

## ASX ANNOUNCEMENT

13 June 2023

### TESSERENT ENTERS INTO SCHEME IMPLEMENTATION DEED WITH THALES

#### Key highlights

- Tesseract has entered into a Scheme Implementation Deed (**SID**) with Thales Australia Holdings Pty Ltd (**Thales Australia**), a wholly owned subsidiary of Thales, under which it is proposed that Thales Australia will acquire 100% of the share capital in Tesseract by way of a scheme of arrangement for \$0.13 per share in cash.
- Cash consideration of \$0.13 per share represents a significant premium of 165.3% to the last closing price of \$0.049 per share and 157.4% to the 1-month volume weighted average price (**VWAP**) of \$0.0505 per share. Tesseract's Board unanimously recommends that Tesseract shareholders vote in favour of the Share Scheme in the absence of a superior proposal and subject to the Independent Expert concluding that the Share Scheme is in the best interests of Tesseract shareholders.
- Each Tesseract Director intends to vote the Tesseract shares held or controlled by them in favour of the proposed Share Scheme, in the absence of a superior proposal and subject to the Independent Expert concluding that the Share Scheme is in the best interests of Tesseract shareholders.
- The Share Scheme is subject to FIRB and shareholder approval and other customary conditions for a transaction of this nature.

**Melbourne, Australia** – Tesseract Limited (ASX: TNT) (**Tesseract** or the **Company**) announces that it has entered into a binding Scheme Implementation Deed (**SID**) with Thales Australia, a wholly owned subsidiary of Thales (Euronext Paris: HO), under which it is proposed that Thales Australia will acquire 100% of the shares in Tesseract by way of a court approved scheme of arrangement (**Share Scheme**) that is subject to shareholder and court approval in accordance with the requirements of Part 5.1 of the *Corporations Act 2001* (Cth). Under the Share Scheme, Tesseract shareholders will receive \$0.13 per share in cash, subject to all applicable conditions being satisfied or waived and the Share Scheme being implemented. The cash consideration of \$0.13 per share values Tesseract's equity at \$176 million<sup>1</sup>.

The transaction is fully funded by Thales' own internal resources and cash reserves noting that as at 31 December 2022, the group had cash and cash equivalents of approximately EUR 5 billion.

Thales has advised the Tesseract business will continue to be known as Tesseract, and its visual identity will incorporate the "*Cyber Solutions by Thales*" tagline. It will become the lead Cybersecurity offering of Thales Australia and New Zealand. It will accelerate the growth of cyber

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<sup>1</sup> Implied equity value of \$176 million based on the Share Scheme Consideration of \$0.13 per Tesseract share multiplied by current shares on issue of 1,354,182,116 shares.

solutions operations for Thales customers in Australia and New Zealand, supported by the balance sheet and know-how of the global Thales business.

### **About Thales**

Thales (Euronext Paris: HO) is a global leader in advanced technologies within three domains: Defence & Security, Aeronautics & Space, and Digital Identity & Security. It develops products and solutions that help make the world safer, greener and more inclusive.

The Group invests close to €4 billion a year in Research & Development, particularly in key areas such as quantum technologies, Edge computing, 6G and cybersecurity.

Thales has 77,000<sup>2</sup> employees in 68 countries. In 2022, the Group generated sales of €17.6 billion.

#### *Thales in Cybersecurity*

With more than €1.5bn in sales generated in 2022 through an extensive cyber portfolio, Thales is involved at every step of the cyber value chain, offering solutions ranging from risk assessment to protection of critical infrastructure, supported by comprehensive threat detection and response capabilities. As a global leader in cybersecurity and data protection, Thales counts over 4,000 cybersecurity experts, over 50 countries that use its cybersecurity solutions and a presence in over 20 countries with 9 Security Operation Centres globally.

#### *Thales in Australia*

Thales has a long-standing corporate presence in Australia with 3,800 employees working across 35 sites for a range of government departments and corporate clients.

### **Tesseract Directors unanimously recommend the Share Scheme**

Each member of the Tesseract Board recommends that Tesseract shareholders vote in favour of the Share Scheme at the Share Scheme meeting in the absence of a Superior Proposal<sup>3</sup> and subject to the Independent Expert concluding (and continuing to conclude) that the Share Scheme is in the best interests of Tesseract's shareholders.

Subject to the same qualifications, each Tesseract Director intends to vote the Tesseract shares held or controlled by them in favour of the Share Scheme (representing collectively 8.98% of the total Tesseract shares on issue).

Tesseract Directors believe the Share Scheme is a compelling offer for Tesseract shareholders for the following reasons:

- **Attractive premium:** The cash consideration of \$0.13 per share under the Share Scheme represents:
  - 165.3% premium to the closing price of Tesseract shares on ASX of \$0.049 on 9 June 2023<sup>4</sup>

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<sup>2</sup> Excluding Transport business, which is being divested

<sup>3</sup> As that term is defined in the attached Scheme Implementation Deed.

<sup>4</sup> 9 June 2023, being the last trading day prior to this announcement.

- 157.4% premium to the 1-month VWAP<sup>5</sup> of Tesseract shares of \$0.505 per share
- 116.3% premium to the 3-month VWAP<sup>6</sup> of Tesseract shares of \$0.0601 per share
- **Certainty of value:** the cash consideration provides Tesseract shareholders with certainty of value and the opportunity to realise their investment for cash
- **Limited conditionality:** the Share Scheme is subject only to conditions customary for transactions of this type, including regulatory approvals, court approval and approval by the shareholders of Tesseract and is not subject to financing or due diligence.

Chairman of Tesseract, Geoff Lord, said: *“The Share Scheme represents a significant premium to Tesseract’s recent share price, reflects an enterprise value of \$232 million (up 35 times from \$6.6 million as at 31 December 2019), delivers certainty of value and provides opportunity for shareholders to realise their investment in full for cash. Furthermore, the Share Scheme enhances outcomes for our customers, suppliers, and staff. Tesseract’s customers are expected to benefit from Thales’ enhanced product suite, global service capabilities and the acceleration of Tesseract’s existing growth and customer service strategy. As a result of the Share Scheme, Tesseract staff are further expected to have increased opportunities to develop new skillsets and access to new networks including international mobility to further advance and grow their careers.”*

Jeff Connolly, CEO of Thales Australia, said: *“Recognising the importance of the Australian market to Thales and the trust placed in us by the highest levels of government and our corporate clientele, Tesseract represents a highly complementary addition to our global cybersecurity platform. We are excited by the combination, especially given our collective alignment to advising multiple levels of government, including national defence and clients with critical infrastructure. We are committed to growing the business and are confident it will be great opportunity to further grow Tesseract’s business and people.”*

### Key terms of the Scheme Implementation Deed

The SID entered into between Thales and Tesseract contains customary terms and conditions on which Tesseract and Thales will implement the Share Scheme. The implementation of the Share Scheme is subject to Tesseract shareholders approving the Share Scheme by the required majorities and court approval. Tesseract shareholders will have the opportunity to vote on the Share Scheme at a meeting of Tesseract shareholders (**Share Scheme Meeting**) expected to be held in September 2023.

Apart from shareholder approval, the implementation of the Share Scheme remains subject to certain other customary conditions including:

- Australian Foreign Investment Review Board and New Zealand OIO approval;
- No “Target Material Adverse Change”, “Target Regulated Event” or “Target Prescribed Occurrences<sup>7</sup>”;
- Tesseract retaining at least 85% of its key management during the period leading up to Court approval of the Scheme; and

<sup>5</sup> Volume weighted average price based on cumulative trading volume and value from 10 May 2023 up to and including 9 June 2023.

<sup>6</sup> Volume weighted average price based on cumulative trading volume and value from 10 March 2023 up to and including 9 June 2023.

<sup>7</sup> As those terms are defined in the attached Scheme Implementation Deed.

- Court approval.

The Share Scheme does not include any funding condition, as the transaction is to be fully funded by Thales' own internal resources and cash reserves.

Under the SID, Tesseract is bound by customary exclusivity provisions including "no shop", "no talk", "no due diligence" (with both the "no talk" and the "no due diligence" subject to the Tesseract Directors' fiduciary obligations), "notification" obligations and "matching" rights. A break fee and a reverse break fee of \$1.8 million will be payable to either Thales or Tesseract in certain circumstances. A full copy of the SID, including all applicable conditions (with certain schedules redacted), is attached to this announcement.

### **Option Scheme**

The SID also provides for a separate and concurrent scheme of arrangement between Tesseract and its option and warrant holders under which each holder will receive cash for each instrument held in accordance with an agreed valuation methodology (**Option Scheme**).

The Share Scheme is not dependent on the Option Scheme proceeding. However, the implementation of the Option Scheme is subject to the Share Scheme proceeding and Court approval.

Each member of the Tesseract Board recommends that Tesseract option and warrant holders vote in favour of the Option Scheme at the Option Scheme meeting in the absence of a Superior Proposal<sup>8</sup> and subject to the Independent Expert concluding (and continuing to conclude) that the Option Scheme is in the best interests of holders.

Each Tesseract Director who holds options (as well as Tesseract's Chief Financial Officer, Mr James Jones), has entered into an option cancellation deed under which, subject to the Share Scheme becoming legally effective, each of their options will be cancelled on the implementation date of the Share Scheme for a cash consideration calculated under the same agreed valuation methodology as the Option Scheme.

### **Next steps**

Tesseract securityholders do not need to take any action at the present time.

An Independent Expert will be appointed by Tesseract to prepare a report on whether, in the Independent Expert's opinion, the Share Scheme is in the best interest of Tesseract shareholders and whether the Option Scheme is in the best interest of Tesseract option and warrant holders. The Independent Expert's report will be included in the Scheme Booklet, along with information relating to the Share Scheme and the Option Scheme (collectively the **Schemes**), the reasons for the Directors' recommendation and details of the Scheme meetings. The Scheme Booklet is expected to be sent to Tesseract shareholders in August 2023.

Securityholders will then have the opportunity to vote on the respective Schemes at court convened meetings, anticipated to be held in September 2023. Subject to the conditions of the Schemes being satisfied, the Schemes are expected to be implemented in October 2023.

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<sup>8</sup> As that term is defined in the attached Scheme Implementation Deed.



**Advisers**

Deloitte is acting as financial adviser and MinterEllison is acting as legal adviser to Tesseract. Azure Capital is acting as financial adviser and Herbert Smith Freehills is acting as legal adviser to Thales.

This announcement is authorised for release by the Board of Directors of Tesseract Limited.

- ENDS -

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HERBERT  
SMITH  
FREEHILLS

Deed

# Scheme implementation deed

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Thales Australia Holdings Pty Ltd

Tesserent Limited



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## Scheme implementation deed

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Date ► 11 June 2023

Between the parties

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<b>Bidder</b>	<b>Thales Australia Holdings Pty Ltd</b> ACN 058 583 841 of Level 2, 3-7 Murray Rose Avenue, Sydney Olympic Park NSW 2127
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<b>Target</b>	<b>Tesseract Limited</b> ABN 13 605 672 928 of Level 5, 990 Whitehorse Road, Box Hill VIC 3128
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<b>Recitals</b>	<ol style="list-style-type: none"><li>1 The parties have agreed that Bidder will acquire all of the ordinary shares in Target by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders.</li><li>2 The parties have agreed to implement the scheme of arrangement on the terms and conditions of this deed.</li></ol>
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This deed witnesses as follows:

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# 1 Definitions and interpretation

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## 1.1 Definitions

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

<b>Term</b>	<b>Meaning</b>
<b>AASB</b>	the Australian Accounting Standards Board.
<b>Abstain Requirement</b>	means an order or requirement made or imposed by the Court or a Government Agency that one or more Target Directors abstain or withdraw from making a recommendation to Target Shareholders to vote in favour of the Scheme.
<b>Affiliate</b>	means, in respect of a person ( <b>Primary Person</b> ), a person: <ol style="list-style-type: none"><li>1 Controlled directly or indirectly by the Primary Person;</li><li>2 Controlling directly or indirectly the Primary Person;</li><li>3 who is Controlled, directly or indirectly, by a person or persons who Control the Primary Person; or</li><li>4 directly or indirectly under the common Control of the Primary Person and another person or persons.</li></ol>
<b>ASIC</b>	the Australian Securities and Investments Commission.
<b>Associate</b>	has the meaning set out in section 12 of the Corporations Act, as if subsection 12(1) of the Corporations Act included a reference to this deed and Target was the designated body.
<b>ASX</b>	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market known as the Australian Securities Exchange that it operates.
<b>Bidder Group</b>	Bidder and each of its Affiliates and its Subsidiaries, and a reference to a Bidder Group Member or a member of the Bidder Group is to Bidder or any of its Affiliates or its Subsidiaries.
<b>Bidder Indemnified</b>	Bidder, its Affiliates and Subsidiaries and their respective directors,



<b>Term</b>	<b>Meaning</b>
<b>Parties</b>	officers and employees.
<b>Bidder Information</b>	<p>information regarding the Bidder Group provided by Bidder to Target in writing for inclusion in the Scheme Booklet including:</p> <ol style="list-style-type: none"><li>1 information about Bidder, other Bidder Group Members, the businesses of the Bidder Group, Bidder's interests and dealings in Target Shares, Bidder's intentions for Target and Target's employees, and funding for the Scheme; and</li><li>2 any other information required under the Corporations Act, Corporations Regulations or RG 60 to enable the Scheme Booklet to be prepared that the parties agree is 'Bidder Information' and that is identified in the Scheme Booklet as such.</li></ol> <p>For the avoidance of doubt, the Bidder Information excludes the Target Information and the Independent Expert's Report and any description of the taxation effect of the Transaction on Scheme Shareholders prepared by an external adviser to Target.</p>
<b>Bidder Reimbursement Fee</b>	\$1,826,126.
<b>Bidder Representations and Warranties</b>	the representations and warranties of Bidder set out in Schedule 2.
<b>Bidder TopCo</b>	Thales, a French company, registered with a French Trade and Companies Registry under number 552 059 024 RCS Nanterre.
<b>Business Day</b>	a day that is not a Saturday, Sunday or a public holiday or bank holiday in Melbourne, Australia.
<b>Competing Proposal</b>	<p>any proposal, agreement, arrangement or transaction (or expression of interest therefor), which, if entered into or completed, would mean a Third Party (either alone or together with any Associate) would:</p> <ol style="list-style-type: none"><li>1 directly or indirectly acquire a Relevant Interest in, or have a right to acquire, a legal, beneficial or economic interest in, or control of, 10% or more of the Target Shares or of the share capital of any material Subsidiary of Target;</li><li>2 acquire Control of Target or any material Subsidiary of Target;</li><li>3 directly or indirectly acquire or become the holder of, or otherwise acquire or have a right to acquire, a legal, beneficial or economic interest in, or control of, all or a material part of Target's business or assets or the business or assets of the Target Group;</li></ol>

<b>Term</b>	<b>Meaning</b>
	<p>4 otherwise directly or indirectly acquire or merge, or be involved in an amalgamation or reconstruction (as those terms are used in s 413(1) of the Corporations Act), with Target or a material Subsidiary of Target; or</p> <p>5 require Target to abandon, or otherwise fail to proceed with, the Transaction,</p> <p>whether by way of takeover bid, members' or creditors' scheme of arrangement, reverse takeover, shareholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement, recapitalisation, refinancing or other transaction or arrangement.</p>
<b>Condition Precedent</b>	each of the conditions set out in clause 3.1.
<b>Confidentiality Agreement</b>	the confidentiality agreement between Bidder TopCo and Tesseract Cyber Services Pty Ltd ACN 632 539 167 dated 15 March 2023.
<b>Consultation Notice</b>	has the meaning given in clause 3.4(a).
<b>Control</b>	has the meaning given in section 50AA of the Corporations Act.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth), as modified or varied by ASIC.
<b>Corporations Regulations</b>	the <i>Corporations Regulations 2001</i> (Cth).
<b>Court</b>	the Federal Court of Australia or any other court of competent jurisdiction nominated by the Target.
<b>Deed Poll</b>	a deed poll substantially in the form of Attachment 3 under which Bidder covenants in favour of the Scheme Shareholders to perform the obligations attributed to Bidder under the Scheme.
<b>Director Target Share</b>	<p>any Target Share:</p> <p>1 held by or on behalf of a Target Board Member; or</p> <p>2 listed as an indirect interest in the latest Appendix 3X or Appendix</p>



<b>Term</b>	<b>Meaning</b>
	3Y lodged by Target with ASX in respect of a Target Board Member.
<b>Disclosure Letter</b>	means the disclosure letter dated the same date as this deed provided by Target to Bidder before the execution of this deed.
<b>Disclosure Materials</b>	<ol style="list-style-type: none"><li>1 the Disclosure Letter;</li><li>2 any other information made available by the Target or its Related Persons to the Bidder or its Related Persons prior to execution of this deed which is agreed between the parties in writing on or prior to the date of this deed; and</li><li>3 written responses from Target and its Related Persons to requests for further information made by Bidder and its Related Persons.</li></ol>
<b>Duty</b>	any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them, but excludes any Tax.
<b>EBITDA</b>	earnings before interest, tax, depreciation, and amortization.
<b>Effective</b>	<ol style="list-style-type: none"><li>1 when used in relation to the Scheme, the coming into effect, under subsection 411(10) of the Corporations Act, of the order of the Court made under paragraph 411(4)(b) of the Corporations Act in relation to the Scheme; and</li><li>2 when used in relation to the Option Scheme, the coming into effect, under subsection 411(10) of the Corporations Act, of the order of the Court made under paragraph 411(4)(b) of the Corporations Act in relation to the Option Scheme.</li></ol>
<b>Effective Date</b>	the date on which the Scheme becomes Effective.
<b>End Date</b>	the date being 31 December 2023, or such other later date as agreed in writing by the parties.
<b>Exclusivity Period</b>	the period from and including the date of this deed to the earliest of: <ol style="list-style-type: none"><li>1 the date of termination of this deed;</li><li>2 the End Date; and</li></ol>

<b>Term</b>	<b>Meaning</b>
	<p>3 the Effective Date.</p>
<b>Fairly Disclosed</b>	<p>a reference to 'Fairly Disclosed' means disclosed to Bidder or any of its Related Persons, to a sufficient extent, and in sufficient detail, so as to enable a reasonable bidder (or one of its Related Persons) experienced in transactions similar to the Transaction and experienced in a business similar to any business conducted by the Target Group, to identify the nature and scope of the relevant matter, event or circumstance (and, for the avoidance of doubt, if a plan or proposal is disclosed, the implementation of that plan or proposal is also considered disclosed).</p>
<b>Financial Adviser</b>	<p>any financial adviser retained by a party in relation to the Transaction or a Competing Proposal from time to time.</p>
<b>Financial Indebtedness</b>	<p>any debt or other monetary liability (whether actual or contingent) in respect of monies borrowed or raised or any financial accommodation including under or in respect of any:</p> <ol style="list-style-type: none"> <li>1 bill, bond, debenture, note or similar instrument;</li> <li>2 acceptance, endorsement or discounting arrangement;</li> <li>3 guarantee or line of credit;</li> <li>4 obligations as lessee for any hire purchase agreement, finance or capital lease but excluding obligations in the nature of an operating lease;</li> <li>5 agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or service, including any earn-outs or similar arrangements; or</li> <li>6 obligation to deliver goods or provide services paid for in advance by any financier.</li> </ol>
<b>First Court Date</b>	<p>the first day on which an application made to the Court for an order under subsection 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.</p>
<b>French Business Day</b>	<p>a day that is not a Saturday, Sunday or a public holiday or bank holiday in Paris, France.</p>



<b>Term</b>	<b>Meaning</b>
<b>Government Agency</b>	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.
<b>Implementation Committee</b>	means a committee to be made up of an equal number of representatives from each of Bidder and Target, as agreed between Bidder and Target from time to time.
<b>Implementation Date</b>	the fifth Business Day after the Scheme Record Date, or such other date after the Scheme Record Date as the parties agree in writing.
<b>Incentive Plans</b>	any rights to Target Shares issued under employee incentive arrangements of the Target Group.
<b>Independent Expert</b>	the independent expert in respect of the Scheme appointed by Target.
<b>Independent Expert's Report</b>	means the report to be issued by the Independent Expert in connection with the Scheme, setting out the Independent Expert's opinion whether or not the Transaction is in the best interest of Target Shareholders and the reasons for holding that opinion.
<b>Insolvency Event</b>	means, in relation to an entity: <ol style="list-style-type: none"><li>1 the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity (other than where the order is set aside within 14 days);</li><li>2 a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;</li><li>3 the entity executing a deed of company arrangement;</li><li>4 the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;</li><li>5 the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation) or is otherwise presumed to be insolvent under the Corporations Act (or, if appropriate, legislation of its place of incorporation) unless the entity has, or has access to, committed financial support from its parent entity such that it is able to pay its debts; or</li></ol>



<b>Term</b>	<b>Meaning</b>
	<p>6 the entity being deregistered as a company or otherwise dissolved,</p> <p>or any other like event, matter or circumstance occurring in relation to an entity in another jurisdiction.</p>
<b>Listing Rules</b>	the official listing rules of ASX.
<b>Material Contracts</b>	the contracts with the counterparties as agreed by the Target and the Bidder on or before the date of this deed.
<b>Material Proceedings</b>	any material investigation, prosecution, arbitration, litigation or dispute threatened against a member of the Target Group which could reasonably be expected to give rise to a liability for the Target Group in excess of \$2,500,000. For the avoidance of doubt, Material Proceedings do not include any liability relating to an investigation, prosecution, arbitration, litigation or dispute to the extent that an insurer has agreed to cover the liability under an insurance policy maintained by a member of the Target Group.
<b>Normalised EBITDA</b>	means operating EBITDA including AASB16 impacts and before one-offs.
<b>Operating Rules</b>	the official operating rules of ASX.
<b>Option Cancellation Deeds</b>	the option cancellation deeds entered into between the relevant holders of Option Cancellation Deed Options, the Target and the Bidder on or before the date of this deed.
<b>Option Cancellation Deed Options</b>	the 53,000,000 options issued by the Target which are subject of the Option Cancellation Deeds.
<b>Option Register</b>	the register of holders of Target Options and Option Cancellation Deed Options maintained by Target or the Target Registry in accordance with the Corporations Act.
<b>Option Scheme</b>	<p>the scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Optionholders, the form of which is to be agreed between Bidder and Target but under which Scheme Optionholders will receive the Option Scheme Consideration, subject to any alterations or conditions that are:</p> <p>1 agreed to in writing by Bidder and Target and approved by the</p>



<b>Term</b>	<b>Meaning</b>
	<p>Court; or</p> <p>2 made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Bidder and Target.</p>
<b>Option Scheme Consideration</b>	the consideration to be provided by Bidder to each Scheme Optionholder for the cancellation and extinguishment of each Scheme Option held by each Scheme Optionholder, as set out in Schedule 5.
<b>Option Scheme Deed Poll</b>	a deed poll, the form of which is to be agreed between Bidder and Target under which Bidder covenants in favour of the Scheme Optionholders to perform its obligations under the Option Scheme.
<b>Option Scheme Effective Date</b>	The date on which the Option Scheme becomes Effective.
<b>Option Scheme Implementation Date</b>	the fifth Business Day after the Option Scheme Record Date, or such other date after the Option Scheme Record Date as the parties agree in writing.
<b>Option Scheme Meeting</b>	the meeting of Target Optionholders ordered by the Court to be convened under subsection 411(1) of the Corporations Act to consider and vote on the Option Scheme and includes any meeting convened following any adjournment or postponement to that meeting.
<b>Option Scheme Record Date</b>	7.00pm on the second Business Day after the Option Scheme Effective Date or such other date as agreed in writing by Target and Bidder.
<b>Permitted Security Interest</b>	<ol style="list-style-type: none"><li>1 a charge or lien arising in favour of a Government Agency by operation of statute in the ordinary course of the business of the Target Group;</li><li>2 any mechanics', workmen's or other like lien arising in the ordinary course of the business of the Target Group;</li><li>3 any retention of title arrangement or purchase money security interest (including arising from any lease of goods or consignment arrangement), in each case, arising in favour of a supplier of goods or services to the business of the Target Group in the ordinary course of that business;</li><li>4 a PPS Lease, as defined in the <i>Personal Property Securities Act 2009</i> (Cth) (<b>PPSA</b>);</li></ol>



<b>Term</b>	<b>Meaning</b>
	<p>5 any Security Interest described in section 12(3) of the PPSA;</p> <p>6 any Security Interest registered by Bidder;</p> <p>7 any Security Interest approved in writing by Bidder (such approval not to be unreasonably withheld or delayed in respect of any Security Interest granted in the ordinary course of Target Group's business);</p> <p>8 any Security Interest relating to any specific Financial Indebtedness that is agreed by Bidder as not being paid out in connection with implementation of the Scheme; and</p> <p>9 any Security Interest which has been Fairly Disclosed in the Disclosure Materials.</p>
<b>Reference Date</b>	means 31 May 2023 and the last day of each month after that.
<b>Registered Address</b>	in relation to a Target Shareholder, the address shown in the Target Share Register as at the Scheme Record Date.
<b>Regulator's Draft</b>	the draft of the Scheme Booklet in a form which is agreed to between the parties and that is provided to ASIC for approval pursuant to subsection 411(2) of the Corporations Act.
<b>Regulatory Approval</b>	a clearance, waiver, ruling, approval, relief, confirmation, exemption, consent or declaration set out in clauses 3.1(a) or 3.1(b).
<b>Related Bodies Corporate</b>	has the meaning set out in section 50 of the Corporations Act.
<b>Related Person</b>	in respect of a party or its Affiliates or Related Bodies Corporate, each director, officer, employee, adviser, Financial Adviser, agent or representative of that party or Affiliate or Related Body Corporate.
<b>Relevant Interest</b>	has the meaning given in sections 608 and 609 of the Corporations Act.
<b>RG 60</b>	Regulatory Guide 60 issued by ASIC in September 2020.
<b>Scheme</b>	the scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders, the form of which is attached as Attachment 2, subject to any alterations or conditions



<b>Term</b>	<b>Meaning</b>
	<p>that are:</p> <ol style="list-style-type: none"><li>1 agreed to in writing by Bidder and Target and approved by the Court; or</li><li>2 made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Bidder and Target.</li></ol>
<b>Scheme Booklet</b>	<p>the scheme booklet to be prepared by Target in respect of the Transaction in accordance with the terms of this deed (including clause 5.2(a)) to be despatched to the Target Shareholders and which must include or be accompanied by:</p> <ul style="list-style-type: none"><li>• a copy of the Scheme;</li><li>• an explanatory statement complying with the requirements of the Corporations Act, the Corporations Regulations and RG 60;</li><li>• the Independent Expert's Report;</li><li>• a copy or summary of this deed;</li><li>• a copy of the executed Deed Poll;</li><li>• a notice of meeting; and</li><li>• a proxy form.</li></ul>
<b>Scheme Consideration</b>	<p>the consideration to be provided by Bidder to each Scheme Shareholder for each Target Share held by a Scheme Shareholder as at the Scheme Record Date, being an amount of \$0.13 per Target Share in cash.</p>
<b>Scheme Meeting</b>	<p>the meeting of Target Shareholders ordered by the Court to be convened under subsection 411(1) of the Corporations Act to consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.</p>
<b>Scheme Options</b>	<p>all Target Options held by the Scheme Optionholders as at the Option Scheme Record Date.</p>
<b>Scheme Optionholder</b>	<p>a holder of a Target Option granted in a tranche which is listed in Schedule 5, who is recorded in the Option Register as at the Option Scheme Record Date.</p>
<b>Scheme Record Date</b>	<p>7.00pm on the second Business Day after the Effective Date or such other date as agreed in writing by Target and Bidder.</p>



<b>Term</b>	<b>Meaning</b>
<b>Scheme Shareholder</b>	a holder of Target Shares recorded in the Target Share Register as at the Scheme Record Date.
<b>Scheme Shares</b>	all Target Shares held by the Scheme Shareholders as at the Scheme Record Date.
<b>Second Court Date</b>	the first day on which an application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application or appeal is heard.
<b>Security Interest</b>	has the meaning given in section 51A of the Corporations Act.
<b>Senior Leadership Team</b>	1 2 3 4 5 6
<b>Standard OIO Condition</b>	the automatic condition set out in section 88(2) of the <i>Overseas Investment Act 2005</i> (New Zealand) and applicable to every direction order, whether or not it is stated in the order, that the relevant acquirer must not, in relation to the strategically important business, act or omit to act with a purpose or an intention of adversely affecting national security or public order.
<b>Standard Tax Condition</b>	any tax-related conditions which are in the form, or substantially in the form, of those set out under the 'Standard tax conditions' heading in Section D of FIRB Guidance Note 12 on 'Tax Conditions' (in the form released on 9 July 2021).
<b>Subsidiary</b>	has the meaning given in Division 6 of Part 1.2 of the Corporations Act.
<b>Superior Proposal</b>	a bona fide Competing Proposal of the kind referred to in any of paragraphs 2, 3, 4 or 5 of the definition of Competing Proposal that the Target Board, acting in good faith, and after receiving written legal advice from its external legal advisers and written financial

<b>Term</b>	<b>Meaning</b>
	<p>advice from its Financial Adviser, determines:</p> <ol style="list-style-type: none"> <li>1 is reasonably capable of being completed in a reasonable timeframe; and</li> <li>2 would, if completed substantially in accordance with its terms, be more favourable to Target Shareholders (as a whole) than the Transaction (and, if applicable, than the Transaction as amended or varied following application of the matching right set out in clause 11.5),</li> </ol> <p>in each case taking into account all terms and conditions and other aspects of the Competing Proposal (including any timing considerations, any conditions precedent, the identity of the proponent or other matters affecting the Competing Proposal) and the Transaction.</p>
<b>Takeovers Panel</b>	the Australian Takeovers Panel.
<b>Target Board</b>	the board of directors of Target and a Target Board Member means any director of Target comprising part of the Target Board.
<b>Target Consolidated Tax Group</b>	the consolidated group of which Target is the head company (where 'consolidated group' and 'head company' have the same meaning as in the Tax Act).
<b>Target Group</b>	Target and each of its Subsidiaries, and a reference to a Target Group Member or a member of the Target Group is to Target or any of its Subsidiaries.
<b>Target Indemnified Parties</b>	Target, its Subsidiaries and their respective directors, officers and employees.
<b>Target Information</b>	information in the Scheme Booklet other than the Bidder Information, the Independent Expert's Report and any description of the taxation effect of the Transaction on Scheme Shareholders prepared by an external adviser to Target.
<b>Target Key Managers</b>	the Target Group employees as agreed between the parties on or prior to the date of this deed.
<b>Target Material</b>	an event, change, condition, matter, circumstance or thing occurring or being reasonably likely to occur after the date of this deed, or on

Term	Meaning
<b>Adverse Change</b>	<p>or before the date of this deed which is only announced or publicly disclosed after the date of this deed, (each a <b>Specified Event</b>) which, whether individually or when aggregated with all Specified Events of a like kind that have occurred or are reasonably likely to occur has had or would be considered reasonably likely to have, the effect of:</p> <ul style="list-style-type: none"> <li>• a diminution in the value of the consolidated net assets of the Target Group (calculated in accordance with the accounting policies and practices applied by Target as at the date of this deed), taken as a whole, by at least \$12.5 million against the value of the consolidated net assets of the Target Group, taken as a whole, as reported in the Target Group's 31 December 2022 accounts;</li> <li>• a diminution of the Normalised EBITDA of the Target Group, taken as a whole, such that the Normalised EBITDA of the Target Group for the 12 months ended on the last Reference Date is less than \$15 million;</li> <li>• a diminution of the consolidated annual turnover of the Target Group, taken as a whole, such that the consolidated annual turnover of the Target Group for the 12 months ended on the last Reference Date is less than \$173 million; or</li> <li>• ceasing or preventing the carrying on of the businesses and operations of the Target Group in substantially the same manner as those businesses and operations are carried on as at the date of this deed,</li> </ul> <p>other than those events, changes, conditions, matters, circumstances or things:</p> <ol style="list-style-type: none"> <li>1 required or permitted by this deed, the Scheme, the Option Scheme, the Option Cancellation Deeds or the transactions contemplated by those documents;</li> <li>2 that are Fairly Disclosed: <ul style="list-style-type: none"> <li>• in the Disclosure Materials (unless otherwise agreed in writing by the parties);</li> <li>• in an announcement made by Target to ASX, or a publicly available document lodged by it with ASIC, in the two year period prior to the date of this deed;</li> <li>• in a publicly available document which would be disclosed in a search of: <ul style="list-style-type: none"> <li>▪ the PPS Register;</li> <li>▪ the registry of the Victorian Land Titles Office or the New South Wales Land Registry Services;</li> <li>▪ the registry of the High Court, the Federal Court, the Federal Circuit Court and the Supreme Court in a state or territory of Australia; or</li> <li>▪ proprietor searches of IP Australia,</li> </ul> </li> </ul> </li> </ol> <p>had each such search been conducted on the date which was 3</p>

Term	Meaning
	<p>Business Days before the date of this deed;</p> <ol style="list-style-type: none"> <li>3 that were within the actual knowledge of Bidder or any of its Affiliates as at the date of this deed;</li> <li>4 directly relating to costs and expenses incurred by Target associated with the Scheme process or the Transaction;</li> <li>5 agreed to in writing by Bidder; or</li> <li>6 arising as a result of any generally applicable change in law (including subordinate legislation) or governmental policy.</li> </ol>
<b>Target Option</b>	<p>together:</p> <ol style="list-style-type: none"> <li>1 an option issued by Target entitling the holder to acquire a specified number of Target Shares for a specified exercise price per Target Share (excluding any Option Cancellation Deed Option)); and</li> <li>2 a warrant issued by Target entitling the holder to acquire a specified number of Target Shares for a specified exercise price per Target Share.</li> </ol>
<b>Target Optionholder</b>	<p>a holder of a Target Option granted in a tranche which is listed in Schedule 5, who is recorded in the Option Register.</p>
<b>Target Prescribed Occurrence</b>	<p>other than as:</p> <ol style="list-style-type: none"> <li>1 required or permitted by this deed, the Scheme, the Option Scheme or the transactions contemplated by those documents;</li> <li>2 Fairly Disclosed in the Disclosure Materials;</li> <li>3 agreed to in writing by Bidder;</li> <li>4 Fairly Disclosed in a publicly available document which would be disclosed in a search of: <ul style="list-style-type: none"> <li>▪ the PPS Register;</li> <li>▪ the registry of the Victorian Land Titles Office or the New South Wales Land Registry Services;</li> <li>▪ the registry of the High Court, the Federal Court, the Federal Circuit Court or the Supreme Court in each state and territory of Australia; or</li> <li>▪ proprietor searches of IP Australia,</li> </ul> <p>had each such search been conducted on the date which was 3 Business Days before the date of this deed; or</p> </li> <li>5 Fairly Disclosed by Target in an announcement made by Target to ASX, or a publicly available document lodged by it with ASIC, in the two year period prior to the date of this deed or which would be disclosed in a search of ASIC records or ASX announcements in relation to Target or a Subsidiary of Target (as</li> </ol>



<b>Term</b>	<b>Meaning</b>
	<p>relevant), in the two year period prior to the date of this deed, the occurrence of any of the following:</p> <ol style="list-style-type: none"><li>6 Target converting all or any of its shares into a larger or smaller number of shares;</li><li>7 a member of the Target Group resolving to reduce its share capital in any way;</li><li>8 a member of the Target Group:<ul style="list-style-type: none"><li>• entering into a buy-back agreement; or</li><li>• resolving to approve the terms of a buy-back agreement under the Corporations Act;</li></ul></li><li>9 a member of the Target Group issuing shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option, other than:<ul style="list-style-type: none"><li>• to a directly or indirectly wholly-owned Subsidiary of Target; or</li><li>• as a result of the exercise or vesting of Target Options;</li></ul></li><li>10 a member of the Target Group issuing or agreeing to issue securities convertible into shares;</li><li>11 a member of the Target Group disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;</li><li>12 a member of the Target Group granting a Security Interest, or agreeing to grant a Security Interest, in the whole, or a substantial part, of its business or property other than a lien which arises by operation of law or legislation securing an obligation that is not yet due or a Permitted Security Interest; or</li><li>12 an Insolvency Event occurs in relation to a member of the Target Group.</li></ol>
<b>Target Registry</b>	Computershare Investor Services Pty Ltd.
<b>Target Regulated Event</b>	<p>other than as:</p> <ol style="list-style-type: none"><li>1 required or permitted by this deed, the Scheme, the Option Scheme, the Option Cancellation Deeds or the transactions contemplated by those documents;</li><li>2 Fairly Disclosed in the Disclosure Materials;</li><li>3 agreed to in writing by Bidder (and Bidder must use reasonable endeavours where it is practicable to do so to respond within 5 Business Days from the date of the request from Target);</li><li>4 required by any applicable law, regulation or contract entered into and a copy of which was Fairly Disclosed to Bidder before the date of this deed;</li></ol>

Term	Meaning
	<p>5 Fairly Disclosed by Bidder in an announcement made by Target to ASX, or a publicly available document lodged by it with ASIC, in the two year period prior to the date of this deed or which would be disclosed in a search of ASIC records or ASX announcements in relation to Target or a Subsidiary of Target (as relevant), in the two year period prior to the date of this deed; or</p> <p>6 Fairly Disclosed in a publicly available document which would be disclosed in a search of:</p> <ul style="list-style-type: none"> <li>• the PPS Register;</li> <li>• the registry of the Victorian Land Titles Office or the New South Wales Land Registry Services;</li> <li>• the registry of the High Court, the Federal Court, the Federal Circuit Court or the Supreme Court in each state and territory of Australia; or</li> <li>• proprietor searches of IP Australia,</li> </ul> <p>had each such search been conducted on the date which was 3 Business Days before the date of this deed,</p> <p>the occurrence of any of the following:</p> <p>7 a Target Group Member reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;</p> <p>8 a member of the Target Group commencing or entering into a new line of business not already carried out by the Target Group as at the date of this deed, whether by way of acquisition or otherwise;</p> <p>9 Target announcing, making, declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members (whether in cash or in specie);</p> <p>10 Target amending the terms of the Incentive Plans other than in accordance with the terms of this deed;</p> <p>11 a member of the Target Group making any change to its constitution;</p> <p>12 a member of the Target Group:</p> <ul style="list-style-type: none"> <li>• acquiring (including through exercising any option to acquire), leasing or disposing of;</li> <li>• agreeing, offering or proposing to acquire, lease or dispose of; or</li> <li>• announcing or proposing a bid, or tendering, for,</li> </ul> <p>any business, assets, entity or undertaking, the value of which exceeds \$2,000,000 (individually or in aggregate);</p> <p>13 a member of the Target Group entering into a contract or commitment restraining a member of the Target Group from competing with any person or conducting activities in any market;</p> <p>14 other than in the ordinary course of business and consistent with</p>

Term	Meaning
	<p>past practice, a member of the Target Group entering into any agreement, arrangement or transaction with respect to derivative instruments (including, but not limited to, swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments;</p>
15	<p>a member of the Target Group:</p> <ul style="list-style-type: none"> <li>• entering into any contract or commitment (including in respect of Financial Indebtedness) requiring payments by the Target Group in excess of \$1,000,000 (individually or in aggregate) other than any payment required by law;</li> <li>• without limiting the foregoing, (i) agreeing to incur or incurring capital expenditure of more than \$500,000 (individually or in aggregate) or (ii) incurring any Financial Indebtedness of an amount in excess of \$500,000 (individually or in aggregate) other than (in either and each case) for the purposes of funding any deferred consideration and earn out payments due in respect of acquisitions by the Target Group made prior to the date of this deed or as otherwise as Fairly Disclosed in the Disclosure Letter;</li> <li>• waiving any material third party default where the financial impact on the Target Group will be in excess of \$750,000 (individually or in aggregate); or</li> <li>• accepting as a compromise of a matter less than the full compensation due to a member of the Target Group where the financial impact of the compromise on the Target Group is more than \$750,000 (individually or in aggregate);</li> </ul>
16	<p>a member of the Target Group providing financial accommodation other than to members of the Target Group (irrespective of what form of Financial Indebtedness that accommodation takes) in excess of \$500,000 (individually or in aggregate);</p>
17	<p>a member of the Target Group entering into, or resolving to enter into, a transaction with any related party of Target (other than a related party which is a member of the Target Group), as defined in section 228 of the Corporations Act;</p>
18	<p>a member of the Target Group entering into or materially altering, varying or amending any employment, consulting, severance or similar agreement or arrangement with one or more of its officers, directors, other executives or employees, or accelerating or otherwise materially increasing compensation, incentives or benefits for any of the above, in each case other than pursuant to:</p> <ul style="list-style-type: none"> <li>• contractual arrangements in effect on the date of this deed and which are contained in the Disclosure Materials; or</li> <li>• Target's policies and guidelines in effect on the date of this deed and which are contained in the Disclosure Materials,</li> </ul> <p>provided that the aggregate of all increases in compensation or benefits is no greater than \$500,000;</p>
19	<p>a member of the Target Group paying any of its officers, directors, other executives or employees a termination or</p>

Term	Meaning
	<p>retention payment, other than in accordance with contractual arrangements in effect on the date of this deed and which are contained in the Disclosure Materials or where:</p> <ul style="list-style-type: none"> <li>• in relation to termination payments, no one officer, director, executive or employee receives a termination payment exceeding more than 4 months of his or her total remuneration package; and</li> <li>• in relation to retention payments, the aggregate of all retention payments is no greater than \$1,000,000 and no one officer, director, executive or employee receives a retention payment exceeding more than 4 months of his or her total remuneration package;</li> </ul>
20	a member of the Target Group entering into any enterprise bargaining agreement other than in the ordinary course of business or pursuant to contractual arrangements in effect on the date of this deed and which are contained in the Disclosure Materials;
21	a member of the Target Group: <ul style="list-style-type: none"> <li>• a materially amending any agreement or arrangement with a Financial Adviser or other professional adviser for the provision of services to assist with the Transaction or entering into an agreement or arrangement with a new Financial Adviser or other professional adviser for the provision of services to assist with the Transaction or entering into a new agreement or arrangement with an existing Financial Adviser or other professional adviser for the provision of services to assist with the Transaction; or</li> <li>• paying or agreeing to pay any discretionary fee to any Financial Adviser or other professional adviser for the provision of services to assist with the Transaction under any new or existing agreement or arrangement;</li> </ul>
22	a member of the Target Group changing any accounting policy applied by them to report their financial position other than any change in policy required by a change in accounting standards; and
23	notice of any Material Proceedings and for the avoidance of doubt which is not frivolous or vexatious, or circumstances arising which could reasonably be expected to give rise to any Material Proceedings.
<b>Target Reimbursement Fee</b>	\$1,826,126.
<b>Target Representations and Warranties</b>	the representations and warranties of Target set out in Schedule 3, as each is qualified by clause 7.5.



<b>Term</b>	<b>Meaning</b>
<b>Target Share</b>	a fully paid ordinary share in the capital of Target.
<b>Target Share Register</b>	the register of members of Target maintained in accordance with the Corporations Act.
<b>Target Shareholder</b>	each person who is registered as the holder of a Target Share in the Target Share Register.
<b>Tax</b>	any tax, levy, charge, impost, fee, deduction, goods and services tax, compulsory loan or withholding, that is assessed, levied, imposed or collected by any Governmental Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above but excludes Duty.
<b>Tax Act</b>	the <i>Income Tax Assessment Act 1997</i> (Cth).
<b>Third Party</b>	a person other than Bidder, its Affiliates and its other Associates.
<b>Timetable</b>	the indicative timetable for the implementation of the Transaction set out in Attachment 1, or such other timetable as may be agreed in writing between the parties.
<b>Transaction</b>	the acquisition of the Scheme Shares by Bidder through implementation of the Scheme in accordance with the terms of this deed.

## 1.2 Interpretation

In this deed:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency, as well as an individual;



- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to this deed;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Melbourne, Australia;
- (k) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this deed;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) no provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision;
- (n) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (o) a reference to a body (including an institute, association or authority), other than a party to this deed, whether statutory or not:
  - (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (p) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (q) a reference to liquidation or insolvency includes appointment of an administrator, a reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, bankruptcy, or a scheme, compromise or arrangement with creditors (other than solely with holders of securities or derivatives), or any similar procedure;
- (r) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (s) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (t) a reference to the Listing Rules and the Operating Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party; and
- (u) a reference to something being "reasonably likely" (or to a similar expression) is a reference to that thing being more likely than not to occur when assessed objectively.

### 1.3 Interpretation of inclusive expressions

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

### 1.4 Business Day

If an act prescribed under this deed is to be done by a party on or by a given day and that act is done after 5.00pm on that day in the place nominated by the party as its address in clause 17.1(b), it is taken to be done on or by the next Business Day.

### 1.5 Deed components

This deed includes any schedule.

## 2 Agreement to proceed with the Transaction

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

## 3 Conditions Precedent and pre-implementation steps

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### 3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Scheme are not binding, until each of the following Conditions Precedent is satisfied or waived to the extent and in the manner set out in this clause 3.

- (a) **Regulatory Approvals:** before 5.00pm on the Business Day before the Second Court Date the Bidder has received all regulatory approvals from the Government Agencies noted below in relation to the Transaction (**Regulatory Approvals**):
  - (1) **FIRB:** one of the following has occurred:
    - (A) Bidder has received written notice under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**), by or on behalf of the Treasurer of the Commonwealth of Australia (**Treasurer**), advising that the Commonwealth Government has no objections to the Transaction either unconditionally or on terms that are acceptable to Bidder acting reasonably;
    - (B) the Treasurer becomes precluded by the passage of time from making an order or decision under Part 3 of the FATA

in relation to the Transaction and the Transaction is not prohibited by section 82 of the FATA; or

where an interim order is made under section 68 of the FATA in respect of the Transaction, the subsequent period for making an order or decision under Part 3 of the FATA elapses without the Treasurer making such an order or decision.

- (2) **OIO:** the receipt by the Bidder, on terms that are acceptable to the Bidder acting reasonably, of a direction order under section 88 of the *Overseas Investment Act 2005* (New Zealand).
- (b) **ASIC and ASX:** ASIC and ASX issue or provide all relief, waivers, confirmations, exemptions, consents or approvals, and do all other acts, necessary which Target and Bidder agree in writing are desirable, to implement the Scheme or otherwise ensure Bidder acquires all the issued securities of Target and such relief, waivers, confirmations, exemptions, consents, approvals or other acts (as the case may be) remain in full force and effect in all respects and have not been withdrawn, revoked, suspended, restricted or amended (or become subject to any notice, intimation or indication of intention to do any such thing) before 8.00am on the Second Court Date.
- (c) **Shareholder approval:** Target Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities under subparagraph 411(4)(a)(ii) of the Corporations Act.
- (d) **Independent Expert:** the Independent Expert issues an Independent Expert's Report which concludes that the Scheme is in the best interest of Target Shareholders before the time when the Scheme Booklet is registered by ASIC, and the Independent Expert does not publicly withdraw, qualify or change that opinion at any time prior to 8.00am on the Second Court Date.
- (e) **Court approval:** the Court approves the Scheme in accordance with paragraph 411(4)(b) of the Corporations Act.
- (f) **Restraints:** between (and including) the date of this deed and 8.00am on the Second Court Date:
- (1) there is not in effect any temporary, preliminary or final order, injunction, decision or decree issued by any court of competent jurisdiction in Australia or New Zealand or other Australian, or New Zealand Government Agency, or other material legal restraint or prohibition;
  - (2) no action or investigation is announced, commenced or threatened by any Australian and New Zealand Government Agency; and
  - (3) no application is made to any Australian or New Zealand Government Agency,
- in consequence of, or in connection with, the Scheme which:
- (4) restrains, prohibits or otherwise materially adversely affects (or could reasonably be expected to restrain, prohibit or otherwise materially adversely affect) the Scheme, completion of the Transaction or the rights of Bidder in respect of Target or the Target Shares to be acquired under the Scheme; or
  - (5) requires the divestiture by Bidder of any Target Shares or the divestiture of any assets of the Bidder Group or the Target Group,



unless such order, injunction decision, decree, action, investigation or application has been disposed of to the satisfaction of Bidder acting reasonably, or is otherwise no longer effective or enforceable, by 8.00am on the Second Court Date.

- (g) **No Target Prescribed Occurrence:** no Target Prescribed Occurrence occurs between (and including) the date of this deed and 8.00am on the Second Court Date.
- (h) **No Target Regulated Event:** no Target Regulated Event occurs between (and including) the date of this deed and 8.00am on the Second Court Date.
- (i) **No Target Material Adverse Change:** no Target Material Adverse Change occurs, is more likely than not to occur, or is discovered, announced, disclosed or otherwise becomes known to Bidder, between (and including) the date of this deed and 8.00am on the Second Court Date.
- (j) **Target Key Manager retention:** not less than 85% of the Target Key Managers employed by Target Group on the date of this deed are employed by the Target Group at 8.00am on the Second Court Date.

### 3.2 Satisfaction of Conditions Precedent

- (a) Target must, to the extent it is within its power to do so, use all reasonable endeavours to procure that each of the Conditions Precedent in clauses 3.1(g), 3.1(h), 3.1(i) and 3.1(j) is satisfied as soon as practicable after the date of this deed and continues to be satisfied at all times until the last time that the relevant clause provides that it is to be satisfied.
- (b) Each party must, to the extent it is within its respective power to do so, use all reasonable endeavours to procure that:
  - (1) the Conditions Precedent in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(d), 3.1(e) and 3.1(f) are satisfied as soon as practicable after the date of this deed and continues to be satisfied at all times until the last time that the relevant clause provides that it is to be satisfied; and
  - (2) there is no occurrence within its control or the control of any of its Subsidiaries that would prevent any of the Conditions Precedent being or remaining satisfied.
- (c) Without limiting this clause 3.2 and except to the extent prohibited by a Government Agency, Bidder must promptly and in any event within 10 Business Days after the date of this deed apply for all relevant Regulatory Approvals (as applicable) and provide to Target a copy of all those applications, and each party must:
  - (1) take all steps it is responsible for as part of the Regulatory Approval process, including responding to requests for information from the relevant Government Agencies at the earliest practicable time;
  - (2) provide the other party with all information reasonably requested in connection with the applications for, or progress of, the Regulatory Approvals;
  - (3) consult with the other party in advance in relation to the progress of obtaining the Regulatory Approvals; and

- (4) provide the other party with all assistance and information that it reasonably requests in connection with an application for a Regulatory Approval to be lodged by Bidder,
- provided that:
- (5) each party may withhold or redact information or documents from the other party if and to the extent that they are either confidential to a third party or commercially sensitive and confidential to the applicant, except that if the information or documents are reasonably necessary to progress the Regulatory Approval, then such information or documents will be provided to the other party on an external counsel basis only;
- (6) neither party is required to disclose materially commercially sensitive information to the other party, except that if the information or documents are reasonably necessary to progress the Regulatory Approval, then such information or documents will be provided to the other party on an external counsel basis only; and
- (7) Bidder is not prevented from taking any step (including communicating with a Government Agency) in respect of a Regulatory Approval if Target has not promptly responded under clause 3.2(c)(3).
- (d) Bidder acknowledges and agrees that the Standard Tax Conditions issued by FIRB from time to time are reasonable and acceptable to it if they are included in any “no objections” notification contemplated by clause 3.1(a)(1) that is received in connection with the Transaction.
- (e) Bidder acknowledges and agrees that the Standard OIO Condition is reasonable and acceptable to it in respect of any direction order contemplated by clause 3.1a)2) that is received in connection with the Transaction.

### 3.3 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a), 3.1(c) and 3.1(e) cannot be waived.
- (b) The Conditions Precedent in clauses 3.1(g), 3.1(h), 3.1(i) and 3.1(j) are for the sole benefit of Bidder and may only be waived by Bidder (in its absolute discretion) in writing.
- (c) The Conditions Precedent in clauses 3.1(d) is for the sole benefit of Target and may only be waived by Target (in its absolute discretion) in writing.
- (d) The Conditions Precedent in clauses 3.1(b) and 3.1(f) are for the benefit of both parties and may only be waived by written agreement between Bidder and Target (in each case in their respective absolute discretion).
- (e) If a party waives the breach or non-satisfaction of any of the Conditions Precedent in clause 3.1, that waiver does not prevent that party from suing the other party for any breach of this deed that resulted in the breach or non-satisfaction of the relevant Condition Precedent.
- (f) Waiver of a breach or non-satisfaction in respect of one Condition Precedent does not constitute:
- (1) a waiver of breach or non-satisfaction of any other Condition Precedent resulting from the same event; or

- (2) a waiver of breach or non-satisfaction of that Condition Precedent resulting from any other event.

### 3.4 Termination on failure of Condition Precedent

- (a) If there is an event or occurrence that would, does, or will prevent any of the Conditions Precedent being satisfied (including, for the avoidance of doubt, if Target Shareholders do not agree to the Scheme at the Scheme Meeting by the requisite majorities), or if any of the Conditions Precedent will not otherwise be satisfied, by the earlier of:
  - (1) the time and date specified in this deed for the satisfaction of that Condition Precedent; and
  - (2) the End Date,or such Condition Precedent is otherwise not satisfied by that specified time and date or by the End Date (as applicable) or it becomes more likely than not that the Scheme will not become Effective on or before the End Date, then:
  - (3) if Bidder has given notice to Target under clause 3.5(b) in respect of an actual or alleged breach of one or more of the Conditions Precedent in clauses 3.1(g), 3.1(h) and 3.1(i), if Target remedies the breach within 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which that notice is given, the relevant Condition Precedent or Conditions Precedent (as applicable) will not be taken to have been breached or failed; and
  - (4) either party may give the other party written notice (**Consultation Notice**) within 5 Business Days after a relevant notice being given under clause 3.5(b) and the parties then must consult in good faith to:
    - (A) consider and, if agreed, determine, whether the Transaction may proceed by way of alternative means or methods;
    - (B) consider changing and, if agreed, change, the date of the application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed to in writing by Bidder and Target (being a date no later than 5 Business Days before the End Date); or
    - (C) consider extending and, if agreed, extend, the time and date specified in this deed for the satisfaction of that Condition Precedent or End Date (as applicable),respectively.
- (b) Subject to clauses 3.4(c), 3.4(d) and 3.4(e), if the parties are unable to reach agreement under clause 3.4(a) within 5 Business Days after the date on which the Consultation Notice is given, then, unless:
  - (1) the relevant Condition Precedent has been waived in accordance with clause 3.3; or
  - (2) the party, or in the case of clause 3.3(d), each party, entitled to waive the relevant Condition Precedent in accordance with clause 3.3 confirms in writing to the other party that it will not rely on the event or occurrence that would or does prevent the relevant Condition



Precedent from being satisfied, or would mean the relevant Condition Precedent would or will not otherwise be satisfied,

either party may terminate this deed without any liability to the other party because of that termination. For the avoidance of doubt, nothing in this clause 3.4(b) affects the obligation of Target to pay the Target Reimbursement Fee or the obligation of Bidder to pay the Bidder Reimbursement Fee, if it is required to do so under clause 12 or 13.

- (c) A party may not terminate this deed pursuant to clause 3.4(b):
  - (1) if the relevant occurrence or event, the failure of the Condition Precedent to be satisfied, or the failure of the Scheme to become Effective, arises out of a breach of clause 3.2 by that party, although in such circumstances the other party may still terminate this deed; or
  - (2) the relevant Condition Precedent is stated in clause 3.3 to be for the sole benefit of the other party.
- (d) If the Condition Precedent in clause 3.1(c) (*Shareholder approval*) is not satisfied only because of a failure to obtain the majority required by sub-paragraph 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice to the other within 3 Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that sub-paragraph, provided the party has, in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable. If approval is given, the Condition Precedent in clause 3.1(c) (*Shareholder approval*) is deemed to be satisfied for all purposes.
- (e) If the Court refuses to make an order approving the Scheme which satisfies the Condition Precedent in clause 3.1(e), at Bidder's request Target must appeal the Court's decision to the fullest extent possible (except to the extent that the parties agree otherwise, or an independent Senior Counsel indicates that, in their view, an appeal would have a less than 50% prospect of success before the End Date, in which case either party may terminate this deed by notice to the other party). Target may bring an appeal even if not requested by Bidder. If any such appeal is undertaken at the request of Bidder, Bidder will bear Target's costs of the appeal (including costs of the independent Senior Counsel) unless the parties otherwise agree. If any such appeal is undertaken by Target as a result of a request by the Bidder as contemplated by this clause 3.4(e), the costs of the appeal will be borne equally between the parties unless the parties otherwise agree.

### 3.5 Certain notices relating to Conditions Precedent

If a party becomes aware of:

- (a) the satisfaction of a Condition Precedent or of any material progress towards such satisfaction; or
- (b) the happening of an event or occurrence that would, does, will, or would reasonably be likely to:
  - (1) prevent a Condition Precedent being satisfied; or
  - (2) mean that any Condition Precedent will not otherwise be satisfied,

before the time and date specified for its satisfaction (or being satisfied by the End Date, if no such time and date is specified) or such Condition Precedent is



not otherwise satisfied by that time and date (including, for the avoidance of doubt, if Target Shareholders do not agree to the Scheme at the Scheme Meeting by the requisite majorities),

it must advise the other by notice in writing, as soon as possible (and in any event within 2 Business Days).

### **3.6 Further notice in certain circumstances**

Target and Bidder (as the case may be) must promptly advise each other, in writing, of any fact, matter, change, event or circumstance causing, or which, so far as can reasonably be foreseen, would cause:

- (a) a representation or warranty provided in this deed by the relevant party to be false, inaccurate, misleading or deceptive;
- (b) a breach or non-satisfaction of any of the Conditions Precedent; or
- (c) a material breach of this deed by the relevant party.

## **4 Transaction steps**

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### **4.1 Scheme**

Target must propose the Scheme to Target Shareholders on and subject to the terms and conditions of this deed and the Scheme.

### **4.2 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.

### **4.3 Scheme Consideration**

- (a) The parties acknowledge that each Scheme Shareholder will be entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder in accordance with and subject to the terms and conditions of this deed and the Scheme.
- (b) Bidder undertakes and warrants to Target (in its own right and separately as trustee on behalf of the Scheme Shareholders) that, in consideration of the transfer to Bidder of each Target Share held by a Scheme Shareholder under the terms of the Scheme, on the Implementation Date Bidder will:
  - (1) accept that transfer; and
  - (2) provide to each Scheme Shareholder the Scheme Consideration for each Scheme Share in accordance with and subject to the terms and conditions of this deed and the Scheme.



#### 4.4 Provision of Target Share information

- (a) In order to facilitate the provision of the Scheme Consideration, Target must provide, or procure the provision of, to Bidder a complete copy of the Target Share Register as at the Scheme Record Date (which must include the name, Registered Address and registered holding of each Scheme Shareholder as at the Scheme Record Date), within one Business Day after the Scheme Record Date.
- (b) The details and information to be provided under clause 4.4(a) must be provided in such form as Bidder or its nominee may reasonably require.

#### 4.5 Option Scheme

- (a) Target must propose a creditors' scheme of arrangement between itself and each Target Optionholder under which all outstanding Target Options will be cancelled and each Scheme Optionholder will be entitled to receive the Option Scheme Consideration.
- (b) Bidder will execute the Option Scheme Deed Poll in which it undertakes in favour of each Scheme Optionholder that it will, subject to the Scheme and the Option Scheme becoming Effective, pay the Option Scheme Consideration.
- (c) The Option Scheme will be conditional on the following (without limitation), unless the parties otherwise agree in writing:
  - (1) the ASX granting a waiver from rule 6.23 of the Listing Rules in relation to the Option Scheme or Target Shareholders giving any necessary approvals under rule 6.23 of the Listing Rules in relation to the Option Scheme; and
  - (2) the Scheme becoming Effective.
- (d) The Option Scheme must be proposed, conducted and implemented by Target concurrently with the Scheme.

#### 4.6 No amendment to Option 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 Option Scheme without the prior written consent of Bidder.

#### 4.7 Option Scheme Consideration

- (a) The parties acknowledge that each Scheme Optionholder will be entitled to receive the Option Scheme Consideration in respect of each Scheme Option held by that Scheme Optionholder in accordance with and subject to the terms and conditions of this deed and the Option Scheme.
- (b) Bidder undertakes and warrants to Target (in its own right and separately as trustee on behalf of the Scheme Optionholders) that, in consideration for the cancellation and extinguishment of the Scheme Options under the terms of the Option Scheme, on the Option Scheme Implementation Date, Bidder will provide the Option Scheme Consideration.



#### 4.8 ASX waiver

- (a) As soon as reasonably practicable after the Regulator's Draft is provided to ASX, Target must use reasonable endeavours to procure that the ASX grants a waiver from rule 6.23 of the Listing Rules in respect of the Option Scheme.
- (b) If the waiver referred to in clause 4.8(a):
  - (1) is obtained subject to one or more conditions that are not reasonably satisfactory to Bidder; or
  - (2) is not obtained,

Target agrees to seek any approvals that are required from the Target Shareholders under rule 6.23 of the Listing Rules in relation to the Option Scheme on the same date on which the Option Scheme Meeting is held.

#### 4.9 Application of this deed to Option Scheme

To the extent that the parties have obligations in respect of the Scheme under this deed, the parties will have the same obligations in respect of the Option Scheme, as applicable and as reasonably required to propose, conduct and implement the Option Scheme.

## 5 Implementation

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### 5.1 Timetable

- (a) Subject to clause 5.1(b), the parties must each use all reasonable endeavours to:
  - (1) comply with their respective obligation under this clause 5; and
  - (2) take all necessary steps and exercise all rights necessary to implement the Transaction,in accordance with the Timetable.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 5.1(a) to the extent that such failure is due to circumstances and matters outside the party's control or due to Target taking or omitting to take any action in response to a Competing Proposal as permitted or contemplated by this deed.
- (c) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control, the parties will consult in good faith and act reasonably to agree to any necessary extension to ensure such matters are completed within the shortest possible timeframe.



## 5.2 Target's obligations

Target must take all necessary steps to implement the Scheme as soon as is reasonably practicable and, without limiting the foregoing, (i) use all reasonable endeavours to ensure that each step in the Timetable is met by the relevant date set out beside that step (and must consult with Bidder on a regular basis about its progress in that regard), (ii) do any acts it is authorised and able to do on behalf of Target Shareholders, and (iii) do each of the following:

- (a) **preparation of Scheme Booklet:** prepare and despatch the Scheme Booklet in accordance with all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60, applicable Takeovers Panel guidance notes and the Listing Rules;
- (b) **directors' recommendation:** include in the Scheme Booklet a statement by the Target Board:
  - (1) unanimously recommending that Target Shareholders vote in favour of the Scheme in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interest of Target Shareholders; and
  - (2) that each Target Board Member will (subject to the same qualifications as set out in clause 5.2(b)(1)) vote, or procure the voting of, any Director Target Shares at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting,unless there has been a change of recommendation permitted by clause 5.8;
- (c) **paragraph 411(17)(b) statement:** apply to ASIC for the production of:
  - (1) an indication of intent letter stating that it does not intend to appear before the Court on the First Court Date; and
  - (2) a statement under paragraph 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (d) **Court direction:** apply to the Court for orders pursuant to subsection 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;
- (e) **Scheme Meeting:** convene the Scheme Meeting to seek Target Shareholders' agreement to the Scheme in accordance with the orders made by the Court pursuant to subsection 411(1) of the Corporations Act and must not adjourn or postpone the Scheme Meeting or request the Court to adjourn or postpone the Scheme Meeting in either case without obtaining the prior written approval (which approval must not be unreasonably withheld, delayed or conditioned) of the Bidder, except where there is a Competing Proposal;
- (f) **Court documents:** consult with Bidder in relation to the content of the documents required for the purpose of each of the Court hearings held for the purpose of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith, for the purpose of amending drafts of those documents, any reasonable and timely comments from Bidder and its Related Persons on those documents;
- (g) **Court approval:** if the Scheme is approved by Target Shareholders under subparagraph 411(4)(a)(ii) of the Corporations Act and it can reasonably be expected that all of the Conditions Precedent (other than the Condition Precedent in clause 3.1(e)) will be satisfied or waived in accordance with this



deed before 8.00am on the Second Court Date, apply to the Court for orders approving the Scheme as agreed to by the Target Shareholders at the Scheme Meeting;

- (h) **certificate:** at the hearing on the Second Court Date provide to the Court:
  - (1) a certificate (signed for and on behalf of Target) in the form of a deed (substantially in the form set out in Attachment 4) confirming, in respect of matters within its knowledge, whether or not the Conditions Precedent (other than the Condition Precedent in clause 3.1(e)) have been satisfied or waived in accordance with this deed, a draft of which certificate must be provided by Target to Bidder by 4.00pm on the date that is two Business Days prior to the Second Court Date; and
  - (2) any certificate provided to it by Bidder pursuant to clause 5.3(i);
- (i) **lodge copy of Court order:** lodge with ASIC in accordance with subsection 411(10) of the Corporations Act an office copy of the Court order approving the Scheme by no later than the Business Day after the date on which the Court order was made (or such later date as agreed in writing by Bidder, acting reasonably);
- (j) **Scheme Consideration:** if the Scheme becomes Effective, finalise and close the Target Share Register as at the Scheme Record Date, and determine entitlements to the Scheme Consideration, in accordance with the Scheme and the Deed Poll;
- (k) **transfer and registration:** if the Scheme becomes Effective and subject to Bidder having paid the Scheme Consideration in accordance with the Scheme and Deed Poll:
  - (1) execute, on behalf of Scheme Shareholders, instruments of transfer of the Scheme Shares to Bidder; and
  - (2) register all transfers of the Scheme Shares to the Bidder on the Implementation Date;
- (l) **consultation with Bidder in relation to Scheme Booklet:** consult with Bidder as to the content and presentation of the Scheme Booklet including:
  - (1) providing to Bidder drafts of the Scheme Booklet and, subject to the prior consent of the Independent Expert, the Independent Expert's Report (excluding any part of the draft of the Independent Expert's Report which contains the Independent Expert's opinion), for the purpose of enabling Bidder to review and comment on those draft documents. In relation to the Independent Expert's Report, Bidder's review is to be limited to a factual accuracy review;
  - (2) taking timely and reasonable comments made by Bidder into account when producing a revised draft of the Scheme Booklet;
  - (3) providing to Bidder a revised draft of the Scheme Booklet within a reasonable time (being, in any case, no less than 1 Business Day) before the Regulator's Draft is finalised and to enable Bidder to review the Regulator's Draft before the date of its submission; and
  - (4) obtaining written consent from Bidder for the form and content in which the Bidder Information appears in the Scheme Booklet (which consent must not be unreasonably withheld, delayed or conditioned);
- (m) **information:** provide assistance to, including consents and directions for, the Bidder to enable the Bidder to procure that the Target Registry provides all



necessary information, in each case in a form reasonably requested by Bidder, about the Scheme, the Scheme Shareholders and Target Shareholders to Bidder and its Related Persons, including:

- (1) without limiting the operation of 4.4, copies of the share register each time it is requested by Bidder and on each occasion it is obtained from the registry by Target,

which Bidder reasonably requires in order to:

- (2) understand the legal and beneficial ownership of Target Shares (including the results of directions by Target to Target Shareholders under Part 6C.2 of the Corporations Act);
- (3) facilitate the provision by, or on behalf of, Bidder of the Scheme Consideration and to otherwise enable Bidder to comply with the terms of this deed, the Scheme and the Deed Poll; or
- (4) review the tally of proxy appointments and directions received by Target before the Scheme Meeting.

Target must comply with any reasonable request of Bidder for Target to give directions to Target Shareholders pursuant to Part 6C.2 of the Corporations Act from time to time for one of the purposes referred to in (2) or (3) above. For the avoidance of doubt, nothing in this clause 5.2(m) limits Bidder's obligations under the Confidentiality Agreement in respect of personal information and privacy;

- (n) **Judgement of Regulator's Draft:** as soon as reasonably practicable, but by no later than 14 days before the First Court Date, provide the Regulator's Draft to ASIC for its review for the purposes of subsection 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to Bidder as soon as practicable thereafter;
- (o) **ASIC and ASX review of Scheme Booklet:** keep Bidder informed of any matters raised by ASIC or ASX in relation to the Scheme Booklet or the Transaction, and use reasonable endeavours to take into consideration any comments made by Bidder in relation to any such matters raised by ASIC or ASX;
- (p) **registration of Scheme Booklet:** as soon as reasonably practicable after the Court directs Target in accordance with subsection 411(1) of the Corporations Act to convene the Scheme Meeting, take all reasonable measures within its control to cause ASIC to register the Scheme Booklet under subsection 412(6) of the Corporations Act;
- (q) **despatch Scheme booklet:** as soon as reasonably practicable following registration of the Scheme Booklet by ASIC, despatch the Scheme Booklet to Target Shareholders;
- (r) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (s) **Independent Expert:** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet (including any updates to such report) and any other materials to be prepared by the Independent Expert for inclusion in the Scheme Booklet (including any updates thereto);



- (t) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations;
- (u) **listing:** subject to clause 5.2(w), not do anything to cause Target Shares to cease being quoted on ASX or to become permanently suspended from quotation prior to implementation of the Transaction unless Bidder has agreed in writing;
- (v) **update Scheme Booklet:** until the date of the Scheme Meeting, promptly update or supplement the Scheme Booklet with, or if the parties agree (provided that Target will not be limited from making any disclosure necessary, in its sole discretion, to comply with its continuous disclosure obligations), otherwise inform the market by way of announcement of, any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement, and seek the Court's approval for the despatch of any updated or supplementary Scheme Booklet. Target must consult with Bidder as to the content and presentation of the updated or supplementary Scheme Booklet, or the market announcement, in the manner contemplated by clause 5.2(l);
- (w) **suspension of trading:** apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date;
- (x) **other things necessary:** promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme in accordance with all applicable laws and regulations subject to the terms of this deed;
- (y) **proxy solicitation:** in consultation with Bidder, undertake reasonable shareholder engagement and proxy solicitation actions so as to promote the merits of the Transaction and encourage Target Shareholders to vote on the Scheme in accordance with the recommendation of the Target Board, subject to applicable law and ASIC policy; and
- (z) **proxy information:** upon request by Bidder made prior to commencement of the Scheme Meeting, inform Bidder of the total number of proxy votes received by Target:
  - (1) to vote in favour of the Scheme;
  - (2) to vote against the Scheme;
  - (3) to abstain from voting on the Scheme; and
  - (4) where the proxy may vote at the proxy's discretion.

### 5.3 Bidder's obligations

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

- (a) **Bidder Information:** prepare and provide to Target the Bidder Information for inclusion in the Scheme Booklet, including all information regarding the Bidder Group, and the Scheme Consideration required by all applicable laws (including



the Corporations Act and the Corporations Regulations), RG 60, applicable Takeovers Panel guidance notes and the Listing Rules, and consent to the inclusion of that information in the Scheme Booklet;

- (b) **Scheme Booklet and Court documents:** provide any assistance or information reasonably requested by Target in connection with preparation of the Scheme Booklet (including any updated or supplementary Scheme Booklet) and any documents required to be filed with the Court in respect of the Scheme, review the drafts of the Scheme Booklet (including any updated or supplementary Scheme Booklet) prepared by Target and provide comments on those drafts in good faith;
- (c) **Independent Expert's Report:** subject to the Independent Expert entering into arrangements with Bidder including in relation to confidentiality in a form reasonably acceptable to Bidder, provide any assistance or information reasonably requested by Target or by the Independent Expert in connection with the preparation of the Independent Expert's Report to be sent together with the Scheme Booklet;
- (d) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (e) **Deed Poll:** by no later than the Business Day prior to the First Court Date, execute and deliver to Target the Deed Poll;
- (f) **accuracy of Bidder Information:** confirm in writing to Target that Bidder Information in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement (and Target must not lodge the Scheme Booklet with ASIC until such approval is obtained from Bidder);
- (g) **share transfer:** if the Scheme becomes Effective:
  - (1) accept a transfer of the Scheme Shares as contemplated by clause 4.3(b)(1); and
  - (2) execute instruments of transfer in respect of the Scheme Shares;
- (h) **Scheme Consideration:** if the Scheme becomes Effective, procure or provide the Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Scheme and the Deed Poll;
- (i) **certificate:** before the commencement of the hearing on the Second Court Date provide to Target for provision to the Court at that hearing a certificate (signed for and on behalf of Bidder) in the form of a deed (substantially in the form set out in Attachment 4) confirming whether or not the Conditions Precedent (other than the Condition Precedent in clause 3.1(e)) have been satisfied or waived in accordance with this deed, a draft of which certificate must be provided by Bidder to Target by 4.00 pm on the date that is two Business Days prior to the Second Court Date;
- (j) **update Bidder Information:** until the date of the Scheme Meeting, promptly provide to Target any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Bidder Information contained in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (k) **assistance:** up to (and including) the Implementation Date and subject to obligations of confidentiality owed to third parties and undertakings to



Government Agencies, provide Target and its Related Persons with reasonable access during normal business hours to information and personnel of Bidder Group that Target reasonably requests for the purpose of preparation of the Scheme Booklet and implementation of the Transaction; and

- (l) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations.

## 5.4 Conduct of business

- (a) Subject to clauses 5.4(b) and 5.4(d), from the date of this deed up to and including the Implementation Date, and without limiting any other obligations of Target under this deed, Target must:
- (1) conduct its businesses and operations, and must cause each other Target Group Member to conduct its respective business and operations, in the ordinary and usual course generally consistent with the manner in which each such business and operations have been conducted in the 12 month period prior to the date of this deed;
  - (2) comply, and must procure that each Target Group Member complies, in all material respects, with all applicable authorisations, laws and regulations (including the Listing Rules);
  - (3) comply, and must procure that each Target Group Member complies, in all material respects, with all Material Contracts to which it is party;
  - (4) use reasonable endeavours to maintain and if necessary, renew and procure that each Target Group Member uses reasonable endeavours to maintain, and if necessary, renew each of the material authorisations, accreditations and licences necessary to conduct the Target Group's business and promptly notifies Bidder if any renewal proposal is not accepted by the relevant Government Agency or industry body or if any relevant Government Agency or industry body notifies a member of the Target Group in writing of an intention not to renew such an authorisation, accreditation or licence;
  - (5) keep Bidder informed of any material developments concerning the conduct of Target's business in a timely manner;
  - (6) not enter into any line of business or other activities in which the Target Group is not engaged as of the date of this deed;
  - (7) not do or omit to do anything that would make any policy of insurance relating to a Target Group Member void or voidable, and maintain (and where necessary, use reasonable efforts to renew) insurance materially consistent with the insurance held by the Target Group in force at the date of this deed and promptly notify Bidder if any insurance which is material to the operations of the Target Group is not accepted for renewal by the relevant insurer;
  - (8) not, and must procure that each Target Group Member does not, make, change or revoke any material Tax election or file any amendment to a material Tax return;
  - (9) not, and must procure that each Target Group Member does not, settle or compromise any material liability relating to a Tax audit,

- dispute, litigation or other proceeding, or consent to any extension or waiver of a limitation period applicable to such proceeding;
- (10) not appoint any new director to the Target Board and the boards of Target's subsidiaries;
  - (11) make all reasonable efforts, and procure that each other Target Group Member makes all reasonable efforts, to:
    - (A) preserve and maintain the businesses and assets of the Target Group;
    - (B) keep available the services of the directors, officers and employees of each member of the Target Group; and
    - (C) maintain and preserve their relationships with Government Agencies, customers, suppliers, partners and others having business dealings with any Target Group Member.
- (b) Nothing in clause 5.4(a) restricts the ability of Target to take any action:
- (1) which is required or permitted by this deed or the Scheme, the Option Scheme, the Option Cancellation Deeds or the transactions contemplated by those documents;
  - (2) which is Fairly Disclosed in:
    - (A) the Disclosure Materials;
    - (B) an announcement made by Target to ASX, or a publicly available document lodged by it with ASIC, in the 24 months prior to the date of this deed; or
    - (C) a search of ASIC records that are open to public inspection or ASX announcements in relation to Target or a Target Group Member, in the 24 months prior to the date of this deed;
  - (3) required in order to pay any Tax or Duty when due;
  - (4) required to maintain (or where necessary, renew) insurance materially consistent with the insurance held by the Target Group in force at the date of this deed or as otherwise permissible under clause 5.11(b);
  - (5) to reasonably and prudently respond to regulatory or legislative changes (including changes to subordinate legislation) affecting the business of Target or a Target Group Member to a material extent where a failure to so respond in a timely manner would mean that the Target Group would not be able to operate substantially in the manner in which it operates at the date of this deed, and provided that the response does not have a material adverse impact on the expected future prospects or operations of the Target Group;
  - (6) which has been consented to in writing by Bidder (which response must not be unreasonably withheld or delayed more than 5 Business Days from the date of the request from Target);
  - (7) which is mandatory and required by any applicable law or regulation or by a Government Agency and consequently unavoidable; or
  - (8) which is undertaken as permitted by clause 11.



- (c) Subject to clause 5.4(d), from the date of this deed up to and including 8.00am on the Second Court Date, unless Bidder agrees otherwise in writing, Target will promptly notify Bidder of anything of which it becomes aware that:
- (1) makes any material information publicly filed by Target (either on its own account or in respect of any other Target Group Member) to be, or reasonably likely to be, incomplete, incorrect, untrue or misleading in any material respect; or
  - (2) makes any information provided in the Disclosure Materials incomplete, incorrect, untrue or misleading in any material respect.
- (d) The obligations in clauses 5.4(a) and 5.4(c) do not include the provision of information in respect of proposed pricing of services, current or potential proposals to customers or potential customers or the participation of the Target Group in any tender or proposed tender if to do so would not comply with law.
- (e) As soon as reasonably practicable after each Reference Date and at any rate prior to the earlier of the next Reference Date or the date that is two Business Days before the Second Court Date, the Target must promptly confirm to the Bidder its Normalised EBITDA and consolidated annual turnover for the 12 months ended on that Reference Date.

## 5.5 Cooperation with financing

- (a) Prior to the Implementation Date, Target must use reasonable endeavours to provide, and cause each other Target Group Member and the respective directors, officers, managers, employees, agents and representatives of each Target Group Member to provide, reasonable assistance and cooperation to Bidder in connection with any repayment of Financial Indebtedness (including, for the avoidance of doubt, any Financial Indebtedness of a Target Group Member under the facility agreement as agreed between the parties prior to or on the date of this deed (the **Existing Facility Agreement**)), in connection with the Transaction, including, but not limited to:
- (1) undertaking all steps reasonably required or requested by Bidder in connection with any such repayment of Financial Indebtedness in connection with the Transaction, provided that the timing of any such repayment is no earlier than the Implementation Date;
  - (2) providing Bidder with information reasonably requested by Bidder in relation to the use of existing cash reserves of the Target Group for such purpose and/or contingent instruments on issue under the Existing Facility Agreement;
  - (3) subject to the Scheme becoming Effective, issuing prepayment notices in relation to the existing Target Group debt facilities, and closing out hedging arrangements in accordance with any timing requirements reasonably required by Bidder to give effect to any refinancing on and from the Implementation Date, and using reasonable endeavours to assist in the repayment or replacement of contingent instruments on issue under the Existing Facility Agreement; and
  - (4) subject to the Scheme becoming Effective, using reasonable endeavours to procure deeds of release and discharges of any real property mortgages and registrations on the PPS Register from secured parties with effect from the Implementation Date in relation to

any encumbrance granted by a Target Group Member in favour of that party and using reasonable endeavours to procure the return of any title documents held by a secured party.

- (b) Nothing in this clause 5.5 shall require Target's cooperation to the extent that it would:
- (1) unreasonably interfere with the ongoing business or operations of Target (having regard to, among other things, the reasonableness of the notice given to Target of any requested assistance or cooperation);
  - (2) cause any Condition Precedent to not be satisfied or otherwise cause any breach of this deed;
  - (3) require any Target Group Member to take any action that would reasonably be expected to conflict with or violate a Target Group Member's constituent documents or any law or regulation;
  - (4) require any Target Group Member to take any action that would breach any existing contractual obligations (other than any obligations of confidentiality owed by a Target Group Member to any Third Party) or result in the loss or waiver of legal privilege;
  - (5) require any Target Group Member to provide any confidential or commercially sensitive information where the provision of such information is reasonably likely to cause prejudice to the commercial or legal interests of the Target Group taken as a whole;
  - (6) require any Target Group Member to actually effect any repayment of Financial Indebtedness prior to the Implementation Date; or
  - (7) require the approval of Target Shareholders under section 260B of the Corporations Act or an equivalent or analogous restriction in any jurisdiction.

## 5.6 Change of control

- (a) Target and Bidder must use all reasonable endeavours to procure that, as soon as practicable following the date of this deed (and, in any event, before the Second Court Date), they (to the extent possible for the Bidder, recognising the Bidder is not a party to and does not have the Material Contracts) seek to identify any change of control, unilateral termination rights or similar provisions in any Material Contract to which a Target Group Member is a party which may be triggered by or exercised in response to the implementation of the Scheme (**Change of Control Requirements**). In respect of those Material Contracts, the parties agree as follows:
- (1) Target and Bidder will, each acting reasonably, agree a proposed course of action to obtain any consents or waivers required in accordance with the terms of any identified Change of Control Requirements and then jointly initiate contact with the relevant counterparties and request that they provide any consents or waivers required. Bidder and its Related Persons must not contact any counterparties for this purpose without Target being present or without Target's prior written consent (which is not to be unreasonably withheld or delayed).

- (2) Target must cooperate with, and provide reasonable assistance to, the Bidder to obtain such consents or waivers as expeditiously as possible, including by promptly providing any information reasonably required by counterparties (but nothing in this clause requires Target or Bidder to incur material external expense).
  - (3) Provided that Target has complied with this clause 5.6, a failure by a Target Group Member to obtain any third party consent or waiver in respect of a Change of Control Requirement will not constitute a breach of this deed by Target.
- (b) Target must consult with Bidder, and Bidder must provide reasonable assistance to Target, in connection with giving any notice or seeking any approval or consent under clause 5.6(a), and Target must:
  - (1) keep Bidder informed of any material discussions with any Third Party in connection with clause 5.6(a);
  - (2) give Bidder a reasonable opportunity to review drafts of any material communications to Third Parties in connection with clause 5.6(a) and, acting reasonably and in good faith, take into account any reasonable comments provided by Bidder or its Related Persons on such drafts; and
  - (3) promptly provide Bidder with copies of all material communications received from Third Parties in connection with clause 5.6(a),in each case, unless restricted by law or the relevant contract.
- (c) Any notice, approval or consent of a kind referred to in clause 5.6(a) may only be given or sought by Target in a form and on terms approved by Bidder (which approval is not to be unreasonably withheld or delayed).
- (d) Nothing in this clause 5.6 precludes Bidder from terminating this deed for a breach of the Conditions Precedent in clause 3.1(i) (No Target Material Adverse Change), clause 3.1(g) (No Target Prescribed Occurrence) and clause 3.1(h) (No Regulated Event) in accordance with the provisions of clause 3.4.

## 5.7 Appointment of directors

Target must, as soon as practicable on the Implementation Date, after the Scheme Consideration has been despatched by Target to Scheme Shareholders in accordance with the terms of the Scheme, to the extent it is within Target's power to do so, take all actions necessary to:

- (a) cause the appointment of the nominees of Bidder to the Target Board;
- (b) ensure that all directors on the Target Board, other than any existing Target Director that Bidder has notified in writing it wishes to remain on the Target Board:
  - (1) resign; and
  - (2) acknowledge in their respective notices of resignation that they have no outstanding claims against Target in relation to unpaid director's fees and unconditionally and irrevocably release the Target Group from any claims they may have against the Target Group (other than for claims to ensure the Director receives payment of Scheme Consideration under the Scheme to the extent a Director is a Scheme Shareholder, any claim under this deed arising from the Bidder's

obligations under clause 5.11 or 8.1 or under any deed of indemnity, access and insurance or policy of directors' and officers' insurance); and

- (c) ensure that all directors on the boards of Target's Subsidiaries other than any existing Target Subsidiary Director that Bidder has notified it wishes to remain on the Target Subsidiary Board:
- (1) resign; and
  - (2) acknowledge in their respective notices of resignation that they have no outstanding claims against the Target Group in relation to unpaid director's fees and unconditionally and irrevocably release the Target Group from any claims they may have against the Target Group (other than for claims to ensure the Director receives payment of Scheme Consideration under the Scheme to the extent the Director is a Scheme Shareholder, any claim under this deed arising from the Bidder's obligations under clauses 5.11 and 8.1 or under any deed of indemnity, access and insurance or policy of directors' and officers' insurance),

and to cause the appointment of nominees of Bidder to those boards.

## 5.8 Target Board recommendation

- (a) Target must use reasonable endeavours to procure that, subject to clause 5.8(b), the Target Board Members unanimously recommend that Target Shareholders vote in favour of the Scheme at the Scheme Meeting in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interest of Target Shareholders, and that the Scheme Booklet include a statement by the Target Board to that effect.
- (b) Target must procure that the Target Board collectively, and the Target Board Members individually, do not adversely change, withdraw, adversely modify or adversely qualify (or make a public statement which is inconsistent with) its or their recommendation to vote in favour of the Scheme unless:
- (1) the Independent Expert provides a report to Target (including either the Independent Expert's Report or any update of, or any revision, amendment or supplement to, that report) that concludes that the Scheme is not in the best interest of Target Shareholders;
  - (2) Target has received a Competing Proposal and the Target Board has determined that the Competing Proposal constitutes a Superior Proposal; or
  - (3) the change, withdrawal, modification or qualification occurs because of an Abstain Requirement after the date of this deed,

and Target has complied with its obligations under clause 11.

For the purposes of this clause 5.8(b), customary qualifications and explanations contained in the Scheme Booklet and any public announcements by Target in relation to a recommendation to vote in favour of the Scheme to the effect that the recommendation is made:

- (4) in the absence of a Superior Proposal;



- (5) in respect of any public announcement issued before the issue of the Scheme Booklet, 'subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interest of Target Shareholders'; and
- (6) in respect of the Scheme Booklet and any public announcements issued at the time of or after the issue of the Scheme Booklet, 'subject to the Independent Expert continuing to conclude that the Scheme is in the best interest of Target Shareholders',

will not be regarded as a failure to make, or a change, withdrawal, modification or qualification of, a recommendation in favour of the Scheme.

- (c) Without limiting the operation of clause 11 or the preceding provisions of this clause 5, if circumstances arise, including the receipt or expected receipt of an unfavourable report from the Independent Expert (including either the Independent Expert's Report or any update of, or any revision, amendment or supplement to, that report) which is likely to lead to any one or more Target Board Members adversely changing, withdrawing or adversely modifying their recommendation to vote in favour of the Scheme, Target must promptly and without delay notify Bidder of this fact if the Target Board proposes to change, withdraw or vary its recommendation.
- (d) Despite anything to the contrary in this clause 5.8, a statement made by Target or the Target Board to the effect that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board or the completion of the matching right process set out in clause 11.5 does not contravene this clause 5.8.

## 5.9 Conduct of Court proceedings

- (a) Target and Bidder are entitled to separate representation at all Court proceedings affecting the Transaction.
- (b) This deed does not give Target or Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent.
- (c) Target and Bidder must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Transaction as contemplated by this deed.

## 5.10 Scheme Booklet content and responsibility statements

- (a) The Scheme Booklet will contain a responsibility statement to the effect that:
  - (1) Bidder is responsible for the Bidder Information contained in the Scheme Booklet;
  - (2) Target is responsible for the Target Information contained in the Scheme Booklet; and
  - (3) the Independent Expert is responsible for the Independent Expert's Report, and none of Target, Bidder or their respective directors or officers assumes any responsibility for the accuracy or completeness of the Independent Expert's Report.
- (b) If the parties disagree on the form or content of the Scheme Booklet, they must consult in good faith and try to settle an agreed form of the Scheme Booklet.



- (c) If after five Business Days of consultation, Target and Bidder are unable to agree on the form or content of the Scheme Booklet:
  - (1) where the determination relates to Bidder Information, Bidder will make the final determination as to the form and content of the Bidder Information; and
  - (2) in any other case, Target will make the final determination as to the form and content of the Scheme Booklet, acting reasonably.

## 5.11 Target directors and officers

- (a) Subject to clauses 5.11(b), and 5.11(e), the Scheme becoming Effective and the Transaction completing, the Bidder undertakes in favour of the Target and each other Target Indemnified Party that it will:
  - (1) for a period of 7 years from the Implementation Date, ensure that the constituent documents of the Target and each other Target Group member continue to contain such rules as are contained in those constituent documents at the date of this deed that provide for each company to indemnify each of its 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 Target Group member; and
  - (2) procure that the Target and each other Target Group member 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 directors' and officers' run-off insurance cover for such directors and officers is maintained for a period of 7 years from the date that such director or officer has ceased to hold office provided that such obligations shall be subject to any limitation imposed by the certificate of incorporation or its constituent documents as in effect on the date of this deed and as imposed from time to time under applicable law.
- (b) Bidder acknowledges and agrees that notwithstanding any other provision of this deed, Target will, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for such 7 year period, provided that the total premium for any insurance cover referred to in this clause 5.11(b) does not exceed an amount agreed in writing between the parties on or before the date of this deed, and that any actions to facilitate that insurance or in connection with such insurance will not be a Target Material Adverse Change, a Target Prescribed Occurrence or Target Regulated Event or a breach of any provision of this deed or give rise to any right to terminate this deed.
- (c) The undertakings in this clause 5.11 are subject to any Corporations Act restriction and will be read down accordingly.
- (d) The Target holds the benefit of clauses 5.11(a) and 5.11(b), to the extent it relates to other Target Indemnified Parties, as trustee for them.
- (e) Nothing in this clause 5.11 prohibits or in any way restricts a Target Group Member from commencing or completing the process to wind up or deregister as a company under the Corporations Act after the Effective Date.



## 6 Integration

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### 6.1 Access to information and management

Between (and including) the date of this deed and the Implementation Date, Target must, and must cause each other Target Group Member to, provide to Bidder, Bidder Group Members and a reasonable number of their Related Persons:

- (a) reasonable access to information (subject to any existing confidentiality obligations owed to third parties), premises and such senior executives of any member of the Target Group as reasonably requested by Bidder at mutually convenient times, and provide Target reasonable co-operation, for the sole purposes of:
  - (1) finalisation of Bidder's structuring arrangements for the Transaction;
  - (2) Bidder developing and implementing plans for transition of the businesses of the Target Group to Bidder following implementation of the Scheme;
  - (3) Bidder obtaining an understanding of the operations of the Target Group's business, financial position, prospects and affairs or in order to allow and facilitate the development and implementation of the Bidder's plans for the carrying on of the businesses of the Target Group following implementation of the Scheme;
  - (4) keeping Bidder informed of material developments relating to the businesses of the Target Group;
  - (5) the implementation of the Scheme;
  - (6) putting in place insurance policies; and
  - (7) any other purpose agreed between the parties (each acting reasonably);
- (b) regular reports on the financial affairs of the Target Group in the form which is ordinarily used by Target, including the Target Group's monthly management accounts to Bidder in a timely manner; and
- (c) a copy of all material correspondence received from, or provided or proposed to be provided to, a Government Agency,

provided that:

- (d) nothing in this clause 6.1 will require Target to provide, or procure the provision of, information which has been provided in writing to the Implementation Committee;
- (e) nothing in this clause 6.1 will require Target to provide, or procure the provision of, information concerning:
  - (1) any Target director's, the Target Board's (or any sub-committee of the Target board's) and management's (a **Relevant Person**) consideration of the Scheme or any proposal by Bidder at any time in relation to the acquisition of an interest in Target; or
  - (2) any actual, proposed or potential Competing Proposal (including a Relevant Person's consideration of any actual, proposed or potential Competing Proposal),



- but this proviso does not limit Target's obligations under clause 11;
- (f) providing or procuring the provision of information or access to Bidder or its Related Persons pursuant to this clause 6.1 must not result in unreasonable disruptions to, or interference with, the Target Group's business;
  - (g) Bidder must:
    - (1) keep all information obtained by it as a result of this clause 6.1 confidential in accordance with the terms of the Confidentiality Agreement, other than in relation to enforcing its rights under, and in connection with this deed;
    - (2) provide Target with reasonable notice of any request for information or access; and
    - (3) comply with the reasonable requirements of Target in relation to any access granted;
  - (h) Target may provide to Bidder its records at a place other than Target's business premises;
  - (i) nothing in this clause 6.1 gives Bidder any rights as to the decision making of any Target Group Member or its business;
  - (j) nothing in this clause 6.1 will require Target to provide, or procure the provision of, information concerning the Target Group's business that is, in the reasonable opinion of Target, commercially or competitively sensitive, including any specific pricing and margin information or customer details; and
  - (k) nothing in this clause 6.1 will require Target to provide, or procure the provision of, information if to do so would or would be reasonably likely to:
    - (1) breach any confidentiality obligation owed to a third party or any applicable law; or
    - (2) result in a waiver of legal professional privilege.

For the avoidance of doubt, the parties agree that Target taking any action or incurring any cost for the purposes of complying with its obligations under this clause 6.1 will not be a Target Prescribed Occurrence, a Target Regulated Event or a Target Material Adverse Change or a breach of any provision of this deed, or give rise to any right of Bidder to terminate this deed (unless such action is a breach of this clause 6.1), and will be disregarded when assessing the operation of any other part of this deed.

## 6.2 Implementation Committee

- (a) Each party will, as soon as practicable after the date of this deed, notify the other party of its appointees to the Implementation Committee.
- (b) Without limiting clause 6.1, between (and including) the date of this deed and the Implementation Date, Implementation Committee will:
  - (1) oversee implementation of the Scheme;
  - (2) assist Bidder in obtaining an understanding of the operations and conduct of the Target Group's business; and
  - (3) seek to determine how to best integrate the Target Group's business into the operations of Bidder,

but, for the avoidance of doubt, the Implementation Committee is a consultative body only that will make recommendations to the parties.



- (c) The parties must use all reasonable endeavours to procure that the Implementation Committee meets no less than once a month, commencing on the date that is one month after the date of this deed.
- (d) All information obtained by a party or its Related Persons through the Implementation Committee must be kept confidential in accordance with the terms of the Confidentiality Agreement other than in relation to enforcing its rights under, and in connection with this deed.
- (e) Subject to this deed, nothing in this clause requires either party to act at the direction of the other, gives Bidder any rights as to the decision making of any Target Group Member or its business, or gives Bidder any rights to undertake further due diligence investigations. The business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this deed constitutes the relationship of a partnership or joint venture between the parties.

## 7 Representations and warranties

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### 7.1 Bidder's representations and warranties

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

### 7.2 Bidder's indemnity

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

### 7.3 Target's representations and warranties

Subject to clause 7.5, Target represents and warrants to Bidder (in its own right and separately as trustee or nominee for each of the other Bidder Indemnified Parties) each of the Target Representations and Warranties.

### 7.4 Target's indemnity

Subject to clause 7.5, Target agrees with Bidder (in its own right and separately as trustee or nominee for each Bidder Indemnified Party) to indemnify Bidder and each of the Bidder Indemnified Parties from any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Bidder or any of the other Bidder Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Target Representations and Warranties.

## 7.5 Qualifications on Target's representations, warranties and indemnities

- (a) The Target Representations and Warranties made or given in clause 7.3 and the indemnity in clause 7.4 are each subject to matters that:
- (1) have been Fairly Disclosed in the Disclosure Materials;
  - (2) have been Fairly Disclosed in an announcement by Target to ASX, or a publicly available document lodged by it with ASIC, in the two year period prior to the date of this deed, or which would be disclosed in a search of ASIC records or ASX announcements in relation to Target or a Subsidiary of Target (as relevant), in the two year period prior to the date of this deed;
  - (3) have been Fairly Disclosed in a publicly available document which would be disclosed in a search of:
    - (A) the PPS Register;
    - (B) the registry of either the Victorian land Titles Office or the New South Wales Land Registry Services;
    - (C) the registry of the High Court, the Federal Court, the Federal Circuit Court, or the Supreme Court of a state or territory of Australia; or
    - (D) proprietor searches of IP Australia,had each such search been conducted on the date which was 3 Business Days before the date of this deed;
  - (4) are required by this deed or the Scheme;
  - (5) are required by any applicable law or regulation; or
  - (6) of which Bidder or any of its Affiliates has actual knowledge, on or before the date of this deed.
- (b) Despite anything contained in this deed or within the knowledge of the Bidder or any of its Related Persons or Affiliates, clause 7.5(a) does not apply to or qualify the Target Representation and Warranty in paragraph (j) of Schedule 3, other than clauses 7.5(a)(4) and 7.5(a)(5) or unless otherwise agreed between the parties in writing.
- (c) Where a Target Representation and Warranty is given 'so far as Target is aware' or with a similar qualification as to Target's awareness or knowledge, Target's awareness or knowledge is limited to and deemed only to include those facts, matters or circumstances of which a member of the Senior Leadership Team is actually aware, or ought reasonably be aware, as at the date such Target Representation and Warranty is given.

## 7.6 Survival of representations and warranties

Each representation and warranty in clauses 7.1 and 7.3:

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



## 7.7 Survival of indemnities

Each indemnity in this deed (including those in clauses 7.2 and 7.4):

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

## 7.8 Timing of representations and warranties

Each representation and warranty made or given under clauses 7.1 or 7.3 is given:

- (a) at the date of this deed;
- (b) at 8.00am on the Second Court Date; and
- (c) at the date the Scheme Booklet is registered under section 412(6) of the Corporations Act,

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

## 7.9 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed 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 deed.
- (c) Each party acknowledges and confirms that clauses 7.9(a) and 7.9(b) do not prejudice any rights a party may have in relation to information which has been announced by the other party to ASX or lodged by it with ASIC, or that is contained in the Disclosure Materials.

# 8 Releases

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## 8.1 Target and Target directors and officers

- (a) Bidder, on its own behalf and on behalf of each Bidder Indemnified Party:
  - (1) releases its rights; and



- (2) agrees with Target that it will not make, and that after the Implementation Date it will procure that each Target Group Member does not make, any claim,

against any Target Indemnified Party (other than Target and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:

- (3) Target's execution or delivery of this deed;
- (4) any breach of any representations and warranties of Target or any other member of the Target Group in this deed or any breach of any covenant given by Target in this deed;
- (5) the implementation of the Scheme;
- (6) any disclosures containing any statement which is false or misleading whether in content or by omission; or
- (7) any failure to provide information,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct, wilful concealment or fraud. For the avoidance of doubt, nothing in this clause 8.1(a) limits Bidder's rights to terminate this deed under clause 14.

- (b) Clause 8.1(a) is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Target receives and holds the benefit of this clause 8.1 to the extent it relates to each Target Indemnified Party as trustee for each of them.

## 8.2 Bidder and Bidder directors and officers

- (a) Target, on its own behalf and on behalf of each Target Indemnified Party, releases its rights, and agrees with Bidder that it will not make a claim, against any Bidder Indemnified Party (other than Bidder and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:

- (1) Bidder's execution or delivery of this deed;
- (2) any breach of any representations and warranties of Bidder or any other member of the Bidder Group in this deed or any breach of any covenant given by Bidder in this deed;
- (3) the implementation of the Scheme;
- (4) any disclosure containing any statement which is false or misleading whether in content or by omission; or
- (5) any failure to provide information,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct, wilful concealment or fraud. For the avoidance of doubt, nothing in this clause 8.2(a) limits Target's rights to terminate this deed under clause 14.

- (b) Clause 8.2(a) is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Bidder receives and holds the benefit of this clause 8.2 to the extent it relates to each Bidder Indemnified Party as trustee for each of them.



## 9 Public announcement

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### 9.1 Announcement of the Transaction

- (a) Immediately after the execution of this deed, Target and Bidder must issue public announcements in a form previously agreed to in writing between them.
- (b) The Target announcement must include a unanimous recommendation by the Target Board to Target Shareholders that, in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent's Expert's Report (and continuing to conclude) that the Scheme is in the best interest of Target Shareholders, Target Shareholders vote in favour of the Scheme and that all the Target Board Members will vote (or will procure the voting of) all Director Target Shares at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting.

### 9.2 Public announcements

Subject to clause 9.3, no public announcement or public disclosure of the Transaction or any other transaction the subject of this deed or the Scheme may be made other than in a form approved by each party in writing (acting reasonably), but each party must use all reasonable endeavours to provide such approval as soon as practicable. For the avoidance of doubt, this clause 9.2 does not apply to any announcement or disclosure relating to a Competing Proposal.

### 9.3 Required disclosure

Where a party is required by applicable law or the Listing Rules to make any announcement or to make any disclosure in connection with the Transaction or any other transaction the subject of this deed or the Scheme, including by Bidder on a foreign exchange and that exchange's corresponding listing rules, it may do so despite clause 9.2 but must use all reasonable endeavours, to the extent practicable and lawful, to consult with the other party prior to making the relevant disclosure and take account of any reasonable comments received from the other party in relation to the form and content of the announcement or disclosure, except where such disclosure relates to, or is in connection with, an actual, potential or proposed Competing Proposal.

### 9.4 Statements on termination

The parties must use all reasonable endeavours to issue agreed statements in respect of any termination of this deed and, to that end but without limitation, clause 9.3 applies to any such statements or disclosures, except where such disclosure relates to, or is in connection with, an actual, potential or proposed Competing Proposal.

## 10 Confidentiality

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- (a) Subject to clause (b), Target and Bidder acknowledge and agree that they continue to be bound by the Confidentiality Agreement after the date of this deed on the terms of that Confidentiality Agreement. The rights and obligations of the parties under the Confidentiality Agreement survive termination of this deed.



- (b) Target and Bidder acknowledge and agree that the terms of this deed will prevail over the Confidentiality Agreement to the extent of any inconsistency and that the purpose (as contemplated in the Confidentiality Agreement) shall include the purpose of a party exercising its rights under this deed.

## 11 Exclusivity

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### 11.1 No continuing discussions

- (a) Target represents and warrants to Bidder that as at the date of this deed:
- (1) it has ceased all negotiations or discussions with any person in respect of any Competing Proposal, or which could reasonably be expected to encourage or lead to the making of an actual, proposed or potential Competing Proposal; and
  - (2) it is not progressing or obliged to progress any agreement or arrangement with a Third Party for the purpose of facilitating a Competing Proposal.
- (b) On the date of this deed, Target must, and must procure that each of its Related Persons and Related Bodies Corporate:
- (1) cease any discussions with any Third Party in relation to, a potential Competing Proposal or a transaction which would affect, prejudice or jeopardise the completion of the Transaction;
  - (2) has ceased the provision of any due diligence access and the making available of any non-public information in relation to the Target Group to any Third Party where such information was provided for the purpose of facilitating, or could reasonably be expected to lead to, a Competing Proposal, and request the return or destruction of such non-public information by the Third Party; and
  - (3) not terminate, waive, amend or modify any provision of any existing confidentiality agreement relating to any possible Competing Proposal or any standstill agreement to which any member of the Target Group is a party.

### 11.2 No shop and no talk

During the Exclusivity Period, Target must not, and must ensure that each of its Related Persons and Related Bodies Corporate and the Related Persons of those Related Bodies Corporate do not, directly or indirectly:

- (a) **(no shop)** solicit, invite, encourage or initiate (including by the provision of non-public information to any Third Party) any inquiry, expression of interest, offer, proposal, discussion or other communication by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or communicate to any person an intention to do anything referred to in this clause 11.2(a); or
- (b) **(no talk)** subject to clause 11.3:
- (1) facilitate, participate in or continue any negotiations, discussions or other communications with respect to any inquiry, expression of

- interest, offer, proposal or discussion by any person to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal;
- (2) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal;
  - (3) disclose or otherwise provide or make available any non-public information about the business or affairs of the Target Group to a Third Party (other than a Government Agency that has the right to obtain that information and has sought it) in connection with, with a view to obtaining, or which would reasonably be expected to encourage or lead to the formulation, receipt or announcement of, an actual, proposed or potential Competing Proposal (including, without limitation, providing such information for the purposes of the conduct of due diligence investigations in respect of the Target Group) whether by that Third Party or another person; or
  - (4) communicate to any person an intention to do anything referred to in the preceding paragraphs of this clause 11.2(b).

provided that nothing in this clause 11.1 prevents or restricts Target or any of its Related Persons and Related Bodies Corporate from responding to a Third Party in respect of an inquiry, expression of interest, offer, proposal or discussion by that Third Party to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal on these terms: "We acknowledge receipt of Third Party's proposal. We advise Third Party that Target is bound by the provisions of clause 11.1 of the Scheme Implementation Deed lodged with ASX and is only able to engage in negotiations, discussions or other communications if clause 11.3 of the Scheme Implementation Deed applies."

### 11.3 Fiduciary exception

Clause 11.2(b) does not prohibit any action or inaction by Target, any of its Related Bodies Corporate or any of their respective Related Persons, in relation to an actual, proposed or potential Competing Proposal if the Target Board determines acting that:

- (a) after consultation with its advisers, such actual, proposed or potential Competing Proposal is a Superior Proposal or could reasonably be expected to become a Superior Proposal; and
- (b) after receiving written legal advice from its external legal advisers, compliance with that clause would, or would be reasonably likely to, constitute a breach of any of the fiduciary or statutory duties of the directors of Target.

provided that the actual, proposed or potential Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of clause 11.2(a).

### 11.4 Notification of approaches

- (a) During the Exclusivity Period, Target must as soon as reasonably practicable (and in any event within the later of 48 hours and 1 Business Day) notify Bidder in writing if it, any of its Related Bodies Corporate or any of their respective Related Persons, becomes aware of any:

- (1) negotiations, discussions or other communications in respect of any inquiry, expression of interest, offer, proposal or discussion in relation to an actual, proposed or potential Competing Proposal;
  - (2) proposal made to Target, any of its Related Bodies Corporate or any of their respective Related Persons in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal; or
  - (3) provision by Target, any of its Related Bodies Corporate or any of their respective Related Persons of any non-public information concerning the business or operations of Target or the Target Group to any to a Third Party (other than a Government Agency) in connection with an actual, proposed or potential Competing Proposal, whether direct or indirect, solicited or unsolicited, and in writing or otherwise. For the avoidance of doubt, any of the acts described in paragraphs (1) to (3) may only be taken by Target, its Related Bodies Corporate or their respective Related Persons if not proscribed by clause 11.1 or if permitted by clause 11.3.
- (b) A notification given under clause 11.4(a) must include all material terms and conditions of the actual, proposed or potential Competing Proposal (including price and form of consideration, conditions precedent, proposed deal protection arrangements, the identity of the bidder and timetable), in each case to the extent known by Target or any of its Related Persons.
- (c) During the Exclusivity Period, Target must also notify Bidder in writing as soon as possible after it, any of its Related Bodies Corporate or any of their respective Related Persons, becomes aware of any material change to any of the information previously provided to Bidder pursuant to this clause 11.4, including that the relevant actual, proposed or potential Competing Proposal is no longer proceeding.

## 11.5 Matching right

- (a) During the Exclusivity Period, Target:
- (1) must not, and must procure that each of its Related Bodies Corporate do not, enter into any legally binding agreement, arrangement or understanding (whether or not in writing), pursuant to which a one or more of a Third Party, Target or any Related Body Corporate of Target proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal; and
  - (2) must use best endeavours to procure that none of its directors change their recommendation in favour of the Scheme, publicly recommend an actual, proposed or potential Competing Proposal (or recommend against the Transaction) or make any public statement to the effect that they may do so at a future point (provided that a statement that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board or the completion of the matching right process set out in this clause 11.5 will not be taken to contravene this clause 11.5), subject to any change of recommendation by the Target Board that is permitted by clause 5.8(b),
- unless:



- (3) the Target Board acting in good faith and in order to satisfy what the Target Board Members consider to be their statutory or fiduciary duties (having received written legal advice from its external legal advisers) determines that the Competing Proposal is, or would be or would be reasonably likely to be an actual, proposed or potential, Superior Proposal;
  - (4) Target has provided Bidder with the material terms and conditions of the actual, proposed or potential Competing Proposal (including price and form of consideration, conditions precedent, proposed deal protection arrangements and timetable) (in each case, to the extent known), the high level basis on which the Target Board has concluded that the actual, proposed or potential Competing Proposal is superior and the identity of the Third Party making the actual, proposed or potential Competing Proposal;
  - (5) Target has given Bidder at least five French Business Days after the date of the provision of the information referred to in clause 11.5(a)(4) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal; and
  - (6) Bidder has not announced or otherwise formally proposed to Target a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal by the expiry of the five French Business Day period in clause 11.5(a)(5).
- (b) 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 Proposal (**Bidder Counterproposal**) by the expiry of the five French Business Day period in clause 11.5(a)(5), 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 Proposal, taking into account all of the terms and conditions of the Bidder Counterproposal, then Target and Bidder must use their best endeavours to agree the amendments to this deed, the Scheme and the Deed Poll (as applicable) that are reasonably necessary to reflect the Bidder Counterproposal and to implement the Bidder Counterproposal, in each case as soon as reasonably practicable, and Target must procure that each of the directors of Target continues to recommend the Transaction (as modified by the Bidder Counterproposal) to Target Shareholders.
- (c) For the purposes of this clause 11.5, each successive material modification of any Competing Proposal or potential Competing Proposal will constitute a new Competing Proposal or potential Competing Proposal, and the procedures set out in this clause 11.5 must again be followed prior to any member of the Target Group entering into any agreement, arrangement, understanding or commitment in respect of such Competing Proposal or potential Competing Proposal.
- (d) Despite any other provision in this deed, a statement by Target or the Target Board to the effect that:
  - (1) the Target Board has determined that a Competing Proposal is a Superior Proposal and has commenced the matching right process set out in this clause 11.5; or

- (2) Target Shareholders should take no action pending the completion of the matching right process set out in this clause 11.5,

does not of itself:

- (3) constitute a change, withdrawal, modification or qualification of the recommendation by the Target directors or an endorsement of a Competing Proposal;
- (4) contravene this deed;
- (5) give rise to an obligation to pay the Reimbursement Fee under clause 12.2; or
- (6) give rise to a termination right under clause 14.1.

### 11.6 Compliance with law

- (a) If it is finally determined by a court, or the Takeovers Panel, that the agreement by the parties under this clause 11 or any part of it:
- (1) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the Target Board;
- (2) constituted, or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the Corporations Act; or
- (3) was, or is, or would be, unlawful for any other reason,
- then, to the extent determined by the court or Takeovers Panel, Target will not be obliged to comply with that part of the provision of clause 11.
- (b) Target must not make any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 11.6.

### 11.7 Usual provision of information

- (a) Nothing in this clause 11 prevents Target from:
- (1) providing any information to its Related Persons;
- (2) providing any information to any Government Agency;
- (3) providing any information required to be provided by any applicable law, including to satisfy its obligations under the Listing Rules or to any Government Agency;
- (4) providing any information to its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business; and
- (5) making presentations to, or responding to enquiries from, brokers, portfolio investors, analysts and other third parties, and engaging with financiers and potential financiers

## 12 Target Reimbursement Fee

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### 12.1 Background to Target Reimbursement Fee

- (a) Bidder and Target acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, Bidder will incur significant costs, including those set out in clause 12.4.
- (b) In these circumstances Bidder has requested that provision be made for the payments outlined in clause 12.2, without which Bidder would not have entered into this deed or otherwise agreed to implement the Scheme.
- (c) The Target Board believes, having taken advice from its external legal advisers and Financial Adviser, that the implementation of the Scheme will provide benefits to Target and that it is appropriate for Target to agree to the payments referred to in clause 12.2 in order to secure Bidder's participation in the Transaction.

### 12.2 Target Reimbursement Fee triggers

Subject to this clause 12, Target must pay the Target Reimbursement Fee to Bidder if:

- (a) during the Exclusivity Period, one or more Target Board Members (**Defaulting Director**) withdraws, adversely changes, adversely modifies or adversely qualifies their support of the Scheme or their recommendation that Target Shareholders vote in favour of the Scheme or fails to recommend that Target Shareholders vote in favour of the Scheme, (including by supporting, recommending or endorsing a Competing Proposal) in each case to the extent required by, and in the manner described in clause 5.8(a), provided that Bidder has terminated this deed in accordance with clause 14, unless:
  - (1) the Independent Expert concludes in the Independent Expert's Report or any update of, or any revision, amendment or supplement to, that report that the Scheme is not in the best interest of Target Shareholders (except where that conclusion is due to the existence, announcement or publication of a Competing Proposal);
  - (2) Target is entitled to terminate this deed pursuant to clause 14.1(a)(1) or clause 14.2(b), and has given the appropriate termination notice to Bidder;
  - (3) Target is entitled to terminate this deed pursuant to clause 3.4 as a result of the non-satisfaction of the Condition Precedent in clause 3.1(a) or 3.1(f) (unless the non-satisfaction was due to events, matters or circumstances within the control of the Target Group) and has given the appropriate termination notice to Bidder; or
  - (4) the Defaulting Director abstains from making a recommendation to Target Shareholders in accordance with an Abstain Requirement that relates to that Defaulting Director,

provided that, for the avoidance of doubt, a statement made by Target or the Target Board to the effect that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board or the completion of the matching rights process set out in clause 11.5 will not (of itself) require Target to pay the Target Reimbursement Amount to Bidder;

- (b) a Competing Proposal of any kind is announced during the Exclusivity Period (whether or not such proposal is stated to be subject to any pre-conditions) and, within 12 months of the date of such announcement, the Third Party to which the Competing Proposal relates, or any Associate of that Third Party:
  - (1) completes a Competing Proposal of a kind referred to in any of paragraphs 2, 3 or 4 of the definition of Competing Proposal; or
  - (2) without limiting clause 12.2(b)(1) acquires (either alone or in aggregate) a Relevant Interest in more than 50% of the Target Shares or otherwise acquires (either alone or in aggregate) Control of Target; or
- (c) Bidder has terminated this deed pursuant to:
  - (1) clause 3.4 due to a Target Prescribed Occurrence or Target Regulated Event;
  - (2) clause 14.1(a)(1);
  - (3) clause 14.1(d); or
  - (4) clause 14.2(a),and the Transaction does not complete.

### 12.3 Payment of Target Reimbursement Fee

- (a) A demand by Bidder for payment of the Target Reimbursement Fee under clause 12.2, must:
  - (1) be in writing;
  - (2) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (3) state the circumstances which give rise to the demand; and
  - (4) nominate an account in the name of Bidder into which Target is to pay the Target Reimbursement Fee.
- (b) Target must pay the Target Reimbursement Fee into the account nominated by Bidder, without set-off or withholding, within 10 Business Days after receiving a demand for payment where Bidder is entitled under clause 12.2 to the Target Reimbursement Fee.

### 12.4 Basis of Target Reimbursement Fee

- (a) The Target Reimbursement Fee has been calculated to reimburse Bidder for costs including, the following:
  - (1) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
  - (2) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
  - (3) costs of management and directors' time in planning and implementing the Transaction; and



- (4) out of pocket expenses incurred by the Bidder and its employees, advisers and agents in planning and implementing the Transaction.
- (b) The parties agree that the costs actually incurred by Bidder will be of such a nature that they cannot all be accurately ascertained and the Target Reimbursement Fee is a genuine and reasonable pre-estimate of those costs.
- (c) Target represents and warrants to the Bidder that it has received legal advice from its legal advisers in relation to the operation of this clause 12.

## 12.5 Compliance with law

- (a) This clause 12 does not impose an obligation on Target to pay the Target Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the Target Reimbursement Fee:
  - (1) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
  - (2) is determined to be unenforceable or unlawful by a court, provided that all proper avenues of appeal and review, judicial and otherwise, have been exhausted. For the avoidance of doubt, any part of the Target Reimbursement Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by Target.
- (b) The parties must not make or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 12.5(a).

## 12.6 Target Reimbursement Fee payable only once

Where the Target Reimbursement Fee becomes payable to Bidder under clause 12.2 and is actually paid to Bidder, Bidder cannot make any claim against Target for payment of any subsequent or additional Target Reimbursement Fee.

## 12.7 No Target Reimbursement Fee if Scheme becomes Effective

Despite anything to the contrary in this deed, if the Scheme becomes Effective, the Target Reimbursement Fee will not be payable to Bidder, notwithstanding the occurrence of any event in clause 12.2 and, if the Target Reimbursement Fee has already been paid it must be refunded by Bidder.

# 13 Bidder Reimbursement Fee

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## 13.1 Background to Bidder Reimbursement Fee

- (a) Bidder and Target acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, Target will incur significant costs, including those set out in clause 13.4.
- (b) In these circumstances Target has requested that provision be made for the payments outlined in clause 13.2, without which Bidder would not have entered into this deed or otherwise agreed to implement the Scheme.



### 13.2 Bidder Reimbursement Fee triggers

Subject to this clause 13, Bidder must pay the Bidder Reimbursement Fee to Target if the Scheme becomes Effective but Bidder does not provide the Scheme Consideration in accordance with the terms and conditions of this deed and the Deed Poll.

### 13.3 Payment of Bidder Reimbursement Fee

- (a) A demand by Target for payment of the Bidder Reimbursement Fee under clause 13.2, must:
- (1) be in writing;
  - (2) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (3) state the circumstances which give rise to the demand; and
  - (4) nominate an account in the name of Target into which Bidder is to pay the Bidder Reimbursement Fee.
- (b) Bidder must pay the Bidder Reimbursement Fee into the account nominated by Target, without set-off or withholding, within 10 Business Days after receiving a demand for payment where Target is entitled under clause 13.2 to the Bidder Reimbursement Fee.

### 13.4 Basis of Bidder Reimbursement Fee

- (a) The Bidder Reimbursement Fee has been calculated to reimburse Target for costs including, the following:
- (1) fees for legal, financial and other professional advice relating to the Transaction;
  - (2) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative acquisitions or strategic initiatives which Target could have developed to further its business and objectives;
  - (3) the distraction of Target's management from conducting Target's business as usual caused by pursuing the Scheme;
  - (4) costs of management and directors' time in planning and implementing the Transaction;
  - (5) damage to Target's reputation associated with a failed transaction and the implications of that damage to Target's business; and
  - (6) out of pocket expenses incurred by the Target and its employees, advisers and agents relating to the Transaction.
- (b) The parties agree that the costs actually incurred by Target will be of such a nature that they cannot all be accurately ascertained and the Bidder Reimbursement Fee is a genuine and reasonable pre-estimate of those costs.
- (c) Bidder represents and warrants to the Target that it has received legal advice from its legal advisers in relation to the operation of this clause 13.



### **13.5 Compliance with law**

- (a) This clause 13 does not impose an obligation on Bidder to pay the Bidder Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the Bidder Reimbursement Fee:
- (1) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
  - (2) is determined to be unenforceable or unlawful by a court, provided that all proper avenues of appeal and review, judicial and otherwise, have been exhausted. For the avoidance of doubt, any part of the Bidder Reimbursement Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by Bidder.
- (b) The parties must not make or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 13.5(a).

### **13.6 Bidder Reimbursement Fee payable only once**

- (a) Where the Bidder Reimbursement Fee becomes payable to Target under clause 13.2 and is actually paid to Target, Target cannot make any claim against Bidder for payment of any subsequent Bidder Reimbursement Fee.
- (b) The Bidder Reimbursement Fee is not payable where Bidder has become entitled to the Target Reimbursement Fee.

### **13.7 No Bidder Reimbursement Fee if Scheme becomes Effective**

Despite anything to the contrary in this deed, if the Scheme becomes Effective and proceeds to be implemented, the Bidder Reimbursement Fee will not be payable to Bidder, notwithstanding the occurrence of any event in clause 13.2 and, if the Bidder Reimbursement Fee has already been paid it must be refunded by Target.

### **13.8 Non-exclusive remedy**

Target's right to receive the Bidder Reimbursement Fee will not limit or otherwise affect Target's right to seek specific performance, injunctive relief or any other remedies that would otherwise be available in equity or law as a remedy for a breach or threatened breach of this deed by Bidder, provided that in no event will Target be entitled to receive both specific performance and payment of the Bidder Reimbursement Fee.

### **13.9 Claims under the Deed Poll**

Nothing in clause 13 limits the liability of Bidder in connection with the Deed Poll or the obligations under clause 4.3(b).

## 14 Termination

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### 14.1 Termination

- (a) Either party may terminate this deed by written notice to the other party:
- (1) other than in respect of a breach of either a Bidder Representation and Warranty or a Target Representation and Warranty (which are dealt with in clause 14.2), at any time before 8.00am on the Second Court Date, if the other party has materially breached this deed, the party wishing to terminate has given written notice to the party in breach of this deed setting out the relevant circumstances and stating an intention to terminate this deed, and the other party has failed to remedy the breach within five Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given;
  - (2) at any time before 8.00am on the Second Court Date if the Court or another Government Agency (including any other court) has taken any action permanently restraining or otherwise prohibiting or preventing the Transaction, or has refused to do anything necessary to permit the Transaction to be implemented by the End Date, and the action or refusal has become final and cannot be appealed or reviewed;
  - (3) in the circumstances set out in, and in accordance with, clause 3.4; or
  - (4) if the Effective Date for the Scheme has not occurred on or before the End Date other than as a result of any breach of this deed by the party purporting to terminate.
- (b) Bidder may terminate this deed by written notice to Target at any time before 8.00am on the Second Court Date if:
- (1) any Target Board Member:
    - (A) fails to recommend the Scheme;
    - (B) withdraws, adversely changes, adversely modifies or adversely qualifies their support of the Scheme or their recommendation that Target Shareholders vote in favour of the Scheme; or
    - (C) makes a public statement indicating that he or she no longer recommends the Transaction or recommends, supports or endorses another transaction (including any Competing Proposal, but excluding a statement that no action should be taken by Target Shareholders pending assessment of a Competing Proposal by the Target Board or the completion of the matching right process set out in clause 11.5),other than where:
    - (D) any Target Board Member is subject to an Abstain Requirement and merely complies with the Abstain Requirement; or
    - (E) the Independent Expert provides a report to Target (including either the Independent Expert's Report or any update of, or any revision, amendment or supplement to,



that Report) that concludes that the Scheme is not in the best interest of Target Shareholders.

- (c) Target may terminate this deed by written notice to Bidder at any time before 8.00am on the Second Court Date if the Target Board or a majority of the Target Board has changed, withdrawn, modified or qualified its recommendation as permitted under clause 5.8 and, if required to do so under clause 12.2, Target pays the Target Reimbursement Fee to Bidder.
- (d) Bidder may terminate this deed by written notice to Target at any time before 8.00am on the Second Court Date if in any circumstances Target enters into any legally binding agreement, arrangement or understanding, excluding a confidentiality or non-disclosure agreement or deed where the entry into such agreement or deed relates to any engagement or action permitted by clause 11.3, in relation to the undertaking or giving effect to any actual, proposed or potential Competing Proposal.

## 14.2 Termination for breach of representations and warranties

- (a) Bidder may, at any time prior to 8.00am on the Second Court Date, terminate this deed for a material breach of a Target Representation and Warranty only if:
  - (1) Bidder has given written notice to Target setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
  - (2) the relevant breach continues to exist 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 14.2(a)(1); and
  - (3) the relevant breach is material in the context of the Scheme taken as a whole.
- (b) For the avoidance of doubt, any breach of Warranty (j) in Schedule 3 resulting from an inaccuracy in the number of Target Shares or rights to Target Shares on issue will be deemed to be a material breach of the relevant Target Representation and Warranty and a breach which is material in the context of the Scheme taken as a whole enabling Bidder to terminate this deed under clause 14.2(a) if the impact, including on the total consideration payable by Bidder in accordance with this deed, is, or is reasonably likely to be, \$750,000 or more.
- (c) Target may, at any time before 8.00am on the Second Court Date, terminate this deed for breach of a Bidder Representation and Warranty only if:
  - (1) Target has given written notice to Bidder setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
  - (2) the relevant breach continues to exist 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 14.2(c)(1); and
  - (3) the loss that would reasonably be expected to follow from such a breach would be material or the breach would reasonably be expected to lead to Bidder not being able to provide the Scheme Consideration.
- (d) This deed is terminable if agreed to in writing by Bidder and Target.

### 14.3 Effect of termination

If this deed is terminated by either party under clause 3.4, 14.1 or 14.2:

- (a) each party will be released from its obligations under this deed, except that this clause 14.3, and clauses 1, 7.5 to 7.9 (inclusive), 8.1, 8.2, 10, 12, 13, 15, 16, 17 and 18 (except clause 18.10), will survive termination and remain in force;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this deed; and
- (c) in all other respects, all future obligations of the parties under this deed will immediately terminate and be of no further force and effect including any further obligations in respect of the Scheme.

### 14.4 Termination

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

### 14.5 No other termination

Neither party may terminate or rescind this deed except as permitted under clause 3.4, 14.1 or 14.2.

## 15 Duty, costs and expenses

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### 15.1 Stamp duty

Bidder:

- (a) must pay all Duty in respect of this deed or the Scheme or the steps to be taken under this deed or the Scheme; and
- (b) indemnifies Target against any liability arising from its failure to comply with clause 15.1(a).

### 15.2 Costs and expenses

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

## 16 GST

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- (a) Any consideration or amount payable under this deed, including any non-monetary consideration (as reduced in accordance with clause 16.1(e) if required) (**Consideration**) is exclusive of GST.



- (b) If GST is or becomes payable on a Supply made under or in connection with this deed, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under clause 16.1(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice, including by specifying the GST exclusive and specifying the amount of GST payable in relation to a taxable supply to which the Tax invoice relates.
- (d) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 16.1(b):
  - (1) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as applicable;
  - (2) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
  - (3) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 14 days after receiving such notification, as applicable. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.
- (e) Despite any other provision in this deed if an amount payable under or in connection with this deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (g) Any term starting with a capital letter in this clause 16 that is not defined in this clause 16 has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

## 17 Notices

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### 17.1 Form of Notice

A notice or other communication to a party under this deed (**Notice**) must be:

- (a) in writing and in English; and



- (b) addressed to that party in accordance with the details nominated in Schedule 1 (or any alternative details nominated to the sending party by Notice).

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

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

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee’s time) on a day that is not a Saturday, Sunday or a public holiday or bank holiday in the place of receipt (**business hours period**), then, other than in respect of any Notice given on, and prior to 8.00am on, the Second Court Date, the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By express post to the nominated address	At 9.00am (addressee’s time) on the second day that is not a Saturday, Sunday or a public holiday or bank holiday in the place of receipt after the date of posting
By email to the nominated email address	The first to occur of: <ol style="list-style-type: none"> <li>1 the sender receiving an automated message confirming delivery; or</li> <li>2 two hours after the time that the email was sent (as recorded on the device from which the email was sent) provided that the sender does not, within the period, receive an automated message that the email has not been delivered.</li> </ol>

## 17.3 Notice must not be given by electronic communication

A Notice must not be given by electronic means of communication (other than email as permitted in clause 17.2).

# 18 General

## 18.1 Governing law and jurisdiction

- (a) This deed is governed by the law in force in Victoria.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria and courts of appeal from them in respect of



any proceedings arising out of or in connection with this deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

**18.2 Service of process**

Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of Notices under clause 17.

**18.3 No merger**

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

**18.4 Invalidity and enforceability**

- (a) If any provision of this deed is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 18.4(a) does not apply where enforcement of the provision of this deed in accordance with clause 18.4(a) would materially affect the nature or effect of the parties' obligations under this deed.

**18.5 Waiver**

No party to this deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

The meanings of the terms used in this clause 18.5 are set out below.

<b>Term</b>	<b>Meaning</b>
<b>conduct</b>	includes delay in the exercise of a right.
<b>right</b>	any right arising under or in connection with this deed and includes the right to rely on this clause.
<b>waiver</b>	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

**18.6 Variation**

A variation of any term of this deed must be in writing and signed by the parties.



## **18.7 Assignment of rights**

- (a) A party may not assign, novate, declare a trust over or otherwise transfer or deal with any of its rights or obligations under this deed without the prior written consent of the other party or as expressly provided in this deed.
- (b) A breach of clause 18.7(a) by a party shall be deemed to be a material breach for the purposes of clause 14.1(a)(1).
- (c) Clause 18.7(b) does not affect the construction of any other part of this deed.

## **18.8 Acknowledgement**

Each party acknowledges that the remedy of damages may be inadequate to protect the interests of the parties for a breach of clause 11 and that Bidder is entitled to seek and obtain, without limitation, injunctive relief if Target breaches, or threatens to breach, clause 11.

## **18.9 No third party beneficiary**

This deed shall be binding on and inure solely to the benefit of each party to it and each of their respective permitted successors and assigns, and nothing in this deed is intended to or shall confer on any other person, other than the Bidder Indemnified Parties and the Target Indemnified Parties, in each case to the extent set forth in clause 7 and clause 8, any third party beneficiary rights. This clause 18.9 does not apply in relation to the Bidder's obligations to provide to each Scheme Shareholder the Scheme Consideration for each Scheme Share in accordance with and subject to the terms and conditions of this deed and the Scheme.

## **18.10 Further action to be taken at each party's own expense**

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this deed and the transactions contemplated by it.

## **18.11 Entire agreement**

This deed (including the documents in the Attachments to it), the Confidentiality Agreement and any other documents specified by the parties for the purposes of this clause 18.11 state all the express terms agreed by the parties in respect of their subject matter. They supersede all prior discussions, negotiations, understandings and agreements in respect of their subject matter.

## **18.12 Counterparts**

This deed may be executed in any number of counterparts.

## **18.13 Relationship of the parties**

- (a) Nothing in this deed gives a party authority to bind any other party in any way.
- (b) Nothing in this deed imposes any fiduciary duties on a party in relation to any other party.

## 18.14 Remedies cumulative

Except as provided in this deed and permitted by law, the rights, powers and remedies provided in this deed are cumulative with, and not exclusive of, the rights, powers and remedies provided by law independently of this deed.

## 18.15 Exercise of rights

- (a) Unless expressly required by the terms of this deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.

## 18.16 Withholding

- (a) Subject to clauses 18.16(c) to 18.16(f) inclusive, Bidder must make all payments that become due under the Scheme free and clear and without deduction of all present and future withholdings (including Taxes or Duties), unless required by law or the Bidder determines (acting reasonably) that it is required to pay an amount to the Commissioner of Taxation pursuant to Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) (a **CGT Withholding Amount**).
- (b) If Bidder determines (acting reasonably) that it is required to pay a CGT Withholding Amount with respect to the acquisition of the Scheme Shares from any Relevant Scheme Shareholder, Bidder will:
  - (1) determine the amount of the CGT Withholding Amount;
  - (2) withhold the CGT Withholding Amount from the Scheme Consideration and remit the CGT Withholding Amount to the Commissioner within the time required under Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) (**Subdivision 14-D**); and
  - (3) be deemed to have satisfied its obligations to pay the CGT Withholding Amount to the Scheme Shareholder for the purposes of the Scheme.
- (c) Bidder acknowledges and agrees that it must not deduct from the Scheme Consideration or pay to the Commissioner of Taxation any amounts under clause 18.16(b) with respect to a Relevant Scheme Shareholder where it has received an entity declaration from the Relevant Scheme Shareholder prior to the Implementation Date (**Entity Declaration**) and:
  - (1) the Entity Declaration is made in accordance with the requirements in section 14-225 of Subdivision 14-D and applies to a period that includes the Implementation Date; and
  - (2) Bidder does not know that the Entity Declaration is false.



- (d) If Bidder forms the view that it knows that an Entity Declaration it has received from a Relevant Scheme Shareholder is false, and Bidder received the Entity Declaration more than 30 days before the Implementation Date, Bidder agrees that it will not under clause 18.16(b) deduct from the Scheme Consideration or pay to the Commissioner of Taxation any amounts in respect of that Scheme Shareholder unless:
- (1) Bidder has, no fewer than 20 days before the Implementation Date, provided written notice to the Relevant Scheme Shareholder who has provided that Entity Declaration detailing the information upon which it relied to form that view;
  - (2) having provided the written notice referred to in clause 18.16(d)(1) to the Relevant Scheme Shareholder, Bidder has provided that Relevant Scheme Shareholder the opportunity to review the information in that notice and respond with its views on the matters set out in that notice by or before the date that is 10 days before the Implementation Date; and
  - (3) the Relevant Scheme Shareholder has either not responded to that notice by the time specified in clause, or has responded to that notice and Bidder, after having considered in good faith that response, continues to hold the view that it has knowledge that the Entity Declaration it has received from that Relevant Scheme Shareholder is false.
- (e) Target agrees that Bidder may approach the Australian Taxation Office to obtain clarification as to the application of Subdivision 14-D to the Transaction and will provide all information and assistance that Bidder reasonably requires for the purpose of making any such approach. Bidder agrees:
- (1) to provide Target a reasonable opportunity to review the form and content of all materials to be provided to the Australian Taxation Office, and must incorporate Target's reasonable comments on those materials, and more to take into account Target's comments in relation to Bidder's engagement with the Australian Taxation Office, and provide Target a reasonable opportunity to participate in any discussions and correspondence between Bidder and the Australian Taxation Office in connection with the application of Subdivision 14-D to the Transaction; and
  - (2) not to contact any Target Shareholders in connection with the application of Subdivision 14-D to the Transaction without Target's prior written consent
- (f) The parties agree to consult with each other in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the Australian Taxation Office following the process described in clause 18.16(d) in respect of any Target Shareholder.
- (g) For the purposes of this clause 18.16 a **Relevant Scheme Shareholder** means any Scheme Shareholder, at the time the Transaction is entered into:
- (1) that is:
    - (A) known or reasonably believed by Bidder to be a non-resident for the purposes of the Tax Act;
    - (B) not reasonably believed by Bidder to be an Australian resident for the purposes of the Tax Act, and either has an



- address outside Australia or has authorised Bidder to provide a financial benefit to a place outside Australia; or
    - (C) has a connection outside Australia of a kind specified in the regulations; and
  - (h) that is known or reasonably believed by the Bidder to hold, on an associate inclusive basis, 5% or more of the issued share capital in the Target.



## Schedules

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## Schedule 1

### Notice details

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#### Bidder

Address Level 2, 3-7 Murray Rose Avenue, Sydney Olympic Park NSW 2127, Australia

Attention James Couche – Vice President Legal & Contracts

Email

[REDACTED]

Copy

Lauren de Luca

[REDACTED]

Copy

Herbert Smith Freehills

**Address:** Level 33, ANZ Tower, 161 Castlereagh Street, Sydney NSW 2000 Australia

**Attn:** Tony Damian

**Email:** [Tony.Damian@hsf.com](mailto:Tony.Damian@hsf.com)

#### Target

Address Level 5, 990 Whitehorse Road, Box Hill, VIC 3128

Attention Paul Taylor

Email

[REDACTED]

Copy

MinterEllison



HERBERT  
SMITH  
FREEHILLS

**Address:** Level 20, Collins Arch, 447 Collins Street, Melbourne, VIC  
3000 Australia

**Attn:** Bart Oude-Vrielink

**Email:** [bart.oude-vrielink@minterellison.com](mailto:bart.oude-vrielink@minterellison.com)

## Schedule 2

### Bidder Representations and Warranties

---

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

- (a) **Bidder Information:** the Bidder Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Target Shareholders, will be accurate in all material respects and will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion being honestly held and formed on a reasonable basis), including by way of omission from that statement;
- (b) **basis of Bidder Information:** the Bidder Information:
  - (1) will be provided to Target in good faith and on the understanding that Target and each other Target Indemnified Party will rely on that information for the purposes of preparing the Scheme Booklet and determining to proceed with the Transaction; and
  - (2) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60, applicable Takeovers Panel guidance notes and the Listing Rules,and all information provided by or on behalf of Bidder to the Independent Expert will be prepared and provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (c) **new information:** it will, as a continuing obligation, 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 (including by way of omission);
- (d) **validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (e) **authority:** the execution and delivery of this deed by Bidder has been properly authorised by all necessary corporate action of Bidder, and Bidder has taken or will take all necessary corporate action to authorise the performance of this deed and to carry out the transactions contemplated by this deed;
- (f) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed and to carry out the transactions contemplated by this deed;
- (g) **no default:** neither this deed nor the carrying out by Bidder of the transactions contemplated by this deed does or will conflict with or result in the breach of or a default under:
  - (1) any provision of Bidder's constitution; or
  - (2) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other Bidder Group Member is bound



and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;

- (h) **deed binding:** this deed is a valid and binding obligation of Bidder, enforceable in accordance with its terms;
- (i) **Bidder:** Bidder will be a wholly-owned Subsidiary of Bidder TopCo;
- (j) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to it or another Bidder Group Member, nor has any regulatory action of any nature of which it is aware been taken, in each case that would reasonably be likely to prevent or restrict its ability to fulfil its obligations under this deed, under the Deed Poll or under the Scheme;
- (k) **Reasonable basis:** as at the date of this deed, Bidder has a reasonable basis to expect that it will have sufficient funds or financing to satisfy its obligations to provide:
  - (1) the Scheme Consideration in accordance with the terms of this deed, the Scheme and the Deed Poll;
  - (2) the Option Scheme Consideration in accordance with the terms of this deed, the Option Scheme and the Option Scheme Deed Poll; and
  - (3) the consideration for the cancellation of the Option Cancellation Deed Options; and
- (l) **Financing:** at 8.00am on the Second Court Date and on the Implementation Date, Bidder will have sufficient funds or financing available to it on an unconditional basis (other than, in respect of the Second Court Date only, any conditions relating to the approval of the Scheme and the Option Scheme by the Court, or procedural or documentary matters which can only be satisfied or performed after the Second Court Date) to enable Bidder to satisfy its obligations to provide the Scheme Consideration in accordance with the terms of this deed, the Scheme and the Deed Poll, the Option Scheme Consideration in accordance with the terms of the Option Scheme and the Option Scheme Deed Poll and the consideration payable for the cancellation of the Option Cancellation Deed Options.

## Schedule 3

### Target Representations and Warranties

---

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

- (a) **Target Information:** the Target Information contained in the Scheme Booklet, other than the Bidder Information, as at the date the Scheme Booklet is despatched to Target Shareholders, will be accurate in all material respects and will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion being honestly held and formed on a reasonable basis), including by way of omission from that statement;
- (b) **basis of Target Information:** the Target Information:
  - (1) will be prepared and included in the Scheme Booklet in good faith and on the understanding that Bidder and each other Bidder Indemnified Party will rely on that information for the purposes of determining to proceed with the Transaction and considering and approving the Bidder Information; and
  - (2) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60, applicable Takeovers Panel guidance notes and the Listing Rules,and all information provided by or on behalf of Target to the Independent Expert will be prepared and provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (c) **new information:** it will, as a continuing obligation (but in respect of the Bidder Information, only to the extent that Bidder provides Target with updates to the Bidder Information), ensure that the Scheme Booklet is updated or supplemented to include 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 Scheme Booklet is not misleading or deceptive (including by way of omission) in any material respect;
- (d) **validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (e) **authority:** the execution and delivery of this deed by Target has been properly authorised by all necessary corporate action of Target, and Target has taken or will take all necessary corporate action to authorise the performance by Target of this deed and the transactions contemplated by this deed;
- (f) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (g) **no default:** neither this deed nor the carrying out by Target of the transactions contemplated by this deed does or will conflict with or result in the breach of or a default under:
  - (1) any provision of Target's constitution; or



- (2) any material term or provision of any material agreement (including any financing arrangements) or any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other Target Group Member is bound,
- and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;
- (h) **deed binding:** this deed is a valid and binding obligation of Target, enforceable in accordance with its terms;
- (i) **continuous disclosure:** as at the date of this deed, Target is in compliance its continuous disclosure obligations under Listing Rule 3.1 and, other than for this Transaction, it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure;
- (j) **capital structure:** its capital structure, including all issued securities as at the date of this deed, is as set out in Schedule 4 and it has not issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into Target Shares other than as set out in Schedule 4 and it is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any shares, options, warrants, performance rights or other securities or instruments in Target other than as set out in Schedule 4;
- (k) **interest:** the Disclosure Materials set out full details of any company, partnership, trust, joint venture (whether incorporated or unincorporated) or other enterprise in which Target or another Target Group Member owns or otherwise holds any interest;
- (l) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to it or another Target Group Member, nor has any regulatory action of any nature been taken that would reasonably be likely to prevent or restrict its ability to fulfil its obligations under this deed or under the Scheme;
- (m) **compliance:** each member of the Target Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Government Agencies having jurisdiction over them;
- (n) **material licences:** the Target Group has all material licences, authorisations and permits necessary for it to conduct the business of the Target Group as it is being conducted as at the date of this deed and no member of the Target Group:
- (1) is in material breach of, or default under, any such licence, authorisation or permit; or
- (2) has received any notice in respect of the termination, revocation, variation or non-renewal of any such licence, authorisation or permit;
- (o) **Disclosure Materials:** it has collated and prepared all of the Disclosure Materials in good faith for the purposes of a due diligence process (but which process does not include due diligence on information of commercial or competitive sensitivity) and in this context, as far as Target is aware as at the date of this deed:
- (1) the information contained in the Disclosure Materials is accurate in all material respects;



- (2) the Disclosure Materials do not include information that is misleading in any material respect; and
- (3) no information has been omitted from the Disclosure Materials that, in Target's reasonable opinion, would render the Disclosure Materials misleading in any material respect,

except that no warranty or representation, express or implied, is given by or on behalf of the Target in relation to any forecast, forward looking statement, budget or projection contained or referred to in the Disclosure Materials other than that any statement of belief or opinion, including in such documents are honestly held and are formed on a reasonable basis;

- (p) **all information:** it is not aware of any information relating to the Target Group or its respective businesses or operations (having made reasonable enquiries) as at the date of this deed that has or could reasonably be expected to give rise to a Target Material Adverse Change that has not been disclosed in an announcement by Target to ASX or in the Disclosure Materials;
- (q) **not misleading:** all information it has provided or will provide to the Independent Expert, as contemplated by clause 5.2(s) or otherwise, or to Bidder, is accurate and not misleading, and it has not omitted any information required to make the information provided to the Independent Expert or Bidder not misleading;
- (r) **no contravention of Corporations Act or Listing Rules:** neither ASIC nor ASX has made a determination against any member of the Target Group for any contravention of the requirements of the Corporations Act or the Listing Rules or any rules, regulations or regulatory guides under the Corporations Act or the Listing Rules and, as far as Target is aware, no event has occurred which reasonably could or would reasonably be likely to result in such a determination being made;
- (s) **litigation:** there are no current Material Proceedings against any member of the Target Group and, as far as Target is aware there are no (i) current, pending or threatened Material Proceedings, or (ii) pending or threatened Material Proceedings, in each case against any member of the Target Group;
- (t) **encumbrances:** other than any Permitted Security Interest, on the Implementation Date there will be no security interest over all or any of the Target Group's present or future assets or revenues;
- (u) **no Target Material Adverse Change:** immediately prior to entry into this deed, no Target Material Adverse Change has occurred;
- (v) **financial statements:** there has not been any event, change, effect or development that would require Target to restate Target's financial statements as disclosed to ASX, and Target's financial statements for the financial year ended 30 June 2022 or the financial half year ended 31 December 2022:
  - (1) comply with applicable statutory requirements and were prepared in accordance with the Corporations Act, the Accounting Standards and all other applicable laws and regulations; and
  - (2) give a true and fair view of the financial position and the assets and liabilities of the Target Group;
- (w) **adviser fees:** as at the date of this deed Target has Fairly Disclosed in the Disclosure Materials the aggregate amount of any amounts expected to be payable by a Target Group Member to any financial, legal, accounting and other adviser in connection with the Transaction.



## Schedule 4

### Target details

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<b>Security</b>	<b>Total number on issue</b>
Target Shares	1,354,182,116
Target Options	142,501,771 Target Options, which collectively are capable of being converted into 142,501,771 Target Shares.
Option Cancellation Deed Options	53,000,000 options which collectively are capable of being converted into 53,000,000 Target Shares.



## Schedule 5

### Option Scheme Consideration

<b>Option tranche</b>	<b>Exercise price of the Target Options in the relevant tranche (A\$)</b>	<b>Expiry Date</b>	<b>Number of Target Options in the relevant tranche as at the date of this deed</b>	<b>Option Scheme Consideration per Target Option in the relevant tranche (A\$)</b>
EO1 – ESOP OPT: Options	\$0.2800	2 November 2023	13,711,996	\$0.0018
EO2 – ESOP OPT: Options	\$0.3500	2 November 2023	12,961,996	\$0.0006
EO3 – ESOP OPT: Options	\$0.2800	31 January 2025	6,400,000	\$0.0176
EO8 – ESOP OPT: Options	\$0.1500	16 August 2026	46,900,000	\$0.0541
OPW – U/L OPT: Warrant	\$0.1200	18 September 2024	18,083,334	\$0.0443
WR2 – WARRANTS: Warrant	\$0.4500	12 April 2025	44,444,445	\$0.0101



# Signing page

## Executed as a deed

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### Bidder

Signed sealed and delivered for  
**Thales Australia Holdings Pty Ltd**  
by its authorised individual on its behalf  
pursuant to section 126 of the *Corporations Act 2001* (Cth)

DocuSigned by:  
*Philippe More*  
sign here ▶ 74DBE3F2CED2491  
Authorised individual

print name Philippe More

### Target

Signed sealed and delivered by  
**Tesserent Limited**  
by

sign here ▶ \_\_\_\_\_  
Company Secretary/Director

sign here ▶ \_\_\_\_\_  
Director

print name \_\_\_\_\_

print name \_\_\_\_\_



# Signing page

## Executed as a deed

---

### Bidder

Signed sealed and delivered for  
**Thales Australia Holdings Pty Ltd**  
by its authorised individual on its behalf  
pursuant to section 126 of the *Corporations Act 2001* (Cth)

sign here ► \_\_\_\_\_  
Authorised individual

print name \_\_\_\_\_

### Target

Signed sealed and delivered by  
**Tesseract Limited**  
by

sign here ►   
Paul Taylor (Jun 10, 2023 14:37 GMT+10)  
Company Secretary/~~Director~~

print name Paul Taylor

sign here ►   
Kurt Hansen (Jun 10, 2023 14:35 GMT+10)  
Director

print name Kurt Hansen



## Attachment 1

### Indicative Timetable

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[Not reproduced here. Refer to ASX announcement dated 13 June 2023 for indicative timing.]



## Attachment 2

### Scheme of arrangement

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[Not reproduced here. Await Scheme Booklet.]



## Attachment 3

### Deed poll

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[Not reproduced here. Await Scheme Booklet.]



## Attachment 4

### Conditions Precedent certificate

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Target (**Target**) and Bidder (**Bidder**) certify, confirm and agree that each of the conditions precedent:

- 1 in clause [insert clause] (other than the condition in clause [insert clause] relating to Court approval) of the scheme implementation deed dated [insert date] between Target and Bidder (**SID**) has been satisfied or is hereby waived by the relevant party (or parties) to the SID in accordance with the terms of the SID;
- 2 in clauses [insert clause] of the scheme of arrangement between Target and the relevant Target shareholders which appears in Appendix [insert] to Target's scheme booklet dated [insert date] has been satisfied; and
- 3 in clauses [insert clause] of the option scheme of arrangement between Target and the relevant Target optionholders which appears in Appendix [insert] to Target's scheme booklet dated [insert date] has been satisfied.

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Dated: [insert date]

#### Executed as a deed

#### Target

Signed sealed and delivered by

**Tesserent Limited**

by

sign here ► \_\_\_\_\_  
Company Secretary/Director

print name \_\_\_\_\_

sign here ► \_\_\_\_\_  
Director

print name \_\_\_\_\_

---



HERBERT  
SMITH  
FREEHILLS

## Bidder

Signed sealed and delivered for  
**Thales Australia Holdings Pty Ltd**  
by its authorised individual on its behalf  
pursuant to section 126 of the *Corporations Act 2001* (Cth)

*sign here* ► \_\_\_\_\_  
Authorised individual

*print name* \_\_\_\_\_