

# ASX / Media Release

## ASCENT PHARMAHEALTH AND STRIDES ARCOLAB ENTER INTO SCHEME IMPLEMENTATION AGREEMENT

**22 December 2010, Melbourne:** Ascent Pharmahealth Limited ("Ascent") and Strides Arcolab Limited ("Strides") today announced they have entered into a Scheme Implementation Agreement ("SIA") under which Linkace Investments Pty Ltd ("Linkace Investments"), a company wholly owned by Strides, will acquire the outstanding minority shares in Ascent via a Scheme of Arrangement ("Scheme").<sup>1</sup>

Under the Scheme, Ascent shareholders will receive \$0.40 in cash per share, valuing the total issued shares in Ascent at \$100 million, and at a premium of 51% on the closing share price at 21 December 2010 of \$0.265.

The offer price represents:

- An increase of \$0.05 (14%) to the indicative and non-binding proposal of \$0.35 per share submitted by Strides on 16 March 2010;
- A premium of 48% on Ascent's share price of \$0.27 on 15 March 2010, the last day prior to the submission of Strides' indicative and non-binding proposal to acquire Ascent;
- A premium of 67% over the volume weighted average price ("VWAP") of \$0.24 for the one month prior to 15 March 2010; and
- A premium of 76% over the VWAP of \$0.23 for the 3 months prior to 15 March 2010.

The proposed acquisition is subject to a number of conditions, including:

- Ascent shareholder approval of the Scheme;
- ASIC and Court approval of the Scheme; and
- certain other conditions, as set out in the SIA attached to this announcement.

The Independent Directors of Ascent will commission an Independent Expert's report from KPMG to assess whether the Scheme is in the best interests of Ascent shareholders.

Subject to the Independent Expert confirming that the Scheme is in the best interests of shareholders and absent a superior proposal, each of the independent directors of Ascent will recommend that Ascent shareholders vote in favour of the Scheme, and have indicated they intend to vote in favour of the Scheme in relation to their own shares.

In respect of the company's financial performance for this year, Ascent expects to report a full-year 2010 (CY2010) EBITDA result in the range of \$17.5 to \$18 million (NPAT of between \$11.5 and \$12 million) against the previous corresponding period's EBITDA of \$14 million for CY2009 (and NPAT of \$9.2 million for CY2009). This expectation is based on unaudited management accounts, subject to review and audit of the company's accounts for the full year.

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<sup>1</sup> Excluding those shares currently held by Linkace Limited (a wholly owned subsidiary of Strides), Futura Investments Pte Ltd and I-Investments Pty Ltd (entities associated with Ascent CEO, Dennis Bastas).

Ascent Chairman Warren Jenkins said, "The proposed transaction allows our shareholders to realise cash proceeds at a premium to recent trading levels, at a time when the Australian pharmaceutical industry continues to face challenges."

### Timing

Subject to the Supreme Court making appropriate orders, it is currently expected that Ascent shareholders will be sent Scheme Documentation in March 2011. This will contain the basis for the Ascent Board's recommendation and an Independent Expert's Report.

Ascent Shareholders will vote at a Scheme Meeting, expected to be held in April 2011. If the Court makes orders approving the Scheme and those orders are lodged with ASIC, the Scheme will become effective and Strides and Ascent will become bound to implement the Scheme. Should the Scheme be implemented, Strides will apply for Ascent to be delisted from the Official List of ASX immediately after the implementation date.

For further information, please contact:

Andrew Burgess  
Company Secretary  
Ascent Pharmahealth Limited  
+61 3 8677 6600.

### About Ascent:

Ascent Pharmahealth Ltd (ASX:APH) sells over 400 products in eight countries. It is one of Australia's and Asia's fastest growing and most dynamic pharmaceutical businesses. Ascent registers, markets, distributes and sells generic pharmaceuticals, consumer skincare and over-the-counter medicines. Key subsidiaries are Ascent Pharmaceuticals, one of Australia's top 5 generic pharmaceutical companies and Drug Houses of Australia, Singapore's largest generic pharmaceutical company with products distributed across seven Asian countries. The company listed on the Australian Securities Exchange in June 2004. For more information visit: [www.ascentpharma.com.au](http://www.ascentpharma.com.au).

# Scheme implementation agreement

Ascent Pharmahealth Limited  
Target

Linkace Investments Pty Ltd  
Bidder

Strides Arcolab Limited  
Guarantor

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**Parties**

**Ascent Pharmahealth Limited** ACN 107 340 367 of 151-153 Clarendon Street, South Melbourne, Victoria, Australia 3025 (**Target**)

**Linkace Investments Pty Ltd** ACN 147 854 484 of 54 Macedon Road, Lower Templestowe Victoria 3107 (**Bidder**)

**Strides Arcolab Limited** of Strides House, Bilekahalli, Bannerghatta Road, Bangalore 560076, India (**Guarantor**)

**Background**

- A. The Bidder proposes to acquire all of the Scheme Shares for the Scheme Consideration pursuant to a scheme of arrangement under section 411 of the Corporations Act between the Target and the holders of Scheme Shares (being all Target Shares other than those held by the Excluded Shareholders).
- B. The Target has agreed to propose the Scheme and issue the Explanatory Memorandum at the request of the Bidder and the Guarantor, and the Target, the Bidder, and the Guarantor have agreed to implement the Scheme on the terms and conditions of this agreement.
- C. The Bidder is a wholly-owned subsidiary of the Guarantor.
- D. The Guarantor is willing to guarantee, and indemnify the Target in respect of, the obligations and liabilities of the Bidder under each Transaction Document.

**Operative provisions**

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**1. Definitions and interpretation**

**1.1 Definitions**

In this agreement:

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

**Associate** has the meaning given in the Corporations Act.

**ASX** means ASX Limited (ABN 98 008 624 691) and where the context requires, the market operated by ASX Limited.

**Bidder Announcement** means a press release in the form of Annexure C.

**Bidder Information Requirements** means all information regarding the Bidder and its Associates that is required by the Corporations Act and the Policy Statements to be included in the Explanatory Memorandum including all the information that would be required under sections 636(1)(c), (f), (h), (i), (k)(ii), (l) and (m) of the Corporations Act to be included in a bidder's statement if the Bidder were offering the Scheme Consideration as consideration under a takeover bid.

**Bidder Provided Information** means all information provided by or on behalf of the Bidder and/or Guarantor for inclusion in the Explanatory Memorandum under this agreement or otherwise in connection with the Scheme.

**Bidder Warranties** means the warranties made by the Bidder set out in clause 9.1.

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

**Competing Bidder** means a person who makes or wishes to make a Competing Proposal, which the Target Board reasonably believes will be a Superior Proposal.

**Competing Proposal** means a proposed transaction or arrangement pursuant to which a person other than the Bidder or any of its Related Entities would, if the proposed transaction or arrangement is entered into or completed substantially in accordance with its terms:

- (a) directly or indirectly acquire, have a right to acquire or otherwise acquire an economic interest in, all or a substantial part of the business of the Target Group;
- (b) acquire a Relevant Interest in 50% or more of Target Shares or otherwise acquire control of the Target or the Target Group within the meaning of section 50AA of the Corporations Act; or
- (c) otherwise acquire or merge with the Target whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy back, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure or other synthetic merger or any other transaction or arrangement.

**Condition** means each condition specified in clause 3.1.

**Confidential Information** has the meaning given to that term in the Confidentiality Agreement.

**Confidentiality Agreement** means the confidentiality agreement between the Target and the Guarantor dated 20 April 2010.

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

**Court** means the Supreme Court of Victoria or such other court of competent jurisdiction as the Target and the Bidder agree in writing.

**D&O Policy** means the Target's directors and officers insurance policy in effect as at the date of this agreement.

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

**Disclosure Letter** means the letter from the Target to the Bidder dated the same date as this agreement.

**Due Diligence Materials** means the written information and documents provided to the Bidder by the Target (including any information contained on a flashcard or in an email provided to the Bidder before the date of this agreement and listed in the index attached as Annexure E) to allow the Bidder to undertake due diligence in respect of the Target Group.

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

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

**EGM** has the meaning given in clause 2.1.

**End Date** means 31 May 2011 from execution of this agreement or such other date agreed in writing between the Target and the Bidder.

**Excluded Shareholders** means each of Linkace, I-Investments and Futura Investments.

**Excluded Shareholders Meeting** means a class meeting comprising the Excluded Shareholders to consider, and if thought fit, approve the Scheme.

**Explanatory Memorandum** means the explanatory memorandum to be prepared by the Target in accordance with the terms of this agreement and to be dispatched to Target Shareholders in respect of:

- (a) the Scheme; and
- (b) the Facility Guarantee.

**Facility Guarantee** means the guarantee to be provided by Target in favour of Financier to secure Bidder's performance under the finance facility entered into under the First Facility Binding Offer.

**Financial Assistance Approval Resolution** means a resolution to be put at the EGM for Target Shareholders to consider, and if thought fit, approve for the purposes of section 260B of the Corporations Act the Target's entry into the Facility Guarantee, which resolution is interdependent with and inter-conditional on each of the Scheme Resolution and the Related Party Approval Resolution.

**Financier** means Bank of Western Australia Ltd ABN 22 050 494 454.

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

**First Facility Binding Offer** means a binding letter of offer from the Financier to the Bidder and Guarantor regarding a loan from the Financier to the Bidder of approximately \$37.5 million.

**Futura Investments** means Futura Investments Pte Ltd 200900186M, an entity incorporated under the laws of Singapore of which Dennis Bastas, the Chief Executive Officer of the Target, is the sole shareholder.

**Guarantor Warranties** means the warranties set out in clause 9.1 (but on the basis that each reference to the Bidder is taken to be a reference to the Guarantor).

**I-Investments** means I-Investments Pty Ltd ACN 087 117 226, an entity incorporated under the laws of Australia of which Dennis Bastas, the Chief Executive Officer of the Target, is the sole shareholder.

**Implementation Date** means the date which is 3 Business Days after the Record Date or such other date as the Target and the Bidder agree in writing.

**Indemnified Losses** means, in relation to any fact, matter or circumstance, all losses, costs, damages, expenses and other liabilities arising out of or in connection with that fact, matter or circumstance including all legal and other professional expenses on a solicitor-client basis incurred in connection with investigating, disputing, defending or settling any claim, action, demand or proceeding relating to that fact, matter or circumstance (including any claim, action, demand or proceeding based on the terms of this agreement).



**Independent Directors** means the Target Directors other than Messrs Dennis Bastas, Arun Kumar and T.S. Rangan.

**Independent Expert** means the independent expert to be engaged by the Target to express an opinion on whether the Scheme is in the best interests of the Target Shareholders.

**Independent Expert's Report** means the report from the Independent Expert commissioned by the Target Board after announcement of the transactions contemplated by this agreement.

**Insolvency Event** means, in relation to the Bidder or the Guarantor, any event which under the laws applying in the Bidder's or the Guarantor's place of incorporation is equivalent to any of the events referred to in paragraphs (j) to (l) (inclusive) of the definition of "Target Prescribed Occurrence" (on the basis that each reference to the Target in those paragraphs is taken to be a reference to the Bidder or the Guarantor (as applicable) for the purposes of this definition).

**Linkace** means Linkace Limited, a company incorporated under the laws of Cyprus, being a wholly-owned subsidiary of the Guarantor.

**Listing Rules** means the official listing rules published by ASX.

**Policy Statements** means all policy statements and practice notes published by ASIC and in force at the date of this agreement.

**Record Date** means 7.00 pm on the date which is 5 Business Days after the Effective Date.

**Regulatory Authority** means:

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

**Regulatory Conditions** means the Conditions set out in clauses 3.1(a) and 3.1(b).

**Related Entity** of a corporation means:

- (a) a related body corporate of that corporation within the meaning of section 50 of the Corporations Act and, for the avoidance of doubt, as if that section applies to foreign corporations; or
- (b) a trustee of any unit trust in relation to which that corporation, or a corporation referred to in paragraph (a), directly or indirectly:
  - (i) controls the right to appoint the trustee;
  - (ii) is in a position to control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units in the trust; or
  - (iii) holds or is in a position to control the disposal of more than one half of the issued units of the trust.

**Related Party Approval Resolution** means a resolution to be put at the EGM for Target Shareholders to consider, and if thought fit, approve for the purposes of section 208 of the Corporations Act the Target's entry into the Facility Guarantee, which resolution is

interdependent with and inter-conditional on each of the Scheme Resolution and the Financial Assistance Approval Resolution.

**Relevant Interest** has the meaning given in sections 608 and 609 of the Corporations Act.

**Representatives** means, in relation to a party, all officers, employees, professional advisers and agents of the party or of its Related Entities.

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

**Scheme Consideration** means the amount of A\$0.40 cash in respect of each Scheme Share.

**Scheme Meetings** means, collectively, the following meetings to be convened by the Court in relation to the Scheme pursuant to section 411(1) of the Corporations Act:

- (a) the Excluded Shareholders Meeting; and
- (b) the Scheme Shareholders Meeting.

**Scheme Resolution** means the resolution to be considered by each of the Scheme Meetings to approve the Scheme.

**Scheme Share** means a Target Share on issue and held by a Scheme Shareholder on the Record Date.

**Scheme Shareholder** means each Target Shareholder (other than the Excluded Shareholders) as at the Record Date.

**Scheme Shareholders Meeting** means a class meeting comprising the Scheme Shareholders to consider, and if thought fit, approve the Scheme.

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

**Subsidiary** means a subsidiary of the Target within the meaning given to that term in the Corporations Act.

**Superior Proposal** means a Competing Proposal which:

- (a) purports to offer consideration per Scheme Share which is greater than the Scheme Consideration where the value of the offer consideration is determined as follows:
  - (i) if the consideration offered is a cash sum only, the amount of that cash sum;
  - (ii) if the consideration offered is scrip consideration, the VWAP of the relevant shares being offered as scrip consideration for the 5 trading days immediately prior to the announcement of the Competing Proposal; and
  - (iii) if the consideration offered is a combination of cash consideration and scrip consideration, the aggregate of the amount of the cash sum and the value of the scrip component calculated using the principles set out in paragraph (a)(ii) above;

- (b) in the determination of the Target Board acting in good faith is reasonably capable of being completed, taking into account both the nature of the Competing Proposal and the person or persons making it; and
- (c) in the determination of the Target Board acting in good faith and in order to satisfy what the Target Board considers to be its fiduciary or statutory duties would, if completed substantially in accordance with its terms, result in a transaction more favourable to the Scheme Shareholders than the transactions contemplated by this agreement.

**Target Announcement** means an announcement in the form of Annexure D.

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

**Target Directors** means the directors of the Target from time to time.

**Target Group** means the Target and each Subsidiary.

**Target Information** means all information included in the Explanatory Memorandum, other than the Bidder Provided Information.

**Target Material Adverse Change** means any event, occurrence or matter which individually or when aggregated with all such events, occurrences or matters:

- (a) diminishes the consolidated net profit after tax of the Target Group in the financial year ending 31 December 2010 by an amount of at least \$1 million (which amount shall be calculated after taking into account any event, occurrence or matter not disclosed prior to the date of this agreement);
- (b) diminishes the net assets of the Target Group for the financial year ending 31 December 2010 by an amount of at least \$5 million; or
- (c) has the result that the Target Group is unable to carry on its business in substantially the same manner as carried on as at the date of this agreement or which otherwise materially and adversely affects the prospects of the Target Group,

other than:

- (d) the execution of the Transaction Documents or announcement of the Scheme and the completion of the transaction contemplated by them; or
- (e) an event, occurrence or change fairly disclosed in the Disclosure Letter, the Due Diligence Materials or in any announcement on ASX made by Target prior to the parties entering into this agreement.

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

- (a) the Target converting all or any of its securities into a larger or smaller number of securities;
- (b) the Target or a Subsidiary resolving to reduce its capital in any way or resolving to re-classify, combine, split, redeem or re-purchase directly or indirectly any of its shares;
- (c) the Target or a Subsidiary:
  - (i) entering into a buy-back agreement; or

- (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act.
- (d) the Target or a Subsidiary issuing shares, or granting an option over its shares or agreeing to make such an issue or grant such an option;
- (e) the Target or a Subsidiary issuing, or agreeing to issue, convertible notes or any other security convertible into shares;
- (f) the Target agreeing to pay, declaring or paying a dividend or any other form of distribution of profits or return of capital to its members;
- (g) the Target or a Subsidiary disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;
- (h) without the prior written consent of the Bidder (which may not be unreasonably withheld), the Target or a Subsidiary acquiring or disposing of or agreeing to acquire or dispose of, any asset (excluding trading stock) or business, or agreeing to form a business combination, or assuming or agreeing to assume any liability (excluding trade creditors), where the aggregate of the amounts involved in any such acquisition, disposal or business combination and liability assumed exceed \$1 million or exceed \$1 million in the case of an individual acquisition, disposal, business combination or assumption of liability, except for the commitments which have been fairly disclosed to the Bidder in the Disclosure Letter;
- (i) the Target or a Subsidiary creating or agreeing to create any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property otherwise than in the ordinary course of business;
- (j) an application being made to court or a resolution being passed or an order is made for the winding up or dissolution of the Target or a Subsidiary;
- (k) the Target or a Subsidiary proposing or taking any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them;
- (l) a receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or similar officer being appointed in respect of the Target or a Subsidiary or any of its assets;
- (m) the level of the Target Group's aggregate net debt exceeding \$18 million;
- (n) the Target or a Subsidiary making or proposing to make any change to its constitution; or
- (o) except as required by law or otherwise permitted under this agreement or with the prior written consent of the Bidder, any member of the Target Group:
  - (i) increasing the remuneration of, or paying any bonus or issues any securities to, or otherwise varying the employment arrangements with, any of its directors or executives;
  - (ii) accelerating the rights of any of its directors or executives to benefits of any kind; or
  - (iii) paying or agreeing to pay a director or executive a termination payment (including a "golden parachute"), other than as provided for in an

existing employment contract fairly disclosed to the Bidder in the Due Diligence Materials or the Disclosure Letter.

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

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

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

**Target Share Registry** means Computershare Investor Services Pty Limited of Yarra Falls, Abbotsford, Victoria Australia 3067.

**Target Warranties** means the warranties made by the Target set out in clause 9.3.

**Timetable** means the indicative timetable in relation to the Scheme set out in Schedule 1, or such other indicative timetable as the Target and the Bidder agree in writing.

**Transaction** means the acquisition by the Bidder of the Scheme Shares for the Scheme Consideration pursuant to the Scheme.

**Transaction Documents** means:

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

**VWAP** means the average of the daily volume weighted average price of the relevant securities traded on the ASX during the relevant period or on the relevant days, but excluding any "crossing" transacted outside the "Open Session State" or any "Special Crossing" transacted at any time, each as defined in the ASX Operating Rules, or any overseas trades or trades pursuant to the exercise of options over the relevant securities.

## **1.2 Best and reasonable endeavours**

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

- (a) to pay any money or to provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any Regulatory Authority; or
- (b) to commence any legal action or proceeding against any person,

except where that provision expressly specifies otherwise.

## **1.3 Business Day**

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

## 1.4 Interpretation

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

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

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## 2. Obligations in relation to Scheme

### 2.1 Target to convene EGM

Subject to the Bidder complying with its obligation under clause 4.2, the Target agrees to convene a general meeting of Target Shareholders (**EGM**) commencing at the conclusion or adjournment of the Scheme Meetings, at which it must propose:

- (a) the Financial Assistance Approval Resolution; and
- (b) the Related Party Approval Resolution.

The Bidder and the Guarantor must assist the Target to propose each of these resolutions at the EGM on and subject to the terms and conditions of this agreement.

## 2.2 Target to propose Scheme

Subject to the Bidder complying with its obligation under clause 4.2, the Target agrees to propose the Scheme on and subject to the terms and conditions of this agreement. The Bidder and the Guarantor agree to assist the Target to propose the Scheme on and subject to the terms and conditions of this agreement.

## 2.3 The Target and the Bidder to implement Scheme

The Target and the Bidder agree to implement the Scheme on and subject to the terms and conditions of this agreement. For the avoidance of doubt, none of the Excluded Shareholders will participate in the Scheme.

## 2.4 Scheme Consideration

The Bidder covenants in favour of the Target (in the Target's own right and separately as trustee for each of the Scheme Shareholders) that, in consideration for the transfer to the Bidder of Scheme Shares held by Scheme Shareholders under the terms of the Scheme, the Bidder will pay the Scheme Consideration to the Scheme Shareholders in accordance with the terms of the Scheme.

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## 3. Conditions precedent

### 3.1 Conditions

The obligations of the Target under clause 4.1(j) and of the Bidder under clause 4.2(i) do not become binding on the parties and have no force or effect, and the Scheme must not take place until each of the conditions listed in the first column of the following table has been either satisfied or waived in accordance with clause 3.5:

Condition	Right to waive
(a) before 8:00 am on the Second Court Date, ASIC and ASX issue or provide such consents or approvals or do other acts which the Bidder and the Target agree are necessary to implement the Transaction. If such consents, approvals or doing of other acts are subject to conditions those conditions must be acceptable to the Bidder and the Target;	Bidder and Target
(b) no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction, no preliminary or final decision, determination, or order issued by any Regulatory Authority and no other legal restraint preventing any of the transactions contemplated by this agreement is in effect as at 8.00 am on the Second Court Date;	Bidder and Target
(c) no Target Material Adverse Change has occurred after the date of this agreement and before 8.00 am on the Second Court Date;	Bidder
(d) no Target Prescribed Occurrence has occurred after the date of this agreement and before 8.00 am on the Second Court Date;	Bidder

Condition	Right to waive
(e) each of the Financial Assistance Approval Resolution and the Related Party Approval Resolution has been passed at the EGM to approve the Target's entry into the Facility Guarantee, in each case in accordance with the applicable voting exclusions prescribed by the Corporations Act or otherwise required by the Policy Statements;	Bidder and Target
(f) the Scheme Resolution has been passed at each of the duly convened Scheme Meetings by the relevant class of Target Shareholders to approve the scheme contemplated by the Transaction Documents, in each case by the majorities required under section 411(4)(a)(ii) of the Corporations Act;	None
(g) the Target Warranties are true and correct in all material respects on the date of this agreement and as at 8.00am on the Second Court Date;	Bidder
(h) the Bidder Warranties are true and correct in all material respects on the date of this agreement and as at 8.00am on the Second Court Date;	Target
(i) the Guarantor Warranties are true and correct in all material respects on the date of this agreement and as at 8.00am on the Second Court Date;	Target
(j) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;	None
(k) the Independent Expert provides the Independent Expert's Report to the Target Board stating in its opinion that the Scheme and the Target's entry into the Facility Guarantee are fair and reasonable to and in the best interests of the Target Shareholders and the Independent Expert does not change its conclusion or withdraw its report by notice in writing to the Target prior to 8.00 am on the Second Court Date; and	Target
(l) prior to 8.00 am on the Second Court Date: <ul style="list-style-type: none"> <li data-bbox="507 1525 1166 1626">(i) Bidder has executed a facility agreement on substantially the terms contemplated by the First Facility Binding Offer; and</li> <li data-bbox="507 1659 1166 1850">(ii) any condition precedent to the financing contemplated by the above facility agreement is satisfied or waived, other than any condition relating to the Court approving the Scheme in accordance with section 411(4)(b) of the Corporations Act.</li> </ul>	Bidder

### 3.2 General obligations in relation to Conditions

Without prejudice to any other obligations of the parties under this agreement:



- (a) the Target must use all reasonable endeavours to ensure that:
  - (i) the Conditions set out in clauses 3.1(c) and 3.1(d) continue to be satisfied at all times until 8.00 am on the Second Court Date; and
  - (ii) the Condition set out in clause 3.1(g) is satisfied as at the time set out in that clause;
  - (iii) each of the Conditions set out in clause 3.1(e), 3.1(f), 3.1(j) and 3.1(k) is satisfied;
- (b) each of the Bidder and the Guarantor must use all reasonable endeavours to ensure that:
  - (i) each of the Conditions set out in clauses 3.1(h), 3.1(i) and 3.1(l) is satisfied at the times set out in that clause; and
  - (ii) the Condition set out in clause 3.1(j) is satisfied; and
- (c) the parties shall not take any action that will or is likely to hinder or prevent the satisfaction of any Condition except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by, this agreement or is required by law.

### **3.3 Obligations in relation to Regulatory Conditions**

Each party must use all reasonable endeavours to ensure that the Regulatory Conditions are satisfied as soon as practicable after the date of this agreement and continue to be satisfied at all times until 8.00 am on the Second Court Date.

### **3.4 Notice in relation to satisfaction of Conditions**

Each party must within 1 Business Day after becoming aware of the satisfaction of any Condition notify each other party of the satisfaction of that Condition and provide reasonable evidence the Condition has been satisfied.

### **3.5 Waiver of Conditions**

A Condition may be waived and may only be waived:

- (a) if one party is specified in the second column of the table in clause 3.1 opposite that Condition, by that party by notice to each other party; or
- (b) if more than one party is specified in the second column of the table in clause 3.1 opposite that Condition, by written agreement between all of those parties.

A party entitled to waive or to agree to waive a Condition under this clause 3.5 may do so in its absolute discretion. A party that waives or agrees to waive a Condition is not prevented from bringing a claim against any other party in respect of any breach of this agreement that caused that Condition not to be satisfied.

### **3.6 Failure of Conditions**

- (a) If:
  - (i) any event occurs which would prevent any of the Conditions from being satisfied, or there is an occurrence that is reasonably likely to prevent

one or more of the Conditions being satisfied by the date specified in this agreement for satisfaction; or

- (ii) the Scheme has not become Effective by the End Date,

the parties must consult in good faith to:

- (iii) determine whether the Transaction may proceed by way of alternative means or methods; or
- (iv) change the date of the application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by the parties (being a date no later than 5 Business Days before the End Date).

- (b) If the parties are unable to reach agreement under clause 3.6(a) (each acting reasonably), a party is entitled to terminate this agreement by notice to each other party at any time after the End Date:

- (i) if any Condition has become incapable of satisfaction and that Condition has not been waived in accordance with clause 3.5 within 5 Business Days after the occurrence of the fact, matter or circumstance which caused that Condition to become incapable of satisfaction;
- (ii) if any Condition has not been satisfied or waived in accordance with clause 3.5 before the End Date; or
- (iii) if any Condition, having been satisfied on or before the End Date ceases to be satisfied before the Schemes becomes Effective,

except where the relevant Condition has become incapable of satisfaction, has not been satisfied, or ceases to be satisfied, as a direct result of a failure by the party seeking to terminate to comply with its obligations under clause 3.6(a), clause 3.2 or clause 3.3.

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## **4. Implementation of Scheme**

### **4.1 Target's obligations**

The Target must take all steps reasonably necessary to implement the Scheme as soon as is reasonably practicable after the date of this agreement and so as to complete the Transaction substantially in accordance with the Timetable, and in particular the Target must:

- (a) prepare the Explanatory Memorandum in accordance with the requirements of the Corporations Act and the Policy Statements, provide a draft of the Explanatory Memorandum to the Bidder and provide the Bidder with a reasonable opportunity to provide suggested amendments to that draft prior to the provision of a draft of the Explanatory Memorandum to ASIC under clause 4.1(d)(i) and if such suggested amendments relate to the Bidder Provided Information, the Target must consider in good faith such suggested amendments unless such suggested amendments would render the Explanatory Memorandum misleading or deceptive (by omission or otherwise);
- (b) promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Explanatory Memorandum;

- (c) include a statement by the Target Board that the Independent Directors unanimously recommend that Target Shareholders vote in favour of the Scheme, in the absence of a Superior Proposal, unless there has been a change of recommendation permitted by clause 6.3;
- (d) as soon as reasonably practicable but no later than 14 days before the First Court Date provide an advanced draft of the Explanatory Memorandum to:
  - (i) ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
  - (ii) the Bidder;
- (e) apply to ASIC for the production of statements in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (f) provided the approval referred to in clause 4.1(d)(i) has been received from ASIC, lodge all documents with the Court and take all other reasonable steps to ensure that, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meetings;
- (g) request to ASIC that the explanatory statement included in the Explanatory Memorandum in relation to the Scheme be registered in accordance with section 412(6) of the Corporations Act;
- (h) take all reasonable steps necessary to comply with the orders of the Court including, as required, dispatching the Explanatory Memorandum to the Target Shareholders and convening and holding the Scheme Meetings;
- (i) if the Scheme Resolution submitted to the Scheme Meetings in relation to the Scheme is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act, apply to the Court for orders approving the Scheme;
- (j) if the Scheme is approved by the Court:
  - (i) promptly lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act;
  - (ii) close the Target Share Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme;
  - (iii) promptly register all transfers of Scheme Shares to the Bidder in accordance with the Scheme; and
  - (iv) promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme, including making the Target Share Register available to the Bidder within 2 Business Days of receiving a request to do so from the Bidder or any Representatives of the Bidder; and
- (k) from the First Court Date until the Implementation Date, promptly inform the Bidder if it becomes aware that the Explanatory Memorandum contains a statement which is misleading or deceptive in a material respect or contains a material omission.

## 4.2 Bidder's obligations

The Bidder must take all steps reasonably necessary to assist the Target to implement the Scheme as soon as is reasonably practicable and so as to complete the Transaction substantially in accordance with the Timetable, and in particular the Bidder must:

- (a) provide to the Target the Bidder Provided Information in a form appropriate for inclusion in the Explanatory Memorandum;
- (b) ensure that all Bidder Provided Information complies with the Bidder Information Requirements (including promptly updating and supplementing the Bidder Provided Information as required by ASIC or otherwise desirable for the purpose of ensuring continued compliance with the Bidder Information Requirements);
- (c) promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare its report for inclusion in the Explanatory Memorandum;
- (d) as soon as reasonably practicable after receipt from the Target of a draft of the Explanatory Memorandum in accordance with clause 4.1(a) provide any suggested changes to the Bidder Provided Information in that draft;
- (e) as soon as reasonably practicable after receipt from the Target of the draft of the Explanatory Memorandum provided in accordance with clause 4.1(d), either:
  - (i) confirm in writing to the Target that the Bidder Provided Information in the form and context in which it appears in the draft of the Explanatory Memorandum is not misleading or deceptive in any material respect and does not contain any material omission and complies with the Bidder Information Requirements; or
  - (ii) provide to the Target all necessary changes required to ensure that the Bidder Provided Information in the form and context in which it appears in the Explanatory Memorandum is not misleading or deceptive in any material respect and does not contain any material omission and complies with the Bidder Information Requirements;
- (f) provide to the Target all such further or new information of which the Bidder becomes aware after the Explanatory Memorandum has been dispatched until the date of the Scheme Meetings that is required to ensure that the Bidder Provided Information in the form and context in which it appears in the Explanatory Memorandum is not misleading or deceptive in any material respect and does not contain any material omission and complies with the Bidder Information Requirements;
- (g) enter into the Deed Poll and deliver the executed Deed Poll to the Target in accordance with the Timetable (and in any event by no later than the Business Day prior to the First Court Date);
- (h) procure that it is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel, the Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme; and

- (i) if the Scheme becomes Effective, pay the Scheme Consideration to the Scheme Shareholders on the Implementation Date and accept transfer of the Scheme Shares in accordance with the Scheme.

### **4.3 Reconstitution of Target Board**

On the Implementation Date, the Target will use its reasonable endeavours to:

- (a) take all actions necessary to procure that any director of a Subsidiary as designated by the Bidder in writing and each director of the Target as designated by the Bidder in writing in office on the Implementation Date resigns his or her office; and
- (b) cause the appointment to the Target Board and to the boards of each Subsidiary of such number of persons as nominated by Bidder, subject to those persons having provided a consent to act as directors of the relevant companies.

### **4.4 Content of Explanatory Memorandum**

- (a) The parties agree that the Explanatory Memorandum must contain statements to the effect that:
  - (i) the Target is responsible for the content of the Explanatory Memorandum other than, to the maximum extent permitted by law, the Independent Expert's Report and the Bidder Provided Information; and
  - (ii) the Bidder and the Guarantor are responsible for all Bidder Provided Information included in the Explanatory Memorandum, provided they have consented to the form and content of the information as it appears in the Explanatory Memorandum.
- (b) If the parties disagree on the form or content of the Explanatory Memorandum:
  - (i) they must consult in good faith to try to settle an agreed form of the Explanatory Memorandum; and
  - (ii) failing agreement within 5 Business Days, the dispute must be referred to the respective chairmen of the parties.
- (c) If within 5 Business Days of referral to the respective chairmen there is still no agreement between the parties:
  - (i) the final form and content of the Explanatory Memorandum shall be determined by the Target, acting reasonably; and
  - (ii) if either of the Bidder or the Guarantor disagrees with such final form and content, the Target must include a statement to that effect in the Explanatory Memorandum.

### **4.5 Conduct of Court proceedings**

- (a) The Target and the Bidder are entitled to separate representation at all Court proceedings affecting the Transaction.
- (b) No party has any right or power to give undertakings to the Court for or on behalf of any other party without that party's consent.

- (c) The Target and the Bidder must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Transaction as contemplated by this agreement.

#### **4.6 ASIC lodgements**

If the Financial Assistance Approval Resolution is passed at the EGM in accordance with the Corporations Act, the Target must, as soon as practicable after the EGM and in any event at least 14 days before the Implementation Date, lodge with ASIC all notices in the prescribed form stating that the Financial Assistance Approval Resolution has been passed under section 260B of the Corporations Act.

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## **5. Conduct of business and requests for access**

### **5.1 Conduct of business**

Subject to clause 5.3, from the date of this agreement up to and including the Implementation Date, the Target must use all reasonable endeavours to procure that each entity of the Target Group:

- (a) conducts its businesses and operations in the ordinary and usual course consistent with its past business practices and does not make any significant change to the nature or scale of any activity comprised in its businesses and operations;
- (b) conducts its businesses and operations in accordance with all applicable laws and regulations;
- (c) preserves its relationships with material customers, suppliers, landlords, licensors, licensees, joint venturers and others having material business dealings with it;
- (d) protects and maintains each of its physical assets and must maintain appropriate and adequate insurance in respect of each of those assets which are insurable;
- (e) keeps and maintains proper records of all its dealings and transactions relating to its business and operations;
- (f) pays all amounts owing to trade or other creditors of the entity in accordance with applicable payment terms; and
- (g) consults with the Bidder in relation to the preparation and approval of any budget or business plan relating to the entity's businesses or operations.

### **5.2 Restricted conduct**

Without limiting clause 5.1, from the date of this agreement up to and including the Implementation Date, the Target must use all reasonable endeavours to procure that each entity of the Target Group does not (without the prior approval of the Bidder):

- (a) acquire or dispose of any business, operation, asset, entity or undertaking, the value of which exceeds \$1 million, individually or when aggregated with all such businesses, operations, assets, entities or undertakings;
- (b) enter into, vary or terminate any contract, joint venture, partnership or commitment involving total expenditure greater than \$0.5 million, individually or when aggregated with all such contracts, joint ventures, partnerships or commitments;

- (c) authorise, commit, announce or agree to take any of the actions referred to in any of clauses 5.2(a) or 5.2(b) above;
- (d) settle any legal proceedings, claim, investigation, arbitration or other like proceedings where the amount claimed exceeds \$0.5 million;
- (e) materially amend any arrangement with its financial advisors in respect of the transactions contemplated by this agreement; or
- (f) authorise, commit or agree to do any of the matters set out above.

### **5.3 Permitted activities**

Nothing in clause 5.1 or clause 5.2 restricts the Target or any member of the Target Group from undertaking anything that:

- (a) is required or contemplated to be undertaken pursuant to the Transaction Documents, or which is otherwise permitted by the Transaction Documents;
- (b) is considered necessary by the Target or a Subsidiary to respond to prevailing market conditions in a reasonable manner consistent with the manner in which the entity has responded in the past;
- (c) has been approved in writing by the Bidder, such approval not to be unreasonably withheld or delayed; or
- (d) is otherwise required by law.

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## **6. Recommendation, intentions and announcements**

### **6.1 Target Board recommendation**

So far as it is within its power and control to do so, the Target must procure that the Independent Directors, in the Target Announcement and in the Explanatory Memorandum, unanimously recommend that Target Shareholders vote in favour of the Scheme, the Financial Assistance Approval Resolution and the Related Party Approval Resolution, subject to:

- (a) no Superior Proposal being made;
- (b) the Scheme Consideration being within or above the assessed valuation range of Target Shares set out in the Independent Expert's Report; and
- (c) the Independent Expert concluding that the Scheme and the Target's entry into the Facility Guarantee are fair and reasonable to and in the best interests of the Target Shareholders.

### **6.2 Target Director intentions**

So far as it is within its power and control to do so, the Target must procure that each Independent Director announces in the Target Announcement and in the Explanatory Memorandum his or her intention to vote in favour of the Scheme, the Financial Assistance Approval Resolution and the Related Party Approval Resolution, any Target Shares in which they have a Relevant Interest and in respect of which they have power to vote subject to:

- (a) no Superior Proposal being made;

- (b) the Scheme Consideration being within or above the assessed valuation range of Target Shares set out in the Independent Expert's Report; and
- (c) the Independent Expert concluding that the Scheme and the Target's entry into the Facility Guarantee are fair and reasonable to and in the best interests of the Target Shareholders.

### **6.3 Change of recommendation or intentions**

The Target Board may change its recommendation and any Independent Director may announce his or her intention to vote any Target Shares in which they have a Relevant Interest against the Scheme, the Financial Assistance Approval Resolution or the Related Party Approval Resolution, or abstain from voting on the Scheme, the Financial Assistance Approval Resolution or the Related Party Approval Resolution, if:

- (a) a Superior Proposal is made;
- (b) the Scheme Consideration is below the assessed valuation range of Target Shares set out in the Independent Expert's Report; and
- (c) the Independent Expert does not conclude that the Scheme and the Target's entry into the Facility Guarantee are fair and reasonable to and in the best interests of the Target Shareholders.

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## **7. Announcements**

### **7.1 Bidder Announcement and Target Announcement**

Immediately after the execution of this agreement, the Target must issue the Target Announcement to the ASX and the Bidder must publicly issue the Bidder Announcement.

### **7.2 Making announcements**

Subject to clause 7.1, a party must not make, or authorise or cause to be made, any public announcement relating to the negotiations between the parties or the subject matter of any Transaction Document unless:

- (a) it has the prior written consent of the other parties; or
- (b) it is required to do so by law or the listing or other rules of the securities or stock exchange on which that party's securities are quoted.

### **7.3 Requirements**

If a party is required to make a public announcement under clause 7.2(b), it must before doing so, to the extent practicable and as soon as reasonably possible:

- (a) notify the other parties of the proposed announcement;
- (b) consult with the other parties as to its content; and
- (c) use reasonable endeavours to comply with any reasonable request by the other parties concerning the proposed announcement.



## **7.4 Survival of clause**

Despite any other provision of this agreement, this clause 7 survives the expiry or termination of this agreement.

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## **8. Liability of directors and employees**

### **8.1 Liability of directors and employees**

Each party releases all rights against, and agrees that it will not make any claim against, each past or present director and employee of the other party in relation to information provided to the first party in relation to the transactions contemplated by this agreement to the extent that such director or employee has acted without negligence, in good faith and has not engaged in wilful misconduct.

### **8.2 Directors' and officers' insurance**

The Bidder acknowledges that the Target will, by no later than the Implementation Date, pay all premiums required so as to ensure that insurance cover is provided under any D&O Policy on those terms until that date. The extension of cover will be on terms that such extension cannot be amended to the detriment of the insureds or cancelled by any insured or the insurer under the D&O Policy.

### **8.3 Obligations in relation to directors' and officers' insurance**

From the Implementation Date, the Target must not:

- (a) vary or cancel the D&O Policy; or
- (b) unless required under the D&O Policy, commit any act or omission that may prejudice any claim by a director or officer of the Target under the D&O Policy as extended pursuant to clause 8.2 above.

Nothing in clause 8.2 or clause 8.3 shall require the Bidder or the Target to incur any additional premium after the Implementation Date or require the Target to not fulfil its contractual obligations under the D&O Policy.

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## **9. Warranties and indemnities**

### **9.1 Warranties by the Bidder**

The Bidder warrants to the Target that each of the following warranties is true and correct:

- (a) as at the date of this agreement and as at the Second Court Date:
  - (i) the Bidder is a company properly incorporated and validly existing under the laws of Victoria;
  - (ii) the Bidder and the Guarantor have been offered and have accepted the First Facility Binding Offer;
  - (iii) the Bidder has taken all corporate actions necessary to enable it to execute, deliver and perform its obligations under this agreement;
  - (iv) the Guarantor and each of its Related Entities (other than the Target) has complied with all of its obligations arising under Chapter 6 of the Corporations Act in respect of the Target;

- (v) each Transaction Document constitutes (or will when executed constitute) valid legal and binding obligations of the Bidder and is enforceable against the Bidder in accordance with its respective terms; and
  - (vi) the Bidder is aware that the Target and its Representatives will rely on the Bidder Provided Information for the purposes of preparing the Explanatory Memorandum and proposing the Scheme in accordance with the requirements of the Corporations Act and the Policy Statements;
- (b) as at the First Court Date, the Bidder Provided Information in the form and context approved or amended by the Bidder under clause 4.2(e) is not misleading or deceptive in any material respect and does not contain any material omission and complies with the Bidder Information Requirements; and
- (c) on each date from the First Court Date until the Implementation Date, the Bidder has complied with its obligations under clause 4.2(f).

## **9.2 Bidder indemnity**

The Bidder indemnifies the Target against any Indemnified Loss suffered or incurred by the Target by reason of:

- (a) any breach of any of the representations and warranties of the Bidder in clause 9.1;
- (b) any of the Bidder Provided Information contained in the Explanatory Memorandum as at the date on which the Explanatory Memorandum is dispatched to Target Shareholders containing any statement which is false, misleading or deceptive, whether in content or by omission;
- (c) any breach by the Bidder of any covenant or undertaking on the part of the Bidder under this agreement or the Deed Poll; or
- (d) the Target having proposed, and the Independent Directors having recommended, the Scheme to Target Shareholders in reliance on the Bidder Provided Information and the representations and warranties of the Bidder in clause 9.1.

## **9.3 Warranties by the Target**

The Target warrants to the Bidder that each of the following warranties is true and correct:

- (a) as at the date of this agreement and as at the Second Court Date:
  - (i) the Target is a company properly incorporated and validly existing under the laws of Australia;
  - (ii) the Target has taken all corporate actions necessary to enable it to execute, deliver and perform its obligations under this agreement;
  - (iii) each Transaction Document (other than the Deed Poll) constitutes (or will when executed constitute) valid legal and binding obligations of the Target and is enforceable against the Target in accordance with its terms; and
  - (iv) the Target is not and has not been in breach of its continuous disclosure obligations under the Listing Rules;

- (b) as at the date of this agreement:
  - (i) there are 249,439,547 Target Shares on issue; and
  - (ii) the Target has not issued (and is not required to issue) any options or other securities or instruments which are still outstanding (or may become outstanding) and which may convert into Target securities;
- (c) as at the Second Court Date, the Target Information in the Explanatory Memorandum does not contain a statement which is misleading or deceptive in any material respect and does not contain any material omission (other than a statement or omission which has been rectified by the Target to the Court's satisfaction by the Second Court Date);
- (d) on each date from the First Court Date until the Implementation Date, the Target has complied with its obligations under clause 4.1(k); and
- (e) all information it has provided to the Bidder or the Guarantor (whether as part of the Due Diligence Materials or otherwise) is accurate and not misleading.

#### **9.4 Target indemnity**

The Target indemnifies the Bidder against any Indemnified Loss suffered or incurred by the Bidder by reason of any breach of any of the representations and warranties of the Target in clause 9.3.

#### **9.5 Warranties by Guarantor**

The Guarantor warrants to the Target that each Guarantor Warranty is true and correct at the relevant time specified in clause 9.1, save that it was incorporated and is validly existing under the laws of Bangalore, India, not Victoria.

#### **9.6 Guarantor indemnity**

The Guarantor indemnifies the Target against, and must pay to the Target on demand, any Indemnified Loss suffered or incurred by the Target by reason of:

- (a) any breach of any of the representations and warranties of the Guarantor in clause 9.5;
- (b) any of the Bidder Provided Information contained in the Explanatory Memorandum as at the date on which the Explanatory Memorandum is dispatched to Target Shareholders containing any statement which is false, misleading or deceptive, whether in content or by omission;
- (c) any breach of any covenant or undertaking on the part of the Bidder under this agreement or the Deed Poll; and
- (d) the Target having proposed, and the Independent Directors having recommended, the Scheme to Target Shareholders in reliance on the Bidder Provided Information and the representations and warranties of the Guarantor in clause 9.5.

#### **9.7 Notifications**

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 9.

## **9.8 Status of representations and warranties**

Each representation and warranty in this clause 9:

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

## **9.9 Status and enforcement of indemnities**

Each indemnity in this agreement:

- (a) is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement; and
- (b) is given to the party to which it is expressed to be given, and as trustee for each Representative of that party, and a reference to a loss in an indemnity given to a party includes a loss suffered or incurred by a Representative of that party,

and it is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this agreement.

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## **10. Termination**

### **10.1 Termination by Bidder**

The Bidder may terminate this agreement at any time before 8.00 am on the Second Court Date:

- (a) in accordance with clause 3.6; or
- (b) by notice in writing to the Target if:
  - (i) the Target is in material breach of any of clause 3, clause 4.1 or clause 4.6 of this agreement before that time, provided that the Bidder is only entitled to terminate if it has given notice to the Target setting out the relevant circumstances and stating an intention to terminate and the relevant circumstances have continued to exist for 5 Business Days (or any shorter period ending at 5.00 pm on the day before the Second Court Date) from the time such notice is received by the Target;
  - (ii) the Target is in breach of clause 6.1 or clause 6.2 of this agreement;
  - (iii) there is a material breach of any of the Target Warranties; or
  - (iv) the Target Board changes its recommendation in relation to the Scheme, for any reason, whether or not permitted to do so under this agreement.

### **10.2 Termination by Target**

The Target may terminate this agreement at any time before 8.00 am on the Second Court Date by notice in writing to the Bidder:

- (a) in accordance with clause 3.6; or
- (b) by notice in writing to the Bidder if:
  - (i) the Bidder or the Guarantor is in material breach of either clause 3 or clause 4.2 of this agreement before that time, provided that the Target is only entitled to terminate if it has given notice to the Bidder setting out the relevant circumstances and stating an intention to terminate and the relevant circumstances have continued to exist for 5 Business Days (or any shorter period ending at 5.00 pm on the day before the Second Court Date) from the time such notice is received by the Bidder;
  - (ii) an Insolvency Event occurs in relation to the Bidder or the Guarantor;
  - (iii) there is a material breach of any of the Bidder Warranties or Guarantor Warranties; or
  - (iv) the Target Board recommends to the Target Shareholders any Superior Proposal.

### **10.3 Effect of termination**

If this agreement is terminated then:

- (a) the provisions of this agreement shall cease to have effect except for the provisions of clauses 1, 10, 11, 12, 13, 15 and 16 which will survive termination;
- (b) each party retains the rights it has against the others in respect of any breach of this agreement occurring before termination; and
- (c) the Bidder must return to the Target all confidential information in relation to the Target in its possession in accordance with the terms and conditions of the Confidentiality Agreement.

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## **11. Confidentiality**

No party may disclose the existence or contents of this document except:

- (a) in the Bidder Announcement or the Target Announcement;
- (b) in the Explanatory Memorandum;
- (c) to that party's professional advisers;
- (d) to that party's financiers in accordance with the terms of the Confidentiality Agreement; or
- (e) to the extent required by law or the rules of any stock exchange (provided the disclosing party consults with the other party as to the form and content of any disclosure required and uses its best endeavours to minimise the extent of such disclosure).

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## **12. Guarantee and indemnity**

### **12.1 Guarantee**

In consideration of the Target entering into this agreement with the Bidder at the request of the Guarantor, the Guarantor irrevocably and unconditionally guarantees to the Target the due and punctual performance of all present and future obligations and the payment of all present and future liabilities of the Bidder under each Transaction Document and must on demand by the Target perform such obligations or pay such liabilities in the manner specified in the relevant Transaction Document if the Bidder fails to do so on the due date.

### **12.2 Indemnity**

As a separate and independent obligation from that contained in clause 12.1, the Guarantor must pay to the Target on demand the amount of any Indemnified Loss suffered or incurred by the Target or any of its shareholders arising out of or in connection with any failure of the Bidder to perform any obligation or pay any liability under any Transaction Document on the due date.

### **12.3 Nature and preservation of liability**

The Guarantor acknowledges and agrees that each of its obligations under this clause 12:

- (a) is a principal and continuing obligation and will not be affected by any principle of law or equity which might otherwise reduce or limit in any way the liability of the Guarantor under this clause 12; and
- (b) continues notwithstanding any amendment of any Transaction Document or any waiver, consent or notice given under any Transaction Document by any party to another.

### **12.4 Waiver of rights**

The Guarantor must not exercise any right of indemnity or subrogation which it might otherwise be entitled to claim and enforce against or in respect of the Bidder and irrevocably waives all those rights of indemnity or subrogation it may have.

### **12.5 Restrictions on Guarantor's dealings**

The Guarantor irrevocably appoints the Target as its attorney to prove in the insolvency of the Bidder for all money to which the Guarantor may be entitled from the Bidder up to an amount which does not exceed the amount which may be payable by the Guarantor under any Transaction Document. The Guarantor acknowledges that the Target may, subject to the terms of this agreement, retain any money which the Target may receive from any proof on account of the Guarantor's liability under this clause 12.

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## **13. Notices**

### **13.1 How notice to be given**

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

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

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

- (i) ***if to the Target:*** Ascent Pharmahealth Limited
- Address: 151-153 Clarendon Street, South Melbourne, VIC  
3025 Australia
- Fax number: + 61 3 8677 6666
- Email address: [Stephenl.blank@ascentpharma.com.au](mailto:Stephenl.blank@ascentpharma.com.au)
- For the attention of: Stephen L. Blank, Senior Vice President, Strategy  
and Development
- with a copy to:*** Clayton Utz
- Address: Level 18, 333 Collins Street
- Fax: +61 3 9629 8488
- Email address: [rlyle@claytonutz.com](mailto:rlyle@claytonutz.com)
- For the attention of: Roderick Lyle, Partner
- (ii) ***if to the Bidder:*** Linkace Investments Pty Ltd
- Address: 54 Macedon Road, Lower Templestowe Victoria  
3107
- Fax number: N/A
- For the attention of: George Karagiannis
- with a copy to:*** Middletons
- Address: Level 25, 525 Collins Street, Melbourne Victoria  
3000
- Fax: +61 3 9205 2055
- For the attention of: Jol Rogers, Partner
- (iii) ***if to the Guarantor:*** Strides Arcolab Limited
- Address: Strides House, Bilekahalli, Bannerghatta Road,  
Bangalore - 560076, India
- Fax number: N/A
- Email address: [rangants@stridesarco.com](mailto:rangants@stridesarco.com)
- For the attention of: T. S. Rangan
- with a copy to:*** Middletons
- Address: Level 25, 525 Collins Street, Melbourne Victoria  
3000

Fax: +61 3 9205 2055

For the attention of: Jol Rogers, Partner

- (d) (in the case of personal service, post or facsimile) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
- (e) (in the case of email) must be in pdf or other format that is a scanned image of the original of the communication, including a handwritten signature, and be attached to an email that states that the attachment is a communication under this agreement; and
- (f) must be delivered by hand or posted by prepaid post to the address, sent by fax to the number, or sent by email to the email address, of the addressee, in accordance with this clause 13.1.

### **13.2 When notice taken to be received**

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

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
- (d) (in the case of delivery by hand) on delivery; and
- (e) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of this clause 13, 24 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

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## **14. Entire agreement**

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

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## **15. General**

### **15.1 Amendments**

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



## **15.2 Assignment**

A party cannot assign or otherwise transfer any of its rights under this agreement without the prior consent of each other party.

## **15.3 Consents**

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

## **15.4 Costs**

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

## **15.5 Counterparts**

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

## **15.6 Further acts and documents**

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

## **15.7 No merger**

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

## **15.8 Severance**

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

## **15.9 Stamp duties**

The Bidder:

- (a) must pay all stamp duties and any related fines and penalties in respect of this agreement, the performance of this agreement and each transaction effected by or made under this agreement;
- (b) must pay to the Target on demand the amount of any Indemnified Loss suffered or incurred by the Target arising out of or in connection with any failure to comply with clause 15.9(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

## **15.10 Waivers**

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

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

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

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## **16. Governing law, and jurisdiction and service of process**

### **16.1 Governing law**

This agreement is governed by the law applying in Victoria, Australia.

### **16.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non exclusive jurisdiction of the courts of Victoria, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 16.2(a).

### **16.3 Service of process**

The Guarantor irrevocably appoints Bidder as its agent in Australia for service of process.

## Schedule 1 Timetable

<b>Event</b>	<b>Date</b>
Target lodges draft Explanatory Memorandum with ASIC	1 February 2011
First Court Date	18 February 2011
Dispatch of Explanatory Memorandum completed	25 February 2011
Scheme Meetings	30 March 2011
EGM	30 March 2011
Second Court Date	8 April 2011
Effective Date	11 April 2011
Record Date	18 April 2011
Implementation Date	21 April 2011
End Date	31 May 2011

**Executed as an agreement.**

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

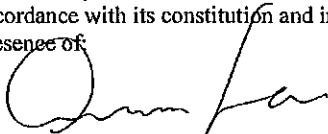
\_\_\_\_\_  
Signature of director

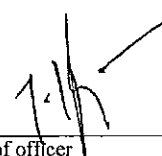
\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Full name of company secretary/director

**Executed by Strides Arcolab Limited** in accordance with its constitution and in the presence of:

  
\_\_\_\_\_  
Signature of officer

  
\_\_\_\_\_  
Signature of officer

**ARUN KUMAR, GROUP CEO & MD**  
\_\_\_\_\_  
Full name of officer and office held

**TS RANGAN, GROUP CFO**  
\_\_\_\_\_  
Full name of officer and office held

**Executed by Linkace Investments Pty Ltd** ACN 147 854 484 in accordance with its constitution and in the presence of:

\_\_\_\_\_  
Signature of officer

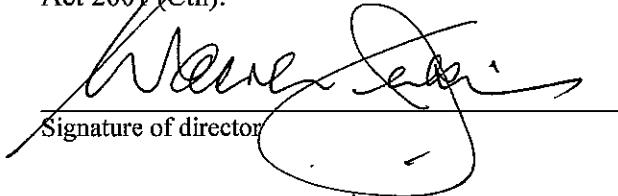
\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Full name of officer and office held

\_\_\_\_\_  
Full name of officer and office held

**Executed** as an agreement.

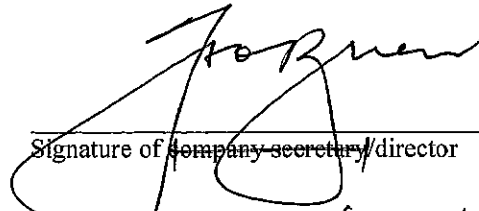
**Executed by Ascent Pharmahealth Limited** in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

WARREN JENKINS

Full name of director



Signature of company secretary/director

THOMAS J.R. SBRIEN

Full name of company secretary/director

**Executed by Strides Arcolab Limited** in accordance with its constitution and in the presence of:

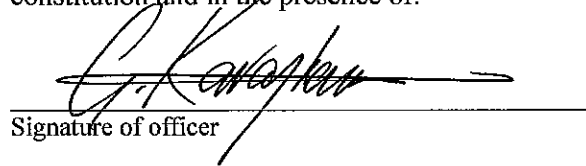
Signature of officer

Full name of officer and office held

Signature of officer

Full name of officer and office held

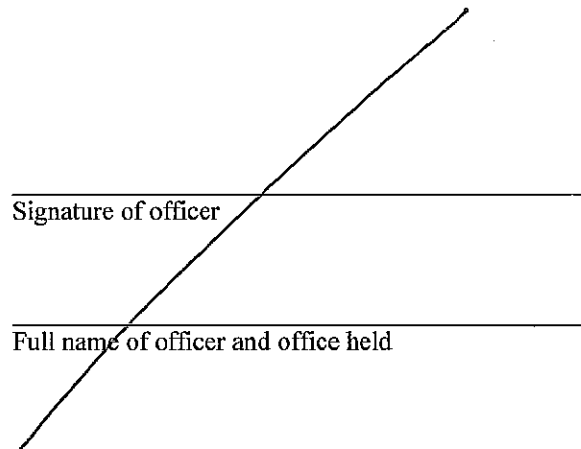
**Executed by Linkace Investments Pty Ltd** ACN 147 854 484 in accordance with its constitution and in the presence of:



Signature of officer

GEORGE KARAGIANNIS

Full name of officer and office held *SOLE DIRECTOR*



Signature of officer

Full name of officer and office held

## **Annexure A Scheme**

## **Scheme of Arrangement made under section 411 of the Corporations Act 2001 (Commonwealth)**

**Parties**                    **Ascent Pharmahealth Limited ABN 17 003 854 626 of 151-153  
Clarendon Street, South Melbourne Victoria, Australia 3025 (Target)**

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

### **Recitals**

- A. Target is a public company incorporated in the State of Victoria, Australia which is admitted to the official list of ASX.
- B. Guarantor is a public company incorporated under the laws of India which is listed on the Bombay Stock Exchange and the National Stock Exchange of India.
- C. Bidder is a private company incorporated under the laws of Australia which is a wholly-owned subsidiary of Guarantor.
- D. Target, Bidder and Guarantor have entered into an implementation agreement dated 22 December 2010 (the **Implementation Agreement**).
- E. Target has agreed in the Implementation Agreement to propose a scheme of arrangement between Target and the holders of fully paid ordinary shares in Target (other than Excluded Shareholders) in accordance with the terms of this document (the **Scheme**), the effect of which will be that Bidder acquires all of the Scheme Shares from Scheme Shareholders for the Scheme Consideration.
- F. The Excluded Shareholders are Linkace (a company incorporated in Cyprus which is a wholly-owned subsidiary of Guarantor) and Futura Investments (a company incorporated in Singapore of which Dennis Basis, the Chief Executive Officer of Target, is the sole shareholder) and I-Investments (a company incorporated in Australia of which Dennis Bastas, the Chief Executive Officer of Target, is the sole shareholder).
- G. Bidder has agreed in the Implementation Agreement to take certain steps in relation to the Scheme and Guarantor has agreed in the Implementation Agreement to guarantee the obligations of Bidder and to take certain other steps in relation to the implementation of the Scheme.
- H. If the Scheme becomes Effective, then, on the Implementation Date, Bidder will pay the Scheme Consideration to the Scheme Shareholders in accordance with the provisions of the Scheme and Bidder will acquire all of the Scheme Shares.
- I. Bidder has entered into the Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders to perform its obligations under the Implementation Agreement and this Scheme (as if named as a party to this Scheme). Guarantor has entered into the Deed Poll for the purposes of covenanting in favour of the Scheme Shareholders to procure that Bidder performs its obligations under the Implementation Agreement and this Scheme (as if named as a party to this Scheme).

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## **1. Definitions and interpretation**

### **1.1 Definitions**

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

Each capitalised term used and not otherwise defined has the meaning given to that term in the Implementation Agreement.

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

**ASX** means ASX Limited ABN 98 008 624 691, and where the context requires, the market operated by ASX Limited.

**Bidder** means Linkace Investments Pty Ltd ACN 147 854 484 of 54 Macedon Road, Lower Templestowe, Victoria 3107.

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

**CHESS** means the clearing house electronic sub-register system of share transfers operated by ASX Settlement and Transfer Corporation Pty Limited.

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

**Court** means the Supreme Court of Victoria, Australia or such other court of competent jurisdiction as the Target and the Bidder agree in writing.

**Deed Poll** means the deed poll to be executed by the Bidder and the Guarantor in favour of each Scheme Shareholder.

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

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

**End Date** means the date which is 3 months from execution of this agreement or such other date as agreed in writing between Target and Bidder.

**Excluded Shareholders** means each of Linkace, Futura Investments and I-Investments.

**Financier** means Bank of Western Australia Ltd ABN 22 050 494 454.

**First Facility Binding Offer** means a binding letter of offer from the Financier to the Bidder and Guarantor regarding a loan from the Financier to the Bidder of approximately \$37.5 million.

**Futura Investments** means Futura Investments Pte Ltd 200900186M, an entity incorporated under the laws of Singapore of which Dennis Bastas, the Chief Executive Officer of Target, is the sole shareholder.

**Guarantor** means Strides Arcolab Limited of Strides House, Bilekahalli, Bannerghatta Road, Bangalore - 560076, India.

**Implementation Date** means the date which is 3 Business Days after the Record Date or such other date as Target and Bidder agree in writing.

**I-Investments** means I-Investments Pty Ltd ACN 087 117 226, an entity incorporated under the laws of Australia of which Dennis Bastas, the Chief Executive Officer of Target, is the sole shareholder.

**Linkace** means Linkace Limited, a company incorporated under the laws of Singapore, being a wholly-owned subsidiary of the Guarantor.



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

**Record Date** means 7:00 pm on the date which is 5 Business Days after the Effective Date.

**Related Entity** of a corporation means:

- (a) a related body corporate of that corporation within the meaning of section 50 of the Corporations Act and, for the avoidance of doubt, as if that section applies to foreign corporations; and
- (b) a trustee of any unit trust in relation to which that corporation, or a corporation referred to in paragraph (a), directly or indirectly:
  - (i) controls the right to appoint the trustee;
  - (ii) is in a position to control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units in the trust; or
  - (iii) holds or is in a position to control the disposal of more than one half of the issued units of the trust.

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

**Scheme Consideration** means the amount of A\$0.40 cash in respect of each Scheme Share.

**Scheme Share** means a Target Share on issue and held by a Scheme Shareholder as at the Record Date.

**Scheme Shareholder** means each Target Shareholder (other than the Excluded Shareholders) as at the Record Date.

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

**Target Constitution** means the constitution of Ascent Pharmahealth Limited.

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

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

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

**Target Share Registry** means Computershare Investor Services Pty Limited of Yarra Falls, Abbotsford, Victoria Australia 3067.

## 1.2 Interpretation

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

- (a) the singular includes the plural and vice versa;

- (b) each gender includes each other gender;
- (c) references to persons includes references to individuals, corporations, other bodies corporate or bodies politic;
- (d) references to paragraphs or clauses are to a paragraph or clause of this document;
- (e) a reference to a statute, regulation or agreement is to such a statute, regulation or agreement as from time to time amended;
- (f) a reference to a person includes a reference to a person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (g) if a time period is specified and dates from a given date or the day of an act or event, it is to be calculated exclusive of that day;
- (h) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (i) a reference to any time is a reference to that time in Victoria, Australia;
- (j) a reference to "A\$" is to the lawful currency of the Commonwealth of Australia;
- (k) a reference to a document is that document as varied, novated, ratified or replaced from time to time;
- (l) the interpretation of a substantive provision is not affected by any heading; and
- (m) "includes" in any form is not a word of limitation.

### **1.3 Business Day**

Except where otherwise expressly provided, where the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing shall be done on the next Business Day.

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## **2. Conditions**

### **2.1 Conditions precedent to the Scheme**

The Scheme is conditional upon satisfaction of each of the following conditions precedent and the provisions of clauses 3, 4, 5 and 6 will not come into effect unless and until each of those conditions has been satisfied:

- (a) as at 8.00 am on the Second Court Date each of the conditions precedent set out in clause 3.1 of the Implementation Agreement (other than the condition relating to the approval of the Court set out in clause 3.1(k) of the Implementation Agreement) has been satisfied or waived in accordance with clause 3.6 of the Implementation Agreement;
- (b) as at 8.00 am on the Second Court Date the Implementation Agreement has not been terminated;
- (c) the Court has approved this Scheme for the purposes of section 411(4)(b) of the Corporations Act with or without modification;

- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme as are acceptable to the Target and the Bidder have been satisfied; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable section 411(6) of the Corporations Act) in relation to the Scheme.

## **2.2 Certificates in relation to conditions and financing**

On the Second Court Date:

- (a) Target must provide to the Court a certificate confirming:
  - (i) whether or not as at 8.00 am on the Second Court Date the conditions precedent set out in clauses 3.1(c), 3.1(d), 3.1(e), 3.1(f), 3.1(g), 3.1(h) and 3.1(l) of the Implementation Agreement have been satisfied or waived in accordance with clause 3.6 of the Implementation Agreement; and
  - (ii) to the best of Target's knowledge whether the conditions precedent set out in clauses 3.1(a) and 3.1(b) of the Implementation Agreement have been satisfied or waived in accordance with clause 3.6 of the Implementation Agreement.
- (b) Bidder and Guarantor must jointly provide to the Court a certificate confirming:
  - (i) whether or not as at 8.00 am on the Second Court Date the conditions precedent set out in clauses 3.1(i) and 3.1(j) of the Implementation Agreement have been satisfied or waived in accordance with clause 3.6 of the Implementation Agreement;
  - (ii) to the best of Bidder's and Guarantor's knowledge whether the conditions precedent set out in clauses 3.1(a) and 3.1(b) of the Implementation Agreement have been satisfied or waived in accordance with clause 3.6 of the Implementation Agreement; and
  - (iii) whether or not as at 8.00 am on the Second Court Date the condition precedent set out in clause 3.1(m) of the Implementation Agreement has been satisfied or waived in accordance with clause 3.6 of the Implementation Agreement.

## **2.3 Termination of Implementation Agreement**

Without limiting any rights under the Implementation Agreement, in the event that the Implementation Agreement is terminated in accordance with its terms before 8.00 am on the Second Court Date, the Target, Bidder and Guarantor are each released from:

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

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### **3. Scheme**

#### **3.1 Lodgement of Court order**

As soon as practicable following approval of this Scheme by the Court in accordance with section 411(4)(b) of the Corporations Act, and in any event by no later than 10.00 am on the Business Day following the date of the Court approval, Target will lodge with ASIC an office copy of the Court order under section 411(10) of the Corporations Act approving this Scheme.

#### **3.2 Effective Date of the Scheme**

Subject to clause 3.3, the Scheme will take effect on and from the Effective Date.

#### **3.3 End Date**

The Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the End Date or such later date as the Court approves with the consent of Target.

#### **3.4 Implementation of Scheme**

On the Implementation Date, the following will occur (and must occur in the order set out below):

- (a) **(payment by Bidder)** on or before 12:00 pm:
  - (i) in consideration for the transfer of the Scheme Shares to Bidder, Bidder will pay (and Guarantor must ensure that Bidder pays) the Scheme Consideration in A\$ to Scheme Shareholders for each Scheme Share registered in the name of that Scheme Shareholder as at the Record Date in accordance with clause 3.5; and
  - (ii) Bidder and Guarantor will provide a certificate to Target (signed by two directors of Guarantor and the sole director of Bidder) confirming that Bidder and Guarantor have fulfilled their respective obligations under clause 3.5(a);
- (b) **(transfer)** after 12:00 pm and subject to Target receiving the certificate from Bidder and Guarantor referred to in clause 3.4(a)(ii) and dispatching the cheques for the Scheme Consideration in accordance with clause 3.5(b):
  - (i) Target must complete, execute (acting as agent and attorney for each Scheme Shareholder pursuant to clause 6.1) and deliver to Bidder a share transfer form or forms to transfer all of the Scheme Shares to Bidder;
  - (ii) Bidder must execute the share transfer form(s) referred to in clause 3.4(b)(i) and deliver the share transfer form(s) to Target for registration; and
  - (iii) immediately following receipt of transfer form(s) in respect of the Scheme Shares, the Scheme Shares together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date will be transferred to Bidder without the need for any further act by any Scheme Shareholder, and Target must enter the name of Bidder in the Target Share Register as the holder of the Scheme Shares.

### **3.5 Method of payment**

The obligations of Bidder and Guarantor under clause 3.4(a) must be satisfied as follows:

- (a) on or before the Business Day prior to the Implementation Date, Bidder and/or Guarantor depositing in cleared funds into an account in the name of Target (as notified by Target to Bidder) (**Trust Account**) an amount equal to the aggregate Scheme Consideration payable to all Scheme Shareholders (and that amount is actually received in the Trust Account). The monies deposited pursuant to this clause 3.5(a) will be held by Target on trust for the Scheme Shareholders (except that any interest on the amount less applicable handling fees will be for the account of Bidder or Guarantor (as the case requires)); and
- (b) Target, acting as trustee for Scheme Shareholders, sending or procuring the dispatch to each Scheme Shareholder by pre-paid post to his or her address recorded in the Target Share Register as at the Record Date, a pre-printed cheque for the Scheme Consideration due to that Scheme Shareholder as determined in accordance with the Scheme. In the case of joint holders of Scheme Shares, the Scheme Consideration must be paid to the holder whose name appears first in the Target Share Register as at the Record Date.

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## **4. Dealings in Target Shares**

### **4.1 Dealings in Target Shares by Scheme Shareholders**

For the purposes of establishing who are Scheme Shareholders, dealings in Target Shares will be recognised by Target provided that:

- (a) in the case of dealings of the type to be effected on CHESS, the transferee is registered in the Target Share Register as the holder of the relevant Target Shares by the Record Date; or
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Target Share Registry on or before the Record Date,

and Target will not accept for registration, or recognise for the purpose of establishing who are Scheme Shareholders, any transmission application or transfer in respect of Target Shares received after the Record Date.

### **4.2 Target Share Register**

Target will, until the Scheme Consideration has been paid, maintain the Target Share Register in accordance with the provisions of this clause 4 and the Target Share Register in this form will solely determine entitlements to the Scheme Consideration.

### **4.3 Information to be made available to the Bidder**

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

#### **4.4 Effect of Share certificates and holding statements**

As from the Record Date (and other than for the Excluded Shareholders following the Implementation Date), all share certificates and holding statements for the Scheme Shares will cease to have effect as documents of title, and each entry on the Target Share Register at that date will cease to have any effect other than as evidence of entitlement to the Scheme Consideration.

#### **4.5 No disposals after Record Date**

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

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### **5. Suspension and termination of quotation**

Target must:

- (a) apply to ASX for suspension of the Target Shares from official quotation on ASX with effect from the Business Day following the Effective Date; and
- (b) apply to ASX for termination of official quotation of the Target Shares on ASX with effect from the Business Day following the Implementation Date.

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### **6. General Scheme provisions**

#### **6.1 Appointment of agent and attorney**

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

- (a) executing any document or doing any other act necessary to give effect to the terms of the Scheme including, without limitation, the execution of the share transfer(s) to be delivered under clause 3.4(b) and the giving of the Scheme Shareholders' consent under clause 6.4; and
- (b) enforcing the Deed Poll against Guarantor and Bidder,

and Target accepts such appointment. Target, as agent of each Scheme Shareholder, may sub-delegate its functions under this clause 6.1 to all or any of its directors and secretaries (jointly and severally).

#### **6.2 Appointment of sole proxy**

On and from the time the Scheme becomes Effective and until Target registers, or procures the registration of, Bidder as the holder of all Scheme Shares in the Target Share Register, each Scheme Shareholder is deemed to have irrevocably appointed Bidder as attorney and agent (and directed Bidder in such capacity) to appoint an officer or agent nominated by Bidder as its sole proxy and, where applicable, corporate representatives to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in its name and sign any shareholders' resolutions, whether in person, by proxy or by corporate representative (other than as pursuant to this clause 6.2).

### **6.3 Enforcement of Deed Poll**

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

### **6.4 Scheme Shareholders' consent**

The Scheme Shareholders consent to Target, Guarantor and Bidder doing all things necessary, incidental or expedient to the implementation and performance of the Scheme and acknowledge that the Scheme binds Target and all of the Target Shareholders from time to time (including those who do not attend the meeting of Target Shareholders to approve the Scheme, do not vote at that meeting or vote against the Scheme).

### **6.5 Agreement by Scheme Shareholders**

The Scheme Shareholders agree to the transfer of their Scheme Shares to Bidder in accordance with the terms of the Scheme and agree to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from the Scheme.

### **6.6 Warranty by Scheme Shareholders**

The Scheme Shareholders are deemed to have warranted to Bidder that all their Scheme Shares (including any rights attaching to those shares) which are transferred to Bidder under the Scheme will, at the date of the transfer of them to Bidder, be fully paid and free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to sell and to transfer their Scheme Shares together with any rights attaching to such shares. Target undertakes in favour of each Scheme Shareholder that it will provide such warranty to Bidder on behalf of the Scheme Shareholder.

### **6.7 Title to Scheme Shares**

Bidder shall be beneficially entitled to the Scheme Shares transferred to it under the Scheme pending registration by Target of Bidder in the Target Share Register as the holder of the Scheme Shares.

### **6.8 Amendments to the Scheme**

If the Court proposes to approve the Scheme subject to any alterations or conditions, Target may, by its counsel, and with the consent of Bidder and Guarantor, consent to those alterations or conditions on behalf of all persons concerned, including a Scheme Shareholder.

### **6.9 Notices**

Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to Target, it shall not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at Target's registered office or at the Target Share Registry.

### **6.10 Inconsistencies**

To the extent of inconsistency between the Scheme and the Target Constitution, the Scheme overrides the Target Constitution and binds Target and all Target Shareholders.

### **6.11 Further assurance**

Target will execute all deeds and other documents and do all acts and things as may be necessary or expedient for the implementation and performance of the Scheme and will, on behalf of Scheme Shareholders, procure Guarantor and Bidder to execute all documents and do all acts and things necessary or desirable for the implementation and performance of the steps attributed to Bidder or Guarantor under the Scheme.

### **6.12 Costs**

Except as otherwise expressly stated in the Scheme, Target will, or will procure that Bidder will pay any costs, and any stamp duty and any related fines or penalties, which are payable on or in respect of this Scheme or on any document referred to this Scheme, including, without limitation, all costs and brokerage payable in connection with the provision of the Scheme Consideration in accordance with this Scheme.

### **6.13 Stamp Duty**

Bidder will pay any stamp duty payable on the transfer by the Scheme Shareholders of the Scheme Shares to Bidder and indemnifies the Target Shareholders for any duty incurred as a result of the Scheme or any dealing or transactions contemplated as part of the Scheme.

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## **7. Governing law**

This Scheme is governed by the laws of the State of Victoria, Australia.



**Annexure B Deed Poll**

## Deed poll dated

**Parties**                    **Strides Arcolab** of Strides House, Bilekahalli, Bannerghatta Road, Bangalore - 560076, India (**Guarantor**)

**Linkace Investments Pty Ltd** ACN 147 854 484 of 54 Macedon Road, Lower Templestowe Victoria 3107 (**Bidder**)

**in favour of**

**Each holder of fully paid ordinary shares in the capital of Ascent Pharmahealth Limited ABN 17 003 854 626 (Target) on issue as at the Record Date (other than Excluded Shareholders) (Scheme Shareholders)**

## Recitals

- A. Target, Bidder and Guarantor have entered into an implementation agreement dated 22 December 2010 (the **Implementation Agreement**).
- B. Target has agreed in the Implementation Agreement to propose a scheme of arrangement under Part 5.1 of the Corporations Act between Target and the holders of fully paid ordinary shares in Target (other than Excluded Shareholders) (the **Scheme**), the effect of which will be that Bidder acquires all of the Scheme Shares from Scheme Shareholders for the Scheme Consideration. A copy of the Scheme is annexed to the Implementation Agreement.
- C. Bidder has agreed in the Implementation Agreement to take certain steps in relation to the Scheme and Guarantor has agreed in the Implementation Agreement to guarantee the obligations of Bidder and to take certain other steps in relation to the implementation of the Scheme.
- D. Guarantor is entering into this deed poll to covenant in favour of Scheme Shareholders that it will observe and perform its obligations under the Implementation Agreement and the Scheme, and procure that Bidder observes and performs its obligations under the Implementation Agreement and the Scheme, as if named as a party to the Scheme.
- E. Bidder is entering into this deed poll to covenant in favour of Scheme Shareholders that it will observe and perform its obligations under the Implementation Agreement and the Scheme, as if named as a party to the Scheme.

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## 1. Definitions and interpretations

### 1.1 Definitions

Unless otherwise defined, in this deed poll capitalised words and phrases have the same meaning as given to them in the Implementation Agreement and the Scheme.

### 1.2 Interpretation

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

- (a) the singular includes the plural and vice versa;
- (b) each gender includes each other gender;
- (c) references to persons includes references to individuals, corporations, other bodies corporate or bodies politic;

- (d) references to paragraphs or clauses are to a paragraph or clause of this document;
- (e) a reference to a statute, regulation or agreement is to such a statute, regulation or agreement as from time to time amended;
- (f) a reference to a person includes a reference to a person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (g) if a time period is specified and dates from a given date or the day of an act or event, it is to be calculated exclusive of that day;
- (h) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (i) a reference to any time is a reference to that time in Victoria, Australia;
- (j) a reference to "A\$" is to the lawful currency of the Commonwealth of Australia;
- (k) a reference to a document is that document as varied, novated, ratified or replaced from time to time;
- (l) the interpretation of a substantive provision is not affected by any heading; and
- (m) "includes" in any form is not a word of limitation.

### **1.3 Nature of deed poll**

Guarantor and Bidder acknowledge that:

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

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## **2. Conditions**

### **2.1 Conditions precedent**

Guarantor's and Bidder's obligations under this deed poll are subject to the satisfaction of each condition in clause 2.1 of the Scheme in accordance with its terms.

### **2.2 Termination**

If the conditions in clause 2.1 of the Scheme are not satisfied or waived on or before the End Date, or the Scheme is terminated, Guarantor's and Bidder's obligations under this deed poll automatically terminate.

### **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, each of Guarantor and Bidder is released from its obligations to further perform this deed poll except those obligations which by their nature survive termination.

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### **3. Payment of Scheme Consideration**

#### **3.1 Obligation to pay**

Subject to clause 2, on the Implementation Date, in consideration of the transfer of each Scheme Share to Bidder, Bidder must pay (and Guarantor must procure that Bidder pays) to each Scheme Shareholder the Scheme Consideration in accordance with clauses 3.4 and 3.5 of the Scheme, being A\$[insert] in respect of each Target Share registered in the name of that Scheme Shareholder as at the Record Date.

#### **3.2 Manner of payment**

Guarantor must procure that the obligations of Bidder to pay the Scheme Consideration to each Scheme Shareholder under the Scheme will be satisfied by Bidder complying with clauses 3.4 and 3.5 of the Scheme.

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### **4. Other obligations of Bidder**

Each of Guarantor and Bidder covenants in favour of Scheme Shareholders to observe and perform all other obligations attributed to it under the Implementation Agreement.

Bidder will perform (and Guarantor will procure that Bidder performs) all other obligations attributed to it under the Implementation Agreement and comply with the Scheme as if named as a party to the Scheme.

---

### **5. Warranties**

#### **5.1 Guarantor's warranties**

Guarantor represents and warrants that:

- (a) each of it and Bidder is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this deed poll and it and Bidder have the corporate power 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 it and Bidder have 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 on it and is enforceable in accordance with its terms (subject to any necessary stamping) and does not conflict with or result in a breach of or default under:
  - (i) the constitution or equivalent documents of it or any of its Related Entities; or
  - (ii) any writ, order or injunction, law, rule or regulation to which it is party, or by which it is bound.

#### **5.2 Bidder's warranties**

Bidder represents and warrants that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into and 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 on it.

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## 6. Continuing obligations

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

- (a) Guarantor and Bidder have fully performed their obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.

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## 7. General

### 7.1 Notices

Any notice or other communication in respect of this deed poll must be in legible writing and in English and:

- (a) must be addressed as show below:

- (i) ***if to the Target:*** Ascent Pharmahealth Limited  
Address: 151-153 Clarendon Street, South Melbourne, VIC 3025 Australia  
Fax number: + 61 3 8677 6666  
Email address: [Stephenf.blank@ascentpharma.com.au](mailto:Stephenf.blank@ascentpharma.com.au)  
For the attention of: Stephen L. Blank, Senior Vice President, Strategy and Development  
***with a copy to:*** Clayton Utz  
Address: Level 18, 333 Collins Street  
Fax: +61 3 9629 8488  
Email address: [ryle@claytonutz.com](mailto:ryle@claytonutz.com)  
For the attention of: Roderick Lyle, Partner
- (ii) ***if to the Bidder:*** Linkace Investments Pty Ltd  
Address: 54 Macedon Road, Lower Templestowe Victoria 3107  
Fax number: N/A  
For the attention of: George Karagiannis

**with a copy to:** Middletons  
Address: Level 25, 525 Collins Street, Melbourne Victoria  
3000  
Fax: +61 3 9205 2055  
For the attention of: Jol Rogers, Partner

(iii) **if to the Guarantor:** Strides Arcolab Limited  
Address: Strides House, Bilekahalli, Bannerghatta Road,  
Bangalore - 560076, India  
Fax number: N/A  
Email address: rangants@stridesarco.com  
For the attention of: T. S. Rangan

**with a copy to:** Middletons  
Address: Level 25, 525 Collins Street, Melbourne Victoria  
3000  
Fax: +61 3 9205 2055  
For the attention of: Jol Rogers, Partner

(iv) if to a Scheme Shareholder, by post to the registered address of that Scheme Shareholder with a copy to Target (in accordance with the notice details set out in the Implementation Agreement);

(b) must be signed by the person making the communication or by a person duly authorised by that person;

(c) must be delivered or posted by prepaid post to the address in accordance with clause 7.1(a) or sent by facsimile to the facsimile number specified above;

(d) will be regarded as received by the addressee:

(i) if by delivery, on delivery at the address as provided in clause 7.1(a) unless that delivery is not made on a Business Day or after 5.00 pm on a Business Day, when that communication will be regarded as received at 9.00 am on the next Business Day;

(ii) if sent by prepaid post, three Business Days after posting (or seven Business Days if posted to or from a place outside Australia); and

(iii) if a facsimile, at the time at which that facsimile is sent or shown on the transmission report which is produced by the machine from which that facsimile is sent and which confirms transmission of that facsimile in its entirety, unless that local time is not a Business Day or is after 5.00 pm on a Business Day when that communication will be regarded as received at 9.00 am on the next Business Day.

## **7.2 Stamp duty**

Bidder will (and Guarantor will procure that Bidder will):

- (a) pay all stamp duties and any related fines and penalties in respect of this deed poll, the performance of this deed poll and each transaction effected by or made under this deed poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 7.2(a).

## **7.3 Waiver**

The parties agree that:

- (a) waiver of any right arising from a breach of this deed poll or of any right, power, authority, discretion or remedy arising upon default under this deed poll must be in writing and signed by the party granting the waiver;
- (b) a failure or delay in exercise, or partial exercise, of:
  - (i) a right arising from a breach of this deed poll; or
  - (ii) a right, power, authority, discretion or remedy created or arising upon default under this deed poll,does not result in a waiver of that right, power, authority, discretion or remedy;
- (c) a party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this deed poll or on a default under this deed poll as constituting a waiver of that right, power, authority, discretion or remedy;
- (d) a party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party; and
- (e) this clause may not itself be waived except in writing.

## **7.4 Variation**

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

- (a) before the Second Court Date, the variation is agreed to in writing by Target; or
- (b) on or after the Second Court Date, the variation is agreed to in writing by Target and is approved by the Court,

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

## **7.5 Cumulative rights**

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

## 7.6 Assignment

The rights and obligations of Guarantor and Bidder and the rights of each Scheme Shareholder under this deed poll are personal and must not be assigned or otherwise dealt with at law or in equity without the prior written consent of the Target for and on behalf of Scheme Shareholders.

## 7.7 Further action

Each of Guarantor and Bidder will promptly do all things and execute all further documents necessary to give effect to this deed poll.

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## 8. Governing law and jurisdiction

### 8.1 Governing law

This deed poll is governed by the laws of the State of Victoria, Australia.

### 8.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non exclusive jurisdiction of the courts of Victoria, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8.2(a).

**Executed** as a deed poll.

**Signed, sealed and delivered** by **Strides Arcolab Limited** in accordance with its constitution and in the presence of:

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Full name of officer and office held

\_\_\_\_\_  
Full name of officer and office held



**Signed, sealed and delivered** by **Linkace Investments Pty Ltd ACN 147 854 484** in accordance with its constitution and in the presence of:

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Full name of officer and office held

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Full name of officer and office held