

3 February 2015

## **Merger of Novion Property Group and Federation Centres to create one of Australia's leading REITs, invested across the full retail asset spectrum**

Novion Property Group (Novion, ASX: NVN) and Federation Centres (Federation, ASX: FDC) announce that they have entered into a Merger Implementation Agreement to merge subject to certain conditions (the "Merger"). The Merger will create one of Australia's leading REITs with over \$22 billion in assets under management ("AUM")<sup>1</sup>, invested across the full retail asset spectrum (the "Merged Group").

The Merger combines two highly complementary platforms to provide existing Novion and Federation securityholders with an enhanced investment proposition relative to each group on a stand alone basis, including:

- Increased portfolio scale and expertise;
- Material value creation via cost savings and future opportunities;
- Significant earnings and distribution accretion for each group;
- Improved growth opportunities;
- Enhanced asset, geographic and tenant diversification; and
- Greater relevance for equity and debt investors.

Implementation of the Merger requires the approval by Novion securityholders of Novion schemes of arrangement. Novion schemes of arrangement are required as Federation will act as the legal acquiring entity. This was determined to be the most efficient transaction structure, having regard to the existing corporate structures of Novion and Federation.

On implementation, each Novion security will be exchanged for 0.8225 Federation securities, which implies a current Novion value of \$2.55 per security relative to Novion's last close of \$2.32<sup>2</sup>. Based on the exchange ratio, existing Novion securityholders will own approximately 64% of the Merged Group and existing Federation securityholders will own approximately 36%.

The Novion and Federation Boards unanimously support the Merger and believe it represents a unique and compelling opportunity that creates significant value for both Novion and Federation securityholders.

### **Merged Group profile**

The Merged Group will be a significant owner and manager of Australian retail assets, fully diversified by retail asset type, geographic location and tenant mix. Key metrics of the Merged Group include:

- Over \$22 billion of retail assets under management across 102 retail assets with over \$18.2 billion in annual retail sales<sup>1</sup>;

1. As at 31 December 2014, adjusted for post balance date acquisitions and sales.

2. Based on closing trading prices as at 2 February 2015.

- 2<sup>nd</sup> largest listed manager of Australian retail assets and a top 10 listed manager of retail assets globally<sup>3</sup>;
- #1 owner / manager of Australian sub-regional and outlet centres; #2 in super-regional and regional centres combined;
- One of the largest retail landlords in Australia, with over 500 million annual customer visits to more than 9,500 retail tenancies over 3 million sqm of lettable area<sup>4</sup>; and
- A market capitalisation of over \$11 billion<sup>5</sup>, the 3<sup>rd</sup> largest A-REIT and an ASX top 30 entity.

### **Strategic rationale**

The Merger provides Novion and Federation securityholders with a number of key benefits relative to each group on a stand alone basis, including:

#### **1. Increased portfolio scale and expertise**

- Creates one of Australia's leading REITs, with over \$22 billion in AUM<sup>6</sup> invested across the full retail asset spectrum
- #1 owner / manager of Australian sub-regional and outlet centres; #2 in super-regional and regional centres combined
- Brings together each group's expertise to create an industry leading executive team

#### **2. Material value creation via cost savings and future opportunities**

- Merger expected to result in at least \$42 million p.a. of net operational cost savings (upon full integration) and \$35 million p.a. of net mark-to-market financing savings (crystallised on implementation), with a further \$7 million p.a. of expected cash flow savings via capitalised costs (within 12 months) – total net cost savings of at least \$84 million p.a.<sup>7</sup>
- Operational cost savings alone have the potential to create over \$700 million of value for Novion and Federation securityholders<sup>8</sup>
- Opportunities for additional revenue and strategic synergies to be extracted over time

#### **3. Significant earnings and distribution accretion for each group**

- Novion FY15 pro forma EPS and DPS accretion of +14.6% and +8.9% respectively<sup>9</sup>
- Federation FY15 pro forma EPS and DPS accretion of +5.8% and +8.1% respectively<sup>9</sup>

#### **4. Improved growth opportunities**

- Ability to apply each group's operational expertise and active management capability across the enlarged portfolio
- Provides the capability to unlock and optimise the combined development pipeline of \$2.5 billion
- Opportunity to integrate and expand strategic partnerships

3. Based on the constituents of the FTSE EPRA / NAREIT Global Index, adjusted to include CapitaLand Limited.

4. Based on total AUM.

5. Based on the combination of Novion's and Federation's stand alone market capitalisations as at 2 February 2015.

6. As at 31 December 2014, adjusted for post balance date acquisitions and sales.

7. Represents the total cost savings expected to be realised upon full integration net of external share of cost savings allocated to properties and the annual funding cost associated with the one-off costs incurred to achieve these savings.

8. Assumes net P&L corporate overhead and operational cost savings of \$42 million p.a. (net of capitalised cost savings and the annual funding cost associated with the one-off costs to achieve these savings) are capitalised at an earnings yield of 5.9% (the blended FY15 trading earnings yield of Novion and Federation as at 2 February 2015).

9. FY15 pro forma impact assuming the Merger was implemented on 1 July 2014 and total net P&L cost savings of approximately \$77 million p.a. are achieved (i.e. excluding \$7 million p.a. of capitalised cost savings).

## 5. Enhanced asset, geographic and tenant diversification

- Scale and relevance across all major retail asset classes
- Exposure to all key Australian retail markets
- Balanced exposure to discretionary and non-discretionary retail spending
- One of the largest retail landlords in Australia with more than 9,500 retail tenancies<sup>10</sup>

## 6. Greater relevance for equity and debt investors

- Market capitalisation of over \$11 billion<sup>11</sup> – the 3<sup>rd</sup> largest A-REIT and an ASX top 30 entity
- Enlarged balance sheet to provide greater flexibility and increased diversification of funding (by source and tenor)

## Governance

The Merged Group will benefit from a highly experienced Board and senior executive team that draws on the breadth of both groups' skills and expertise.

Upon implementation of the Merger, Mr Peter Hay (a current Novion Independent Non-executive Director) will be Chairman of the Merged Group. Mr Richard Haddock AM (current Chairman of Novion) will continue as a Director of the Merged Group. Dr Bob Edgar (current Chairman of Federation) will step down from his role as a Director should the Merger be implemented. The Gandel Group (which will have a 13.8% direct interest in the Merged Group<sup>12</sup> and will be the co-owner of the Merged Group's largest asset, Chadstone Shopping Centre) will also retain two Board representatives.

Mr Steven Sewell (the current CEO of Federation) will become CEO of the Merged Group. Should the Merger be implemented, Mr Angus McNaughton (CEO and Managing Director of Novion) and Mr Michael Gorman (Deputy CEO and Chief Investment Officer of Novion) will step down from their current roles.

Mr Sewell said: "I am excited about the opportunity to lead the Merged Group. The Merger brings together two high quality management teams, creating an industry leading executive team with expert skills in managing the full spectrum of retail assets. In addition, the complementary platforms will provide both Novion and Federation securityholders with a well-balanced exposure to the major retail categories and across discretionary and non-discretionary spending."

## Implementation process

In addition to the approval by Novion securityholders of Novion schemes of arrangement, the Merger is also subject to other customary conditions including: court approval, regulatory approvals (including Foreign Investment Review Board) and an independent expert concluding the Merger is fair and reasonable to, and in the best interest of, Novion securityholders.

Customary deal protections and mutual break fees (\$40 million) have also been agreed by Novion and Federation.

The obligations of Novion and Federation regarding the implementation of the Merger, the deal protections and mutual break fees are set out in a Merger Implementation Agreement entered into by both parties. A full copy of this agreement is attached to this announcement.

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10. Based on total AUM.

11. Based on the combination of Novion's and Federation's stand alone market capitalisation as at 2 February 2015.

12. The Gandel Group currently has a 26.2% relevant interest in Novion securities, comprising a 21.6% direct interest and a 4.6% indirect interest held pursuant to a right of first refusal arrangement with the Commonwealth Bank of Australia ("CBA"). The Gandel Group will have a direct interest in the Merged Group of 13.8% and a relevant interest of 16.8%.

A scheme booklet (which will include an independent expert's report) is expected to be sent to Novion securityholders in April 2015.

The Merged Group is expected to transition to a new corporate name as part of the integration process.

### **Board support and Gandel Group intention**

Novion's Board unanimously recommends the Merger, in the absence of a superior proposal and subject to an independent expert concluding the Merger is fair and reasonable to, and in the best interests of, Novion securityholders. Federation's Board believes the Merger is in the best interests of Federation securityholders, and unanimously supports the Merger.

Mr Haddock said, "Based on the strategic rationale identified and the terms agreed with Federation, the Board of Novion believes the Merger represents a unique and compelling opportunity for Novion securityholders that creates significant value."

Dr Edgar added, "The combination of Novion and Federation provides Federation securityholders with an opportunity to create significant value by forming one of Australia's leading REITs."

Novion's largest securityholder, the Gandel Group (which has a 21.6% direct interest in Novion<sup>13</sup> and is the co-owner of Novion's largest asset, Chadstone Shopping Centre), has advised that its intention is to vote in favour of the Merger, based on the disclosed Merger terms and in the absence of a superior proposal.

### **Indicative timetable**

A number of expected key dates relevant to the Merger have been outlined below.

<b>Key dates</b>	<b>Date</b>
Announcement of the Merger	3 February 2015
Novion FY15 half year results	18 February 2015
Federation FY15 half year results	19 February 2015
Federation 1H15 distribution payment	25 February 2015
Novion 1H15 distribution payment and allotment of DRP securities	26 February 2015
First court hearing	April 2015
Scheme booklet dispatched to Novion securityholders	
Novion securityholder meeting to approve the schemes	May 2015
Final court hearing	
Implementation date	June 2015

*Note: these dates are indicative only and may be subject to change.*

### **Advisers**

Novion has engaged Macquarie Capital (Australia) Limited as its financial adviser and Ashurst Australia as its legal adviser.

Federation has engaged Merrill Lynch and UBS AG, Australia Branch as its financial advisers, with KPMG as strategic adviser. Allens and Minter Ellison have been engaged as legal advisers.

13. The Gandel Group currently has a 26.2% relevant interest in Novion securities, comprising a 21.6% direct interest and a 4.6% indirect interest held pursuant to a right of first refusal arrangement with CBA.

### Presentation and market briefing

To provide an overview of the Merger in greater detail, a presentation has also been released to the ASX today.

A joint Novion and Federation briefing for investors and analysts will also be held at 10:30am Australian Eastern Daylight Time (AEDT) today.

<b>Time</b>	10:30am AEDT
<b>Conference call</b>	<u>Australia dial-in:</u> 1800 908 299 <u>International dial-in:</u> +61 2 9007 8048 <u>Participant password:</u> t2814 (when asked by the operator)
<b>Live webcast</b>	<a href="http://webcasting.brrmedia.com/broadcast/133506">http://webcasting.brrmedia.com/broadcast/133506</a>

### Key contacts

#### Novion Property Group

##### Angus McNaughton

CEO and Managing Director

T +61 2 8229 7801

E [angus.mcnaughton@novion.com.au](mailto:angus.mcnaughton@novion.com.au)

##### Penny Berger

Head of Investor Relations and Communications

T +61 2 8229 7760

E [penny.berger@novion.com.au](mailto:penny.berger@novion.com.au)

#### Federation Centres

##### Media: Brandon Phillips

General Manager External Affairs

T +61 3 9236 6321

E [brandon.phillips@federationcentres.com.au](mailto:brandon.phillips@federationcentres.com.au)

##### Investors: Grant Mackenzie

Senior Investor Relations

T +61 3 9236 6328

E [grant.mackenzie@federationcentres.com.au](mailto:grant.mackenzie@federationcentres.com.au)

**ENDS**

### About Novion Property Group

Novion Property Group (Novion, ASX:NVN) is one of Australia's leading retail property groups, with a fully integrated funds and asset management platform, and \$14.9 billion in retail assets under management. Listed on the Australian Securities Exchange, Novion holds interests in 27 directly-owned retail assets across Australia, manages 19 assets on behalf of strategic partners (9 of which are co-owned with Novion) and has over 17,000 investors across 19 countries. For more information, visit [www.novion.com.au](http://www.novion.com.au).

### About Federation Centres

Federation Centres (Federation, ASX:FDC) is a fully vertically integrated Australian real estate investment trust (A-REIT) specialising in the ownership and management of Australian shopping centres. With \$7.3 billion of shopping centres under management, FDC employs approximately 600 people with offices in Melbourne, Sydney, Brisbane and Perth. For more information, please visit the FDC website at [www.federationcentres.com.au](http://www.federationcentres.com.au).

Federation Limited  
Federation Centres Limited  
Novion Limited  
Novion RE Limited

## Merger Implementation Agreement

Allens  
101 Collins Street  
Melbourne VIC 3000 Australia  
T +61 3 9614 1011  
F +61 3 9614 4661  
[www.allens.com.au](http://www.allens.com.au)

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This Agreement is made on **3 February 2015**

## Parties

- 1 **Federation Limited** (ABN 90 114 757 783) of Level 28, 35 Collins Street, Melbourne, Victoria, 3000 (**Federation Co**).
- 2 **Federation Centres Limited** (ABN 88 149 781 322) of Level 28, 35 Collins Street, Melbourne, Victoria, 3000, in its capacity as responsible entity of Federation Centres Trust No.1 (ARSN 104 931 928) (**Federation Trust RE**).
- 3 **Novion Limited** (ABN 79 167 087 363) of Level 39, MLC Centre, 19 Martin Place, Sydney, NSW, 2000 (**Novion Co**).
- 4 **Novion RE Limited** (ABN 33 084 098 180) of Level 39, MLC Centre, 19 Martin Place, Sydney, NSW, 2000, in its capacity as responsible entity of Novion Trust (ARSN 090 150 280) (**Novion Trust RE**).

## Recitals

- A Novion is a double-stapled group listed on ASX. The two investment vehicles that comprise Novion are Novion Trust and Novion Co.
- B Federation is also a double-stapled group listed on ASX. The two investment vehicles that comprise Federation are Federation Trust and Federation Co.
- C Federation and Novion are proposing a transaction under which:
  - a) Federation Co will acquire all of the Company Scheme Shares in Novion Co pursuant to the Company Scheme; and
  - b) Federation Trust RE will acquire all of the Trust Scheme Units in Novion Trust pursuant to the Trust Scheme.
- D Novion has agreed to propose the Company Scheme and the Trust Scheme to Novion Securityholders and to issue the Scheme Booklet to Novion Securityholders, and Federation and Novion have agreed to implement the Schemes, upon and subject to the terms and conditions of this Agreement.

**It is agreed** as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

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

**Adviser** means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity to the market in general and who has been engaged by that entity.

**Agreed Public Announcement** means the public announcement to be made jointly by Federation and Novion in the form of Schedule 3.

**Announcement Date** means:

- (a) the date on which this Agreement is executed; or

- (b) if this Agreement is executed on a day that is not a Trading Day, the first Trading Day immediately following the day of execution.

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

**Associate** has the meaning given in section 12(2) of the Corporations Act, where Novion is the 'designated body'.

**ASX** means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market known as 'ASX' operated by ASX Limited.

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

**ATO** means the Australian Taxation Office.

**Business Day** means any day that is each of the following:

- (a) a Business Day within the meaning given in the ASX Listing Rules; and
- (b) a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Melbourne and Sydney, Australia.

**Communications** means all forms of communications, whether written, oral, in electronic format or otherwise that are approved by a party, and whether direct or indirect via its agents or Representatives provided such agents or Representatives are approved by the party to make the Communication.

**Company General Meeting** means the meeting of Novion Co Shareholders to be convened by Novion Co to consider the Company General Meeting Resolution and to be held on the same day as the Company Scheme Meeting, and includes any adjournment of such meeting.

**Company General Meeting Resolution** means a special resolution of Novion Co Shareholders approving the unstapling of Novion Trust Units from Novion Co Shares.

**Company Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between Novion Co and Novion Co Shareholders substantially in the form agreed on behalf of Federation and Novion on the date of this Agreement, or in such other form as Federation and Novion may agree in writing (such agreement not to be unreasonably withheld).

**Company Scheme Consideration** means the consideration to be provided to Company Scheme Participants under the terms of the Company Scheme for the transfer to Federation Co of their Company Scheme Shares, as described in clause 4.

**Company Scheme Meeting** means the meeting of Novion Co Shareholders to be ordered by the Court to be convened under section 411(1) of the Corporations Act in relation to the Company Scheme, and includes any adjournment of that meeting.

**Company Scheme Participant** means each person who is registered in the Novion Register as at the Record Date as a holder of Company Scheme Shares.

**Company Scheme Resolution** means the resolution to be put to Novion Co Shareholders to approve the Company Scheme (such resolution to be put to Novion Co Shareholders at the Company Scheme Meeting and that, to be passed, must be approved by the requisite majorities of Novion Co Shareholders under section 411(4)(a)(ii) of the Corporations Act).

**Company Scheme Shares** means the Novion Co Shares on issue as at the Record Date.

**Competing Proposal** means any expression of interest, proposal, offer, transaction or arrangement (other than any Transaction that may be made and implemented in accordance with this Agreement) by or with any person pursuant to which, if the expression of interest, proposal, offer, transaction or arrangement is entered into or completed substantially in accordance with its terms:

- (a) a Third Party will (other than as custodian, nominee or bare trustee):
- (i) acquire an interest in, or a Relevant Interest in, or become the holder of, 20% or more of the securities in any Novion Group Member;
  - (ii) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in, all or a substantial part of the assets or business of any Novion Group Member;
  - (iii) otherwise acquire control (within the meaning of section 50AA of the Corporations Act) of any Novion Group Member; or
  - (iv) otherwise directly or indirectly acquire, merge or amalgamate with, or acquire a significant security holding or economic interest in, any Novion Group Member or in all or a substantial part of their respective assets or business, whether by way of takeover offer, scheme of arrangement, securityholder approved acquisition, capital reduction, share or unit buy-back or repurchase, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding company or new holding trust for the Novion Group or other synthetic merger or any other transaction or arrangement,
- excluding:
- (i) any transaction or arrangement involving a first right of refusal granted by the Commonwealth Bank of Australia to The Gandel Group Pty Ltd as trustee for The Gandel Group Family Trust on 3 October 2002 in respect of Novion Stapled Securities, pursuant to which, if The Gandel Group Pty Ltd as trustee for The Gandel Group Family Trust exercises its first right of refusal, it will acquire Novion Stapled Securities from the Commonwealth Bank of Australia; and
  - (ii) any acquisition of Novion Stapled Securities by The Gandel Group Pty Ltd as trustee for The Gandel Group Family Trust that is exempt from the prohibition in section 606(1) of the Corporations Act by virtue of the exception in item 9 of section 611 of the Corporations Act; or
- (b) Novion would be required to abandon or otherwise fail to proceed with either of the Schemes or the Transactions, by whatever means.

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

**Confidentiality Deed** means the deed of that name between Federation and Novion dated 21 October 2014.

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

**Court** means the Federal Court of Australia or such other court of competent jurisdiction as Federation and Novion may agree in writing.

**Effective** means, when used in relation to the Schemes, all of the following events taking place:

- (a) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to the Company Scheme; and
- (b) the Novion Trust Supplemental Deed taking effect pursuant to section 601GC(2) of the Corporations Act.

**Effective Date** means the date on which each of the Schemes becomes Effective.

**End Date** means the date which is six months after the date of this Agreement, or such later date

as Federation and Novion may agree in writing.

**Entity** includes a natural person, a body corporate, a partnership, a trust and the trustee of a trust.

**Exclusivity Period** means the period commencing on the date of this Agreement and ending on the earlier of:

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

**Executive** means the Chief Executive Officer and any direct reports to the Chief Executive Officer.

**First Court Date** means the first day of hearing of an application made to the Court by Novion for the First Court Orders and the First Judicial Advice or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**First Court Orders** means orders pursuant to section 411(1) of the Corporations Act convening the Company Scheme Meeting.

**First Judicial Advice** means confirmation from the Court under section 63 of the *Trustee Act 1925* (NSW) that:

- (a) Novion Trust RE would be justified in convening the Trust Meeting for the purposes of considering the Trust Scheme Resolutions; and
- (b) subject to Novion Trust Unitholders passing the Trust Scheme Resolutions, Novion Trust RE would be justified in proceeding on the basis that amending the Novion Trust Constitution as set out in the Novion Trust Supplemental Deed would be within the powers of alteration conferred by the Novion Trust Constitution and section 601GC of the Corporations Act.

**Federation** means Federation Centres, being Federation Trust and Federation Co, or one of them as the context requires.

**Federation Acquisition Proposal** means any expression of interest, proposal, offer, transaction or arrangement (other than any Transaction that may be made and implemented in accordance with this Agreement) by or with any person pursuant to which, if the expression of interest, proposal, offer, transaction or arrangement is entered into or completed substantially in accordance with its terms a Third Party will (other than as custodian, nominee or bare trustee):

- (a) acquire an interest in, or a Relevant Interest in, or become the holder of, 20% or more of the securities in any Federation Group Member;
- (b) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in, all or a substantial part of the assets or business of any Federation Group Member;
- (c) otherwise acquire control (within the meaning of section 50AA of the Corporations Act) of any Federation Group Member; or
- (d) otherwise directly or indirectly acquire, merge or amalgamate with, or acquire a significant security holding or economic interest in, any Federation Group Member or in all or a substantial part of their respective assets or business, whether by way of takeover offer, scheme of arrangement, securityholder approved acquisition, capital reduction, share or unit buy-back or repurchase, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding company

or new holding trust for the Federation Group or other synthetic merger or any other transaction or arrangement.

**Federation Board** means the board of directors of Federation Co and the board of directors of Federation Trust RE (as those boards are constituted from time to time), and includes any authorised committee of directors of those boards.

**Federation Break Fee** means an amount equal to \$40 million (exclusive of GST).

**Federation Co Share** means a fully paid ordinary share issued in the capital of Federation Co.

**Federation Co Shareholder** means a person who is registered in the Federation Register as a holder of Federation Co Shares from time to time.

**Federation Data Room** means the Ansarada online data room, established by or on behalf of Federation containing the documents, information and materials listed in the Federation Data Room Index.

**Federation Data Room Index** means the index of Federation Data Room documents, as contained on a USB flash drive provided by Federation to Novion prior to the date of this Agreement.

**Federation Deed Poll** means a deed poll to be executed by Federation in favour of the Schemes Participants substantially in the form agreed on behalf of Federation and Novion on the date of this Agreement (or in such other form as Federation and Novion may agree in writing).

**Federation Director** means a director of Federation Co or a director of Federation Trust RE.

**Federation Disclosed Information** means all information (in whatever form) provided by Federation or any of its Representatives to Novion or any of its Representatives in connection with the Schemes or relating to the Federation Group's past, present or future operations, affairs, business and/or strategic plans, whether provided before or after entry into this Agreement and whether provided for the purpose of facilitating Novion's due diligence investigations in relation to the Federation Group or otherwise (including information provided by way of access to data rooms, site visits, management presentations, and interviews and discussions with or other access to the Federation Group's external auditors and Advisers).

**Federation Disclosure Letter** means a letter dated the date of this Agreement addressed by Federation to Novion disclosing facts, matters and circumstances that are inconsistent with the Federation representations and warranties set out in clause 9.1.

**Federation Disclosure Materials** means the following information given or made available by or on behalf of Federation to Novion prior to the date of this Agreement:

- (a) the documents listed in the Federation Data Room Index provided such documents were uploaded into the Federation Data Room before 30 January 2015, as contained on a USB flash drive provided by Federation to Novion prior to the date of this Agreement;
- (b) the written answers provided by, or on behalf of, Federation to questions asked by, or on behalf of, Novion through the Federation Data Room, as contained on a USB flash drive provided by Federation to Novion prior to the date of this Agreement; and
- (c) the information set out in the Federation Disclosure Letter.

**Federation ESP** means the Federation Long Term Incentive Plan.

**Federation Group** means Federation and its Subsidiaries.

**Federation Group Member** means a member of the Federation Group.

**Federation Indemnified Party** means:

- (a) each Federation Group Member; and

- (b) each Officer of each Federation Group Member.

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

- (a) diminishes, or is reasonably likely to diminish, (whether now or in the future) the consolidated net assets of the Federation Group by an amount equal to \$180 million or more, excluding:
  - (i) property re-valuations undertaken by the Federation Group in connection with preparation of Federation's 31 December 2014 financial statements; and
  - (ii) the impact of any write down or write off of IT costs;
- (b) diminishes, or is reasonably likely to diminish, (whether in the Federation Group's current financial year or in a future financial year) the underlying earnings (to be calculated by reference to the manner in which 'underlying earnings' were calculated in the most recent Federation results presentation) of the Federation Group by an amount equal to \$13 million or more, which amount will be calculated after taking into account any event, occurrence or matter not disclosed prior to the date of this Agreement that has or could reasonably be expected to have a positive effect on the underlying earnings of the Federation Group in the relevant financial year; or
- (c) has the result that the Federation Group is unable to carry on its business in substantially the same manner as carried on as at the date of this Agreement, or that otherwise materially and adversely affects the prospects of the Federation Group,

other than an event, occurrence or matter:

- (d) required to be undertaken or procured by the Federation Group pursuant to the Transaction Documents;
- (e) to the extent that event, occurrence or matter is fairly disclosed prior to entry into this Agreement in the Federation Disclosed Information; or
- (f) to the extent that event, occurrence or matter was known to Novion prior to the date of this Agreement (which does not include knowledge of the risk of an event, occurrence or matter happening).

**Federation New Significant Contract** means a contract or commitment requiring total payments in excess of or which are reasonably likely to be in excess of \$32 million per annum.

**Federation Performance Right** means a right to acquire a Federation Stapled Security granted by Federation under the Federation ESP.

**Federation Provided Information** means all information regarding the Federation Group and the Merged Group that is provided by or on behalf of Federation to Novion, including the information that is referred to in clause 5.5(a), to enable the Scheme Booklet to be prepared and completed in accordance with clause 5.1, and any updates to that information provided by or on behalf of Federation to Novion in accordance with clause 5.5(d).

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

**Federation Regulated Event** has the meaning given in Part 1 of Schedule 1.

**Federation Securityholder** means a person who is registered in the Federation Register as a holder of Federation Stapled Securities from time to time.

**Federation Stapled Security** means a stapled security comprising a Federation Co Share and a Federation Trust Unit.

**Federation Trust** means Federation Centres Trust No.1 (ARSN 104 931 928).

**Federation Trust Constitution** means the constitution establishing Federation Trust dated 29 May 2003, as amended from time to time.

**Federation Trust Unit** means a fully paid ordinary unit in Federation Trust.

**Federation Trust Unitholder** means a person who is registered in the Federation Register as the holder of Federation Trust Units.

**FY15 Distribution Forecast** means the forecast of the distribution to be made to Federation Securityholders by Federation in respect of the six month period ending 30 June 2015, assuming the Schemes are approved, take effect and are fully implemented before the record date for that distribution, such that the registered holders of the Scheme Consideration on that record date will be entitled to the distribution that is the subject of the FY15 Distribution Forecast.

**Governmental Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister (including, for the avoidance of doubt, the Commonwealth Treasurer), ASIC, the ACCC, the ATO, ASX and any regulatory organisation established under statute or any stock exchange.

**Group** means the Federation Group or the Novion Group, as applicable.

**Group Member** means a Federation Group Member or a Novion Group Member, as applicable.

**GST** means a goods and services tax or similar value added tax levied or imposed in Australia.

**Implementation Date** means the date that is three Business Days after the Record Date, or such other date as Novion and Federation may agree in writing or as may be required by ASX.

**Independent Expert** means an independent expert to be engaged by Novion to express an opinion on whether the Schemes are fair and reasonable to and in the best interests of Novion Securityholders.

**Independent Expert's Report** means the report from the Independent Expert commissioned by Novion for inclusion in the Scheme Booklet, and any update to such report that the Independent Expert issues prior to the date of the Meetings.

**Ineligible Foreign Novion Securityholder** means a Schemes Participant whose address, as shown in the Novion Register (as at the Record Date), is in a place outside Australia and Australia's external territories, unless Federation is satisfied, acting reasonably, that the laws of that place permit the allotment and issue of Federation Stapled Securities to that Schemes Participant pursuant to the Schemes, either unconditionally or after compliance with conditions that Federation in its sole discretion regards as acceptable and not unduly onerous or impracticable.

**Investigating Accountant** means an accounting firm appointed for the purpose of reporting on financial information included in the Scheme Booklet.

**Investigating Accountant's Report** means the report from the Investigating Accountant to be addressed to the Novion Board and included in the Scheme Booklet.

**Joint Information** means:

- (a) the pro forma financial information relating to the Merged Group contained in the Scheme Booklet and the adjustments made to the relevant historical financial information to generate such pro forma financial information;
- (b) the FY15 Distribution Forecast; and
- (c) the Synergy Forecast.

**Material Contract** means:

- (a) in respect of Novion, the agreements set out in a list prepared by Novion; and
  - (b) in respect of Federation, the agreements set out in a list prepared by Federation,
- each in a form agreed by the other party prior to the date of this Agreement.

**Meetings** means the Company Scheme Meeting, the Company General Meeting and the Trust Meeting.

**Merged Group** means Federation and its Subsidiaries, immediately after implementation of the Transactions.

**MIA Compatible and Compelling Proposal** means a bona fide Federation Acquisition Proposal received by Federation that the Federation Board determines, acting in good faith and in order to satisfy what the Federation Board considers to be its fiduciary or statutory duties:

- (a) is capable of being implemented by Federation without Federation breaching any of its obligations under this Agreement;
- (b) is not subject to a condition either that the Schemes or the Transactions do not proceed or they, or either of them, only proceed if approved by the Federation Securityholders;
- (c) if the proposal involves the provision of any benefit to Federation Securityholders, such benefit would not be provided prior to the Implementation Date and would be available to Schemes Participants in their capacity as Federation Securityholders; and
- (d) is a proposal that compels the Federation Board to act prior to the Implementation Date, after taking into account a qualitative assessment of the identity, expertise and experience in the Australian retail property and property leasing sectors, reputation and financial standing of the party making the Federation Acquisition Proposal.

**Novion** means Novion Property Group, being Novion Trust and Novion Co, or one of them as the context requires.

**Novion Board** means the board of directors of Novion Co and the board of directors of Novion Trust RE (as those boards are constituted from time to time), and includes any authorised committee of directors of those boards.

**Novion Break Fee** means an amount equal to \$40 million (exclusive of GST).

**Novion Co Share** means a fully paid ordinary share in Novion Co.

**Novion Co Shareholder** means a person who is registered in the Novion Register as a holder of Novion Co Shares from time to time.

**Novion Data Room** means the Intralinks online data room, established by or on behalf of Novion containing the documents, information and materials listed in the Novion Data Room Index.

**Novion Data Room Index** means the index of Novion Data Room documents, as contained on a USB flash drive provided by Novion to Federation prior to the date of this Agreement.

**Novion Director** means a director of Novion Co or a director of Novion Trust RE.

**Novion Disclosed Information** means all information (in whatever form) provided by Novion or its Representatives to Federation or its Representatives in connection with the Schemes or relating to the Novion Group's past, present or future operations, affairs, business and/or strategic plans, whether provided before or after entry into this Agreement and whether provided for the purpose of facilitating Federation's due diligence investigations in relation to the Novion Group or otherwise (including information provided by way of access to data rooms, site visits, management presentations, and interviews and discussions with or other access to the Novion

Group's external auditors and Advisers).

**Novion Disclosure Letter** means a letter dated the date of this Agreement addressed by Novion to Federation disclosing facts, matters and circumstances that are inconsistent with the Novion representations and warranties set out in clause 9.2.

**Novion Disclosure Materials** means the following information given or made available by or on behalf of Novion to Federation prior to the date of this Agreement:

- (a) the documents listed in the Novion Data Room Index provided such documents were uploaded into the Novion Data Room before 30 January 2015, as contained on a USB flash drive provided by Novion to Federation prior to the date of this Agreement;
- (b) the written answers provided by, or on behalf of, Novion to questions asked by, or on behalf of, Federation through the Novion Data Room, as contained on a USB flash drive provided by Novion to Federation prior to the date of this Agreement; and
- (c) the information set out in the Novion Disclosure Letter.

**Novion ESP** means the Novion Long Term Incentive Plan.

**Novion Group** means Novion and its Subsidiaries.

**Novion Group Member** means a member of the Novion Group.

**Novion Indemnified Party** means:

- (a) each Novion Group Member; and
- (b) each Officer of each Novion Group Member.

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

- (a) diminishes, or is reasonably likely to diminish, (whether now or in the future) the consolidated net tangible assets of the Novion Group by an amount equal to \$300 million or more, excluding:
  - (i) property re-valuations undertaken by the Novion Group in connection with preparation of Novion's 31 December 2014 financial statements; and
  - (ii) the impact of any write down or write off of IT costs;
- (b) diminishes, or is reasonably likely to diminish, (whether in the Novion Group's current financial year or in a future financial year) the distributable income (to be calculated by reference to the manner in which 'distributable income' was calculated in the most recent Novion results presentation) of the Novion Group by an amount equal to \$20 million or more, which amount will be calculated after taking into account any event, occurrence or matter not disclosed prior to the date of this Agreement that has or could reasonably be expected to have a positive effect on the distributable income of the Novion Group in the relevant financial year; or
- (c) has the result that the Novion Group is unable to carry on its business in substantially the same manner as carried on as at the date of this Agreement, or that otherwise materially and adversely affects the prospects of the Novion Group,

other than an event, occurrence or matter:

- (d) required to be undertaken or procured by the Novion Group pursuant to the Transaction Documents;
- (e) to the extent that event, occurrence or matter is fairly disclosed prior to entry into this Agreement in the Novion Disclosed Information; or

- (f) to the extent that event, occurrence or matter was known to Federation prior to the date of this Agreement (which does not include knowledge of the risk of an event, occurrence or matter happening).

**Novion New Significant Contract** means a contract or commitment requiring total payments in excess of or which are reasonably likely to be in excess of \$64 million per annum.

**Novion Performance Right** means a right to acquire a Novion Stapled Security granted by Novion under the Novion ESP or a contract of employment.

**Novion Provided Information** means all information included in the Scheme Booklet, and any updates to that information prepared by or on behalf of Novion in accordance with clause 5.1(j), other than:

- (a) the Federation Provided Information and any information solely derived from, or prepared solely in reliance on, the Federation Provided Information; and
- (b) the Independent Expert's Report and the Investigating Accountant's Report.

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

**Novion Regulated Event** has the meaning given in Part 2 of Schedule 1.

**Novion Securityholder** means a person who is registered in the Novion Register as a holder of Novion Stapled Securities from time to time.

**Novion Stapled Security** means a stapled security comprising a Novion Co Share and a Novion Trust Unit.

**Novion Trust** means Novion Trust (ARSN 090 150 280).

**Novion Trust Constitution** means the constitution establishing Novion Trust dated 10 February 1994, as amended from time to time.

**Novion Trust Constitution Modifications** means the modifications to the Novion Trust Constitution substantially in the form agreed on behalf of Federation and Novion on the date of this Agreement, and any amendments to those modifications or other modifications that Federation and Novion acting in good faith and acting reasonably agree are necessary or desirable to implement the Schemes.

**Novion Trust Supplemental Deed** means a deed poll under which Novion Trust RE will amend the Novion Trust Constitution in accordance with the Novion Trust Constitution Modifications and make any other changes it considers necessary or desirable to effect the Trust Scheme.

**Novion Trust Unit** means a fully paid ordinary unit in Novion Trust.

**Novion Trust Unitholder** means a person who is registered in the Novion Register as the holder of Novion Trust Units.

**Notice of Company Scheme Meeting** means the notice convening the Company Scheme Meeting, together with the proxy form for the Company Scheme Meeting.

**Notice of Company General Meeting** means the notice convening the Company General Meeting, together with the proxy form for the Company General Meeting.

**Notice of Trust Meeting** means the notice convening the Trust Meeting, together with the proxy form for the Trust Meeting.

**Notices of Meeting** means the Notice of Company Scheme Meeting, the Notice of Company General Meeting and the Notice of Trust Meeting.

**Officer** means, in relation to an entity, any of its directors, officers and employees.

**Permitted Federation Distributions** means a distribution of up to \$0.084 per Federation Trust Unit in respect of the 6 months ending 31 December 2014 and, if the Implementation Date is after the record date for the distribution of Federation Trust income relating to the 6 months ending 30 June 2015, a distribution approved by the Federation Board in line with previous practice and in the amount that has or will be the subject of the Federation distribution forecast for that period.

**Permitted Novion Distributions** means a distribution of up to \$0.069 per Novion Trust Unit in respect of the 6 months ending 31 December 2014 and, if the Implementation Date is after the record date for the distribution of Novion Trust income relating to the 6 months ending 30 June 2015, a distribution approved by the Novion Board in line with previous practice and in the amount that has or will be the subject of the Novion distribution forecast for that period.

**Record Date** means 7pm on the date that is five Business Days after the Effective Date, or such other date as may be agreed in writing between Federation and Novion or as may be required by ASX.

**Regulatory Approval** means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Governmental Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action,

but excludes any matter to the extent that it relates to:

- (c) any application lodged by a Federation Group Member with ASIC in relation to or arising from the Federation Group's syndicate wind down program;
- (d) a property development of a Group Member (including any variation to a property development);
- (e) any solvent reconstruction by, or winding up or dissolution of, a Group Member; or
- (f) the surrender of any Australian financial services licence held by any Group Member where such licence is not required for the relevant Group's ongoing business.

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

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

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

- (a) a Related Body Corporate of the person; or
- (b) an Officer of the person or any of the person's Related Bodies Corporate; or
- (c) an Adviser to the person or any of the person's Related Bodies Corporate.

**Required Resolutions** means the Trust Scheme Resolutions, the Company Scheme Resolution and the Company General Meeting Resolution.

**Scheme Booklet** means the explanatory memorandum to be prepared in respect of the Company Scheme and the Trust Scheme in accordance with the terms of this Agreement and to be despatched by Novion to Novion Securityholders, including the Independent Expert's Report, the Investigating Accountant's Report, the Company Scheme, the Federation Deed Poll, the Novion Trust Supplemental Deed and the Notices of Meeting.

**Schemes** means the Company Scheme and the Trust Scheme.

**Schemes Consideration** means the Company Scheme Consideration and the Trust Scheme Consideration.

**Schemes Participant** means each person who participates in each of the Schemes by virtue of being a Company Scheme Participant and a Trust Scheme Participant.

**Schemes Stapled Securities** means the Novion Stapled Securities on issue as at the Record Date, being the Trust Scheme Units and the Company Scheme Shares.

**Second Court Date** means the first day of hearing of an application made to the Court by Novion for the Second Court Orders and the Second Judicial Advice or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Second Court Orders** means orders, pursuant to section 411(4)(b) of the Corporations Act, approving the Company Scheme.

**Second Judicial Advice** means confirmation from the Court under section 63 of the *Trustee Act 1925* (NSW) that, Novion Trust Unitholders having approved the Trust Scheme Resolutions by the requisite majorities, Novion Trust RE would be justified in implementing the Trust Scheme Resolutions, giving effect to the provisions of the Novion Trust Constitution (as amended by the Novion Trust Supplemental Deed) and in doing all things and taking all necessary steps to put the Trust Scheme into effect.

**Stock Exchange** means ASX or another prescribed financial market.

**Subsidiary** has the meaning given in the Corporations Act, provided that an Entity will also be taken to be a Subsidiary of another Entity if it is controlled by that Entity (as 'control' is defined in section 50AA of the Corporations Act) and, without limitation:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and
- (b) an Entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.

**Superior Proposal** means a bona fide Competing Proposal received by Novion that the Novion Board determines, acting in good faith and in order to satisfy what the Novion Board considers to be its fiduciary or statutory duties:

- (a) is capable of being valued and completed, taking into account all aspects of the Competing Proposal, including its conditions; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to the Novion Securityholders than the Transactions viewed in aggregate, taking into account all the terms and conditions of the Competing Proposal,

after taking into account a qualitative assessment of the identity, expertise and experience in the Australian retail property and property leasing sectors, reputation and financial standing of the party making the Competing Proposal.

**Synergy Forecast** means the forecast of likely synergies to be achieved as a result of the Transactions as stated in the Agreed Public Announcement including the underlying material that verifies the forecast or any assumptions upon which the forecast is made, unless otherwise amended by the agreement of the parties (such agreement not to be unreasonably withheld or delayed).

**Third Party** means any of the following:

- (a) a person other than any Federation Group Member, any Novion Group Member and any of their respective Representatives; or

- (b) a consortium, partnership, limited partnership, syndicate or other group in which no Federation Group Member nor Novion Group Member has agreed in writing to be a participant.

**Timetable** means the indicative timetable in relation to the Schemes set out in Schedule 2, or such other indicative timetable as Federation and Novion may agree in writing or as may be required by ASX.

**Trading Day** has the meaning given in the ASX Listing Rules.

**Transaction Documents** means:

- (a) this Agreement;
- (b) the Company Scheme;
- (c) the Novion Trust Supplemental Deed; and
- (d) the Federation Deed Poll.

**Transactions** means:

- (a) the proposed transaction pursuant to which Federation Co will acquire the Company Scheme Shares under the Company Scheme, in consideration for the provision of the Company Scheme Consideration; and
- (b) the proposed transaction pursuant to which Federation Trust RE will acquire the Trust Scheme Units under the Trust Scheme, in consideration for the provision of the Trust Scheme Consideration.

**Trust Meeting** means the meeting of Novion Trust Unitholders convened by the Novion Trust RE to consider the Trust Scheme Resolutions, and includes any adjournment of that meeting.

**Trust Scheme** means the arrangement under which Federation Trust RE acquires all of the Novion Trust Units from Trust Scheme Participants facilitated by amendments to the Novion Trust Constitution as set out in the Novion Trust Supplemental Deed, subject to the requisite approvals of Novion Trust Unitholders.

**Trust Scheme Consideration** means the consideration to be provided to Trust Scheme Participants under the terms of the Trust Scheme for the transfer to Federation Trust RE of their Trust Scheme Units, as described in clause 4.

**Trust Scheme Participant** means each person who is registered in the Novion Trust Register as a holder of Trust Scheme Units as at the Record Date.

**Trust Scheme Resolutions** means the resolutions to approve the Trust Scheme including:

- (a) a resolution for the purposes of section 601GC(1) of the Corporations Act to approve amendments to the Novion Trust Constitution as set out in the Novion Trust Supplemental Deed;
- (b) a resolution for the purposes of item 7 of section 611 of the Corporations Act to approve the acquisition of all the Novion Trust Units by Federation Trust RE; and
- (c) a special resolution of Novion Trust Unitholders to approve the unstapling of Novion Trust Units from Novion Co Shares.

**Trust Scheme Unit** means the Novion Trust Units on issue as at the Record Date.

**Voting Power** has the meaning given in section 610 of the Corporations Act.

**Wholly-Owned Subsidiary** means, in relation to a party, a Subsidiary, all of the issued shares or trust units of which are or will be directly or indirectly owned by that party.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.
- (c) The following rules apply unless the context requires otherwise.
  - (i) The singular includes the plural and conversely.
  - (ii) A gender includes all genders.
  - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - (iv) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
  - (v) A reference to a clause or Schedule is a reference to a clause of, or Schedule to, this Agreement.
  - (vi) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
  - (vii) A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
  - (viii) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
  - (ix) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form but excludes a communication by electronic mail.
  - (x) A reference to \$ is to the lawful currency of Australia.
  - (xi) Words and phrases not specifically defined in this Agreement have the same meanings (if any) given to them in the Corporations Act.
  - (xii) A reference to time is a reference to time in Melbourne and Sydney.
  - (xiii) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.
  - (xiv) The meaning of general words is not limited by specific examples introduced by **including**, or **for example**, or similar expressions.
  - (xv) A reference to a **liability** incurred by any person includes any liability of that person arising from or in connection with any obligation (including indemnities and all other obligations owed as principal or guarantor) whether liquidated or not, whether present, prospective or contingent and whether owed, incurred or imposed by or to or on account of or for the account of that person alone, severally or jointly or jointly and severally with any other person.
  - (xvi) A reference to a **loss** incurred by any person includes any loss, liability, damage, cost, charge or expense that the person pays, incurs or is liable for and any other

diminution of value of any description that the person suffers, including all liabilities on account of taxes or duties, all interest, penalties, fines and other amounts payable to third parties and all reasonable legal expenses and other expenses in connection with investigating or defending any claim, action, demand or proceeding, whether or not resulting in any liability, and all amounts paid in settlement of any such claims.

### **1.3 Best and reasonable endeavours**

A reference to a party using, or obligation on a party to use, its best endeavours or reasonable endeavours does not oblige that party to:

- (a) pay money:
  - (i) in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing); or
  - (ii) in circumstances that are commercially onerous or unreasonable in the context of this Agreement;
- (b) provide other valuable consideration to or for the benefit of any person; or
- (c) agree to commercially onerous or unreasonable conditions.

### **1.4 Consents and approvals**

If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of a party, such consent or approval may be given or such discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion (unless this Agreement specifies otherwise).

### **1.5 Breach of Conditions Precedent**

For the avoidance of doubt, a reference in this Agreement to a Condition Precedent being breached includes a reference to the Condition Precedent becoming incapable of being satisfied.

### **1.6 References to the parties**

A reference to a right or obligation as between the parties (including an obligation to seek consent or provide notice as between the parties) is a reference to a right or obligation as between Federation and Novion and not as between:

- (a) Federation Co and Federation Trust; or
- (b) Novion Co and Novion Trust.

## **2 Agreement to Proceed with Schemes**

### **2.1 Novion to propose Schemes**

In consideration of Federation's promises contained in this Agreement, Novion agrees to propose and, subject to the satisfaction or waiver (as the case may be) of the Conditions Precedent, to implement the Schemes upon and subject to the terms and conditions of this Agreement, and to use all reasonable endeavours to do so in accordance with the Timetable.

### **2.2 Federation to assist**

In consideration of Novion's promises contained in this Agreement, Federation agrees, subject to the satisfaction or waiver (as the case may be) of the Conditions Precedent, to assist Novion to

implement the Schemes upon and subject to the terms and conditions of this Agreement, and to use all reasonable endeavours to do so in accordance with the Timetable.

### 3 Conditions Precedent and Pre-Implementation Steps

#### 3.1 Conditions Precedent

Subject to this clause 3, the obligations of Novion under clause 5.1(n) and Federation's obligation to provide, or procure the provision of, the Schemes Consideration in accordance with the Federation Deed Poll and clause 5.3(j) are subject to the satisfaction (or waiver in accordance with clause 3.2) of each of the following Conditions Precedent:

##### Conditions Precedent for the benefit of Federation and Novion

- (a) **(Regulatory Approvals)**
- (i) **(FIRB)** before 8am on the Second Court Date, the Treasurer of the Commonwealth of Australia:
    - (A) **(approval)** gives (either themselves or by their delegate) an approval under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**) to the proposed acquisition of Novion Stapled Securities by Federation and that approval is not subject to conditions, or is subject only to conditions that Federation reasonably considers to be acceptable;
    - (B) **(no objection)** provides (either themselves or by their delegate) written advice or confirmation that there is no objection to the proposed acquisition of Novion Stapled Securities by Federation under the FATA or the foreign investment policy of the Australian Government, and that advice or confirmation is not subject to conditions, or is subject only to conditions that Federation reasonably considers to be acceptable; or
    - (C) **(expiry of notice period)** ceases to be empowered to make any order under Part II of the FATA in respect of the proposed acquisition of Novion Stapled Securities by Federation;
  - (ii) **(ASIC)** before 8am on the Second Court Date, ASIC has granted a modification of item 7 of section 611 of the Corporations Act, allowing Novion Trust Unitholders to vote in favour of the relevant Trust Scheme Resolution for the purpose of item 7 of section 611 of the Corporations Act;
  - (iii) **(ASX)** before 8am on the Second Court Date, ASX has granted Federation a waiver of Listing Rule 7.1 in relation to the issue of Federation Trust Units under the Trust Scheme;
- (b) **(quotation approval for Federation Stapled Securities)** before 8am on the Second Court Date, ASX provides approval for the official quotation of the Federation Stapled Securities to be issued pursuant to the Schemes, subject to any conditions that ASX may reasonably require, including customary pre-quotation conditions and conditions relating to the Schemes becoming Effective;
- (c) **(Independent Expert's Report)** the Independent Expert provides the Independent Expert's Report to Novion, stating that in its opinion the Schemes are fair and reasonable to and in the best interests of Novion Securityholders, and the Independent Expert does not change its conclusion or withdraw the Independent Expert's Report by notice in writing to Novion prior to 8am on the Second Court Date;
- (d) **(Novion Securityholder approval of the Required Resolutions)** before 8am on the Second Court Date:

- (i) the Company Scheme Resolution is approved by the requisite majorities of Novion Co Shareholders under section 411(4)(a)(ii) of the Corporations Act;
  - (ii) the Company General Meeting Resolution is approved by the requisite majority; and
  - (iii) the Trust Scheme Resolutions are approved by the requisite majorities of Novion Trust Unitholders under section 601GC(1) and item 7 of section 611 of the Corporations Act;
- (e) **(Court Orders before issue of Scheme Booklet)** the Court grants the First Judicial Advice and makes the First Court Orders;
- (f) **(Court approval of Schemes)** the Company Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act and the Trust Scheme is approved by the Court by granting the Second Judicial Advice;
- (g) **(no restraints)** no judgment, order, decree, statute, law, ordinance, rule or regulation, or permanent injunction, permanent restraint or prohibition, entered, enacted, promulgated, enforced or issued by any court or other Governmental Agency of competent jurisdiction, remains in effect as at 8am on the Second Court Date that prohibits, materially restricts, makes illegal or restrains the completion of the Transactions or any Transaction Document;
- (h) **(index decline)** between the date of this Agreement and 8am on the Second Court Date, the S&P/ASX200 A-REIT (Sector) index does not fall below 20% below the level of that index immediately prior to signing Agreement on any three consecutive Trading Days;

#### **Conditions Precedent for the benefit of Federation only**

- (i) **(no Novion Regulated Events)** no Novion Regulated Event occurs or becomes known to Federation between the date of this Agreement and 8am on the Second Court Date;
- (j) **(no Novion Material Adverse Change)** no Novion Material Adverse Change occurs, or is discovered, announced or disclosed or otherwise becomes known to Federation between the date of this Agreement and 8am on the Second Court Date; and
- (k) **(Novion representations and warranties)** the representations and warranties of Novion set out in clause 9.2:
  - (i) that are qualified as to materiality, are true and correct; and
  - (ii) that are not so qualified, are true and correct in all material respects,as at the date of this Agreement and as at 8am on the Second Court Date as though made on and as of that time;

#### **Conditions Precedent for the benefit of Novion only**

- (l) **(no Federation Regulated Events)** no Federation Regulated Event occurs between the date of this Agreement and 8am on the Second Court Date;
- (m) **(no Federation Material Adverse Change)** no Federation Material Adverse Change occurs, or is discovered, announced or disclosed or otherwise becomes known to Novion, between the date of this Agreement and 8am on the Second Court Date; and
- (n) **(Federation representations and warranties)** the representations and warranties of Federation set out in clause 9.1:
  - (i) that are qualified as to materiality, are true and correct; and
  - (ii) that are not so qualified, are true and correct in all material respects,

as at the date of this Agreement and as at 8am on the Second Court Date as though made on and as of that time.

### 3.2 Benefit and waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a) to 3.1(h) are for the benefit of each party, and (except in the cases of the Conditions Precedent in clauses 3.1(a)(i), 3.1(d), 3.1(e) and 3.1(f), which cannot be waived) any breach or non-fulfilment of any of those Conditions Precedent may only be waived with the written consent of all parties.
- (b) The Conditions Precedent in clauses 3.1(i) to 3.1(k) are for the sole benefit of Federation, and any breach or non-fulfilment of any of those Conditions Precedent may only be waived by Federation giving its written consent.
- (c) The Conditions Precedent in clauses 3.1(l) to 3.1(n) are for the sole benefit of Novion, and any breach or non-fulfilment of any of those Conditions Precedent may only be waived by Novion giving its written consent.
- (d) A party entitled to waive the breach or non-fulfilment of a Condition Precedent pursuant to this clause 3.2 may do so in its absolute discretion.
- (e) If a party waives the breach or non-fulfilment of a Condition Precedent, that waiver will not preclude it from suing each other party for any breach of this Agreement constituted by the same event that gave rise to the breach or non-fulfilment of the Condition Precedent.
- (f) Waiver of a breach or non-fulfilment in respect of one Condition Precedent does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition Precedent resulting from the same events or circumstances; or
  - (ii) a waiver of breach or non-fulfilment of that Condition Precedent resulting from any other event or circumstance.

### 3.3 Best endeavours and co-operation

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

- (a) Federation must use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(b), 3.1(l), 3.1(m) and 3.1(n);
- (b) Novion must use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(c), 3.1(d), 3.1(i), 3.1(j) and 3.1(k);
- (c) each of Novion and Federation must use their respective best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(a), 3.1(e), 3.1(f) and 3.1(g), to the extent that it is within their respective control; and
- (d) no party will take any action that will or is likely to hinder or prevent the satisfaction of any Condition Precedent, except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by, the Transaction Documents, or is required by law; and
- (e) each party must co-operate with each other party or a Governmental Agency or third party in good faith with a view to satisfying the Conditions Precedent, including (subject to any relevant confidentiality restrictions) providing all information reasonably required by each other party in relation to the Federation Group or Novion Group (as applicable) in order to satisfy the Conditions Precedent and (subject to any relevant confidentiality

restrictions) providing all information reasonably required by any Governmental Agency or other third party to such Governmental Agency or third party as appropriate.

### 3.4 Notifications

Each party must:

- (a) keep each other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent;
- (b) promptly notify each other party in writing if it becomes aware that any Condition Precedent has been satisfied, in which case the notifying party must also provide reasonable evidence that the Condition Precedent has been satisfied; and
- (c) promptly notify each other party in writing of a failure to satisfy a Condition Precedent or of any fact or circumstance that results in that Condition Precedent becoming incapable of being satisfied or that may result in that Condition Precedent not being satisfied in accordance with its terms (having regard to the obligations of the parties under clause 3.3 and the terms of clause 3.6).

### 3.5 Failure of Conditions Precedent

- (a) If:
  - (i) there is a breach or non-fulfilment of a Condition Precedent that is not waived in accordance with clause 3.2 before the End Date; or
  - (ii) a Condition Precedent becomes incapable of satisfaction, having regard to the obligations of the parties under clause 3.3 and the terms of clause 3.6 (and the breach or non-fulfilment of the Condition Precedent that would otherwise occur has not already been waived),

Federation Trust RE may serve notice on Novion Trust RE, or Novion Trust RE may serve notice on Federation Trust RE, and the parties must then consult in good faith with a view to determining whether:

- (iii) the Schemes or the Transactions may proceed by way of alternative means or methods;
  - (iv) to extend the relevant time or date for satisfaction of the Condition Precedent;
  - (v) to change the date of the application to be made to the Court for the Second Court Orders and the Second Judicial Advice or to adjourn that application (as applicable) to another date agreed by the parties; or
  - (vi) to extend the End Date.
- (b) If Federation and Novion are unable to reach agreement under clauses 3.5(a)(iii) to (vi) within five Business Days after the delivery of the notice under that clause or any shorter period ending at 5pm on the day before the Second Court Date, either Federation Trust RE or Novion Trust RE may terminate this Agreement by notice in writing to Federation Trust RE or Novion Trust RE (as applicable), provided that:
    - (i) the Condition Precedent to which the notice relates is for the benefit of that party (whether or not the Condition Precedent is also for the benefit of the other party); and
    - (ii) there has been no failure by that party to comply with its obligations under this Agreement, where that failure directly and materially contributed to the Condition Precedent to which the notice relates becoming incapable of satisfaction, or being breached or not fulfilled before the End Date,

in which case clause 14.4 will have effect.

### 3.6 Conditions of Regulatory Approvals

A Regulatory Approval will be regarded as having been obtained notwithstanding that a condition or conditions may have been attached to that Regulatory Approval, if such conditions are reasonably satisfactory to all parties.

### 3.7 Certificates in relation to Conditions Precedent

On the Second Court Date:

- (a) Novion must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8am on the Second Court Date:
  - (i) the conditions precedent set out in clauses 3.1(a)(ii), 3.1(c), (d), (e), (i), (j) and (k) have been satisfied or waived in accordance with this Agreement; and
  - (ii) to the best of Novion's knowledge whether the conditions precedent set out in clauses 3.1(g) and (h) have been satisfied or waived in accordance with this Agreement; and
- (b) Federation must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8am on the Second Court Date:
  - (i) the conditions precedent set out in clauses 3.1(a)(i), 3.1(a)(iii), 3.1(b), (l), (m) and (n) have been satisfied or waived in accordance with this Agreement; and
  - (ii) to the best of Federation's knowledge whether the condition precedent set out in clause 3.1(h) has been satisfied or waived in accordance with this Agreement.

Federation Trust RE and Novion Trust RE must provide to each other a draft of the relevant certificate to be provided by Federation or Novion (as applicable) pursuant to this clause 3.7 by 5pm on the day that is two Business Days prior to the Second Court Date, and must provide to Federation Trust RE and Novion Trust RE (as applicable) on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

## 4 Schemes

### 4.1 Outline of Schemes

- (a) The parties agree that:
  - (i) Novion will propose the Schemes; and
  - (ii) Federation will assist Novion as reasonably required by Novion in proposing the Schemes,to Novion Securityholders, on and subject to the terms of this Agreement.
- (b) Subject to the Schemes becoming Effective, on the Implementation Date the general effect of the Schemes will be as follows:
  - (i) in respect of the Company Scheme:
    - (A) the Company Scheme Participants will transfer all of the Company Scheme Shares to Federation Co in accordance with the terms of the Company Scheme; and
    - (B) in consideration for the transfer to Federation Co of all Company Scheme Shares, the Company Scheme Participants will receive the Company

Scheme Consideration in accordance with clause 4.2 and the terms of the Company Scheme; and

- (ii) in respect of the Trust Scheme:
  - (A) the Trust Scheme Participants will transfer all of the Trust Scheme Units to Federation Trust RE in accordance with the terms of the Trust Scheme; and
  - (B) in consideration for the transfer to Federation Trust RE of all Trust Scheme Units, the Trust Scheme Participants will receive the Trust Scheme Consideration in accordance with clause 4.2 and the terms of the Trust Scheme.

#### 4.2 Schemes Consideration

- (a) Subject to the Schemes becoming Effective and clauses 4.2(b), 4.2(c) and 4.3, Federation agrees in favour of Novion that, in consideration for the transfer to Federation of each Schemes Stapled Security under the Schemes, Federation will accept such transfer, and will provide to each Schemes Participant 0.8225 Federation Stapled Securities for each Schemes Stapled Security held by that Schemes Participant, in accordance with the terms of the Schemes.
- (b) If the number of Schemes Stapled Securities held by a Schemes Participant as at the Record Date is such that the aggregate entitlement of the Schemes Participant to Schemes Consideration includes a fractional entitlement to a Federation Stapled Security then the entitlement of that Schemes Participant must be rounded up or down, with any such fractional entitlement of:
  - (i) less than 0.5 being rounded down to the nearest whole number of Federation Stapled Securities; and
  - (ii) 0.5 or more being rounded up to the nearest whole number of Federation Stapled Securities.
- (c) If Federation is of the opinion (acting reasonably and after consultation with Novion and taking into account the views of Novion) that two or more Schemes Participants (each of whom holds a number of Schemes Stapled Securities that results in rounding in accordance with clause 4.2(b)) have, before the Record Date, been party to securityholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, Federation may give notice to those Schemes Participants:
  - (i) setting out their names and registered addresses as shown in the Novion Register;
  - (ii) stating that opinion; and
  - (iii) attributing to one of them specifically identified in the notice the Schemes Stapled Securities held by all of them,

and, after such notice has been given, the Schemes Participant specifically identified in the notice as the deemed holder of all the specified Schemes Stapled Securities will, for the purposes of the Schemes, be taken to hold all of those Schemes Stapled Securities and each of the other Schemes Participants whose names and registered addresses are set out in the notice will, for the purposes of the Schemes, be taken to hold no Schemes Stapled Securities. Federation, in complying with the other provisions of the Schemes relating to it in respect of the Schemes Participant specifically identified in the notice as the deemed holder of all the specified Schemes Stapled Securities, will be taken to have

satisfied and discharged its obligations to the other Schemes Participants named in the notice under the terms of the Schemes.

#### 4.3 Treatment of Ineligible Foreign Novion Securityholders

- (a) Federation will be under no obligation under the Schemes to issue, and will not issue, any Federation Stapled Securities to any Ineligible Foreign Novion Securityholder, and instead Federation will issue on the Implementation Date the Federation Stapled Securities to which that Ineligible Foreign Novion Securityholder would otherwise have been entitled (if they were a Schemes Participant who was not an Ineligible Foreign Novion Securityholder) to a nominee appointed by Federation Participant.
- (b) Federation will procure that, as soon as reasonably practicable and in any event not more than 15 Business Days after the Implementation Date, the nominee:
  - (i) sells on a Stock Exchange all of the Federation Stapled Securities issued to the nominee in accordance with clause 4.3(a) in such manner, at such price and on such other terms as the nominee determines in good faith, and at the risk of the Ineligible Foreign Novion Securityholders; and
  - (ii) remits to Federation the proceeds of sale (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges).
- (c) Promptly after the last remittance in accordance with clause 4.3(b), Federation will pay to each Ineligible Foreign Novion Securityholder the proportion of the net proceeds of sale received by Federation pursuant to clause 4.3(b)(ii) to which that Ineligible Foreign Novion Securityholder is entitled.

#### 4.4 Ranking of Federation Stapled Securities

The Federation Stapled Securities to be issued pursuant to the Schemes must, upon issue, rank equally in all respects with all other Federation Stapled Securities then on issue, except that they will not carry a right to participate in any Permitted Federation Distribution.

### 5 Steps for Implementation

#### 5.1 Novion's obligations in respect of the Schemes

Novion must take all steps reasonably necessary to propose and implement the Schemes as soon as is reasonably practicable after the date of this Agreement and otherwise substantially in accordance with the Timetable, and in particular Novion must:

- (a) **(preparation of Scheme Booklet)** as soon as reasonably practicable after the date of this Agreement, prepare the Scheme Booklet in accordance with clause 5.4;
- (b) **(Independent Expert)** promptly appoint the Independent Expert (if the Independent Expert has not been appointed prior to the date of this Agreement), and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (c) **(Investigating Accountant)** as soon as reasonably practicable after the date of this Agreement, appoint the Investigating Accountant, and provide all assistance and information reasonably requested by the Investigating Accountant to enable it to prepare the Investigating Accountant's Report;
- (d) **(liaison with ASIC)** as soon as reasonably practicable after the date of this Agreement but no later than 14 days before the First Court Date, provide an advanced draft of the Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act, and to Federation, and (to the extent reasonably practicable) keep

Federation reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet (and of any resolution of those matters), and use its best endeavours, in co-operation with Federation, to resolve any such matters (which will to the extent reasonably practicable include allowing Federation to participate in Novion's meetings and discussions with ASIC);

- (e) **(approval of Scheme Booklet)** procure that a meeting of the Novion Board is convened to approve the Scheme Booklet for despatch to Novion Securityholders subject to the making of the First Court Orders and the First Judicial Advice (and provide Federation with a copy of an extract of the applicable resolutions from the applicable minutes of meeting, as soon as practicable after those minutes have been prepared and signed);
- (f) **(Court documents)** prepare all documents necessary for the Court proceedings (including any appeals) relating to the Schemes (including originating process, affidavits, submissions and draft minutes of Court orders), and provide Federation with drafts of those documents for review and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments from Federation and its Representatives on those drafts;
- (g) **(First Court Date)** lodge all documents with the Court and take all other reasonable steps to ensure that an application is heard by the Court for the First Court Orders and the First Judicial Advice;
- (h) **(registration of Scheme Booklet)** if the Court makes the First Court Orders and gives the First Judicial Advice, as soon as possible thereafter, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Company Scheme in accordance with section 412(6) of the Corporations Act;
- (i) **(Meetings)** take all reasonable steps necessary to comply with the orders of the Court, including, as required, despatching the Scheme Booklet to Novion Securityholders, convening and holding the Meetings in accordance with the Court orders, and putting the relevant Required Resolutions to Novion Securityholders at the Meetings, provided that if this Agreement is terminated under clause 14, Novion will take all steps reasonably required to ensure the Meetings are not held;
- (j) **(update Scheme Booklet)** if it becomes aware of information after the date of despatch of the Scheme Booklet, that is material for disclosure to Novion Securityholders in deciding whether to approve the Required Resolutions or that is required to be disclosed to Novion Securityholders under any applicable law, as expeditiously as practicable:
  - (i) inform Novion Securityholders of the information in an appropriate and timely manner, and after consultation with Federation as to the manner of provision of that information to Novion Securityholders; and
  - (ii) to the extent it is reasonably practicable to do so, provide Federation with drafts of any documents that it proposes to issue to Novion Securityholders under this clause 5.1(j) and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments received in a timely manner from Federation or its Representatives on those drafts;
- (k) **(section 411(17)(b) statement)** apply to ASIC for the production of statements in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Company Scheme;
- (l) **(Court approval)** if the Required Resolutions are passed by the requisite majorities of Novion Securityholders, as soon as practicable after such time apply to the Court for the Second Court Orders and the Second Judicial Advice;

- (m) **(provide Novion Register information)** as soon as practicable after the Record Date, and in any event at least three Business Days before the Implementation Date, give to Federation (or as it directs) details of the names, registered addresses and holdings of Novion Stapled Securities of every Schemes Participant as shown in the Novion Register as at the Record Date, in such form as Federation may reasonably require;
- (n) **(implementation of the Schemes)** if the Court makes the Second Court Orders and gives the Second Judicial Advice:
  - (i) as soon as possible after the Court makes those orders, and in any event by no later than 4pm on the first Business Day after the date on which the Court makes those orders or such other Business Day as Novion and Federation may agree in writing, lodge with ASIC:
    - (A) an office copy of the Second Court Orders in accordance with section 411(10) of the Corporations Act;
    - (B) a copy of the Novion Trust Constitution Modification in accordance with section 601GC(2) of the Corporations Act;
    - (C) if requested by ASIC, a consolidated copy of the Novion Trust Constitution (as amended by the Novion Trust Constitution Modifications) in accordance with section 601GC(3) of the Corporations Act.
  - (i) use best endeavours to ensure that ASX suspends trading in Novion Stapled Securities with effect from the close of trading on the Effective Date;
  - (ii) close the Novion Register as at the Record Date to determine the identity of Schemes Participants and to determine their entitlements to the Schemes Consideration in accordance with the Schemes;
  - (iii) promptly execute proper instruments of transfer of, and register all transfers of, the Company Scheme Shares to Federation Co in accordance with the Company Scheme;
  - (iv) promptly execute proper instruments of transfer of, and register all transfers of, the Trust Scheme Units to Federation Trust RE in accordance with the Trust Scheme; and
  - (v) promptly do all other things contemplated by or necessary to give effect to the Schemes, the Second Court Orders and the Second Judicial Advice, and to effect the transfer of the Company Scheme Shares and the Trust Scheme Units to Federation;
- (o) **(information)** provide all necessary information, or have the share registry of Novion provide all necessary information, to Federation about the Schemes and Novion Securityholders (including the results of directions by Novion Co to Novion Co Shareholders under Part 6C.2 of the Corporations Act), in each case in a form reasonably requested by Federation and at least on a weekly basis, which Federation reasonably requires in order to facilitate the provision by Federation of the Schemes Consideration;
- (p) **(representation)** allow, and not oppose, any application by Federation for leave of the Court to be represented, or the separate representation of Federation by counsel, at any Court hearings in relation to the Schemes, provided that in making any application for representation or in appearing before the Court, Federation acts in accordance with the Transaction Documents and does not oppose any application by Novion in exercise of its rights under the Transaction Documents;

- (q) **(Material Contracts)** as reasonably requested by Federation use reasonable endeavours to obtain consent from each person who is entitled to exercise any right under any provision of any Material Contract relating to Novion's businesses that entitles the person to terminate or modify the contract as a result of the announcement or implementation of the Schemes, and keep Federation informed of its progress in obtaining such consents and use best endeavours, in co-operation with Federation, to resolve any matters raised by any applicable counterparty to such a contract;
- (r) **(ASX listing)** use its best endeavours to ensure that the Novion Stapled Securities continue to be quoted on ASX until the close of business on the Implementation Date;
- (s) **(publication of information on website)** promptly after they become available, publish on its website the date fixed for any Court hearing in relation to the Schemes, including any adjournments or continuance of the hearing, the date of the Meetings and the text of all announcements made to ASX in connection with the Schemes;
- (t) **(keep Federation informed)** from the First Court Date until the Implementation Date, promptly inform Federation if it becomes aware (or ought reasonably to have become aware, after making all reasonable and diligent enquiries) that the Scheme Booklet contains a statement that is or has become misleading or deceptive in a material respect or that contains a material omission;
- (u) **(Federation Provided Information)** during the period until the Federation Provided Information (or any information solely derived from, or prepared solely in reliance on, the Federation Provided Information) becomes publicly available, only use that information with the prior written consent of Federation (not to be unreasonably withheld); and
- (v) **(all things necessary)** do all other things contemplated by or necessary to lawfully give effect to the Schemes, the First Court Orders, First Judicial Advice, Second Court Orders and Second Judicial Advice.

## 5.2 Appeal process

If the Court refuses to make any orders or confirmations for the purposes of convening a Meeting or approving the Schemes, Novion must appeal the Court's decision to the fullest extent possible (except to the extent that the parties agree otherwise, or an independent barrister with at least 15 years' experience advises that, in their view, an appeal would have no reasonable prospect of success before the End Date).

## 5.3 Federation's obligations in respect of the Scheme

Federation must take all steps reasonably necessary to assist Novion to propose and implement the Schemes as soon as is reasonably practicable after the date of this Agreement and otherwise substantially in accordance with the Timetable, and in particular Federation must:

- (a) **(Federation Provided Information)** prepare and provide to Novion the Federation Provided Information in accordance with clause 5.5.
- (b) **(Independent Expert information)** provide all assistance and information reasonably requested by Novion or by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (c) **(Investigating Accountant information)** provide all assistance and information reasonably requested by Novion or by the Investigating Accountant to enable the Investigating Accountant to prepare the Investigating Accountant's Report;

- (d) **(liaison with ASIC)** provide reasonable assistance to Novion to assist Novion to resolve any matter raised by ASIC regarding the Scheme Booklet or the Schemes during its review of the Scheme Booklet;
- (e) **(approval of Scheme Booklet)** procure that a meeting of the Federation Board (or of a committee of the Federation Board appointed for the purpose) is convened to approve those sections of the Scheme Booklet that comprise the Federation Provided Information as being in a form appropriate for despatch to Novion Securityholders subject to the making of the First Court Orders and the First Judicial Advice (and provide Novion with a copy of an extract of the applicable resolutions from the applicable minutes of meeting, as soon as practicable after those minutes have been prepared and signed);
- (f) **(keep Novion informed)** from the First Court Date until the Implementation Date, promptly inform Novion if it becomes aware (or ought reasonably to have become aware, after making all reasonable and diligent enquiries) that the Federation Provided Information contains a statement that, in the form and context in which it appears in the Scheme Booklet, is or has become misleading or deceptive in any material respect or that contains any material omission, and provide such further or new information as is required to ensure that such information is no longer misleading or deceptive in any material respect or does not contain any material omission;
- (g) **(Court representation)** procure that, if requested by Novion, it is represented by counsel at the Court hearings convened in relation to the Schemes, at which, through its counsel and if requested by the Court, Federation will undertake to do all such things and take all such steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this Agreement and the Schemes;
- (h) **(Federation Deed Poll)** prior to the First Court Date, execute the Federation Deed Poll;
- (i) **(official quotation)** apply to ASX for official quotation by ASX of the Federation Stapled Securities to be issued pursuant to the Schemes;
- (j) **(Schemes Consideration)** if the Schemes become Effective, provide, or procure the provision of, the Schemes Consideration in accordance with the Schemes and the Federation Deed Poll on the Implementation Date;
- (k) **(Novion Provided Information)** during the period until the Novion Provided Information (or information solely derived from, or prepared solely in reliance on, the Novion Provided Information) becomes publicly available, only use the Novion Provided Information with the prior written consent of Novion (not to be unreasonably withheld); and
- (l) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this Agreement are effected in accordance with all applicable laws and regulations.

#### 5.4 Preparation of Scheme Booklet

- (a) **(Novion to prepare)** Subject to Federation complying with its obligations under clause 5.5, Novion must prepare the Scheme Booklet as soon as is reasonably practicable after the date of this Agreement and otherwise substantially in accordance with the Timetable.
- (b) **(Compliance requirements)** Subject to clause 5.5(e) Novion must ensure that the Scheme Booklet complies with the requirements of the Corporations Act, the ASX Listing Rules and all ASIC Regulatory Guides applicable to members' schemes of arrangement under Part 5.1 of the Corporations Act, except that the obligation to do so in respect of

the Federation Provided Information is subject to Federation complying with its obligations under clauses 5.5 and 9.1(f).

- (c) **(Content of Scheme Booklet)** Without limiting clause 5.4(b), the Scheme Booklet will include or be accompanied by:
- (i) the Schemes;
  - (ii) the Notices of Meeting;
  - (iii) a copy of this Agreement (without the Schedules) or a summary of it;
  - (iv) a copy of the executed Federation Deed Poll;
  - (v) the Independent Expert's Report or a summary version of it;
  - (vi) the Investigating Accountant's Report;
  - (vii) a statement that the Novion Board unanimously considers each of the Schemes to be in the best interests of Novion Securityholders and recommends that Novion Securityholders approve the Required Resolutions, in the absence of a Superior Proposal, unless prior to the issue of the Scheme Booklet the Novion Board has changed or withdrawn those statements and recommendations in accordance with clause 7.1(b); and
  - (viii) a statement that each Novion Director who is able to control voting rights in relation to Novion Stapled Securities intends to vote those Novion Stapled Securities, or procure that those Novion Stapled Securities are voted, in favour of the Required Resolutions, in the absence of a Superior Proposal, unless prior to the issue of the Scheme Booklet the Novion Director has changed his or her voting intention in accordance with clause 7.2.
- (d) **(Review by Federation)** Novion must:
- (i) make available to Federation drafts of the Scheme Booklet, including any draft of the Independent Expert's Report, but excluding those sections containing the Independent Expert's opinions or conclusions;
  - (ii) consult with Federation in relation to the content of those drafts, including the inclusion of any Federation Provided Information and any information solely derived from, or prepared solely in reliance on, the Federation Provided Information; and
  - (iii) acting reasonably and in good faith, take into account, for the purpose of amending those drafts, any comments from Federation and its Representatives on those drafts.
- (e) **(Dispute as to Scheme Booklet)** If, after a reasonable period of consultation and compliance by Novion with its obligations under clauses 5.4(d), Federation and Novion, acting reasonably and in good faith, are unable to agree on the form or content of the Scheme Booklet, then:
- (i) if the disagreement relates to the form or content of the Federation Provided Information (or any information solely derived from, or prepared solely in reliance on, the Federation Provided Information), Novion will, acting in good faith, make such amendments to that information in the Scheme Booklet as Federation may reasonably require; and
  - (ii) if the disagreement relates to the form or content of the Novion Provided Information, Novion will, acting in good faith, decide the final form of that information in the Scheme Booklet.

## 5.5 Federation Provided Information and Joint Information

- (a) **(Federation to Prepare)** Federation must provide the Federation Provided Information to Novion as soon as is reasonably practicable after the date of this Agreement and otherwise substantially in accordance with the Timetable, in a form that includes all information regarding the Federation Group and the Federation Stapled Securities that is required by the Corporations Act, the ASX Listing Rules and all ASIC Regulatory Guides applicable to members' schemes of arrangement under Part 5.1 of the Corporations Act, including all the information that would be required under sections 636(1)(c), (g), (h), (i), (k)(ii), (l) and (m) of the Corporations Act to be included in a bidder's statement if Federation were offering the Schemes Consideration as consideration under a takeover bid, and must:
- (i) provide to Novion such assistance as Novion may reasonably require in order to adapt such information for inclusion in the Scheme Booklet; and
  - (ii) ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (b) **(Consent of Federation)** Without limiting clause 5.4(e), Federation must provide written consent to Novion in relation to the form and context in which any such Federation Provided Information (and any information solely derived from, or prepared solely in reliance on, the Federation Provided Information) is used in the Scheme Booklet, such consent not to be unreasonably withheld or delayed by Federation.
- (c) **(Verification)** Novion must undertake appropriate verification processes in relation to the Novion Provided Information included in the Scheme Booklet, and Federation must undertake appropriate verification processes in relation to the Federation Provided Information included in the Scheme Booklet. The verification processes must also apply to information Federation must disclose to Novion in accordance with paragraph (d).
- (d) Federation must disclose to Novion such further or new information relevant to voting by Novion Securityholders at the Meetings as may arise after the date of the Scheme Booklet as may be necessary to ensure that the Federation Provided Information, contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission).
- (e) The Scheme Booklet must include a responsibility statement, in a form to be agreed by the parties, which will contain words to the effect that:
- (i) Novion has provided, and is responsible for, the Novion Provided Information, and that Federation does not assume any responsibility or liability for the accuracy or completeness of that information, but Novion does take responsibility and liability for that information;
  - (ii) Federation has provided, and is responsible for, the Federation Provided Information, and that Novion does not assume any responsibility or liability for the accuracy or completeness of that information, but Federation does take responsibility and liability for that information;
  - (iii) both Federation and Novion have provided, and are jointly liable for, the Joint Information and, subject to the exception below, both Federation and Novion assume responsibility and liability for the accuracy and completeness of that information. The exception is that, in relation to the pro forma financial information relating to the Merged Group contained in the Scheme Booklet:

- (A) Federation has provided, and is responsible for the financial information concerning the Federation Group included in that information, or upon which that information is based, but otherwise Federation does not take any responsibility or liability for that information; and
- (B) Novion has provided, and is responsible for, the financial information concerning the Novion Group included in that information, or upon which that information is based, but otherwise Novion does not take any responsibility or liability for that information.

## 5.6 Joint Information

- (a) The Scheme Booklet must include the Joint Information.
- (b) Both Federation and Novion must cooperate in good faith to prepare the Joint Information in a timely manner for inclusion in the Scheme Booklet.
- (c) Both Federation and Novion must undertake appropriate verification processes in relation to the Joint Information and share with each other their respective verification material for the Joint Information.
- (d) Both Federation and Novion must, after the date of the Scheme Booklet, take such reasonable steps to ensure that the Joint Information does not, having regard to applicable disclosure requirements, become false, misleading or deceptive in any material respect, including because of a material omission. Federation and Novion must each advise the other as soon as practicable of any fact, matter or circumstance of which they become aware that makes the Joint Information misleading in a material respect, including by the omission of material information.

## 5.7 Novion Certificate on Implementation Date

On the Implementation Date, Novion will provide Federation with a certificate, approved by the Novion Board, in the following terms:

*"The Novion Trust RE is not aware of any fact, matter or circumstance having occurred between the date of the Meetings and the date of this certificate that would materially affect the value of the Novion Stapled Securities as determined by the Independent Expert in the Independent Expert's Report other than [to be set out if necessary]."*

## 5.8 Novion Distributions

Federation agrees with Novion RE, such agreement to be held for Novion RE's benefit and on trust by Novion RE for each Trust Scheme Participant, that if the Implementation Date is before 30 June 2015 that, in respect of the tax year ending on 30 June 2015, Federation will ensure that Novion RE Trust will make total income distributions, as defined in the Novion Trust Constitution, of an amount at least equal to its net taxable income for the tax year to 30 June 2015 adjusted by grossing up any capital gains to exclude the effect of the capital gains tax discount.

## 5.9 Federation Board and Novion Board changes from Implementation Date

On and from the Implementation Date, after Federation has provided, or procured the provision of, the Schemes Consideration in accordance with the Schemes and the Federation Deed Poll, each of Federation and Novion must use its best endeavours to:

- (a) take all action necessary to procure that any:
  - (i) Federation Director and any director of any Subsidiary of Federation; and
  - (ii) Novion Director and any director of any Subsidiary of Novion,

agreed by Federation and Novion prior to the date of this Agreement, resigns their office; and

- (b) cause the appointment to:
  - (i) the Federation Board and to the board of each of Federation's Subsidiaries; and
  - (ii) the Novion Board and to the boards of each of Novion's Subsidiaries,such persons as agreed by Federation and Novion prior to the date of this Agreement, subject to those persons having provided a consent to act as directors of the relevant company/companies.

## 6 Conduct of Business and Requests for Access

### 6.1 Conduct of business

During the period from the date of this Agreement up to and including the earlier of the date when this Agreement is terminated and the Implementation Date, each of Federation and Novion must:

- (a) procure that their Group conducts its business and operations in the ordinary course and substantially consistent (subject to any applicable laws, regulations and Regulatory Approvals) with the manner in which each such business and operation has been conducted in the period prior to the date of this Agreement and in compliance in all material respects with all applicable laws, regulations and Regulatory Approvals; and
- (b) to the extent consistent with that obligation, use their best endeavours to preserve intact their Group's current business organisation, to keep available the services of their current Officers, and to preserve their Group's relationship with Governmental Agencies, ratings agencies, customers, suppliers, licensors, licensees and others having business dealings with their Group,

except to the extent required to be done or procured by Federation or Novion (as applicable) pursuant to, or that is otherwise expressly permitted by, the Transaction Documents, or the undertaking of which the other party has approved in writing, such approval not to be unreasonably withheld or delayed.

### 6.2 Access to information and co-operation

- (a) **(Provision of access and information)** During the period from the date of this Agreement up to and including the earlier of the date when this Agreement is terminated and the Implementation Date, each of Federation and Novion must respond, and must procure that each member of their Group responds, to reasonable requests from the other Group and its Representatives for information concerning their businesses and operations, and gives the other Group and its Representatives reasonable access to their Officers and records, and otherwise provides reasonable co-operation to the other Group and its Representatives, in each case for the purposes of:
  - (i) the implementation of the Schemes and the Transactions;
  - (ii) the integration of the Novion Group and the Federation Group following the implementation of the Schemes; or
  - (iii) any other purpose that is agreed in writing between the parties,subject to the proper performance by the directors and officers of each Group of their statutory and fiduciary duties.
- (b) **(Consultation between the Groups)** Without limiting clause 6.2(a), during the period from the date of this Agreement up to and including the earlier of the date when this

Agreement is terminated and the Implementation Date, Federation and Novion must consult with each other, on a regular and ongoing basis, in relation to the conduct of material aspects of their respective Group's business and operations, and consider in good faith each other's views in relation to the same, and:

- (i) consult with each other in relation to any proposed extension, renewal, replacement, revocation, amendment or surrender of any Regulatory Approval that is material to the business or operations of any member of their respective Group, and promptly take, or refrain from taking, such action in relation to that proposal as may be reasonably requested by Federation or Novion (as applicable) (such reasonableness to be determined having regard to the interests of the other party); and
  - (ii) consult with each other in relation to any material dealings with any Governmental Agency in connection with the business or operations of any member of their respective Group, other than any such dealings in respect of the matters referred to in paragraphs (c), (d) and (e) of the definition of Regulatory Approval.
- (c) **(Limits on obligations)** Without limiting clauses 9.2(f) and 9.2(g), the obligations in clauses 6.2(a) and 6.2(b) do not require Federation or Novion to:
- (i) provide information to each other concerning their respective Directors' and management's consideration of the Schemes;
  - (ii) provide any commercially sensitive or competitive information;
  - (iii) breach an obligation of confidentiality to any person; or
  - (iv) do anything that would cause or result in that party being in breach of any material obligation owed to another party (whether under an agreement of otherwise) or a breach of any duty, whether arising under statute or general law owed by that party.
- (d) The parties acknowledge that all information that is provided pursuant to this clause 6.2 will be provided subject to the terms of the Confidentiality Deed.

### 6.3 No Regulated Events

Without limiting clauses 6.1 and 6.2(a), during the period from the date of this Agreement up to and including the earlier of the date when this Agreement is terminated and the Implementation Date, each of Federation and Novion must ensure, to the extent within the control of any member of their respective Group (or two or more of them), that:

- (a) in the case of Federation, no Federation Regulated Event occurs, without the prior written consent of Novion (such consent not to be unreasonably withheld or delayed); and
- (b) in the case of Novion, no Novion Regulated Event occurs, without the prior written consent of Federation (such consent not to be unreasonably withheld or delayed).

## 7 Novion Board Recommendations and Intentions

### 7.1 Novion Board recommendation

- (a) The Agreed Public Announcement must state (on the basis of written statements or resolutions made by each of the Novion Directors) that the Novion Board unanimously considers the Schemes to be in the best interests of Novion Securityholders and recommends that Novion Securityholders approve the Required Resolutions, in the absence of a Superior Proposal and subject to the Independent Expert concluding that

the Schemes are fair and reasonable to and in the best interests of Novion Securityholders and the Independent Expert not changing that conclusion before the Second Court Date.

- (b) Novion must use its best endeavours to procure that the Novion Board:
- (i) does not change or withdraw the statements and recommendations set out in the Agreed Public Announcement;
  - (ii) in the Scheme Booklet, states that the Novion Board unanimously considers the Schemes to be in the best interests of Novion Securityholders and recommends that Novion Securityholders approve the Required Resolutions, in the absence of a Superior Proposal, and does not change or withdraw those statements or recommendations once made; and
  - (iii) does not make any public statement or any statement to brokers, analysts, journalists, Novion Securityholders or professional or institutional investors to the effect, or take any other action that suggests, that the Schemes are no longer so considered or recommended,

unless:

- (iv) one or more of the following occurs:
  - (A) the Independent Expert concludes at any time before the Second Court Date that the Schemes are not fair and reasonable to and in the best interests of Novion Securityholders;
  - (B) there is a Superior Proposal; and
  - (C) there is a MIA Compatible and Compelling Proposal, which:
    - (1) if the proposal is to proceed by way of a company scheme of arrangement and a 'trust scheme', is the subject of an executed implementation agreement between the proponent of the proposal and Federation; or
    - (2) if the proposal is to proceed by way of takeover bids, is the subject of publicly announced takeover bids or a public announcement of an intention to make those takeover bids; and
- (v) a majority of the Novion Board, after considering the matter in good faith and after consulting in good faith with Federation in relation to its proposed change of statement and recommendation, no longer considers the Schemes to be in the best interests of Novion Securityholders.

## 7.2 Novion Director intentions

- (a) The Agreed Public Announcement must state (on the basis of written statements or resolutions made by each of the relevant Novion Directors) that each Novion Director who holds Novion Stapled Securities or on whose behalf Novion Stapled Securities are held intends to vote such securities in favour of the Required Resolutions in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Schemes are fair and reasonable to and in the best interests of Novion Securityholders and the Independent Expert does not change that conclusion before the Second Court Date;
- (b) Novion must use its best endeavours to ensure that each Novion Director who holds Novion Stapled Securities or on whose behalf Novion Stapled Securities are held:

- (i) intends to vote such securities in favour of the Required Resolutions; and
  - (ii) does not change that voting intention,
- unless:
- (iii) one or more of the following occurs:
    - (A) the Independent Expert concludes at any time before the Second Court Date that the Schemes are not fair and reasonable to and in the best interests of Novion Securityholders;
    - (B) there is a Superior Proposal; and
    - (C) the applicable Novion Director changes his or her recommendation in respect of the Schemes in accordance with clause 7.1(b)(iv)(C); and
  - (iv) the applicable Novion Director, after considering the matter in good faith, and after consulting in good faith with Federation in relation to their proposed change or withdrawal of intention, no longer considers the Schemes to be in the best interests of Novion Securityholders.

## **8 Public Announcements, Communications and Confidentiality**

### **8.1 Required announcements**

- (a) On the Announcement Date, and immediately after execution of this Agreement, Federation and Novion must jointly release the Agreed Public Announcement.
- (b) Where a party is required by applicable law or the ASX Listing Rules to make any announcement or to make any disclosure in connection with this Agreement (including its termination), the Schemes, the Transactions or any other transaction contemplated by this Agreement or the Schemes, it may do so only after it has given each other party as much notice as is reasonably practicable in the context of any deadlines imposed by law or applicable requirement, but in any event prior notice, and to the extent practicable has consulted with each other party as to (and to the extent practicable has given each other party a reasonable opportunity to comment on) the form and content of that announcement or disclosure. Nothing in this clause requires the giving of prior notice or the taking of any action if doing so would lead to a party breaching an applicable law or the ASX Listing Rules.

### **8.2 Agreement on other Communications**

Except in relation to Communications regulated by clause 8.1 and to the extent permitted by applicable law:

- (a) Federation and Novion must in good faith and on a timely and pragmatic basis consult with each other and so far as practicable agree in advance on all aspects (including the timing, form, content and manner) of:
  - (i) any Communications with any Governmental Agency in relation to the implementation of the Schemes, whether or not such Communications are for the purposes of satisfying a Condition Precedent;
  - (ii) any public announcement or disclosure in connection with this Agreement (including its termination), the Schemes, the Transactions or any other transaction contemplated by this Agreement, the Schemes or the Transactions;
  - (iii) any written Communications with Novion Securityholders in relation to the Schemes;

- (b) unless one party bona fide determines that it is not in the best interests of that party for the other party to be represented at a meeting with any Government Agency, each of Federation and Novion is entitled to be represented and to make submissions at any meeting with any Governmental Agency relating to:
  - (i) the Transactions; or
  - (ii) any Regulatory Approval required to implement the Transactions;
- (c) each party must provide copies to each other party of any written Communications sent to or received from a person referred to in clause 8.2(a) promptly upon despatch or receipt (as the case may be) where that communication is material in relation to the Schemes.

### 8.3 Confidentiality Deed

Except as set out in clause 8.1(b), the parties acknowledge and agree that:

- (a) they continue to be bound by the Confidentiality Deed after the date of this Agreement; and
- (b) the rights and obligations of the parties under the Confidentiality Deed survive termination of this Agreement.

## 9 Representations and Warranties

### 9.1 Federation representations and warranties

Federation represents and warrants to Novion (on Novion's own behalf and separately as trustee for each of the Novion Indemnified Parties and in relation to the warranties in clauses 9.1(b)(iii), (b)(iv) and (b)(vi) also as trustee for each of the Novion Securityholders who is registered at the date of this Agreement or becomes registered at any time before the earlier of the date this Agreement is terminated and the date when the conditions to the Federation Deed Poll have been satisfied) that, except as consented to in writing by Novion:

- (a) **(Federation Co representations and warranties)** on each date from the date of this Agreement until (and including) the Second Court Date:
  - (i) Federation Co is a corporation validly existing under the laws of its place of incorporation;
  - (ii) Federation Co has the power to enter into and perform its obligations under this Agreement and to carry out the Transactions;
  - (iii) Federation Co has taken all necessary corporate action to authorise the entry into this Agreement and has taken or will take all necessary corporate action to authorise the performance of this Agreement;
  - (iv) this Agreement is Federation Co's valid and binding obligation enforceable in accordance with its terms; and
  - (v) the execution and performance by Federation Co of this Agreement and each transaction contemplated by this Agreement did not and will not violate in any respect a provision of:
    - (A) a law, judgment, ruling, order or decree binding on it;
    - (B) its constitution; or
    - (C) any other document or agreement that is binding on it or any of its Subsidiaries;

- (b) **(Federation Trust representations and warranties)** on each date from the date of this Agreement until (and including) the Second Court Date:
- (i) Federation Trust is duly established and validly subsisting;
  - (ii) Federation Trust RE is the responsible entity of the Federation Trust, has been validly appointed and remains as responsible entity of the Federation Trust, and no action has been taken or proposed to be taken to remove it as responsible entity;
  - (iii) Federation Trust RE is empowered by the Federation Trust Constitution to enter into and perform its obligations under this Agreement and to carry out the Transactions, in its capacity as responsible entity of the Federation Trust. There is and will be no restriction on or condition of its doing so, prior to the earlier of the End Date and the date when this Agreement is terminated;
  - (iv) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required or as may be required, including under the Federation Trust Constitution, for Federation Trust RE to enter into and perform this Agreement, including without limitation, for the issue of the Trust Scheme Consideration;
  - (v) this Agreement is Federation Trust RE's valid and binding obligation enforceable in accordance with its terms;
  - (vi) the execution and performance by Federation Trust RE of this Agreement and each transaction contemplated by this Agreement did not and will not violate in any respect a provision of:
    - (A) a law, judgment, ruling, order or decree binding on it;
    - (B) the Federation Trust Constitution; or
    - (C) any other document or agreement that is binding on it or any of its Subsidiaries; and
  - (vii) Federation Trust RE's right of indemnity out of, and lien over, the assets of the Federation Trust have not been limited in any way. Federation Trust RE has no liability which may be set off against that right of indemnity;
- (c) other than as provided for or described in the Federation Disclosure Letter, on each date from the date of this Agreement until (and including) the Second Court Date:
- (i) each Federation Group Member is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against any Federation Group Member:
    - (A) for the winding up, dissolution or termination of that Federation Group Member; or
    - (B) for the appointment of a liquidator, receiver, administrator, or similar officer over any or all of any Federation Group Member's assets,except in the case of a solvent reconstruction by, or winding up or dissolution of, a Federation Group Member;
  - (ii) Federation is not aware of any material breach of law by any Federation Group Member of any Australian or foreign laws and regulations applicable to it or orders of Australian or foreign Governmental Agencies having jurisdiction over it and the Federation Group has all material licences, permits and franchises necessary for it to conduct its activities as presently being conducted;

- (iii) as at the date of this Agreement, neither ASIC nor ASX (as applicable) has made a determination against any Federation Group Member for any contravention of the requirements of the Corporations Act or the ASX Listing Rules or any rules, regulations or regulatory guides under the Corporations Act or the ASX Listing Rules; and
  - (iv) so far as Federation is aware, there has not been any event, change, effect or development that would require Federation to restate Federation's financial statements as disclosed to ASX;
- (d) other than as provided for or described in the Federation Disclosure Letter, as at the date of this Agreement, the total securities of Federation on issue are as follows:
  - (i) 1,427,641,565 Federation Stapled Securities; and
  - (ii) 7,631,810 Federation Performance Rights,and no Federation Group Member has issued (or is actually or contingently required to issue) any other securities that are still outstanding (or may become outstanding) and that may convert into Federation Stapled Securities;
- (e) other than as provided for or described in the Federation Disclosure Letter, except with the prior consent of Novion, it has not, prior to the date of this Agreement, taken any action contemplated by paragraph (e) of the definition of Federation Regulated Event to the extent that such action affects any Federation Performance Rights on issue as at the date of this Agreement;
- (f) on the First Court Date and the Second Court Date:
  - (i) the Federation Provided Information has been prepared and provided in good faith and on the understanding that Novion and each of its Officers have relied on that information for the purposes of preparing the Scheme Booklet and proposing the Schemes;
  - (ii) the Federation Provided Information complies in all material respects with the requirements referred to in clause 5.5(a);
  - (iii) the Federation Provided Information in the form and context in which it appears in the Scheme Booklet (as consented to by Federation in accordance with clause 5.5(b)) is not, as at that date, misleading or deceptive in any material respect and does not contain any material omission; and
  - (iv) all information provided by or on behalf of Federation to the Independent Expert or the Investigating Accountant to enable the Independent Expert's Report and the Investigating Accountant's Report, respectively, to be prepared has been prepared and provided in good faith and on the understanding that the Independent Expert and the Investigating Accountant have relied on the information for the purposes of preparing the Independent Expert's Report and the Investigating Accountant's Report, respectively;
- (g) on the date of this Agreement, the First Court Date, the date of the Meetings and the Second Court Date:
  - (i) following the making by Federation of the Agreed Public Announcement, Federation is not in breach of its continuous disclosure obligations under ASX Listing Rule 3.1 and is not withholding any information from Novion that is being withheld from public disclosure in reliance on ASX Listing Rule 3.1A; and
  - (ii) the Federation Disclosed Information has been disclosed in good faith;

- (h) as at the date of this Agreement, no member of the Federation Group has a Relevant Interest in any Novion Stapled Securities or any other economic interest in any such securities (including any interest arising under a derivative or swap arrangement);
- (i) to the best of its knowledge, the information contained in the Federation Disclosure Letter is accurate and Federation has not:
  - (i) deliberately included anything in the Federation Disclosure Materials that Federation is aware is materially misleading or deceptive, or likely to materially mislead or deceive; or
  - (ii) deliberately omitted anything from the Federation Disclosure Materials that Federation is aware is material to the Schemes, or which renders the Federation Disclosure Materials materially misleading or deceptive, or likely to materially mislead or deceive.

## 9.2 Novion representations and warranties

Novion represents and warrants to Federation (on its own behalf and separately as trustee for each of the Federation Indemnified Parties) that, except as consented to in writing by Federation:

- (a) **(Novion Co representations and warranties)** on each date from the date of this Agreement until (and including) the Second Court Date:
  - (i) Novion Co is a corporation validly existing under the laws of its place of incorporation;
  - (ii) Novion Co has the power to enter into and perform its obligations under this Agreement and to carry out the Transactions;
  - (iii) Novion Co has taken all necessary corporate action to authorise the entry into this Agreement and has taken or will take all necessary corporate action to authorise the performance of this Agreement;
  - (iv) this Agreement is Novion Co's valid and binding obligation enforceable in accordance with its terms;
  - (v) the execution and performance by Novion Co of this Agreement and each transaction contemplated by this Agreement did not and will not violate in any respect a provision of:
    - (A) a law, judgment, ruling, order or decree binding on it;
    - (B) its constitution; or
    - (C) any other document or agreement that is binding on it or any of its Subsidiaries;
- (b) **(Novion Trust representations and warranties)** on each date from the date of this Agreement until (and including) the Second Court Date:
  - (i) Novion Trust is duly established and validly subsisting;
  - (ii) Novion Trust RE is the responsible entity of the Novion Trust, has been validly appointed and remains as responsible entity of the Novion Trust, and no action has been taken or proposed to be taken to remove it as responsible entity;
  - (iii) Novion Trust RE is empowered by the Novion Trust Constitution to enter into and perform its obligations under this Agreement and to carry out the Transactions, in its capacity as responsible entity of the Novion Trust. There is and will be no restriction on or condition of its doing so, prior to the earlier of the End Date and the date when this Agreement is terminated;

- (iv) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required or as may be required, including under the Novion Trust Constitution, for Novion Trust RE to enter into and perform this Agreement;
  - (v) this Agreement is Novion Trust RE's valid and binding obligation enforceable in accordance with its terms;
  - (vi) the execution and performance by Novion Trust RE of this Agreement and each transaction contemplated by this Agreement did not and will not violate in any respect a provision of:
    - (A) a law, judgment, ruling, order or decree binding on it;
    - (B) the Novion Trust Constitution; or
    - (C) any other document or agreement that is binding on it or any of its Subsidiaries; and
  - (vii) Novion Trust RE's right of indemnity out of, and lien over, the assets of the Novion Trust have not been limited in any way. Novion Trust RE has no liability which may be set off against that right of indemnity;
- (c) other than as provided for or described in the Novion Disclosure Letter, on each date from the date of this Agreement until (and including) the Second Court Date:
- (i) each Novion Group Member is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against any Novion Group Member:
    - (A) for the winding up, dissolution or termination of that Novion Group Member; or
    - (B) for the appointment of a liquidator, receiver, administrator, or similar officer over any or all of any Novion Group Member's assets,except in the case of a solvent reconstruction by, or winding up or dissolution of, a Novion Group Member;
  - (ii) Novion is not aware of any material breach of law by any Novion Group Member of any Australian or foreign laws and regulations applicable to it or orders of Australian or foreign Governmental Agencies having jurisdiction over it and the Novion Group has all material licences, permits and franchises necessary for it to conduct its activities as presently being conducted;
  - (iii) as at the date of this Agreement, neither ASIC nor ASX (as applicable) has made a determination against any Novion Group Member for any contravention of the requirements of the Corporations Act or the ASX Listing Rules or any rules, regulations or regulatory guides under the Corporations Act or the ASX Listing Rules; and
  - (iv) so far as Novion is aware, there has not been any event, change, effect or development that would require Novion to restate Novion's financial statements as disclosed to ASX;
- (d) other than as provided for or described in the Novion Disclosure Letter, as at the date of this Agreement, the total securities of Novion on issue are as follows:
- (i) 3,050,627,717 Novion Stapled Securities; and
  - (ii) 2,535,110 Novion Performance Rights,

- and no Novion Group Member has issued (or is actually or contingently required to issue) any other securities that are still outstanding (or may become outstanding) and that may convert into Novion Stapled Securities other than as a result of the exercise of convertible notes in existence as at the date of this Agreement or as a result of the issue of securities under the Novion distribution plan in existence as at the date of this Agreement;
- (e) other than as provided for or described in the Novion Disclosure Letter, except with the prior consent of Federation, it has not, prior to the date of this Agreement, taken any action contemplated by paragraph (e) of the definition of Novion Regulated Event to the extent that such action affects any Novion Performance Rights on issue as at the date of this Agreement;
- (f) on the First Court Date and the Second Court Date:
- (i) the Novion Provided Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that Federation and each of its Officers have relied on that information for the purposes of considering and approving the Federation Provided Information in the Scheme Booklet;
  - (ii) the Novion Provided Information complies in all material respects with the requirements referred to in clause 5.4(b);
  - (iii) the Novion Provided Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission; and
  - (iv) all information provided by or on behalf of Novion to the Independent Expert or the Investigating Accountant to enable the Independent Expert's Report and the Investigating Accountant's Report, respectively, to be prepared has been prepared and provided in good faith and on the understanding that the Independent Expert and the Investigating Accountant have relied on the information for the purposes of preparing the Independent Expert's Report and the Investigating Accountant's Report, respectively;
- (g) on the date of this Agreement, the First Court Date, the date of the Meetings and the Second Court Date:
- (i) following the making by Novion of the Agreed Public Announcement, Novion is not in breach of its continuous disclosure obligations under ASX Listing Rule 3.1 and is not withholding any information from Federation that is being withheld from public disclosure in reliance on ASX Listing Rule 3.1A; and
  - (ii) the Novion Disclosed Information has been disclosed in good faith; and
- (h) as at the date of this Agreement, no member of the Novion Group has a Relevant Interest in any Federation Stapled Securities or any other economic interest in any such securities (including any interest arising under a derivative or swap arrangement);
- (i) to the best of its knowledge, the information contained in the Novion Disclosure Letter is accurate and Novion has not:
- (i) deliberately included anything in the Novion Disclosure Materials that Novion is aware is materially misleading or deceptive, or likely to materially mislead or deceive; or
  - (ii) deliberately omitted anything from the Novion Disclosure Materials that Novion is aware is material to the Schemes, or which renders the Novion Disclosure Materials materially misleading or deceptive, or likely to materially mislead or deceive.

### 9.3 Reliance by parties

Each party (**Representor**) acknowledges that:

- (a) in entering into this Agreement each other party has relied on the representations and warranties provided by the Representor under this clause 9;
- (b) any breach of the representations and warranties provided by the Representor under this clause 9 after the Schemes become Effective may only give rise to a claim in damages and cannot result in a termination of this Agreement; and
- (c) it has not entered into this Agreement in reliance on any warranty or representation made by or on behalf of any other party except those warranties and representations set out in this Agreement.

This acknowledgment does not prejudice the rights any party may have in relation to the Novion Provided Information, the Novion Disclosed Information, the Federation Provided Information, the Federation Disclosed Information or any information filed by the other party with ASX or ASIC.

### 9.4 Notifications

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

### 9.5 Status of representations and warranties

Each representation and warranty in this clause 9:

- (a) is severable;
- (b) will survive the termination of this Agreement; and
- (c) is given with the intent that liability under it will not be confined to breaches that are discovered prior to either the date when the Schemes are implemented or the date of termination of this Agreement.

## 10 Indemnities and Releases

### 10.1 Indemnities and releases by Novion

- (a) Subject to section 199A of the Corporations Act and clause 13.6(a), Novion agrees with Federation to indemnify and keep indemnified the Federation Indemnified Parties from and against all loss that any of the Federation Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties of Novion in clause 9.2.
- (b) To the fullest extent permitted by law, Novion releases its rights against, and agrees with Federation that it will not make a claim against, any Federation Indemnified Party (other than Federation) in connection with:
  - (i) any breach of any representation, covenant and warranty of Federation in this Agreement; or
  - (ii) any disclosure made by any Federation Indemnified Party that contains any statement that is false or misleading whether in content or by omission, except to the extent the relevant Federation Indemnified Party has not acted in good faith, has acted without taking reasonable care or has engaged in wilful misconduct.

## 10.2 Indemnities and releases by Federation

- (a) Subject to section 199A of the Corporations Act and clause 13.6(b), Federation agrees with Novion to indemnify and keep indemnified the Novion Indemnified Parties from and against all loss that any of the Novion Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties of Federation in clause 9.1.
- (b) To the fullest extent permitted by law, Federation releases its rights against, and agrees with Novion that it will not make a claim against, any Novion Indemnified Party (other than Novion) in connection with:
  - (i) any breach of any representation, covenant and warranty of Novion in this Agreement; or
  - (ii) any disclosure made by any Novion Indemnified Party that contains any statement that is false or misleading whether in content or by omission,except to the extent the relevant Novion Indemnified Party has not acted in good faith, has acted without taking reasonable care or has engaged in wilful misconduct.

## 10.3 Survival of indemnities and releases

Each indemnity and release in clauses 10.1 and 10.2 will:

- (a) be severable;
- (b) be a continuing obligation;
- (c) constitute a separate and independent obligation of the party giving the indemnity or release from any other obligations of that party under this Agreement; and
- (d) survive the termination of this Agreement.

## 10.4 Enforcement of indemnities

- (a) The indemnities and releases in clause 10.1 are given to Federation, for itself and as trustee for each of the other Federation Indemnified Parties.
- (b) The indemnities and releases in clause 10.2 are given to Novion, for itself and as trustee for each of the other Novion Indemnified Parties.
- (c) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by clause 10.1 or 10.2.

## 11 Limitation of Trustee Liability

- (a) Each of Novion Trust RE and Federation Trust RE (each a **Relevant RE**) enters into and performs this Agreement and the transactions it contemplates only as responsible entity of Novion Trust and Federation Trust (as applicable) (the **Relevant Trust**). This applies in respect of any past and future conduct (including omissions) relating to this Agreement or those transactions.
- (b) Under and in connection with this Agreement and those transactions and conduct:
  - (i) the Relevant RE's liability (including for negligence) is limited to the extent it can be satisfied out of the assets of the Relevant Trust. The Relevant RE need not pay any such liability out of other assets;
  - (ii) another party may only do the following (but any resulting liability remains subject to this clause):

- (A) prove and participate in, and otherwise benefit from, any form of insolvency administration of the Relevant RE but only with respect to the Relevant Trust's assets;
  - (B) exercise rights and remedies with respect to the Relevant Trust's assets, including set-off;
  - (C) exercise contractual rights; and
  - (D) bring any other proceedings against the Relevant RE, seeking relief or orders that are not inconsistent with the limitations in this clause, and may not otherwise:
    - (E) bring proceedings against the Relevant RE;
    - (F) take any steps to have the Relevant RE placed into any form of insolvency administration (but this does not prevent the appointment of a receiver, or a receiver and manager, in respect of the Relevant Trust's assets); or
    - (G) seek by any means (including set-off) to have a liability of the Relevant RE to that party (including for negligence) satisfied out of any assets of the Relevant RE other than the Relevant Trust's assets.
- (c) Paragraphs (a) and (b) apply despite any other provision in this Agreement but do not apply with respect to any liability of the Relevant RE to another party (including for negligence):
- (i) to the extent that the Relevant RE has no right or power to have the Relevant Trust's assets applied towards satisfaction of that liability, or its right or power to do so is subject to a deduction, reduction, limit or requirement to make good, in any case because the Relevant RE has acted beyond power or improperly in relation to the Relevant Trust; or
  - (ii) under any provision which expressly binds the Relevant RE other than as trustee of the Relevant Trust (whether or not it also binds it as trustee of the Relevant Trust).
- (d) The limitation in paragraph (b)(i) is to be disregarded for the purposes (but only for the purposes) of the rights and remedies described in paragraph (b)(ii), and interpreting this Agreement and any security for it, including determining the following:
- (i) whether amounts are to be regarded as payable (and for this purpose damages or other amounts will be regarded as payable if they would have been owed had a suit or action barred under paragraph (b)(ii) been brought);
  - (ii) the calculation of amounts owing; or
  - (iii) whether a breach or default has occurred,
- but any resulting liability will be subject to the limitations in this clause.

## 12 Exclusivity

### 12.1 Termination of existing discussions

- (a) Novion represents and warrants that, as at the time of execution of this Agreement, it is not in any negotiations or discussions, and has ceased any existing negotiations or discussions, in respect of any Competing Proposal with any person (other than, for the

avoidance of doubt, the discussions with Federation and its Representatives in respect of the Schemes and the Transactions).

- (b) Novion agrees that if it has provided any confidential information to a Third Party pursuant to a confidentiality agreement and in connection with such Third Party's consideration of a possible Competing Proposal, Novion has requested or will promptly request in writing the immediate return or destruction by the Third Party of such confidential information.

## 12.2 No shop restriction

During the Exclusivity Period, Novion must not, and must ensure that each of its Representatives does not, except with the prior written consent of Federation, directly or indirectly solicit, invite, encourage or initiate any Competing Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of those things.

## 12.3 No talk restriction

During the Exclusivity Period, Novion must not, and must ensure that each of its Representatives does not, except with the prior written consent of Federation, enter into, continue or participate in negotiations or discussions with, or enter into any agreement, arrangement or understanding with, any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, even if:

- (a) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Novion or any of its Representatives; or
- (b) the Competing Proposal has been publicly announced,

unless the Novion Board, acting in good faith, and in order to satisfy what the Novion Board considers to be its fiduciary or statutory duties, determines that, where there is a Competing Proposal, the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal or, where there is not yet a Competing Proposal, the steps that the Novion Board proposes to take may reasonably be expected to lead to a Competing Proposal that is a Superior Proposal.

## 12.4 No due diligence

Without limiting the general nature of clause 12.3, during the Exclusivity Period, Novion must not, and must ensure that each of its Representatives does not, except with the prior written consent of Federation, make available to any Third Party or permit any such Third Party to receive any non-public information relating to any Novion Group Member in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal, unless:

- (a) the Novion Board, acting in good faith, and in order to satisfy what the Novion Board considers to be its fiduciary or statutory duties, determines that, where there is a Competing Proposal, the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal or, where there is not yet a Competing Proposal, the steps that the Novion Board proposes to take may reasonably be expected to lead to a Competing Proposal that is a Superior Proposal; and
- (b) the Third Party has entered into a written agreement in favour of Novion regarding the use and disclosure of the confidential information by the person and that restricts the Third Party's ability to solicit the employees of the Novion Group.

## 12.5 Notification by Novion and matching rights

- (a) During the Exclusivity Period, Novion must promptly notify Federation if:
- (i) it is approached by any Third Party to take any action of a kind that would breach its obligations under clause 12.3 or 12.4 (or that would breach its obligations under clause 12.3 or 12.4 if it were not for the provisos to the relevant clause); or
  - (ii) it proposes to take any action of a kind that would breach its obligations under clause 12.3 or 12.4 (or that would breach its obligations under clause 12.3 or 12.4 if it were not for the provisos to the relevant clause),

unless (and only to the extent that) the Novion Board, acting in good faith, determines that it would, or would be likely to, involve a breach of its fiduciary or statutory duties to so notify Federation (in which case Novion must promptly notify Federation that such a determination has been made and that Novion is relying on the proviso in this clause).

- (b) If Novion receives a Competing Proposal, and as a result the Novion Board proposes to publicly change or withdraw its statement that it considers the Schemes to be in the best interests of Novion Securityholders and/or its recommendation that Novion Securityholders vote in favour of the Required Resolutions, Novion must:
- (i) give Federation five clear Business Days' notice in writing of such proposed change or withdrawal; and
  - (ii) provide to Federation with that notice all material terms of the applicable Competing Proposal, including details of the proposed price or implied value (including details of the consideration if not simply cash), conditions, timing and break fee (if any), together with a copy of any material confidential information concerning the Novion Group's operations provided to any person associated with the Competing Proposal not previously provided to Federation.

Novion will use its reasonable endeavours to ask the person who has made the applicable Competing Proposal (the **Competing Party**) for their consent to their name and other identifying details which may identify the Competing Party (**Identifying Details**) being provided by Novion to Federation on a confidential basis. If consent is refused, Novion may only withhold the Identifying Details from Federation if the Novion Board, acting in good faith, determines that failing to do so would be likely to, involve a breach of the fiduciary or statutory obligations owed by any Novion Director. Any information provided pursuant to this clause 12.5(b) will be provided subject to the terms of the Confidentiality Deed.

- (c) During the period of five clear Business Days referred to in clause 12.5(b), Federation will have the right to offer to amend the terms of the Schemes or the Transactions (a **Federation Counterproposal**) so that the terms of the Schemes or the Transactions (as amended) would provide a superior outcome for the Novion Securityholders than the applicable Competing Proposal.
- (d) Novion must procure that the Novion Board considers any such Federation Counterproposal and if the Novion Board, acting in good faith, determines that:
- (i) the Federation Counterproposal would provide a superior outcome for the Novion Securityholders than the applicable Competing Proposal (it being acknowledged that the price or value implied by the Federation Counterproposal does have to be above, but does not have to be materially above, the price or value implied by the applicable Competing Proposal for the Novion Board to consider the Federation Counterproposal in relation to price to be superior); and

- (ii) the other terms and conditions of the Federation Counterproposal taken as a whole are not less favourable than those in the applicable Competing Proposal,
- then,
- (iii) Novion and Federation must use their best endeavours to agree the amendments to the Transaction Documents that are reasonably necessary to reflect the Federation Counterproposal (including amendments to the Schemes Consideration that are reasonably necessary to reflect the Federation Counterproposal), and to enter into one or more appropriate amended agreements to give effect to those amendments and to implement the Federation Counterproposal, in each case as soon as reasonably practicable; and
  - (iv) the Novion Board must recommend the Federation Counterproposal to Novion Securityholders and not the applicable Competing Proposal.
- (e) Any material modification to any Competing Proposal (which will include any modification relating to the price or value of any Competing Proposal) will be taken to make that proposal a new Competing Proposal in respect of which Novion must comply with its obligations under this clause 12.5.

## 12.6 Federation Exclusivity

- (a) **(Termination of existing discussions)** Federation:
- (i) represents and warrants that, as at the time of execution of this Agreement, it is not in any negotiations or discussions, and has ceased any existing negotiations or discussions in respect of any Federation Acquisition Proposal with any person (other than, for the avoidance of doubt, the discussions with Novion and its Representatives in respect of the Schemes and the Transactions).
  - (ii) agrees that if it has provided any confidential information to a Third Party pursuant to a confidentiality agreement in connection with such Third Party's consideration of a possible Federation Acquisition Proposal, Federation will promptly request in writing the immediate return or destruction by the Third Party of such confidential information.
- (b) **(No shop restriction)** During the Exclusivity Period, Federation must not, and must ensure that each of its Representatives does not, except with the prior written consent of Novion, directly or indirectly solicit, invite, encourage or initiate any Federation Acquisition Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to lead to, a Federation Acquisition Proposal, or communicate any intention to do any of those things.
- (c) **(No due diligence)** During the Exclusivity Period, Federation must not, and must ensure that each of its Representatives does not, except with the prior written consent of Novion, make available to any Third Party or permit any such Third Party to receive any non-public information relating to any Federation Group Member in connection with such Third Party formulating, developing or finalising or assisting in the formulation, development or finalisation of a Federation Acquisition Proposal, unless:
- (i) the Federation Board, acting in good faith and in order to satisfy what the Federation Board considers to be its fiduciary or statutory duties, determines that, where there is a Federation Acquisition Proposal, the Federation Acquisition Proposal is, or may reasonably be expected to lead to, a MIA Compatible and Compelling Proposal or, where there is not yet a Federation Acquisition Proposal, the steps that the Federation Board proposes to take may reasonably be

expected to lead to a Federation Acquisition Proposal that is a MIA Compatible and Compelling Proposal; and

- (ii) the Third Party has entered into a written agreement in favour of Federation regarding the use and disclosure of the confidential information by the person and that restricts the Third Party's ability to solicit the employees of the Federation Group.
- (d) **(Notification by Federation)** During the Exclusivity Period, Federation must promptly notify Novion if it proposes to take any action of a kind that would breach its obligations under clause 12.6(c) (or that would breach its obligations under clause 12.6(c) if it were not for the provisos to that clause), unless (and only to the extent that) the Federation Board, acting in good faith, determines that it would, or would be likely to, involve a breach of its fiduciary or statutory duties to so notify Novion (in which case Federation must promptly notify Novion that such a determination has been made and that Federation is relying on the proviso in this clause).

## 12.7 Normal provision of information

Nothing in this clause 12 prevents a party from:

- (a) providing information to its Representatives;
- (b) providing information to any Governmental Agency;
- (c) providing information to its auditors, Advisers, customers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information required to be provided by law or any Governmental Agency; or
- (e) making presentations to brokers, portfolio investors, analysts and other third parties in the ordinary course of business.

## 12.8 Acknowledgement

Federation and Novion have required each other to agree to the obligations set out in this clause 12 in consideration of the agreement to propose the Transaction and the parties incurring significant costs in doing so. In the absence of obtaining these obligations neither Novion nor Federation would have entered into this Agreement.

## 13 Break Fees

### 13.1 Payment of costs

- (a) Novion and Federation believe that the Transactions will provide benefits to Novion, Federation and their respective securityholders, and acknowledge that if they enter into this Agreement and the Schemes are subsequently not implemented, Novion and Federation will incur significant costs.
- (b) In the circumstances referred to in clause 13.1(a):
  - (i) Novion and Federation requested that provision be made for the payments referred to in clauses 13.2 and 13.3, without which neither Novion nor Federation would have entered into this Agreement; and
  - (ii) the Novion Board and the Federation Board believe that it is appropriate for Novion and Federation to agree to the payments referred to in clauses 13.2 and 13.3 in order to secure each other's participation.
- (c) Novion and Federation acknowledge that the Novion Break Fee and the Federation Break Fee represent a reasonable amount to compensate the other for the following:

- (i) all advisory costs (including costs of Advisers other than success fees);
  - (ii) costs of management and directors' time;
  - (iii) all out of pocket expenses;
  - (iv) all commitment fees and other financing costs (whether associated with debt or equity finance); and
  - (v) reasonable opportunity costs in pursuing the Transactions or not pursuing other alternative acquisitions or strategic initiatives.
- (d) The parties agree that clauses 13.2 and 13.3 do not limit the rights of Novion or Federation in respect of any other claims that they may have against each other, whether under this Agreement or otherwise.

### 13.2 Novion Break Fee

- (a) Subject to clauses 13.2(b) and 13.2(c), Novion must pay Federation the Novion Break Fee in accordance with clause 13.5(a), without withholding or set off, if:
- (i) any Novion Director fails to state that they consider the Schemes to be in the best interests of Novion Securityholders or fails to recommend that Novion Securityholders approve the Required Resolutions, or publicly changes (including by attaching qualifications to) or withdraws that statement or recommendation, other than in any case in accordance with either:
    - (A) clauses 7.1(b)(iv)(A) and 7.1(b)(v), and provided that the reasons for the Independent Expert's conclusions do not include the existence of a Competing Proposal; or
    - (B) clause 7.1(b)(iv)(C) and clause 7.1(b)(v);
  - (ii) a Competing Proposal is announced or made prior to the earlier of the date this Agreement is terminated and the End Date and is publicly recommended, promoted or otherwise endorsed by a majority of the Novion Board;
  - (iii) a Competing Proposal is announced or made prior to the earlier of the date this Agreement is terminated and the End Date and is completed at any time prior to the first anniversary of the date of this Agreement and, as a result, a Third Party acquires control of Novion or the Novion Group within the meaning of section 50AA of the Corporations Act; or
  - (iv) Federation terminates this Agreement:
    - (A) in relation to a material breach in accordance with clause 14.1(b); or
    - (B) in relation to a Novion Regulated Event in accordance with clause 14.2(a).
- (b) Despite any other term of this Agreement, the Novion Break Fee is only payable once.
- (c) Despite any other term of this Agreement, the Novion Break Fee will not be payable to Federation if:
- (i) the Schemes become Effective notwithstanding the occurrence of any event in clause 13.2(a); or
  - (ii) as at the earlier of the date of termination of this Agreement and the End Date, Novion was entitled to terminate this Agreement under clause 14.1(b) or 14.3(a).
- (d) For the avoidance of doubt, the Novion Break Fee will not be payable merely by reason that the Schemes are not approved by Novion Securityholders at the Meetings.

### 13.3 Federation Break Fee

- (a) Subject to clauses 13.3(b) and 13.3(c), Federation must pay Novion the Federation Break Fee in accordance with clause 13.5(b), without withholding or set-off, if:
  - (i) Novion terminates this Agreement:
    - (A) in relation to a material breach in accordance with clause 14.1(b); or
    - (B) in relation to a Federation Regulated Event in accordance with clause 14.3(a); or
    - (C) in relation to a breach of a representation or warranty in clause 9.1(b)(iii) or (iv) in accordance with clause 14.3(c).
- (b) Despite any other term of this Agreement, the Federation Break Fee is only payable once.
- (c) Despite any other term of this Agreement, the Federation Break Fee will not be payable to Novion if:
  - (i) the Schemes become Effective notwithstanding the occurrence of any event in clause 13.3(a); or
  - (ii) as at the earlier of the date of termination of this Agreement and the End Date, Federation was entitled to terminate this Agreement under clause 14.1(b) or 14.2(a).

### 13.4 Compliance with law

No party may make, nor cause or permit to be made, any application to a court, arbitral tribunal or the Takeovers Panel for or in relation to a determination in relation to any part of the Novion Break Fee or the Federation Break Fee.

### 13.5 Time for payment

- (a) Novion must pay Federation the Novion Break Fee, if it is payable pursuant to clause 13.2(a), within five Business Days after receiving a written notice from Federation setting out the relevant circumstances and requiring payment of the Novion Break Fee.
- (b) Federation must pay Novion the Federation Break Fee, if it is payable pursuant to clause 13.3(a), within five Business Days after receiving a written notice from Novion setting out the relevant circumstances and requiring payment of the Federation Break Fee.
- (c) A written notice requiring payment of the Novion Break Fee or the Federation Break Fee, as applicable, may only be made after the Schemes fail to become Effective by the End Date or this Agreement is terminated in accordance with its terms.

### 13.6 Other claims

Notwithstanding any other term of this Agreement:

- (a) Federation acknowledges and agrees that the maximum liability of Novion arising under or in connection with this Agreement (including any liability to pay the Novion Break Fee) is \$40 million (plus any GST that may be payable by Novion in respect of any such liability); and
- (b) Novion acknowledges and agrees that the maximum liability of Federation arising under or in connection with this Agreement (including any liability to pay the Federation Break Fee) is \$40 million (plus any GST that may be payable by Federation in respect of any such liability).

## 14 Termination

### 14.1 Termination by either party

Federation Trust RE or Novion Trust RE (**terminating party**) may terminate this Agreement by notice to Federation or Novion (as applicable) (the **non-terminating party**):

- (a) in accordance with clause 3.5; or
- (b) at any time before 8am on the Second Court Date if the non-terminating party is in material breach of any clause of this Agreement (including a material breach of a representation or warranty given by the non-terminating party under clause 9), and that breach is or is likely to result in material loss or damage to the terminating party provided that, (except where Federation Trust RE is the terminating party, in the case of a material breach by Novion of clause 7 or 12 or Novion Trust RE is the terminating party in the case of a material breach by Federation of clause 12), the terminating party has given notice to the non-terminating party setting out the relevant circumstances and stating an intention to terminate this Agreement, and the relevant circumstances have continued to exist for five Business Days (or any shorter period ending at 5pm on the last Business Day before the Second Court Date) from the time such notice is given.

### 14.2 Termination by Federation Trust RE

Federation Trust RE may terminate this Agreement at any time before 8am on the Second Court Date by notice in writing to Novion Trust RE:

- (a) if a Novion Regulated Event or a Novion Material Adverse Change occurs, provided that Federation Trust RE has given notice to Novion Trust RE setting out the relevant circumstances and stating an intention to terminate this Agreement, and the relevant circumstances have continued to exist for five Business Days (or any shorter period ending at 5pm on the last Business Day before the Second Court Date) from the time such notice is given;
- (b) if a majority of the Novion Directors publicly change (including by attaching qualifications to) or withdraw their statement that they consider the Schemes to be in the best interests of Novion Securityholders or their recommendation that Novion Securityholders approve the Required Resolutions, or publicly recommend, promote or otherwise endorse a Competing Proposal, whether or not in accordance with clause 7.1(b); or
- (c) if a Competing Proposal is announced, made, or becomes open for acceptance and the Third Party announcing or making the Competing Proposal (either alone or together with its Associates) acquires a Relevant Interest in more than 20% of all Novion Stapled Securities and that Competing Proposal is (or has become) free from any defeating conditions.

### 14.3 Termination by Novion Trust RE

Novion Trust RE may terminate this Agreement at any time before 8am on the Second Court Date by notice in writing to Federation Trust RE:

- (a) if a Federation Regulated Event or a Federation Material Adverse Change occurs, provided that Novion Trust RE has given notice to Federation Trust RE setting out the relevant circumstances and stating an intention to terminate this Agreement, and the relevant circumstances have continued to exist for five Business Days (or any shorter period ending at 5pm on the last Business Day before the Second Court Date) from the time such notice is given;

- (b) if the Novion Board publicly changes (including by attaching qualifications to) or withdraws its statement that it considers the Schemes to be in the best interests of Novion Securityholders or its recommendation that Novion Securityholders approve the Required Resolutions, in either case in accordance with clause 7.1(b), or publicly recommends, promotes or otherwise endorses a Superior Proposal; or
- (c) if there is a breach of a representation or warranty in clause 9.1(b)(iii) or (iv), provided that Novion Trust RE has given notice to Federation Trust RE setting out the relevant circumstances and stating an intention to terminate this Agreement, and the relevant circumstances have continued to exist for five Business Days (or any shorter period ending at 5pm on the last Business Day before the Second Court Date) from the time such notice is given.

#### 14.4 Effect of termination

In the event of termination of this Agreement in accordance with clause 3.5, 14.1, 14.2 or 14.3, this Agreement will have no further force or effect and the parties will have no further obligations under this Agreement, provided that:

- (a) this clause 14 and clauses 1, 8.3, 10, 13, 15 and 16 will survive termination; and
- (b) each party will retain any accrued rights and remedies, including any rights and remedies it has or may have against any other party in respect of any past breach of this Agreement.

### 15 GST

#### 15.1 Recovery of GST

If GST is payable, or notionally payable, on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

#### 15.2 Liability net of GST

Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it must be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

#### 15.3 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

#### 15.4 Cost exclusive of GST

Any reference in this Agreement to a cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

#### 15.5 Survival

This clause will not merge upon completion and will continue to apply after expiration or termination of this Agreement.

## 15.6 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) will have the same meaning in this clause.

## 16 Miscellaneous

### 16.1 Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:
  - (i) to Novion Co: Address: Level 39, MLC Centre, 19 Martin Place, Sydney NSW 2000  
Fax No: +61 2 8229 7706  
Attention: Mr Brian McFadyen, General Counsel
  - (ii) to Novion Trust RE: Address: Level 39, MLC Centre, 19 Martin Place, Sydney NSW 2000  
Fax No: +61 2 8229 7706  
Attention: Mr Brian McFadyen, General Counsel
  - (iii) to Federation Co: Address: Level 28, 35 Collins Street, Melbourne, Victoria, 3000  
Fax No: +61 3 9236 6301  
Attention: Ms Carolyn Reynolds, General Counsel
  - (iv) to Federation Trust RE: Address: Level 28, 35 Collins Street, Melbourne, Victoria, 3000  
Fax No: +61 3 9236 6301  
Attention: Ms Carolyn Reynolds, General Counsel
- (c) will be conclusively taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or at a time that is later than 5pm in the place to which the Notice is sent, it will be conclusively taken to have been duly given or made at the start of business on the next business day in that place.

**16.2 No waiver**

A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

**16.3 Remedies cumulative**

The rights, powers and remedies provided to each party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

**16.4 Entire agreement**

This Agreement and the Confidentiality Deed contain the entire agreement between the parties with respect to their subject matter. They set out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersede all earlier Conduct by or between the parties in connection with their subject matter. No party has relied on or is relying on any other Conduct in entering into this Agreement and completing the transactions contemplated by it. If there is any inconsistency between the provisions of this Agreement and the provisions of the Confidentiality Deed, the provisions of this Agreement will prevail to the extent of any inconsistency and the provisions of the Confidentiality Deed will be construed accordingly.

**16.5 Amendment**

This Agreement may be amended only by another agreement executed by all parties.

**16.6 Assignment**

No party can assign, charge, create a security interest over, encumber or otherwise deal with any of its rights or obligations under this Agreement, or attempt or purport to do so, without the prior written consent of each other party.

**16.7 No merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

**16.8 Further assurances**

Each party must do anything necessary or desirable (including executing agreements and documents) to give full effect to this Agreement and the transactions contemplated by it.

**16.9 Costs and duty**

Subject to clause 13, each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement. All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this Agreement and any instrument executed under or any transaction evidenced by this Agreement must be borne by Federation.

**16.10 Severability of provisions**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not

invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

**16.11 Governing law and jurisdiction**

This Agreement is governed by the laws of Victoria, Australia. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

**16.12 Counterparts**

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

## Schedule 1

### Part 1 - Federation Regulated Event

**Federation Regulated Event** means the occurrence of any of the following events (other than as required to be undertaken or procured by the Federation Group pursuant to, or otherwise as contemplated by, the Transaction Documents, or to the extent fairly disclosed prior to entry into this Agreement in the Federation Disclosed Information, including in the budgets for Federation for the financial year ending on 30 June 2015, or as agreed to in writing by Novion):

- (a) Federation converts all or any of its securities into a larger or smaller number of securities;
- (b) Federation reduces, or resolves to reduce, its capital in any way;
- (c) Federation:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) Federation or any Subsidiary of Federation issues securities, or grants an option over or to subscribe for its securities, or agrees to make such an issue or grant such an option, other than to Federation or a Wholly-Owned Subsidiary of Federation, and excluding any Federation Stapled Securities issued by Federation as a result of the exercise of Federation Performance Rights in existence as at the date of this Agreement or as a result of the issue of securities under the Federation distribution reinvestment plan in existence as at the date of this Agreement;
- (e) Federation makes any amendment to the Federation ESP or to the terms of issue of any Federation Performance Rights, or makes any determination or exercises any discretion under the Federation ESP or the terms of issue of any Federation Performance Rights, where, as a consequence, any one or more of the following occurs:
  - (i) the period for vesting of any Federation Performance Right is extended;
  - (ii) the earliest date for vesting of any Federation Performance Right is brought forward; or
  - (iii) the number of Federation Stapled Securities to be issued on vesting of any Federation Performance Right is increased.
- (f) Federation or any Subsidiary of Federation issues, or agrees to issue, convertible notes or any other security or instrument convertible into shares, other than to Federation or a Wholly-Owned Subsidiary of Federation;
- (g) Federation or any Subsidiary of Federation issues, or agrees to issue, or grants an option to subscribe for, debentures (as defined in section 9 of the Corporations Act), other than to Federation or a Wholly-Owned Subsidiary of Federation;
- (h) Federation or any Subsidiary of Federation agrees to pay, declares, pays or makes, or incurs a liability to pay or make, a dividend or any other form of distribution of profits or capital, other than:
  - (i) the declaration and payment by Federation of the Permitted Federation Distribution; or
  - (ii) the declaration and payment by any Subsidiary of Federation of a dividend or distribution, where the recipient of that dividend or distribution is Federation or a Wholly-Owned Subsidiary of Federation;
- (i) Federation makes any change to its constitution or other constituent documents;
- (j) Federation or any Subsidiary of Federation disposes, or agrees to dispose, of shares or trust units in a Subsidiary of Federation, other than to Federation or a Wholly-Owned Subsidiary of Federation;

- (k) Federation or any Subsidiary of Federation:
- (i) acquires, leases or disposes of;
  - (ii) agrees to acquire, lease or dispose of; or
  - (iii) offers, proposes or announces a bid or tenders for, any entity, business or assets, other than:
    - (iv) a lease or licence in the ordinary and usual course of business;
    - (v) to or from Federation or a Wholly-Owned Subsidiary of Federation; or
    - (vi) as legally committed in any contract fairly disclosed to Novion prior to entry into this Agreement in the Federation Disclosed Information,where the value of such entity, business or assets, or the amount involved in the relevant transaction, exceeds \$100 million (either individually or, in the case of related businesses or classes of assets or a series of related transactions, collectively);
- (l) Federation or any Subsidiary of Federation creates, or agrees to create, any mortgage charge, lien or other encumbrance over the whole, or a substantial part, of its business or assets other than in the ordinary course of its business;
- (m) Federation or any Subsidiary of Federation:
- (i) enters into any Federation New Significant Contract (or any series of related contracts or commitments that would, when read together, constitute a Federation New Significant Contract); or
  - (ii) undertakes capital expenditure in excess of \$40 million, other than:
    - (iii) as legally committed in any contract fairly disclosed to Novion prior to entry into this Agreement in the Federation Disclosed Information;
    - (iv) in relation to any procurement project proposed in any document fairly disclosed to Novion prior to entry into this Agreement in the Federation Disclosed Information (including a project out to tender as at the date of this Agreement); or
    - (v) in relation to Halls Head Centre, Western Australia or Colonnades Centre, South Australia.
- (n) Federation or any Subsidiary of Federation incurs any financial indebtedness or issues any indebtedness or debt securities, other than:
- (i) to or from Federation or a Wholly-Owned Subsidiary of Federation;
  - (ii) in the ordinary course of business; or
  - (iii) pursuant to advances under its credit facilities in existence as at the date of this Agreement where the funds drawn pursuant to those advances are used in the ordinary course of business or in connection with a purpose that is contemplated and permitted in paragraph (k) of this definition;
- (o) Federation or any Subsidiary of Federation makes any loans, advances or capital contributions to, or investments in, any other person, other than to or in Federation or any Wholly-Owned Subsidiary of Federation in the ordinary course of business, or otherwise in the ordinary course of business;

- (p) Federation or any Subsidiary of Federation:
- (i) pays any bonus to any Officer of Federation or any Subsidiary of Federation, other than bonuses payable to executives in accordance with the employment terms of that executive in existence as at the date of this Agreement and in the ordinary and usual course of business (provided that, for the avoidance of doubt, the payment of any bonus in accordance with such employment terms requires that the applicable performance targets or benchmarks relating to the payment of the bonus are satisfied and that any other applicable conditions are fulfilled);
  - (ii) increases the remuneration or compensation of any Officer of Federation or any Subsidiary of Federation other than in accordance with Federation's normal salary review procedure conducted in good faith and in the ordinary and usual course of business on the basis of principles consistent with those applied for Federation's normal salary review procedure;
  - (iii) grants to any Officer of Federation or any Subsidiary of Federation any increase in severance or termination pay or superannuation entitlements; or
  - (iv) makes or agrees to make any material change to the terms of, or waives any claims or rights under, or waives the benefit of any provisions of, any contract of employment with any Executive of Federation or of any Subsidiary of Federation;
- (q) Federation or any Subsidiary of Federation:
- (i) changes the terms of any Material Contract, other than any contract that, as at the date of this Agreement, is out to tender and is disclosed prior to entry into this Agreement in the Federation Disclosed Information;
  - (ii) pays, discharges or satisfies any claims, liabilities or obligations under any Material Contract other than the payment, discharge or satisfaction consistent with past practice and in accordance with its terms; or
  - (iii) waives any material claims or rights under, or waives the benefit of any provision of, any Material Contract,
- where the consequences of such action are material to Federation or the relevant Subsidiary of Federation;
- (r) Federation or any of its material Subsidiaries resolves that it be wound up or an application or order is made for the winding up or dissolution of Federation or any of its material Subsidiaries, other than where the application or order (as the case may be) is set aside within 14 days;
  - (s) a liquidator or provisional liquidator of Federation or any of its material Subsidiaries is appointed;
  - (t) a court makes an order for the winding up of Federation or any of its material Subsidiaries;
  - (u) an administrator of Federation or of any of its material Subsidiaries is appointed under the Corporations Act;
  - (v) Federation or any of its material Subsidiaries ceases, or threatens to cease, to carry on business;
  - (w) Federation or any of its material Subsidiaries executes a deed of company arrangement;
  - (x) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of Federation or any of its material Subsidiaries;
  - (y) Federation or any of its material Subsidiaries is deregistered as a company or otherwise dissolved;
  - (z) Federation or any of its material Subsidiaries is or becomes unable to pay its debts when they fall due; or

- (aa) the trustee of any trust in which Federation or any Subsidiary of Federation has an interest of more than 50% and that would, if it were a company, be a material Subsidiary of Federation undertaking an action in respect of that trust if the corresponding action, in the case of Federation and its material Subsidiaries, would (mutatis mutandis) constitute a Federation Regulated Event.

## Part 2 – Novion Regulated Event

**Novion Regulated Event** means the occurrence of any of the following events (other than as required to be undertaken or procured by the Novion Group pursuant to, or otherwise as contemplated by, the Transaction Documents, or to the extent fairly disclosed prior to entry into this Agreement in the Novion Disclosed Information, including in the budgets for Novion for the financial year ending on 30 June 2015, or as agreed to in writing by Federation):

- (a) Novion converts all or any of its securities into a larger or smaller number of securities;
- (b) Novion reduces, or resolves to reduce, its capital in any way;
- (c) Novion:
- (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) Novion or any Subsidiary of Novion issues securities, or grants an option over or to subscribe for its securities, or agrees to make such an issue or grant such an option, other than to Novion or a Wholly-Owned Subsidiary of Novion and excluding any Novion Stapled Securities issued by Novion as a result of the exercise of Novion Performance Rights or convertible notes in existence as at the date of this Agreement or as a result of the issue of securities under the Novion distribution reinvestment plan in existence as at the date of this Agreement;
- (e) Novion makes any amendment to the Novion ESP or to the terms of issue of any Novion Performance Rights, or makes any determination or exercises any discretion under the Novion ESP or the terms of issue of any Novion Performance Right, where, as a consequence, any one or more of the following occurs:
- (i) the period for vesting of any Novion Performance Right is extended;
  - (ii) the earliest date for vesting of any Novion Performance Right is brought forward; or
  - (iii) the number of Novion Staples Securities to be issued on vesting of any Novion Performance Right is increased.
- (f) Novion or any Subsidiary of Novion issues, or agrees to issue, convertible notes or any other security or instrument convertible into shares, other than to Novion or a Wholly-Owned Subsidiary of Novion;
- (g) Novion or any Subsidiary of Novion issues, or agrees to issue, or grants an option to subscribe for, debentures (as defined in section 9 of the Corporations Act), other than to Novion or a Wholly-Owned Subsidiary of Novion;
- (h) Novion or any Subsidiary of Novion agrees to pay, declares, pays or makes, or incurs a liability to pay or make, a dividend or any other form of distribution of profits or capital, other than:
- (i) the declaration and payment by Novion of the Permitted Novion Distribution; or
  - (ii) the declaration and payment by any Subsidiary of Novion of a dividend or distribution, where the recipient of that dividend or distribution is Novion or a Wholly-Owned Subsidiary of Novion;
- (i) Novion makes any change to its constitution or other constituent documents;

- (j) Novion or any Subsidiary of Novion disposes, or agrees to dispose, of shares or trust units in a Subsidiary of Novion, other than to Novion or a Wholly-Owned Subsidiary of Novion;
- (k) Novion or any Subsidiary of Novion:
  - (i) acquires, leases or disposes of;
  - (ii) agrees to acquire, lease or dispose of; or
  - (iii) offers, proposes or announces a bid or tenders for, any entity, business or assets, other than:
    - (iv) a lease or licence in the ordinary and usual course of business;
    - (v) to or from Novion or a Wholly-Owned Subsidiary of Novion; or
    - (vi) as legally committed in any contract fairly disclosed to Federation prior to entry into this Agreement in the Novion Disclosed Information,where the value of such entity, business or assets, or the amount involved in the relevant transaction, exceeds \$200 million (either individually or, in the case of related businesses or classes of assets or a series of related transactions, collectively);
- (l) Novion or any Subsidiary of Novion creates, or agrees to create, any mortgage charge, lien or other encumbrance over the whole, or a substantial part, of its business or assets other than in the ordinary course of its business;
- (m) Novion or any Subsidiary of Novion:
  - (i) enters into any Novion New Significant Contract (or any series of related contracts or commitments that would, when read together, constitute a Novion New Significant Contract); or
  - (ii) undertakes capital expenditure in excess of \$80 million, other than as legally committed in any contract fairly disclosed to Federation prior to entry into this Agreement in the Novion Disclosed Information;
- (n) Novion or any Subsidiary of Novion incurs any financial indebtedness or issues any indebtedness or debt securities, other than:
  - (i) to or from Novion or a Wholly-Owned Subsidiary of Novion;
  - (ii) in the ordinary course of business; or
  - (iii) pursuant to advances under its credit facilities in existence as at the date of this Agreement where the funds drawn pursuant to those advances are used in the ordinary course of business or in connection with a purpose that is contemplated and permitted in paragraph (k) of this definition;
- (o) Novion or any Subsidiary of Novion makes any loans, advances or capital contributions to, or investments in, any other person, other than to or in Novion or any Wholly-Owned Subsidiary of Novion in the ordinary course of business, or otherwise in the ordinary course of business;
- (p) Novion or any Subsidiary of Novion:
  - (i) pays any bonus to any Officer of Novion or any Subsidiary of Novion, other than bonuses payable to executives in accordance with the employment terms of that executive in existence as at the date of this Agreement and in the ordinary and usual course of business (provided that, for the avoidance of doubt, the payment of any bonus in accordance with such employment terms requires that the applicable performance targets or benchmarks relating to the payment of the bonus are satisfied and that any other applicable conditions are fulfilled);

- (ii) increases the remuneration or compensation of any Officer of Novion or any Subsidiary of Novion other than in accordance with Novion's normal salary review procedure conducted in good faith and in the ordinary and usual course of business on the basis of principles consistent with those applied for Novion's normal salary review procedure;
  - (iii) grants to any Officer of Novion or any Subsidiary of Novion any increase in severance or termination pay or superannuation entitlements; or
  - (iv) makes or agrees to make any material change to the terms of, or waives any claims or rights under, or waives the benefit of any provisions of, any contract of employment with any Executive of Novion or of any Subsidiary of Novion;
- (q) Novion or any Subsidiary of Novion:
- (i) changes the terms of any Material Contract;
  - (ii) pays, discharges or satisfies any claims, liabilities or obligations under any Material Contract other than the payment, discharge or satisfaction consistent with past practice and in accordance with its terms; or
  - (iii) waives any material claims or rights under, or waives the benefit of any provision of, any Material Contract,
- where the consequences of such action are material to Novion or the relevant Subsidiary of Novion;
- (r) Novion or any of its material Subsidiaries resolves that it be wound up or an application or order is made for the winding up or dissolution of Novion or any of its material Subsidiaries other than where the application or order (as the case may be) is set aside within 14 days;
  - (s) a liquidator or provisional liquidator of Novion or any of its material Subsidiaries is appointed;
  - (t) a court makes an order for the winding up of Novion or any of its material Subsidiaries;
  - (u) an administrator of Novion or of any of its material Subsidiaries is appointed under the Corporations Act;
  - (v) Novion or any of its material Subsidiaries ceases, or threatens to cease, to carry on business;
  - (w) Novion or any of its material Subsidiaries executes a deed of company arrangement;
  - (x) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of Novion or any of its material Subsidiaries;
  - (y) Novion or any of its material Subsidiaries is deregistered as a company or otherwise dissolved;
  - (z) Novion or any of its material Subsidiaries is or becomes unable to pay its debts when they fall due; or
  - (aa) the trustee of any trust in which Novion or any Subsidiary of Novion has an interest of more than 50% and that would, if it were a company, be a material Subsidiary of Novion undertaking an action in respect of that trust if the corresponding action, in the case of Novion and its material Subsidiaries, would (mutatis mutandis) constitute a Novion Regulated Event.

**Schedule 2****Timetable**

<b>Event</b>	<b>Date</b>
Novion provides draft Scheme Booklet to ASIC	March/April 2015
First Court Date	April 2015
Despatch of Scheme Booklet completed	April 2015
Company Scheme Meeting	May 2015
Trust Meeting	May 2015
Second Court Date	May 2015
Effective Date	May/June 2015
Record Date	June 2015
Implementation Date	June 2015

**Schedule 3**

**Agreed Public Announcement**

3 February 2015

## **Merger of Novion Property Group and Federation Centres to create one of Australia's leading REITs, invested across the full retail asset spectrum**

Novion Property Group (Novion, ASX: NVN) and Federation Centres (Federation, ASX: FDC) announce that they have entered into a Merger Implementation Agreement to merge subject to certain conditions (the "Merger"). The Merger will create one of Australia's leading REITs with over \$22 billion in assets under management ("AUM")<sup>1</sup>, invested across the full retail asset spectrum (the "Merged Group").

The Merger combines two highly complementary platforms to provide existing Novion and Federation securityholders with an enhanced investment proposition relative to each group on a stand alone basis, including:

- Increased portfolio scale and expertise;
- Material value creation via cost savings and future opportunities;
- Significant earnings and distribution accretion for each group;
- Improved growth opportunities;
- Enhanced asset, geographic and tenant diversification; and
- Greater relevance for equity and debt investors.

Implementation of the Merger requires the approval by Novion securityholders of Novion schemes of arrangement. Novion schemes of arrangement are required as Federation will act as the legal acquiring entity. This was determined to be the most efficient transaction structure, having regard to the existing corporate structures of Novion and Federation.

On implementation, each Novion security will be exchanged for 0.8225 Federation securities, which implies a current Novion value of \$2.55 per security relative to Novion's last close of \$2.32<sup>2</sup>. Based on the exchange ratio, existing Novion securityholders will own approximately 64% of the Merged Group and existing Federation securityholders will own approximately 36%.

The Novion and Federation Boards unanimously support the Merger and believe it represents a unique and compelling opportunity that creates significant value for both Novion and Federation securityholders.

### **Merged Group profile**

The Merged Group will be a significant owner and manager of Australian retail assets, fully diversified by retail asset type, geographic location and tenant mix. Key metrics of the Merged Group include:

- Over \$22 billion of retail assets under management across 102 retail assets with over \$18.2 billion in annual retail sales<sup>1</sup>;

1. As at 31 December 2014, adjusted for post balance date acquisitions and sales.

2. Based on closing trading prices as at 2 February 2015.

- 2<sup>nd</sup> largest listed manager of Australian retail assets and a top 10 listed manager of retail assets globally<sup>3</sup>;
- #1 owner / manager of Australian sub-regional and outlet centres; #2 in super-regional and regional centres combined;
- One of the largest retail landlords in Australia, with over 500 million annual customer visits to more than 9,500 retail tenancies over 3 million sqm of lettable area<sup>4</sup>; and
- A market capitalisation of over \$11 billion<sup>5</sup>, the 3<sup>rd</sup> largest A-REIT and an ASX top 30 entity.

### **Strategic rationale**

The Merger provides Novion and Federation securityholders with a number of key benefits relative to each group on a stand alone basis, including:

#### **1. Increased portfolio scale and expertise**

- Creates one of Australia's leading REITs, with over \$22 billion in AUM<sup>6</sup> invested across the full retail asset spectrum
- #1 owner / manager of Australian sub-regional and outlet centres; #2 in super-regional and regional centres combined
- Brings together each group's expertise to create an industry leading executive team

#### **2. Material value creation via cost savings and future opportunities**

- Merger expected to result in at least \$42 million p.a. of net operational cost savings (upon full integration) and \$35 million p.a. of net mark-to-market financing savings (crystallised on implementation), with a further \$7 million p.a. of expected cash flow savings via capitalised costs (within 12 months) – total net cost savings of at least \$84 million p.a.<sup>7</sup>
- Operational cost savings alone have the potential to create over \$700 million of value for Novion and Federation securityholders<sup>8</sup>
- Opportunities for additional revenue and strategic synergies to be extracted over time

#### **3. Significant earnings and distribution accretion for each group**

- Novion FY15 pro forma EPS and DPS accretion of +14.6% and +8.9% respectively<sup>9</sup>
- Federation FY15 pro forma EPS and DPS accretion of +5.8% and +8.1% respectively<sup>9</sup>

#### **4. Improved growth opportunities**

- Ability to apply each group's operational expertise and active management capability across the enlarged portfolio
- Provides the capability to unlock and optimise the combined development pipeline of \$2.5 billion
- Opportunity to integrate and expand strategic partnerships

3. Based on the constituents of the FTSE EPRA / NAREIT Global Index, adjusted to include CapitaLand Limited.

4. Based on total AUM.

5. Based on the combination of Novion's and Federation's stand alone market capitalisations as at 2 February 2015.

6. As at 31 December 2014, adjusted for post balance date acquisitions and sales.

7. Represents the total cost savings expected to be realised upon full integration net of external share of cost savings allocated to properties and the annual funding cost associated with the one-off costs incurred to achieve these savings.

8. Assumes net P&L corporate overhead and operational cost savings of \$42 million p.a. (net of capitalised cost savings and the annual funding cost associated with the one-off costs to achieve these savings) are capitalised at an earnings yield of 5.9% (the blended FY15 trading earnings yield of Novion and Federation as at 2 February 2015).

9. FY15 pro forma impact assuming the Merger was implemented on 1 July 2014 and total net P&L cost savings of approximately \$77 million p.a. are achieved (i.e. excluding \$7 million p.a. of capitalised cost savings).

## 5. Enhanced asset, geographic and tenant diversification

- Scale and relevance across all major retail asset classes
- Exposure to all key Australian retail markets
- Balanced exposure to discretionary and non-discretionary retail spending
- One of the largest retail landlords in Australia with more than 9,500 retail tenancies<sup>10</sup>

## 6. Greater relevance for equity and debt investors

- Market capitalisation of over \$11 billion<sup>11</sup> – the 3<sup>rd</sup> largest A-REIT and an ASX top 30 entity
- Enlarged balance sheet to provide greater flexibility and increased diversification of funding (by source and tenor)

## Governance

The Merged Group will benefit from a highly experienced Board and senior executive team that draws on the breadth of both groups' skills and expertise.

Upon implementation of the Merger, Mr Peter Hay (a current Novion Independent Non-executive Director) will be Chairman of the Merged Group. Mr Richard Haddock AM (current Chairman of Novion) will continue as a Director of the Merged Group. Dr Bob Edgar (current Chairman of Federation) will step down from his role as a Director should the Merger be implemented. The Gandel Group (which will have a 13.8% direct interest in the Merged Group<sup>12</sup> and will be the co-owner of the Merged Group's largest asset, Chadstone Shopping Centre) will also retain two Board representatives.

Mr Steven Sewell (the current CEO of Federation) will become CEO of the Merged Group. Should the Merger be implemented, Mr Angus McNaughton (CEO and Managing Director of Novion) and Mr Michael Gorman (Deputy CEO and Chief Investment Officer of Novion) will step down from their current roles.

Mr Sewell said: "I am excited about the opportunity to lead the Merged Group. The Merger brings together two high quality management teams, creating an industry leading executive team with expert skills in managing the full spectrum of retail assets. In addition, the complementary platforms will provide both Novion and Federation securityholders with a well-balanced exposure to the major retail categories and across discretionary and non-discretionary spending."

## Implementation process

In addition to the approval by Novion securityholders of Novion schemes of arrangement, the Merger is also subject to other customary conditions including: court approval, regulatory approvals (including Foreign Investment Review Board) and an independent expert concluding the Merger is fair and reasonable to, and in the best interest of, Novion securityholders.

Customary deal protections and mutual break fees (\$40 million) have also been agreed by Novion and Federation.

The obligations of Novion and Federation regarding the implementation of the Merger, the deal protections and mutual break fees are set out in a Merger Implementation Agreement entered into by both parties. A full copy of this agreement is attached to this announcement.

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10. Based on total AUM.

11. Based on the combination of Novion's and Federation's stand alone market capitalisation as at 2 February 2015.

12. The Gandel Group currently has a 26.2% relevant interest in Novion securities, comprising a 21.6% direct interest and a 4.6% indirect interest held pursuant to a right of first refusal arrangement with the Commonwealth Bank of Australia ("CBA"). The Gandel Group will have a direct interest in the Merged Group of 13.8% and a relevant interest of 16.8%.

A scheme booklet (which will include an independent expert's report) is expected to be sent to Novion securityholders in April 2015.

The Merged Group is expected to transition to a new corporate name as part of the integration process.

### **Board support and Gandel Group intention**

Novion's Board unanimously recommends the Merger, in the absence of a superior proposal and subject to an independent expert concluding the Merger is fair and reasonable to, and in the best interests of, Novion securityholders. Federation's Board believes the Merger is in the best interests of Federation securityholders, and unanimously supports the Merger.

Mr Haddock said, "Based on the strategic rationale identified and the terms agreed with Federation, the Board of Novion believes the Merger represents a unique and compelling opportunity for Novion securityholders that creates significant value."

Dr Edgar added, "The combination of Novion and Federation provides Federation securityholders with an opportunity to create significant value by forming one of Australia's leading REITs."

Novion's largest securityholder, the Gandel Group (which has a 21.6% direct interest in Novion<sup>13</sup> and is the co-owner of Novion's largest asset, Chadstone Shopping Centre), has advised that its intention is to vote in favour of the Merger, based on the disclosed Merger terms and in the absence of a superior proposal.

### **Indicative timetable**

A number of expected key dates relevant to the Merger have been outlined below.

<b>Key dates</b>	<b>Date</b>
Announcement of the Merger	3 February 2015
Novion FY15 half year results	18 February 2015
Federation FY15 half year results	19 February 2015
Federation 1H15 distribution payment	25 February 2015
Novion 1H15 distribution payment and allotment of DRP securities	26 February 2015
First court hearing	April 2015
Scheme booklet dispatched to Novion securityholders	
Novion securityholder meeting to approve the schemes	May 2015
Final court hearing	
Implementation date	June 2015

*Note: these dates are indicative only and may be subject to change.*

### **Advisers**

Novion has engaged Macquarie Capital (Australia) Limited as its financial adviser and Ashurst Australia as its legal adviser.

Federation has engaged Merrill Lynch and UBS AG, Australia Branch as its financial advisers, with KPMG as strategic adviser. Allens and Minter Ellison have been engaged as legal advisers.

13. The Gandel Group currently has a 26.2% relevant interest in Novion securities, comprising a 21.6% direct interest and a 4.6% indirect interest held pursuant to a right of first refusal arrangement with CBA.

### Presentation and market briefing

To provide an overview of the Merger in greater detail, a presentation has also been released to the ASX today.

A joint Novion and Federation briefing for investors and analysts will also be held at 10:30am Australian Eastern Daylight Time (AEDT) today.

<b>Time</b>	10:30am AEDT
<b>Conference call</b>	<u>Australia dial-in</u> : 1800 908 299 <u>International dial-in</u> : +61 2 9007 8048 <u>Participant password</u> : t2814 (when asked by the operator)
<b>Live webcast</b>	<a href="http://webcasting.brrmedia.com/broadcast/133506">http://webcasting.brrmedia.com/broadcast/133506</a>

### Key contacts

#### Novion Property Group

##### Angus McNaughton

CEO and Managing Director

T +61 2 8229 7801

E [angus.mcnaughton@novion.com.au](mailto:angus.mcnaughton@novion.com.au)

##### Penny Berger

Head of Investor Relations and Communications

T +61 2 8229 7760

E [penny.berger@novion.com.au](mailto:penny.berger@novion.com.au)

#### Federation Centres

##### Media: Brandon Phillips

General Manager External Affairs

T +61 3 9236 6321

E [brandon.phillips@federationcentres.com.au](mailto:brandon.phillips@federationcentres.com.au)

##### Investors: Grant Mackenzie

Senior Investor Relations

T +61 3 9236 6328

E [grant.mackenzie@federationcentres.com.au](mailto:grant.mackenzie@federationcentres.com.au)

**ENDS**

### About Novion Property Group

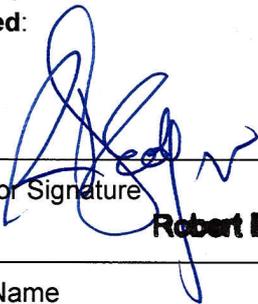
Novion Property Group (Novion, ASX:NVN) is one of Australia's leading retail property groups, with a fully integrated funds and asset management platform, and \$14.9 billion in retail assets under management. Listed on the Australian Securities Exchange, Novion holds interests in 27 directly-owned retail assets across Australia, manages 19 assets on behalf of strategic partners (9 of which are co-owned with Novion) and has over 17,000 investors across 19 countries. For more information, visit [www.novion.com.au](http://www.novion.com.au).

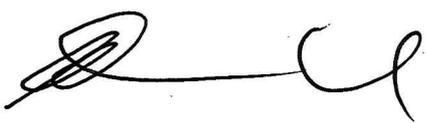
### About Federation Centres

Federation Centres (Federation, ASX:FDC) is a fully vertically integrated Australian real estate investment trust (A-REIT) specialising in the ownership and management of Australian shopping centres. With \$7.3 billion of shopping centres under management, FDC employs approximately 600 people with offices in Melbourne, Sydney, Brisbane and Perth. For more information, please visit the FDC website at [www.federationcentres.com.au](http://www.federationcentres.com.au).

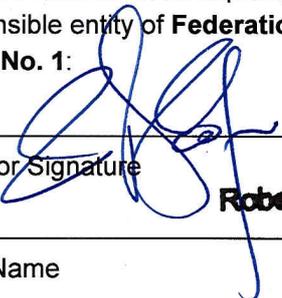
**Executed as an Agreement.**

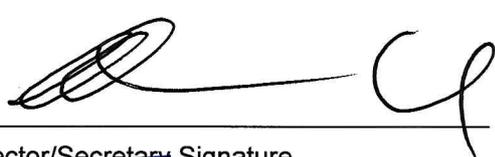
**Executed** in accordance with section 127 of the *Corporations Act 2001* by **Federation Limited:**

  
\_\_\_\_\_  
Director Signature  
**Robert Edger**  
\_\_\_\_\_  
Print Name

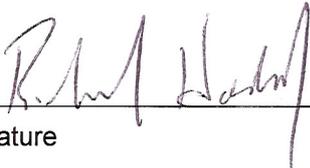
  
\_\_\_\_\_  
Director/Secretary Signature  
Steven Sewell  
\_\_\_\_\_  
Print Name

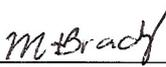
**Executed** in accordance with section 127 of the *Corporations Act 2001* by **Federation Centres Limited** in its capacity as responsible entity of **Federation Centres Trust No. 1:**

  
\_\_\_\_\_  
Director Signature  
**Robert Edger**  
\_\_\_\_\_  
Print Name

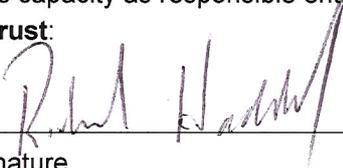
  
\_\_\_\_\_  
Director/Secretary Signature  
Steven Sewell  
\_\_\_\_\_  
Print Name

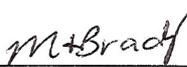
**Executed** in accordance with section 127 of the *Corporations Act 2001* by **Novion Limited**:

  
\_\_\_\_\_  
Director Signature  
Richard Haddock  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Director/Secretary Signature  
Michelle Tamara Brady  
\_\_\_\_\_  
Print Name

**Executed** in accordance with section 127 of the *Corporations Act 2001* by **Novion RE Limited** in its capacity as responsible entity of **Novion Trust**:

  
\_\_\_\_\_  
Director Signature  
Richard Haddock  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Director/Secretary Signature  
Michelle Tamara Brady  
\_\_\_\_\_  
Print Name