

## ASX Announcement

### Cover-More Group Limited enters into a Scheme Implementation Agreement with Zurich Insurance Company Ltd

**Sydney, 12 December 2016:** The Board of Cover-More Group Limited (ASX:CVO) (**Cover-More**), a specialist, integrated travel insurance provider, is pleased to announce that it has entered into a Scheme Implementation Agreement (**SIA**) under which it is proposed that Zurich Insurance Company Ltd (**Zurich**), a direct subsidiary of Zurich Insurance Group Ltd (SWX:ZURN), will acquire all of the ordinary shares in Cover-More by way of a Scheme of Arrangement (**Scheme**).

Under the terms of the Scheme, Cover-More shareholders will be entitled to receive A\$1.95 cash per share (**Scheme Consideration**), subject to all applicable conditions being satisfied or waived and the Scheme being implemented. Under the SIA, Cover-More is permitted to pay an interim and/or special dividend (which may be franked) on or prior to implementation of the Scheme. The Scheme Consideration would be reduced by the cash amount of any such dividend. Subject to the limitations in the SIA, the Board will determine the quantum and timing of any such dividend(s) in due course and provide further details in the Scheme Booklet. The Scheme Consideration of A\$1.95 per share represents an implied market capitalisation of A\$741 million and an implied enterprise value of A\$854 million, on a fully diluted basis.<sup>1</sup>

The signing of the SIA followed receipt of a confidential, indicative and non-binding proposal from Zurich, after which Cover-More granted Zurich a period of exclusivity to conduct due diligence and negotiate the terms of the SIA.

#### Cover-More's Board unanimously recommends the Scheme

The Board of Cover-More unanimously recommends that Cover-More shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to the independent expert concluding that the Scheme is in the best interests of Cover-More shareholders. Subject to those same qualifications, each director of Cover-More intends to vote all the Cover-More shares held or controlled by them in favour of the Scheme.

In making this recommendation, the Cover-More Board considered several factors, including:

- **Significant premium:** the Scheme Consideration of A\$1.95 per Cover-More share represents an attractive premium of:
  - 48.3% over the last closing price of Cover-More shares on 9 December 2016 of A\$1.32<sup>2</sup>
  - 47.4% over the 1 month VWAP of A\$1.32<sup>2</sup>
  - 40.9% over the 3 month VWAP of A\$1.38<sup>2</sup>
  - 46.1% over the 6 month VWAP of A\$1.34<sup>2</sup>
  - 62.5% premium to the entitlement offer issue price of A\$1.20 per share, at which Cover-More raised equity in September 2016.
- **Attractive acquisition multiple:** the Scheme Consideration of A\$1.95 per share implies an EV/pro-forma FY16 EBITDA multiple of 15.3x<sup>3</sup>, which is attractive relative to its trading multiple of 11.0x<sup>3</sup>

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<sup>1</sup> Assumes 380,082,011 shares on issue (being the diluted number of shares on issue taking into account any outstanding share rights that are expected to vest in the event the Scheme completes), and FY16 pro-forma net debt of A\$113 million

<sup>2</sup> IRESS as at 9 December 2016 – all prices have been rounded to two decimal places

<sup>3</sup> Assumes 380,082,011 shares on issue (being the diluted number of shares on issue taking into account any outstanding share rights that are expected to vest in the event the Scheme completes), FY16 pro-forma net debt of A\$113 million and FY16 pro-forma EBITDA of A\$55.8 million (including the contribution from Travelex Insurance Services)

- **Certainty of value:** the 100% cash consideration under the Scheme, if implemented, provides Cover-More shareholders with certainty of value and the opportunity to realise in full their investment for cash
- **Limited conditionality:** the Scheme is subject to limited conditionality and is not subject to financing arrangements or due diligence.

Cover-More Chairman, Louis Carroll, said: “Cover-More’s Board has unanimously concluded that the sale of the company at a significant premium to market is an attractive outcome for shareholders. This reflects the strategic value of Cover-More’s business including its strong market position, global distribution footprint and its ability to deliver growth into the future.”

“It is also an attractive outcome for Cover-More’s employees, customers and partners. Zurich proposes to operate Cover-More as a discrete business and retain Cover-More’s management team to safeguard the key drivers of Cover-More’s success, including its strong brand and entrepreneurial culture of innovation.”

Cover-More CEO and Managing Director, Mike Emmett, said: “If the Scheme is implemented, Cover-More will be well positioned to accelerate growth in the global travel insurance market with access to Zurich’s global platform and strong balance sheet. This is an acknowledgement of our expanding global footprint, specialist travel insurance capability and market-leading partnerships in key markets.”

## **Details of the Scheme Implementation Agreement**

The implementation of the Scheme is subject to customary conditions including the requisite Cover-More shareholder and Court approvals, FIRB approval, approval under the Hart-Scott-Rodino Antitrust Improvements Act 1976, approval under the Financial Services and Markets Act (2000) (UK) and there being no prescribed events. Full details of all conditions precedent to the Scheme and other agreed terms are set out in the SIA, a copy of which is attached to this announcement.

The SIA contains customary exclusivity provisions including no-shop, no-talk and no due diligence restrictions, a reimbursement fee of 1% of the aggregate Scheme Consideration that may be payable by either Zurich or Cover-More depending on the circumstances, as well as a notification obligation and a matching right. The no-talk and no due diligence restrictions and an obligation to disclose the identity of a potential rival bidder to Zurich are subject to the Cover-More directors’ fiduciary obligations.

Cover-More has appointed KPMG Corporate Finance as the independent expert to prepare a report opining on whether the Scheme is in the best interests of Cover-More shareholders. The independent expert’s report will be included in the Scheme Booklet which is expected to be distributed to shareholders in late February or early March 2017.

## **Indicative timetable and next steps**

Shareholders do not need to take any action at the present time. A Scheme Booklet containing information relating to the Scheme, the independent expert’s report on whether the Scheme is in the best interests of Cover-More’s shareholders, the reasons for the Board of Directors’ unanimous recommendation in favour of the Scheme, and details of the Scheme meeting is expected to be sent to Cover-More shareholders in late February or early March 2017. Cover-More shareholders will be given the opportunity to vote on the Scheme at a Scheme meeting expected to be held in late March or early April 2017.

Subject to the conditions of the Scheme being satisfied, the Scheme is expected to be implemented in mid or late April 2017. These dates are indicative and subject to change.

Macquarie Capital (Australia) Limited and Gilbert + Tobin are advising Cover-More in relation to the Scheme.

### **FY17 earnings guidance**

Cover-More expects to deliver EBITDA in the range of \$54 million to \$57 million for FY17. The range includes a contribution for part of the year from Travelex Insurance Services which reached financial close on 17 November 2016.

*ENDS*

Attached: Scheme Implementation Agreement

**For investor relations contact Michael Brown, +61 400 248 080**

**For media enquiries contact Peter Brookes, +61 407 911 389**

### **About Cover-More Group**

Cover-More Group Limited is a specialist and integrated travel insurance, medical assistance and employee assistance provider. The group listed on the Australian Securities Exchange (ASX) in 2013. Cover-More has the leading market position in Australia—with an approximate 40% share of the national travel insurance market and a growing footprint in India and China as well as a presence in Malaysia, Singapore, New Zealand and the United Kingdom and now the United States. Visit <https://www.covermoregroup.com> for more information.

### **About Zurich**

Zurich Insurance Group (Zurich) is a leading multi-line insurer that serves its customers in global and local markets. With around 55,000 employees, it provides a wide range of general insurance and life insurance products and services. Zurich's customers include individuals, small businesses, and mid-sized and large companies, including multinational corporations, in more than 170 countries. The Group is headquartered in Zurich, Switzerland, where it was founded in 1872. The holding company, Zurich Insurance Group Ltd (ZURN), is listed on the SIX Swiss Exchange and has a level I American Depositary Receipt (ZURVY) program, which is traded over-the-counter on OTCQX. Further information about Zurich is available at [www.zurich.com](http://www.zurich.com)

# Scheme Implementation Agreement

Dated 11 December 2016

Zurich Insurance Company Limited ("**Bidder**")  
Cover-More Group Limited (ACN 166 776 334) ("**Target**")

**King & Wood Mallesons**

Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Australia  
**T** +61 2 9296 2000  
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DX 113 Sydney  
[www.kwm.com](http://www.kwm.com)

# Scheme Implementation Agreement

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# Scheme Implementation Agreement

## Details

<b>Parties</b>	<b>Bidder and Target</b>	
<b>Bidder</b>	Name	<b>Zurich Insurance Company Ltd</b>
	Address	Mythenquai 2 CH-8002, Zurich Switzerland
	Email	group.legal@zurich.com
	Attention	Group General Counsel
	Cc:	Ms Cathy Manolios  cathy.manolios@zurich.com.au
	<b>Target</b>	Name
ACN		166 776 334
Address		Level 2 60 Miller Street North Sydney NSW 2060 Australia
Email		Mark.Steinberg@covermore.com
Attention		Mark Steinberg
Cc:		Jason Maywald  Jason.Maywald@covermore.com
<b>Governing law</b>		New South Wales
<b>Recitals</b>	<b>A</b>	Target and Bidder have agreed to propose and implement a members' scheme of arrangement under Part 5.1 of the Corporations Act.
	<b>B</b>	At the request of Bidder, Target intends to propose the Scheme and issue the Scheme Booklet.

- C** Target and Bidder have agreed to implement the Scheme on the terms and conditions of this document.
- D** Bidder has agreed that, if Target's Insurance Services Agreement (ISA) with the Australasian branch of Berkshire Hathaway Specialty Insurance Company (BHSI) described in Target's ASX announcement on 9 December 2016 is lawfully terminated by either party without breach by Target, Bidder will provide services similar to those that would have been provided by BHSI had the ISA not been terminated on terms substantially similar to, and not materially less favourable to Target than, the ISA for a term of one year, terminable on giving 6 months written notice which may be served following expiry of the one year term.

# Scheme Implementation Agreement

## General terms

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### 1 Definitions and interpretation

#### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

**ACCC** means the Australian Competition and Consumer Commission.

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

**Associate** has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this document.

**ASX** means ASX Limited or the market operated by it, as the context requires.

**Authorised Officer** means a director or secretary of a party or any other person nominated by a party to act as an Authorised Officer for the purposes of this document.

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

**Bidder Confidential Information** means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, on, or after the date of this document relating to the business, technology or other affairs of Bidder.

**Bidder Group** means Bidder and its Subsidiaries.

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

**Bidder Information** means the information regarding Bidder as is required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or ASIC Regulatory Guide 60. Bidder Information does not include information about the Target Group (except to the extent it relates to any statement of intention relating to the Target Group following the Effective Date).

**Bidder Nominee** has the meaning given to that term in clause 2.2.

**Bidder Reimbursement Fee** means the amount equal to 1% of the total Scheme Consideration payable for all the Target Shares under the Scheme (before any reduction for the amount of any Permitted Dividend in accordance with clause 4.4(d)).

**Bidder Representations and Warranties** means the representations and warranties of Bidder set out in clause 12.5.

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

**Competing Transaction** means a proposal or transaction or arrangement (including by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale or issue of securities or joint venture) which, if completed, would mean a person (other than Bidder or its Related Bodies Corporate) whether alone or together with its Associates would:

- (a) directly or indirectly, acquire an interest or Relevant Interest in or become the holder of more than 20% of the Target Shares (but not as a custodian, nominee or bare trustee);
- (b) acquire control of Target, within the meaning of section 50AA of the Corporations Act, or any of the Target's material Subsidiaries;
- (c) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in all or a material part of the assets of or business conducted by the Target Group
- (d) otherwise acquire or merge (including by a reverse takeover bid or dual listed company structure) with Target.

For the purposes of paragraph (b) above, a Subsidiary of Target will be a material Subsidiary if:

- (1) the business or assets of the Subsidiary contributes 30% or more of the consolidated net profit after tax of Target; or
- (2) the business or assets of the Subsidiary represents 30% or more of the total consolidated assets of Target.

For the purposes of paragraph (c) above, the acquisition of an interest in the business or assets of Target or any of its Subsidiaries will be material if:

- (1) the relevant business or assets contributes 30% or more of the consolidated net profit after tax of Target; or
- (2) the business or assets represents 30% or more of the total consolidated assets of Target.

**Conditions Precedent** means the conditions precedent set out in clause 3.1.

**Confidentiality Deed** means the Confidentiality Deed between the parties dated 18 November 2016.

**Confidential Information** means Bidder Confidential Information or Target Confidential Information.

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

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

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

**Costs** includes costs, charges and expenses, including those incurred in connection with advisers and any legal costs on a full indemnity basis.

**Court** means the Federal Court of Australia, or such other court of competent jurisdiction under the Corporations Act agreed by the parties.

**Court Documents** means the documents required for the purposes of a Court Hearing, including (as applicable) originating process, affidavits, submissions and draft minutes of Court orders.

**Court Hearing** means the First Court Hearing or Second Court Hearing (as applicable), and **Court Hearings** means both of them.

**Deed Poll** means a deed poll substantially in the form of Annexure B to this document, or as otherwise agreed by Bidder and Target.

**Details** means the section of this document headed “Details”.

**Disclosed** means fairly disclosed:

- (a) in the Disclosure Materials; or
- (b) in any announcement made by Target on ASX prior to the date of this document.

**Disclosure Letter** means the letter so entitled from Target addressed to Bidder and provided to the Bidder prior to 2pm on Sunday, 11 December 2016.

**Disclosure Materials** means the information in relation to the Target Group disclosed in writing by or on behalf of Target to Bidder and its Representatives, in:

- (a) the documents and information contained in the Intralinks online data room (“**Online Data Room**”) to which Bidder and its Representatives were given access prior to 7:00pm on Thursday, 8 December 2016;
- (b) any written answers to requests for further information made by Bidder and its Representatives as contained in the Online Data Room prior to 7:00pm on Thursday, 8 December 2016; and
- (c) the Disclosure Letter.

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

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

**Employee Performance Right** means a Performance Right issued under the LTIP.

**Encumbrance** means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any “security interest” as defined in sections 12(1) or 12(2) of the PPSA or any agreement to create any of them or allow them to exist.

**End Date** means 30 June 2017 or such other date as is agreed by Bidder and Target.

**Excluded Information** means Confidential Information which:

- (a) is in or becomes part of the public domain other than through breach of this document or an obligation of confidence owed to the party providing the Confidential Information; or
- (b) the recipient of the Confidential Information can prove by contemporaneous written documentation was already known to it at the time of disclosure by the party providing the Confidential Information (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) the recipient of the Confidential Information acquires from a source other than the party providing the Confidential Information or any Representative of the party providing the Confidential Information where such source is entitled to disclose it.

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

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

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

**First Court Date** means the first day on which an application made to the Court, in accordance with clause 5.2(h), for orders under section 411(1) of the Corporations Act convening the Scheme Meeting is heard (or if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard) with such hearing being the **First Court Hearing**.

**FSMA** means Financial Services and Markets Act (2000) (UK).

**Implementation Date** means the 5<sup>th</sup> Business Day following the Record Date or such other date as Target and Bidder agree.

**Incoming Directors** means the persons nominated in writing to Target by Bidder no later than 5 Business Days before the Implementation Date.

**Independent Expert** means the independent expert appointed by the Target under clause 5.2(c), being KPMG Financial Advisory Services (Australia) Pty Ltd (of which KPMG Corporate Finance is a division).

**Independent Expert's Report** means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating whether or not in the Independent Expert's opinion the Scheme is in the best interests of Target Shareholders.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in paragraphs (a), (b) or (c);
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or

- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Listing Rules** means the Listing Rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

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

**LTIP** means the "Cover-More Group Limited Long Term Incentive Plan" operated by the Target and adopted by the Target Board on 12 June 2015.

**Material Contract** means:

- (a) any underwriting agreement;
- (b) a contract or commitment (or a group of related contracts or commitments with the same party or group of related parties or relating to the same matter or project) involving annual revenue or annual expenditure in excess of \$10,000,000; or
- (c) a contract or commitment agreeing to, or accepting, a restraint of trade undertaking applicable to the conduct of the business of the Target Group.

**Outgoing Directors** means the Target Directors advised in writing to Target by Bidder no later than 5 Business Days before the Implementation Date.

**Permitted Dividend** means an interim dividend and/or special dividend (which may be franked) declared or determined by Target Board, provided that the maximum aggregate amount paid or payable by Target per Target Share in respect of all such dividends is A\$0.05 per Target Share.

**Post-End Date Dividend** means one or more dividends declared or determined by Target Board in respect of the period 1 January 2017 to 30 June 2017, provided that the maximum aggregate amount paid or payable by Target per Target Share in respect of all such dividends is A\$0.05 per Target Share.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Recommendation** has the meaning given to that term in clause 6.1.

**Record Date** means 5.00pm on the 5th Business Day following the Effective Date or such other date as Target and Bidder agree.

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

**Regulator's Draft** has the meaning given to that term in clause 5.2(f).

**Regulatory Approval** means a waiver, consent or approval of a Regulatory Authority in connection with the Scheme.

**Regulatory Authority** includes:

- (a) ASX, ACCC, ASIC and the Takeovers Panel;
- (b) a government or governmental, semi-governmental or judicial entity or authority;

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

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

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

**Relevant Employee** means any executive or employee of the Target Group whose annual base salary exceeds A\$250,000 per annum, and any Target Director.

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

**Representative** means, in relation to a party:

- (a) a Related Body Corporate;
- (b) a director, officer or employee of the party or any of the party's Related Bodies Corporate; or
- (c) an adviser to the party or any of the party's Related Bodies Corporate, where an "adviser" means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity and who has been engaged by that entity.

**Scheme** means the scheme of arrangement under part 5.1 of the Corporations Act under which all the Target Shares will be transferred to Bidder substantially in the form of Annexure A or as otherwise agreed by Bidder and Target, together with any amendment or modification made pursuant to section 411(6) of the Corporations Act.

**Scheme Booklet** means, in respect of the Scheme, the information booklet to be approved by the Court and despatched to Target Shareholders which includes the Scheme, an explanatory statement complying with the requirements of the Corporations Act and notices of meeting and proxy forms.

**Scheme Consideration** means the consideration payable by Bidder (or the Bidder Nominee) for the transfer of Target Shares held by a Scheme Participant to Bidder (or the Bidder Nominee), being, in respect of each Target Share, \$1.95 less the amount of the Permitted Dividend paid in respect of the Target Share in accordance with clause 4.4(d).

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

**Scheme Participants** means each person who is a Target Shareholder at the Record Date.

**Second Court Date** means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme (or if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard), with such hearing being the **Second Court Hearing**.

**Subsidiary** of an entity means another entity which:

- (a) is a subsidiary of the first entity within the meaning of the Corporations Act; and
- (b) is part of a consolidated entity constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares, or would be if the first entity was required to prepare consolidated financial statements.

**Superior Proposal** means a bona fide Competing Transaction which the Target Board, acting in good faith, and after taking written advice from its legal advisers and advice from its financial advisers, determines:

- (a) is reasonably capable of being completed taking into account all aspects of the Competing Transaction, including its conditions, the identity, reputation and financial condition of the person making such proposal, and legal, regulatory and financial matters; and
- (b) is of a higher financial value to Target Shareholders and would, if completed substantially in accordance with its terms, be more likely than not to result in a transaction that is more favourable to Target Shareholders than the Scheme, taking into account all aspects of the Competing Transaction as compared to the Scheme, including consideration (including the nature or form of the consideration), conditionality (including the nature and status of outstanding Conditions Precedent and whether those Conditions Precedent are likely to be satisfied or waived), funding, certainty and timing; and
- (c) is necessary for the Target Board to pursue, accept or recommend because failing to do so would be reasonably likely to constitute a breach of the Target Board's fiduciary or statutory obligations,

provided that if the Target Board has received written advice from the Target's legal advisers (who must be reputable and experienced in transactions of this nature) that requiring the Competing Transaction to have a higher financial value to Target Shareholders, as an essential element, in order to be a Superior Proposal would be reasonably likely to constitute a breach of the Target Board's fiduciary or statutory obligations in the relevant circumstances, then the Target Board may determine that a bona fide Competing Transaction is a Superior Proposal if it otherwise satisfies the criteria set out above (with financial value to Target Shareholders being one of the factors for consideration by the Target Board).

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

**Target Confidential Information** means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this document relating to the business, technology or other affairs of Target.

**Target Constitution** means the constitution of Target.

**Target Group** means Target and its Subsidiaries.

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

**Target Information** means all information contained in the Scheme Booklet other than the Bidder Information, the Independent Expert's Report and any

information in respect of which a statement that a third party assumes responsibility for that information is included in the Scheme Booklet.

**Target Prescribed Event** means, except to the extent contemplated by this document or the Scheme, any of the following events:

- (a) **(conversion)** Target converts all or any of its shares into a larger or smaller number of shares;
- (b) **(reduction of share capital)** Target or another member of the Target Group resolves to reduce its share capital in any way or resolves to reclassify, combine, split or redeem or repurchase directly or indirectly any of its shares;
- (c) **(buy-back)** Target or another member of the Target Group:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(distribution)** Target makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie) except for the Permitted Dividend and (to the extent permitted by clause 4.4(c)) the Post-End Date Dividend;
- (e) **(issuing or granting shares or options)** any member of the Target Group:
  - (i) issues shares;
  - (ii) grants an option over its shares; or
  - (iii) agrees to make such an issue or grant such an option,  
  
in each case to a person outside the Target Group, other than an issue of shares pursuant to the granting of (or in satisfaction of) an Employee Performance Right under the LTIP as permitted by clause 4.5;
- (f) **(securities or other instruments)** any member of the Target Group issues or agrees to issue securities or other instruments convertible into shares or debt securities (other than the type of securities described in paragraph (e) above) in each case to a person outside the Target Group;
- (g) **(constitution)** Target adopts a new constitution or modifies or repeals its constitution or a provision of it;
- (h) **(disposals)** any member of the Target Group disposes, or agrees to dispose of the whole or a substantial part of its business or property;
- (i) **(acquisitions, disposals or tenders)** any member of the Target Group, in a single transaction or series of related transactions:
  - (i) acquires or disposes of;
  - (ii) agrees to acquire or dispose of; or
  - (iii) offers, proposes, announces a bid or tenders for,

any assets, other than equipment and business supplies in the ordinary course of the Target Group's business, or any business, entity or undertaking;

- (j) **(Encumbrances)** any member of the Target Group creates, or agrees to create, any Encumbrance over the whole or a substantial part of its business or property, other than:
  - (i) any security required in connection with the Westpac Facility; or
  - (ii) a lien which arises by operation of law or legislation or arises in the ordinary course of the Target Group's business;
- (k) **(loss of distribution agreements)** any person validly exercising any rights under a distribution agreement to which a member of the Target Group is a party, which results, or could reasonably be expected to result, either individually or when aggregated with any other similar occurrences or events, in the loss or reduction in the value of EBITDA of the Target Group of at least \$4,500,000, provided that if the term of any such distribution agreement expires or lapses in accordance with the terms of that agreement, or any such distribution agreement is terminated but the parties to it enter into a replacement agreement on terms no less favourable to the relevant member of the Target Group, those occurrences will not be taken into account in calculating whether the above threshold has been reached;
- (l) **(Insolvency)** Target or any of its Related Bodies Corporate becomes Insolvent,

provided that a Target Prescribed Event listed in items (a) to (k) will not occur where:

- (m) Target has first consulted with Bidder in relation to the event and Bidder has approved the proposed event in writing (and the Bidder will consider in good faith, acting reasonably, any request for consent for the Target Group to proceed with any transaction that would constitute a Target Prescribed Event listed in item (i) where Target has provided reasonable details of the proposed transaction and its material terms in writing to the Bidder); or
- (n) the relevant fact, matter or circumstance that would otherwise give rise to the Target Prescribed Event has been Disclosed.

**Target Reimbursement Fee** means the amount equal to 1% of the total Scheme Consideration payable for all the Target Shares under the Scheme (before any reduction for the amount of any Permitted Dividend in accordance with clause 4.4(d)).

**Target Representations and Warranties** means the representations and warranties of Target set out in clauses 9.1 and 12.1.

**Target Share** means an ordinary fully paid share in the capital of Target.

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

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth), or both as the context requires.

**Tax Authority** means any government agency responsible for the imposition, collection or recovery of any Tax.

**Taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties) paid, payable or assessed as being payable by any authority together with any fines, penalties and interest in connection with them.

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

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

- (a) Cathy Manolios; and
- (b) Mark Steinberg; and

such other persons as the parties may agree from time to time.

**Treasurer** means the Treasurer of Australia.

**Westpac Facility** means the agreement entitled 'Senior Facilities Agreement' dated 20 December 2010 between Travel Assist Pty Limited and others, and Westpac Banking Corporation and others, as amended and restated on or about 3 October 2012, 21 December 2012, 24 September 2013, 2 December 2013, 21 December 2015, 18 October 2016 and 15 November 2016 between Target, Cover-More Finance Pty Limited (ACN 166 777 680), Travel Assist Pty Ltd (ABN 27 139 174 913), Travel Insurance Partners Pty Limited (ABN 73 144 049 230), Cover-More Insurance Services Pty Ltd (ABN 95 003 114 145), Westpac Banking Corporation (ABN 33 007 457 141), Westpac Administration Pty Limited (ABN 67 008 617 203) and others, a copy of which has been Disclosed in the Disclosure Materials.

**Zurich Australia** means Zurich Financial Services Australia Limited (ACN 008 423 372).

## 1.2 General interpretation

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (e) a reference to "**person**" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Sydney time;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;

- (i) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually; and
- (m) a reference to any thing (including an amount) is a reference to the whole and each part of it.

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## **2 Agreement to propose and implement Scheme**

### **2.1 Target to propose Scheme**

Target agrees to propose the Scheme on and subject to the terms and conditions of this document.

### **2.2 Nomination of acquirer Subsidiary**

At any time prior to the Business Day before the First Court Date, Bidder may nominate any wholly-owned Subsidiary of Bidder (“**Bidder Nominee**”) to acquire Target Shares under the Scheme by providing a written notice which sets out the details of Bidder Nominee to Target. If Bidder decides to nominate Bidder Nominee to acquire Target Shares:

- (a) the parties must procure that the Target Shares transferred under the Scheme are transferred to Bidder Nominee rather than Bidder;
- (b) Bidder must procure that Bidder Nominee complies with all of the relevant obligations of Bidder under this document and the Deed Poll; and
- (c) any such nomination will not relieve Bidder of its obligations under this document, including the obligation to pay (or procure the payment by Bidder Nominee of) the Scheme Consideration in accordance with the terms of the Scheme.

### **2.3 Agreement to implement Scheme**

The parties agree to implement the Scheme on the terms and conditions of this document.

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## **3 Conditions Precedent**

### **3.1 Conditions Precedent**

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties to complete the implementation of the Scheme (including the obligations of the Bidder under clause 4.3) are not binding, until and unless each of the following Conditions Precedent are satisfied or waived to the extent and in the manner set out in this clause 3.

Condition Precedent	Party entitled to benefit	Party responsible
<p><b>(a) (FIRB approval)</b> before 5.00pm on the Business Day before the Second Court Date either:</p> <p>(i) the Treasurer (or the Treasurer's delegate) has provided a written no objection notification to the Scheme either without conditions or with conditions acceptable to Bidder (acting reasonably); or</p> <p>(ii) following notice of the proposed Scheme having been given by Bidder to the Treasurer under the FIRB Act, the Treasurer has ceased to be empowered to make any order under Part 3 of the FIRB Act because the applicable time limit on making orders and decisions under the FIRB Act has expired.</p>	Cannot be waived	Bidder
<p><b>(b) (Shareholder approval)</b> Target Shareholders approve the Scheme by the requisite majorities in accordance with the Corporations Act, except to the extent the Court orders otherwise under section 411(4)(a)(ii)(A) of the Corporations Act.</p>	Cannot be waived	Target
<p><b>(c) (Court approval)</b> the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.</p>	Cannot be waived	Target
<p><b>(d) (Other Regulatory Approvals)</b> before 8.00am on the Second Court Date:</p> <p>(i) the waiting period applicable to the transactions contemplated by this document under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the associated rules and regulation, have expired (or early termination has been granted by the Federal Trade Commission);</p> <p>(ii) the Financial Conduct Authority ("FCA") has given written notice (and such notice not having expired or withdrawn) in accordance with:</p> <p>(A) section 189(4) of FSMA that it approves unconditionally the Bidder and any other person who would, on Implementation, become a controller (as defined in the FSMA) of the Target as a consequence of their</p>	Bidder	Both

Condition Precedent	Party entitled to benefit	Party responsible
	<p>relationship with the Bidder, parent undertakings of the Bidder or otherwise (in each case, an “<b>Additional Controller</b>”) acquiring control of the Target pursuant to this document; or</p> <p>(B) section 189(7) of FSMA that it approves the Bidder and any Additional Controller acquiring control of the Target pursuant to this document subject to conditions and those conditions are satisfactory to the Bidder.</p>	
<b>(e)</b>	<b>(Regulatory intervention)</b> no Court or Regulatory Authority has issued or announced that it has taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Scheme and no such order, decree, ruling, other action or refusal is in effect as at 8.00am on the Second Court Date.	Bidder
<b>(f)</b>	<b>(No Target Prescribed Event)</b> no Target Prescribed Event occurs between the date of this document and 8.00am on the Second Court Date.	Bidder

### 3.2 Reasonable endeavours

Each of Target and Bidder agree to use reasonable endeavours to procure that:

- (a) each of the Conditions Precedent for which it is a party responsible (as noted in clause 3.1):
  - (i) is satisfied as soon as practicable after the date of this document; and
  - (ii) continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
- (b) there is no occurrence that would prevent the Condition Precedent for which it is a party responsible being satisfied.

### 3.3 Regulatory matters

- (a) Without limiting clause 3.2:
  - (i) **(applying for Regulatory Approvals – Bidder)** Bidder must promptly apply for all relevant Regulatory Approvals contemplated by the Conditions Precedent in clauses 3.1(a) and

- (d) and provide the Target with a copy of those applications (provided that any commercially sensitive information may be redacted from the copy provided);
  - (ii) **(Regulatory Approvals process)** each party must take all steps it is responsible for as part of the applicable approval or consent process in respect of the relevant Regulatory Approvals, including responding to requests for information at the earliest practicable time;
  - (iii) **(representation)** each party acknowledges and agrees that the other party has the right to be represented and make submissions at any meeting with any Regulatory Authority relating to a Regulatory Approval;
- (b) Without limiting clause 3.2, each party:
- (i) **(consultation)** must consult with the other party in advance in relation to all material communications (whether written or oral, and whether direct or via a Representative) with any Regulatory Authority relating to any approval or consent required to satisfy a Condition Precedent, or any action taken or proposed by, or any enquiries made by, a Regulatory Authority in relation to the Scheme ("**Regulatory Matters**") and:
    - (A) provide the other party with drafts of any material written communications to be sent to a Regulatory Authority and taking any reasonable comments made by the other party into account in good faith when making any amendments; and
    - (B) provide copies of any material written communications sent to or received from a Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so; and
  - (ii) **(Regulatory Authority)** subject to the terms of the applicable Condition Precedent, must promptly offer to the relevant Regulatory Authority, and agree or accept, all undertakings, commitments and conditions reasonably necessary or appropriate in order to obtain the approval or consent (as the case may be) as soon as possible, unless it would be unreasonable to do so.

### 3.4 FIRB conditions

The parties acknowledge that the standard tax conditions issued by FIRB from time to time are acceptable if included in the "no objections" notifications.

### 3.5 Waiver of Conditions Precedent

- (a) A Condition Precedent may only be waived in writing by the party or parties entitled to the benefit of that Condition Precedent as noted in clause 3.1 and will be effective only to the extent specifically set out in that waiver.
- (b) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.5 may do so in its absolute discretion.

- (c) If either Target or Bidder waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause 3.5, then:
  - (i) subject to clause 3.5(c)(ii), that waiver precludes that party from suing the other for any breach of this document arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; but
  - (ii) if the waiver of the Condition Precedent is itself conditional and the other party:
    - (A) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with clause 3.5(c)(i); or
    - (B) does not accept the condition, the Condition Precedent has not been waived.
- (d) A waiver of a breach or non-fulfilment in respect of a Condition Precedent does not constitute:
  - (i) a waiver of a breach or non-fulfilment of any other Condition Precedent arising from the same event; or
  - (ii) a waiver of a breach or non-fulfilment of that Condition Precedent resulting from any other event.

### 3.6 Notices in relation to Conditions Precedent

Each party must:

- (a) **(notice of satisfaction)** promptly notify the other party of the satisfaction of a Condition Precedent, and must keep the other party informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;
- (b) **(notice of failure)** immediately give written notice to the other of a breach or non-fulfilment of a Condition Precedent, or of any event which will prevent a Condition Precedent being satisfied; and
- (c) **(notice of waiver)** upon receipt of a notice given under clause 3.6(b), give written notice to the other party as soon as possible (and in any event before 5.00pm on the day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question.

### 3.7 Consultation on failure of Condition Precedent

If:

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

- (c) the Scheme has not become Effective by the End Date,  
the parties must consult in good faith with a view to determine whether:
- (d) the Scheme may proceed by way of alternative means or methods;
- (e) to extend the relevant time for satisfaction of the Condition Precedent or to adjourn or change the date of an application to the Court; or
- (f) to extend the End Date.

### **3.8 Failure to agree**

If the parties are unable to reach agreement under clause 3.7 within 5 Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date):

- (a) subject to clause 3.8(b), either party may terminate this document (and that termination will be in accordance with clause 13.1(h)(i)); or
- (b) if a Condition Precedent may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this document (and that termination will be in accordance with clause 13.1(h)(ii)),

in each case before 8.00am on the Second Court Date.

However, a party will not be entitled to terminate this document under this clause 3.8 if the relevant Condition Precedent has not been satisfied or agreement cannot be reached as a result of a breach of this document by that party or a deliberate act or omission of that party.

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## **4 Outline of Scheme**

### **4.1 Scheme**

Target must propose a scheme of arrangement under which:

- (a) all of the Target Shares held by Scheme Participants at the Record Date will be transferred to Bidder (or if applicable, Bidder Nominee); and
- (b) each Scheme Participant will be entitled to receive the Scheme Consideration.

### **4.2 Scheme Consideration**

Subject to and in accordance with this document and the Scheme, each Scheme Participant is entitled to receive the Scheme Consideration in respect of each Target Share held by that Scheme Participant at the Record Date.

### **4.3 Payment of Scheme Consideration**

Subject to this document and the Scheme, Bidder undertakes to Target (in its own right and separately as trustee or nominee of each Scheme Participant) that, in consideration of the transfer to Bidder of each Target Share held by a Scheme Participant, Bidder will, on the Implementation Date:

- (a) accept (or if applicable, cause Bidder Nominee to accept) that transfer; and
- (b) pay or procure the payment of the Scheme Consideration in accordance with the Scheme.

Where the calculation of the Scheme Consideration to be provided to a particular Scheme Participant would result in the Scheme Participant becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up or down (as applicable) to the nearest cent.

#### **4.4 Dividends**

- (a) Bidder acknowledges and agrees that, at any time on or before the Implementation Date, Target may announce, declare and pay a Permitted Dividend.
- (b) Target may frank a Permitted Dividend but only to the extent that it does not cause Target's franking account to be in deficit (as defined in section 204-40(2) of the Tax Act).
- (c) Target must provide Bidder with any information pertaining to the franking position of Target that is reasonably requested by Bidder at any time.
- (d) If Target announces, declares and/or pays a Permitted Dividend in accordance with clause 4.4(a), the Scheme Consideration per Target Share will be reduced by the aggregate amount per Target Share of the Permitted Dividend.
- (e) Bidder acknowledges and agrees that if the Scheme has not become Effective by the End Date, and the delay in implementing the Scheme by that End Date is not as a result of a breach of this document by Target or a deliberate act or omission by Target, and the parties agree to extend the End Date, then Target may announce, declare and pay a Post-End Date Dividend, and the Scheme Consideration per Target Share will not be reduced by the aggregate amount per Target Share of the Post-End Date Dividend. Any Post-End Date Dividend may also be franked by Target, but only to the extent that it does not cause the Target's franking account to be in deficit (as defined in section 204-40(2) of the Tax Act).

#### **4.5 Employee Performance Rights**

- (a) Target must ensure that, by no later than the Record Date, there are no outstanding Employee Performance Rights.
- (b) In order to comply with its obligation under clause 4.5(a), Target must:
  - (i) to the extent Disclosed to Bidder, cause 1,164,145 outstanding Employee Performance Rights to vest in accordance with the LTIP rules (but subject to the Scheme becoming Effective) and, following such vesting, cause 1,164,145 Target Shares to be transferred or issued to the relevant former holders of the relevant Employee Performance Rights in sufficient time to allow those relevant former holders to participate in the Scheme; and
  - (ii) take such action as may be necessary to cancel all outstanding Employee Performance Rights (subject to the Scheme becoming Effective) which it does not cause to vest in accordance with clause 4.5(b)(i).

#### **4.6 No amendment to the Scheme without consent**

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

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## 5 Implementation

### 5.1 General obligations

Target and Bidder must each:

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

to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable and in accordance with the Timetable.

### 5.2 Target's obligations

Target must take all reasonable steps to implement the Scheme on a basis consistent with this document and as soon as reasonably practicable, and in particular must:

- (a) **(announce directors' recommendation)** following execution of this document, announce (on the basis of statements made to Target by each member of the Target Board) that:
  - (i) the Target Board intends to unanimously recommend to Scheme Participants that the Scheme be approved; and
  - (ii) each Target Board member who holds Target Shares, intends to vote his or her Target Shares in favour of the Scheme,subject to:
  - (iii) the Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of Target Shareholders; and
  - (iv) there being no Superior Proposal.
- (b) **(preparation of Scheme Booklet)** subject to clause 5.2(e)(i), as soon as practicable after the date of this document, prepare (other than the Bidder Information and the Independent Expert's Report) and despatch the Scheme Booklet:
  - (i) in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules; and
  - (ii) which includes a statement by the Target Board:
    - (A) unanimously recommending that Target Shareholders vote in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Target Shareholders and there being no Superior Proposal; and
    - (B) that each Target Board member who holds Target Shares intends to vote his or her Target Shares in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is in the best

interests of Target Shareholders and there being no Superior Proposal;

- (c) **(Independent Expert)** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare the Independent Expert's Report as soon as practicable;
- (d) **(section 411(17)(b) statement)** apply to ASIC for the production of a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (e) **(consultation with Bidder)** consult with Bidder as to the content and presentation of:
  - (i) the Scheme Booklet, which includes:
    - (A) providing Bidder with drafts of the Scheme Booklet in a timely manner, and allowing Bidder a reasonable opportunity to review and make comments on drafts of the Scheme Booklet (accepting that any review of the Independent Expert's Report is limited to review for factual accuracy including of those parts that include information relating to Bidder);
    - (B) acting reasonably and in good faith, taking any reasonable comments made by Bidder and its Representatives on those drafts into account in good faith when producing a revised draft of the Scheme Booklet, provided that such comments are provided to Target in a timely manner (however, in relation to the Independent Expert's Report, Target makes no representation as to the extent to which the Independent Expert will receive or consider those comments);
    - (C) providing to Bidder a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act is finalised; and
    - (D) obtaining Bidder's consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet) in accordance with clause 5.3(b); and
  - (ii) documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), which includes providing Bidder with drafts of those documents in a timely manner, and considering in good faith and acting reasonably, any reasonable comments on, or suggested amendments to, those documents from Bidder or its Representatives prior to filing those documents with the Court;
- (f) **(lodgement of Regulator's Draft)**
  - (i) no later than 14 days before the First Court Date, provide an advanced draft of the Scheme Booklet ("**Regulator's Draft**") to

ASIC for its review for the purposes of section 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to Bidder immediately thereafter (for the avoidance of doubt, Target will not be deemed to have breached its obligation to use reasonable endeavours under this clause 5.2(f) if it has used reasonable endeavours in respect of matters reasonably within the control of Target and will not be deemed to have breached this clause 5.2(f) to the extent that Bidder, Bidder Group, a Representative of Bidder or the Independent Expert has caused or contributed to the failure of Target to lodge the Regulator's Draft with ASIC by the required time); and

- (ii) keep Bidder reasonably informed of any material issues raised by ASIC in relation to the Regulator's Draft and, where practical to do so, consult with Bidder in good faith prior to taking any steps or actions to address those material issues (provided that, where those issues relate to Bidder Information, Target must not take any steps to address them without Bidder's prior written consent, not to be unreasonably withheld);

(g) **(supplementary disclosure)** if, after despatch of the Scheme Booklet, Target becomes aware:

- (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
- (ii) of information that is required to be disclosed to Target Shareholders under any applicable law but was not included in the Scheme Booklet,

promptly consult with Bidder in good faith as to the need for, and the form of, any supplementary disclosure to Target Shareholders, and make any disclosure that Target considers reasonably necessary in the circumstances, having regard to applicable laws and to ensure that there would be no breach of clause 12.1(g) if it applied as at the date that information arose;

(h) **(Court application)** apply to the Court for an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;

(i) **(send Scheme Booklet)** send the Scheme Booklet to Target Shareholders as soon as practicable after the Court orders Target to convene the Scheme Meeting;

(j) **(Scheme Meeting)** convene the Scheme Meeting to agree to the Scheme in accordance with any orders made by the Court pursuant to section 411(1) of the Corporations Act;

(k) **(director's voting)** use its reasonable endeavours to procure that each member of the Target Board votes any Target Shares in which they have a Relevant Interest in favour of the Scheme at the Scheme Meeting;

(l) **(Court approval)** subject to all Conditions Precedent, other than the Condition Precedent in paragraph (c) in clause 3.1, being satisfied or waived in accordance with this document, apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;

- (m) **(Conditions Precedent certificate)** at the hearing on the Second Court Date, provide to the Court (through its counsel):
  - (i) a certificate confirming (in respect of matters within Target's knowledge) whether or not the Conditions Precedent for which it is responsible, as noted in clause 3.1 (other than paragraph (c)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to Bidder by 5.00pm on the Business Day prior to the Second Court Date; and
  - (ii) any certificate provided to it by Bidder under clause 5.3(g);
- (n) **(lodge copy of Court order)** lodge with ASIC an office copy of the Court order approving the Scheme as approved by the Target Shareholders at the Scheme Meeting in accordance with section 411(10) of the Corporations Act no later than the day after that office copy is received (or any later date agreed in writing by Bidder);
- (o) **(Register)** close the Register as at the Record Date to determine the identity of Scheme Participants and their entitlements to Scheme Consideration;
- (p) **(instruments of transfer)** subject to Bidder satisfying its obligations under clause 4.3, on the Implementation Date:
  - (i) execute proper instruments of transfer and effect the transfer of Target Shares to Bidder (or Bidder Nominee) in accordance with the Scheme; and
  - (ii) register all transfers of Target Shares held by Scheme Participants to Bidder (or Bidder Nominee);
- (q) **(Suspension of trading)** apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date;
- (r) **(listing)** take all reasonable steps to maintain Target's listing on ASX, notwithstanding any suspension of the quotation of Target Shares, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC;
- (s) **(tax ruling)** discuss and co-operate in good faith with Bidder and/or its legal advisers in relation to any ruling applications made to a Tax Authority in connection with the Scheme, and in the conduct of any such ruling applications, including allowing the Bidder and/or its legal advisers to review and comment on any drafts of the ruling applications and to attend and participate in any meetings with any Tax Authority dealing with the ruling applications. Target must keep Bidder informed of all correspondence and communications with any Tax Authority (both written and oral) pertaining to any ruling application; and
- (t) **(other steps)** if the Scheme becomes Effective, do all things contemplated of it under the Scheme and all other things (if any) reasonably necessary for the Target to do to lawfully give effect to the Scheme and the orders of the Court approving the Scheme.

### 5.3 Bidder's obligations

Bidder must take (or cause Bidder Nominee to take) all reasonable steps to assist Target to implement the Scheme on a basis consistent with this document and as soon as reasonably practicable, and in particular must:

- (a) **(Bidder Information):**
- (i) prepare and promptly provide to Target for inclusion in the Scheme Booklet the Bidder Information (in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules) and consent to the inclusion of that information in the Scheme Booklet; and
  - (ii) provide Target with drafts of the Bidder Information in a timely manner and, acting reasonably and in good faith, take into account all reasonable comments from Target and its Representatives on those drafts, provided that such comments are provided to Bidder in a timely manner;
- (b) **(confirmation of Bidder Information)** subject to Target complying with clause 5.2(e) and (f), promptly after Target requests that it does so, confirm in writing to Target that:
- (i) it consents to the inclusion of the Bidder Information in the Scheme Booklet, in the form and context in which the Bidder Information appears; and
  - (ii) the Bidder Information in the Scheme Booklet is not misleading or deceptive in any material respect (whether by omission or otherwise), and the inclusion of such Bidder Information, in that form and context, has been approved by the Bidder Board;
- (c) **(further Bidder Information)** promptly:
- (i) advise Target in writing if it becomes aware:
    - (A) of information which should have been but was not included in the Bidder Information in the Scheme Booklet (including if known at the time), and promptly provide Target with the omitted information; or
    - (B) that the Bidder Information in the Scheme Booklet is misleading or deceptive in any material respect (whether by omission or otherwise), and promptly provide Target with any information required to correct the misleading or deceptive statements; and
  - (ii) provide to Target any further or new Bidder Information as may arise after the Scheme Booklet has been sent to Target Shareholders and until the date of the Scheme Meeting as may be necessary to ensure that the Bidder Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission) and to ensure that there would be no breach of clause 12.5(g) if it applied as at the date on which such further or new Bidder Information arose;
- (d) **(assistance with Scheme Booklet and Court Documents)** provide any assistance or information reasonably requested by Target or its Representatives in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to Target Shareholders) or any Court Documents, including reviewing the drafts of the Scheme Booklet prepared by Target and provide comments in a timely manner on those drafts in good faith;

- (e) **(Independent Expert information)** provide any assistance or information reasonably requested by Target or its Representatives, or by the Independent Expert, in connection with the preparation of the Independent Expert's Report;
- (f) **(Deed Poll)** prior to the Scheme Booklet being dispatched to Target Shareholders, sign and deliver the Deed Poll and, if the Scheme becomes Effective, fully comply with its obligations under the Deed Poll;
- (g) **(Conditions Precedent certificate)** before 8.00am on the Second Court Date, provide to Target for provision to the Court at the hearing on that date a certificate confirming (in respect of matters within Bidder's knowledge) whether or not the Conditions Precedent for which Bidder is responsible, as noted in clause 3.1, have been satisfied or waived in accordance with clause 3, a draft of which must be provided to Target by 5.00pm on the Business Day prior to the Second Court Date;
- (h) **(Share transfer)** if the Scheme becomes Effective, accept a transfer of the Target Shares (or procure that a transfer of the Target Shares is accepted by Bidder Nominee) as contemplated by clause 4.3(a) and execute (or procure the execution of) proper instruments of transfer of the Target Shares to Bidder (or Bidder Nominee) in accordance with the Scheme;
- (i) **(Scheme Consideration)** if the Scheme becomes Effective, pay or procure the payment of the Scheme Consideration in the manner and amount contemplated by clause 4.3(b) and the terms of the Scheme;
- (j) **(taxation)** promptly review and comment on any draft ruling applications or other communications or correspondence provided to Bidder in accordance with clause 5.2(s); and
- (k) **(other steps)** do everything reasonably within its power to ensure that the Scheme is effected in accordance with all applicable laws, regulations and policy.

#### 5.4 Scheme Booklet responsibility statement

The responsibility statement to appear in the Scheme Booklet, in a form to be agreed by the parties, will contain words to the effect that:

- (a) Target has prepared, and is responsible for, the content of the Scheme Booklet other than, to the maximum extent permitted by law, the Bidder Information, the Independent Expert's Report or any other report or letter issued to Target by a third party; and
- (b) Bidder has prepared, and is responsible for, the Bidder Information in the Scheme Booklet (and no other part of the Scheme Booklet).

#### 5.5 Disagreement on content of Scheme Booklet

If Bidder and Target disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet.

If complete agreement is not reached after reasonable consultation, then:

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

## **5.6 Verification**

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

## **5.7 Conduct of Court proceeding**

Target and Bidder (or, if applicable, Bidder Nominee) are entitled to separate representation at all Court proceedings relating to the Scheme and each of them must ensure that it is represented by counsel at the First Court Hearing and the Second Court Hearing. This document does not give Target or Bidder (or, if applicable, Bidder Nominee) any right or power to give undertakings to the Court for or on behalf of the other party without that party's prior written consent. Otherwise, Target and Bidder (or, if applicable, Bidder Nominee) must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Scheme as contemplated by this document.

## **5.8 Appeal process**

If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, Target must appeal the Court's decision to the fullest extent possible (and Bidder must provide, or procure that Bidder Nominee provides, all reasonable assistance and be represented at any such appeal) except to the extent that:

- (a) the parties agree otherwise; or
- (b) an independent senior counsel of the New South Wales bar advises that, in their opinion, an appeal would have no reasonable prospect of success before the End Date,

in which case either party may terminate this document in accordance with clause 13.1(h)(iii).

## **5.9 Transaction Implementation Committee**

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

- (a) oversee and coordinate the performance of the parties respective obligations to implement the Scheme in accordance with this clause 5; and
- (b) subject to clause 5.10, consult with each other and plan to ensure the smooth transition of the management of the business and the affairs of the Target Group to the Bidder Group following the implementation of the Scheme, including to oversee and coordinate the matters set out in clause 8.

## **5.10 No partnership or joint venture**

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

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## **6 Target Board recommendation**

### **6.1 Reasonable endeavours**

Target must use its reasonable endeavours to procure that none of its directors withdraws or changes their recommendation that Target Shareholders vote in favour of the Scheme at the Scheme Meeting, unless:

- (a) there is a Superior Proposal; or
- (b) the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of Target Shareholders, or adversely changes its previously given opinion in the Independent Expert's Report (or any update or variation to that report) that the Scheme is in the best interests of Target Shareholders,

**(Recommendation).**

### **6.2 Withdrawal or change of recommendation**

Without limiting clause 9, other than in the circumstances described in clauses 6.1(a) or 6.1(b), if Target receives notice from (or is otherwise aware that) a member of the Target Board proposes to withdraw or change its Recommendation:

- (a) Target must notify Bidder in writing as soon as reasonably practicable and in any event within 1 Business Day; and
- (b) the parties must consult in good faith for 2 Business Days after the date on which the notification in sub clause (a) is given to Bidder in order to consider and determine whether the Recommendation of that member of the Target Board can be maintained and any associated implications.

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## **7 Directors and employees**

### **7.1 Release of Bidder and Bidder Indemnified Parties**

Subject to the Corporations Act, Target releases its rights, and agrees with Bidder that it will not make a claim, against any Bidder Indemnified Party (other than Bidder, the Bidder Nominee (if any) and their Related Bodies Corporate) as at the date of this document and from time to time in connection with:

- (a) any breach of any representations and warranties of Bidder or any other member of the Bidder Group in this document;
- (b) any disclosure made to the Target containing any statement which is false or misleading whether in content or by omission in connection with Scheme,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except when the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 7.1 limits Target's rights to terminate this document under clause 13.1.

### **7.2 Benefit for Bidder Indemnified Parties**

Bidder receives and holds the benefit of clause 7.1 to the extent it relates to each Bidder Indemnified Party on behalf of each of them.

### **7.3 Release of Target and Target Indemnified Parties**

Subject to the Corporations Act, Bidder releases its rights, and agrees with Target that it will not make a claim, against any Target Indemnified Party (other than Target and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:

- (a) any breach of any representations and warranties of Target or any other member of the Target Group in this document;
- (b) any disclosure made to the Bidder containing any statement which is false or misleading whether in content or by omission in connection with Scheme,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except when the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 7.3 limits Bidder's rights to terminate this document under clause 13.1.

### **7.4 Benefit for Target Indemnified Parties**

Target receives and holds the benefit of clause 7.3 to the extent it relates to each Target Indemnified Party on behalf of each of them.

### **7.5 Appointment/retirement of Target directors**

On the Implementation Date, but subject to the Scheme Consideration having been paid to the Scheme Participants and receipt by Target of signed consents to act, Target must use its reasonable endeavours to:

- (a) cause the appointment of each Incoming Director to the Target Board; and
- (b) procure that each of the Outgoing Directors retire from the Target Board and provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against Target (provided that nothing in this clause 7.5 requires any Outgoing Director to forego any rights they may have under any deed of access and indemnity or policy of insurance),

in each case, in accordance with Target's constitution, the Corporations Act and the Listing Rules.

### **7.6 Directors' and officers' insurance**

Subject to the Scheme becoming Effective and subject to the Corporations Act, Bidder undertakes in favour of Target and each other person who is a Target Indemnified Party that it will:

- (a) subject to clause 7.7, for a period of 7 years from the Implementation Date, ensure that the constitutions of Target and each other member of the Target Group continue to contain such rules as are contained in those constitutions at the date of this document that provide for each company to indemnify each of its current and former directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the Target Group; and
- (b) procure that Target and each other member of the Target Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that the directors' and officers' run-off insurance cover for those directors and officers is maintained,

subject to clause 7.7, for a period of 7 years from the retirement date of each director and officer.

### **7.7 Period of undertaking**

The undertakings contained in clause 7.6 are given until the earlier of the end of the relevant period specified in that clause or the relevant member of the Target Group ceasing to be part of the Bidder Group.

### **7.8 Benefit of undertaking for Target Group**

Target acknowledges that it receives and holds the benefit of clause 7.6 to the extent it relates to each director and officer of a member of the Target Group on behalf of each of them.

### **7.9 Bidder acknowledgement regarding insurance**

Bidder acknowledges that, notwithstanding any other provision of this document, Target may, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to such 7 year period, and that any actions to facilitate that insurance or in connection therewith will not be a Target Prescribed Occurrence or breach any provision of this deed.

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## **8 Conduct of business**

### **8.1 Overview**

From the date of this document up to and including the Implementation Date, Target must, and must cause each member of the Target Group to, conduct its business in the ordinary course consistent with business plans and budgets Disclosed and otherwise in a manner generally consistent with the manner in which such business has been conducted in the 12 months prior to the date of this document.

### **8.2 Specific obligations**

Without limiting clause 8.1, and otherwise except with the prior written approval of Bidder (which approval must not be unreasonably withheld or delayed), Target must, during the period contemplated by clause 8.1, use all reasonable endeavours to ensure that Target and each member of the Target Group:

- (a) **(officers and employees)** retains the services of the Relevant Employees of the Target Group;
- (b) **(relationships)** preserves its relationships with customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings; and
- (c) **(cash)** ensures that there is no material decrease in the amount of cash in Target Group other than as used in the ordinary course of business and consistent with Disclosed forecast cash utilisation, or as a result of reasonable costs incurred directly in relation to the transactions contemplated by the Scheme.

### **8.3 Prohibited actions**

Other than with the prior written approval of Bidder or as required by this document, Target must not, and must ensure that each member of the Target Group does not, during the period referred to in clause 8.1:

- (a) **(Material Contracts)** enter into, amend or terminate a Material Contract;

- (b) **(commitments and settlements)** breach in any material respect any Material Contract or do anything which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under a Material Contract, or waive any material third party default, or institute or accept as a settlement or compromise of a material matter (relating to an amount in excess of \$4,500,000) an amount that is less than the full compensation due to Target or a Subsidiary of Target;
- (c) **(employment agreements)** except as required by law or as provided in an existing contract in place at the date of this document (a copy of which has been Disclosed), increase the remuneration of (including with regard to superannuation benefits) or benefits provided to or pay any bonus or issue any securities or options to, or otherwise vary the employment agreements with, any Relevant Employee;
- (d) **(accelerate rights)** other than as permitted by clause 4.5, accelerate the rights of any of its directors or employees to compensation or benefits of any kind (including under any Target executive or employee share plans);
- (e) **(termination payments)** pay a director, executive or Relevant Employee a termination or retention payment, other than as required by law or provided for in an existing employment contract in place as at the date of this document and a copy of which has been Disclosed;
- (f) **(financial arrangements)** enter into any new arrangement, or amend in any material respect any arrangement in existence as at the date of this document, with its financial advisers in respect of the transactions contemplated by this document;
- (g) **(dividends)** announce, declare or pay any dividends other than the Permitted Dividend and (to the extent permitted by clause 4.4(c)) the Post-End Date Dividend;
- (h) **(information technology)** take any action in respect of its software or information technology systems (including to enter into, vary or terminate any contract or commitment relating to the use or development of that software or those systems) which would have a materially adverse impact on the use of that software or those systems, or the Target Group's distribution arrangements; or
- (i) **(agree)** agree to do any of the matters set out above.

#### 8.4 Exceptions to conduct of business provisions

Nothing in this clause 8 restricts the ability of Target to take any action which:

- (a) is expressly required or permitted by this document or the terms of the Scheme;
- (b) is required by law, the rules of a recognised stock exchange, or a Regulatory Authority;
- (c) has been Disclosed to Bidder;
- (d) has been consented to in writing by Bidder (and the Bidder will consider in good faith, acting reasonably, any request for consent from Target where Target has provided reasonable details of the matter (including any material terms) in writing to the Bidder); or

- (e) ensures that directors' and officers' run-off insurance cover for the directors and officers of Target and each member of the Target Group is maintained in accordance with clause 7.9.

## **8.5 Access to people and Target Information**

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

- (a) as soon as reasonably practicable provide Bidder and its officers and advisers with any documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) reasonably requested by them; and
- (b) without limiting its obligations under clause 3.6, promptly notify Bidder in writing if any person validly exercises, or purports to exercise, or states an intention to exercise, any rights under a distribution agreement to which a member of the Target Group is a party which could reasonably be expected to result in the termination or expiry of that distribution agreement (without renewal or replacement on terms no less favourable to the Target Group), in which case the parties must use all reasonable endeavours to agree and implement a proposed strategy to mitigate any risks to Target Group associated with any such actual, purported or threatened exercise of rights as soon as practicable and in any event before the Second Court Date;
- (c) provide Bidder and its officers and advisers with reasonable, non-disruptive access during normal business hours and on reasonable notice to Target's officers and advisers which Bidder reasonably requires for the purposes of:
  - (i) understanding Target's financial position (including its cash flow and working capital position), trading performance and management control systems;
  - (ii) implementing the Scheme;
  - (iii) preparing for carrying on the business of the Target Group following implementation of the Scheme; and
  - (iv) any other purpose which is agreed in writing between the parties,

provided in every case that such access is reasonably necessary to Bidder and, in the reasonable opinion of Target, does not place an unreasonable burden on the ability of Target to run its business, and provided that (without limiting clause 6.2) nothing in this clause 8.5 shall require Target to provide Bidder with any information:

- (v) concerning the consideration of the Scheme or any actual or potential Competing Transaction by the Target Board (or a sub-committee of the Target Board) or Target management; or
- (vi) in breach of an obligation of confidentiality to any person, provided that Target must use its reasonable endeavours to obtain the person's consent to disclose the relevant information to Bidder.

## **8.6 Change of control**

As soon as practicable after the date of this document, the parties must:

- (a) seek to identify any change of control or similar provisions in any Material Contract which may be triggered by the implementation of the Scheme (**Change of Control Requirements**); and
- (b) use all reasonable endeavours to agree a proposed strategy to obtain any consents required in accordance with the terms of any identified Change of Control Requirements, and, if agreed between parties as part of the proposed strategy, to then use reasonable efforts to promptly seek those consents in accordance with the agreed strategy as soon as practicable and in any event before the Second Court Date.

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## **9 Exclusivity**

### **9.1 No existing discussions**

Target represents and warrants that, other than the discussions with Bidder in respect of the Scheme, as at the date of this document, it is not currently in negotiations or discussions in respect of any Competing Transaction with any person. From the date of this document, Target must promptly enforce the terms of any confidentiality agreement entered into with a party other than Bidder in relation to a Competing Transaction before the execution of this document, and must promptly request, or must procure that the relevant Target Group company requests, the return or destruction of Target's confidential information in accordance with, but only to the extent provided by, the terms of that confidentiality agreement and terminate their access to any confidential information under that confidentiality agreement. Target agrees not to waive, and to enforce, any standstill obligations of any such party, to the extent provided by the terms of any confidentiality agreement entered into with a party other than Bidder, except in relation to a Competing Transaction where Bidder has failed to provide a matching or superior proposal which satisfies clause 9.8(e).

### **9.2 No-shop**

During the Exclusivity Period, Target must ensure that neither it nor any of its Representatives directly or indirectly:

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

with a view to obtaining any offer, proposal or expression of interest from any person (other than Bidder) in relation to a Competing Transaction.

### **9.3 No-talk**

Subject to clause 9.5, during the Exclusivity Period, Target must ensure that neither it nor any of its Representatives:

- (a) negotiates or enters into; or
- (b) participates in negotiations or discussions with any other person regarding,

a Competing Transaction or any agreement, understanding or arrangement that may be reasonably expected to lead to a Competing Transaction, even if that person's Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by Target or any of its Representatives or the person has publicly announced the Competing Transaction.

#### **9.4 Due diligence information**

Subject to clauses 9.5 and 9.6, during the Exclusivity Period, Target must ensure that neither it nor any of its Representatives in relation to a Competing Transaction:

- (a) enables any other person other than Bidder to undertake due diligence investigations on any member of the Target Group or their businesses or operations; or
- (b) makes available to any other person, or permits any other person to receive, other than Bidder (in the course of due diligence investigations or otherwise) any non-public information relating to any member of the Target Group or their businesses or operations.

#### **9.5 Exceptions**

Each of clause 9.3, clause 9.4 and clause 9.7(a)(iii), does not apply to the extent that it restricts Target or the Target Board from taking or refusing to take any action with respect to a genuine Competing Transaction (which was not solicited, invited, encouraged or initiated by Target or its Representatives in contravention of clause 9.2) provided that the Target Board has determined, in good faith and acting reasonably that:

- (a) after consultation with its financial advisors, such a genuine Competing Transaction is, or could reasonably be considered to become, a Superior Proposal; and
- (b) after receiving written legal advice from the Target's legal advisers (who must be reputable and experienced in transactions of this nature) that failing to respond to such a genuine Competing Transaction would be reasonably likely to constitute a breach of the Target Board's fiduciary or statutory obligations.

#### **9.6 Further exceptions**

Nothing in this document prevents Target from:

- (a) continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Scheme or its business generally; or
- (b) fulfilling its continuous disclosure requirements.

#### **9.7 Notice of unsolicited approach**

During the Exclusivity Period, Target must inform Bidder as soon as reasonably practicable, and in any event with 3 Business Days, if it or any of its Representatives:

- (a) receives any unsolicited approach with respect to any Competing Transaction and must disclose to Bidder:
  - (i) the fact that such an approach has been made;
  - (ii) all material terms of any Competing Transaction (to the extent known by the Target); and
  - (iii) subject to clause 9.5, details of the proposed bidder or acquirer (to the extent known by the Target);
- (b) receives any request for information relating to Target or any of its Related Bodies Corporate or any of their businesses or operations or

any request for access to the books or records of Target or any of its Related Bodies Corporate, which Target has reasonable grounds to suspect may be in connection with or for the purposes of the person formulating, developing or finalising a Competing Transaction; and

- (c) provides any information relating to Target or any of its Related Bodies Corporate or any of their businesses or operations to any person in connection with or for the purposes of the person formulating, developing or finalising a Competing Transaction.

## 9.8 Matching right

Without limiting clauses 9.2 and 9.3, during the Exclusivity Period, Target:

- (a) must not enter into any legally binding agreement, arrangement or understanding pursuant to which a third party, Target or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Transaction; and
- (b) must use its reasonable endeavours to procure that none of its directors withdraw or change their Recommendation or otherwise make a public statement to endorse or recommend an actual, proposed or potential Competing Transaction,

unless:

- (c) the Competing Transaction is a Superior Proposal;
- (d) Target has provided Bidder with the material terms and conditions of the actual, proposed or potential Competing Transaction, including price and the identity of the third party making or proposing to undertake or give effect to the actual, proposed or potential Competing Transaction;
- (e) Target has given Bidder at least 3 Business Days after the date of the provision of the information referred to in clause 9.8(d) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction; and
- (f) Bidder has not provided a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction to the Target Board by the expiry of the 3 Business Day period referred to in clause 9.8(e).

Target acknowledges and agrees that each successive modification of any actual, proposed or potential Competing Transaction will constitute a new actual, proposed or potential Competing Transaction for the purposes of the requirements under clause 9.8 and accordingly Target must comply with clause 9.8(a) and clause 9.8(b) of this clause in respect of any new actual, proposed or potential Competing Transaction unless clauses 9.8(c) to 9.8(f) (inclusive) apply.

## 9.9 Bidder counterproposal

If Bidder proposes to Target, or announces amendments to the Scheme or a new proposal that constitute a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction (“**Bidder Counterproposal**”) by the expiry of the 3 Business Day period referred to in clause 9.8(e), Target must procure that the Target Board considers the Bidder Counterproposal and if the Target Board, acting reasonably and in good faith, determines that the Bidder Counterproposal would provide an equivalent or superior outcome for Target Shareholders as a whole compared with the Competing Transaction, taking into account the material terms and conditions of the Bidder Counterproposal, then:

- (a) Target and Bidder must use their best endeavours to agree the amendments to this document and, if applicable, the Scheme and Deed Poll that are reasonably necessary to reflect the Bidder Counterproposal and to implement the Bidder Counterproposal, in each case as soon as reasonably practicable; and
- (b) Target must use its reasonable endeavours to procure that each of the directors of Target recommends the Scheme (as modified by the Bidder Counterproposal) to Target Shareholders.

## 9.10 Legal advice

Target acknowledges that it has received legal advice on this document and the operation of this clause.

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# 10 Target Reimbursement Fee

## 10.1 Background

This clause has been agreed in circumstances where:

- (a) Bidder and Target believe that the Scheme will provide significant benefits to Bidder, Target and their respective shareholders, and Bidder and Target acknowledge that, if they enter into this document and the Scheme is subsequently not implemented, Bidder will incur significant costs, including those set out in clause 10.5;
- (b) Bidder requested that provision be made for the Target Reimbursement Fee, without which Bidder would not have entered into this document;
- (c) both the Bidder Board and Target Board believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure Bidder's entry into this document and participation in the Scheme; and
- (d) both parties have received legal advice on this document and the operation of this clause.

## 10.2 Payment by Target to Bidder

Subject to clauses 10.3, 10.4, 10.6 and 10.7, Target agrees to pay the Target Reimbursement Fee to Bidder without withholding or set off if the Scheme does not proceed because:

- (a) **(Competing Transaction)** on or before the earlier to occur of the End Date and the date this document is validly terminated in accordance with its terms, a transaction of the type referred to in paragraphs (b), (c) or (d) of the definition of Competing Transaction is announced and within 12 months of such announcement, such a transaction is completed, implemented or consummated; or
- (b) **(change of recommendation)** any Target Director fails to make the Recommendation or withdraws their Recommendation, adversely changes or qualifies their Recommendation, or otherwise makes a public statement indicating that he or she no longer supports the Scheme, except where the Independent Expert concludes that the Scheme is not in the best interests of Target Shareholders (other than where the reason for that conclusion is a Competing Transaction);
- (c) **(Independent Expert)** Target validly terminates this document in accordance with clause 13.1(g) due to the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of

Target Shareholders, or adversely changing its previously given opinion in the Independent Expert's Report (or any update or variation to that report) that the Scheme is in the best interests of Target Shareholders, where the reason for that conclusion is a Competing Transaction; or

- (d) **(termination)** Bidder validly terminates this document in accordance with:
  - (i) clause 13.1(b); or
  - (ii) clause 13.1(c).

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

- (a) Notwithstanding the occurrence of any event in clause 10.2, if the Scheme becomes Effective:
  - (i) no amount is payable by Target under clause 10.2; and
  - (ii) if any amount has already been paid under clause 10.2 it must be refunded by Bidder within 10 Business Days after the Scheme becomes Effective.
- (b) Target can only ever be liable to pay the Target Reimbursement Fee once.

### **10.4 Timing of payment**

- (a) A demand by Bidder for payment of the Target Reimbursement Fee under clause 10.2 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account into which Target must pay the Target Reimbursement Fee.
- (b) Target must pay the Target Reimbursement Fee to Bidder under clause 10.2 without withholding or set off within 10 Business Days of receipt by Target of a valid demand for payment from Bidder under clause 10.4(a).
- (c) The demand may only be made after the occurrence of an event referred to in clause 10.2.

### **10.5 Nature of payment**

The Target Reimbursement Fee is an amount to compensate Bidder for:

- (a) advisory costs;
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;
- (d) the distraction of Bidder's management from conducting Bidder's business as usual caused by pursuing the Scheme;

- (e) reasonable opportunity costs incurred by Bidder in pursuing the Scheme or in not pursuing alternative acquisitions or strategic initiatives which Bidder could have developed to further its business and objectives; and
- (f) damage to Bidder's reputation associated with a failed transaction and the implications of that damage to Bidder's business.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 10.2.

## **10.6 Target's limitation of liability**

Notwithstanding any other provision of this document but subject to clause 10.7:

- (a) the maximum liability of Target to Bidder under or in connection with this document including in respect of any breach of this document will be the Target Reimbursement Fee, and in no event will the aggregate liability of the Target under or in connection with a breach of this document exceed an amount equal to the Target Reimbursement Fee; and
- (b) the payment by Target of the Target Reimbursement Fee represents the sole and absolute amount of liability of Target to Bidder under or in connection with this document and no further damages, fees, expenses or reimbursements of any kind will be payable by Target to Bidder in connection with this document.

## **10.7 Compliance with law**

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a Court that all or any part of the amount payable under clause 10.2:

- (a) is unlawful or would if performed be, unlawful;
- (b) involves a breach of the duties of the Target Board; or
- (c) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then Target's obligation to pay the applicable amount or part of the amount payable under clause 10.2 does not apply and if Bidder has received any such part of the payment due under clause 10.2 it must refund it within 10 Business Days of such final determination.

The parties must not make or cause or permit to be made any application to a Court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in this clause 10.7.

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# **11 Bidder Reimbursement Fee**

## **11.1 Background**

This clause has been agreed in circumstances where:

- (a) Bidder and Target believe that the Scheme will provide significant benefits to Bidder, Target and their respective shareholders, and Bidder and Target acknowledge that, if they enter into this document and the Scheme is subsequently not implemented, Target will incur significant costs, including those set out in clause 11.5;

- (b) Target requested that provision be made for the Bidder Reimbursement Fee, without which Target would not have entered into this document;
- (c) both the Bidder Board and Target Board believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure Target's entry into this document and participation in the Scheme; and
- (d) both parties have received legal advice on this document and the operation of this clause.

## **11.2 Payment by Bidder to Target**

Subject to clauses 11.3, 11.4 and 11.6, Bidder agrees to pay the Bidder Reimbursement Fee to Target without withholding or set off if the Scheme does not proceed because Target validly terminates this document in accordance with:

- (a) clause 13.1(b); or;
- (b) clause 13.1(d).

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

- (a) Notwithstanding the occurrence of any event in clause 11.2, if the Scheme becomes Effective:
  - (i) no amount is payable by Bidder under clause 11.2; and
  - (ii) if any amount has already been paid under clause 11.2 it must be refunded by Target within 10 Business Days after the Scheme becomes Effective.
- (b) Bidder can only ever be liable to pay the Bidder Reimbursement Fee once.

## **11.4 Timing of payment**

- (a) A demand by Target for payment of the Bidder Reimbursement Fee under clause 11.2 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account into which Bidder must pay the Bidder Reimbursement Fee.
- (b) Bidder must pay the Bidder Reimbursement Fee to Target under clause 11.2 without withholding or set off within 10 Business Days of receipt by Bidder of a valid demand for payment from Target under clause 11.4(a).
- (c) The demand may only be made after the occurrence of an event referred to in clause 10.2.

## **11.5 Nature of payment**

The Bidder Reimbursement Fee is an amount to compensate Target for:

- (a) advisory costs;

- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;
- (d) the distraction of Target's management from conducting Target's business as usual caused by pursuing the Scheme;
- (e) reasonable opportunity costs incurred by Target in pursuing the Scheme or in not pursuing alternative strategic initiatives which Target could have developed to further its business and objectives; and
- (f) damage to Target's reputation associated with a failed transaction and the implications of that damage to Target's business.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 11.2.

## 11.6 Bidder's limitation of liability

Notwithstanding any other provision of this document:

- (a) the maximum liability of Bidder to Target under or in connection with this document including in respect of any breach of this document will be the Bidder Reimbursement Fee and in no event will the aggregate liability of the Bidder under or in connection with a breach of this document exceed an amount equal to the Bidder Reimbursement Fee; and
- (b) the payment by Bidder of the Bidder Reimbursement Fee represents the sole and absolute amount of liability of Bidder to Target under or in connection with this document and no further damages, fees, expenses or reimbursements of any kind will be payable by Bidder to Target in connection with this document.

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## 12 Representations and warranties

### 12.1 Target's representations and warranties

Subject to clause 12.4, Target represents and warrants to Bidder (on its own behalf and separately as trustee or nominee for each of the Bidder directors) that each of the following statements is true and correct in all material respects as at the date of this document and, unless expressly stated otherwise, as at 5.00pm on the Business Day immediately prior to the Second Court Date:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
  - (ii) any law binding on it;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;

- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(reliance)** the Target Information contained in the Scheme Booklet will be included in good faith and on the understanding that Bidder and its directors will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme;
- (g) **(Target Information)** the Target Information provided in accordance with this document and included in the Scheme Booklet as at the date of the Scheme Booklet will not contain any material statement which is misleading or deceptive in any material respect nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (h) **(disclosure)** the Disclosure Materials and all other information provided to Bidder by Target in connection with this document were prepared, compiled and made available to Bidder and its Representatives in good faith, the Disclosure Materials are not misleading or deceptive in any material respect (whether by way of omission or otherwise), and Target has not withheld from the Disclosure Materials any information actually known to the Target Board or the senior management of the Target Group after making reasonable inquiries as at the date of this document regarding matters affecting or relating to it:
  - (i) which is not already in the public domain; and
  - (ii) the disclosure of which might reasonably be expected to have resulted in Bidder not entering into this document at all or only entering into this document on materially different terms;
- (i) **(continuous disclosure)** Target is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure (other than in connection with the transaction contemplated by this document);
- (j) **(compliance)** the Target Group has not breached any Australian or foreign law or regulation applicable to it or an order of an Australian or foreign governmental agencies having jurisdiction over it that has or could reasonably be expected to have a materially adverse effect on:
  - (i) the conduct of the business of the Target Group;
  - (ii) the value of the Target Group;
  - (iii) the reputation of the Target Group, including any implication in relation to its good standing with any Regulatory Authority having jurisdiction over the Target Group or the conduct of business of the Target Group; or
  - (iv) the satisfaction or fulfilment of any Condition Precedent in accordance with clause 3.1;
- (k) **(licences)** as at the date of this document, the Target Group has all material licenses, permits and franchises necessary for it to conduct its respective businesses as conducted as at the date of this document,

which is generally consistent with the manner in which such businesses have been conducted in the 12 months prior to the date of this document;

- (l) **(opinions)** any statement of opinion or belief contained in the Target Information is honestly held and there are reasonable grounds for holding the opinion or belief;
- (m) **(provision of information to Independent Expert)** all information provided by or on behalf of Target to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (n) **(no default)** as at the date of this document, and so far as the Target Board and the senior management of the Target Group are aware after making reasonable inquiries, neither Target nor any of its Subsidiaries is in default under any Material Contract nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under a Material Contract;
- (o) **(securities)** Target's issued securities as at the date of this document are 378,917,866 fully paid ordinary shares and 2,201,373 Employee Performance Rights, and other than as Disclosed it has not issued or agreed to issue any other securities or instruments which are still outstanding and which may convert into or give rights to acquire Target Shares;
- (p) **(no Encumbrances)** other than any Encumbrance identifiable from the public records or registers of the Personal Property Securities Register or in connection with the Westpac Facility, there are no material Encumbrances over all or any of its assets or revenues.
- (q) **(Insolvency event)** no member of the Target Group is Insolvent;
- (r) **(regulatory approvals)** so far as Target is aware as at the date of this document, no regulatory approval is required to be obtained by Target in order for it to execute, deliver and perform this document, other than those approvals set out in clause 3.1, and so far as the Target is aware, as at the date of this document no regulatory action of any nature has been taken that would prevent or restrict its ability to fulfil its obligations under this document; and
- (s) **(Target Shares not indirect Australian real property interests)** the relevant Target Shares held by each Scheme Participant are not, and until (and including) the Implementation Date will not be, indirect Australian real property interests within the meaning of Division 855 of the Tax Act for the Scheme Participant.

## 12.2 Notices in relation to Target's Representations and Warranties

Target must give written notice to Bidder promptly, and in any event within 2 Business Days, of any breach of any of the Target Representations and Warranties, or any material development of which Target or any of its Representatives becomes aware that is reasonably likely to result in the breach of any of the Target Representations and Warranties, with such notice to include details of the relevant circumstances and any actions taken to remedy the actual or potential breach.

### 12.3 Target's indemnity

Subject to clauses 10.6 and 12.4, Target indemnifies the Bidder Indemnified Parties against all Losses incurred directly or indirectly as a result of any breach of the representations and warranties in clause 12.1.

### 12.4 Qualifications on Target Representations and Warranties

The Target Representations and Warranties in clause 12.1 and the indemnity in clause 12.3 are each subject to matters that:

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

### 12.5 Bidder's representations and warranties

Bidder represents and warrants to Target (on its own behalf and separately as trustee or nominee for each of the Target directors) that each of the following statements is true and correct in all material respects as at the date of this document and as at 5.00pm on the Business Day immediately prior to the Second Court Date:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
  - (ii) any law binding on it;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(reliance)** the Bidder Information provided to Target for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that Target and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act;
- (g) **(Bidder Information)** the Bidder Information provided in accordance with this document and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive in any material respect nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;

- (h) **(new information)** it will, as a continuing obligation, provide to Target all further or new information which arises after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information is not misleading or deceptive in any material respect (including by way of omission);
- (i) **(compliance)** the Bidder Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over it and has all material licenses, permits and franchises necessary for it to conduct its businesses as presently being conducted;
- (j) **(opinions)** any statement of opinion or belief contained in the Bidder Information is honestly held and there are reasonable grounds for holding the opinion or belief;
- (k) **(no dealing with Target Shareholders)** neither it nor any of its associates has any agreement, arrangement or understanding with any Target Shareholder under which that Target Shareholder (or an associate of that Target Shareholder) would be entitled to receive consideration for their Target Shares different from the Scheme Consideration or under which the Target Shareholder agrees to vote in favour of the Scheme or against any Competing Transaction;
- (l) **(reasonable basis)** it has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy Bidder's obligations to pay the Scheme Consideration in accordance with its obligations under this document, the Scheme and the Deed Poll;
- (m) **(Insolvency event)** no member of the Bidder Group is Insolvent; and
- (n) **(regulatory approvals)** so far as the Bidder is aware, no regulatory approval is required to be obtained by Bidder in order for it to execute, deliver and perform this document, other than those approvals set out in clause 3.1, and so far as the Bidder is aware, as at the date of this document no regulatory action of any nature has been taken that would prevent or restrict its ability to fulfil its obligations under this document.

## 12.6 Notices in relation to Bidder's Representations and Warranties

Bidder must give written notice to Target promptly, and in any event within 2 Business Days, of any breach of any of the Bidder Representations and Warranties, or any material development of which Bidder or any of its Representatives becomes aware that is reasonably likely to result in the breach of any of the Bidder Representations and Warranties, with such notice to include details of the relevant circumstances and any actions taken to remedy the actual or potential breach.

## 12.7 Bidder's indemnity

Subject to clause 11.6, Bidder indemnifies the Target Indemnified Parties against all Losses incurred directly or indirectly as a result of any breach of the representations and warranties in clause 12.5.

## 12.8 Qualifications on Bidder Representations and Warranties

The Bidder Representations and Warranties in clause 12.5 and the indemnity in clause 12.7 are each subject to matters that as at the date of this document are within the actual knowledge of Target or any of the Target's Representatives who

have been directly involved in the assessment and/or negotiation of the transactions contemplated by this document before the date of this document.

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## 13 Termination

### 13.1 Termination events

This document may be terminated:

- (a) **(lack of support)** by Bidder at any time prior to 8.00am on the Second Court Date if any member of the Target Board fails to make the Recommendation withdraws their Recommendation, adversely changes or qualifies their Recommendation, or otherwise makes a public statement indicating that he or she no longer supports the Scheme;
- (b) **(material breach of document)** by either Bidder or Target at any time prior to 8.00am on the Second Court Date, if the other is in material breach of a term of this document (other than a breach of representation and warranty, which is dealt with in clause 13.1(c) or 13.1(d), as applicable), taken in the context of the Scheme as a whole, provided that Bidder or Target (as the case may be) has, if practicable, given notice to the other setting out the relevant circumstances and the relevant circumstances continue to exist 5 Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the time such notice is given;
- (c) **(material breach of Target Representations and Warranties)** by Bidder if the Target Representations and Warranties are not true and accurate in all material respects, provided that:
  - (i) Bidder has given written notice to Target setting out the relevant circumstances and stating an intention to terminate this document or to allow the Scheme to lapse;
  - (ii) the relevant breach or circumstances have not been remedied within 5 Business Days after such notice is given (or any shorter period ending at 8:00am on the Second Court Date); and
  - (iii) the relevant breach of the Target Representations and Warranties is material in the context of the Scheme taken as a whole;
- (d) **(material breach of Bidder Representations and Warranties)** by Target if the Bidder Representations and Warranties are not true and accurate in all material respects, provided that:
  - (i) Target has given written notice to Bidder setting out the relevant circumstances and stating an intention to terminate this deed or to allow the Scheme to lapse;
  - (ii) the relevant breach or circumstances have not been remedied within 5 Business Days after such notice is given (or any shorter period ending at 8:00am on the Second Court Date); and
  - (iii) the relevant breach of the Bidder Representations and Warranties is material in the context of the Scheme taken as a whole;
- (e) **(competing interest)** by Bidder, if a person (other than Bidder or its Associates) acquires a Relevant Interest in more than 20% of the Target

Shares after the date of this document (except as a custodian, nominee or bare trustee);

- (f) **(Competing Transaction)** by Target if, at any time before 8:00am on the Second Court Date, a majority of the Target Board publicly recommends a Competing Transaction that is a Superior Proposal, and provided that the Competing Transaction was not solicited or facilitated by Target or its Representatives in breach of Target's obligations in clause 9;
- (g) **(Independent Expert)** by Target if the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of Target Shareholders, or adversely changes its previously given opinion in the Independent Expert's Report (or any update or variation to that report) that the Scheme is in the best interests of Target Shareholders;
- (h) **(consultation or appeal failure)** in accordance with and pursuant to:
  - (i) clause 3.8(a);
  - (ii) clause 3.8(b); or
  - (iii) clause 5.8; or
- (i) **(agreement)** if agreed to in writing by Bidder and Target.

### **13.2 Termination**

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

### **13.3 Effect of Termination**

If this document is terminated by either party, or if this document otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this document, other than the obligations set out in this clause and in clauses 5.8, 7, 10.2, 11.2 and 14 to 20 (inclusive) will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause releases any party from liability for any pre-termination breach of this document.

### **13.4 Damages**

Subject to clauses 10.6 and 11.6, in addition to the right of termination under clause 13.1 where there is no appropriate remedy for the breach in this document (other than termination), the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this document.

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## **14 Public announcements**

### **14.1 Public announcement of Scheme**

Immediately after signing this document (or any other time the parties agree), Target and Bidder must each issue a public announcement of the proposed Scheme in a form agreed between Target and Bidder before the execution of this document.

## **14.2 Required disclosure**

Where a party is required by any applicable law or any Listing Rule to make any announcement or make any disclosure in connection with the Scheme, it must use all reasonable endeavours, to the extent possible, to consult with the other party prior to making the relevant disclosure.

## **14.3 Other announcements**

Subject to clauses 14.1 and 14.2, no party may make any public announcement or disclosure in connection with the Scheme (including disclosure to a Regulatory Authority) other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable.

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## **15 Confidential Information**

Each party acknowledges and agrees that it continues to be bound by the Confidentiality Deed in respect of all the Bidder Confidential Information and Target Confidential Information (as applicable) received by it from the other party on, before or after the date of this document.

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## **16 Notices and other communications**

### **16.1 Form**

Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing and signed by the sender (if an individual) or an Authorised Officer of the sender.

All communications (other than email communications) must also be marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).

Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

### **16.2 Delivery**

Communications must be:

- (a) left at the address referred to in the Details;
- (b) sent by regular ordinary post (airmail if appropriate) to the address referred to in the Details;
- (c) sent by email to the address referred to in the Details.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

### **16.3 When effective**

Communications take effect from the time they are received or taken to be received under clause 16.4 ("When taken to be received") (whichever happens first) unless a later time is specified in the communication.

### **16.4 When taken to be received**

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another);
- (b) if sent by email:
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

## 16.5 Receipt outside business hours

Despite anything else in this clause 16, if communications are received or taken to be received under clause 16.4 (“When taken to be received”) after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

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## 17 GST

### 17.1 Definitions and interpretation

For the purposes of this clause:

- (a) “**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) a term which has a defined meaning in the GST Act has the same meaning when used in this clause, unless the contrary intention appears; and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.

### 17.2 GST exclusive

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

### 17.3 Payment of GST

- (a) If GST is payable, or notionally payable, on a supply in connection with this document, the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply (“**GST Amount**”).
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

## **17.4 Adjustment events**

If an adjustment event arises for a supply made in connection with this document, the GST Amount must be recalculated to reflect that adjustment. The supplier or the recipient (as the case may be) agrees to make any payments necessary to reflect the adjustment and the supplier agrees to issue an adjustment note.

## **17.5 Reimbursements**

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this document which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 17.3 will apply to the reduced payment.

## **17.6 No merger**

This clause 17 ("GST") will not merge on termination of this document.

---

## **18 Costs**

### **18.1 Costs**

The parties agree to pay their own Costs in connection with the preparation, negotiation, execution and completion of this document, except for amounts covered by clause 18.2 ("Stamp duty and registration fees").

### **18.2 Stamp duty and registration fees**

Bidder

- (a) agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document (including any fees, fines, penalties and interest in connection with any of those amounts); and
- (b) indemnifies Target against, and agrees to reimburse and compensate it for, any liability in respect of stamp duty under clause 18.2(a).

Bidder agrees to pay amounts due to Target under this clause within 3 Business Days of demand from Bidder.

However, Bidder need not pay, reimburse or indemnify against any fees, fines, penalties or interest to the extent they have been imposed because of Target's delay.

---

## **19 General**

### **19.1 Variation and waiver**

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

### **19.2 Consents, approvals or waivers**

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

### **19.3 Discretion in exercising rights**

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

### **19.4 Partial exercising of rights**

Unless this document expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this document fully or at a given time, they may still exercise it later.

### **19.5 Conflict of interest**

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

### **19.6 Remedies cumulative**

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

### **19.7 Indemnities and reimbursement obligations**

Any indemnity, reimbursement or similar obligation in this document.

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

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

### **19.8 Inconsistent law**

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

### **19.9 Supervening law**

Any present or future law which operates to vary the obligations of a party in connection with this document with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

### **19.10 Counterparts**

This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document.

### **19.11 Entire agreement**

This document constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

### **19.12 Further steps**

Each party agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed), which the other party asks and considers necessary to:

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

### **19.13 No liability for loss**

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

### **19.14 Severability**

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this document or is contrary to public policy.

### **19.15 Rules of construction**

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

### **19.16 Assignment**

Subject to clause 2.2, a party may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of the other party.

### **19.17 Enforceability**

For the purpose of this document:

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

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

### **19.18 Foreign resident capital gains withholding**

If Bidder (or the Bidder Nominee) determines that it must pay an amount to the Commissioner pursuant to Subdivision 14-D of Schedule 1 to the TAA with respect to the acquisition of the Target Shares from a Target Shareholder, the Bidder will, for any such Target Shareholder:

- (a) determine the amount to be paid to the Commissioner ("**Payment Amount**");
- (b) remit the Payment Amount to the Commissioner within the time required under the TAA; and

- (c) reduce the amount of Scheme Consideration payable to that Target Shareholder by the Payment Amount for the purposes of this agreement and the Scheme.

For the avoidance of doubt, Bidder will, for the purposes of this agreement, be deemed to have satisfied its obligations to pay the Scheme Consideration to a Target Shareholder if the amount paid to the Target Shareholder is the amount of the Scheme Consideration that would have otherwise been payable to the Target Shareholder pursuant to the Scheme under this agreement, less the Payment Amount for that Target Shareholder.

### **19.19 No representation or reliance**

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document;
- (b) it does not enter into this document in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this document; and
- (c) clauses 19.19(a) and 19.19(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

---

## **20 Governing law**

### **20.1 Governing law and jurisdiction**

The law in force in the place specified in the Details governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

### **20.2 Serving documents**

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address for service of notices under clause 16.2 ("Delivery") or with its process agent.

### **20.3 Appointment of process agent**

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

- (a) irrevocably appoints Zurich Australia as its process agent to receive any document in an action in connection with this document; and
- (b) agrees that failure by a process agent to notify Bidder of any document in an action in connection with this document does not invalidate the action concerned.

If for any reason Zurich Australia ceases to be able to act as process agent, Bidder agrees to appoint another person as its process agent in the place referred to in clause 20.1 ("Governing law and jurisdiction") and ensure that the replacement process agent accepts its appointment and confirms its appointment to Bidder.

Zurich Australia accepts its appointment as the process agent.

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

Zurich Australia  
Attention: Cathy Manolios  
5 Blue Street  
NORTH SYDNEY NSW 2060  
AUSTRALIA.

**EXECUTED** as an agreement

# Scheme Implementation Agreement

## Schedule 1 Timetable (clause 5.1)

<b>Event</b>	<b>Date</b>
Regulator's Draft provided to ASIC	X (being 3 February 2017)
First Court Date	X + 15 Business Days
Printing and despatch of Scheme Booklet	X + 15 - 18 Business Days
Scheme Meeting held	Y
Second Court Date	Z
Lodge Court order with ASIC (Effective Date)	Z + 1 Business Day
Record Date	Z + 6 Business Days
Implementation Date	Z + 11 Business Days

# Scheme Implementation Agreement

## Signing page

DATED: \_\_\_\_\_

SIGNED as authorised signatories for  
ZURICH INSURANCE COMPANY  
LIMITED:



.....  
Signature of authorised signatory

MARIO GRECO  
.....  
Name of authorised signatory (block  
letters)



.....  
Signature of authorised signatory

JOHN INNIS HOWELL  
.....  
Name of authorised signatory (block  
letters)

EXECUTED by COVER-MORE  
GROUP LIMITED in accordance with  
section 127(1) of the *Corporations Act*  
2001 (Cth) by authority of its directors:

.....  
Signature of director

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

.....  
Signature of director/company  
secretary\*

\*delete whichever is not applicable

.....  
Name of director/company secretary\*  
(block letters)

\*delete whichever is not applicable



# Scheme Implementation Agreement

## Annexure A Scheme of Arrangement

# Scheme of Arrangement

Dated

Cover-More Group Limited (ACN 166 776 334)

Scheme Participants

**King & Wood Mallesons**

Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Australia  
**T** +61 2 9296 2000  
**F** +61 2 9296 3999  
DX 113 Sydney  
[www.kwm.com](http://www.kwm.com)

# Scheme of Arrangement

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# Scheme of Arrangement

## Details

<b>Parties</b>	<b>Cover-More and Scheme Participants</b>	
<b>Cover-More</b>	Name	<b>Cover-More Group Limited</b>
	ACN	166 776 334
	Address	Level 2 60 Miller Street North Sydney NSW 2060 Australia
	Telephone	
	Email	
	Attention	Chief Executive Officer
<b>Scheme Participants</b>	Name	Each person registered as a holder of fully paid ordinary shares in Cover-More as at 5.00pm on the Record Date
	<b>Governing law</b>	New South Wales

# General terms

---

## 1 Definitions and interpretation

### 1.1 Definitions

In this Scheme:

**ACCC** means the Australian Competition and Consumer Commission.

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

**ASX** means ASX Limited or the market operated by it, as the context requires.

**Bidder Nominee** has the meaning given to that term in clause 2.3 of this Scheme.

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

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

**Court** means the Federal Court of Australia, or such other court of competent jurisdiction under the Corporations Act agreed in writing by Zurich and Cover-More.

**Cover-More** means Cover-More Group Limited (ACN 166 776 334).

**Cover-More Share** means a fully paid ordinary share in the capital of Cover-More.

**Cover-More Shareholder** means each person registered in the Register as a holder of Cover-More Shares.

**Deed Poll** means the deed poll dated .....executed by Zurich substantially in the form of Annexure C of the Scheme Implementation Agreement or as otherwise agreed by Zurich and Cover-More under which Zurich covenants in favour of each Scheme Participant to perform its obligations under this Scheme.

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

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

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

**Employee Performance Right** means a Performance Right issued under the "Cover-More Group Limited Long Term Incentive Plan" operated by the Target and adopted by the Target Board on 12 June 2015.

**Encumbrance** means any security for payment of money or performance of obligations, including a mortgage, lien, charge, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in

sections 12(1) or 12(2) of the *Personal Property Securities Act 2009* (Cth) or any agreement to create any of them or allow them to exist.

**End Date** means 30 June 2017 or such other date as is agreed in writing by Zurich and Cover-More.

**Immediately Available Funds** means a bank cheque or other form of cleared funds acceptable to Cover-More.

**Implementation Date** means the fifth Business Day following the Record Date or such other date as is agreed by Zurich and Cover-More.

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

**Permitted Dividend** means an interim dividend and/or special dividend (which may be franked) declared or determined by Target Board, provided that the maximum aggregate amount paid or payable by Target per Target Share in respect of all such dividends is A\$0.05 per Target Share.

**Record Date** means the fifth Business Day following the Effective Date or such other date as Cover-More and Zurich agree.

**Register** means the register of members of Cover-More maintained by or on behalf of Cover-More in accordance with section 168(1) of the Corporations Act and **Registry** has a corresponding meaning.

**Registered Address** means, in relation to a Cover-More Shareholder, the address shown in the Register.

**Regulatory Authority** includes:

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

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

**Scheme Consideration** means the consideration payable by Zurich (or if applicable, the Bidder Nominee) for the transfer of Target Shares held by a Scheme Participant to Zurich (or the Bidder Nominee), being, in respect of each Target Share, \$1.95 less the amount of the Permitted Dividend paid or payable in respect of the Target Share in accordance with the Scheme Implementation Agreement.

**Scheme Implementation Agreement** means the scheme implementation agreement dated 12 December 2016 between Cover-More and Zurich under which, amongst other things, Cover-More has agreed to propose this Scheme to

Cover-More Shareholders, and each of Zurich and Cover-More has agreed to take certain steps to give effect to this Scheme.

**Scheme Meeting** means the meeting of Cover-More Shareholders, ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act at which Cover-More Shareholders will vote on this Scheme.

**Scheme Participant** means each person who is a Cover-More Shareholder as at 5.00pm on the Record Date.

**Scheme Share** means a Cover-More Share held by a Scheme Participant as at the Record Date and, for the avoidance of doubt, includes any Cover-More Shares issued on or before the Record Date.

**Second Court Date** means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme (or if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard).

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

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

**Trust Account** means the trust account operated by or on behalf of Cover-More to hold the Scheme Consideration on trust for the purpose of paying the Scheme Consideration to the Scheme Participants in accordance with clause 6.4 of this Scheme.

**Zurich** means Zurich Insurance Company Limited, a company incorporated under the laws of Switzerland.

## 1.2 Reference to certain general terms

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

- (a) **(variations or replacement)** a document, agreement (including this agreement) or instrument is a reference to that document, agreement or instrument as amended, consolidated, supplemented, novated or replaced;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(party)** a party means a party to this Scheme;

- (g) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Regulatory Authority;
- (h) **(executors, administrators, successors)** a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (j) **(calculation of time)** a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (m) **(time of day)** time is a reference to Sydney time.

### 1.3 Headings

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

## 2 Preliminary

### 2.1 Cover-More

Cover-More is:

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

As at ....., Cover-More’s issued securities are:

- (a) Cover-More Shares: .....
- (b) Employee Performance Rights: .....

### 2.2 Zurich

Zurich is a company incorporated in Switzerland.

### 2.3 Bidder Nominee

Pursuant to clause 2.2 of the Scheme Implementation Agreement, Zurich may nominate a wholly owned Subsidiary of Zurich (“**Bidder Nominee**”) to pay the Scheme Consideration and to which the Scheme Shares are to be transferred in accordance with clause 5 of this Scheme.

If Zurich nominates a Bidder Nominee, then clause 2.2 of the Scheme Implementation Agreement provides that:

- (a) Zurich must procure that the Bidder Nominee complies with the Scheme Implementation Agreement as if the Bidder Nominee were a party to it in place of Zurich; and
- (b) any such nomination will not relieve Zurich of its obligations under the Scheme Implementation Agreement, including the obligation to pay (or procure the payment by Bidder Nominee of) the Scheme Consideration as contemplated by the terms of this Scheme.

## **2.4 If Scheme becomes Effective**

If this Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share to Zurich (or if applicable, the Bidder Nominee), Zurich will provide (or procure the Bidder Nominee to provide) the Scheme Consideration to Cover-More on behalf of each Scheme Participant in accordance with the terms of this Scheme;
- (b) all Scheme Shares will be transferred to Zurich (or if applicable, the Bidder Nominee) on the Implementation Date; and
- (c) Cover-More will enter the name of Zurich (or if applicable, the Bidder Nominee) in the Register in respect of all Scheme Shares transferred to Zurich (or if applicable, the Bidder Nominee) in accordance with the terms of this Scheme.

## **2.5 Scheme Implementation Agreement**

Cover-More and Zurich have agreed by executing the Scheme Implementation Agreement to implement the terms of this Scheme.

## **2.6 Deed Poll**

Zurich has executed the Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform (or procure the performance of) its obligations as contemplated by this Scheme, including to provide (or procure the provision of) the Scheme Consideration.

---

# **3 Conditions precedent**

## **3.1 Conditions precedent to Scheme**

This Scheme is conditional on, and will not become Effective until, the satisfaction of each of the following conditions precedent:

- (a) as at 8.00am on the Second Court Date, neither the Deed Poll nor the Scheme Implementation Agreement have been terminated in accordance with their terms;
- (b) all of the conditions precedent in clause 3.1 of the Scheme Implementation Agreement having been satisfied or waived (other than the condition precedent in item (c)) in accordance with the terms of the Scheme Implementation Agreement by 8:00am on the Second Court Date;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Cover-More and Zurich having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act; and

- (d) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

### **3.2 Conditions precedent and operation of clause 5**

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

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

Each of Cover-More and Zurich must provide to the Court on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent set out in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and clause 3.1(d) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date.

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

---

## **4 Scheme**

### **4.1 Effective Date**

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

### **4.2 Termination and End Date**

Without limiting any rights under the Scheme Implementation Agreement, if:

- (a) the Scheme Implementation Agreement or the Deed Poll is terminated in accordance with its terms before the Scheme becomes Effective; or
- (b) the Effective Date does not occur on or before the End Date,

then each of Zurich (and if applicable the Bidder Nominee) and Cover-More are released from any further obligation to take steps to implement the Scheme.

---

## **5 Implementation of Scheme**

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

If the conditions precedent set out in clause 3.1 of this Scheme (other than the condition precedent in clause 3.1(d) of this Scheme) are satisfied, Cover-More must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 5.00pm on the first Business Day after the day on which the Court approves this Scheme or such later time as Zurich and Cover-More agree in writing.

### **5.2 Transfer and registration of Cover-More Shares**

On the Implementation Date, but subject to the provision of the Scheme Consideration for the Scheme Shares in accordance with clauses 6.1 to 6.3 of this Scheme and Zurich having provided Cover-More with written confirmation thereof:

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Zurich (or if applicable, the Bidder Nominee) without the need for any further act by any Scheme Participant (other than acts performed by Cover-More as attorney and agent for Scheme Participants under clause 8.1 of this Scheme) by:
  - (i) Cover-More delivering to Zurich (or if applicable, the Bidder Nominee) a duly completed and executed Share Scheme Transfer executed on behalf of the Scheme Participants; and
  - (ii) Zurich (or if applicable, the Bidder Nominee) duly executing the Share Scheme Transfer, attending to the stamping of the Share Scheme Transfer (if required) and delivering it to Cover-More for registration; and
- (b) as soon as practicable after receipt of the duly executed Share Scheme Transfer, Cover-More must enter, or procure the entry of, the name of Zurich (or if applicable, the Bidder Nominee) in the Register in respect of all Scheme Shares transferred to Zurich (or if applicable, the Bidder Nominee) in accordance with the terms of this Scheme.

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

On the Implementation Date, in consideration for the transfer to Zurich (or if applicable, the Bidder Nominee) of the Scheme Shares, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clause 6 of this Scheme.

### **5.4 Title and rights in Cover-More Shares**

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 6 of this Scheme, on and from the Implementation Date, Zurich (or if applicable, the Bidder Nominee) will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by Cover-More of Zurich (or if applicable, the Bidder Nominee) in the Register as the holder of the Scheme Shares.

### **5.5 Scheme Participants' agreements**

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

### **5.6 Warranty by Scheme Participants**

Each Scheme Participant warrants to Zurich (or if applicable, the Bidder Nominee) and is deemed to have authorised Cover-More to warrant to Zurich as agent and attorney for the Scheme Participant by virtue of this clause 5.6, that:

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

### **5.7 Transfer free of encumbrances**

To the extent permitted by law, all Cover-More Shares (including any rights and entitlements attaching to those shares) which are transferred to Zurich (or if

applicable, the Bidder Nominee) under this Scheme will, at the date of the transfer of them to Zurich (or if applicable, the Bidder Nominee), vest in Zurich (or if applicable, the Bidder Nominee) free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind not referred to in this Scheme.

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

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clauses 5.2 and 6.2 of this Scheme, on and from the Implementation Date until Cover-More registers Zurich (or if applicable, the Bidder Nominee) as the holder of all of the Cover-More Shares in the Register, each Scheme Participant:

- (a) irrevocably appoints Cover-More as attorney and agent (and directs Cover-More in such capacity) to appoint Zurich (or if applicable, the Bidder Nominee) and each of its directors from time to time (jointly and each of them individually) as its sole proxy and where applicable, corporate representative, to attend shareholders' meetings, exercise the votes attaching to Cover-More Shares registered in its name and sign any shareholders resolution, and no Scheme Participant may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 5.8(a)); and
- (b) must take all other actions in the capacity of the registered holder of Cover-More Shares as Zurich (or if applicable, the Bidder Nominee) reasonably directs.

Cover-More undertakes in favour of each Scheme Participant that it will appoint Zurich (or if applicable, the Bidder Nominee) and each of its directors from time to time (jointly and each of them individually) as that Scheme Participant's proxy or, where applicable, corporate representative in accordance with clause 5.8(a) of this Scheme.

---

# **6 Scheme Consideration**

## **6.1 Consideration under the Scheme**

On the Implementation Date, Cover-More must procure Zurich to pay (or procure the payment of) the Scheme Consideration to the Scheme Participants in accordance with clauses 6.2, 6.3, 6.4 and 6.5 of this Scheme.

## **6.2 Satisfaction of obligations**

Subject to clause 6.4 of this Scheme, the obligation of Cover-More to procure payment of the Scheme Consideration pursuant to clause 6.1 of this Scheme will be satisfied by Cover-More procuring Zurich no later than two Business Days before the Implementation Date to deposit (or procure the deposit) in Immediately Available Funds the aggregate amount of the Scheme Consideration payable to all Scheme Participants into the Trust Account (except that the amount of any interest on the amount deposited (less bank fees and other charges) will be to Zurich's (or if applicable, the Bidder Nominee's) account).

## **6.3 Payment of Scheme Consideration**

On the Implementation Date, subject to receipt of the Scheme Consideration from or on behalf of Zurich (or the Bidder Nominee) in accordance with clauses 6.2 and 6.4 of this Scheme, Cover-More must pay to each Scheme Participant an amount equal to the Scheme Consideration for each Scheme Share transferred to Zurich (or if applicable, the Bidder Nominee) on the Implementation Date by that Scheme Participant, which obligation will be satisfied by Cover-More:

- (a) where a Scheme Participant has, before 5:00pm on the Record Date, made an election in accordance with the requirements of the Register to receive dividend payments from Cover-More by electronic funds transfer to a bank account nominated by the Scheme Participant, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
- (b) whether or not a Scheme Participant has made an election referred to in clause 6.3(a), dispatching, or procuring the dispatch of, a cheque drawn on an Australian bank in Australian currency for the relevant amount to the Scheme Participant by pre-paid ordinary post (or, if the address of the Scheme Participant in the Register is outside Australia, by pre-paid airmail post) to their Registered Address at 5.00pm on the Record Date, such cheque being drawn in the name of the Scheme Participant (or in the case of joint holders, in accordance with clause 6.8).

#### 6.4 Foreign resident capital gains withholding

If Zurich (or if applicable, the Bidder Nominee) determines that it must pay an amount to the Commissioner pursuant to Subdivision 14-D of Schedule 1 to the TAA with respect to the acquisition of the Target Shares from a Scheme Participant, Zurich (or if applicable, the Bidder Nominee) will, for any such Scheme Participant:

- (a) determine the amount to be paid to the Commissioner (“**Payment Amount**”);
- (b) remit the Payment Amount to the Commissioner within the time required under the TAA; and
- (c) reduce the amount of Scheme Consideration payable to that Scheme Participant by the Payment Amount for the purposes of the Deed Poll, this Scheme and the Scheme Implementation Agreement.

For the avoidance of doubt, Zurich (and if applicable, the Bidder Nominee) will, for the purposes of the Deed Poll, this Scheme and the Scheme Implementation Agreement, be deemed to have satisfied its obligations to pay the Scheme Consideration to a Scheme Participant if the amount paid to the Scheme Participant is the amount of the Scheme Consideration that would have otherwise been payable to the Scheme Participant pursuant to the Scheme, less the Payment Amount for that Scheme Participant.

#### 6.5 Cancellation and re-issue of cheques

Cover-More may cancel a cheque issued under clause 6.3 of this Scheme if the cheque:

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

During the period of one year commencing on the Implementation Date, on request from a Scheme Participant (which request may not be made until the date which is five Business Days after the Implementation Date), Cover-More must reissue a cheque that was previously cancelled under this clause 6.5.

#### 6.6 Unclaimed monies

- (a) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes “unclaimed money” (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).

- (b) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Zurich.

## **6.7 Orders of a court**

In the case of notice having been given to Cover-More (or the Registry) of an order made by a court of competent jurisdiction or by a Regulatory Authority:

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

## **6.8 Joint holders**

In the case of Scheme Shares held in joint names, any bank cheque required to be paid to Scheme Participants by or on behalf of Zurich must be payable to the joint holders and be forwarded to the holder whose name appears first in the Register as at 5.00pm on the Record Date.

---

# **7 Dealings in Scheme Shares**

## **7.1 Determination of Scheme Participants**

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

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

## **7.2 Register**

Cover-More must register any registrable transmission applications or transfers of the Scheme Shares received in accordance with clause 7.1(b) of this Scheme on or before 5.00pm on the Record Date, provided that nothing in this clause 7.2 requires Cover-More to register a transfer that would result in a Cover-More Shareholder holding a parcel of Cover-More Shares that is less than a "marketable parcel" (as defined in the operating rules of ASX).

## **7.3 No disposals after Effective Date**

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

Cover-More will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Shares received after

5.00pm on the Record Date (except a transfer to Zurich (or if applicable, the Bidder Nominee) pursuant to this Scheme and any subsequent transfer by Zurich (or if applicable, the Bidder Nominee) or its successors in title) or received prior to 5:00pm on the Record Date but not in registrable or actionable form.

#### **7.4 Maintenance of Cover-More Register**

For the purpose of determining entitlements to the Scheme Consideration, Cover-More will maintain the Register in accordance with the provisions of this clause 7.4 until the Scheme Consideration has been paid to the Scheme Participants and Zurich (or if applicable, the Bidder Nominee) has been entered in the Register as the holder of all the Scheme Shares. The Register in this form will solely determine entitlements to the Scheme Consideration.

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

Subject to provision of the Scheme Consideration and registration of the transfer to Zurich (or if applicable, the Bidder Nominee) contemplated in clauses 5.2 and 6.3 of this Scheme, any statements of holding in respect of Scheme Shares will cease to have effect after 5.00pm on the Record Date as documents of title in respect of those shares (other than statements of holding in favour of Zurich (or if applicable, the Bidder Nominee) and its successors in title). After 5.00pm on the Record Date, each entry current on the Register as at 5.00pm on the Record Date (other than entries in respect of Zurich (or if applicable, the Bidder Nominee) or its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration.

#### **7.6 Details of Scheme Participants**

Within three Business Days after the Record Date Cover-More will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant, as shown in the Register at 5.00pm on the Record Date are available to Zurich and its Bidder Nominee (if applicable) in such form as Zurich reasonably requires.

#### **7.7 Quotation of Cover-More Shares**

- (a) Suspension of trading on ASX in Cover-More Shares will occur from the close of trading on ASX on the Effective Date.
- (b) After the Scheme has been fully implemented, Cover-More will apply:
  - (i) for termination of the official quotation of Cover-More Shares on the ASX; and
  - (ii) to have itself removed from the official list of the ASX,in each case with effect on and from the close of trading day immediately following, or shortly after, the Implementation Date, as determined by Zurich.

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## **8 General Scheme provisions**

### **8.1 Power of attorney**

Each Scheme Participant, without the need for any further act by any Scheme Participant, irrevocably appoints Cover-More and each of its directors and secretaries (jointly and each of them individually) as its attorney and agent for the purpose of:

- (a) executing any document necessary or expedient to give effect to this Scheme including the Share Scheme Transfer;

- (b) enforcing the Deed Poll against Zurich (or if applicable, the Bidder Nominee),

and Cover-More accepts such appointment.

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

Cover-More may, with the consent of Zurich (or if applicable, the Bidder Nominee) (which cannot be unreasonably withheld), by its counsel or solicitor consent on behalf of all persons concerned to any variations, alterations or conditions to this Scheme which the Court thinks fit to impose.

## **8.3 Further action by Cover-More**

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

## **8.4 Authority and acknowledgement**

Each of the Scheme Participants:

- (a) irrevocably consents to Cover-More and Zurich (or if applicable, the Bidder Nominee) doing all things necessary or expedient for or incidental to the implementation of this Scheme; and
- (b) acknowledges that this Scheme binds Cover-More and all Scheme Participants (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against the Scheme at that Meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of Cover-More.

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

Neither Cover-More nor Zurich (and if applicable, the Bidder Nominee), nor any of their respective officers, will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

## **8.6 Enforcement of Deed Poll**

Cover-More undertakes in favour of each Scheme Participant to enforce the Deed Poll against Zurich on behalf of and as agent and attorney for the Scheme Participants.

## **8.7 Stamp duty**

Zurich will:

- (a) pay all stamp duty (if any) (including any fines, penalties and interest) payable in connection with this Scheme or the Deed Poll; and
- (b) indemnify each Scheme Participant against any liability incurred by the Scheme Participant arising from failure to comply with clause 8.7(a).

## **8.8 Notices**

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

unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

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## **9 Governing law**

### **9.1 Governing law**

This Scheme is governed by the law in force in New South Wales.

### **9.2 Jurisdiction**

Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of that place.
- (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

# Scheme Implementation Agreement

## Annexure B Deed Poll

# Deed Poll

Dated

Given by Zurich Insurance Company Limited ("**Zurich**")

In favour of each registered holder of fully paid ordinary shares in Cover-More Group Limited (ACN 166 776 334) ("**Cover-More**") as at 5.00 pm on the Record Date ("**Scheme Participants**")

**King & Wood Mallesons**

Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Australia  
T +61 2 9296 2000  
F +61 2 9296 3999  
DX 113 Sydney  
[www.kwm.com](http://www.kwm.com)

# Deed Poll

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# Deed Poll

## Details

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<b>Parties</b>	<b>Zurich</b>
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<b>Zurich</b>	Name	Zurich Insurance Company Limited
	Incorporated in	Switzerland
	Address	Mythenquai 2 CH-8002, Zurich Switzerland
	Email	group.legal@zurich.com
	Attention	Group General Counsel

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<b>In favour of</b>	Each registered holder of fully paid ordinary shares in Cover-More as at 5.00 pm on the Record Date.
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<b>Recitals</b>	<b>A</b>	The directors of Cover-More have resolved that Cover-More should propose the Scheme.
	<b>B</b>	The effect of the Scheme will be that all Scheme Shares will be transferred to Zurich (or if applicable, the Bidder Nominee).
	<b>C</b>	Cover-More and Zurich have entered into the Scheme Implementation Agreement.
	<b>D</b>	In the Scheme Implementation Agreement, Zurich has agreed (amongst other things) to provide the Scheme Consideration to Cover-More on behalf of the Scheme Participants, subject to the satisfaction of certain conditions.
	<b>E</b>	Zurich is entering into this deed poll for the purpose of covenanting in favour of Scheme Participants to perform its obligations in relation to the Scheme.

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<b>Governing law</b>	New South Wales
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<b>Date of Deed Poll</b>	See Signing page
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# Deed Poll

## General terms

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### 1 Definitions and interpretation

#### 1.1 Definitions

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

- (a) **Authorised Officer** means, in respect of a party, a director or secretary of the party or any other person appointed by a party to act as an Authorised Officer under this deed poll;
- (b) **Details** means the section of this document headed “Details”;
- (c) **Scheme Implementation Agreement** means the scheme implementation agreement dated 12 December 2016 between Cover-More and Zurich under which, amongst other things, Cover-More has agreed to propose the Scheme to Cover-More Shareholders, and each of Zurich and Cover-More has agreed to take certain steps to give effect to the Scheme;
- (d) **Scheme** means the proposed scheme of arrangement between Cover-More and Scheme Participants under which all the Scheme Shares will be transferred to Zurich (or if applicable, the Bidder Nominee) under Part 5.1 of the Corporations Act, substantially in the form of Annexure A to this deed poll, or as otherwise agreed by Zurich and Cover-More, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act, to the extent they are approved in writing by Cover-More and Zurich in accordance with clause 8.2 of the Scheme; and
- (e) all other words and phrases used in this deed poll have the same meaning as given to them in the Scheme.

#### 1.2 Interpretation

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

#### 1.3 Headings

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

#### 1.4 Nature of deed poll

Zurich acknowledges and agrees that:

- (a) this deed poll may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not a party to it; and
- (b) under the Scheme, each Scheme Participant irrevocably appoints Cover-More and each of its directors, officers and secretaries (jointly and each

of them severally) as its agent and attorney to enforce this deed poll against Zurich.

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## **2 Conditions precedent and termination**

### **2.1 Conditions precedent**

Zurich's obligations under clause 4 are subject to the Scheme becoming Effective.

### **2.2 Termination**

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

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

### **2.3 Consequences of termination**

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

- (a) Zurich is released from its obligations to further perform this deed poll except those obligations contained in clause 8.1 and any other obligations which by their nature survive termination; and
- (b) each Scheme Participant retains the rights, powers or remedies they have against Zurich in respect of any breach of this deed poll which occurs before it is terminated.

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## **3 Performance of obligations generally**

Zurich must comply with its obligations under the Scheme Implementation Agreement and do all acts and things necessary or desirable on its part to give full effect to the Scheme.

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## **4 Scheme Consideration**

### **4.1 Scheme Consideration**

Subject to clause 2, Zurich undertakes in favour of each Scheme Participant to pay, or to procure the payment of, the Scheme Consideration to the Trust Account on behalf of each Scheme Participant subject to and in accordance with the terms of the Scheme.

### **4.2 Manner of payment**

Subject to clause 4.3, Zurich's obligation to provide, or procure the provision of, the Scheme Consideration to Cover-More on behalf of each Scheme Participant is satisfied by Zurich (or if applicable, the Bidder Nominee), no later than two Business Days before the Implementation Date, depositing in Immediately Available Funds the aggregate amount of the Scheme Consideration payable to all Scheme Participants into the Trust Account (except that the amount of any

interest (less bank fees and other charges) on the amount deposited will be to Zurich's account).

#### 4.3 Foreign resident capital gains withholding

If Zurich (or if applicable, the Bidder Nominee) determines that it must pay an amount to the Commissioner pursuant to Subdivision 14-D of Schedule 1 to the TAA with respect to the acquisition of the Target Shares from a Scheme Participant, Zurich (or if applicable, the Bidder Nominee) will, for any such Scheme Participant:

- (a) determine the amount to be paid to the Commissioner ("**Payment Amount**");
- (b) remit the Payment Amount to the Commissioner within the time required under the TAA; and
- (c) reduce the amount of Scheme Consideration payable to that Scheme Participant by the Payment Amount for the purposes of the Deed Poll, this Scheme and the Scheme Implementation Agreement.

For the avoidance of doubt, Zurich (and if applicable, the Bidder Nominee) will, for the purposes of this deed poll, the Scheme and the Scheme Implementation Agreement, be deemed to have satisfied its obligations to pay the Scheme Consideration to a Scheme Participant if the amount paid to the Scheme Participant is the amount of the Scheme Consideration that would have otherwise been payable to the Scheme Participant pursuant to the Scheme, less the Payment Amount for that Scheme Participant.

#### 4.4 Joint holders

In the case of Scheme Shares held in joint names, any bank cheque required to be paid to Scheme Participants by Zurich (or if applicable, the Bidder Nominee) must be payable to the joint holders and be forwarded to the holder whose name appears first in the Register as at 5.00pm on the Record Date.

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## 5 Representations and warranties

Zurich 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 this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) this deed poll is valid and binding upon Zurich and enforceable against Zurich in accordance with its terms; and
- (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

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## **6 Continuing obligations**

Subject to clause 8.3, this deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

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

---

## **7 Notices**

### **7.1 Form - all communications**

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

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

### **7.2 Delivery**

Communications must be:

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

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

### **7.3 When effective**

Communications take effect from the time they are received or taken to be received under clause 7.4 (whichever happens first) unless a later time is specified.

### **7.4 When taken to be received**

Communications are taken to be received:

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

## 7.5 Receipt outside business hours

Despite clauses 7.3 and 7.4, if communications are received or taken to be received under clause 7.4 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

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# 8 General

## 8.1 Stamp duty

Zurich must:

- (a) pay all stamp duty (including fines, penalties and interest) payable and assessed on or in connection with this deed poll, the performance of this deed poll, or any instruments entered into under this deed poll and in respect of a transaction effected by or made under the Scheme and this deed poll;
- (b) pay other costs in respect of the Scheme (including, in connection with the transfer of Cover-More Shares to Zurich (or if applicable, the Bidder Nominee) in accordance with the terms of the Scheme); and
- (c) indemnify on demand each Scheme Participant against any liability arising from failure to comply with clauses 8.1(a) or 8.1(b).

## 8.2 Waiver

- (a) 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 giving 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.

## 8.3 Variation

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

- (a) if before the First Court Date (as defined in the Scheme Implementation Agreement), the variation is agreed to by Cover-More and Zurich in writing; and

- (b) if on or after the First Court Date (as defined in the Scheme Implementation Agreement), the variation is agreed to by Cover-More and Zurich in writing and the Court indicates that the variation, alteration or amendment would not itself preclude approval of the Scheme,

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

#### **8.4 Remedies cumulative**

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

#### **8.5 Assignment**

The rights and obligations of Zurich and each Scheme Participant under this deed poll are personal and must not be assigned, encumbered or otherwise dealt with at law or in equity and no person may attempt or purport to do so without the prior written consent of Zurich and Cover-More.

#### **8.6 Governing law and jurisdiction**

This deed poll is governed by the law in force in New South Wales. Zurich irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place.

#### **8.7 Further action**

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

#### **8.8 Service of process**

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

- (a) irrevocably appoints Zurich Australia as its process agent to receive any document in an action in connection with this document; and
- (b) agrees that failure by a process agent to notify Zurich of any document in an action in connection with this document does not invalidate the action concerned.

If for any reason Zurich Australia ceases to be able to act as process agent, Zurich agrees to appoint another person as its process agent in the place referred to in clause 8.6 and ensure that the replacement process agent accepts its appointment and confirms its appointment to Zurich.

Zurich Australia accepts its appointment as the process agent.

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

Zurich Australia  
Attention: Cathy Manolios  
5 Blue Street  
NORTH SYDNEY NSW 2060  
AUSTRALIA.

**EXECUTED** as a deed poll

# Deed Poll

## Signing page

DATED: \_\_\_\_\_

**SIGNED, SEALED AND DELIVERED** )  
by ..... )  
and ..... )  
as authorised signatories of **ZURICH**  
**INSURANCE COMPANY LTD:**



.....  
Signature of authorised person

.....  
Signature of authorised person

Deed Poll

Annexure A - Scheme