain any statement which is materially misleading or deceptive including by way of omission from that statement;
- (d) **Validly existing:** each of the Bidder and the Guarantor are a validly existing corporation registered under the laws of its place of incorporation;
- (e) **Authority:** the execution and delivery of this deed has been properly authorised by all necessary corporate action of the Bidder and the Guarantor;
- (f) **Power:** each of the Bidder and the Guarantor has full corporate power and lawful authority to execute, deliver and perform this deed;
- (g) **Binding obligations:** (subject to laws generally affecting creditors' rights and the principles of equity) this deed constitutes legal, valid and binding obligations on the Bidder and the Guarantor;
- (h) **No default:** this deed does not conflict with or result in the breach of or a default under any provision of the Bidder's constitution, the Guarantor's constitution, or any writ, order or injunction, judgement, law rule or regulation to which the Bidder or the Guarantor is party or subject to or by which it is bound; and
- (i) **Ordinary Scheme Consideration:** on the Ordinary Scheme Implementation Date it will have available to it sufficient cash amounts (from the Loan and its internal cash resources) to satisfy its obligation to pay the Ordinary Scheme Consideration in accordance with the Ordinary Scheme and the Deed Poll.

## Schedule 2 – Target Representations and Warranties

The Target represents and warrants to the Bidder (in its own right and separately as trustee or nominee for each of the other Bidder Indemnified Parties) that:

- (a) **Scheme Booklet:** the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report):
  - (i) will be prepared in good faith; and
  - (ii) will comply in all material respects with the requirements of the Corporations Act, Corporations Regulations, Listing Rules and relevant ASIC regulatory guides;
- (b) **Information provided to the Independent Expert:** all information provided by the Target 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 its report for inclusion in the Scheme Booklet;
- (c) **Scheme Booklet:** no information (other than the Bidder Information) contained in the Scheme Booklet as at the date of the Scheme Booklet, will contain any statement which is materially misleading or deceptive including by way of omission from that statement;
- (d) **Validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (e) **Authority:** the execution and delivery of this deed has been properly authorised by all necessary corporate action of the Target;
- (f) **Power:** the Target has full corporate power and lawful authority to execute and deliver this deed;
- (g) **Binding obligations:** (subject to laws generally affecting creditors' rights and the principles of equity) this deed constitutes legal, valid and binding obligations on it;
- (h) **Capital structure:** its capital structure, including all issued securities as at the date of this deed, is as set out in Schedule 3 and it has not issued or agreed to issue any other securities, options or instruments which are still outstanding or which may convert into Target Shares other than as set out in Schedule 3.

### **Schedule 3 – Target Capital Structure**

- Ordinary shares on issue: 19,839,827
- Preference shares on issue: 9,905,398



**Executed** as a deed and delivered on the date shown on the first page.

**Executed by Payce Consolidated Limited** )  
)  
)

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director / company secretary  
(delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director / company secretary (print)

**Executed by Bellawest Pty Limited** by its )  
attorney under power of attorney dated )  
\_\_\_\_\_ in the presence of: )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
By executing this document the attorney  
states that the attorney has received no  
notice of revocation of the power of attorney

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of attorney (print)

**Executed by Lanox Pty Limited** )  
)  
)

\_\_\_\_\_  
Signature of sole director and secretary

\_\_\_\_\_  
Name (print)

## **Attachment 1 – Indicative Timetable – elections etc, financial assistance**

<b>Event</b>	<b>Target date</b>
Announcement	1 July 2016
Announcement of revised Schemes	26 August 2016
Scheme Booklet complete and provided to ASIC	1 September 2016
First Court hearing	23 September 2016
Mailing of Scheme Booklet complete	29 September 2016
Meetings	31 October 2016
Second Court hearing	3 November 2016
Lodge financial assistance and capital reduction notifications with ASIC	4 November 2016
Effective Date	4 November 2016
Scheme Record Date	11 November 2016
Election Date	16 November 2016
Preference Scheme Implementation Date	22 November 2016
Ordinary Scheme Implementation Date	25 November 2016

## **Attachment 2 – Ordinary Scheme**

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# Ordinary Scheme of Arrangement

Payce Consolidated Limited

Ordinary Scheme Shareholders

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# Table of Contents

1.	Defined terms and interpretation .....	1
2.	Preliminary matters .....	5
3.	Conditions .....	6
4.	Implementation of the Scheme .....	6
5.	Ordinary Scheme Consideration.....	7
6.	Dealings in Ordinary Shares .....	12
7.	Quotation of PCL Shares .....	13
8.	General Scheme provisions .....	13
9.	General.....	15
	Annexure A – Terms of Bidder Note .....	17

**THIS ORDINARY SCHEME OF ARRANGEMENT** is made under section 411 of the *Corporations Act 2001* (Cth)

## **Parties**

**(1) Payce Consolidated Limited (PCL)**

ACN	001 566 310
Address	Level 37, Chifley Tower 2 Chifley Square Sydney NSW 2000

**(2) Each person registered as a holder of fully paid ordinary shares in PCL as at the Record Date other than the Non-Participating Shareholders (Ordinary Scheme Shareholders)**

## **Operative Parts**

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### **1. Defined terms and interpretation**

#### **1.1 Defined terms**

The following definitions apply unless the context requires otherwise.

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

**ASX** means ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.

**Bidder** means Bellawest Pty Limited ACN 612 757 829.

**Bidder Group** means the Bidder, the Bidder Guarantor and their Related Bodies Corporate and a reference to a “Bidder Group Member” or a member of the “Bidder Group” is to the Bidder, the Bidder Guarantor or any of its Related Bodies Corporate.

**Bidder Guarantor** means Lanox Pty Limited ACN 077 164 884.

**Bidder Note** means an unsecured note with a face value of \$12.60 the terms of which are set out in Annexure A, to be issued by the Bidder pursuant to the trust deed between the Bidder and Australian Executors Trustees Limited (ACN 007 869 794) dated [●].

**Business Day** means a business day as defined in the official listing rules of the ASX.

**Cash Consideration** means \$12.60 for each Ordinary Scheme Share.

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

**Conditions** means the conditions precedent contained in clause 3.1 of the Implementation Deed.

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

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

**Court** means the Federal Court of Australia, New South Wales registry or such other court of competent jurisdiction under the Corporations Act agreed to in writing by the Bidder and PCL.

**Deed Poll** means the deed poll substantially in the form of Attachment 1 under which the Bidder and the Bidder Guarantor each covenants in favour of the Ordinary Scheme Shareholders to perform certain obligations attributed to them under this Ordinary Scheme.

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

**Effective Date** means the date on which this Ordinary Scheme becomes Effective.

**Election** means the election by an Ordinary Scheme Shareholder (other than an Ineligible Foreign Shareholder) to receive some or all of the Ordinary Scheme Consideration to which they are entitled in the form of Bidder Notes in accordance with clause 5.2(a).

**Election Form** means an election form for the purposes of an Ordinary Scheme Shareholder (other than an Ineligible Foreign Shareholder) making an Election.

**Election Time** means 5pm on the date which is eight Business Days after the Effective Date or such other time as agreed between the Bidder and PCL in writing.

**End Date** means:

- (a) 31 December 2016; or
- (b) such other date and time agreed in writing between PCL and the Bidder.

**Government Agency** means 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, or any other federal, state, provincial, local or other government, whether foreign or Australian, including ASX, ASIC, the Australian Competition and Consumer Commission and any regulatory organisation established under statute.

**Implementation Deed** means the scheme implementation deed dated 1 July 2016 and amended and restated on 26 August 2016 between PCL, the Bidder and the Bidder Guarantor relating to the implementation of this Ordinary Scheme and the Preference Scheme.

**Ineligible Foreign Shareholder** means an Ordinary Scheme Shareholder whose address shown in the Share Register is a place outside Australia and its external territories or New Zealand unless the Bidder determines that it is lawful and not unduly onerous or impracticable to issue that Ordinary Scheme Shareholder with Bidder Notes when the Ordinary Scheme becomes Effective.

**Non-Participating Shareholder** means the Bidder and the Bidder Guarantor.

**Note Consideration** means one Bidder Note for each Ordinary Scheme Share.

**Noteholder Register** means a register of holders of Bidder Notes.

**Ordinary Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act between PCL and the Ordinary Scheme Shareholders subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by the Bidder and PCL.

**Ordinary Scheme Consideration** has the meaning given in clause 5.1(a).

**Ordinary Scheme Implementation Date** means, subject to the prior implementation of the Preference Scheme, the tenth Business Day after the Record Date, or such other day as PCL and the Bidder agree in writing.

**Ordinary Scheme Meeting** means the meeting of Ordinary Scheme Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.

**Ordinary Scheme Shareholder** means a holder of Ordinary Shares recorded in the Share Register as at the Record Date (other than a Non-Participating Shareholder).

**Ordinary Scheme Shares** means all Ordinary Shares held by the Ordinary Scheme Shareholders as at the Record Date.

**Ordinary Share** means a fully paid ordinary share in PCL.

**Ordinary Shareholder** means a person who is registered in the Share Register as the holder of an Ordinary Share.

**PCL Registry** means Boardroom Pty Limited of Grosvenor Place Level 12, 225 George Street, Sydney.

**Preference Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between PCL and the Preference Scheme Shareholders as set out in Attachment 3 to the Implementation Deed subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by the Bidder and PCL.

**Preference Scheme Shareholder** means a Preference Shareholder as at the Record Date.

**Preference Share** means a preference share in PCL issued pursuant to the offer document dated 4 May 2015.

**Preference Shareholder** means a person who is registered in the Share Register as the holder of a Preference Share.

**Record Date** means 5.00pm on the fifth Business Day after the Effective Date or such other time and date agreed to in writing between PCL and the Bidder.

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

**Related Body Corporate** has the meaning given in section 50 of the Corporations Act.

**Scheme Booklet** means the scheme booklet published by PCL on [●].

**Scheme Transfer** means a duly completed and executed proper instrument of transfer in respect of the Ordinary Scheme Shares for the purposes of section 1071B of the Corporations Act, in favour of the Bidder as transferee, which may be a master transfer of all of the Ordinary Scheme Shares.

**Schemes** means the Ordinary Scheme and the Preference Scheme.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving this Ordinary Scheme is heard.



**subsidiary** has the meaning given in Division 6 of Part 1.2 of the Corporations Act.

**Share Register** means the register of members of PCL maintained in accordance with the Corporations Act

## 1.2 Interpretation

In this Ordinary Scheme:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Ordinary Scheme;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Ordinary Scheme have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (f) a reference to a clause, party, part, schedule, attachment or exhibit is a reference to a clause or part of, and a party, schedule, attachment or exhibit to, this Ordinary Scheme;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (h) a reference to a document (including this Ordinary Scheme) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', 'A\$' or 'dollar' is to Australian currency unless denominated otherwise;
- (j) a reference to any time is a reference to that time in Sydney;
- (k) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Ordinary Scheme;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) no provision of this Ordinary Scheme will be construed adversely to a party because that party was responsible for the preparation of this Ordinary Scheme or that provision; and
- (n) a reference to a body, other than a party to this Ordinary Scheme (including an institute, association or authority), whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

### 1.3 Interpretation of inclusive expressions

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

### 1.4 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

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## 2. Preliminary matters

### 2.1 PCL

- (a) PCL is a public company limited by shares, registered in New South Wales, Australia.
- (b) PCL is admitted to the official list of the ASX.
- (c) As at the date of the Implementation Deed, PCL's capital structure was as follows:
  - (i) 19,839,827 Ordinary Shares were on issue; and
  - (ii) 9,905,398 Preference Shares were on issue.

### 2.2 The Bidder and Bidder Guarantor

- (a) The Bidder is a private company incorporated in Australia and registered in New South Wales and is a company limited by shares.
- (b) The Bidder Guarantor is a private company incorporated in Australia and registered in New South Wales and is a company limited by shares.

### 2.3 Consequences of the Ordinary Scheme becoming Effective

- (a) If this Ordinary Scheme becomes Effective:
  - (i) the Bidder must provide or procure the provision of the Ordinary Scheme Consideration to the Ordinary Scheme Shareholders in accordance with this Ordinary Scheme and the Deed Poll; and
  - (ii) all the Ordinary Scheme Shares, and all the rights and entitlements attaching to them as at the Ordinary Scheme Implementation Date, will be transferred to the Bidder and PCL will enter the name of the Bidder in the Share Register in respect of the Ordinary Scheme Shares on the Ordinary Scheme Implementation Date.
- (b) PCL, the Bidder Guarantor and the Bidder have agreed, by executing the Implementation Deed, to implement this Ordinary Scheme.
- (c) This Ordinary Scheme attributes actions to the Bidder and the Bidder Guarantor but does not itself impose an obligation on them to perform those actions. The Bidder and the Bidder Guarantor have agreed, by executing the Deed Poll, to perform the actions attributed to them under this Ordinary Scheme, including the Bidder and the Bidder Guarantor providing the Ordinary Scheme Consideration to the Ordinary Scheme Shareholders, subject to the terms of the Deed Poll.

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### **3. Conditions**

#### **3.1 Conditions precedent**

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

- (a) all the Conditions (other than the condition in the Implementation Deed relating to Court approval of the Schemes) having been satisfied or waived in accordance with the terms of the Implementation Deed by 8.00am on the Second Court Date;
- (b) neither the Implementation Deed nor the Deed Poll having been terminated in accordance with their terms before 8.00am on the Second Court Date;
- (c) approval of this Ordinary Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable and agreed to by the Bidder and PCL;
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Ordinary Scheme as are acceptable to the Bidder and PCL having been satisfied or waived;
- (e) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving this Ordinary Scheme coming into effect, pursuant to section 411(10) of the Corporations Act on or before the End Date; and
- (f) the implementation of the Preference Scheme.

#### **3.2 Certificate**

- (a) PCL and the Bidder will provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived.
- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent were satisfied, waived or taken to be waived.

#### **3.3 End Date**

This Ordinary Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Implementation Deed or the Deed Poll is terminated in accordance with its terms, unless PCL and the Bidder otherwise agree in writing.

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### **4. Implementation of the Scheme**

#### **4.1 Lodgement of Court orders with ASIC**

PCL will lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Court orders approving this Ordinary Scheme as soon as practicable and in any event by no later than 10.00am on the first Business Day after the day on which the Court approves the Ordinary Scheme.

## 4.2 Transfer of Scheme Shares

On the Ordinary Scheme Implementation Date:

- (a) subject to the provision of the Ordinary Scheme Consideration in the manner contemplated by clause 5, the Ordinary Scheme Shares, together with all rights and entitlements attaching to the Ordinary Scheme Shares as at the Ordinary Scheme Implementation Date, will be transferred to the Bidder, without the need for any further act by any Ordinary Scheme Shareholder (other than acts performed by PCL as attorney and agent for Ordinary Scheme Shareholders under clause 8.5), by:
  - (i) PCL delivering to the Bidder a duly completed Scheme Transfer, executed on behalf of the Ordinary Scheme Shareholders by PCL, for registration; and
  - (ii) the Bidder duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to PCL for registration; and
- (b) as soon as possible following receipt of the Scheme Transfer in accordance with clause 4.2(a)(ii), PCL must enter, or procure the entry of, the name of the Bidder in the Share Register in respect of all the Ordinary Scheme Shares transferred to the Bidder in accordance with this Ordinary Scheme.

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## 5. Ordinary Scheme Consideration

### 5.1 Entitlement to Ordinary Scheme Consideration

Subject to the terms of this Ordinary Scheme, each Ordinary Scheme Shareholder will be entitled to (the **Ordinary Scheme Consideration**):

- (a) for an Ordinary Scheme Shareholder (other than an Ineligible Foreign Shareholder) who has made a valid Election:
  - (i) Note Consideration for the number of Ordinary Scheme Shares specified by the Ordinary Scheme Shareholder on the Election Form that are held by that Ordinary Scheme Shareholder on the Record Date; and
  - (ii) Cash Consideration for the number of Ordinary Scheme Shares held by that Ordinary Scheme Shareholder on the Record Date for which the Ordinary Scheme Shareholder will not receive Note Consideration in accordance with paragraph 5.1(a)(i) above; and
- (b) for Ordinary Scheme Shareholders who have not made a valid Election, Ordinary Scheme Shareholders who have not made any Election, and Ineligible Foreign Shareholders, Cash Consideration for each Ordinary Scheme Share held on the Record Date.

### 5.2 Election

- (a) An Ordinary Scheme Shareholder, other than an Ineligible Foreign Shareholder, may make an election to receive some or all of the Ordinary Scheme Consideration to which they are entitled, in the form of Bidder Notes by completing the Election Form. An Ineligible Foreign Shareholder is not entitled to make an Election and will receive Cash Consideration.
- (b) Subject to clause 5.2(f), for an Election to receive Note Consideration to be valid:

- (i) the Ordinary Scheme Shareholder must complete and sign the Election Form in accordance with the instructions in the Scheme Booklet and on the Election Form; and
  - (ii) the Election Form must be received by the PCL Registry before the Election Time at the address specified in the Scheme Booklet and on the Election Form, unless the Bidder and PCL agree otherwise, in their absolute discretion.
- (c) An Election whether valid or not, will be irrevocable unless the Bidder and PCL agree, in their absolute discretion, to the revocation of the Election.
- (d) If:
  - (i) a valid Election is not made by an Ordinary Scheme Shareholder;
  - (ii) no Election is made by an Ordinary Scheme Shareholder; or
  - (iii) the Ordinary Scheme Shareholder is an Ineligible Foreign Shareholder,
 that Ordinary Scheme Shareholder will receive Cash Consideration in respect of all of their Ordinary Scheme Shares.
- (e) Subject to clause 5.2(f) an Election will be deemed to apply in respect of the Ordinary Scheme Shareholder's registered holding of Ordinary Scheme Shares on the Record Date, regardless of whether the Ordinary Scheme Shareholder's holding of Ordinary Scheme Shares on the Record Date is greater or less than the Ordinary Scheme Shareholder's holding at the time it made its Election, unless the Bidder and PCL agree otherwise, in their absolute discretion. Where the Ordinary Scheme Shareholder's holding of Ordinary Scheme Shares on the Record Date is less than the Ordinary Scheme Shareholder's holding at the time it made its Election and an Election is made to receive Note Consideration in respect of more Ordinary Scheme Shares than are held on the Record Date, the Election will be deemed to apply to all Ordinary Scheme Shares held by that Ordinary Scheme Shareholder on the Record Date.
- (f) In the manner considered appropriate by PCL and the Bidder (acting reasonably including after consultation with the PCL Registry), an Ordinary Scheme Shareholder who is noted on the PCL Share Register as holding one or more parcels of Ordinary Shares as trustee or nominee for, or otherwise on account of, another person, may make separate Elections under this clause 5.2 to receive Note Consideration for all of their Ordinary Scheme Shares in relation to any of those parcels of Ordinary Scheme Shares (subject to it providing to the Bidder and PCL any substantiating information they reasonably require), and an Election for Note Consideration made in respect of any such parcel, or an omission to make an Election for Note Consideration in respect of any such parcel, will not be taken to extend to the other parcels.
- (g) Subject to clauses 5.2(h) and 5.2(i), an Election Form will not be valid unless it is completed and received in accordance with the procedures set out in clause 5.2(b), unless the Bidder and PCL agree otherwise, in their absolute discretion.
- (h) PCL will determine, in its sole discretion having consulted with the Bidder in good faith, all questions as to the correct completion of an Election Form, and time of receipt of an Election Form. PCL is not required to communicate with any Ordinary Scheme Shareholder prior to making this determination. The determination of PCL will be final and binding on the Ordinary Scheme Shareholder.

- (i) Notwithstanding clause 5.2(b), PCL may, in its sole discretion having consulted with the Bidder in good faith, at any time and without further communication to Ordinary Scheme Shareholder, deem any Election Form it receives from an Ordinary Scheme Shareholder to be a valid Election for Note Consideration in respect of the relevant Ordinary Scheme Shares, even if a requirement for a valid Election for Note Consideration has not been complied with.

### **5.3 Cash Consideration**

Unless an Ordinary Scheme Shareholder has made a valid Election to receive Note Consideration in accordance with clause 5.2, each Ordinary Scheme Shareholder will be entitled to receive the Cash Consideration for each Ordinary Scheme Share held by that Ordinary Scheme Shareholder at the Record Date.

### **5.4 Note Consideration**

If an Ordinary Scheme Shareholder (other than an Ineligible Foreign Shareholder) validly Elects to receive Note Consideration, the Ordinary Scheme Shareholder will be entitled to receive:

- (a) Note Consideration for the elected number of Ordinary Scheme Shares held by that Ordinary Scheme Shareholder at the Record Date; and
- (b) Cash Consideration for the number of Ordinary Scheme Shares held by that Ordinary Scheme Shareholder at the Record Date for which a valid Election is not made.

### **5.5 Provision of Ordinary Scheme Consideration**

- (a) The Bidder must, and PCL must use its best endeavours to procure that the Bidder does, by no later than the Business Day before the Ordinary Scheme Implementation Date, deposit in cleared funds an amount equal to the aggregate amount of the Cash Consideration payable to each Ordinary Scheme Shareholder, in an Australian dollar denominated trust account operated by PCL as trustee for the Ordinary Scheme Shareholders, (provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to the Bidder's account).
- (b) On the Ordinary Scheme Implementation Date, subject to funds having been deposited in accordance with clause 5.5(a), PCL must pay or procure the payment, from the trust account referred to in clause 5.5(a), to each Ordinary Scheme Shareholder the Cash Consideration as that Ordinary Scheme Shareholder is entitled under this clause 5.
- (c) The obligations of PCL under clause 5.5(b) will be satisfied by PCL (in its absolute discretion):
  - (i) where an Ordinary Scheme Shareholder has, before the Record Date, made a valid election in accordance with the requirements of the PCL Registry to receive dividend payments from PCL by electronic funds transfer to a bank account nominated by the Ordinary Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
  - (ii) otherwise, whether or not the Ordinary Scheme Shareholder has made an election referred to in clause 5.5(c)(i), dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to

the Ordinary Scheme Shareholder by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Ordinary Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 5.7).

- (d) To the extent that, following satisfaction of PCL's obligations under clause 5.5(b), there is surplus in the amount held by PCL as trustee for the Ordinary Scheme Shareholders in the trust account referred to in clause 5.5(b), that surplus amount shall be paid by PCL to the Bidder.

## **5.6 Provision of Note Consideration**

Bidder must, subject to clauses 5.7 and 5.8:

- (a) on the Ordinary Scheme Implementation Date, issue the Bidder Notes to each Ordinary Scheme Shareholder who made (or is deemed to have made) a valid Election to receive some or part of the Ordinary Scheme Consideration in the form of Bidder Notes, and procure that the name and address of each such Ordinary Scheme Shareholder is entered in the Noteholder Register in respect of those Bidder Notes; and
- (b) procure that on or before the date that is two Business Days after the Ordinary Scheme Implementation Date, a holding statement (or equivalent document) is sent to the Registered Address of each Ordinary Scheme Shareholder to whom Bidder Notes are issued in accordance with clause 5.6(a) representing the number of Bidder Notes issued to that Ordinary Scheme Shareholder pursuant to this Ordinary Scheme.

## **5.7 Joint holders**

In the case of Ordinary Scheme Shares held in joint names:

- (a) any Cash Consideration is payable to the joint holders and:
  - (i) any electronic funds transfer required to be made under this Ordinary Scheme will be made to the bank account nominated to the PCL Registry in accordance with clause 5.5(c)(i); and
  - (ii) any cheque required to be sent under this Ordinary Scheme will be made payable to the joint holders and sent to the holder whose name appears first in the Share Register as at the Record Date;
- (b) any Bidder Notes to be issued under the Ordinary Scheme must be issued to, and registered in the names of, the joint holders; and
- (c) any other document required to be sent under this Ordinary Scheme will be forwarded to the holder whose name appears first in the Share Register as at the Record Date.

## **5.8 Ineligible Foreign Shareholders**

The Bidder will be under no obligation to issue, and must not issue, any Bidder Notes under this Ordinary Scheme to any Ineligible Foreign Shareholder, and instead, must pay the Cash Consideration to each Ineligible Foreign Shareholder who is an Ordinary Scheme Shareholder in accordance with this clause 5.

## 5.9 Unclaimed monies

- (a) PCL may cancel a cheque issued under this clause 5 if the cheque:
  - (i) is returned to PCL; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Ordinary Scheme Implementation Date, on request from an Ordinary Scheme Shareholder (which request may not be made until the date which is 20 Business Days after the Ordinary Scheme Implementation Date), PCL must reissue a cheque that was previously cancelled under this clause 5.
- (c) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Ordinary Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).

## 5.10 Orders of a court or Government Agency

If written notice is given to PCL (or the PCL Registry) of an order or direction made by a court of competent jurisdiction or by another Government Agency that:

- (a) requires payment to a third party of a sum in respect of Ordinary Scheme Shares held by a particular Ordinary Scheme Shareholder, which would otherwise be payable to that Ordinary Scheme Shareholder by PCL in accordance with this clause 5, then PCL shall be entitled to make that payment (or procure that payment is made) in accordance with that order; or
- (b) prevents PCL from making a payment by PCL to any particular Ordinary Scheme Shareholder in accordance with clause 5.5(c), or such payment is otherwise prohibited by applicable law, PCL shall be entitled to:
  - (i) retain an amount, in Australian dollars, equal to the cash component of the Ordinary Scheme Consideration to which the Ordinary Scheme Shareholder would otherwise be entitled under this clause 5; and
  - (ii) direct the Bidder not to issue, or to issue to a trustee or nominee, such number of Bidder Notes as that Ordinary Scheme Shareholder would otherwise be entitled to under this clause 5,

until such time as provision of the Ordinary Scheme Consideration in accordance with this clause 5 is permitted by that order or otherwise by law.

## 5.11 Status of Bidder Notes

Subject to this Ordinary Scheme becoming Effective, the Bidder must:

- (a) issue the Bidder Notes required to be issued by it under this Ordinary Scheme; and
- (b) ensure that each such Bidder Note is duly and validly issued in accordance with all applicable laws and free from any mortgage, charge, lien, encumbrance or other security interest.



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## **6. Dealings in Ordinary Shares**

### **6.1 Determination of Ordinary Scheme Shareholders**

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

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

and PCL must not accept for registration, nor recognise for any purpose (except a transfer to the Bidder pursuant to this Ordinary Scheme, a transfer to the Bidder by another Non-Participating Shareholder, or any subsequent transfer by the Bidder or its successors in title), any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

### **6.2 Register**

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

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## **7. Quotation of PCL Shares**

- (a) PCL must apply to ASX to suspend trading on the ASX in Ordinary Shares with effect from the close of trading on the Effective Date.
- (b) On a date after the Ordinary Scheme Implementation Date to be determined by the Bidder, PCL must apply:
  - (i) for termination of the official quotation of Ordinary Shares on the ASX; and
  - (ii) to have itself removed from the official list of the ASX.

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## **8. General Scheme provisions**

### **8.1 Consent to amendments to the Ordinary Scheme**

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

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

### **8.2 Ordinary Scheme Shareholders' agreements and warranties**

- (a) Each Ordinary Scheme Shareholder irrevocably:
  - (i) agrees to the transfer of their Ordinary Shares together with all rights and entitlements attaching to those Ordinary Shares in accordance with this Ordinary Scheme;
  - (ii) agrees to the variation, cancellation or modification (if any) of the rights attached to their Ordinary Shares constituted by or resulting from this Ordinary Scheme; and
  - (iii) acknowledges that this Ordinary Scheme binds PCL and all Ordinary Scheme Shareholders (including those who do not attend the Ordinary Scheme Meeting or those who do not vote, or vote against this Ordinary Scheme, at the Ordinary Scheme Meeting).
- (b) Each Ordinary Scheme Shareholder is taken to have warranted to PCL and the Bidder on the Ordinary Scheme Implementation Date, and appointed and authorised PCL as its attorney and agent to warrant to the Bidder on the Ordinary Scheme Implementation Date, that:
  - (i) all their Ordinary Shares (including any rights and entitlements attaching to those shares) which are transferred under the Ordinary Scheme will, at the date of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the Personal Property Securities Act 2009 (Cth)) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind; and

- (ii) they have full power and capacity to transfer their Ordinary Shares to the Bidder together with any rights attaching to those shares.
- (c) PCL undertakes that it will provide such warranty to the Bidder as agent and attorney of each Ordinary Scheme Shareholder.

### 8.3 Title to and rights in Ordinary Scheme Shares

- (a) To the extent permitted by law, the Ordinary Scheme Shares (including all rights and entitlements attaching to the Ordinary Scheme Shares) transferred under this Ordinary Scheme will be transferred free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise and free from any restrictions on transfer of any kind.
- (b) Immediately upon the provision of the Ordinary Scheme Consideration to each Ordinary Scheme Shareholder in the manner contemplated by clause 5, the Bidder will be beneficially entitled to the Ordinary Scheme Shares to be transferred to it under this Ordinary Scheme pending registration by PCL of the Bidder in the Share Register as the holder of the Ordinary Scheme Shares.

### 8.4 Appointment of sole proxy

Immediately upon the provision of the Ordinary Scheme Consideration to each Ordinary Scheme Shareholder in the manner contemplated by clause 5, and until PCL registers the Bidder as the holder of all Ordinary Scheme Shares in the Share Register, each Ordinary Scheme Shareholder:

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

### 8.5 Authority given to PCL

Each Ordinary Scheme Shareholder, without the need for any further act:

- (a) on the Effective Date, irrevocably appoints PCL and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of enforcing the Deed Poll against the Bidder, and PCL undertakes in favour of each Ordinary Scheme Shareholder that it will enforce the Deed Poll against the Bidder on behalf of and as agent and attorney for Ordinary Scheme Shareholders; and

- (b) on the Ordinary Scheme Implementation Date, irrevocably appoints PCL and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of executing any document or doing or taking any other act, necessary, desirable or expedient to give effect to this Ordinary Scheme and the transactions contemplated by it, including (without limitation) executing the Scheme Transfer,

and PCL accepts each such appointment. PCL as attorney and agent of each Ordinary Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.5 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

## **8.6 Binding effect of Ordinary Scheme**

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

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## **9. General**

### **9.1 Stamp duty**

The Bidder will:

- (a) pay all stamp duty and any related fines and penalties in respect of this Ordinary Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under this Ordinary Scheme and the Deed Poll; and
- (b) indemnify each Ordinary Scheme Shareholder against any liability arising from failure to comply with clause 9.1(a).

### **9.2 Consent**

Each of the Ordinary Scheme Shareholders consents to PCL doing all things necessary or incidental to the implementation of this Ordinary Scheme, whether on behalf of the Ordinary Scheme Shareholders, PCL or otherwise.

### **9.3 Notices**

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

### **9.4 Governing law**

- (a) The Ordinary Scheme is governed by the laws in force in New South Wales, Australia.

- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales, and courts of appeal from them in respect of any proceedings arising out of or in connection with this Ordinary Scheme. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

#### 9.5 **Further action**

PCL must do all things and execute all documents necessary to give full effect to this Ordinary Scheme and the transactions contemplated by it.

## **Annexure A – Terms of Bidder Note**

## **Attachment 3 – Preference Scheme**

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# Preference Scheme of Arrangement

Payce Consolidated Limited

Preference Scheme Shareholders

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# Table of Contents

1.	Defined terms and interpretation .....	1
2.	Preliminary matters .....	5
3.	Conditions .....	5
4.	Implementation of the Scheme .....	6
5.	Preference Scheme Consideration .....	6
6.	Dealings in Preference Shares .....	9
7.	General Scheme provisions .....	10
8.	General.....	11
	Annexure A – Terms of PCL Note .....	13

**THIS PREFERENCE SCHEME OF ARRANGEMENT** is made under section 411 of the *Corporations Act 2001* (Cth)

## **Parties**

**(1) Payce Consolidated Limited (PCL)**

ACN	001 566 310
Address	Level 37, Chifley Tower 2 Chifley Square Sydney NSW 2000

**(2) Each person registered as a holder of preference shares in PCL as at the Record Date (Preference Scheme Shareholders)**

## **Operative Parts**

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### **1. Defined terms and interpretation**

#### **1.1 Defined terms**

The following definitions apply unless the context requires otherwise.

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

**ASX** means ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.

**Bidder** means Bellawest Pty Limited ACN 612 757 829.

**Bidder Guarantor** means Lanox Pty Limited ACN 077 164 884.

**Business Day** means a business day as defined in the official listing rules of the ASX.

**Capital Reduction Resolution** means the resolution to be considered at the Ordinary Meeting to approve a selective capital reduction of PCL's issued share capital, in the terms set out in the notice convening the Ordinary Meeting.

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

**Conditions** means the conditions precedent contained in clause 3.1 of the Implementation Deed.

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

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

**Court** means the Federal Court of Australia, New South Wales registry or such other court of competent jurisdiction under the Corporations Act agreed to in writing by the Bidder and PCL.

**Deed Poll** means the deed poll substantially in the form of Attachment 1 under which the Bidder and the Bidder Guarantor each covenants in favour of the Ordinary Scheme Shareholders to perform certain obligations attributed to them under the Ordinary Scheme.

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

**Effective Date** means the date on which this Preference Scheme becomes Effective.

**End Date** means:

- (a) 31 December 2016; or
- (b) such other date and time agreed in writing between PCL and the Bidder.

**Government Agency** means 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, or any other federal, state, provincial, local or other government, whether foreign or Australian, including ASX, ASIC, the Australian Competition and Consumer Commission and any regulatory organisation established under statute.

**Implementation Deed** means the scheme implementation deed dated 1 July 2016 and amended and restated on 26 August 2016 between PCL, the Bidder and the Bidder Guarantor relating to the implementation of this Preference Scheme and the Ordinary Scheme.

**Ineligible Foreign Shareholder** means a Preference Scheme Shareholder whose address shown in the Share Register is a place outside Australia and its external territories or New Zealand unless PCL determines that it is lawful and not unduly onerous or impracticable to issue that Preference Scheme Shareholder with PCL Notes when the Preference Scheme becomes Effective.

**Noteholder Register** means a register of holders of PCL Notes.

**Ordinary Meeting** means the general meeting of Ordinary Shareholders to be held to consider and, if thought fit, approve various resolutions to give effect to this Preference Scheme and the Ordinary Scheme, as set out in detail in the Scheme Booklet.

**Ordinary Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between PCL and the Ordinary Scheme Shareholders as set out in Attachment 2 to the Implementation Deed subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by the Bidder and PCL.

**Ordinary Scheme Shareholder** means a holder of Ordinary Shares recorded in the Share Register as at the Record Date (other than a Non-Participating Shareholder (which has the meaning given in the Ordinary Scheme)).

**Ordinary Scheme Shares** means all Ordinary Shares held by the Ordinary Scheme Shareholders as at the Record Date.

**Ordinary Share** means a fully paid ordinary share in PCL.

**PCL Note** means an unsecured note with a face value of \$6.50, the terms of which are set out in Annexure A, to be issued by PCL pursuant to the trust deed between PCL and Australian Executors Trustees Limited (ACN 007 869 794) dated [●].

**PCL Registry** means Boardroom Pty Limited of Grosvenor Place Level 12, 225 George Street, Sydney.

**Preference Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act between PCL and the Preference Scheme Shareholders subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by the Bidder and PCL.

**Preference Scheme Consideration** has the meaning given in clause 5.1(a).

**Preference Scheme Implementation Date** means the seventh Business Day after the Record Date or such other day as PCL and the Bidder agree.

**Preference Scheme Meeting** means the meeting of Preference Scheme Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.

**Preference Scheme Shareholder** means a holder of Preference Shares recorded in the Share Register as at the Record Date.

**Preference Scheme Shares** means all Preference Shares held by the Preference Scheme Shareholders as at the Record Date.

**Preference Share** means a preference share in PCL issued pursuant to the offer document dated 4 May 2015.

**Preference Shareholder** means a person who is registered in the Share Register as the holder of a Preference Share.

**Record Date** means 5.00pm on the fifth Business Day after the Effective Date or such other time and date agreed to in writing between PCL and the Bidder.

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

**Related Body Corporate** has the meaning given in section 50 of the Corporations Act.

**Scheme Booklet** means the scheme booklet published by PCL on [●].

**Schemes** means the Ordinary Scheme and the Preference Scheme.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving this Preference Scheme is heard.

**subsidiary** has the meaning given in Division 6 of Part 1.2 of the Corporations Act.

**Share Register** means the register of members of PCL maintained in accordance with the Corporations Act.

## 1.2 Interpretation

In this Preference Scheme:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Preference Scheme;
- (b) the singular includes the plural and the plural includes the singular;

- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Preference Scheme have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (f) a reference to a clause, party, part, schedule, attachment or exhibit is a reference to a clause or part of, and a party, schedule, attachment or exhibit to, this Preference Scheme;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (h) a reference to a document (including this Preference Scheme) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', 'A\$' or 'dollar' is to Australian currency unless denominated otherwise;
- (j) a reference to any time is a reference to that time in Sydney;
- (k) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Preference Scheme;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) no provision of this Preference Scheme will be construed adversely to a party because that party was responsible for the preparation of this Preference Scheme or that provision; and
- (n) a reference to a body, other than a party to this Preference Scheme (including an institute, association or authority), whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

### 1.3 Interpretation of inclusive expressions

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

### 1.4 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

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## **2. Preliminary matters**

### **2.1 PCL**

- (a) PCL is a public company limited by shares, registered in New South Wales, Australia.
- (b) PCL is admitted to the official list of the ASX.
- (c) As at the date of the Implementation Deed, PCL's capital structure was as follows:
  - (i) 19,839,827 Preference Shares were on issue; and
  - (ii) 9,905,398 Preference Shares were on issue.

### **2.2 Consequences of the Preference Scheme becoming Effective**

- (a) If this Preference Scheme becomes Effective:
  - (i) PCL must provide or procure the provision of the Preference Scheme Consideration to the Preference Scheme Shareholders in accordance with this Preference Scheme; and
  - (ii) PCL must effect a selective capital reduction of all Preference Shares in accordance with the Capital Reduction Resolution.
- (b) PCL has agreed, by executing the Implementation Deed, to implement this Preference Scheme.

---

## **3. Conditions**

### **3.1 Conditions precedent**

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

- (a) all the Conditions (other than the condition in the Implementation Deed relating to Court approval of the Schemes) having been satisfied or waived in accordance with the terms of the Implementation Deed by 8.00am on the Second Court Date;
- (b) neither the Implementation Deed nor the Deed Poll having been terminated in accordance with their terms before 8.00am on the Second Court Date;
- (c) approval of this Preference Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable and agreed to by the Bidder and PCL;
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Preference Scheme as are acceptable to the Bidder and PCL having been satisfied or waived;
- (e) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving this Preference Scheme coming into effect, pursuant to section 411(10) of the Corporations Act on or before the End Date; and

- (f) all the conditions in clause 3.1 of the Ordinary Scheme (other than the condition relating to the implementation of this Preference Scheme) having been satisfied or waived in accordance with the terms of the Ordinary Scheme.

### 3.2 **Certificate**

- (a) PCL will provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within its knowledge) whether or not all of the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived.
- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent were satisfied, waived or taken to be waived.

### 3.3 **End Date**

This Preference Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Implementation Deed or the Deed Poll is terminated in accordance with its terms, unless PCL and the Bidder otherwise agree in writing.

---

## 4. **Implementation of the Scheme**

### 4.1 **Lodgement of Court orders with ASIC**

PCL will lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Court orders approving this Preference Scheme as soon as practicable and in any event by no later than 10.00am on the first Business Day after the day on which the Court approves the Preference Scheme.

### 4.2 **Cancellation of Scheme Shares**

On the Preference Scheme Implementation Date, subject to the provision of the Preference Scheme Consideration in the manner contemplated by clause 5, each Preference Scheme Shareholder authorises and directs PCL to, and PCL must effect a selective capital reduction of all Preference Shares in accordance with the Capital Reduction Resolution.

---

## 5. **Preference Scheme Consideration**

### 5.1 **Entitlement to Preference Scheme Consideration**

Subject to the terms of this Preference Scheme, each Preference Scheme Shareholder will for each Preference Scheme Share held be entitled to (the **Preference Scheme Consideration**):

- (a) for a Preference Scheme Shareholder (other than an Ineligible Foreign Shareholder), the cash component calculated in accordance with clause 5.2 and one PCL Note; and
- (b) for an Ineligible Foreign Shareholder, the cash component calculated in accordance with clause 5.2 plus a cash amount equal to the face value of the PCL Note.

## 5.2 Calculation of cash component of Preference Scheme Consideration

The cash component of the Preference Scheme Consideration will be calculated as follows:

$$CC = \$1.00 + (DR \times \$7.50 \times D / 365)$$

Where:

- CC is the cash component of the Preference Scheme Consideration.
- DR is the Dividend Rate applicable in the Dividend Period beginning on the last Dividend Payment Date prior to the Preference Scheme Implementation Date (**Prior DP Date**).
- D is the number of days in the period commencing on (and including) the Prior DP Date and expiring on (but excluding) the Preference Scheme Implementation Date.
- Dividend Rate, Dividend Period and Dividend Payment Date have the meaning given in the terms of issue of the Preference Shares set out in the offer document dated 4 May 2015.

## 5.3 Provision of Preference Scheme Consideration

- (a) PCL must, by no later than the Business Day before the Preference Scheme Implementation Date, deposit in cleared funds an amount equal to the aggregate amount of the cash component of the Preference Scheme Consideration payable to each Preference Scheme Shareholder, in an Australian dollar denominated trust account operated by PCL as trustee for the Preference Scheme Shareholders, (provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to PCL's account).
- (b) On the Preference Scheme Implementation Date, subject to funds having been deposited in accordance with clause 5.3(a), PCL must pay or procure the payment, from the trust account referred to in clause 5.3(a), to each Preference Scheme Shareholder the cash component of the Preference Scheme Consideration as that Preference Scheme Shareholder is entitled under this clause 5.
- (c) The obligations of PCL under clause 5.3(b) will be satisfied by PCL (in its absolute discretion):
  - (i) where a Preference Scheme Shareholder has, before the Record Date, made a valid election in accordance with the requirements of the PCL Registry to receive dividend payments from PCL by electronic funds transfer to a bank account nominated by the Preference Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
  - (ii) otherwise, whether or not the Preference Scheme Shareholder has made an election referred to in clause 5.3(c)(i), dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Preference Scheme Shareholder by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Preference Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 5.5).



- (d) To the extent that, following satisfaction of PCL's obligations under clause 5.3(b), there is surplus in the amount held by PCL as trustee for the Preference Scheme Shareholders in the trust account referred to in clause 5.3(b), that surplus amount shall be payable to PCL.

#### **5.4 Provision of PCL Notes**

PCL must, subject to clauses 5.5 and 5.6:

- (a) on the Preference Scheme Implementation Date, issue to each Preference Scheme Shareholder, one PCL Note for each Preference Share held by that Preference Scheme Shareholder at the Record Date and enter the name and address of each such Preference Scheme Shareholder in the Noteholder Register in respect of those PCL Notes; and
- (b) ensure that each such PCL Note is duly and validly issued in accordance with all applicable laws and free from any mortgage, charge, lien, encumbrance or other security interest; and
- (c) on or before the date that is two Business Days after the Preference Scheme Implementation Date, send a holding statement (or equivalent document) to the Registered Address of each Preference Scheme Shareholder to whom PCL Notes are issued in accordance with clause 5.4(a) representing the number of PCL Notes issued to that Preference Scheme Shareholder pursuant to this Preference Scheme.

#### **5.5 Joint holders**

In the case of Preference Scheme Shares held in joint names:

- (a) the cash proportion of the Preference Scheme Consideration is payable to the joint holders and:
  - (i) any electronic funds transfer required to be made under this Preference Scheme will be made to the bank account nominated to the PCL Registry in accordance with clause 5.3(c)(i); and
  - (ii) any cheque required to be sent under this Preference Scheme will be made payable to the joint holders and sent to the holder whose name appears first in the Share Register as at the Record Date;
- (b) the PCL Notes to be issued under the Preference Scheme must be issued to, and registered in the names of, the joint holders; and
- (c) any other document required to be sent under this Preference Scheme will be forwarded to the holder whose name appears first in the Share Register as at the Record Date.

#### **5.6 Ineligible Foreign Shareholders**

PCL will be under no obligation to issue, and must not issue, any PCL Notes under this Preference Scheme to any Ineligible Foreign Shareholder, and instead, must pay the Preference Scheme Consideration specified in clause 5.1(b) to each Ineligible Foreign Shareholder.

#### **5.7 Unclaimed monies**

- (a) PCL may cancel a cheque issued under this clause 5 if the cheque:

- (i) is returned to PCL; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Preference Scheme Implementation Date, on request from a Preference Scheme Shareholder (which request may not be made until the date which is 20 Business Days after the Preference Scheme Implementation Date), PCL must reissue a cheque that was previously cancelled under this clause 5.
- (c) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Preference Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).

## 5.8 Orders of a court or Government Agency

If written notice is given to PCL (or the PCL Registry) of an order or direction made by a court of competent jurisdiction or by another Government Agency that:

- (a) requires payment to a third party of a sum in respect of Preference Scheme Shares held by a particular Preference Scheme Shareholder, which would otherwise be payable to that Preference Scheme Shareholder by PCL in accordance with this clause 5, then PCL shall be entitled to make that payment (or procure that payment is made) in accordance with that order; or
- (b) prevents PCL from making a payment by PCL to any particular Preference Scheme Shareholder in accordance with clause 5.3(c), or such payment is otherwise prohibited by applicable law, PCL shall be entitled to:
  - (i) retain an amount, in Australian dollars, equal to the cash component of the Preference Scheme Consideration to which the Preference Scheme Shareholder would otherwise be entitled under this clause 5; and
  - (ii) not issue, or to issue to a trustee or nominee, such number of PCL Notes as that Preference Scheme Shareholder would otherwise be entitled to under this clause 5,

until such time as provision of the Preference Scheme Consideration in accordance with this clause 5 is permitted by that order or otherwise by law.

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## 6. Dealings in Preference Shares

### 6.1 Determination of Preference Scheme Shareholders

To establish the identity of the Preference Scheme Shareholders, dealings in Preference Shares or other alterations to the Share Register will only be recognised if registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received on or before the Record Date at the place where the Share Register is kept and PCL must not accept for registration, nor recognise for any purpose any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

### 6.2 Register

- (a) PCL must register registrable transmission applications or transfers of the Preference Scheme Shares in accordance with clause 6.1 before the Record Date provided that, for the avoidance of doubt, nothing in this clause 6.2(a) requires

PCL to register a transfer that would result in an Preference Shareholder holding a parcel of Preference Shares that is less than a 'marketable parcel' (as defined in the Operating Rules of the ASX).

- (b) If the Preference Scheme becomes Effective, a holder of Preference Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of, any Preference Scheme Shares or any interest in them after the Record Date otherwise than pursuant to this Preference Scheme, and any attempt to do so will have no effect and PCL shall be entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Preference Scheme Consideration, PCL must maintain the Share Register in accordance with the provisions of this clause 6.2 until the Preference Scheme Consideration has been paid to the Preference Scheme Shareholders. The Share Register in this form will solely determine entitlements to the Preference Scheme Consideration.
- (d) All statements of holding for Preference Shares will cease to have effect after the Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Share Register will cease to have effect except as evidence of entitlement to the Preference Scheme Consideration in respect of the Preference Shares relating to that entry.
- (e) As soon as possible on or after the Record Date, and in any event within one Business Day after the Record Date, PCL will ensure that details of the names, Registered Addresses and holdings of Preference Shares for each Preference Scheme Shareholder as shown in the Share Register are available to the Bidder in the form the Bidder reasonably requires.

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## **7. General Scheme provisions**

### **7.1 Consent to amendments to the Preference Scheme**

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

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

### **7.2 Preference Scheme Shareholders' agreements**

Each Preference Scheme Shareholder irrevocably:

- (a) agrees to the cancellation of their Preference Shares together with all rights and entitlements attaching to those Preference Shares in accordance with this Preference Scheme and the Capital Reduction Resolution;
- (b) agrees to the variation, cancellation or modification (if any) of the rights attached to their Preference Shares constituted by or resulting from this Preference Scheme; and
- (c) acknowledges that this Preference Scheme binds PCL and all Preference Scheme Shareholders (including those who do not attend the Preference Scheme Meeting or those who do not vote, or vote against this Preference Scheme, at the Preference Scheme Meeting).

### 7.3 Authority given to PCL

- (a) On the Preference Scheme Implementation Date, each Preference Scheme Shareholder, without the need for any further act, irrevocably appoints PCL and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of executing any document or doing or taking any other act, necessary, desirable or expedient to give effect to this Preference Scheme and the transactions contemplated by it.
- (b) PCL accepts each such appointment made under this clause 7.3.
- (c) PCL as attorney and agent of each Preference Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 7.3 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

### 7.4 Binding effect of Preference Scheme

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

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## 8. General

### 8.1 Stamp duty

PCL will:

- (a) pay all stamp duty and any related fines and penalties in respect of this Preference Scheme and each transaction effected by or made under this Preference Scheme; and
- (b) indemnify each Preference Scheme Shareholder against any liability arising from failure to comply with clause 8.1(a).

### 8.2 Consent

Each of the Preference Scheme Shareholders consents to PCL doing all things necessary or incidental to the implementation of this Preference Scheme, whether on behalf of the Preference Scheme Shareholders, PCL or otherwise.

### 8.3 Notices

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

### 8.4 Governing law

- (a) The Preference Scheme is governed by the laws in force in New South Wales, Australia.

- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales, and courts of appeal from them in respect of any proceedings arising out of or in connection with this Preference Scheme. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

#### 8.5 **Further action**

PCL must do all things and execute all documents necessary to give full effect to this Preference Scheme and the transactions contemplated by it.

## **Annexure A – Terms of PCL Note**

## **Attachment 4 – Deed Poll**

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# Deed Poll

**Bellawest Pty Limited**  
ACN 612 757 829

**and**

**Lanox Pty Limited**  
ACN 077 164 884

**in favour of**

**Each Ordinary Scheme Shareholder**

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# Table of Contents

1.	Defined terms and interpretation .....	1
2.	Conditions .....	2
3.	Consideration.....	3
4.	Warranties .....	3
5.	Continuing obligations.....	3
6.	Notices .....	4
7.	General.....	5
	Attachment 1 - Ordinary Scheme .....	8

## DETAILS

### Date:

### Parties

#### Bellawest Pty Limited (Bidder)

ACN: 612 757 829

Address: 84 Cawarra Road, Caringbah NSW 2229

#### Lanox Pty Limited (Guarantor)

ACN: 077 164 884

Address: 84 Cawarra Road, Caringbah NSW 2229

### In favour of

Each registered holder of fully paid ordinary shares in the capital of Payce Consolidated Limited (ACN 001 566 310) (**PCL**) recorded in the Share Register as at the Record Date (other than Non-Participating Shareholders) (**Ordinary Scheme Shareholders**)

## Recitals

- A. The Bidder, PCL and the Guarantor have entered into the Implementation Deed.
- B. In the Implementation Deed, the Bidder and the Guarantor have agreed to execute this deed poll.
- C. The Bidder and the Guarantor are entering into this deed poll for the purposes of covenanting in favour of the Ordinary Scheme Shareholders that they will observe and perform their obligations under the Implementation Deed and the Ordinary Scheme.

## Operative Parts

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### 1. Defined terms and interpretation

#### 1.1 Defined terms

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

**First Court Date** means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act convening the Ordinary Scheme Meeting to consider the Ordinary Scheme is heard.

**Implementation Deed** means the scheme implementation deed entered into between PCL, the Bidder and the Guarantor dated 1 July 2016 and amended and restated on 26 August 2016 relating to the implementation of the Schemes.

**Notice** has the meaning give to that term in clause 6.1.

**Ordinary Scheme** means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between PCL and the Ordinary Scheme Shareholders, the form of which is attached to this deed poll, subject to any alterations or conditions as agreed between the Bidder, the Guarantor and PCL or made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to by the Bidder, the Guarantor and PCL.

**Scheme** means the Ordinary Scheme and the Preference Scheme.

Unless the context otherwise requires, terms defined in the Ordinary Scheme have the same meaning when used in this deed poll.

## 1.2 Interpretation

Clauses 1.2 and 1.3 of the Ordinary Scheme apply to the interpretation of this deed poll, except that references to 'this Ordinary Scheme' are to be read as references to 'this deed poll'.

## 1.3 Nature of deed poll

The Bidder and the Guarantor acknowledge that:

- (a) this deed poll may be relied on and enforced by any Ordinary Scheme Shareholder in accordance with its terms even though the Ordinary Scheme Shareholders are not party to it; and
- (b) under the Ordinary Scheme, each Ordinary Scheme Shareholder irrevocably appoints PCL and each of its directors and officers (jointly and severally) as its agent and attorney to enforce this deed poll against the Bidder and the Guarantor on behalf of that Ordinary Scheme Shareholder.

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## 2. Conditions

### 2.1 Conditions Precedent

The obligations of the Bidder and the Guarantor under this deed poll are subject to the Ordinary Scheme becoming Effective.

### 2.2 Termination

The obligations of the Bidder and the Guarantor under this deed poll to the Ordinary Scheme Shareholders will automatically terminate and the terms of this deed poll will be of no force or effect if:

- (a) the Implementation Deed is terminated in accordance with its terms; or
- (b) the Ordinary Scheme is not Effective on or before the End Date.

### 2.3 Consequences of termination

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

- (a) the Bidder and the Guarantor are released from their obligations to further perform this deed poll; and
- (b) each Ordinary Scheme Shareholder retains the rights it has against the Bidder and the Guarantor in respect of any breach of this deed poll which occurred before it was terminated.

---

### **3. Consideration**

#### **3.1 Undertaking to satisfy Ordinary Scheme Consideration**

- (a) Subject to clause 2, the Bidder and the Guarantor undertake in favour of each Ordinary Scheme Shareholder to:
  - (i) provide or procure the provision of the Ordinary Scheme Consideration to each Ordinary Scheme Shareholder in accordance with the terms of the Ordinary Scheme; and
  - (ii) undertake all other actions attributed to it under the Ordinary Scheme and otherwise comply with the Ordinary Scheme as if it were a party to the Ordinary Scheme.

---

### **4. Warranties**

Each of the Bidder and the Guarantor represent and warrant in favour of each Ordinary Scheme Shareholder that each of the following statements are true and correct:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) this deed poll is valid and binding upon it and enforceable against it in accordance with its terms; and
- (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound, and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed poll.

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### **5. Continuing obligations**

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

- (a) the Bidder and the Guarantor having fully performed their obligations under this deed poll; and
- (b) the termination of this deed poll under clause 2.2.

---

## 6. Notices

### 6.1 Form of Notice

A notice or other communication in respect of this deed poll (**Notice**) must be:

- (a) in writing and in English and signed by or on behalf of the sending party (communications sent by email are taken to be signed by the named sender); and
- (b) addressed to the Bidder and the Guarantor in accordance with the details set out below (or any alternative details nominated by the Bidder and the Guarantor by Notice).

#### **Bidder**

Attention: Brian Boyd  
Address: c/- Danny Simmons of Pistilli Simmons by email  
Email: [ds@pistillisimmons.com](mailto:ds@pistillisimmons.com)

#### **Guarantor**

Attention: Brian Boyd  
Address: c/- Danny Simmons of Pistilli Simmons by email  
Email: [ds@pistillisimmons.com](mailto:ds@pistillisimmons.com)

### 6.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the next business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address.
By pre-paid post to the nominated address	At 9.00am (addressee's time) on the second Business Day after the date of posting.
By email to the nominated email address	The earliest to occur of: <ul style="list-style-type: none"><li>(i) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;</li><li>(ii) the time that the email is first opened or read by the intended recipient; and</li><li>(iii) 2 hours after the time the email is sent (as recorded on the device from which the sender sent</li></ul>

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the email) unless the sender receives, within that 2 hour period, an automated message that the email has not been delivered.

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**6.3 Notice must not be given by other electronic communication**

A Notice must not be given by any electronic means of communication other than email as permitted by clause 6.2(b).

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**7. General**

**7.1 Stamp duty**

The Bidder will, and the Guarantor will procure that the Bidder will:

- (a) pay stamp duties (and any related fines, penalties and interest) in respect of the Ordinary Scheme and this deed poll, the performance of this deed poll and each transaction effected by or made under the Ordinary Scheme and this deed poll (including, without limitation, the acquisition or transfer of Ordinary Scheme Shares pursuant to the Ordinary Scheme); and
- (b) indemnify each Ordinary Scheme Shareholder against any liability arising from failure to comply with clause 7.1(a).

**7.2 Legal costs**

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

**7.3 Governing law and jurisdiction**

- (a) This deed poll is governed by the law in force in New South Wales, Australia.
- (b) The Bidder and the Guarantor irrevocably and unconditionally submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal that have jurisdiction to hear appeals from those courts in respect of any proceedings arising out of or in connection with this deed poll. The Bidder and the Guarantor irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

**7.4 Rights cumulative**

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

**7.5 Waiver**

The Bidder and the Guarantor may not rely on the words or conduct of any Ordinary Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Ordinary Scheme Shareholder granting the waiver.

## **7.6 Variation**

A provision of this deed poll or any right created under it may not be varied, altered or otherwise amended unless:

- (a) if before the First Court Date, the variation is agreed to in writing by PCL (on behalf of each Ordinary Scheme Shareholder); or
- (b) if on or after the First Court Date, the variation is agreed to in writing by PCL (on behalf of each Ordinary Scheme Shareholder) and the Court indicates that the variation would not of itself preclude approval of the Ordinary Scheme,

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

## **7.7 Assignment**

- (a) The rights and obligations created by this deed poll are personal to the Bidder, the Guarantor and each Ordinary Scheme Shareholder and cannot be assigned, encumbered or otherwise dealt with at law or in equity and no person may attempt or purport to do so without the prior written consent of the Bidder, the Guarantor or PCL (as applicable).
- (b) Any purported dealing in contravention of clause 7.7(a) is invalid.

## **7.8 Further action**

The Bidder the Guarantor must, at their own expense, do all things and execute all documents (on its own behalf or on behalf of each Ordinary Scheme Shareholder) necessary to give full effect to this deed poll and the transactions contemplated by it.

**Executed as a deed poll**

**Executed** by **Bellawest Pty Limited** by its )  
attorney under power of attorney dated )  
\_\_\_\_\_ in the presence of: )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
By executing this document the attorney  
states that the attorney has received no  
notice of revocation of the power of attorney

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of attorney (print)

**Executed** by **Lanox Pty Limited** )  
 )  
 )

\_\_\_\_\_  
Signature of sole director and secretary

\_\_\_\_\_  
Name  
(print)



## **Attachment 1 - Ordinary Scheme**

## **Attachment 5 - Summary of Bidder Note Terms**

### **1. Face Value**

The Bidder Notes will each have a face value representing a principal amount of \$12.60.

### **2. Interest**

- (a) Interest shall be payable on the principal amount of the Bidder Note at the rate of 6.5% per annum paid quarterly in arrears.
- (b) The Bidder (**Issuer**) may elect to capitalise Interest payable on any interest payment date.

### **3. Unsecured**

All Bidder Notes are issued as unsecured notes and rank pari passu with all other unsecured creditors of the Issuer.

### **4. Redemption**

- (a) Bidder Notes not previously redeemed must be redeemed by the Issuer by the end of the quarter on or following the second anniversary of the issue of the Notes (**Maturity Date**).
- (b) Each Bidder Note is redeemable by:
  - (i) the Noteholder giving the Issuer written notice; or
  - (ii) the Issuer giving to the Noteholder written notice,(each a Redemption Notice).
- (c) A Redemption Notice may only be given by a Noteholder following an event of default by the Issuer and with the prior approval of the Noteholders by ordinary resolution;
- (d) Other than a Redemption Notice in respect of redemption on the Maturity Date, a Redemption Notice may only be given by the Issuer during the period between 28 and 7 days prior to an interest payment date.
- (e) Unless the Issuer is redeeming all Bidder Notes, the Issuer must redeem the Bidder Notes pro-rata as between Noteholders in accordance with the number of Bidder Notes held by each Noteholder.

### **5. Participation in issue of securities and capital reorganisations**

The Bidder Notes carry no right:

- (a) to participate in any issue or offer of securities to the holders of shares or other securities of the Issuer; or
- (b) to be reconstructed or re-organised by reference to any reconstruction or re-organisation of the capital of the Issuer.

## **Attachment 6 - Summary of Target Note Terms**

### **1. Face Value**

The Target Notes will each have a face value representing a principal amount of \$6.50.

### **2. Interest**

- (a) Interest shall be payable on the principal amount of the Target Note at the rate of 7.5% per annum paid quarterly in arrears.
- (b) The Target (**Issuer**) may elect to capitalise Interest payable on any interest payment date.

### **3. Unsecured**

All Target Notes are issued as unsecured notes and rank pari passu with all other unsecured creditors of the Issuer.

### **4. Redemption**

- (a) Target Notes not previously redeemed must be redeemed by the Issuer by the end of the quarter on or following the fourth anniversary of the issue of the Target Notes (**Maturity Date**).
- (b) Each Target Note is redeemable by:
  - (i) the Noteholder giving the Issuer written notice; or
  - (ii) the Issuer giving to the Noteholder written notice,(each a Redemption Notice).
- (c) A Redemption Notice may only be given by a Noteholder following an event of default by the Issuer and with the prior approval of the Noteholders by ordinary resolution;
- (d) Other than a Redemption Notice in respect of redemption on the Maturity Date, a Redemption Notice may only be given by the Issuer during the period between 28 and 7 days prior to an interest payment date.
- (e) Unless the Issuer is redeeming all Target Notes, the Issuer must redeem the Target Notes pro-rata as between Noteholders in accordance with the number of Target Notes held by each Noteholder.

### **5. Participation in issue of securities and capital reorganisations**

The Target Notes carry no right:

- (a) to participate in any issue or offer of securities to the holders of shares or other securities of the Issuer; or
- (b) to be reconstructed or re-organised by reference to any reconstruction or re-organisation of the capital of the Issuer.