

## ASG Group announces recommended cash offer from Nomura Research Institute of A\$1.63 per share

- ASG Group Limited (ASX:ASZ, “**ASG**”) and Nomura Research Institute, Ltd. (TYO:4307, “**NRI**”) have entered into a Scheme Implementation Agreement (“**SIA**”) under which it is proposed that NRI will acquire 100% of the shares in ASG (“**Scheme**”)
- NRI has offered to acquire ASG for A\$1.63 cash per ASG share, valuing the diluted equity of ASG at ~A\$349 million<sup>1</sup>
- The offer price represents attractive premia of 20% to last close on 29 September 2016, 27% to the 10 trading day volume weighted average price (“**VWAP**”) and 38% to the 3 month VWAP
- The SIA contains conditions, including approval by ASG shareholders, the Court and the Foreign Investment Review Board (“**FIRB**”), an Independent Expert opining that the Scheme is in the best interests of ASG shareholders and other customary conditions being satisfied (unless waived)
- ASG’s Independent Board Committee (“**IBC**”) unanimously recommends that all ASG shareholders vote in favour of the Scheme in the absence of a superior proposal and subject to an Independent Expert opining that the Scheme is in the best interests of shareholders

### **Transaction Overview**

ASG today announces that it has entered into an SIA with NRI under which it is proposed that NRI will acquire all of the shares in ASG for A\$1.63 cash per share (“**Proposal**”) by way of a Scheme of Arrangement between ASG and its shareholders.

The Proposal values the diluted equity of ASG at ~A\$349 million<sup>1</sup> and will be funded through NRI’s existing cash reserves.

NRI is a Japanese-based consulting and IT solutions group listed on the Tokyo Stock Exchange with a market capitalisation of ~¥794 billion (equivalent to ~A\$10.2 billion) as at 29 September 2016. NRI currently employs approximately 10,000 people and its operations span Asia, Europe and North America.

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<sup>1</sup> Based on total ordinary shares outstanding plus 12.44m in-the-money options.

**IBC Recommendation and Benefits of the Scheme**

ASG has formed an IBC to assess the Proposal, comprising Non-Executive Directors Ian Campbell (Chairman of ASG), Steve Johnston (who has been appointed IBC Chairman) and Grant Pestell.

The IBC unanimously recommends that ASG shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to an Independent Expert opining that the Scheme is in the best interests of ASG shareholders.

Subject to these qualifications, each member of ASG's Board of Directors and senior executive team, who represent 11% of the total shares outstanding, separately intend to vote all ASG shares held by each of them in favour of the Scheme.

In recommending the Proposal, the IBC notes that the offer price of A\$1.63 per share represents premia of:

- 20% to last close on 29 September 2016;
- 27% to the 10 trading day VWAP; and
- 38% to the 3 month VWAP.

An Independent Expert will opine on whether the Scheme is in the best interests of ASG shareholders. A copy of the Independent Expert's report will be included in the Explanatory Booklet for the Scheme ("**Scheme Booklet**") that will be distributed to ASG shareholders.

Mr Campbell said NRI's offer was compelling and gave shareholders the opportunity to realise immediate value for their investment in ASG at a significant premium to current trading levels.

"After careful consideration and subject to my comments below, the IBC unanimously recommends that shareholders vote in favour of the Scheme," said Mr Campbell.

"This is a compelling offer that gives ASG shareholders the opportunity to realise immediate value for their investment, in the absence of a superior proposal and subject to an Independent Expert opining that the Proposal is in the best interests of ASG's shareholders."

"Balancing all factors, including the inherent risks and volatility in commercial markets, we believe based on current circumstances outlined in this announcement that shareholders should support the Proposal and vote in favour of the Scheme."

On current expectations, the meeting at which ASG shareholders will vote on the Scheme will be held in mid-December.

Mr Campbell said NRI planned to bring substantial new service capabilities and international experience to ASG.

“These capabilities and experience will broaden and deepen ASG’s offering to our customer base,” he said.

“It will also bring new professional opportunities for our staff of almost 1,000 people given NRI’s ambitions to grow the ASG business.”

NRI’s CEO Shingo Konomoto, said the acquisition of ASG represented an exciting opportunity to build NRI’s offering in terms of products / services and geography.

“We look forward to bringing our expanded technology capability and experience to ASG’s customers, enhancing the range of technology products and services provided to them so customers can run their businesses more efficiently and profitably,” said Mr Konomoto.

“In addition, we believe that under NRI’s ownership, ASG can continue to grow as a major competitive force in the Australian market. NRI also holds strong ambitions of taking ASG’s ‘New World’ service offering into new international markets.”

ASG’s Chief Executive Officer Geoff Lewis has entered into an executive services agreement (“ESA”) with ASG, at the request of NRI, which varies his current employment terms, effective on implementation of the Scheme. The majority of Mr Lewis’ employment terms have not materially changed, including his fixed annual remuneration. Mr Lewis’ long term incentive arrangements have not been agreed, however Mr Lewis will be eligible to receive such incentives, with the specific terms and conditions to be determined within the next three months. The material changes to Mr Lewis’ employment terms are disclosed in Schedule A to this announcement. Given NRI’s strong desire to maintain continuity at ASG, it wanted Mr Lewis to commit to remaining with the business.

### **Details of the Scheme**

ASG and NRI have entered into a SIA that sets out the terms under which the Scheme is to be implemented.

The implementation of the Scheme remains subject to some standard conditions, including:

- ASG shareholders approving the Scheme by the requisite majorities;
- Court approval of the Scheme, FIRB approval and other contractual and regulatory approvals;
- an Independent Expert opining that the Scheme is in the best interests of ASG shareholders; and

- no “material adverse change”, “prescribed occurrences” or termination of the SIA occurring.

Further details of the conditions are set out in the SIA, which is attached as Schedule B to this announcement.

Under the SIA, ASG will be bound by customary exclusivity mechanisms, including “no shop”, “no talk” and “matching right” provisions as set out in the attached SIA. A break fee and a reimbursement fee of A\$3.3 million will be payable by ASG or NRI respectively in certain circumstances.

### **Indicative Timetable and Next Steps**

No action is required by ASG shareholders at this time.

ASG anticipates that the Scheme Booklet will be sent to shareholders in November 2016. The Scheme Booklet will contain information relating to the proposed transaction, the reasons for the IBC’s recommendation, details of the shareholder meeting and other matters relevant to ASG shareholders’ vote on the Scheme.

It is currently anticipated that ASG shareholders will have the opportunity to vote on the Scheme at a meeting to be held in December 2016 and if successful, shareholders are expected to receive their cash consideration in late December.

The indicative timetable is set out below.

<b>Item</b>	<b>Estimated Timing</b>
Lodge Scheme Booklet and Independent Expert’s Report with ASIC for review	Late October
First Court Hearing Date	Early November
Despatch of Scheme Booklet	Early-Mid November
Scheme Meeting	Mid December
FIRB Approval	Mid December
Second Court Hearing Date	Mid December
Effective Date	Mid December
Record Date	Late December
Implementation Date / Despatch of Consideration	Late December

**Advisers**

Citi is acting as financial adviser and King & Wood Mallesons is acting as legal adviser to ASG in relation to the transaction.

Euroz is acting as corporate broker to ASG.

**Further Information**

ASG's IBC Chairman Steve Johnston and ASG's Chief Executive Officer Geoff Lewis will host a briefing call at 9am AWST this morning, 30 September 2016. Dial in details are as follows:

*Participant Information:*

Item	Estimated Timing
Dial-In Numbers	Australia Toll Free: 1800 268 560 Hong Kong Toll Free: 800 900 431 New Zealand Toll Free: 0800 466 125 Singapore Toll Free: 800 616 2330 United Kingdom Toll Free: 0808 234 7273 US Toll Free: 1 855 717 2650 International: +61 2 8047 9300
Participant PIN Code	960320#
Audience URL	<a href="http://event.onlineseminarsolutions.com/r.htm?e=1277911&amp;s=1&amp;k=8596F6A0BB682A0FD7819FB53AAACD0E">http://event.onlineseminarsolutions.com/r.htm?e=1277911&amp;s=1&amp;k=8596F6A0BB682A0FD7819FB53AAACD0E</a>  <i>This link gives participants access to the live event. This URL can be distributed for posting on various websites, or for inclusion in email notifications.</i>

ASG shareholders seeking further information should call the shareholder information line on 08 9420 5483.

**Contacts**

Investors and Analysts	Media
Steve Johnston, IBC Chairman: 08 9420 5420 Shareholder Information Line: 08 9420 5483	John McGlue, Castle Gates: 0417 926 915

**About ASG**

ASG is an award winning Australian IT business solutions provider, offering IT management and consulting services, business intelligence and thought leadership. Established in 1996, the company's goal is to provide innovative, high-quality and cost-effective services to its clients. ASG listed on the Australian Securities Exchange in 2002. For further information, visit [www.asggroup.com.au](http://www.asggroup.com.au).

**About NRI**

NRI is a leading global provider of system solutions and consulting services, including management consulting, system integration, and IT management and solutions for financial, manufacturing and service industries. Clients partner with NRI to expand businesses, design corporate structures and create new business strategies. NRI has approximately 10,000 employees in 37 offices globally and reports annual sales ¥421.4 billion. For more information, visit [www.nri.com/global](http://www.nri.com/global).

**Schedule A: Material Changes to ESA**

The material changes to Geoff Lewis' employment terms are as follows:

Item	Description
Termination events	Either ASG or Mr Lewis can terminate on 12 months' notice without cause or in certain other circumstances.
Restraint following cessation	Following cessation of his employment, Mr Lewis is restricted from competing with ASG or being involved in a business similar to the ASG core business in either Australia or New Zealand for a maximum period of 12 months.
Short term incentives (STIs)	Mr Lewis remains eligible to receive STI payments, however the amount he is entitled to be paid in respect of those STIs is now referable to the achievement of pre-established financial targets. Depending on the extent to which those targets are achieved, Mr Lewis may be eligible to receive an amount which is greater or less than that which applies under his existing arrangements.

**Schedule B: Scheme Implementation Agreement**



# Scheme Implementation Agreement

Dated 30 September 2016

**King & Wood Mallesons**

Level 30  
QV1 Building  
250 St Georges Terrace  
Perth WA 6000  
Australia  
T +61 8 9269 7000  
F +61 8 9269 7999  
DX 210 Perth  
[www.kwm.com](http://www.kwm.com)

# Scheme Implementation Agreement

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# Scheme Implementation Agreement

## Details

Parties	NRI and ASG	
NRI	Name	<b>Nomura Research Institute, Ltd.</b>
	Formed in	Tokyo, Japan
	Address	Marunouchi Kitaguchi Bldg. 1-6-5 Marunouchi, Chiyoda-ku Tokyo 100-0005, Japan
	Telephone	+81 3 5533 2111
	Email	h1-ueda@nri.co.jp
	Fax	+81 3 5533 3639
	Attention	Hajime Ueda
ASG	Name	<b>ASG Group Limited</b>
	ABN	57 070 045 117
	Formed in	Victoria, Australia
	Address	Level 9, 167 St Georges Terrace Perth, WA 6000
	Telephone	+61 8 9420 5420
	Email	peter@torrecorporate.com.au
	Fax	+61 8 9420 5422
	Attention	Peter Torre
Recitals	A	NRI proposes to acquire all ASG Shares pursuant to a members' scheme of arrangement under Part 5.1 of the Corporations Act.
	B	As mutually agreed between ASG and NRI, ASG intends to propose the Scheme and issue the Scheme Booklet.
	C	ASG and NRI have agreed to implement the Transaction on the terms and conditions of this agreement.
Governing law	Western Australia	
Date of agreement	See Signing page	

# Scheme Implementation Agreement

## General terms

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### 1 Definitions and interpretation

#### 1.1 Definitions

These meanings apply unless the contrary intention appears.

**Announcement Date** means the date on which the public announcement is made in accordance with clause 16.1.

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

**ASG Constitution** means the constitution of ASG.

**ASG Director** means a director of ASG.

**ASG Group** means ASG and its Subsidiaries.

**ASG Indemnified Parties** means ASG, its directors, officers, employees and advisers and its Related Bodies Corporate and the directors officers, employees and advisers of each of its Related Bodies Corporate.

**ASG Information** means all information contained in the Scheme Booklet other than the NRI Information and the Independent Expert's Report.

**ASG Share** means a fully paid ordinary share in the capital of ASG.

**ASG Shareholder** means each person registered in the Register as a holder of ASG Shares.

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

**ASX** means ASX Limited or Australian Securities Exchange, as appropriate.

**Authorised Officer** means:

- (a) in respect of NRI, each of Ayumu Ueno and Hajime Ueda, or any other person nominated by NRI to act as an Authorised Officer under this agreement and notified to ASG in writing; and
- (b) in respect of ASG, each of Stephen Johnston and Peter Torre, or any other person nominated by ASG to act as an Authorised Officer under this agreement and notified to NRI in writing.

**Break Fee** means A\$3,300,000.

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

**Competing Transaction** means any proposal, agreement, arrangement, reorganisation or transaction which, if entered into or completed, would mean a person (other than NRI or its Related Bodies Corporate), either alone or together with its associates, would:

- (a) directly or indirectly, acquire an interest or Relevant Interest in, become the holder of, or otherwise acquire or have a legal, beneficial or economic interest in:

- (i) 20% or more of the ASG Shares; or
- (ii) all, or a substantial or material part, of the ASG Group's business or assets;
- (b) acquire control of ASG or any of its material Subsidiaries, within the meaning of section 50AA of the Corporations Act; or
- (c) otherwise acquire or merge with ASG,

whether by way of takeover bid, scheme of arrangement, shareholder approved acquisition, capital reduction or buy-back, sale or purchase of assets, sale or purchase of shares, joint venture, reverse takeover, dual-listed company structure or other synthetic merger or other transaction or arrangement.

**Conditions Precedent** means the conditions precedent set out in Schedule 2.

**Confidentiality Deed** means the deed of that name between ASG and NRI dated 10 February 2016 as amended on 12 August 2016.

**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 or the Supreme Court of Western Australia, or such other Australian court of competent jurisdiction agreed to in writing by NRI and ASG.

**Data Room** means the documents contained in the virtual data room established by ASG containing information relating to the ASG Group (including all written responses provided in response to written questions or requests for information) and to which NRI and its Representatives have had access to in the period 15 August 2016 to the date of this agreement, an index of which is in the agreed form.

**Deed Poll** means a deed poll substantially in the form of Annexure B to this agreement, or such other form as agreed between NRI and ASG.

**Details** means the section of this agreement headed "Details".

**EBITDA** means earnings of the ASG Group before interest, tax, depreciation and amortisation after non-recurring items and non-operating items and calculated in accordance with the accounting policies and practices applied by ASG as at the date of this agreement, excluding abnormal items such as fees, costs and expenses associated with the Transaction.

**Effective**, when used in relation to the Scheme, means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

**Encumbrance** means any mortgage, lien, charge, pledge, encumbrance, assignment by way of security, security interest (including any 'security interest' within the meaning of section 12 of the Personal Property Securities Act 2009 (Cth)), title retention, preferential right or trust arrangement, contractual right of set-off, claim, covenant, or any other security arrangement or any other arrangement having the same effect, whether registered or unregistered.



**End Date** means 30 June 2017 or such other date as is agreed in writing by NRI and ASG.

**Exclusivity Period** means the period from and including the date of this agreement to the earliest of:

- (a) the termination of this agreement in accordance with its terms;
- (b) the Effective Date; and
- (c) the End Date.

**FATA** means the Foreign Acquisitions and Takeovers Act 1975 (Cth).

**FIRB** means the Foreign Investment Review Board.

**First Court Date** means the first day on which an application made to the Court, in accordance with item 14 of Schedule 4, for orders under section 411(1) of the Corporations Act convening the Scheme Meeting to consider the Scheme is heard.

**IBC** means the Independent Board Committee, being a subcommittee of the ASG Board, that has been established to consider the Transaction and which comprises Ian Campbell, Stephen Johnston and Grant Pestell.

**Implementation Date** means the fifth Business Day following the Record Date or such other date agreed in writing by ASG and NRI.

**Indebtedness** means any debt or other monetary liability (whether actual or contingent), together with all interest, fees and penalties accrued thereon, in respect of moneys borrowed or raised or any financial accommodation including under or in respect of any:

- (a) bill, bond, debenture, note or similar instrument;
- (b) acceptance, endorsement or discounting arrangement;
- (c) guarantee or letter of credit;
- (d) finance or capital lease;
- (e) swap, option, hedge, forward, futures or similar transaction;
- (f) redeemable share or security;
- (g) deferral of a purchase price or other payment in relation to the acquisition of any asset or service;
- (h) obligation to deliver assets or services paid for in advance by a financier, or any guarantee of the obligations of another person with respect to the foregoing;
- (i) all recourse and non-recourse liabilities and other liabilities (whether conditional or unconditional, present or future) arising from any transactions related to the assignment or securitisation of receivables for financing purposes to any third party, including all factoring agreements and similar agreements executed for the purpose of obtaining financing and including any amount raised pursuant to such agreements but which, in accordance with applicable accounting standards, have not otherwise been recognised on the balance sheet as a liability; or

- (j) all interest and non-interest bearing loans or other financing liabilities or obligations, including overdrafts and any other liabilities in the nature of borrowed money (whether secured or unsecured),

but excluding contingent liabilities arising from bank guarantees and surety bonds or any equivalent instrument provided by ASG as surety for contracts entered into in the ordinary course of business.

**Independent Expert** means the independent expert appointed by ASG in good faith under item 4 of Schedule 4.

**Independent Expert's Report** means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating an opinion whether or not the Transaction is in the best interests of ASG Shareholders and setting out its reasons for that opinion.

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);
- (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;
- (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 agreement);
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

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

**Losses** means all claims, demands, damages, losses, costs, expenses and liabilities.

**Material Adverse Change** means Specified Events which are not disclosed or properly taken into account in the preparation of the ASG Group's financial statements and which had they been so disclosed or properly taken into account, individually or when aggregated with all such events, would:

- (a) be reasonably likely to result in the value of the consolidated net assets of the ASG Group as to be reported in the ASG Group's financial statements for the year ending 30 June 2017 being reduced by at least A\$10,000,000, other than as a result of any non-cash impairment or changes to the ASG Group's deferred tax asset position; or

- (b) be reasonably likely to result in the value of EBITDA of the ASG Group as to be reported in the ASG's Group financial statements for the year ending 30 June 2017 being less than A\$28,300,000; or
- (c) be reasonably likely to increase the consolidated Net Indebtedness of the ASG Group as to be reported in the ASG Group's financial statements for the year ending 30 June 2017 above A\$2,900,000, calculated exclusive of the amount of any advisers' fees, costs and other related expenses incurred by ASG in undertaking the Transaction;

but does not include:

- (d) any matter, event or circumstance disclosed to, or actually known by, NRI or its Representatives before the date of this agreement (including as a result of disclosures made by ASG to ASX);
- (e) any matter, event or circumstance arising from changes in law or general economic, political or regulatory conditions in Australia or Japan or that affects or otherwise has an impact on Australia or Japan;
- (f) any change in accounting policy required by law;
- (g) any change occurring directly or indirectly as a result of any matter, event or circumstance required by this agreement, the Scheme or the transactions contemplated by them;
- (h) any change or disruption to the existing financial markets of Australia or Japan;
- (i) any change to currency exchange or commodity market conditions in Australia or Japan;
- (j) an event, change, matter, thing or condition that is reasonably likely to have resulted from, been caused by or occurred in response to, the Transaction or its announcement;
- (k) any matter, event or circumstance agreed to by NRI in writing; or
- (l) a change resulting directly from a general deterioration in equity markets, interest rates, exchange rates or credit spreads, that impacts the ASG Group and its competitors in a similar manner.

**Material Contract** means a contract or commitment with a customer or client of the ASG Group involving revenue of more than \$8 million annually in the financial year ended 30 June 2016.

**Net Indebtedness** means Indebtedness less the amount of cash, cash equivalents and short term interest bearing deposits, where the terms "cash" and "cash equivalents" are as defined in applicable accounting standards.

**NRI Indemnified Parties** means NRI, its Related Bodies Corporate and the directors, officers, employees and advisers of each of NRI and each of its Related Bodies Corporate.

**NRI Information** means the information regarding NRI provided by NRI to ASG in writing for inclusion in the Scheme Booklet, being:

- (a) information about NRI, its Related Bodies Corporate, businesses and interests and dealings in ASG Shares, its intentions for ASG Group's employees and funding; and

- (b) any other information as is required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or applicable ASIC Regulatory Guides that the parties agree is "NRI Information" and that is identified in the Scheme Booklet as such.

For the avoidance of doubt, NRI Information does not include information about the ASG Group (except to the extent it relates to any statement of intention of NRI relating to the ASG Group following the Effective Date).

**Option** means any option issued by ASG in respect of ASG Shares, whether vested or unvested.

**Optionholder** means each person who is a holder of an Option.

**Optionholder Deeds** means the deeds (in the form agreed by NRI and ASG) executed by each Optionholder that accepts the Option Cancellation Offer, NRI and ASG pursuant to which the Optionholder agrees, subject to the Scheme becoming Effective and any necessary ASX waivers being obtained, to the cancellation of each Option held in return for the Option Consideration.

**Option Cancellation Offer** has the meaning given in clause 4.5.

**Option Consideration** means, in respect of the Options, the consideration payable for the cancellation of the Options (in aggregate), as set out in each Optionholder Deed, which for:

- (a) each Option which is in the money, will be the Scheme Consideration payable per ASG Share less the relevant Option exercise price; and
- (b) each Option which is at or out of the money, will be the consideration agreed between the relevant Optionholder, NRI and ASG, up to a maximum of \$30,000 in aggregate to all Optionholders with Options at or out of the money.

**PPSR** means the register maintained for the purposes of the Personal Property Securities Act 2009 (Cth).

**Prescribed Event** means, except to the extent disclosed to NRI or its Representatives in the Data Room or otherwise disclosed to ASX prior to the date of this agreement, or expressly contemplated by this agreement or the Scheme, any of the events listed in Schedule 1 provided that a Prescribed Event listed in items 1 to 11 of Schedule 1 will not occur where ASG has first consulted with NRI in relation to the event and NRI has approved the proposed event in writing or has not objected to the proposed event within 5 Business Days of having being so consulted.

**Record Date** means 5.00pm on the fifth Business Day following the Effective Date or such other date as ASG and NRI agree in writing.

**Register** means the share register of ASG and **Registry** has a corresponding meaning.

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

**Regulatory Approval** means any approval of a Regulatory Authority to the Transaction or any aspect of it which is necessary or desirable for the implementation of the Transaction.

**Regulatory Authority** means:

- (a) ASX and ASIC;
- (b) the Takeovers Panel;
- (c) a government or governmental, semi-governmental or judicial entity or authority in Australia;
- (d) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government in Australia; and
- (e) any regulatory organisation established under statute in Australia.

**Regulatory Review Period** means the period from the date on which the Regulator's 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 the Scheme.

**Reimbursement Fee** means A\$3,300,000.

**Related Body Corporate** has the meaning it has in the Corporations Act.

**Relevant Interest** has the same meaning as given by the Corporations Act.

**Representative** means any person acting for or on behalf of a party including any director, officer, employee, agent, contractor or professional advisor of a party.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act under which all of the Scheme Shares will be transferred to NRI substantially in the form of Annexure A together with any amendment or modification made pursuant to section 411(6) of the Corporations Act.

**Scheme Booklet** means, in respect of the Scheme, the information booklet to be approved by the Court and despatched to ASG Shareholders which must:

- (a) include the Scheme, an explanatory statement complying with the requirements of the Corporations Act, notices of meeting and proxy forms; and
- (b) comply with the Corporations Act, Corporations Regulations, applicable ASIC Regulatory Guides and the Listing Rules.

**Scheme Consideration** means the consideration payable by NRI for ASG Shares under the Scheme and in accordance with clause 4.2.

**Scheme Meeting** means the meeting to be convened by the Court at which ASG Shareholders will vote on the Scheme.

**Scheme Participant** means a person registered as an ASG Shareholder at the Record Date.

**Scheme Shares** means all ASG Shares on issue as at the Record Date.

**Second Court Date** means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme.

**Specified Event** means any change, event, occurrence, matter or circumstance that:

- (a) occurs after the date of this agreement;

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

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

**Superior Proposal** means a bona fide Competing Transaction which the IBC, acting in good faith, and after receiving written advice from its external legal and financial advisers, determines is:

- (a) reasonably capable of being completed taking into account all aspects of the Competing Transaction and any timing considerations, conditions precedent and the identity of the proponent; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to ASG Shareholders (as a whole) than the Scheme, taking into account all terms and conditions of the Competing Transaction (including consideration, conditionality, funding, certainty and timing).

**Superior Proposal Period** means the period commencing on the date a Superior Proposal comes into existence and ending on the date that the Superior Proposal is withdrawn, terminated, rejected, expires or is otherwise concluded.

**Takeovers Panel** means the review body continuing in existence under section 261 of the Australian Securities and Investments Commission Act 2001 (Cth) and given powers under Part 6.10 of the Corporations Act.

**Timetable** means the timetable set out in Schedule 3.

**Transaction** means the acquisition by NRI of all ASG Shares through the implementation of the Scheme and other transactions contemplated by this agreement.

## 1.2 References to certain general terms

Unless the contrary intention appears, a reference in this agreement to:

- (a) **(variations or replacement)** a document (including this agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Regulatory Authority;

- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (j) **(calculation of time)** 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;
- (k) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(accounting terms)** an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (m) **(meaning not limited)** the words "include", "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (n) **(time of day)** time is a reference to time in Perth, Western Australia time.

### 1.3 Next day

If an act under this agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day.

### 1.4 Next Business Day

If an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

### 1.5 Headings

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

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## 2 Agreement to propose and implement Scheme

### 2.1 Target to propose Scheme

ASG agrees to propose the Scheme on and subject to the terms and conditions of this agreement.

### 2.2 Agreement to implement Transaction

The parties agree to implement the Transaction on the terms and conditions of this agreement.

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## **3 Conditions precedent**

### **3.1 Conditions precedent**

Subject to this clause 3, the obligations of NRI under clause 4.2 are conditional on the satisfaction (or waiver, if applicable) of each of the Conditions Precedent contained in Schedule 2 to the extent and in the manner set out in clauses 3.2 and 3.4, and the Scheme will not become Effective unless and until all such Conditions Precedent are satisfied or waived.

### **3.2 Benefit of certain Conditions Precedent**

A Condition Precedent may only be waived in writing by a party entitled to the benefit of that Condition Precedent as noted in the table set out in Schedule 2 and will be effective only to the extent specifically set out in that waiver.

A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.2 may do so in its absolute discretion.

The parties acknowledge that the Conditions Precedent set out in items 1(b), 2 and 3 of Schedule 2 cannot be waived.

### **3.3 Waiver of Conditions Precedent**

If either ASG or NRI waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause, then:

- (a) subject to subclause 3.3(b), that waiver precludes that party from suing the other for any breach of this agreement arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; but
- (b) if the waiver of the Condition Precedent is itself conditional and the other party:
  - (i) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with subclause 3.3(a); or
  - (ii) does not accept the condition, the Condition Precedent has not been waived.

### **3.4 Reasonable endeavours**

Each of ASG and NRI agree to use reasonable endeavours to procure that:

- (a) each of the Conditions Precedent:
  - (i) is satisfied as soon as is reasonably practicable after the date of this agreement; and
  - (ii) continues to be satisfied at all times until the last time that the relevant clause is to be satisfied (as the case may require); and
- (b) there is no occurrence within its control or the control of any of its Subsidiaries that would prevent the Conditions Precedent being satisfied.



### 3.5 FIRB application

- (a) NRI must lodge its application to the Treasurer of the Commonwealth of Australia in relation to the Condition Precedent in item 1(b) of Schedule 2 no later than 10 Business Days after execution of this agreement unless otherwise agreed in writing by ASG.
- (b) NRI must, prior to providing any written communications to the Treasurer (or his delegate) or FIRB regarding the Condition Precedent in item 1(b) of Schedule 2:
  - (i) consult with ASG with respect to the content of the communications; and
  - (ii) provide ASG with draft extracts of those parts of the communications that relate to the ASG Group, its business or its assets and make such amendments as ASG reasonably requires.
- (c) NRI will provide copies of any written communications sent to or received from FIRB to ASG promptly upon despatch or receipt (as the case may be).

### 3.6 Regulatory matters

Without limiting clause 3.4, each party:

- (a) **(Regulatory Approvals)** must promptly apply for all relevant Regulatory Approvals and take all steps it is responsible for as part of the approval process, including responding to requests for information from the relevant Regulatory Authority at the earliest practicable time;
- (b) **(representation)** subject to the requirements of the relevant Regulatory Authority, has the right to be represented and make submissions at any proposed meeting with any Regulatory Authority relating to any Regulatory Approval; and
- (c) **(consultation)** must consult with the other party in advance in relation to all communications (whether written or oral, and whether direct or via a Representative) with any Regulatory Authority relating to any Regulatory Approval (**Communications**) and, without limitation:
  - (i) provide the other party with drafts of any material written Communications to be sent to a Regulatory Authority and make such amendments as the other party reasonably requires; and
  - (ii) provide copies of any material written Communications sent to or received from a Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so.

### 3.7 Notices in relation to Conditions Precedent

Each party must:

- (a) **(notice of satisfaction)** keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of a Condition Precedent and promptly notify the other of satisfaction of a Condition Precedent and must keep the other informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;

- (b) **(notice of failure)** immediately give written notice to the other party upon becoming aware of a breach or non-fulfilment of a Condition Precedent, or of any event which will prevent a Condition Precedent being satisfied;
- (c) **(notice of waiver)** upon receipt of a notice given under paragraph (b), give written notice to the other party as soon as reasonably practicable (and in any event before 5.00pm on the day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question; and
- (d) **(certificates)** give to:
  - (i) the other (in draft) by 5:00pm on the day immediately prior to the Second Court Date; and
  - (ii) the Court (in final form), on the Second Court Date,
 a certificate signed by an Authorised Officer (in respect of the Conditions Precedent relating to it, other than the Conditions Precedent in items 1(b), 2 and 3 of Schedule 2) whether or not those Conditions Precedent have been satisfied or waived.

### 3.8 Effect of waiver or non-fulfilment

A waiver of breach or non-fulfilment in respect of one Condition Precedent does not constitute:

- (a) a waiver of the breach or non-fulfilment of any other Condition Precedent resulting from the same event; or
- (b) a waiver of the breach or non-fulfilment of that Condition Precedent resulting from any other event.

### 3.9 Consultation on failure of Conditions Precedent

If:

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

then the parties must consult in good faith with a view to determining whether:

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

### **3.10 Failure to agree**

If the parties are unable to reach agreement under clause 3.8 within 5 Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date):

- (a) subject to subclause 3.9(b), either party may terminate this agreement (and such termination will be in accordance with clause 15.1(g)(i)); or
- (b) if a Condition Precedent may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this agreement (and such termination will be in accordance with clause 15.1(g)(ii)),

in each case before 8.00am on the Second Court Date. A party will not be entitled to terminate this agreement pursuant to this clause 3.9 if the relevant Condition Precedent has not been satisfied or agreement cannot be reached as a result of:

- (c) a breach of this agreement by that party; or
- (d) a deliberate act or omission of that party (other than the exercise of a discretion contemplated in the Condition Precedent).

### **3.11 Regulatory Approval**

A Regulatory Approval and any approval from the Treasurer (or his delegate) for the purposes of the Condition Precedent in item 1(b) of Schedule 2 will be regarded as having been obtained notwithstanding that a condition or conditions may have been attached to that Regulatory Approval if that condition or those conditions (as the case may be) are reasonably satisfactory to ASG and NRI.

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## **4 Outline of Scheme**

### **4.1 Scheme**

Subject to clause 3.1 and the terms of this agreement, ASG must propose a scheme of arrangement under which on the Implementation Date:

- (a) all of the Scheme Shares will be transferred to NRI; and
- (b) each Scheme Participant will be entitled to receive the Scheme Consideration.

### **4.2 Scheme consideration**

Subject to the terms and conditions of this agreement and the Scheme, NRI covenants in favour of ASG (in its own right and as trustee for each Scheme Participant) that in consideration of the transfer to NRI of each Scheme Share held by a Scheme Participant, NRI will in accordance with the Scheme, on the Implementation Date, pay or procure the payment to ASG (as trustee for each Scheme Participant) of \$1.63 for each Scheme Share held by a Scheme Participant at the Record Date.

### **4.3 Undertakings held as trustee**

ASG acknowledges that the undertaking by NRI in clause 4.2 is given to ASG in its capacity as trustee for each Scheme Participant.

#### **4.4 Payment to Scheme Participants**

ASG must:

- (a) receive in a trust account in accordance with the Scheme and as trustee for each Scheme Participant, the payment referred to in clause 4.2;
- (b) pay to each Scheme Participant such moneys as each Scheme Participant is entitled to receive in accordance with the Scheme; and
- (c) otherwise comply with its obligations under the Scheme.

#### **4.5 Options**

ASG must make offers to each Optionholder as soon as reasonably practicable after the date of this agreement but in any event prior to the First Court Date (**Option Cancellation Offer**) and use its best endeavours to ensure that each Optionholder either:

- (a) exercises their Options, in which event ASG will ensure that the relevant ASG Shares are issued prior to the Record Date so as to be Scheme Shares; or
- (b) enters into an Optionholder Deed in a form reasonably acceptable to NRI and ASG under which they agree to cancel each of their Options, subject to any requisite ASX waiver being obtained and with effect from the Effective Date, for the Option Consideration.

#### **4.6 Option Consideration**

NRI covenants in favour of ASG (in its own right and as trustee for each Optionholder) that in consideration of the cancellation of each Option held by an Optionholder, NRI will, on the Implementation Date, provide ASG with sufficient funds to pay, or at the direction of ASG pay, to each Optionholder the Option Consideration payable under the terms of each Optionholder Deed.

#### **4.7 ASX waiver**

ASG will apply for, and use its best endeavours to procure, any ASX waiver necessary to give effect to the treatment of the Options as contemplated by this clause 4.

#### **4.8 No amendment to Scheme without consent**

ASG must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of NRI (such consent not to be unreasonably withheld).

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### **5 Co-operation and timing**

#### **5.1 General obligations**

ASG and NRI must each:

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

such meetings and by providing such information as in each case may reasonably be required),

to comply with their respective obligations in this agreement to produce the Scheme Booklet and to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable.

## **5.2 Access to people and information**

Between the date of this agreement and the earlier of the Implementation Date and the date this agreement is terminated, ASG must promptly provide NRI and its officers and advisers with reasonable access to ASG's officers and advisers and documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) which NRI reasonably requires for the purposes of:

- (a) applying for and pursuing all relevant Regulatory Approvals and any approval from the Treasurer (or his delegate) for the purposes of the Condition Precedent in item 1(b) of Schedule 2; and
- (b) planning the transition of the ASG Group and other matters relating to the conduct of the ASG Group following the Implementation Date.

## **5.3 Right to separate representation**

NRI is entitled to separate representation at all Court proceedings relating to the Transaction. Nothing in this agreement is to be taken to give ASG any right or power to make or give undertakings to the Court for or on behalf of NRI.

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# **6 Implementation obligations of the parties**

## **6.1 ASG's obligations**

ASG must comply with the obligations of ASG set out in Schedule 4 and take all reasonable steps to implement the Scheme as soon as is reasonably practicable having regard to the Timetable and in any event prior to the End Date.

## **6.2 NRI's obligations**

NRI must comply with the obligations of NRI set out in Schedule 5 and take all reasonable steps to assist ASG to implement the Scheme as soon as reasonably practicable having regard to the Timetable and in any event prior to the End Date.

## **6.3 Appointment and retirement of ASG Directors**

On the Implementation Date, but subject to NRI having provided the Scheme Consideration in accordance with clause 4.2, ASG must:

- (a) cause the appointment to the ASG Board of such number of persons as NRI may nominate (but to not exceed the maximum prescribed by the ASG constitution), subject to those persons providing a consent to act as a director of ASG; and
- (b) procure:
  - (i) the retirement from the ASG Board of such ASG Directors as NRI may nominate (if any); and
  - (ii) the provision of written resignation notices by retiring ASG Directors.

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## 7 Scheme Booklet

### 7.1 Preparation

Without limiting clauses 6.1 or 6.2:

- (a) **(preparation)**: ASG is generally responsible for the preparation of the Scheme Booklet but will provide drafts to and consult with NRI in accordance with clause 7.2; and
- (b) **(compliance)** without limiting clause 7.3, ASG must take all necessary steps to ensure that the Scheme Booklet:
  - (i) complies with the requirements of:
    - (A) the Corporations Act and the Corporations Regulations;
    - (B) applicable ASIC Regulatory Guides; and
    - (C) the Listing Rules; and
  - (ii) is not, having regard to applicable disclosure requirements, misleading or deceptive in any material respect (including because of any material omission).

### 7.2 Content of the Scheme Booklet

ASG must:

- (a) **(consult NRI)**:
  - (i) provide to NRI drafts of the Scheme Booklet for the purpose of enabling NRI to review and comment on those draft documents;
  - (ii) take all comments made by NRI into account acting reasonably and in good faith when producing a revised draft of the Scheme Booklet; and
  - (iii) provide to NRI a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable NRI to review the Regulator's Draft at least 5 Business Days before its submission;
- (b) **(amend the Scheme Booklet)** implement such changes to those parts of the Scheme Booklet relating to NRI which are provided in accordance with clause 7.2(a) as reasonably requested by NRI and prior to finalising the Regulator's Draft;
- (c) **(Regulatory Review Period)** during the Regulatory Review Period promptly provide to NRI, and include in a revised draft of the Scheme Booklet, any new information not included in the Regulator's Draft which is required by the Corporations Act, Corporations Regulations, applicable ASIC Regulatory Guides or the Listing Rules to be included in the Scheme Booklet;
- (d) **(ASIC review)** keep NRI informed of any matters raised by ASIC in relation to the Scheme Booklet and use all reasonable endeavours, in co-operation with NRI, to resolve any such matters;
- (e) **(NRI Information)** obtain approval from NRI for the form and context in which the NRI Information appears in the Scheme Booklet; and

- (f) **(Responsibility statement)** include in the Scheme Booklet a responsibility statement to the effect that:
  - (i) NRI is responsible for NRI Information contained in the Scheme Booklet (and no other part of the Scheme Booklet); and
  - (ii) ASG is responsible for the content of the Scheme Booklet other than, to the maximum extent permitted by law, the NRI Information and the Independent Expert's Report.

### 7.3 NRI Information

NRI:

- (a) must consult with ASG as to the content of the NRI Information;
- (b) consents to the inclusion of the NRI Information in the Scheme Booklet;
- (c) must take all necessary steps to ensure that the NRI Information:
  - (i) complies with the requirements of:
    - (A) the Corporations Act and the Corporations Regulations;
    - (B) applicable ASIC Regulatory Guides; and
    - (C) the Listing Rules; and
  - (ii) is not, having regard to applicable disclosure requirements, misleading or deceptive in any material respect (including because of any material omission); and
- (d) acknowledges that:
  - (i) ASG will not verify or edit that information in the Scheme Booklet; and
  - (ii) the Scheme Booklet will state that NRI is responsible for the NRI Information (and no other part of the Scheme Booklet).

### 7.4 Disagreement on content

If NRI and ASG disagree on the form or content of the Scheme Booklet, they must act reasonably and consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after a reasonable period of consultation, then:

- (a) if the disagreement relates to the form or content of the NRI Information contained in the Scheme Booklet, ASG will, acting in good faith, make such amendments as NRI reasonably requires; and
- (b) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the IBC will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet.

### 7.5 Verification

Each party must undertake appropriate verification processes for the information supplied by that party for the Scheme Booklet.

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## 8 Conduct of business

### 8.1 Overview

From the date of this agreement up to and including the Implementation Date, ASG must (and must ensure that its Related Bodies Corporate) conduct their businesses:

- (a) in the ordinary and proper course and in all material respects in accordance with applicable laws; and
- (b) in substantially the same manner and at the same locations as previously conducted.

### 8.2 Specific obligations

Without limiting clause 8.1 and other than with the prior approval of NRI (which approval must not be unreasonably withheld or delayed) or as required by this agreement, ASG must (and must ensure that its Related Bodies Corporate), during the period contemplated by clause 8.1, use all reasonable endeavours to:

- (a) **(business and assets)** maintain the condition of its business and assets materially in the manner maintained prior to the date of this agreement, including maintaining at least its current level of insurance over its business and assets;
- (b) **(officers and employees)** keep available the services of its current officers and employees;
- (c) **(relationships)** maintain and preserve its relationships and contracts with customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings;
- (d) **(Material Contracts)** comply in all material respects with all Material Contracts to which a member of the ASG Group is a party;
- (e) **(Information)** keep NRI informed of the conduct of the ASG Group's businesses by providing, in a timely manner, NRI with monthly updates on operational and financial performance of the ASG Group;
- (f) **(change of control provisions)**
  - (i) ensure that any contracts entered into by a member of the ASG Group after the date of this agreement and which involves revenue of more than \$8 million annually, do not contain any change of control or similar provisions or, where they do contain such provisions, that consent to the change of control that will result from the Transaction is provided by the counterparty concurrently with the relevant contract being entered into; and
  - (ii) identify any change of control provisions in any contracts entered into after the date of this agreement which involve revenue of more than \$8 million annually.
- (g) **(cash)** ensure there is no material decrease in the amount of cash in ASG other than as:
  - (i) used in the ordinary course of business; or
  - (ii) a result of reasonable costs incurred directly in relation to the transactions contemplated by the Transaction.



### 8.3 Prohibited actions

Other than with the prior approval of NRI (not to be unreasonably withheld) or as required by this agreement ASG must not, during the period referred to in clause 8.1:

- (a) **(no new ASG Shareholders)** issue any new ASG Shares (other than upon exercise of an option granted prior to the date of this agreement);
- (b) **(Material Contracts)** terminate a Material Contract;
- (c) **(Restrictions)** enter (or cause a Subsidiary of ASG to enter) into any agreement or arrangement with a third party in relation to the business of the ASG Group that would or would purport to restrict or restrain the ability of any member of the NRI group following the Implementation Date to operate in any line of business material to the NRI group or in any geographic region;
- (d) **(financial arrangements)** amend in any material respect any arrangement with its financial advisers in respect of the transactions contemplated by this agreement;
- (e) **(dividends)** announce, declare, distribute or pay any dividends bonus or share of its profits or assets or retained earnings or reserves or agree to return any capital or announcing any intention to do any of the above;
- (f) **(Prescribed Event)** take any action which is, or would be reasonably expected to give rise to, a Prescribed Event; or
- (g) **(agreement)** agree to do any of the matters set out above.

### 8.4 Exceptions to conduct of business restrictions

- (a) Nothing in clause 8 restricts the ability of ASG to take any action:
  - (i) expressly required or permitted by this agreement or the Scheme (including clause 4.5);
  - (ii) approved in writing by NRI;
  - (iii) which has been disclosed to NRI or its Representatives, or disclosed to ASX, before the date of this agreement as being an action that ASG may carry out between (and including) the date of this agreement and the Implementation Date;
  - (iv) where applicable, to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property); or
  - (v) which is necessary for ASG (or its Subsidiaries) to meet its legal obligations or contractual obligations.
- (b) NRI must not unreasonably withhold or delay any approval sought under clause 8.4(a)(ii).

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## **9 Releases**

### **9.1 ASG and ASG Indemnified Parties**

- (a) NRI releases its rights, and agrees with ASG that it will not make a claim, against any ASG Indemnified Party (other than ASG or its Related Bodies Corporate) as at the date of this agreement and from time to time in connection with:
  - (i) any breach of any representations and warranties of ASG or any other member of the ASG Group in this agreement; or
  - (ii) any disclosures containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the ASG Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 9.1(a) limits NRI's rights in clause 13.2 or its rights to terminate this agreement under clause 15.1.
- (b) This clause 9.1 is subject to any Corporations Act restriction and will be read down accordingly.
- (c) ASG receives and holds the benefit of this clause 9.1 to the extent it relates to each ASG Indemnified Party as trustee for each of them.

### **9.2 NRI and NRI Indemnified Parties**

- (a) ASG releases its rights, and agrees with NRI that it will not make a claim, against any NRI Indemnified Party (other than NRI or its Related Bodies Corporate) as at the date of this agreement and from time to time in connection with:
  - (i) any breach of any representations and warranties of NRI in this agreement; or
  - (ii) any disclosures containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the NRI Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 9.2(a) limits ASG's rights in clause 13.6 or its rights to terminate this agreement under clause 15.1.
- (b) This clause 9.2 is subject to any Corporations Act restriction and will be read down accordingly.
- (c) NRI receives and holds the benefit of this clause 9.2 to the extent it relates to each NRI Indemnified Party as trustee for each of them.

### **9.3 Deeds of access, indemnity and insurance**

- (a) Subject to the Scheme becoming Effective and the Transaction completing, NRI must procure that ASG and each member of the ASG Group preserve the indemnities and other rights under the deeds of indemnity access and insurance made by them in favour of their respective directors and officers from time to time and, in particular, must

not take any action which would prejudice or adversely affect any directors' and officers run-off insurance cover taken out prior to the Implementation Date.

- (b) NRI acknowledges that, notwithstanding any other provision of this agreement, ASG may, prior to the Implementation Date, enter into a run-off insurance policy in respect of any ASG Group directors and officers for a 7 year period from their respective retirement dates and that any actions to facilitate that insurance or in connection therewith (including paying any amounts to ensure such maintenance upfront) will not be a Prescribed Event or breach any provision of this agreement, provided that ASG has acted reasonably and in good faith and has consulted with NRI in respect of the entry into any such policy.
- (c) The undertakings contained in this clause 9.3 are subject to any restriction under the Corporations Act or any other applicable legislation and will be read down accordingly. ASG receives and holds the benefit of this clause 9.3, to the extent it relates to the directors and officers of ASG and other members of the ASG Group, as trustee for them.

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## **10 Exclusivity**

### **10.1 No continuing discussions**

ASG represents and warrants that from the date of this agreement, it has ceased all negotiations or discussions with any person in respect of any Competing Transaction, or which could reasonably be expected to encourage or lead to the making of an actual, proposed or potential Competing Transaction.

### **10.2 No-shop**

During the Exclusivity Period, ASG must ensure that neither it nor any of its Related Bodies Corporate or Representatives directly or indirectly:

- (a) solicits, invites, encourages or initiates any enquiries, negotiations or discussions; or
- (b) communicates any intention to do any of these things,

in relation to, or which may reasonably be expected to encourage or lead to the making of any offer, proposal or expression of interest from any person in relation to a Competing Transaction.

Nothing in this clause 10.2 prevents ASG from continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course of business in relation to the Scheme or its business generally.

### **10.3 No-talk**

Subject to clause 10.6, during the Exclusivity Period, ASG must ensure that neither it nor any of its Related Bodies Corporate or Representatives:

- (a) directly or indirectly participates in or continues any discussions or negotiations;
- (b) provides any non-public information (including due diligence information) to a third party; or

- (c) participates in negotiations or discussions with any other person regarding,

in relation to, or which may reasonably be expected to lead to the making of an actual, proposed or potential Competing Transaction, even if that person's Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by ASG or any of its Related Bodies Corporate or Representatives or the person has publicly announced the Competing Transaction.

#### **10.4 No due diligence**

Subject to clause 10.6, during the Exclusivity Period, ASG must ensure that neither it nor any of its Related Bodies Corporate or Representatives makes available to any other person, or permits any other person to receive, other than ASG and its Representatives (in the course of due diligence investigations or otherwise) any non-public information relating to ASG or any of its Related Bodies Corporate in connection with such person formulating, developing or finalising a Competing Transaction.

#### **10.5 Notice of approaches**

Subject to clause 10.6, during the Exclusivity Period, ASG must promptly, and in any event no later than 5 Business Days following the relevant event, inform NRI if it or any of its Related Bodies Corporate or Representatives receives or becomes aware of any:

- (a) approach or proposal, whether written or otherwise, direct or indirect, solicited or unsolicited, with respect to any actual, proposed or potential Competing Transaction; or
- (b) provision by ASG or any of its Related Bodies Corporate or Representatives of any information relating to ASG or any of its Related Bodies Corporate or any of their businesses or operations to any person in connection with or for the purpose of an actual, proposed or potential Competing Transaction,

and must disclose to NRI all material details of the Competing Transaction, including details of the proposed bidder or acquirer, together with the terms and conditions of the actual, proposed or potential Competing Transaction.

#### **10.6 Exceptions to no-talk and no due diligence**

Clauses 10.3, 10.4 and 10.5 do not apply to the extent they would otherwise prohibit ASG or the ASG Board from taking any action with respect to a bona fide Competing Transaction that was not solicited by ASG and not otherwise brought about as a result of a breach of ASG's obligations under this clause 10, where the IBC has determined, in good faith and acting reasonably that:

- (a) after consultation with its external legal and financial advisors, such a bona fide Competing Transaction could reasonably be considered to become a Superior Proposal; and
- (b) after receiving written advice from ASG's external legal advisers to the Scheme, that not undertaking such action would be reasonably likely to constitute a breach of the ASG Board's fiduciary or statutory obligations.

## 10.7 Matching right

(a) Until 31 March 2017, ASG:

- (i) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a third party or ASG proposes to undertake or give effect to an actual, proposed or potential Competing Transaction; and
- (ii) must use its best endeavours to procure that none of its directors changes or withdraws their recommendation in favour of the Scheme, publicly recommends or supports a Competing Transaction, or otherwise makes a public statement indicating that he or she no longer supports the Transaction,

unless:

- (iii) the IBC acting in good faith and in order to satisfy their statutory or fiduciary duties (having received written advice from ASG's external legal and financial advisers) determines that the Competing Transaction would or is likely to be a Superior Proposal;
  - (iv) ASG has provided NRI with the material terms and conditions of the Competing Transaction; and
  - (v) ASG has given NRI 5 Business Days after the provision of the information referred to in clause 10.7(a)(iv) to provide a matching or superior proposal (**Matching Offer**) to the terms of the Competing Transaction.
- (b) This clause 10.7 has repeating applications so that if any further proposal which constitutes a Competing Transaction is made after NRI has made a Matching Offer, ASG must comply with paragraph (a)(i) and (a)(ii) of this clause in respect of any new Competing Transaction, unless paragraphs (a)(iii) to (a)(v) (inclusive) apply.
- (c) The IBC must consider the Matching Offer and if it determines, acting in good faith, that the Matching Offer would provide an outcome that is at least as favourable to ASG Shareholders as a whole as the relevant Competing Transaction, ASG and NRI must use their best endeavours to agree any amendments to this agreement and the contents of the Scheme Booklet, which are reasonably necessary to reflect the Matching Offer, and to enter into an appropriate amending agreement to give effect to those amendments and to implement the Matching Offer, in each case, as soon as reasonably practicable.

## 10.8 Legal advice

ASG acknowledges that it has received legal advice on the operation of this clause 10.

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## 11 Break Fee

### 11.1 Background

This clause 11 has been agreed in circumstances where:

- (a) NRI and ASG believe that the Scheme will provide significant benefits to NRI, ASG and ASG Shareholders, and NRI and ASG acknowledge that,

if they enter into this agreement and the Scheme is subsequently not implemented, NRI will incur significant costs;

- (b) the parties have agreed that provision be made for the payments outlined in clause 11.2, without which NRI would not have entered into this agreement;
- (c) the parties believe that it is appropriate for both parties to agree to the payment referred to in this clause 11 to secure NRI's participation in the Transaction; and
- (d) both parties have received legal advice on this agreement and the operation of this clause 11.

## 11.2 Payment by ASG to NRI

ASG agrees to pay to NRI the amount of the Break Fee if the Scheme has not become effective and:

- (a) **(Competing Transaction)** a Competing Transaction is announced on or before the End Date and either:
  - (i) ASG enters into a legally binding agreement to undertake the Competing Transaction;
  - (ii) any member of the ASG Board recommends the Competing Transaction; or
  - (iii) at any time on or prior to the date three months after the end of the Exclusivity Period, the proponent of the Competing Transaction acquires control of ASG (within the meaning of section 50AA of the Corporations Act), or voting power or an economic interest in more than 50% of ASG Shares, more than 50% of the shares in any material Subsidiary, or acquires or obtains an economic interest in more than 50% (by value) of the assets (excluding cash), cash or business of the ASG Group;
- (b) **(change of recommendation)** on or before the End Date, any member of the IBC fails to recommend or support the Scheme or changes or withdraws his or her recommendation in favour of the Scheme, or any ASG Director publicly recommends or supports a Competing Transaction, or otherwise makes a public statement indicating that he or she no longer supports the Transaction, except:
  - (i) as a result of the Independent Expert's Report (or any update of, or revision, amendment or addendum to, that report) where that report states that in the opinion of the Independent Expert the Scheme is not in the best interests of ASG Shareholders; or
  - (ii) where ASG is entitled to terminate this agreement pursuant to clause 15.1(c)(ii) and has given the appropriate termination notice to NRI; or
- (c) **(material breach)** NRI validly terminates this agreement in accordance with:
  - (i) clause 15.1(c)(ii); or
  - (ii) clause 15.1(g)(ii) in respect of the Condition Precedent in item 5 (No Prescribed Event) of Schedule 2.

### **11.3 No amount payable if Scheme becomes Effective**

Notwithstanding the occurrence of any event under clause 11.2, no amount of the Break Fee is payable if the Scheme becomes Effective.

### **11.4 Timing of payment**

ASG must pay NRI the Break Fee (without set-off or withholding) within 20 Business Days of receipt by ASG of a demand for payment from NRI. The demand may only be made after the occurrence of an event referred to in clauses 11.2(a), 11.2(b), or 11.2(c). ASG can only ever be liable to pay the Break Fee once.

### **11.5 Nature of payment**

The Break Fee has been calculated as an amount to compensate NRI for:

- (a) advisory costs (including costs of advisers other than success fees);
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses; and
- (d) reasonable opportunity costs incurred by NRI in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives which NRI could have developed to further its business and objectives.

### **11.6 Reduction in Break Fee**

- (a) The Break Fee is reduced by an amount equal to the amount which is recovered by NRI as a result of any claim against ASG pursuant to any other remedies available to NRI under this agreement.
- (b) Where the Break Fee has already been paid, NRI must, within 2 Business Days of the event contemplated by clause 11.6(a) which would have reduced the amount payable, refund an amount to ASG which is equivalent to that calculated under clause 11.6(a).

### **11.7 ASG's limitation of liability**

Notwithstanding any other provision of this agreement the maximum liability of ASG to NRI under or in connection with this agreement (including in respect of any breach of the agreement), other than in the case of conduct designed or intended to frustrate the Transaction or fraud or wilful misconduct, will be the amount of the Break Fee.

### **11.8 Compliance with law**

- (a) This clause 11 does not impose an obligation on ASG to pay the Break Fee to the extent (and only to the extent) that the obligation to pay the Break Fee:
  - (i) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
  - (ii) is determined to be unenforceable or unlawful by a court,provided that all proper avenues of appeal and review, judicial and otherwise, have been exhausted. For the avoidance of doubt, any part

of that fee that would not constitute 'unacceptable circumstances' or that is not unenforceable or unlawful (as applicable) must be paid by ASG.

- (b) The parties must not make or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 11.8(a).

## **11.9 Survival**

This clause survives termination of this agreement.

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## **12 Reimbursement Fee**

### **12.1 Background**

This clause 12 has been agreed to in circumstances where:

- (a) each party believes that it and its shareholders will derive significant benefits from the implementation of the Transaction;
- (b) ASG has incurred and will further incur significant costs in connection with the Transaction;
- (c) ASG has requested that provision be made for the payment of the Reimbursement Fee by NRI and would not have entered into this agreement had such provision not been made;
- (d) NRI believes that it is appropriate to agree to pay the Reimbursement Fee to secure ASG's entry into this agreement; and
- (e) each party has received separate legal advice in relation to this agreement and the operation of this clause 12.

### **12.2 Payment of Reimbursement Fee**

Subject to clause 12.3 and without limiting the rights of ASG in respect of any other claims that may arise under this agreement, NRI must pay ASG (without set-off or withholding) within 20 Business Days after receipt by NRI of a written demand from ASG, the Reimbursement Fee if:

- (a) NRI is in material breach of this agreement (including in respect of a representation and warranty) and the circumstances giving rise to the breach have not been remedied by the end of the period specified in clause 15.1(c)(ii), and ASG terminates this agreement as a result; or
- (b) NRI does not pay the Scheme Consideration in accordance with the terms and conditions of the Scheme Implementation Agreement and the Deed Poll.

### **12.3 Payment Conditions**

- (a) Notwithstanding the occurrence of any event referred to in clause 12.2, the Reimbursement Fee will not be payable if the Scheme becomes Effective and the Scheme Consideration is paid by NRI.
- (b) The Reimbursement Fee must be refunded to NRI within 10 Business Days after the Scheme becomes Effective if it was paid to ASG before that time.
- (c) NRI can only ever be liable to pay the Reimbursement Fee once.



## **12.4 Nature of Payment**

The Reimbursement Fee has been calculated as an amount to compensate ASG for:

- (a) advisory costs (including costs of advisers other than success fees);
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses; and
- (d) reasonable opportunity costs incurred by ASG in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives which ASG could have developed to further its business and objectives.

## **12.5 Reduction in Reimbursement Fee**

- (a) The Reimbursement Fee is reduced by an amount equal to the amount which is recovered by ASG as a result of any claim against NRI pursuant to any other remedies available to ASG under this agreement.
- (b) Where the Reimbursement Fee has already been paid, ASG must, within 2 Business Days of the event contemplated by clause 12.5(a) which would have reduced the amount payable, refund an amount to NRI which is equivalent to that calculated under clause 12.5(a).

## **12.6 NRI's limitation of liability**

Notwithstanding any other provision of this agreement the maximum liability of NRI to ASG under or in connection with this agreement (including in respect of any breach of the agreement), other than in the case of fraud or wilful misconduct, will be the amount of the Reimbursement Fee.

## **12.7 Survival**

This clause survives termination of this agreement.

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# **13 Representations and warranties**

## **13.1 ASG's representations and warranties**

ASG represents and warrants to NRI that each of the statements set out in Schedule 6 is true and correct in all material respects as at the date of this agreement and until 5.00pm on the Business Day immediately prior to the Second Court Date.

## **13.2 ASG's indemnity**

ASG indemnifies the NRI Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 13.1 not being true and correct.

## **13.3 ASG warranty certificate**

ASG must provide to NRI on the Business Day immediately prior to the Second Court Date a certificate signed by a director of ASG and made in accordance with a resolution of the ASG Board stating, as at that date, that the representations or warranties given by ASG in clause 13.1 remain true and accurate or, if any such representation or warranty is not true and accurate as at

that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or inaccurate.

#### **13.4 Qualifications to ASG's representations and warranties**

The ASG representations and warranties under clause 13.1 and Schedule 6 are each subject to matters:

- (a) disclosed in the Data Room;
- (b) which were disclosed in a public document lodged with ASIC or announced on ASX, in the 2 years prior to the date of this agreement;
- (c) which would have been known to NRI if it (or its Representatives) had conducted searches in respect of the ASG Group 5 Business Days before execution of this agreement of:
  - (i) the PPSR; and
  - (ii) any public record maintained by the High Court, the Federal Court and the Supreme Court in every State and Territory in Australia; and
- (d) actually known to NRI and its directors, officers or employees.

#### **13.5 NRI's representations and warranties**

NRI represents and warrants to ASG that each of the statements set out in Schedule 7 is true and correct in all material respects as at the date of this agreement and until 5.00pm on the Business Day immediately prior to the Second Court Date.

#### **13.6 NRI's indemnity**

NRI indemnifies the ASG Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 13.5 not being true and correct.

#### **13.7 NRI warranty certificate**

NRI must provide to ASG on the Business Day immediately prior to the Second Court Date a certificate signed on behalf of NRI stating, as at that date, that the representations and warranties given by NRI in clause 13.5 remain true and accurate or, if any such representation or warranty is not true and accurate as at that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or inaccurate.

#### **13.8 Survival of representations**

Each representation and warranty referred to in clauses 13.1 and 13.5:

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

#### **13.9 Survival of indemnities**

Each indemnity in this agreement (including those in clauses 13.2 and 13.6):

- (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 agreement; and
- (d) survives the termination of this agreement.

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## 14 Court proceedings

### 14.1 Appeal process

If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, NRI and ASG must appeal the Court's decision to the fullest extent possible except to the extent that:

- (a) the parties otherwise agree in writing;
- (b) external legal counsel representing that party in relation to the Scheme indicates in writing that, in their opinion, an appeal would likely have less than a 50% prospect of success; or
- (c) there is, in the bona fide view of the IBC, a Superior Proposal which should be recommended in preference to the Scheme,

in which case either party may terminate this agreement in accordance with clause 15.1(g)(iii).

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## 15 Termination

### 15.1 Termination events

Without limiting any other provision of this agreement (including clauses 3.9 and 14.1), this agreement may be terminated at any time prior to 8.00am on the Second Court Date:

- (a) **(End Date)** by either party, if the Scheme has not become Effective on or before the End Date;
- (b) **(FIRB approval)** by ASG if NRI fails to satisfy the Condition Precedent in item 1(b) of Schedule 2 by 31 December 2016;
- (c) **(lack of support or breach)**
  - (i) by NRI if the IBC or any of its members changes or withdraws its recommendation to the Scheme Participants that they vote in favour of the Scheme, including any adverse modification to its recommendation, or otherwise makes a public statement indicating that it no longer supports the Transaction, or the IBC, ASG Board or any ASG Director recommends or supports a Competing Transaction; or
  - (ii) by either NRI or ASG if the other is in material breach of this agreement (including as a result of a material breach of a representation or warranty) provided that either NRI or ASG, as the case may be, has given notice to the other setting out the relevant circumstances and stating an intention to terminate and, the relevant circumstances continue to exist 10 Business Days

(or any shorter period ending at 8:00 am on the day before the Second Court Date) after the time such notice is given; or

- (d) **(Scheme not approved)** by either party if the resolution submitted to the Scheme Meeting is not approved by the requisite majorities;
- (e) **(restraint)** by either party if a Court or other Regulatory Authority has issued a final and non-appealable order, decree or ruling or taken other action which permanently restrains or prohibits the Scheme;
- (f) **(Material Adverse Change)** by NRI if a Material Adverse Change occurs; or
- (g) **(consultation or appeal failure)** in accordance with and pursuant to:
  - (i) clause 3.9(a);
  - (ii) clause 3.9(b); or
  - (iii) clause 14.1.

## 15.2 Termination

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

## 15.3 Effect of termination

In the event that a party terminates this agreement, or if this agreement otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this agreement, other than the obligations set out in clauses 11.8, 12.7, 13, 17 and 19, will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause 15.3 releases any party from liability for any pre-termination breach of this agreement.

## 15.4 Damages

- (a) In addition to the rights of termination under clause 15.1 but subject to clause 11.7 and clause 12.6 (as applicable) and clauses 15.4(b) and 15.4(c), where there is no appropriate remedy for the breach in the agreement (other than termination), the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this agreement.
- (b) Despite any other provision in this agreement, where an amount becomes payable to NRI under clause 11.2 and is actually paid to NRI (or is payable, but no demand is made under clause 11.2), NRI cannot make any Claim (other than a Claim under clause 11 or in respect of fraud or other conduct referred to in clause 11.7) against ASG which relates to the event that gave rise to the right to make a demand under clause 11.2.
- (c) Despite any other provision in this agreement, where an amount becomes payable to ASG under clause 12.2 and is actually paid to ASG (or is payable, but no demand is made under clause 12.2), ASG cannot make any Claim (other than a Claim under clause 12 or in respect of fraud or other conduct referred to in clause 12.6) against NRI which relates to the event that gave rise to the right to make a demand under clause 12.2.

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## **16 Public announcements**

### **16.1 Public announcement of Scheme**

Immediately after signing this agreement, ASG will issue a public announcement of the Transaction in agreed form.

### **16.2 Required disclosure**

- (a) Subject to clause 16.2(b), where a party is required by law, the Listing Rules or a memorandum of understanding with a Regulatory Authority to make any announcement or make any disclosure relating to a matter the subject of the Transaction, it may do so only after it has given the other party as much notice as reasonably possible and has consulted to the fullest extent possible in the circumstances with the other party and its legal advisers.
- (b) The obligations in clause 16.2(a) do not apply to any announcements by ASG which:
  - (i) relate to a Competing Proposal; or
  - (ii) are made during a Superior Proposal Period.

### **16.3 Other announcements**

Subject to clauses 16.1 and 16.2, no party may make any public announcement or disclosure in connection with the Transaction (including disclosure to a Regulatory Authority) other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable.

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## **17 Confidential Information**

Each party acknowledges and agrees that it continues to be bound by the Confidentiality Deed in respect of all information received by it from the other party on, before or after the date of this agreement, except that where there is a conflict or inconsistency between the terms of this agreement and the Confidentiality Deed, the terms of this agreement will prevail to the extent of the conflict or inconsistency.

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## **18 Notices and other communications**

### **18.1 Form - all communications**

Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be:

- (a) in writing;
- (b) signed by the sender (if an individual) or an Authorised Officer of the sender; and
- (c) marked for the attention of the person identified in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified) and:

- (i) in the case of communications to NRI, a copy must be sent to Mr Hiroyuki Kano, [hkano@claytonutz.com](mailto:hkano@claytonutz.com); and
- (ii) in the case of communications to ASG, a copy must be sent to [peter@torreccorporate.com.au](mailto:peter@torreccorporate.com.au) and [shaun.mcrobert@au.kwm.com](mailto:shaun.mcrobert@au.kwm.com).

## **18.2 Form - communications sent by email**

Communications sent by email need not be marked for attention in the way stated in clause 18.1 except that copies must be sent in accordance with sub-clauses 18.1(c)(i) and (ii). The email must state the first and last name of the sender.

Communications sent by email are taken to be signed by the named sender.

## **18.3 Delivery**

Communications must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by regular post (airmail if appropriate) to the address set out or referred to in the Details with a copy to be sent by email to the address set out or referred to in the Details;
- (c) sent by fax to the fax number set out or referred to in the Details;
- (d) sent by email to the address set out or referred to in the Details; or
- (e) given in any other way permitted by law.

However, if the intended recipient has notified a changed address, fax number or email address, then communications must be to that address, fax number or email address.

## **18.4 When effective**

Communications take effect from the time they are received or taken to be received under clause 18.5 (whichever happens first) unless a later time is specified.

## **18.5 When taken to be received**

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 Business Days after posting if sent from one country to another);
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email;
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

## **18.6 Receipt outside business hours**

Despite clauses 18.4 and 18.5, if communications are received or taken to be received under clause 18.5 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

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# **19 Goods and services tax (GST)**

## **19.1 Consideration GST exclusive**

Unless expressly stated otherwise in this agreement, all amounts payable or consideration to be provided under this agreement are exclusive of GST.

## **19.2 Payment of GST**

If GST is payable on any supply made under this agreement, for which the consideration is not expressly stated to include GST, the recipient agrees to pay to the supplier an additional amount equal to the GST payable at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided. However:

- (a) the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note;
- (b) if an adjustment event arises in respect of the supply, the additional amount must be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment; and
- (c) this clause 19.2 does not apply to the extent that the GST on the supply is payable by the recipient under Division 84 of the GST Act.

## **19.3 Reimbursements**

If a party is required under this agreement to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.

## **19.4 Calculation of payments**

If an amount payable under this agreement is to be calculated by reference to:

- (a) the price to be received for a taxable supply then, for the purposes of that calculation, the price is reduced to the extent that it includes any amount on account of GST; and
- (b) the price to be paid or provided for an acquisition then, for the purposes of that calculation, the price is reduced to the extent that an input tax credit is available for the acquisition.

## **19.5 Interpretation**

For the purposes of this clause 19:

- (a) a term which has a defined meaning in the GST Act has the same meaning when used in this clause 19;

- (b) **GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth); and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it is a separate supply.

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## **20 Miscellaneous**

### **20.1 Discretion in exercising rights**

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

### **20.2 Partial exercising of rights**

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

### **20.3 No liability for loss**

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

### **20.4 Approvals and consents**

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

### **20.5 Conflict of interest**

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

### **20.6 Remedies cumulative**

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

### **20.7 Variation and waiver**

A provision of this agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

### **20.8 No merger**

The warranties, undertakings and indemnities in this agreement do not merge on the Implementation Date.

### **20.9 Indemnities**

The indemnities in this agreement are continuing obligations, independent from the other obligations of the parties under this agreement and continue after this agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.



## **20.10 Enforceability**

For the purpose of this agreement:

- (a) ASG is taken to be acting as agent and trustee on behalf of and for the benefit of all ASG Indemnified Parties; and
- (b) NRI is taken to be acting as agent and trustee on behalf of and for the benefit of all NRI Indemnified Parties,

and all of those persons are to this extent taken to be parties to this agreement.

## **20.11 Further steps**

Each party agrees, at its own expense, to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the party and any other person intended to be bound under this agreement; or
- (b) to show whether the party is complying with this agreement.

## **20.12 Construction**

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

## **20.13 Costs**

Subject to clause 11, the parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this agreement and other related documentation except for stamp duty (including any costs incurred as a result of the operation of clause 14).

## **20.14 Stamp duty**

NRI agrees to pay all stamp duty (including fines and penalties) payable and assessed on this agreement or the Scheme and in respect of a transaction evidenced by this agreement or the Scheme.

## **20.15 Entire agreement**

Except for the Confidentiality Agreement, this agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

## **20.16 Assignment**

A party may not assign or otherwise deal with its rights under this agreement or allow any interest in them to arise or be varied in each case, without the consent of the other party.

## **20.17 No representation or reliance**

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement,

except for representations or inducements expressly set out in this agreement;

- (b) it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement; and
- (c) paragraphs 20.17(a) and 20.17(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

#### **20.18 Governing law**

This agreement is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

#### **20.19 Counterparts**

This agreement may consist of a number of copies, signed by one or more parties to the agreement. If so, the signed copies are treated as making up the one document. This agreement will take effect when all counterparts are received (whether by email or otherwise) by NRI at its address listed in the Details.

**EXECUTED** as an agreement

# Scheme Implementation Agreement

## Schedule 1 Prescribed Events

- 1 **(Conversion)** ASG converts all or any of its shares into a larger or smaller number of shares.
- 2 **(Reduction of share capital)** ASG (or any of its Subsidiaries) resolves to reduce its share capital in any way or reclassifies, combines, splits or redeems or repurchases directly or indirectly any of its shares.
- 3 **(Buy-back)** ASG (or any of its Subsidiaries):
  - (a) enters into a buy-back agreement; or
  - (b) resolves to approve the terms of a buy-back agreement under the Corporations Act.
- 4 **(Distribution)** ASG makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie).
- 5 **(Issuing or granting shares or options)** ASG or any of its Subsidiaries:
  - (a) issues shares (other than upon exercise of an option granted prior to the date of this agreement);
  - (b) grants a performance right or an option over its shares; or
  - (c) agrees to make such an issue or grant such an option,in each case to a person outside the ASG Group.
- 6 **(Securities or other instruments)** ASG or any of its Subsidiaries:
  - (a) issues securities or other instruments convertible into shares or debt securities; or
  - (b) agrees to issue securities or other instruments convertible into shares or debt securities,in each case to a person outside the ASG Group.
- 7 **(Constitution)** ASG adopts a new constitution or modifies or repeals its constitution or a provision of it.
- 8 **(Disposals)** ASG or any of its Subsidiaries disposes, or agrees to dispose of the whole or a substantial part of the ASG Group's business or property.
- 9 **(Acquisitions, disposals or tenders)** ASG or any of its Subsidiaries:
  - (a) acquires or disposes of;
  - (b) agrees to acquire or dispose of; or
  - (c) offers, proposes, announces a bid or tenders for (other than client bids or tenders in the ordinary course of ASG's business),

any business, assets, entity or undertaking the value of which exceeds \$3,000,000.

- 10     **(Encumbrances)** other than in the ordinary course of business and consistent with past practice, ASG or any of its Subsidiaries creates, or agrees to create, any Encumbrance over the whole or a substantial part of its business or property.
- 11     **(Insolvency)** ASG or any of its Related Bodies Corporate becomes Insolvent.
- 12     **(Listing)** ASG ceases to be listed on ASX.

# Scheme Implementation Agreement

## Schedule 2 Conditions Precedent (clause 3.1)

Condition	Party entitled to benefit
<p><b>1 Approvals or Restraints</b></p> <p>Before 8.00am on the Second Court Date:</p> <p>(a) <b>(ASIC)</b> ASIC has issued or provided such consents or approvals or have done such other acts which the parties agree are reasonably necessary or desirable to implement the Transaction;</p> <p>(b) <b>(FIRB approval)</b> either:</p> <p>(i) the Treasurer (or his delegate) has provided notice that there are no objections to the proposed Transaction either unconditionally or with conditions reasonably acceptable to NRI; or</p> <p>(ii) following notice of the proposed Transaction having been given by NRI to the Treasurer under the FATA, the Treasurer has ceased to be empowered to make any order because of lapse of time.</p> <p>(c) <b>(Regulatory Authority)</b> all other approvals of a Regulatory Authority which NRI and ASG agree are necessary to implement the Scheme are obtained;</p> <p>(d) <b>(Court orders)</b> no Court of competent jurisdiction has issued or taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, preliminary or permanent decision, notice of objection, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Transaction and no such order, decree, ruling, other action or refusal is in effect.</p>	<p>Both</p> <p>Cannot be waived</p> <p>Both</p> <p>Both</p>
<p><b>2 Scheme approval</b></p> <p>ASG Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities in accordance with the Corporations Act.</p>	<p>Cannot be waived</p>
<p><b>3 Court approval</b></p> <p>The Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.</p>	<p>Cannot be waived</p>
<p><b>4 Independent Expert</b></p> <p>The Independent Expert issues an Independent Expert's Report which concludes that the Scheme is in the best interests of Scheme Participants before the date on which the Scheme Booklet is registered with ASIC.</p>	<p>ASG</p>

Condition	Party entitled to benefit
<p><b>5      No Prescribed Event</b></p> <p>No Prescribed Event occurs between (and including) the date of this agreement and 8.00am on the Second Court Date.</p>	NRI
<p><b>6      No termination</b></p> <p>This agreement has not been terminated in accordance with clause 15.</p>	Both
<p><b>7      Material Contract consents</b></p> <p>Prior to the Second Court Date, an entity that is a party to a Material Contract which contains a provision requiring (either expressly or so as to avoid a right of termination or other right adverse to the relevant member of the ASG Group arising) ASG to seek that counterparty's consent to the change of control that would be caused by the Transaction, provides its consent to the Transaction either unconditionally or subject to conditions (including any amendments) that are not materially adverse to the ASG Group.</p>	NRI
<p><b>8      New information</b></p> <p>Between the date of this agreement and the Second Court Date ASG does not become aware of any information which:</p> <p>(a) ASG would be obliged to tell ASX immediately pursuant to ASX Listing Rule 3.1 if it was not relying upon the exception in ASX Listing Rule 3.1A; or</p> <p>(b) if the Transaction were proceeding by way of a takeover bid pursuant to Chapter 6 of the Corporations Act, it would be required to include in a target's statement pursuant to section 638 of the Corporations Act,</p> <p>where that information would, or would be reasonably likely to, result in a Material Adverse Change in relation to ASG after the date of this agreement.</p>	NRI
<p><b>9      Options</b></p> <p>Before the First Court Date, all Optionholders have either exercised their Options or entered into an Optionholder Deed as contemplated in clause 4.5 and NRI is satisfied that this has occurred.</p>	NRI

# Scheme Implementation Agreement

## Schedule 3 Timetable\* (clause 5.1)

Event	Date
Lodge Scheme Booklet with ASIC	late October 2016
Application in respect of the Court hearing to be held on the First Court Date, filed with the Court, served on ASIC	late October 2016
First Court Date	early November 2016
Printing and despatch of Scheme Booklet	early-mid November 2016
Scheme Meeting held	mid December 2016
FIRB approval anticipated to be received	mid December 2016
Second Court Date	mid December 2016
Lodge Court order with ASIC (Effective Date)	mid December 2016
Record Date	late December 2016
Implementation Date	late December 2016
Removal of ASG from ASX Official List	Late December, day after Implementation Date

**\* Timetable is indicative only**

# Scheme Implementation Agreement

## Schedule 4 ASG's obligations (clause 6.1)

- 1 **(Scheme Booklet)** as soon as practicable after the date of this agreement, prepare the Scheme Booklet (excluding NRI Information and the Independent Expert's Report) in accordance with all applicable laws and in particular the requirements of the Corporations Act, the Corporations Regulations, the Listing Rules and applicable ASIC Regulatory Guides.
- 2 **(Further ASG Information)** provide to NRI and Scheme Participants such further or new ASG Information as may arise after the Scheme Booklet has been sent which is required to be disclosed to ASG Shareholders (including as may be necessary to ensure that the ASG 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)), and to the extent it is reasonably practicable to do so, provide NRI with drafts of any documents that it proposes to issue to ASG Shareholders, consult with NRI in relation to the content of those drafts and (acting reasonably and in good faith) take into account any comments from NRI and its Representatives on those drafts.
- 3 **(Review of NRI Information)** review the drafts of the NRI Information prepared by NRI and provide comments on those drafts in good faith and in a timely manner.
- 4 **(Independent Expert)** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare its report for the Scheme Booklet.
- 5 **(Provide a copy of the report)** on receipt, provide NRI with a copy of any draft or final report received from the Independent Expert.
- 6 **(IBC recommendation)** state in the Scheme Booklet and the public announcement contemplated by clause 16.1 (on the basis of statements made to ASG by each member of the IBC) that each member of the IBC recommends that the Scheme Participants vote in favour of the Scheme subject only to there being no Superior Proposal and the Independent Expert concluding and continuing to conclude that the Scheme is in the best interests of ASG Shareholders.
- 7 **(ASG Director voting intentions)** state in the Scheme Booklet and the public announcement contemplated by clause 16.1 that each member of the ASG Board intends to vote any ASG Shares in which they have a Relevant Interest in favour of the Scheme and any other resolution submitted to ASG Shareholders for their approval in connection with the Transaction, subject only to the absence of a Superior Proposal and the Independent Expert concluding and continuing to conclude that the Scheme is in the best interests of ASG Shareholders.
- 8 **(Directors' voting)** use its reasonable endeavours to procure that:
  - (a) each member of the ASG Board votes any ASG Shares in which they have a Relevant Interest in favour of the Scheme and any other resolution submitted to ASG Shareholders for their approval in connection with the Transaction; and
  - (b) each member of the ASG Board does not change that voting intention,



unless a Superior Proposal arises or the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of ASG Shareholders.

- 9 **(Approval of draft Scheme Booklet)** after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a meeting of the IBC is convened to approve the draft Scheme Booklet to be provided to ASIC for its review.
- 10 **(Registry details)** subject to the terms of the Scheme:
  - (a) provide all necessary information about the Scheme Participants to NRI which NRI requires in order to assist NRI to solicit votes at the Scheme Meeting; and
  - (b) provide all necessary directions to the Registry to promptly provide any information that NRI reasonably requests in relation to the Register, including any sub-register, and, where requested by NRI, must procure such information be provided in such electronic form as is reasonably requested by NRI.
- 11 **(Proxies)** except to the extent that ASG would be in breach of Australian privacy laws, cause the Registry to report to ASG and NRI on the status of proxy forms received by the Registry for the Scheme Meeting:
  - (a) on the day that is 10 Business Days before the Scheme Meeting;
  - (a) on each Business Day following the day that is 10 Business Days before the Scheme Meeting, up to the deadline for receipt of proxy forms; and
  - (b) immediately following such deadline,and to provide such other information as it may receive concerning the voting intentions of ASG Shareholders to NRI.
- 12 **(Section 411(17)(b) statement)** apply to ASIC for the production of:
  - (a) a letter stating that ASIC does not intend to appear at the First Court Date; and
  - (b) a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme.
- 13 **(Court documents)** consult with NRI in relation to the content of the documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith comments on, and suggested amendments to, those documents from NRI and its Representatives.
- 14 **(Court application)** promptly apply to the Court for an order under section 411(1) of the Corporations Act directing ASG to convene the Scheme Meeting.
- 15 **(Approval of Scheme Booklet)** after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the IBC is convened to approve the Scheme Booklet for registration with ASIC and despatch to ASG Shareholders.
- 16 **(Registration of explanatory statement)** request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act.

- 17      **(Send Scheme Booklet)** send the Scheme Booklet to ASG Shareholders as soon as practicable after the Court orders ASG to convene the Scheme Meeting.
- 18      **(Scheme Meeting)** convene the Scheme Meeting in accordance with any such orders made by the Court and seek the approval of ASG Shareholders for the Scheme and, for this purpose, the directors of ASG must participate in reasonable efforts to promote the merits of the Scheme, including meeting with key Scheme Participants at the reasonable request of NRI.
- 19      **(Court order)** apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act.
- 20      **(Lodge)** lodge with ASIC an office copy of any such Court order approving the Scheme as approved by the ASG Shareholders at the Scheme Meeting in accordance with section 411(10) of the Corporations Act.
- 21      **(Scheme Consideration)** close the Share Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme and the Deed Poll.
- 22      **(Registration)** register all transfers of Scheme Shares to NRI on the Implementation Date.
- 23      **(Listing)** take all reasonable steps to maintain ASG's listing on ASX, notwithstanding any suspension of the quotation of ASG Shares, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC.
- 24      **(Delisting)** if directed by NRI at any time after the Effective Date, take all steps necessary for ASG to be removed from the official list of ASX on the day immediately following the Implementation Date, including lodging a request for removal with ASX prior to the Implementation Date and satisfying any conditions reasonably required by ASX for it to act on that request.
- 25      **(Other steps)** do all other things within its power as may be reasonably necessary to give effect to the Transaction on a basis consistent with this agreement and the orders of the Court approving the Scheme.

# Scheme Implementation Agreement

## Schedule 5 NRI's obligations (clause 6.2)

- 1 **(NRI Information)** prepare and promptly provide to ASG for inclusion in the Scheme Booklet such NRI Information as ASG reasonably requires to prepare and issue the Scheme Booklet (including any information required under the Corporations Act, Corporations Regulations, or applicable ASIC Regulatory Guides).
- 2 **(Further NRI Information)** promptly provide to ASG such further or new NRI Information as may arise after the Scheme Booklet has been sent until the date of the Scheme Meeting as may be necessary to ensure that the NRI 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).
- 3 **(Approval of draft for ASIC)** as soon as reasonably practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procuring that a meeting of the appropriate decision-making body of NRI is held to approve the NRI Information as being in a form appropriate for provision to ASIC for review.
- 4 **(Approval of Scheme Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procuring that a meeting of the appropriate decision-making body of NRI is held to approve the NRI Information as being in a form appropriate for despatch to ASG Shareholders, subject to approval of the Court.
- 5 **(Representation)** procuring that NRI is represented by counsel at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme, at which, through its counsel, NRI will undertake (if requested by the Court) to do all things and take all steps within its power that may be necessary to ensure the fulfilment of its obligations under the Scheme, and, to the extent that leave of the Court is required for NRI to be represented at those Court hearings, apply for that leave.
- 6 **(Independent Expert information)** 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.
- 7 **(Deed Poll)** prior to the Scheme Booklet being sent, sign and deliver the Deed Poll and obtain any due execution opinion required for provision to the Court, confirming the Deed Poll was duly executed by NRI and is binding on NRI in accordance with its terms.
- 8 **(Scheme consideration)** if the Scheme becomes Effective, procure the provision of the Scheme Consideration in the manner and amount contemplated by clause 4.2 and the terms of the Scheme.
- 9 **(Updates)** promptly provide ASG with details of any material developments with respect to NRI's funding arrangements to facilitate payment of the Scheme Consideration in accordance with clause 4.2. **(Share transfer)** if the Scheme becomes Effective, accept a transfer of the Scheme Shares as contemplated by clause 4.1(a).

- 10      **(Review of Scheme Booklet)** review the drafts of the Scheme Booklet prepared by ASG and provide comments on those drafts in good faith and in a timely manner.
- 11      **(Reasonable assistance)** without limiting any obligation of NRI under any other provision of this agreement, providing any assistance or information reasonably requested by ASG in relation to the Scheme.
- 12      **(Regulatory notifications)** without limiting any obligations of NRI under any other provision of this agreement, lodging with each Regulatory Authority within the relevant time periods all necessary documentation and filings required by law to be lodged by NRI in relation to the Scheme and the transactions contemplated by this agreement.
- 13      **(Other steps)** do all things within its power as may be reasonably necessary to give effect to the Transaction on a basis consistent with this agreement and the orders of the Court approving the Scheme.

# Scheme Implementation Agreement

## Schedule 6 ASG's representations and warranties (clause 13.1)

- 1 **(Incorporation)** it is a valid existing corporation registered under the laws of its place of incorporation.
- 2 **(Execution)** the execution and delivery of this agreement has been properly authorised by all necessary corporate actions of ASG.
- 3 **(Corporate power)** it has full corporate power and lawful authority to execute and deliver this agreement and to consummate and perform or cause to be performed its obligations under this agreement in accordance with its terms.
- 4 **(Binding obligations)** (subject to laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations on it.
- 5 **(No conflict)** this agreement does not and will not conflict with or result in the breach of or default under any provision of its constituent documents or any material term or provision of any order, judgment, or law to which it is a party or is subject to or bound.
- 6 **(ASG Information)** the ASG Information and the Scheme Booklet (other than the NRI Information and the Independent Expert's Report), as at the date of the Scheme Booklet will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, the Listing Rules and applicable ASIC Regulatory Guides.
- 7 **(Reliance)** the ASG Information contained in the Scheme Booklet will be included in good faith and on the understanding that NRI and its directors will rely on that information for the purposes of considering and approving the NRI Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme.
- 8 **(Further information)** ASG will, as a continuing obligation, provide to NRI all such further or new information which may arise after the date of the Scheme Booklet until the date of the Scheme Meeting which may be necessary to ensure that there would be no breach of clause 6 if it applied as at the date upon which that information arose.
- 9 **(Disclosure)** the information disclosed in the Data Room or in response to requests for further information issued by NRI or its Representatives has been collated and prepared in good faith and with all reasonable care and skill and, so far as ASG is aware, the Data Room materials are materially true and accurate.
- 10 **(Continuous disclosure)** ASG is in compliance in all material respects with its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure.
- 11 **(Provision of information to Independent Expert)** all information provided by or on behalf of ASG to the Independent Expert to enable the Independent Expert's report to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that, to the extent accepted by the Independent Expert, the Independent Expert will rely

upon that information for the purpose of preparing the Independent Expert's report.

12 **(Compliance)** so far as the IBC is aware, ASG and its Subsidiaries have complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over them and have all material licenses, authorisations, permits and franchises necessary for them to conduct their respective businesses as presently being conducted.

13 **(No default)** neither it nor any of its Subsidiaries:

- (a) is in default under any document, agreement or instrument binding on it or its assets; nor
- (b) has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party thereto a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect,

in each case where such default, occurrence or event would result in a Material Adverse Change.

14 **(Securities)** ASG's issued securities as at the date of this agreement are:

201,781,465	ASG Shares
30,000	Unlisted options exercisable at \$0.87 on or before 31 December 2016.
10,000	Unlisted options exercisable at \$0.79 on or before 30 June 2017.
20,000	Unlisted options exercisable at \$0.79 on or before 30 July 2017.
100,000	Unlisted options exercisable at \$1.19 on or before 30 December 2017.
60,000	Unlisted options exercisable at \$1.74 on or before 30 June 2018.
80,000	Unlisted options exercisable at \$1.01 on or before 30 June 2019.
20,000	Unlisted options exercisable at \$1.72 on or before 30 June 2017.
60,000	Unlisted options exercisable at \$0.73 on or before 30 December 2019.
50,000	Unlisted options exercisable at \$1.63 on or before 30 December 2019.

60,000	Unlisted options exercisable at \$0.91 on or before 30 June 2019.
80,000	Unlisted options exercisable at \$1.43 on or before 31 December 2019.
1,000,000	Unlisted employee options exercisable at \$0.47 expiring on 1 August 2019 subject to certain performance based vesting conditions.
3,500,000	Unlisted employee options exercisable at \$0.44 expiring on 29 April 2020 subject to certain performance based vesting conditions.
5,000,000	Related party options exercisable at \$0.87 and expiring on 29 April 2020 subject to certain vesting conditions.
2,000,000	Unlisted employee options exercisable at \$1.09 expiring on 30 September 2021 subject to certain performance based vesting conditions.
500,000	Unlisted employee options exercisable at \$1.13 on the first exercise date of 1 July 2019 and the last exercise date 1 July 2022 and subject to certain performance based vesting conditions.

and it has not issued or agreed to issue any other securities or instruments which are still outstanding and which may convert into ASG Shares.

- 15 **(No Encumbrances)** there is no material Encumbrance over all or any of its assets or revenues other than as disclosed to NRI prior to the date of this agreement.
- 16 **(Insolvency)** it is not Insolvent.
- 17 **(Material Contracts)** on the date of this agreement, neither it nor any of its Subsidiaries is in material default under any Material Contract to which a member of the ASG Group is a party nor has anything occurred which is or would be with the giving of notice or lapse of time constitute an event of default, prepayment or similar event, or give another party thereto a termination right or right to accelerate any material right or obligation, under any such Material Contract with such an effect.

# Scheme Implementation Agreement

## Schedule 7 NRI's representations and warranties (clause 13.5)

- 1 **(Incorporation)** it is a valid existing corporation registered under the laws of its place of incorporation.
- 2 **(Execution)** the execution and delivery of this agreement has been properly authorised by all necessary corporate actions of NRI.
- 3 **(Corporate power)** it has full corporate power and lawful authority to execute and deliver this agreement and to consummate and perform or cause to be performed its obligations under this agreement in accordance with its terms.
- 4 **(Binding obligations)** (subject to laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations on it.
- 5 **(No conflict)** this agreement does not and will not conflict with or result in the breach of or default under any provision of its constituent documents or any material term or provision of any order, judgment, or law to which it is a party or is subject to or bound.
- 6 **(Reliance)** the NRI Information provided to ASG for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that ASG and its directors will rely on that information for the purposes of including that information in the Scheme Booklet.
- 7 **(NRI Information)** the NRI Information provided in accordance with this agreement and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any statement which is materially misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements.
- 8 **(Further information)** NRI will, as a continuing obligation, provide to ASG all such further or new information which may arise after the date of the Scheme Booklet until the date of the Scheme Meeting which may be necessary to ensure that there would be no breach of clause 7 if it applied as at the date on which that information arose.
- 9 **(Provision of information to Independent Expert)** all information provided by or on behalf of NRI to the Independent Expert to enable the Independent Expert's report to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that, to the extent accepted by the Independent Expert, the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's report.
- 10 **(Regulatory Approvals)** other than the FIRB approval required to be obtained under item 1(b) of Schedule 2, no approvals of any government, governmental authority, minister, department or organisation of any government, or any regulatory organisation established under statute in Japan are required to be obtained by NRI in order to execute and perform its obligations under this agreement (including payment of the Scheme Consideration).
- 11 **(Insolvency)** it is not Insolvent.
- 12 **(Scheme Consideration)** it has sufficient funds available to it on an unconditional basis to, if the Scheme becomes Effective, satisfy its payment obligations to pay the Scheme Consideration under the Scheme and the Deed Poll.



# Scheme Implementation Agreement

## Signing page

**DATED:** 30 September 2016

**SIGNED by Ayumu Ueno,**  
**Representative Director for NOMURA**  
**RESEARCH INSTITUTE, LTD.** in the  
presence of:

[Signed 'Takahiro Miyata']

.....  
Signature of witness

TAKAHIRO MIYATA

.....  
Name of witness (block letters)

[Signed 'Ayumu Ueno']

.....  
By executing this document the  
signatory warrants that the signatory is  
duly authorised to execute this  
document on behalf of Nomura  
Research Institute, Ltd.

**EXECUTED by ASG GROUP LIMITED**  
(ACN 070 045 117) in accordance with  
section 127(1) of the Corporations Act  
2001 (Cth) by authority of its directors:

[Signed 'Stephen Johnston']

.....  
Signature of director

STEPHEN JOHNSTON

.....  
Name of director (block letters)

[Signed 'Grant Pestell']

.....  
Signature of director

GRANT PESTELL

.....  
Name of director

# **Scheme Implementation Agreement**

## **Annexure A - Scheme**

# Scheme of Arrangement

Dated

2016

ASG Group Limited ABN 57 070 045 117 (**ASG**)

Scheme Participants

**King & Wood Mallesons**

Level 30  
QV1 Building  
250 St Georges Terrace  
Perth WA 6000  
Australia  
T +61 8 9269 7000  
F +61 8 9269 7999  
DX 210 Perth  
[www.kwm.com](http://www.kwm.com)

# Scheme of Arrangement

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# Scheme of Arrangement

## Details

<b>Parties</b>	<b>ASG and Scheme Participants</b>	
<b>ASG</b>	Name	<b>ASG Group Limited</b>
	ABN	57 070 045 117
	Formed in	Victoria, Australia
	Address	Level 9, 167 St Georges Terrace Perth, WA 6000 Australia
	Telephone	+61 8 9420 5420
	Fax	+61 8 9420 5422
	Attention	Peter Torre
<b>Scheme Participants</b>	Name	Each person registered as a holder of fully paid ordinary shares in ASG as at 5.00pm on the Record Date
<b>Governing law</b>	Western Australia	

# General terms

---

## 1 Definitions and interpretation

### 1.1 Definitions

In this Scheme:

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

**ASG Share** means a fully paid ordinary share in the capital of ASG.

**ASG Shareholder** means each person recorded in the Register as a holder of ASG Shares.

**ASX** means ASX Limited (ABN 98 008 624 691) or the Australian Securities Exchange, as appropriate.

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

**CHESS** means the Clearing House Electronic Subregister System managed by ASX.

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

**Court** means the Federal Court of Australia or the Supreme Court of Western Australia, or such other Australian court of competent jurisdiction agreed to in writing by NRI and ASG.

**Deed Poll** means the deed poll dated [●] executed by NRI substantially in the form of Annexure B of the Scheme Implementation Agreement or as otherwise agreed by NRI and ASG under which NRI covenants in favour of each Scheme Participant to perform its obligations under this Scheme.

**Effective** means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

**Encumbrance** means any mortgage, lien, charge, pledge, assignment by way of security, security interest (including any 'security interest' within the meaning of section 12 of the Personal Property Securities Act 2009 (Cth)), title retention, preferential right or trust arrangement, claim, covenant or any other security arrangement having the same effect.

**End Date** means 30 June 2017 or such other date as is agreed in writing by NRI and ASG.

**Immediately Available Funds** means a bank cheque or other form of cleared funds acceptable to ASG, acting reasonably.

**Implementation Date** means the fifth Business Day following the Record Date or such other date as is agreed in writing by NRI and ASG.

**Listing Rules** means the Listing Rules of the ASX.

**NRI** means Nomura Research Institute, Ltd.

**Record Date** means 5.00pm (Perth time) on the fifth Business Day following the Effective Date or such other date as ASG and NRI agree.

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

**Registered Address** means, in relation to an ASG Shareholder, the address shown in the Register.

**Regulatory Authority** means:

- (a) ASX and ASIC;
- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute.

**Scheme** means this scheme of arrangement between ASG and Scheme Participants under which all of the Scheme Shares will be transferred to NRI under Part 5.1 of the Corporations Act as described in clause 5.2 of this Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by ASG and NRI in accordance with clause 8.2 of this Scheme.

**Scheme Consideration** means \$1.63 paid in respect of each Scheme Share to be provided by NRI to Scheme Participants under the terms of this Scheme for the transfer to NRI of their Scheme Shares.

**Scheme Implementation Agreement** means the scheme implementation agreement dated [●] 2016 between ASG and NRI under which, amongst other things, ASG has agreed to propose this Scheme to ASG Shareholders, and each of NRI and ASG has agreed to take certain steps to give effect to this Scheme.

**Scheme Meeting** means the meeting of ASG Shareholders, ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act at which ASG Shareholders will vote on this Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**Scheme Participant** means each person who is an ASG Shareholder as at 5.00pm on the Record Date.

**Scheme Share** means an ASG Share held by a Scheme Participant as at the Record Date.

**Scheme Transfer** means, for each Scheme Participant, a duly completed and executed proper instrument of transfer of the Scheme Shares held by that Scheme Participant for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all Scheme Shares.

**Second Court Date** means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme.



**Trust Account** means the Australian dollar trust account operated by ASG to hold the Scheme Consideration on trust for Scheme Participants for the purpose of paying the Scheme Consideration to the Scheme Participants in accordance with clause 6.3 of this Scheme, as nominated by ASG at least 5 Business Days prior to the Implementation Date.

## 1.2 Reference to certain general terms

Unless the contrary intention appears, a reference in this Scheme to:

- (a) **(variations or replacement)** a document, agreement (including this document) or instrument is a reference to that document, agreement or instrument as amended, consolidated, supplemented, novated or replaced;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(party)** a party means a party to this Scheme;
- (g) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Regulatory Authority;
- (h) **(executors, administrators, successors)** a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (j) **(calculation of time)** 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;
- (k) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (m) **(time of day)** time is a reference to Perth, Western Australia time.

## 1.3 Headings

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

---

## **2 Preliminary**

### **2.1 ASG**

ASG is:

- (a) a public company limited by shares;
- (b) incorporated in Australia and registered in Victoria, Australia; and
- (c) admitted to the official list of the ASX and ASG Shares are officially quoted on the stock market conducted by ASX.

As at [●] 2016, ASG's issued securities comprise:

- (a) [201,781,465] ASG Shares; and
- (b) [12,570,000] unlisted options.

### **2.2 NRI**

NRI is a company incorporated in Japan and listed on the Tokyo Stock Exchange.

### **2.3 If Scheme becomes Effective**

If this Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share to NRI, ASG will procure NRI to provide the Scheme Consideration to Scheme Participants in accordance with the terms of this Scheme and the Deed Poll;
- (b) all Scheme Shares, and all the rights and entitlements attaching to them, will be transferred to NRI on the Implementation Date; and
- (c) ASG will enter the name of NRI in the Register in respect of all Scheme Shares transferred to NRI in accordance with the terms of this Scheme.

### **2.4 Scheme Implementation Agreement**

By executing the Scheme Implementation Agreement, subject to the terms and conditions of the Scheme Implementation Agreement, ASG and NRI have agreed to implement the terms of this Scheme.

### **2.5 Deed Poll**

This Scheme attributes actions to NRI but does not itself impose an obligation on NRI to perform those actions. NRI has agreed by executing the Deed Poll to perform (or procure the performance of) its obligations as contemplated by this Scheme, including to provide the Scheme Consideration to Scheme Participants.

---

## **3 Conditions precedent**

### **3.1 Conditions precedent to Scheme**

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

- (a) as at 8.00am on the Second Court Date, neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms;
- (b) all of the conditions precedent in schedule 2 of the Scheme Implementation Agreement having been satisfied or waived (other than the condition precedent relating to the approval of the Court in item [3]) in accordance with the terms of the Scheme Implementation Agreement;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, ASG and NRI having accepted in writing any such modification or condition made or required by the Court under section 411(6) of the Corporations Act and any such conditions having been satisfied or waived; and
- (d) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

### **3.2 Conditions precedent and operation of clauses 5 and 6**

The satisfaction of each condition of clause 3.1 of this Scheme is a condition precedent to the operation of clauses 5 and 6 of this Scheme.

### **3.3 Certificate in relation to conditions precedent**

ASG and NRI must each 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 set out in clause 3.1(a) and 3.1(b) of this Scheme have been satisfied or waived as at 8.00am on the Second Court Date.

The certificates referred to in this clause 3.3 will constitute conclusive evidence of whether the conditions precedent referred to in clause 3.1(a) and 3.1(b) of this Scheme have been satisfied or waived as at 8.00am on the Second Court Date.

---

## **4 Scheme**

### **4.1 Effective Date**

Subject to clause 4.2, this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

### **4.2 End Date**

This 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 Scheme Implementation Agreement or the Deed Poll is terminated in accordance with its terms,

unless ASG and NRI otherwise agree in writing.

---

## **5 Implementation of Scheme**

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

ASG will lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 5.00pm on the first Business Day after the day on which the Court approves this Scheme or such later time as NRI and ASG agree in writing.

### **5.2 Transfer and registration of Scheme Shares**

On the Implementation Date, but subject to the provision of the Scheme Consideration for the Scheme Shares in accordance with clauses 6.1 to 6.3 and 6.5(a) of this Scheme (but subject to clause 6.5(b)) and NRI having provided ASG with written confirmation of the payment contemplated by clause 6.2:

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to NRI without the need for any further act by any Scheme Participant (other than acts performed by ASG as attorney and agent for Scheme Participants under this Scheme) by:
  - (i) ASG delivering to NRI a duly completed and executed Scheme Transfer executed on behalf of the Scheme Participants by ASG; and
  - (ii) NRI duly executing the Scheme Transfer and delivering it to ASG for registration; and
- (b) immediately following receipt of the duly executed Scheme Transfer, ASG must enter the name of NRI in the Register in respect of all Scheme Shares transferred to NRI in accordance with the terms of this Scheme.

### **5.3 Entitlement to Scheme Consideration**

On the Implementation Date, in consideration for the transfer to NRI of the Scheme Shares, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clause 6 of this Scheme.

### **5.4 Title and rights in ASG Shares**

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clauses 5.2 and 6.3 of this Scheme, on and from the Implementation Date, NRI will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by ASG of NRI in the Register as the holder of the Scheme Shares.

## **5.5 Scheme Participants' agreements**

Under this Scheme, each Scheme Participant agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, in accordance with the terms of this Scheme.

## **5.6 Warranty by Scheme Participants**

Each Scheme Participant warrants to NRI and is deemed to have authorised ASG to warrant to NRI as agent and attorney for the Scheme Participant by virtue of this clause 5.6, that:

- (a) all their Scheme Shares (including any rights and entitlements attaching to those shares) transferred to NRI under the Scheme will, as at the date of the transfer, be fully paid and free from all Encumbrances; and
- (b) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those shares) to NRI under the Scheme.

## **5.7 Transfer free of Encumbrances**

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

## **5.8 Appointment of NRI as sole proxy**

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clauses 5.2 and 6.3 of this Scheme, on and from the Implementation Date until ASG registers NRI as the holder of all of the ASG Shares in the Register, each Scheme Participant:

- (a) is deemed to have irrevocably appointed NRI and each of its directors, officers and secretaries as its sole proxy and, where applicable or appropriate, corporate representative, to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution, and no Scheme Participant may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 5.8(a));
- (b) must take all other actions in the capacity of the registered holder of Scheme Shares as NRI directs; and
- (c) acknowledges and agrees that in exercising the powers referred to in clause 5.8(a), NRI and any director, officer, secretary or agent nominated by NRI under clause 5.8(a) may act in the best interests of NRI as the intended registered holder of the Scheme Shares.

---

# **6 Scheme Consideration**

## **6.1 Consideration under the Scheme**

ASG and NRI must pay (or procure the payment of) the Scheme Consideration to the Scheme Participants in accordance with clauses 6.2, 6.3 and 6.4 of this Scheme.

## **6.2 Satisfaction of obligations**

NRI must, and ASG must use its best endeavours to procure that NRI does, no later than the two Business Days before the Implementation Date, deposits (or procures the deposit) in Immediately Available Funds the aggregate amount of the Scheme Consideration payable to all Scheme Participants into the Trust Account (except that the amount of any interest (less any bank fees and other charges) on the amount deposited will be to NRI's account).

## **6.3 Payment of Scheme Consideration**

On the Implementation Date, subject to receipt of the Scheme Consideration from NRI in accordance with clause 6.2 of this Scheme, ASG must pay or procure payment to each Scheme Participant an amount equal to the Scheme Consideration for each Scheme Share transferred to NRI on the Implementation Date by that Scheme Participant.

Unless otherwise directed by the Scheme Participant before the Record Date, the amounts referred to in this clause 6.3 of this Scheme must be paid by direct credit or sending a cheque drawn on an Australian bank in Australian currency on the Implementation Date to each Scheme Participant by pre-paid regular post (or, if the address of the Scheme Participant in the Register is outside Australia, by pre-paid airmail post) to their address recorded in the Register at 5.00pm on the Record Date (or in the case of joint holders, in accordance with the procedures set out in clause 6.6).

## **6.4 Unclaimed monies**

ASG may cancel a cheque issued under clause 6.3 of this Scheme if the cheque:

- (a) is returned to ASG; or
- (b) has not been presented for payment within six months after the date on which the cheque was sent.

During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Participant to ASG, ASG must reissue a cheque that was previously cancelled under this clause 6.4.

## **6.5 Orders of a court**

In the case of notice having been given to ASG (or ASG's share registry) of an order made by a court of competent jurisdiction:

- (a) which requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Participant, which would otherwise be payable to that Scheme Participant in accordance with clause 6.3 of this Scheme, then ASG shall procure that payment is made in accordance with that order; or
- (b) which would prevent ASG from dispatching payment to any particular Scheme Participant in accordance with clause 6.3 of this Scheme, ASG will retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Participant multiplied by the Scheme Consideration until such time as payment in accordance with clause 6.3 of this Scheme is permitted by law.

## **6.6 Joint holders**

In the case of Scheme Shares held by Scheme Participants in joint names, any cheque required to be paid to those Scheme Participants must be made payable

to the joint holders and be forwarded to the holder whose name appears first in the Register as at 5.00pm on the Record Date.

---

## **7 Dealings in Scheme Shares**

### **7.1 Determination of Scheme Participants**

To establish the identity of the Scheme Participants, dealings in Scheme Shares will only be recognised by ASG if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Register as the holder of the relevant Scheme Shares on or before 5.00pm on the Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received on or before 5.00pm on the Record Date at the place where the Register is kept.

### **7.2 Register**

ASG must register any registrable transmission applications or transfers of the Scheme Shares received in accordance with clause 7.1(b) of this Scheme on or before 5.00pm on the Record Date.

### **7.3 No disposals after Record Date**

If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them after the Record Date in any way except as set out in this Scheme, and any attempt to do so will be void and of no legal effect whatsoever and ASG will be entitled to disregard any such disposal, purported disposal or agreement.

ASG will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Shares received after 5.00pm on the Record Date (except a transfer to NRI pursuant to this Scheme and any subsequent transfer by NRI or its successors in title) or received prior to the Record Date but not in registrable or actionable form.

### **7.4 Maintenance of ASG Register**

For the purpose of determining entitlements to the Scheme Consideration, ASG will maintain the Register in accordance with the provisions of this clause 7 until the Scheme Consideration has been paid to the Scheme Participants and NRI has been entered in the Register as the holder of all the Scheme Shares. The Register in this form will solely determine entitlements to the Scheme Consideration.

### **7.5 Effect of certificates and holding statements**

Any statements of holding in respect of Scheme Shares will cease to have effect after 5.00pm on the Record Date as documents of title in respect of those shares. After 5.00pm on the Record Date, each entry current on the Register as at 5.00pm on the Record Date (other than entries on the Register in respect of NRI) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of ASG Shares relating to that entry.

## **7.6 Details of Scheme Participants**

As soon as practicable after the Record Date, and in any event within one Business Day after the Record Date, ASG will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant, as shown in the Register at 5.00pm on the Record Date are available to NRI in such form as NRI reasonably requires.

## **7.7 Quotation of ASG Shares**

- (a) ASG will apply to ASX to suspend trading on ASX in ASG Shares with effect from the close of trading on ASX on the Effective Date.
- (b) After the Scheme has been fully implemented, ASG will apply:
  - (i) for termination of the official quotation of ASG Shares on ASX; and
  - (ii) to have itself removed from the official list of the ASX.

---

# **8 General Scheme provisions**

## **8.1 Power of attorney**

Each Scheme Participant, without the need for any further act, irrevocably appoints ASG and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of:

- (a) executing any document necessary or expedient to give effect to this Scheme including the Scheme Transfer;
- (b) enforcing the Deed Poll against NRI,

and ASG accepts such appointment. ASG as attorney and agent of each Scheme Participant, may sub-delegate its functions, authorities or powers under this clause 8.1 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

## **8.2 Variations, alterations and conditions**

ASG may, with the consent of NRI (which cannot be unreasonably withheld), by its counsel or solicitor consent on behalf of all persons concerned to any variations, alterations or conditions to this Scheme which the Court thinks fit to impose. Each Scheme Participant agrees to any such variation, alteration or condition.

## **8.3 Further action by ASG**

ASG will execute all documents and do all things (on its own behalf and on behalf of each Scheme Participant) necessary or expedient to implement, and perform its obligations under, this Scheme.

## **8.4 Authority and acknowledgement**

Each of the Scheme Participants:

- (a) irrevocably consents to ASG and NRI doing all things and executing all deeds, instruments, transfers or other documents necessary or expedient for or incidental to the implementation and performance of this Scheme; and



- (b) acknowledges that this Scheme binds ASG and all Scheme Participants (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against the Scheme at that Meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of ASG.

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

Each Scheme Participant agrees that neither ASG, NRI, nor any of their respective directors, officers, employees and advisers (as applicable), will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

## **8.6 Enforcement of Deed Poll**

ASG undertakes in favour of each Scheme Participant to enforce the Deed Poll against NRI on behalf of and as agent and attorney for the Scheme Participants.

## **8.7 Stamp duty**

NRI will pay all stamp duty (including any fines, penalties and interest) payable in connection with this Scheme.

## **8.8 Notices**

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to ASG, 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 ASG's registered office or at the office of the registrar of ASG Shares.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any ASG Shareholder shall not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

---

# **9 Governing law**

## **9.1 Governing law**

This Scheme is governed by the law in force in Western Australia.

## **9.2 Jurisdiction**

Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that State and the courts in Australia competent to determine appeals from those courts, with respect to any proceedings in connection with this Scheme; and
- (b) waives, without limitation, any claim or objection to the venue of any legal process in these courts on the basis of the absence of jurisdiction or inconvenient forum.

# **Scheme Implementation Agreement**

## **Annexure B - Deed Poll**

# Deed Poll

Dated

2016

Given by Nomura Research Institute, Ltd. (**NRI**)

In favour of each registered holder of fully paid ordinary shares in ASG Group Limited (ABN 57 070 045 117) (**ASG**) as at 5.00 pm on the Record Date (**Scheme Participants**)

**King & Wood Mallesons**

Level 30  
QV1 Building  
250 St Georges Terrace  
Perth WA 6000  
Australia  
T +61 8 9269 7000  
F +61 8 9269 7999  
DX 210 Perth  
[www.kwm.com](http://www.kwm.com)

# Deed Poll

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# Deed Poll

## Details

Parties	NRI	
NRI	Name	Nomura Research Institute, Ltd.
	Formed in	Toyko, Japan
	Address	Marunouchi Kitaguchi Bldg. 1-6-5 Marunouchi, Chiyoda-ku Tokyo 100-0005, Japan
	Fax	+81 3 5533 3639
	Attention	Hajime Ueda
	In favour of	Each registered holder of fully paid ordinary shares in ASG as at 5.00 pm on the Record Date
Recitals	A	ASG and NRI have entered into the Scheme Implementation Agreement.
	B	In the Scheme Implementation Agreement, NRI agreed (amongst other things) to provide the Scheme Consideration to ASG on behalf of the Scheme Participants, subject to the satisfaction of certain conditions.
	C	NRI is entering into this deed poll for the purpose of covenanting in favour of Scheme Participants to perform its obligations in relation to the Scheme.
Governing law	Western Australia	
Date of Deed Poll	See Signing page	

# Deed Poll

## General terms

---

### 1 Definitions and interpretation

#### 1.1 Definitions

In this deed poll (unless the context otherwise requires):

**Authorised Officer** means:

- (a) in respect of NRI, each of Ayumu Ueno and Hajime Ueda, or any other person nominated by NRI to act as an Authorised Officer under this deed poll and notified to ASG in writing; and
- (b) in respect of any other person, a director or secretary of that person or any other person appointed to act as an Authorised Officer under this deed poll and notified to NRI in writing.

**Scheme Implementation Agreement** means the scheme implementation agreement dated [●] 2016 between ASG and NRI under which, amongst other things, ASG has agreed to propose the Scheme to ASG Shareholders, and each of NRI and ASG has agreed to take certain steps to give effect to the Scheme.

**Scheme** means the proposed scheme of arrangement between ASG and Scheme Participants under which all the Scheme Shares will be transferred to NRI under Part 5.1 of the Corporations Act, the form of which is in Annexure A to this deed poll, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to in writing by NRI and ASG.

All other words and phrases used in this deed poll have the same meaning as given to them in the Scheme.

#### 1.2 Interpretation

Clause 1.2 of the Scheme applies to the interpretation of this deed poll except that references to “this Scheme” in that clause are to be read as references to “this deed poll”.

#### 1.3 Headings

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

#### 1.4 Nature of deed poll

NRI acknowledges that:

- (a) this deed poll may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not a party to it; and
- (b) under the Scheme, ASG undertakes to enforce this deed poll against NRI on behalf of and as agent and attorney for each Scheme Participant.

---

## **2 Conditions precedent and termination**

### **2.1 Conditions precedent**

This deed poll and NRI's obligations under this deed poll are subject to the Scheme becoming Effective.

### **2.2 Termination**

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

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

unless NRI and ASG otherwise agree in writing.

### **2.3 Consequences of termination**

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

- (a) NRI is released from further performing its obligations under this deed poll except those obligations contained in clause 7.1; and
- (b) each Scheme Participant retains the rights, powers or remedies they have against NRI in respect of any breach of this deed poll which occurs before it is terminated.

---

## **3 Scheme Consideration**

Subject to clause 2, NRI undertakes in favour of each Scheme Participant to:

- (a) by no later than two Business Days before the Implementation Date, depositing (or procure the deposit) in Immediately Available Funds the aggregate amount of the Scheme Consideration payable to all Scheme Participants into the Trust Account (except that the amount of any interest on the amount deposited (less bank fees and other charges) will be to NRI's account); and
- (b) undertake the other actions attributed to it under the Scheme,

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

---

## **4 Representations and warranties**

NRI represents and warrants that:

- (a) it is a company incorporated in Japan and listed on the Tokyo Stock Exchange validly existing under the laws of its place of formation;
- (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; and
- (d) this deed poll is valid and binding upon NRI and enforceable against NRI in accordance with its terms.

---

## 5 Continuing obligations

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

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

---

## 6 Notices

### 6.1 Form - all communications

Unless expressly stated otherwise in this deed poll, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed poll must be:

- (a) in writing;
- (b) signed by the sender (if an individual) or an Authorised Officer of the sender;
- (c) marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified;
- (d) in the case of communications to NRI, a copy must be sent to Mr Hiroyuki Kano, [hkano@claytonutz.com](mailto:hkano@claytonutz.com); and
- (e) in the case of communications to ASG, a copy must be sent to [peter@torrecorporate.com.au](mailto:peter@torrecorporate.com.au) and [shaun.mcrobert@au.kwm.com](mailto:shaun.mcrobert@au.kwm.com).

### 6.2 Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details;
- (c) sent by fax to the fax number set out or referred to in the Details; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or fax number, then communications must be to that address or fax number.



### **6.3 When effective**

Communications take effect from the time they are received or taken to be received under clause 6.4 (whichever happens first) unless a later time is specified.

### **6.4 When taken to be received**

Communications are taken to be received:

- (a) if sent by post, six Business Days after posting (or ten Business Days after posting if sent from one country to another); or
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent.

### **6.5 Receipt outside business hours**

Despite clauses 6.3 and 6.4, if communications are received or taken to be received under clause 6.4 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

---

## **7 General**

### **7.1 Stamp duty**

NRI must:

- (a) pay all stamp duty (including fines, penalties and interest) payable and assessed in respect of this deed poll (including, in connection with the transfer of the ASG Shares to NRI in accordance with the terms of the Scheme), the performance of this deed poll and each transaction effected by or made under this deed poll; and
- (b) indemnify on demand each Scheme Participant against any liability arising from failure to comply with clause 7.1(a).

### **7.2 Waiver**

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

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

### **7.3 Variation**

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

- (a) the variation is agreed to by ASG and NRI in writing; and

- (b) the Court indicates that the variation, alteration or amendment would not itself preclude approval of the Scheme,

in which event NRI must enter into a further deed poll in favour of the Scheme Participants giving effect to the variation, alteration or amendment.

#### **7.4 Remedies cumulative**

The rights, powers and remedies of NRI and the Scheme Participants under this deed poll are cumulative and are in addition to, and do not exclude any, other rights, powers and remedies given by law independently of this deed poll.

#### **7.5 Assignment**

The rights and obligations of NRI and each Scheme Participant under this deed poll are personal and must not 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 NRI and ASG.

#### **7.6 Governing law and jurisdiction**

This deed poll is governed by the law in force in Western Australia. NRI irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place, Commonwealth courts having jurisdiction in that State and the courts in Australia competent to determine appeals from those courts, with respect to any proceedings in connection with this deed poll.

#### **7.7 Further action**

NRI must, at its own expense, execute all deeds and other documents and do all things (on its own behalf or on behalf of each Scheme Participant) necessary or expedient to give full effect to this deed poll and the transactions contemplated by it.

**EXECUTED** as a deed poll

# Deed Poll

## Signing Page

DATED:

Signed by **Ayumu Ueno,**  
**Representative Director** for **NOMURA**  
**RESEARCH INSTITUTE, LTD.** in the  
presence of:

.....  
Signature of witness  
  
.....  
Name of witness (block letters)

.....  
By executing this document the  
signatory warrants that the signatory is  
duly authorised to execute this  
document on behalf of Nomura  
Research Institute, Ltd.

Deed Poll

Annexure A - Scheme