



15 November 2022

ALLUDO TRANSACTION

Nitro Software Limited (ASX:NTO) ('Nitro' or the 'Company') today entered into a binding legal agreement with Cascade Parent Limited, trading as Alludo (**Alludo**), under which it undertakes to:

- Acquire 100% of Nitro by way of a scheme of arrangement (**Scheme**) at a price of A\$2.00 cash per share (**Alludo Scheme**); and
- Make a simultaneous off-market takeover offer at A\$2.00 cash per share conditional on (among other things) the Alludo Scheme not proceeding and a 50.1% minimum acceptance condition (**Alludo Takeover Offer**);

(Together the **Alludo Transaction**).

The Nitro Board has determined the Alludo Transaction to be superior to the Potentia Offer of A\$1.80 cash per share¹ and unanimously recommends that shareholders **vote in favour of the Alludo Scheme and accept the Alludo Takeover Offer**, in the absence of a superior proposal and subject to the Independent Expert concluding that the Alludo Scheme is in the best interests of Nitro shareholders and that the Alludo Takeover Offer is fair and reasonable.

The Alludo Transaction represents a premium of:

- 11% to the Potentia Offer on 28 October of A\$1.80 per share;
- 27% to the Initial Potentia Proposal on 30 August 2022 of A\$1.58 per share;
- 77% to the undisturbed Nitro share price of A\$1.13 per share²; and
- 69% to Nitro's 1-month VWAP to 29 August 2022 of A\$1.18 per share.

The Alludo Transaction is subject to limited conditions (as described further below). Full details of the conditions of the Alludo Transaction under both the Alludo Scheme and Alludo

¹ Refer Nitro's ASX announcements dated 31 October 2022 and 11 November 2022.

² The closing share price on 29 August 2022, being the day prior to disclosure of the initial Potentia Consortium proposal of A\$1.58 cash per share.

Takeover Offer are set out in the Implementation Deed, a copy of which is attached to this announcement.

North American-headquartered Alludo is a provider of virtualisation, productivity and professional-calibre graphic solutions for digital remote workforces. Alludo enables individuals and teams to ideate, create and share on any device, anywhere.

Nitro Chairman Kurt Johnson said: *“Nitro is pleased to have reached a binding agreement with Alludo at a price that delivers shareholders material value over the Potentia Offer.”*

“Through our engagement with the Alludo team in recent weeks it has become clear that both organisations share common values and a commitment to excellence in product development and customer service. With complementary software offerings and customer bases, we see real opportunities for collaboration and growth. We look forward to working together across the coming months as we progress the Alludo Transaction.”

Alludo Chief Executive Officer Christa Quarles said: *“Alludo welcomes today’s announcement from Nitro Software. Nitro has developed a complementary product offering to Alludo’s portfolio and we believe Alludo is the natural home for Nitro. We look forward to working with Nitro’s Board of Directors and management team to ensure their shareholders are able to realise the significant and immediate value of the proposed transaction and to accelerate the next stage of Nitro’s growth.”*

Overview of the Alludo Scheme

Under the terms of the Alludo Scheme, Nitro shareholders will receive A\$2.00 cash per share, subject to all applicable conditions being satisfied or waived, and the Alludo Scheme being implemented.

The conditions to the Alludo Scheme include:

- Nitro shareholder approval;
- Court approval;
- FIRB and other regulatory approvals;
- No material adverse change of Nitro;

- No prescribed occurrences; and
- The Independent Expert concluding (and continuing to conclude) that the Alludo Scheme is in the best interests of Nitro shareholders.

Overview of the Alludo Takeover Offer

Under the terms of the Alludo Takeover Offer, accepting Nitro shareholders will be entitled to receive A\$2.00 cash per share, subject to the Alludo Takeover Offer becoming unconditional.

Pursuant to the terms of the Implementation Deed, Nitro has agreed to the reconstruction of the Nitro Board as directed by Alludo following Alludo receiving acceptances under the Alludo Takeover Offer of at least 50.1% and having declared the Alludo Takeover Offer unconditional.

The Alludo Takeover Offer is subject to the following conditions, which are set out in full in the Implementation Deed:

- Alludo achieving acceptances from Nitro shareholders representing at least 50.1% of the Nitro shares on issue (on a fully diluted basis);
- The Alludo Scheme is not approved by Nitro shareholders or the Court;
- FIRB and other regulatory approvals;
- No material adverse change of Nitro;
- No prescribed occurrences; and
- The Implementation Deed not being terminated by Alludo due to material breach of the Implementation Deed by Nitro.

The Alludo Takeover Offer will remain open for a period of at least 20 business days after the date of the Alludo Scheme meeting. As such, Nitro shareholders will have the opportunity to consider the Alludo Takeover Offer after they have voted on the proposed Alludo Scheme and the outcome of that vote is known.

Other Key Details of the Implementation Deed

Under the Implementation Deed, Nitro is subject to customary exclusivity obligations, including “no shop, no talk” (subject to customary fiduciary out exceptions) and notification obligations, and a matching right regime in respect of a superior proposal being received by Nitro.

The Implementation Deed also details circumstances under which a Nitro Break Fee of A\$5.0 million may be payable to Alludo by Nitro.

Unanimous Recommendation of Alludo Transaction

The Nitro Board unanimously recommends that Nitro shareholders vote in favour of the Alludo Scheme, in the absence of a superior proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Alludo Scheme is in the best interests of Nitro shareholders. Subject to the same qualifications, each Nitro Board member intends to vote, or procure the voting of, the shares held or controlled by them in favour of the Alludo Scheme.

The Nitro Board also unanimously recommends that Nitro shareholders accept the Alludo Takeover Offer, in the absence of a superior proposal and subject to an Independent Expert concluding (and continuing to conclude) that the Alludo Takeover Offer is fair and reasonable. Subject to the same qualifications, each Nitro Board member intends to accept, or procure the acceptance of, the shares held or controlled by them into the Alludo Takeover Offer.

Next Steps

Nitro will prepare a Transaction Booklet setting out all information required to decide how to respond to the Alludo Transaction. The Transaction Booklet is expected to be despatched to shareholders in early February 2023³.

An Alludo Scheme meeting is expected to be held in March 2023 and, if approved, the Alludo Scheme would be implemented shortly thereafter.

Nitro shareholders should take no action at this time. The Company will continue to keep its shareholders and the market informed of developments in accordance with its continuous disclosure requirements.

³ Subject to obtaining relief from ASIC.

Status of the Potentia Offer

The Nitro Board continues to recommend that Nitro shareholders **REJECT** the Potentia Offer.

The Nitro Board has concluded the Potentia Offer undervalues Nitro, is inferior to the Alludo Transaction, and unanimously rejects the Potentia Offer as not being in the best interests of shareholders. Accordingly, the Nitro Board recommends that Nitro shareholders **REJECT** and **TAKE NO ACTION** in relation to the Potentia Offer.

Advisors

Nitro has engaged UBS Securities Australia Limited as financial advisor and Allens as legal counsel. Cadence Advisory has been engaged as independent advisor to the Board.

Alludo has engaged Perella Weinberg Partners LP as financial advisor and Gilbert + Tobin and Kirkland & Ellis LLP as legal counsel.

Ends

Authorised for release to the ASX by the Board.

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ABOUT NITRO

Nitro is a global SaaS leader in PDF software, document management and electronic signatures. Nitro's Productivity Platform includes powerful PDF tools, digital workflows, highly secure eSigning and identity verification capabilities. Its industry-leading business intelligence and analytics product measures ROI and quantifies sustainability efforts, all supported by a best-in-class customer success and change management support team. With more than 3 million licensed users and 13,000+ business customers across 157 countries, Nitro serves 68% of the Fortune 500.

For more information on Nitro, please visit:

- Nitro: <https://www.gonitro.com>
- Connective: <https://connective.eu>
- PDFpen: <https://pdfpen.com/pdfpenpro/>
- Investors: <https://ir.gonitro.com/Investor-Centre/>

Cascade Parent Limited (Company Registration Number 129147), an Alludo company
Nitro Software Limited (ACN 079 215 419)

Implementation Deed

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This Deed is made on 15 November 2022

Parties

- 1 **Cascade Parent Limited** (Company Registration Number 129147) of 2nd Floor Sir Walter Raleigh House, 48-50 Esplanade, St. Helier, Jersey JE2 3QB (**Bidder**).
- 2 **Nitro Software Limited** (ACN 079 215 419) of Level 7, 330 Collins Street, Melbourne VIC 3000 (**Target**).

Recitals

- A Bidder proposes to acquire all of the Target Shares by means of:
- a scheme of arrangement under Part 5.1 of the Corporations Act between Target and its shareholders; or
 - if the Scheme does not become Effective, a takeover bid under Chapter 6 of the Corporations Act.
- B Target and Bidder have agreed to propose the Scheme and the Takeover Bid to Target Shareholders on the terms and conditions set out in this deed.

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.

Acceptable Confidentiality Deed means a confidentiality deed between Target and the other relevant person that contains customary provisions for this type of deed and does not impose any obligations or restrictions that would prevent Target from complying with its obligations under this deed.

Acceptance Form means the acceptance form that will be enclosed with the Bidder's Statement.

Accounting Standards means the requirements of the Corporations Act about the preparation and contents of financial reports, the accounting standards and any authoritative interpretations issued by the Australian Accounting Standards Board.

Accounts means the audited consolidated financial statements of the Target Group for the year ended 31 December 2021 set out in the document numbered 02.02.03 in the Data Room.

Accounts Date means 31 December 2021.

Additional Warranties means the Target Representations and Warranties set out in paragraphs 14 to 30 of Schedule 3.

Adviser means, in relation to an entity, a financial, corporate, legal, or other expert adviser or consultant, who provides advisory or consultancy services in a professional capacity in the ordinary course of its business and has been engaged in that capacity in connection with the Transaction by the entity.

Affiliate means, in respect of Bidder, a person:

- (a) Controlled directly or indirectly by Bidder;
- (b) Controlling directly or indirectly Bidder;

- (c) who is Controlled, directly or indirectly, by a person or persons who Controls Bidder; or
- (d) directly or indirectly under the common Control of Bidder and another person or persons, but excluding (other than with respect to clauses 12.2(c) or 20.13) any investment fund or investment vehicle affiliated with, or managed or advised by, KKR or any portfolio company (as such term is commonly understood in the private equity industry) or investment of KKR or of any investment funds or investment vehicles affiliated, or managed or advised by, KKR or any of its Affiliates.

Anti-Corruption Laws has the meaning given in paragraph 25(a)(vi) of Schedule 3.

Antitrust and Foreign Investment Laws means:

- (a) the HSR Act;
- (b) the Federal Trade Commission Act, 15 U.S.C. §§ 41-58, as amended; and
- (c) all other applicable foreign or domestic laws issued by a Government Agency as listed below:
 - (i) the Cypriot Commission for the Protection of Competition pursuant to the Control of Concentrations between Undertakings Law (83(I)/2014) and The Protection of Competition Law of 2022;
 - (ii) the Serbian Commission for the Protection of Competition pursuant to the Law on the Protection of Competition (51/2009 and 95/2013);
 - (iii) the Turkish Competition Authority pursuant to the Act 4054 on the Protection of Competition (1994);
 - (iv) the Moroccan Council for Competition pursuant to Law No 104-12 of 30 June 2014, Decree No 2-14-652 of 1 December 2014, Law No 20-13 of 30 June 2014 and Decree No 2-15-109 4 June 2015; and
 - (v) the Trinidad and Tobago Fair Trading Commission pursuant to the Fair Trading Act, 2006 (Chap 81:13),that are designed or intended to:
 - (vi) prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition; or
 - (vii) restrict, govern or regulate the acquisition of control or influence over persons licensed by any Governmental Authority, including through foreign investment control.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning set out in section 12 of the Corporations Act, as if section 12(1) included a reference to this deed on the basis that Target 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.

Bidder Counter Proposal has the meaning given in clause 13.7(a)(iv).

Bidder Group means Bidder and each of its Affiliates. A reference to a member of the Bidder Group is a reference to Bidder or any such Affiliates.

Bidder Information means information about the Bidder Group provided or approved by Bidder or any of its Advisers to Target in writing for inclusion in a Relevant Document and for which it is responsible in accordance with clause 4.5.

Bidder Party means any member of the Bidder Group or any officer, employee, or Adviser of any of them.

Bidder's Statement means the bidder's statement of Bidder in relation to the Takeover Bid.

Bidder Representation and Warranty means a representation and warranty of Bidder set out in Schedule 2.

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 that banks are open for business in Sydney, Australia and New York, United States of America.

Business Intellectual Property means:

- (a) any Intellectual Property Rights owned or used by a member of the Target Group; and
- (b) the right to take action for infringement of the Intellectual Property Rights referred to in paragraph (a).

Business Records means original and copies of all books, files, reports, financial and other records, title deeds, documents, correspondence, information, accounts and data (whether machine readable or in printed form) owned by the Target Group or relating to its business or the Target Group or the property, Business Intellectual Property, assets or affairs of the Target Group, including financial or accounting information, customer and / or supplier names and lists, marketing analysis, research and reports, and all trade secrets, know how, computer software documentation, data and data bases, operating procedures and technical information.

CBA has the meaning given in paragraph 26(a)(x) of Schedule 3.

Claim means, in relation to a person, a demand, claim, action or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future, or contingent.

Code means the United States Internal Revenue Code of 1986, as amended.

Competing Proposal means a transaction or arrangement, or any proposal, offer or expression of interest in relation to a transaction or arrangement:

- (a) pursuant to which a Third Party will, if the transaction or arrangement is entered into or completed:
 - (i) acquire (whether directly or indirectly) or become the holder of a legal, beneficial and/or economic interest in, all or a substantial part of the business or assets of the Target Group taken as a whole;
 - (ii) acquire a relevant interest in, or otherwise acquire or have a right to acquire a legal, beneficial and/or economic interest in, 20% or more of the shares or other securities of Target or any other member of the Target Group; or
 - (iii) acquire control of Target or any other member of the Target Group within the meaning of section 50AA of the Corporations Act or otherwise acquire or merge with Target or any other member of the Target Group; or
- (b) which, if the transaction or arrangement is entered into or completed, would cause Target or the Bidder not to proceed with the Transaction or as a result of which the Transaction otherwise would not proceed,

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

Condition means each of the Scheme Conditions and the Takeover Bid Conditions.

Confidentiality Deed means the confidentiality deed between Target and Corel Corporation.

Consolidated Group has the meaning given in section 703-5 of the ITAA 1997.

Control has the meaning given under section 50AA of the Corporations Act. **Controlled** has the corresponding meaning.

Corporations Act means the *Corporations Act 2001* (Cth), as amended by any applicable ASIC class order, ASIC legislative instrument or ASIC relief.

Court means the Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act agreed to in writing between the parties.

Data Room the electronic data room which has been established on behalf of Target at www.ansarada.com as at 5:00pm on 14 November 2022 and which has the contents set out in an electronic index sent by Allens to Gilbert + Tobin on the date of this deed.

Debt Funding has the meaning given in clause 8.6.

Deed Poll means a deed poll in favour of all Scheme Shareholders in the form of Annexure B (or such other form agreed to in writing between the parties).

Disclosure Letter means the letter identified as such provided by Target to Bidder and countersigned by or on behalf of Bidder on or prior to the date of this deed and any document identified in that letter as having been disclosed to Bidder subject to such document having been Fairly Disclosed in the Due Diligence Material.

Disputing Action means, in respect of a Tax Demand, any action to cause the Tax Demand to be withdrawn, reduced or postponed or to avoid, resist, object to, defend, appear against or compromise the Tax Demand and any judicial or administrative proceedings arising out of that action.

Duty means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them, but excludes any Tax.

Due Diligence Material means the information disclosed by or on behalf of the Target Group (including in response to requests for information) to a Bidder Party through the Data Room.

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

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

Employee has the meaning given in paragraph 26(a)(i) of Schedule 3.

End Date means the date that is nine months after the date of this deed, or such other date as may be agreed in writing between the parties.

ERISA has the meaning given in paragraph 26(b)(iv) of Schedule 3.

ESS Securities means all the following securities in the capital of Target:

- (a) performance rights;
- (b) performance shares;
- (c) restricted share awards;

- (d) non-executive director share rights; and
- (e) options,

issued under the Employee Equity Incentive Plan, Employee Share Option Plan, Employee Stock Purchase Plan or the Non-Executive Director Share Rights Plan, the terms of which have been Fairly Disclosed in the Due Diligence Material.

Ex-Im Laws has the meaning given in paragraph 25(a)(v) of Schedule 3.

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

- (a) the termination of this deed; and
- (b) the End Date.

Fairly Disclosed means disclosed in sufficient detail to enable a reasonable and sophisticated person experienced in the industries in which the Target Group operates or transactions similar to the Transaction to identify the nature and scope of the relevant matter.

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

Financing Arrangements has the meaning given in paragraph 18(a) of Schedule 3.

FIRB means the Australian Foreign Investment Review Board.

First Court Date means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act that the Scheme Meeting be convened is heard or, if the application is adjourned for any reason, the day on which the adjourned application is heard.

Government Agency means any Australian or foreign government or governmental, semi-governmental or judicial entity or authority (including any national or supranational antitrust, competition or merger control authority, any sectoral ministry or regulator and any foreign investment or national security review body). It also includes any government minister (and their delegate), any self-regulatory organisation established under statute or any securities exchange and, for the avoidance of doubt, includes ASIC, ASX, ACCC, FIRB and equivalent bodies in jurisdictions outside Australia.

GST means goods and services tax, or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Law has the same meaning as in the GST Act.

Head Company has the meaning given by section 995-1 of the ITAA 1997.

HSR Act means the Sherman Act, 15 U.S.C. §§ 1-7, as amended; the Clayton Act, 15 U.S.C. §§ 12-27, 29 U.S.C. §§ 52-53, as amended.

Implementation Date means the fifth Business Day after the Scheme Record Date, or such other date agreed to in writing between the parties.

Indemnities means the indemnity in clause 10.4 and the indemnity in clause 10.5, each of them being an **Indemnity**.

Independent Expert means Kroll Australia Pty Ltd (ACN 116 738 535) engaged by Target to prepare the Independent Expert's Report.

Independent Expert's Report means a report (including any written updates to such report) of the Independent Expert stating whether, in its opinion:

- (a) the Scheme is in the best interests of Target Shareholders; and
- (b) the Takeover Bid is fair and reasonable.

Insolvency Event means, in the case of any entity:

- (a) it ceases, suspends, or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of all or a substantial part of its assets;
- (b) it stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (c) it is, or under legislation is presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or Claim the subject of a good faith dispute);
- (d) it has an administrator, controller or similar officer appointed;
- (e) an application or an order is made, proceedings are commenced, or a resolution is passed (and in the case of an application, it is not stayed, withdrawn, or dismissed within 30 days) for:
 - (i) its winding up, dissolution or administration; or
 - (ii) it entering into an arrangement, compromise, or composition with, or assignment for, the benefit of its creditors or a class of them;
- (f) a:
 - (i) receiver, receiver and manager, administrative receiver or similar officer is appointed to; or
 - (ii) distress, attachment, or other execution is levied or enforced or applied for over, all or a substantial part of its assets; or
- (g) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any foreign law.

Intellectual Property Rights means all industrial and intellectual property rights of whatever nature throughout the world conferred under statute, common law or equity, whether existing now or at any time in the future, and includes rights in respect of or in connection with copyright, inventions (including patents and patent applications), formulae, databases, business processes and methods, circuit layouts, plant varieties, trade marks (including all associated goodwill) and applications therefor, service marks and applications therefor, trading names (including both business and company names), domain names, social media handles, designs, confidential information, trade secrets and know-how and similar industrial and intellectual property rights, whether or not registered or registrable, and includes the right to apply for, extend, renew or enforce the registration of such rights.

Insurances has the meaning given in paragraph 27(a) of Schedule 3.

IP Licences has the meaning given in paragraph 21(e)(i) of Schedule 3.

IT Licences has the meaning given in paragraph 22(b)(i) of Schedule 3.

ITAA 1936 means the *Income Tax Assessment Act 1936* (Cth).

ITAA 1997 means the *Income Tax Assessment Act 1997* (Cth).

KKR means Kohlberg Kravis Roberts & Co. L.P..

Leased Properties has the meaning given in paragraph 20(a) of Schedule 3.

Licensed IP has the meaning given in paragraph 21(e)(iv) of Schedule 3.

Management Accounts means the unaudited monthly consolidated balance sheets, cash flows and profit and loss accounts of the Target Group set out in the document numbered 01.02.14 and the documents in the folder numbered 01.10 in the Data Room.

Matching Date means the date that is five Business Days after the date the Target Board notifies Bidder that it has made the determination referred to in clause 13.7(a)(iii).

Material Contracts has the meaning given in paragraph 17(a) of Schedule 3.

Offer has the meaning given in clause 2.3(a).

Offer Period means the period that the Offer is open for acceptance.

Order means any decree, judgment, injunction, direction, writ, or other order, whether temporary, preliminary, or permanent, made or given by a court of competent jurisdiction or by another Government Agency.

Permits has the meaning given in paragraph 24(e) of Schedule 3.

Plan means any benefit or compensation plan, program, policy, agreement, contract or arrangement maintained, sponsored, contributed or required to be contributed to by any member of the Target Group or with respect to which any member of the Target Group has any current or contingent liability or obligation.

Proceeding has the meaning given in paragraph 24(a) of Schedule 3.

Process Deed means the process deed between Target and Bidder dated 30 October 2022.

Property Leases has the meaning given in paragraph 20(a) of Schedule 3.

Register Date means the date and time identified as the "Register Date" in the Timetable, which will be the relevant date and time that will be set by Bidder for the purposes of section 633(2) of the Corporations Act.

Regulatory Approvals means an approval or consent specified in a Regulatory Condition.

Regulatory Condition means the Conditions set out in:

- (a) clauses 3.1(a), 3.1(b) and 3.1(c); and
- (b) clauses 7(a) and 7(b) of Schedule 1.

Related Bodies Corporate means a related body corporate of a party under section 50 of the Corporations Act and includes any body corporate that would be a related body corporate if section 48(2) of the Corporation Act was omitted.

Representative means, in relation to Bidder or Target:

- (a) each other member of the Bidder Group or Target Group (as applicable);
- (b) an officer or employee of a member of the Bidder Group or Target Group (as applicable); and
- (c) an Adviser to a member of the Bidder Group or Target Group (as applicable).

Right means all rights or benefits attaching to, or arising from, Target Shares directly or indirectly after the date of this deed, including but not limited to, all dividends or other distributions, other than voting rights attaching to Target Shares during the period commencing on the date of this deed and expiring at the later of the end of the Scheme Meeting and the day after the date on which all of the Takeover Bid Conditions have been satisfied or waived.

Sanctioned Country has the meaning given in paragraph 25(a)(ii) of Schedule 3.

Sanctioned Person has the meaning given in paragraph 25(a)(i) of Schedule 3.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders in the form of Annexure A (or such other form agreed to in writing between the parties).

Scheme Booklet means the scheme booklet to be prepared by Target in accordance with clause 4.2(a) and to be approved by the Court and despatched to Target Shareholders and which must include the Scheme, an explanatory statement complying with the requirements of the Corporations Act, the Independent Expert's Report, notice of the Scheme Meeting and a proxy form for the Scheme Meeting.

Scheme Conditions means the conditions set out in clause 3.1 and **Scheme Condition** means any one of them.

Scheme Consideration has the meaning given in clause 5.2.

Scheme Meeting means the meeting of Target Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.

Scheme Recommendation has the meaning given in clause 9(a)(i).

Scheme Record Date means 7:00pm on the fifth Business Day after the Effective Date or such other time and date agreed to in writing between the parties.

Scheme Shares means the Target Shares on issue as at the Scheme Record Date.

Scheme Shareholder means a person registered in the Target Share Register as the holder of one or more Scheme Shares at the Scheme Record Date.

Scheme Transaction means the proposed acquisition by Bidder, in accordance with the terms and conditions of this deed, of all of the Target Shares through the implementation of the Scheme.

Scheme Voting Intention has the meaning given in clause 9(a)(ii).

Second Court Date means the first day on which an application made to the Court for an Order under section 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned for any reason, the day on which the adjourned application is heard.

Security Interest means:

- (a) any third party rights or interests including a mortgage, bill of sale, charge, lien, pledge, trust, encumbrance, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements, option, right to acquire, right of pre-emption, assignment by way of security, the provision of cash collateral to a third party, trust arrangement for the purpose of providing security or any arrangement having a similar effect; and
 - (b) a security interest as defined in the *Personal Property Securities Act 2009* (Cth),
- and includes any agreement to create any of them or allow any of them to exist.

Software has the meaning given in paragraph 22(b) of Schedule 3.

Subsidiary has the meaning given in the Corporations Act, amended as necessary such that:

- (a) a body corporate or a trust will also be taken to be a Subsidiary of an entity if it is controlled by that entity (as defined in section 50AA of the Corporations Act);
- (b) a trust may be a Subsidiary, for the purpose of which a unit or other beneficial interest in the trust will be regarded as a share (ignoring the operation of section 48(2) of the Corporations Act);
- (c) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a body corporate; and
- (d) an entity will also be deemed to be a Subsidiary of an entity if that entity is required by the Accounting Standards to be consolidated with that entity.

Superior Proposal means a bona fide, written Competing Proposal in relation to the acquisition of more than 50% of the issued securities of Target which is received by Target and which the Target Board determines, acting in good faith and in order to satisfy what the Target Board considers to be its fiduciary or statutory duties (and after having obtained written advice from Target's external legal and financial advisers):

- (a) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Proposal, including its conditions, the identity, reputation and financial condition of the person making such proposal, and all other relevant legal, regulatory and financial matters; and
- (b) would, if completed in accordance with its terms, be more favourable to Target Shareholders than the latest proposal provided by Bidder or any other member of the Bidder Group, taking into account all aspects of the Competing Proposal and the latest proposal provided by Bidder or any other member of the Bidder Group to Target, including, in relation to each proposal, its conditions, the identity, reputation and financial condition of the person making the proposal, and all other relevant legal, regulatory and financial matters.

Systems has the meaning given in paragraph 22(a)(i) of Schedule 3.

Takeover Acceptance Intention has the meaning given in clause 9(b)(ii).

Takeover Bid means a takeover bid by Bidder for the Target Shares that satisfies the requirements in clause 2.3.

Takeover Bid Conditions means the conditions to the Takeover Bid set out in clause 7 of Schedule 1.

Takeover Bid Consideration has the meaning given in clause 6.1.

Takeover Bid Terms means the terms and conditions of the Takeover Bid set out in Schedule 1.

Takeover Bid Transaction means the acquisition of Target Shares by Bidder under the Takeover Bid.

Takeover Recommendation has the meaning given in clause 9(b)(i).

Target Board means the board of directors of Target.

Target Break Fee means A\$5,000,000.

Target Group means Target and each of its Subsidiaries. A reference to a **member of the Target Group** is a reference to Target or any such Subsidiary.

Target Material Adverse Change means any event, occurrence or matter (whenever occurring or arising) which has resulted in, or is reasonably likely to result in, either individually or when aggregated with all such events, occurrences or matters (whenever occurring or arising):

- (a) a reduction in the annual recurring revenue of the Target Group at the end of any given month to a level that is less than US\$52,500,000, measured on a consistent basis in accordance with the methodology adopted by the Target Group as at the date of this deed; or
- (b) the cash balance of the Target Group decreasing to less than US\$12,000,000, other than as a direct result of an event, occurrence, or matter:
- (c) required or expressly permitted by this deed or the Scheme;
- (d) which Bidder has previously approved or requested in writing;

- (e) relating to up to US\$10,000,000 of third party costs and expenses incurred by Target associated with the Transactions, including fees payable to external advisers of Target, to the extent such amounts or comparable estimates of such amounts are Fairly Disclosed in the Due Diligence Materials or the Disclosure Letter (with, for the avoidance of doubt, the lesser of such amounts and US\$10,000,000 to be excluded when calculating any decrease in Target's cash balance for the purpose of limb (b) of this definition);
- (f) to the extent that it was Fairly Disclosed in the Due Diligence Material or the Disclosure Letter;
- (g) arising from any change in any law or change in the Accounting Standards after the date of this deed;
- (h) arising from general economic, industry or political conditions or changes in those conditions (including financial market fluctuations, changes in interest rates or changes in foreign currency exchange rates) after the date of this deed in the markets and jurisdictions in which Target operates, other than where such conditions or changes have a materially disproportionate effect on the Target Group as compared to other participants in the industry in which the Target Group operates; or
- (i) arising from an act of terrorism, war (whether declared), natural disaster or the like after the date of this deed.

Target Party means any member of the Target Group or any officer, employee, or Adviser of any member of the Target Group.

Target Prescribed Occurrence means any of the occurrences set out in Schedule 4, other than an occurrence:

- (a) required or expressly permitted by this deed or the Scheme;
- (b) to the extent that it was Fairly Disclosed in the Due Diligence Material or the Disclosure Letter;
- (c) required by law or by an order of a court or Government Agency; or
- (d) consented to in writing by Bidder.

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

Target Representation and Warranty means a representation and warranty of Target set out in Schedule 3.

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

Target Shareholder means a person who is registered as the holder of one or more Target Shares from time to time.

Target Share Register means the register of members of Target maintained in accordance with the Corporations Act.

Target's Statement means the target's statement of Target in relation to the Takeover Bid.

Tax means a tax, levy, charge, impost, fee, deduction, compulsory loan or withholding of any nature, including any goods and services tax (including GST), excise duty, customs duties, payroll taxes, fringe benefits tax, superannuation guarantee charge, value added tax or consumption tax which is assessed, levied, imposed or collected by a Government Agency (including as a transferee or successor, by contract, or otherwise by operation of law). This definition includes any interest, fine, penalty, charge, fee or other amount imposed in addition to the foregoing amounts, but excludes Duty.

Tax Costs means all costs and expenses incurred in:

- (a) managing an inquiry; or
- (b) conducting any Disputing Action in relation to a Tax Demand.

Tax Demand means:

- (a) a demand or assessment from a Government Agency requiring the payment of any Tax or Duty for which Target may be liable under this deed;
- (b) any document received from a Government Agency administering any Tax or Duty assessing, imposing, claiming or indicating an intention to claim any Tax or Duty;
- (c) a notice to a contributing member of a Consolidated Group given under section 721-15(5) or (5A) of the ITAA 1997;
- (d) a notice to a member of a GST Group (as defined in the GST Act) in relation to section 444-90(1) of Schedule 1 to the TAA; or
- (e) a lodgement of a Tax or Duty return or a request for an amendment to a lodged Tax or Duty return.

Tax Indemnity means the indemnity given in clause 10.5.

Tax Law means any law relating to either Tax or Duty as the context requires.

Taxation Conditions means the 'standard' form of tax conditions published in FIRB's Guidance Note 12 as last updated on 9 July 2021.

Tax Return means any return relating to Tax or Duty including any document which is or must be lodged with a Government Agency administering a Tax or Duty which a taxpayer prepares and retains or must prepare and retain under a Tax Law (such as an activity statement, amended return, schedule or election and any attachment).

Third Party means a person other than any member of the Bidder Group.

Third Party Intellectual Property means the Intellectual Property Rights used in the conduct of the Target Group's business that are not owned by a member of the Target Group.

Timetable means the indicative timetable for the implementation of the Transactions set out in Schedule 5.

Trade Control Laws has the meaning given in paragraph 25(a)(iv) of Schedule 3.

Transaction Booklet has the meaning given in clause 2.4(a).

Transactions means the Scheme Transaction and the Takeover Bid Transaction (each a **Transaction**).

Treasurer means the Treasurer of the Commonwealth of Australia (or their delegate).

Treasury Regulations means the United States Treasury Regulations promulgated under the Code, and any reference to any particular Treasury Regulation section shall be interpreted to include any final or temporary revision of or successor to that section regardless of how numbered or classified.

W&I Policy means any policy of warranty and indemnity insurance issued to Bidder or any Affiliate of Bidder after the date of this deed in respect of some or all of the Target Representations and Warranties and / or some or all of the Indemnities.

Warranty or Indemnity Claim means a Claim for breach of a Target Representation and Warranty or a Claim under an Indemnity.

Work Safety Authority means a Government Agency with responsibility for the investigation and enforcement of work health and safety legislation, amongst other functions.

1.2 Interpretations

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body, or other entity includes any of them.
- (e) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this deed.
- (f) A reference to an agreement or document (including a reference to this deed) is to the agreement or document as amended, supplemented, novated, or replaced, except to the extent prohibited by this deed or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
- (g) A reference to a party to this deed or another agreement or document includes the party's successors, permitted substitutes, and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) 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.
- (i) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (j) A reference to an agreement includes any undertaking, deed, agreement, and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (k) A reference to dollars and \$ is to Australian currency (unless another currency is specified).
- (l) All references to time are to Sydney, Australia time.
- (m) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (n) Nothing in this deed is to be interpreted against a party solely on the ground that the party put forward this deed or a relevant part of it.
- (o) A reference to officer, relevant interest or voting power is to that term as it is defined in the Corporations Act.

1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.4 Best and reasonable endeavours

A reference to a party using or obligation on a party to use its best endeavours or reasonable endeavours or all 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 deed;
- (b) provide other valuable consideration to or for the benefit of any person; or
- (c) agree to commercially onerous or unreasonable conditions.

1.5 Consents or approvals

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

1.6 Knowledge, belief, or awareness of Target

- (a) Certain statements made in this deed (including certain Target Representations and Warranties) are given and made by Target only on the basis of its knowledge, belief or awareness. For the purposes of this deed, Target's knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of Sam Chandler, Mark Flanagan, Sam Thorpe, Rohit Shrawagi, Jennifer Murray, Gina O'Reilly, Stefan Gass, Raphael Cohn and Yana Kiziryan, or the knowledge, belief or awareness that any of those persons would have had if they had made reasonable enquiries of their direct reports. The knowledge, belief or awareness of any person other than the persons identified in this clause 1.6(a) will not be imputed to Target.
- (b) None of the persons named in clause 1.6(a) will bear any personal liability in respect of the Target Representations and Warranties or otherwise under this deed.

1.7 Listing requirements included as law

A listing rule or business rule of a securities exchange will be regarded as a law, and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to a party.

1.8 Nominee

- (a) Bidder may nominate an Affiliate (**Bidder Affiliate**) to perform its obligations under this deed by giving written notice to Target no later than three Business Days prior to the date on which Target intends to provide an advanced draft of the Transaction Booklet to ASIC for its review (as notified in writing to Bidder).
- (b) If, pursuant to clause 1.8(a), Bidder nominates a Bidder Affiliate, on and from the date of nomination, this deed is taken to be varied by replacing "Bidder" each time it appears in this deed with the name of that Bidder Affiliate.
- (c) Bidder warrants that if, pursuant to clause 1.8(a), it nominates a Bidder Affiliate:
 - (i) Bidder and the Bidder Affiliate will both enter into the Deed Poll;

- (ii) Bidder will continue to be bound by this deed as if it was still the acquiring entity; and
- (iii) in the case of:
 - (A) the Scheme, Bidder will ensure that the Bidder Affiliate completes the acquisition in accordance with this deed and the Deed Poll; and
 - (B) the Takeover Bid, Bidder will ensure that the Bidder Affiliate completes the acquisition in accordance with this deed and the Takeover Bid Terms.
- (d) Bidder unconditionally and irrevocably:
 - (i) guarantees to Target the due and punctual performance by any Bidder Affiliate nominated under clause 1.8(a) of the Bidder Affiliate's obligations under this deed; and
 - (ii) indemnifies Target, on demand, against all losses incurred by Target arising from any default or delay in the performance of such obligations.
- (e) The obligation of Bidder under clause 1.8(d) is a principal and continuing obligation and remains in full force and effect until all obligations of the relevant Bidder Affiliate have been fully discharged.
- (f) The liability of Bidder under clause 1.8(d) is not affected by anything which, but for this clause 1.8(f), might operate to release or exonerate Bidder in whole or in part from its obligations.

2 Agreement to Proceed with the Transactions

2.1 Overview

On and subject to the terms of this deed:

- (a) Bidder proposes to acquire all of the Target Shares under the Scheme pursuant to which Target Shareholders will receive the Scheme Consideration per Target Share; and
- (b) simultaneously, Bidder will make the Takeover Bid for all of the Target Shares at the Takeover Bid Consideration per Target Share, which will be conditional on, amongst other matters, the Scheme not becoming Effective.

2.2 Proposal of the Scheme

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

2.3 Takeover Bid

Bidder must:

- (a) make offers pursuant to an off-market takeover bid under Chapter 6 of the Corporations Act to acquire all of the Target Shares on terms and conditions no less favourable to Target Shareholders than the Takeover Bid Terms (together, the **Offers**, and each, an **Offer**); and
- (b) without limiting clause 2.3(a), publicly announce on the date of this deed a proposal to make the Takeover Bid constituted by the despatch of the Offers, in accordance with clause 12.1.

2.4 Despatch of Transaction Booklet

- (a) Each party agrees to use reasonable endeavours to mail as one single combined document the Scheme Booklet, Bidder's Statement and Target's Statement (**Transaction Booklet**) to Target Shareholders in accordance with the Timetable.
- (b) Target agrees, and the Target Board has consented, to the Offers and accompanying documents being sent by Bidder under the Takeover Bid under item 6 of section 633(1) of the Corporations Act to the Target Shareholders when the documents are mailed as a single combined document as contemplated by clause 2.4.

2.5 Timetable

The parties agree to take all reasonable actions within their control to implement the Transactions in accordance with the Timetable. To the extent a modification is required for the time to perform a step set out in the Timetable, any extension of the time to perform that step (and any other step that is dependent on that step) will be kept to the minimum period that is reasonably possible and so that the overall time period for an extension for implementation of the Timetable is minimised.

3 Conditions Precedent and Pre-implementation Steps

3.1 Scheme Conditions

Subject to this clause 3, the Scheme will not become Effective, and the obligations of Bidder under clause 5.3 are not binding, unless each of the following conditions precedent is satisfied or waived in accordance with clause 3.4:

- (a) **(FIRB approval)** before 8:00am on the Second Court Date, either of the following occur:
 - (i) the Treasurer provides written notice to Bidder under the FATA stating that, or to the effect that, the Commonwealth Government has no objection to the acquisition of the Target Shares contemplated by the Scheme, either unconditionally or subject only to the Taxation Conditions and/or any other conditions acceptable to Bidder (acting reasonably and in good faith);
 - (ii) following Bidder giving notice under the FATA of the acquisition of the Target Shares contemplated by the Scheme, the Treasurer becomes precluded by passage of time from making any order or decision under Division 2 of Part 3 of the FATA in respect of the acquisition of the Target Shares contemplated by the Scheme; or
 - (iii) where an interim order is made under the FATA in respect of the acquisition of the Target Shares contemplated by the Scheme, the subsequent period for making a final order prohibiting that acquisition elapses without a final order being made;
- (b) **(Ex-Australian Regulatory Approvals)** before 8:00am on the Second Court Date, all approvals, authorisations, and/or expirations or terminations of applicable waiting periods required under Antitrust and Foreign Investment Laws in connection with the acquisition of the Target Shares contemplated by the Scheme have been obtained or occurred;
- (c) **(ASIC and ASX)** before 8:00am on the Second Court Date, ASIC and ASX issue or provide all consents, waivers, relief, or approvals as are necessary or which Target and Bidder agree (each acting reasonably) are desirable to implement the Scheme and such consents, approvals, waivers, relief, or approvals have not been withdrawn, cancelled, revoked or adversely amended;

- (d) **(Target Shareholder approval)** Target Shareholders at the Scheme Meeting approve the Scheme by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act;
- (e) **(Independent Expert)** the Independent Expert issues an Independent Expert's Report which concludes that the Scheme is in the best interests of Target Shareholders and does not publicly change or withdraw that conclusion before 8:00am on the Second Court Date;
- (f) **(Court approval)** the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;
- (g) **(No restraints)** no applicable law has been enacted and no Order is in effect as at 8:00am on the Second Court Date (or the intended date for the Second Court Date, but for such Order) that prevents, makes illegal or prohibits the implementation of the Scheme (including, for the avoidance of doubt, where the implementation of the Scheme would result in a breach of such applicable law or Order (as applicable));
- (h) **(No Target Material Adverse Change)** no Target Material Adverse Change occurs, or is announced or otherwise becomes known to Bidder between (and including) the date of this deed and 8:00am on the Second Court Date;
- (i) **(No Target Prescribed Occurrence)** no Target Prescribed Occurrence occurs between the date of this deed and 8:00am on the Second Court Date; and
- (j) **(ESS Securities)** Target and holders of ESS Securities have taken all necessary steps by 8.00am on the Second Court Date, including by executing all necessary documents, to ensure that the ESS Securities are dealt with in accordance with clause 7 and otherwise on terms acceptable to Bidder (acting reasonably).

3.2 Best endeavours and co-operation

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

- (a) Bidder must use its best endeavours (other than waiver) to satisfy, or procure the satisfaction of, the Conditions as soon as reasonably practicable after the date of this deed;
- (b) Target must use its best endeavours (other than waiver) to satisfy, or procure the satisfaction of, the Conditions as soon as reasonably practicable after the date of this deed; and
- (c) no party will take any action that will or is likely to materially hinder or prevent the satisfaction of any Condition, except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by, this deed, the Scheme or the Takeover Bid, or is required by law.

3.3 Regulatory Approvals

- (a) Without limiting the generality of clauses 3.2 and 3.5 and subject to clause 3.3(b):
 - (i) to the extent it has not already done so prior to the date of this deed:
 - (A) Bidder must, within 10 Business Days after the date of this deed, apply for the Regulatory Approval under clause 3.1(a);
 - (B) Target must promptly apply for all Regulatory Approvals under clause 3.1(c); and
 - (C) Bidder and Target as applicable must promptly (and within 10 Business Days of the date of this deed in the case of the filing under the HSR Act) apply for all Ex-Australian Regulatory Approvals under clause 3.1(b);

- (ii) each party must provide such assistance in respect of any such application for a Regulatory Approval as the other party may reasonably request, and each party must take all reasonable steps required as part of the approval process in respect of any such application, including responding to reasonable requests for information at the earliest practicable time;
- (iii) the parties must keep each other reasonably informed of the progress in relation to the obtaining of the Regulatory Approvals, including (to the extent permitted by law and the relevant Government Agency):
 - (A) reasonable details of all material dealings with Government Agencies in relation to the applications for Regulatory Approvals (including any written requests for information by such Government Agencies and any conditions or other arrangements proposed by any Government Agency in respect of such Regulatory Approvals); and
 - (B) material information (to the extent known) which is likely to result in a delay in receipt of a Regulatory Approval that would mean the Timetable is unlikely to be achieved, or indicate that a Regulatory Approval is unlikely to be given;
- (iv) to the extent reasonably practicable and permitted by law and the relevant Government Agency, the parties must consult with each other in advance in relation to all proposed material communications (whether written or scheduled oral communication and whether direct or via an Adviser) with any Government Agency relating to any Regulatory Approval (**Communications**); and
- (v) without limiting any other provision of this clause 3.3(a), and to the extent permitted by law and the relevant Government Agency, each party must:
 - (A) provide the other party with drafts of any material written Communications to be sent to a Government Agency, and allow the other party a reasonable opportunity to make comments on them prior to them being sent; and
 - (B) promptly provide to the other party copies of any material written Communications received from a Government Agency.
- (b) Before providing any document or other information pursuant to clause 3.3(a), a party may redact or exclude any part of that document, or not disclose any part of that information, which contains or constitutes confidential, commercially sensitive or competitively sensitive or privileged information relating to the existing business or affairs of the party or one of its Affiliates (in the case of Bidder) or Related Bodies Corporate (in the case of Target), to the extent that the party reasonably considers that the disclosure of such information would be unlawful or damaging to its or an Affiliate's (in the case of Bidder) or a Related Body Corporate's (in the case of Target) commercial or legal interests, or would be reasonably likely to jeopardise any attorney-client, work product or other legal privilege.

3.4 Waiver of Conditions

- (a) Any breach or non-satisfaction of any of the Scheme Conditions in clauses 3.1(a), 3.1(d) and 3.1(f) cannot be waived.
- (b) The Scheme Conditions in clauses 3.1(b), 3.1(h), 3.1(i) and 3.1(j) are for the sole benefit of Bidder, and any breach or non-satisfaction of those Scheme Conditions may only be waived by Bidder giving its written consent.

- (c) The Scheme Conditions in clauses 3.1(c), 3.1(e), and 3.1(g) are for the benefit of both Target and Bidder, and any breach or non-satisfaction of those Scheme Conditions may only be waived by written agreement between Bidder and Target.
- (d) A party entitled to waive the breach or non-satisfaction of a Scheme Condition pursuant to this clause 3.4 may do so in its absolute discretion.
- (e) If a waiver by a party of a Scheme Condition is itself expressed to be conditional and the other party accepts the conditions, the terms of the conditions apply accordingly. If the other party does not accept the conditions, the relevant Scheme Condition has not been waived.
- (f) If a party waives the breach or non-satisfaction of a Scheme Condition, that waiver will not preclude it from suing the other party for any breach of this deed constituted by the same event that gave rise to the breach or non-satisfaction of the Scheme Condition.
- (g) Waiver of a breach or non-satisfaction in respect of one Scheme Condition does not constitute:
 - (i) a waiver of breach or non-satisfaction of any other Scheme Condition resulting from the same events or circumstances; or
 - (ii) a waiver of breach or non-satisfaction of that Scheme Condition resulting from any other event or circumstance.
- (h) The Takeover Bid Conditions in clause 7(e) of Schedule 1 may only be waived by Bidder with the prior written consent of Target (in its absolute discretion).

3.5 Notifications

Each party must:

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

3.6 Failure of Conditions

- (a) If:
 - (i) there is a breach or non-satisfaction of a Condition which is not waived in accordance with this deed by the time or date specified in this deed for the satisfaction of the Condition; or
 - (ii) there is an act, failure to act or occurrence which will prevent a Condition being satisfied by the time or date specified in this deed for the satisfaction of the Condition (and the breach or non-satisfaction which would otherwise occur has not already been waived in accordance with this deed),then either party may serve a written notice on the other party, and the parties must promptly consult in good faith with a view to determining whether:
 - (iii) the Transactions may proceed by way of alternative means or methods;

- (iv) to extend the relevant time or date for satisfaction of the Condition;
 - (v) to change the First Court Date or to adjourn the application for orders pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting to another date agreed by the parties;
 - (vi) to change the Second Court Date or to adjourn the application for orders pursuant to section 411(4)(b) of the Corporations Act approving the Scheme to another date agreed by the parties; or
 - (vii) to extend the End Date.
- (b) If Target and Bidder are unable to reach agreement under clauses 3.6(a)(iii), 3.6(a)(iv), 3.6(a)(v), 3.6(a)(vi) or 3.6(a)(vii) within five Business Days after the delivery of the notice under that clause (or any shorter period ending at 5:00pm on the Business Day before the Second Court Date), either party may terminate this deed by notice in writing to the other party, provided that:
- (i) the Condition to which the notice relates is for the benefit of that party (whether or not the Condition 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 deed, where that failure contributed in a material respect to the Condition to which the notice relates becoming incapable of satisfaction, or being breached or not fulfilled before the End Date,

in which case clause 15.2 will have effect.

4 Disclosure Documents

4.1 Definitions

In this clause 4, the following definitions apply:

Primary Party means:

- (a) in the case of the Scheme Booklet and the Target's Statement as incorporated in the Transaction Booklet, Target; and
- (b) in the case of the Bidder's Statement as incorporated in the Transaction Booklet, Bidder.

Relevant Document means each of the Scheme Booklet, the Target's Statement and the Bidder's Statement as incorporated in the Transaction Booklet.

Secondary Party means:

- (a) in the case of the Scheme Booklet and the Target's Statement as incorporated in the Transaction Booklet, Bidder; and
- (b) in the case of the Bidder's Statement as incorporated in the Transaction Booklet, Target.

Secondary Party Information means, in relation to a Relevant Document, information regarding the Secondary Party provided by the Secondary Party or its Representatives to the Primary Party for inclusion in the Relevant Document, being:

- (a) information about the Secondary Party, its Affiliates (in the case of Bidder) or its Related Bodies Corporate (in the case of Target), assets, businesses and interests, and dealings in Target Shares, its intentions for Target's employees and the implications of each of those matters for the Target Group (in the case of Bidder); and
- (b) any other information required under the Corporations Act, ASIC Regulatory Guide 60 or the ASX Listing Rules (as applicable) to enable the Relevant Document to be prepared,

which the parties agree is “Secondary Party Information” in relation to the Relevant Document and is identified in the Relevant Document as such.

4.2 Primary Party's Obligations

The Primary Party in respect of each Relevant Document must:

- (a) **(preparation)** prepare the Relevant Document in compliance with all applicable laws, including the Corporations Act, ASIC Regulatory Guide 60 and the ASX Listing Rules;
- (b) **(consultation with the Secondary Party)** make available to the Secondary Party drafts of the Relevant Document, consult with the Secondary Party in relation to the content of those drafts, and consider in good faith and acting reasonably, for the purpose of amending those drafts, comments from the Secondary Party on those drafts (noting that any review of the Independent Expert's Report by Bidder is limited to review for factual accuracy of those parts that include information relating to Bidder);
- (c) **(verification)** take reasonable verification processes in relation to the information contained in the Relevant Document (other than the Secondary Party Information and the Independent Expert's Report) so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (d) **(approval of the Secondary Party Information)** seek approval from the Secondary Party on the form and context in which the Secondary Party Information appears in the Relevant Document, which approval the Secondary Party must not unreasonably withhold or delay, and the Primary Party must not lodge the Relevant Document with ASIC until such approval is obtained from (or unreasonably withheld by) the Secondary Party;
- (e) **(updating information)** as a continuing obligation:
 - (i) provide to the Secondary Party any information that arises after the Relevant Document has been despatched and until, in the case of the Scheme Booklet, the date of the Scheme Meeting and, in the case of the Target's Statement or the Bidder's Statement, the end of the Offer Period, that may be necessary to ensure that the Relevant Document, in relation to the information for which the Primary Party is responsible in accordance with clause 4.5, continues to comply with the Corporations Act, ASIC Regulatory Guide 60 and the ASX Listing Rules; and
 - (ii) ensure that the Relevant Document (but in respect of the information for which the Secondary Party will be described as responsible in that Relevant Document in accordance with clause 4.5, subject to the Secondary Party complying with its obligations to update such information) will be updated by all such further or new information which may arise after the Transaction Booklet has been despatched until the Scheme Meeting or end of the Offer Period (as applicable) which is necessary to ensure that Relevant Document continues to comply with the Corporations Act, ASIC Regulatory Guide 60 and the ASX Listing Rules.

4.3 Secondary Party's obligations

The Secondary Party in respect of each Relevant Document must:

- (a) **(Secondary Party Information)** provide to the Primary Party all Secondary Party Information for inclusion in the Relevant Document and consult with the Primary Party as to the content and presentation of the Secondary Party Information in the Relevant Document and (in good faith) take into account any comments on drafts of the Secondary Party Information provided by or on behalf of the Primary Party;

- (b) **(verification)** take reasonable verification processes in relation to the Secondary Party Information contained in the Relevant Document so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (c) **(confirmation of Secondary Party Information)** promptly after the Primary Party requests that it does so, confirm in writing to the Primary Party that:
 - (i) it consents to the inclusion of the Secondary Party Information in the Relevant Document, in the form and context in which the Secondary Party Information appears; and
 - (ii) the Secondary Party Information in the Relevant Document is not misleading or deceptive in any material respect (whether by omission or otherwise), and the inclusion of such Secondary Party Information, in that form and context, has been approved by the board of the Secondary Party; and
- (d) **(update Secondary Party Information)** promptly advise the Primary Party in writing if it becomes aware:
 - (i) of information which should have been but was not included in the Secondary Party Information in the Relevant Document (including if known at the time), and promptly provide the Primary Party with the omitted information; or
 - (ii) that the Secondary Party Information in the Relevant Document is misleading or deceptive in any material respect (whether by omission or otherwise), and promptly provide the Primary Party with any information required to correct the misleading or deceptive statements.

4.4 Independent Expert's Report

Bidder must promptly provide any assistance or information reasonably requested by the Independent Expert in connection with the Independent Expert's Report.

4.5 Responsibility statements

The parties agree that the Transaction Booklet will include a responsibility statement to the effect that:

- (a) the Primary Party is responsible for the content of the Relevant Document (other than, to the maximum extent permitted by law, the Secondary Party Information, the Independent Expert's Report or any other report or letter issued to the Primary Party by a third party) and that neither the Secondary Party nor its Representatives assume any responsibility for the accuracy or completeness of the Relevant Document other than Secondary Party Information; and
- (b) the Secondary Party is responsible for the Secondary Party Information (and no other part of the Relevant Document) and that neither the Primary Party nor its Representatives assume any responsibility for the accuracy or completeness of the Secondary Party Information.

4.6 Disagreement on content

If Bidder and Target disagree on the form or content of the Relevant Document, they must consult in good faith to try to settle an agreed form of the Relevant Document. If complete agreement is not reached after reasonable consultation, then:

- (a) if the disagreement relates to the form or content of any information appearing in the Relevant Document other than the Secondary Party Information, the Primary Party will,

acting in good faith, decide the final form or content of the disputed part of the Relevant Document; and

- (b) if the disagreement relates to the form or content of the Secondary Party Information, the Primary Party will make such amendments to the form or content of the disputed part of the Secondary Party Information as the Secondary Party reasonably requires.

5 Steps relevant to the Scheme

5.1 Scheme

Target must propose a scheme of arrangement under which:

- (a) all the Scheme Shares will be transferred to Bidder; and
- (b) the Scheme Shareholders will be entitled to receive the Scheme Consideration, subject to the Scheme becoming Effective on the Implementation Date.

5.2 Scheme Consideration

The **Scheme Consideration**, in respect of a Scheme Shareholder, means A\$2.00 cash per Scheme Share held by that Scheme Shareholder.

5.3 Provision of Scheme Consideration

Bidder undertakes and warrants to Target (in its own right and as trustee on behalf of the Scheme Shareholders) that, in consideration of the transfer to Bidder of the Scheme Shares under the terms of the Scheme, it will:

- (a) accept that transfer; and
- (b) pay or procure payment of the Scheme Consideration for each Scheme Share, in accordance with the Scheme and the Deed Poll.

5.4 Target's obligations

Target must take all steps reasonably necessary to propose and implement the Scheme as soon as is reasonably practicable after the date of this deed and must use reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step, including by doing any acts it is authorised and able to do on behalf of Target Shareholders and each of the following:

- (a) **(Independent Expert)** Provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report.
- (b) **(Liaison with ASIC)** As soon as reasonably practicable after the date of this deed but no later than 14 days before the First Court Date, and following Bidder giving confirmation or providing changes as contemplated by clause 4.3(c), 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 Bidder, and keep Bidder reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet (and of any resolution of those matters), and use reasonable endeavours, in consultation with Bidder, to resolve any such matters (provided that Target may not resolve any such matters without the prior written consent of Bidder to the extent that such matters relate to the Bidder Information).
- (c) **(Indication of intent)** Apply to ASIC for a letter indicating whether ASIC proposes to make submissions to the Court, or intervene to oppose the Scheme, on the First Court Date.

- (d) **(Approval of Scheme Booklet)** As soon as practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Target Board is convened for the purpose of approving the Scheme Booklet for despatch to Target Shareholders.
- (e) **(Court direction)** Apply to the Court for orders under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting, and consult with Bidder as to the content of all relevant originating process, affidavits, submissions, and draft minutes of Court orders. Such consultation must include providing Bidder with a reasonable opportunity to review and comment on the relevant Court documents before they are lodged, and Target must consider in good faith any comments provided by or on behalf of Bidder.
- (f) **(ASIC registration)** Request ASIC to register the Scheme Booklet in the form approved by the Court in accordance with section 412(6) of the Corporations Act.
- (g) **(Despatch)** Send the Scheme Booklet to Target Shareholders following receipt of Bidder's written consent to the inclusion of the Bidder Information in the form and context in which the Bidder Information appears in such version of the Scheme Booklet.
- (h) **(Promote Transaction)** Participate in efforts reasonably requested by Bidder to promote the merits of the Transaction and the Scheme Consideration, including, where requested by Bidder, meeting with key Target Shareholders and soliciting proxy votes in favour of the Scheme.
- (i) **(Scheme Meeting)** Convene the Scheme Meeting to approve the Scheme (in accordance with any orders made by the Court).
- (j) **(No objection statement)** Apply to ASIC for the production of a statement in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme.
- (k) **(Court approval)** Subject to all Scheme Conditions in clause 3.1 being satisfied or waived in accordance with this deed, apply to the Court for orders approving the Scheme, and consult with Bidder as to the content of all relevant affidavits, submissions and draft minutes of Court orders. Such consultation must include providing Bidder with a reasonable opportunity to review and comment on the relevant Court documents before they are lodged, and Target must consider in good faith any comments provided by or on behalf of Bidder.
- (l) **(Court order)** Lodge with ASIC an office copy of any Court order approving the Scheme in accordance with section 411(10) of the Corporations Act and by not later than the first Business Day after the day such office copy is received (or such later date as Bidder may agree in writing).
- (m) **(Representation)** Allow, and not oppose, any application by Bidder for leave of the Court to be represented by counsel at the Court hearings in relation to the Scheme.
- (n) **(Implementation)** If the Scheme becomes Effective:
 - (i) procure ASX to suspend trading in Target Shares from the close of trading on the Effective Date;
 - (ii) close the Target Share Register at the Scheme Record Date to determine the identity of Scheme Shareholders and their entitlements to the Scheme Consideration; and
 - (iii) subject to Bidder satisfying its obligations under clause 5.3, execute proper instruments of transfer of the Scheme Shares on behalf of the Scheme Shareholders in favour of Bidder and procure the registration in the Target Share

Register of all transfers of Scheme Shares to Bidder under those instruments on the Implementation Date.

- (o) **(Proxy reports)** Keep Bidder reasonably informed on the status of proxy forms received for the Scheme Meeting, including on a daily basis over the period commencing 15 Business Days before the Scheme Meeting and ending on the deadline for the receipt of proxy forms, and such other information Target and its Representatives may receive concerning the voting intentions of Target Shareholders.

5.5 Appointment of directors

- (a) On the Implementation Date, but subject to the Scheme Consideration having been paid by Bidder in accordance with the Scheme and receipt by Target of signed consents to act, Target must:
 - (i) take all actions necessary to appoint the persons nominated by Bidder as new directors of Target or any other member of the Target Group (provided that each such person is not ineligible to act as a director under any applicable laws and signs consents to act as a director of the relevant member(s) of the Target Group); and
 - (ii) procure that, as nominated by Bidder before the Implementation Date, directors on the Target Board resign from the Target Board or any other board of a member of the Target Group (provided that nothing in this clause 5.5(a)(ii) requires any such director to forego any rights they may have under and subject to any deed of access and indemnity or policy of directors' and officers' insurance).
- (b) Subject to clause 5.5(c), no later than two Business Days after the later of:
 - (i) the Offer being declared or becoming unconditional; and
 - (ii) Bidder acquiring a relevant interest in at least 50.1% of the Target Shares,and subject to receipt by Target of signed consents to act, Target must:
 - (iii) take all actions necessary to appoint the persons nominated by Bidder as new directors of Target or any other member of the Target Group;
 - (iv) procure that any existing Target directors nominated by Bidder resign from the board of Target; and
 - (v) procure that any existing directors of any member of the Target Group (other than Target), as nominated by Bidder, resign as directors of the relevant member of the Target Group,so that:
 - (vi) those persons nominated by Bidder to be appointed as directors of Target comprise a majority of the directors of Target; and
 - (vii) those persons nominated by Bidder to be appointed as directors of other members of the Target Group comprise a majority of the directors of each such member of the Target Group.
- (c) After appointments are made under clause 5.5(b), Bidder must procure that its nominees on the Target Board do not participate in any discussions or decisions of that board which relate to the Takeover Bid during the Offer Period.

5.6 Bidder's obligations

Bidder must take all steps reasonably necessary to assist Target to propose and implement the Scheme as soon as is reasonably practicable and, without limiting the foregoing, must use reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step, including by doing each of the following:

- (a) **(Assistance with Scheme Booklet)** Provide to Target any assistance or information reasonably requested by Target or its Advisers in connection with the preparation of the Scheme Booklet and any documents required to be filed with the Court in respect of the Scheme.
- (b) **(Regulatory notifications)** in relation to the Regulatory Approvals required to be applied for by Bidder, lodge with any Government Agency within the relevant time periods specified in this deed all documentation and filings required by law to be so lodged by Bidder in relation to the Transactions;
- (c) **(Independent Expert information)** Provide all assistance and information reasonably requested by Target or by the Independent Expert in connection with the preparation of the Independent Expert's Report.
- (d) **(Deed Poll)** Before the first Court hearing on the First Court Date, enter into the Deed Poll and deliver it to Target.
- (e) **(Court representation)** Procure that it is represented by counsel at the Court hearings convened in relation to the Scheme, at which, through its counsel or solicitors, Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme.
- (f) **(Scheme Consideration)** If the Scheme becomes Effective, provide the Scheme Consideration in the manner and amount contemplated by clause 5.3 and the terms of the Scheme.
- (g) **(Promote Transaction)** Participate in efforts reasonably requested by Target to promote the merits of the Transaction and the Scheme Consideration, including, where requested by Target, meeting with key Target Shareholders.

5.7 Certificates in relation to the Scheme Conditions

- (a) On the Second Court Date each party 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 8:00am on the Second Court Date the Scheme Conditions have been satisfied or waived in accordance with this deed.
- (b) Each party must provide to the other party a draft of the certificate to be provided by it pursuant to clause 5.7(a) by 5:00pm on the day that is two Business Days prior to the Second Court Date, and must provide to the other party on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

5.8 Appeal process

If the Court refuses to make any orders convening the Scheme Meeting or approving the Scheme:

- (a) Target and Bidder must consult with each other in good faith as to whether to appeal the Court's decision; and

- (b) Target must appeal the Court's decision (unless the parties agree otherwise, or an independent senior counsel of the New South Wales bar advises that, in their view, an appeal would have no reasonable prospect of success before the End Date).

6 Facilitating the Takeover Bid

6.1 Takeover Bid Consideration

The **Takeover Bid Consideration** means A\$2.00 cash per Target Share.

6.2 Promoting the Takeover Bid

During the Offer Period:

- (a) in the absence of a Superior Proposal that is recommended by the Target Board in accordance with clause 9(c)(iii), and subject to the Independent Expert opining that the Takeover Bid is fair and reasonable, the Target Board will support the Takeover Bid and participate in efforts reasonably required by Bidder to promote the terms of the Takeover Bid; and
- (b) Bidder will participate in efforts reasonably requested by Target to promote the merits of the Takeover Bid and the Takeover Bid Consideration, including, where requested by Target, meeting with key Target Shareholders.

6.3 Independent Expert

Each party will provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Target's Statement.

6.4 Share Register

From the date of this deed until the end of the Offer Period, Target must comply with any reasonable request of Bidder:

- (a) for an up-to-date copy of the register of Target Shareholders;
- (b) for information that is required to be maintained in accordance with section 672DA of the Corporations Act; and
- (c) to give directions to Target Shareholders under Part 6C.2 of the Corporations Act.

6.5 ASX Listing

Target must take all reasonable steps to maintain Target's listing on ASX, notwithstanding any suspension of the quotation of the Target Shares, up to and including the date Bidder compulsorily acquires any Target Shares it does not already own under Chapter 6A of the Corporations Act, including making appropriate applications to ASX and ASIC.

7 Treatment of ESS Securities

By no later than the first to occur of 8.00am on the Scheme Record Date and the end of the Offer Period, Target must:

- (a) give effect to the treatment of all ESS Securities in the manner Fairly Disclosed to Bidder in the Disclosure Letter; and
- (b) without limiting clause 7(a), ensure that there are no ESS Securities (or any other Target securities or rights other than Target Shares) on issue,

in each case subject to:

- (c) the Scheme becoming Effective; or
- (d) the Offer being declared or becoming unconditional and Bidder acquiring a relevant interest in at least 50.1% of the Target Shares.

8 Conduct of Business and Requests for Access

8.1 Conduct of Target Business

During the period from the date of this deed up to and including the earlier of the Implementation Date and the close of the Offer Period, Target must:

- (a) **(ordinary course)** procure that the Target Group conducts its business and operations in the ordinary course and substantially consistent (subject to any applicable laws and regulations) with the manner in which each such business and operation has been conducted in the period prior to the date of this deed;
- (b) **(assets and services)** use its best endeavours to preserve intact the Target Group's current business organisation and assets, to keep available the services of the current officers and employees of it and the other members of the Target Group, and to preserve the Target Group's relationship with any Government Agencies, customers, suppliers, licensors, licensees, landlords and others having business dealings with it;
- (c) **(financial)** ensure that none of the following occurs:
 - (i) **(financial indebtedness)** other than to members of the Target Group, Target or any Subsidiary of Target incurs any financial indebtedness or issues any indebtedness or debt securities, other than in connection with derivative or similar transactions to manage currency, interest rate or commodity price exposure (provided such transactions are entered into in the ordinary course and consistent with past practice), or grants any Security Interest in its assets;
 - (ii) **(employees)** Target or any Subsidiary of Target:
 - (A) enters into any new employment contract or contracting arrangement (or amendment) with a potential or existing director, officer, employee or contractor of the Target Group with annual compensation in excess of US\$50,000;
 - (B) pays any bonus to any director, officer or employee of Target or any Subsidiary of Target, other than bonuses payable in the ordinary course of business to any of those persons in accordance with the employment terms or arrangements with that person in existence as at the date of this deed (provided those terms are Fairly Disclosed in the Due Diligence Materials);
 - (C) increases the remuneration or compensation of any director, officer or employee of Target or any Subsidiary of Target;
 - (D) grants to any director, officer or employee of Target or any Subsidiary of Target any increase in severance or termination pay or superannuation entitlements other than as required by law or in accordance with the employment terms of that officer in existence as at the date of this deed or Target's or any Subsidiary of Target's approach to ex-gratia payments (provided those terms are Fairly Disclosed in the Due Diligence Materials);

- (E) makes or agrees to make any 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 director, officer or employee of Target or of any Subsidiary of Target or grants any loans (of money or property) to any director, officer or employee of Target or any Subsidiary of Target;
- (F) terminates or suspends any existing employment contract or contracting arrangement with any director, officer or employee of Target or any Subsidiary of Target (other than for cause);
- (G) issues or grants any securities or other equity equivalents to any director, officer or employee of Target or a Subsidiary of Target or accelerates the time of payment or vesting of any securities or other equity equivalents or other benefits to any director, officer or employee of Target or a Subsidiary of Target;
- (H) enters into, amends or terminates any Plan;
- (I) enters into any enterprise bargaining agreement or similar collective employment agreement; or
- (J) waives any non-competition, non-disparagement, confidentiality or non-solicitation (or similar) obligation of any director, officer or employee of Target or a Subsidiary of Target;
- (iii) **(acquisitions and disposals)** Target or any Subsidiary of Target acquires, agrees to acquire, leases, agrees to lease, disposes of, agrees to dispose of or offers, proposes or announces a bid or tenders for any entity, business or assets, where the value of such entity, business or assets exceeds:
 - (A) US\$500,000 for any individual item; or
 - (B) US\$1,000,000 in aggregate;
- (iv) **(capital expenditure)** Target or a Subsidiary of Target incurs capital expenditure after the date of this deed which would result in the Target Group incurring US\$500,000 or more of capital expenditure in respect of any individual transaction or US\$1,000,000 or more of capital expenditure in aggregate; or
- (v) **(dividends)** Target or any Subsidiary declares, pays or distributes any dividend or other share of any profits or assets or returns or agrees to return any capital to its members;
- (d) **(IP and licences)** not, and must ensure that its Subsidiaries do not, either:
 - (i) sell, assign, transfer or grant any license to; or
 - (ii) abandon or permit to let lapse or expire,any Business Intellectual Property material to the business of the Target Group as conducted as at the date of this deed, other than a non-exclusive licence in the ordinary course of business;
- (e) **(insurance)** not, and must ensure that its Subsidiaries do not, cancel or terminate any insurance policy naming it or a Subsidiary as a beneficiary without obtaining comparable substitute insurance coverage;
- (f) **(contracts)** not, and must ensure that its Subsidiaries do not:
 - (i) modify, amend or waive, enter into, fail to enforce, or assign or terminate, any material contract of the Target Group the value or cost of which exceeds

US\$100,000 in any 12 month period or which has a term greater than 12 months other than in relation to the renewal of a contract that is in place as at the date of this deed;

- (ii) enter into or amend any contract or arrangement which imposes a non-competition or exclusivity (or similar) obligation on Target or a Subsidiary of Target; or
- (iii) enter into or amend any contract or arrangement for financial advisory or other advisory or brokerage services, whether in connection with the transactions contemplated by this deed or otherwise;
- (g) **(joint ventures)** not, and must ensure that its Subsidiaries do not enter into, vary or terminate any joint venture, partnership, alliance or similar arrangement;
- (h) **(property)** not, and must ensure that its Subsidiaries do not, acquire or agree to acquire any real property or enter into, or agree to enter into, any lease or sublease of real property (whether as a lessor, sublessor, lessee or sublessee);
- (i) **(constituent documents)** not amend its constitution and ensure that none of its Subsidiaries amend any of their constituent or organizational documents;
- (j) **(equity securities)** not, and must ensure that its Subsidiaries do not, issue any equity securities or equity equivalents or amend any term of any equity securities or equity equivalents in any member of the Target Group, including any ESS Securities;
- (k) **(new business)** not, and must ensure that its Subsidiaries do not, enter into any new line of business that is materially different to, or discontinue any material aspect of, the business of the Target Group as conducted at the date of this deed;
- (l) **(fees)** not, and must ensure that its Subsidiaries do not, pay, or agree to pay or incur, any third party costs or expenses in connection with the transactions contemplated by this deed (including legal, financial, tax, accounting, communications and public relations, counsel, expert and court fees and fees payable to Government Agencies) other than as Fairly Disclosed in the Disclosure Letter;
- (m) **(claims and proceedings)** not, and must ensure that its Subsidiaries do not, settle or compromise any legal proceedings, claims (including any tax claims), investigations, arbitration or other similar proceedings in relation to Target or any Subsidiary of Target where the settlement terms require payment in excess of US\$100,000, impose material non-monetary relief or impose any obligations on any member of the Target Group (other than releases and obligations with respect to confidentiality) or involves any admission of liability, or otherwise accept any undertaking or conditions in respect of the same other than as Fairly Disclosed in the Disclosure Letter;
- (n) **(accounting)** not, and must ensure that its Subsidiaries do not, alter any accounting policy of any member of the Target Group, other than any change required by applicable Accounting Standards;
- (o) **(tax)** not, and must ensure that its Subsidiaries do not, make, change or revoke any material election in respect of Taxes, change any material method of Tax accounting, change any Tax accounting period, amend any material Tax Return, or settle, compromise or surrender any claim, audit or proceeding with respect to a material amount of Taxes;
- (p) **(related parties)** not, and must ensure that its Subsidiaries do not, enter into any agreement or arrangement with a related party (as defined in section 228 of the Corporations Act) of Target or a Subsidiary of Target; or

- (q) **(general)** not, and must ensure that its Subsidiaries do not, agree, authorise or commit to do any of the matters set out above,
in each case except to the extent:
 - (r) the Bidder has provided its prior written consent (not to be unreasonably withheld or delayed);
 - (s) required by this deed or the Scheme;
 - (t) required in order to comply with any applicable law or order of a court or Government Agency;
 - (u) in respect of:
 - (i) clauses 8.1(a) to 8.1(q) (other than clauses 8.1(c)(ii) and 8.1(j), to which this limitation does not apply), Fairly Disclosed in the Due Diligence Material or the Disclosure Letter; and
 - (ii) in respect of clauses 8.1(c)(ii) and 8.1(j), Fairly Disclosed in the Disclosure Letter; and
 - (v) required to be done to respond to an emergency or disaster reasonably and prudently (including a situation giving rise to a risk of personal injury or material damage to property).

8.2 Access to information and co-operation

- (a) **(Provision of access and information)** During the period from the date of this deed up to and including the Implementation Date or the end of the Offer Period (whichever is later), Target must, and must procure each of its Subsidiaries to, respond to reasonable requests from Bidder and its Representatives for information concerning the Target Group businesses, operations and affairs as soon as reasonably practicable after such requests are made, and give Bidder and its Representatives reasonable access to Target's premises, senior executive team and records, and otherwise provide reasonable co-operation to Bidder and its Representatives, in each case for the purposes of:
 - (i) the implementation of the Transactions;
 - (ii) integration planning prior to implementation of the Transactions which, for the avoidance of doubt, does not include ongoing due diligence on the Target Group;
 - (iii) finalisation of the Bidder Group's structuring arrangements for the Transaction; or
 - (iv) any other purpose that is agreed in writing between the parties.
- (b) **(Limits on Target obligations)** The obligations in clause 8.2(a) and clause 8.3 do not require Target to:
 - (i) do anything which would cause undue disruption to the operation of its business in the ordinary course;
 - (ii) require a member of the Target Group to take any action that would reasonably be expected to conflict with or violate the entity's constituent documents or any law;
 - (iii) require a member of the Target Group to take any action that would breach an obligation to any person (including any confidentiality obligations);
 - (iv) provide information to Bidder concerning the Target directors' and management's consideration of the Scheme; or

- (v) provide any competitively sensitive or privileged information where the provision of such information is reasonably likely to cause prejudice to the commercial or legal interests of the Target Group taken as a whole, or would be reasonably likely to jeopardise any attorney-client, work product or other legal privilege provided that Target takes reasonable steps to satisfy the reasonable information requests of Bidder concerning that matter (which includes, for the avoidance of doubt, redacting any competitively sensitive or privileged information).
- (c) The parties acknowledge that all information that is provided pursuant to this clause 8.2 will be provided subject to the terms of the Confidentiality Deed.

8.3 Integration planning

- (a) On and from the date of this deed, the parties agree to establish a committee (**Integration Committee**) initially comprising of the following individuals:
 - (i) as representatives of Target: Sam Chandler, Sam Thorpe and Gina O'Reilly; and
 - (ii) as representatives of Bidder: Christa Quarles, Brad Jewett and Connie Chen.
- (b) The role of the Integration Committee will be to act as a forum for discussion and planning in respect of the following:
 - (i) matters related to integration planning, including employee retention and incentivisation, stakeholder engagement and communications, consolidation of operations and functions or processes; and
 - (ii) the process referred to in clause 8.4.
- (c) Each party must ensure that its representatives on the Integration Committee act in good faith in their capacity as members of the Integration Committee with a view to fulfilling the role and objectives of such committee (to the extent within their power).
- (d) The Integration Committee will meet at such times and places as agreed between the members of the Integration Committee from time to time (and at a minimum at least fortnightly), taking into account the existing roles and duties of Target's representatives on the Integration Committee. Meetings may be held via telephone, video or any other technology that permits each member to communicate with every other member (or any combination of these technologies).
- (e) The members of the Integration Committee may agree to invite other persons to attend meetings of the Integration Committee from time to time.
- (f) From time to time, certain members of the Integration Committee or other representatives of the parties (as agreed between the parties) will meet separately to meetings of the Integration Committee to discuss and progress matters considered or plans developed by the Integration Committee.
- (g) The parties acknowledge and agree that:
 - (i) the Integration Committee is a discussion and planning forum only, and the members of the Integration Committee do not have power to bind the other party or to give any consent, approval or waiver on behalf of such other party;
 - (ii) nothing in this clause 8.3 or elsewhere in this deed requires a party to act at the direction of the other party or is intended to create a relationship of partnership, joint venture or similar between the parties;

- (iii) nothing in this clause 8.3 or elsewhere in this deed requires a party to take any action that would reasonably be expected to conflict with or violate the entity's constituent documents or any law;
- (iv) the respective businesses of the Bidder Group and the Target Group are to continue to operate independently until (and subject to) implementation of either Transaction; and
- (v) nothing in this clause 8.3 requires any of Target's representatives on the Integration Committee to do anything which would unduly interfere with their responsibilities to Target and the ongoing conduct of Target's business in the ordinary course.

8.4 Change of control consents

- (a) As soon as practicable after the date of this deed, Target and Bidder must seek to identify any change of control or unilateral termination rights in material leases and material contracts to which Target or another member of the Target Group is party which may be triggered by or exercised in response to the implementation of the Transactions. In respect of those leases and contracts:
 - (i) Target and Bidder will agree a proposed course of action (which, among other things, will have due regard to applicable legal restrictions) and then Target will initiate contact, including joint discussions if required, with the relevant counterparties and request that they provide any consents or confirmations required or appropriate. Bidder must not contact any counterparties in connection with the Transactions without Target present or without Target's prior written consent (which is not to be unreasonably withheld, conditioned, or delayed); provided, nothing shall restrict Bidder or its Affiliates having any contact with counterparties in the ordinary course of their respective businesses;
 - (ii) Target must take all reasonable action to obtain the relevant consents or confirmations as expeditiously as possible and on terms reasonably acceptable to the Bidder, including by promptly providing any information reasonably required by counterparties;
 - (iii) Bidder must take all action reasonably necessary to comply with any requirements of the counterparties that are reasonably necessary to obtain the relevant consent or confirmation, including by providing any information reasonably required and making its officers and employees available, where necessary, to meet with counter-parties to deal with any issues arising in relation to the matter; and
 - (iv) a failure by a member of the Target Group to obtain any third-party consent or confirmation, or the exercise of a termination right, will not constitute a breach of this deed by Target.
- (b) Nothing in clause 8.4(a) requires Target or Bidder to incur material expense or disclose commercially or competitively sensitive or privileged information.

8.5 Directors' and officers' insurance and indemnities

- (a) Subject to:
 - (i) the Scheme becoming Effective; or
 - (ii) the Bidder acquiring a relevant interest in at least 50.1% of the Target Shares and the Offer becoming or being declared unconditional,

Bidder undertakes in favour of Target and each other person who is a director or officer of a member of the Target Group that it will:

- (iii) for a period of seven years from the first of the events in either clause 8.5(a)(i) or 8.5(a)(ii) occurring or until a company ceases to be part of the Target Group (whichever is earlier), ensure that the constitutions of Target and the relevant organizational documents of each other member of the Target Group continues to contain such rules as are contained in those constitutions or relevant organizational documents at the date of this deed that provide for each company to indemnify each of its current and previous directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the Target Group; and
 - (iv) procure that each member of the Target Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that directors' and officers' run-off insurance cover for such directors and officers is maintained, for a period of seven years from the retirement date of each director and officer.
- (b) Bidder acknowledges that, subject to the next sentence and notwithstanding any other provision of this deed, Target may, prior to the event in either clause 8.5(a)(i) or 8.5(a)(ii) occurring, enter into arrangements to secure directors' and officers' run-off insurance for up to such seven-year period, and that any actions to facilitate that insurance or in connection therewith will not be a Target Prescribed Occurrence or breach any provision of this deed, provided that, the cost of such directors' and officers' run-off insurance shall not exceed 300% of the annual premium currently payable by the Target Group in respect to any such current directors' and officers' insurance policy. Before entering into any contract of insurance, Target must first present to Bidder a quotation for such insurance policy, and Bidder must first approve such quotation (acting reasonably and expeditiously) before Target may enter into a contract of insurance, provided that, if the terms of the quotation for such insurance policy are substantially the same as the terms disclosed to Bidder in writing before the execution of this deed, Bidder must not withhold its approval.
- (c) The undertakings contained in clause 8.5(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (d) Target receives and holds the benefit of clause 8.5(a), to the extent it relates to the other Target Parties, as trustee for them.
- (e) The undertakings contained in clause 8.5(a) are given until the earlier of the end of the relevant period specified in clause 8.5(a) or the relevant member of the Target Group ceasing to be part of the Target Group.

8.6 Assistance with financing arrangements

- (a) The parties hereto acknowledge that Bidder may attempt to arrange third party debt financing for the purpose of funding the Transactions (the **Debt Financing**) and, if Bidder so chooses to seek the Debt Financing, prior to the Implementation Date or the end of the Offer Period (whichever is later), Target shall provide, and shall cause each of its Subsidiaries to provide, and shall use reasonable best efforts to cause its and their respective officers, directors, employees, accountants, consultants, legal counsel, affiliates and agents to provide such cooperation in connection with the arrangement of the Debt Financing as may be reasonably requested by Bidder, including, but not limited

to, (i) making available to Bidder, its advisors and the debt financing sources such financial and other pertinent information regarding the Target Group as may be reasonably requested by Bidder, its advisors or the debt financing sources, including (A) the unaudited financial statements of the Target Group for each fiscal quarter ended 45 days prior to the earlier of the Implementation Date and the close of the Offer Period and the audited financial statements of the Target Group for each fiscal year ended 90 days prior to the earlier of the Implementation Date and the close of the Offer Period, (B) such information as is necessary to allow Bidder, its advisors and the debt financing sources to prepare pro forma financial statements and (C) customary authorization letters (including customary representations with respect to accuracy of information and material non-public information); (ii) assisting with the preparation of lender and investor presentations, rating agency presentations, marketing materials and other similar documents and materials in connection with the Debt Financing and participating in a reasonable number of meetings, presentations, road shows, drafting sessions and due diligence sessions with providers or potential providers of the Debt Financing and ratings agencies and otherwise assisting in the marketing efforts of Bidder and its financing sources; (iii) delivering, at least three Business Days prior to the earlier of the Implementation Date and the close of the Offer Period, all documentation and other information as is reasonably requested by Bidder, its advisors and its financing sources at least nine days prior to the earlier of the Implementation Date and the close of the Offer Period with respect to applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and beneficial ownership regulations (including beneficial ownership certifications as under 31 C.F.R. § 1010.230); and (iv) assisting with Bidder's preparation, negotiation and execution of definitive financing documentation and the schedules and exhibits thereto (including loan agreements, guarantees, collateral agreements, hedging arrangements, customary officer's certificates and corporate resolutions, as applicable) as may reasonably be requested and subject to the implementation of a Transaction; provided, however, that nothing in this clause 8.6 will require any such cooperation to the extent that it would (i) require Target or any of its Subsidiaries to pay any fees or reimburse any expenses prior to the implementation of the Transactions for which it has not received prior reimbursement or is not otherwise indemnified by or on behalf of Bidder, (ii) require Target or any of its Subsidiaries to enter into any certificate, agreement, arrangement, document or instrument that is not contingent upon the implementation of a Transaction or that would be effective prior to implementation of a Transaction (other than the customary authorization letters described above), (iii) require Target or any of its Subsidiaries to give to any other person any indemnities in connection with the Debt Financing that are effective prior to the implementation of a Transaction, (iv) require Target or any of its Subsidiaries to enter into or approve any debt financing or any definitive agreement for the Debt Financing that would be effective prior to the implementation of a Transaction (other than the customary authorization letters described above) (v) cause or is reasonably likely to cause a breach of any law or regulation which is applicable to Target or any of its Subsidiaries (vi) unreasonably interfere with the ongoing business operations of Target, (vii) cause any Condition not to be satisfied or (viii) cause a breach of this deed. Target hereby consents to the use of the logos of Target and each of its Subsidiaries in connection with the Debt Financing; provided that such logos shall be used solely in a manner that is not intended or reasonably likely to harm, disparage or otherwise adversely affect Target and/or its Subsidiaries or their reputation or goodwill.

- (b) Bidder must indemnify Target against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising, suffered or incurred by

Target in connection with any Debt Financing and any information utilised in connection with any Debt Financing, in each case other than to the extent any of the foregoing rises from the fraud, bad faith or wilful misconduct of, or breach of this deed by, Target.

- (c) Bidder agrees to reimburse Target for its reasonable and documented out-of-pocket costs and expenses incurred as a result of complying with its obligations under clause 8.6(a).

9 Target Board Recommendation

- (a) Subject to clause 9(c), Target must procure that:
 - (i) the Target Board unanimously recommends that, in the absence of a Superior Proposal, and subject to the Independent Expert concluding (and continuing to conclude) in the Independent Expert's Report that the Scheme is in the best interests of Target Shareholders and not publicly changing or withdrawing that conclusion, Target Shareholders vote in favour of the Scheme at the Scheme Meeting (***Scheme Recommendation***); and
 - (ii) the Target Board announces the intention of each director to cause all Target Shares held or controlled by him or her to be voted in favour of the resolution to approve the Scheme at the Scheme Meeting, in the absence of a Superior Proposal, and subject to the Independent Expert concluding (and continuing to conclude) in the Independent Expert's Report that the Scheme is in the best interests of Target Shareholders and not publicly changing or withdrawing that conclusion (***Scheme Voting Intention***).
- (b) Subject to clause 9(c), Target must procure:
 - (i) that the Target Board unanimously recommends, in the absence of a Superior Proposal, and subject to the Independent Expert concluding (and continuing to conclude) in the Independent Expert's Report that the Offer is fair and reasonable and not publicly changing or withdrawing that conclusion, Target Shareholders accept the Offer to be made to them under the Takeover Bid (***Takeover Recommendation***); and
 - (ii) the Target Board announces the intention of each director to cause all Target Shares held or controlled by him or her to be accepted into the Offer to be made to them under the Takeover Bid, in the absence of a Superior Proposal, and subject to the Independent Expert concluding (and continuing to conclude) in the Independent Expert's Report that the Offer is fair and reasonable and not publicly changing or withdrawing that conclusion (***Takeover Acceptance Intention***).
- (c) Target must ensure that no director of Target:
 - (i) changes, withdraws or modifies his or her Scheme Recommendation, Scheme Voting Intention, Takeover Recommendation or Takeover Acceptance Intention; or
 - (ii) makes any public statement or recommendation that is inconsistent with his or her Scheme Recommendation, Scheme Voting Intention, Takeover Recommendation or Takeover Acceptance Intention,in each case except where:
 - (iii) Target receives a Competing Proposal and the Target Board determines, after Target has fully complied with all of its obligations under clause 13.7, that the Competing Proposal constitutes a Superior Proposal; or
 - (iv) the Independent Expert concludes in the Independent Expert's Report that:

- (A) in respect of the Scheme Recommendation and Scheme Voting Intention, the Scheme is not in the best interests of Target Shareholders; or
 - (B) in respect of the Takeover Recommendation and Takeover Acceptance Intention, the Takeover Bid is not fair and not reasonable to Target Shareholders.
- (d) Despite anything to the contrary in this clause 9, a statement made by Target, the Target Board or any Target director, to the effect that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by Target shall not contravene this clause 9.

10 Representations and Warranties

10.1 Bidder Representations and Warranties

Bidder represents and warrants to Target (in its own right and separately as trustee or nominee for each of the other Target Parties) that each Bidder Representation and Warranty is true and correct.

10.2 Bidder's indemnity

Bidder agrees with Target (on Target's own behalf and separately as trustee for each of the other Target Parties) to indemnify and keep indemnified Target and the other Target Parties against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which Target or any other member of the Target Group suffers or incurs by reason of any breach of any of the Bidder Representations and Warranties.

10.3 Target Representations and Warranties

- (a) Target represents and warrants to Bidder (in its own right and separately as trustee or nominee for each of the other Bidder Parties) that each Target Representation and Warranty is true and correct.
- (b) Bidder acknowledges and agrees that the Target Representations and Warranties and the indemnities are given subject to those matters which:
 - (i) are expressly provided for in this deed;
 - (ii) are Fairly Disclosed in the Due Diligence Material or the Disclosure Letter; or
 - (iii) are within the actual knowledge of Christa Quarles, Brad Jewett or Connie Chen as at the date of this deed.

10.4 Target's indemnity

Subject to clause 10.3(b), Target agrees with Bidder (on Bidder's own behalf and separately as trustee for each of the other Bidder Parties) to indemnify and keep indemnified Bidder and the other Bidder Parties against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which Bidder suffers or incurs by reason of any breach of any of the Target Representations and Warranties.

10.5 Target's tax indemnity

Subject to clause 10.3(b), Target indemnifies Bidder against, and must pay Bidder on demand the amount of, any losses, liabilities, damages, costs, charges or expenses attributable to:

- (a) Tax or Duty payable by a member of the Target Group (whether payable before, on or after implementation of the Scheme or the time at which Bidder acquires a relevant interest in at least 50.1% of the Target Shares and the Offer becomes or is declared unconditional) as a result of a Tax Demand to the extent that such Tax or Duty relates to:
 - (i) any period, or part period, up to and including implementation of the Scheme or the time at which Bidder acquires a relevant interest in at least 50.1% of the Target Shares and the Offer becomes or is declared unconditional; or
 - (ii) any act, transaction, event or omission, or any misstatement, executed, performed or made on or prior to implementation of the Scheme or the time at which Bidder acquires a relevant interest in at least 50.1% of the Target Shares and the Offer becomes or is declared unconditional;
- (b) the loss or limitation, including any reduction in the rate of use, of any tax attributes of the Target Group at the implementation of the Scheme or the time at which Bidder acquires a relevant interest in at least 50.1% of the Target Shares and the Offer becomes or is declared unconditional, due to prior changes in the control or ownership of the Target Group; or
- (c) Tax Costs incurred by or on behalf of a member of the Target Group to the extent that such Tax Costs arise from or relate to any of the matters for which Target may be liable under paragraph (a) or paragraph (b).

10.6 W&I Policy and limitations on Claims

Notwithstanding any provision to the contrary in this deed:

- (a) if Bidder does not take out a W&I Policy, Bidder agrees that it will not be entitled to make, and that it will not make, and irrevocably waives any right it may have to make, any Claim against Target in respect of an Additional Warranty or the Tax Indemnity;
- (b) if Bidder takes out a W&I Policy, Bidder agrees that it will not be entitled to make, and that it will not make, and irrevocably waives any right it may have to make, any Warranty or Indemnity Claim, except to the extent:
 - (i) required to permit a Claim under the W&I Policy (if any) and then only on the basis that Target will have no liability for such Claim; or
 - (ii) such Claim arises as a result of fraud or wilful misconduct by Target or any member of the Target Group or any of their respective directors or officers;
- (c) Bidder covenants in favour of Target that, prior to the earlier of the Scheme becoming Effective or Bidder becoming the holder of a relevant interest in at least 50.1% of the Target Shares and the Offer being declared or becoming unconditional, and subject to Bidder taking out a W&I Policy, it will:
 - (i) not do anything which causes any right of the insured under the W&I Policy not to have full force and effect upon its terms;
 - (ii) not novate or assign its rights under the W&I Policy other than where permitted by the terms of the W&I Policy; and
 - (iii) comply with the terms of the W&I Policy relating to deliverables required to satisfy conditions in the W&I Policy;
- (d) Bidder will ensure that any W&I Policy includes terms to the effect that:
 - (i) the insurer irrevocably waives its rights to bring any claim against any Target Party by way of subrogation, claim for contribution or otherwise, except claims by

way of subrogation against Target to the extent that the relevant loss arose out of the fraud or wilful misconduct by Target or any member of the Target Group or any of their respective directors or officers and only to the extent of the rights of recovery relating directly to the fraud or wilful misconduct by Target or any member of the Target Group or their respective directors or officers; and

- (ii) Bidder acknowledges that each Target Party is entitled to directly enforce such waivers and that in respect of the waivers Bidder contracts in its own right and as agent of each Target Party;
- (e) Bidder agrees that in the event that it takes out a W&I Policy, it will promptly provide Target with a copy of such policy; and
- (f) Target acknowledges and agrees that:
 - (i) Bidder is under no obligation to take out a W&I Policy;
 - (ii) until Bidder takes out a W&I Policy, Target will remain liable in respect of the Target Representation and Warranties (other than the Additional Warranties) in accordance with this deed;
 - (iii) if Bidder takes out a W&I Policy and provides a copy of such policy to it, it shall keep the terms of such policy confidential; and
 - (iv) it will cooperate with Bidder and provide all reasonable assistance and information requested by Bidder in connection with the purchase of a W&I Policy.

10.7 Timing of representations and warranties

Unless expressed to be given at a particular time or during a particular period (in which case it is given at that time or during that period), each Bidder Representation and Warranty and each Target Representation and Warranty is given:

- (a) at the date of this deed;
- (b) at 8:00am on the Second Court Date; and
- (c) at all times during the Offer Period.

10.8 Notification

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance that constitutes or is reasonably expected to constitute a breach of any of the representations or warranties given by it under this clause 10.

10.9 Survival of representations

Each Bidder Representation and Warranty and each Target Representation and Warranty:

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

10.10 Survival of indemnities

Each indemnity in this deed (including in clauses 10.2, 10.4 and 10.5):

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

11 Releases

11.1 Target Parties

- (a) Without limiting clause 14, Bidder releases its rights against, and agrees with Target that it will not make a Claim against, any Target Party (other than Target) in connection with:
 - (i) any breach of any representation, covenant, and warranty of Target in this deed; or
 - (ii) any disclosure made (at any time) by any Target Party that contains any statement which is false or misleading whether in content or by omission,except to the extent the relevant Target Party has not acted in good faith or has acted fraudulently or has engaged in wilful misconduct.
- (b) This clause 11.1 is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Target receives and holds the benefit of this clause as trustee for each other Target Party.

11.2 Bidder Parties

- (a) Target releases its rights against, and agrees with Bidder that it will not make a Claim against, any Bidder Party (other than Bidder) in connection with:
 - (i) any breach of any representation, covenant, and warranty of Bidder in this deed; or
 - (ii) any disclosure made (at any time) by any Bidder Party that contains any statement which is false or misleading whether in content or by omission,except to the extent that the relevant Bidder Party has not acted in good faith or has acted fraudulently or has engaged in wilful misconduct.
- (b) This clause 11.2 is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Bidder receives and holds the benefit of this clause as trustee for each other Bidder Party.

12 Public Announcements

12.1 Announcement of the Transaction

Immediately after the execution of this deed, Target must issue a public announcement in a form previously agreed to in writing between the parties, which must include statements consistent with the Scheme Recommendation, Scheme Voting Intention, Takeover Recommendation and Takeover Acceptance Intention.

12.2 Other public announcements

- (a) Subject to clause 12.2(b), any further public announcement or public disclosure made by Target or Bidder in relation to the Transactions or any other transaction the subject of this deed, may only be made in a form approved by Target and Bidder in writing (acting reasonably).
- (b) Where Target or Bidder is required by applicable law, ASX Listing Rules or the requirements of any Government Agency to make any announcement or to make any disclosure in relation to the Transactions or any other transaction the subject of this deed, it may do so to the extent legally required and only then after it has used all reasonable endeavours, to the extent reasonably practicable in the circumstances, to notify and consult with the other party prior to making the relevant announcement or disclosure and

take account of any reasonable comments received from the other party in relation to the form and content of the announcement or disclosure.

- (c) Nothing herein shall prohibit or prevent KKR or any of its Affiliates from disclosing any information of a nature that would typically be provided by private equity funds to their investors or prospective investors so long as such recipients are bound by an obligation to keep such information confidential.

13 Exclusivity

13.1 No current discussions regarding a Competing Proposal

Target represents and warrants that, as at the date of this deed neither Target nor any Representative of Target is in negotiations or discussions in respect of any Competing Proposal with any person (other than, for the avoidance of doubt, the discussions with the Bidder and its Representatives in respect of the Transactions).

13.2 No-shop

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

- (a) solicits, invites, encourages, or initiates any enquiries, expressions of interest, offers, proposals, negotiations, or discussions in relation to a Competing Proposal; or
- (b) communicates to any person any intention to do any of the things referred to in clause 13.2(a).

13.3 No talk

Subject to clause 13.5, during the Exclusivity Period, Target must ensure that neither it nor any of its Representatives, directly or indirectly:

- (a) negotiates or enters into; or
- (b) participates in negotiations or discussions with any other person regarding, a Competing Proposal or any agreement, understanding or arrangement that may be reasonably expected to lead to a Competing Proposal, even if that person's Competing Proposal was not directly or indirectly solicited, invited, encouraged, or initiated by Target or any of its Representatives or the person has publicly announced the Competing Proposal.

13.4 No due diligence

Subject to clause 13.5, during the Exclusivity Period, Target must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) enables any other person other than Bidder or any of its Representatives to undertake due diligence investigations on any member of the Target Group, any of the operations or assets of the Target Group's businesses or any part thereof; or
- (b) makes available to any other person, or permits any other person to receive, other than Bidder or any of its Representatives (in the course of due diligence investigations or otherwise) any non-public information relating to any member of the Target Group, any of the operations or assets of the Target Group's businesses or any part thereof; or
- (c) makes available to any other person, or permits any other person to have access to, other than the Bidder or any of its Representatives (in the course of due diligence investigations or otherwise) any officers or employees of, or premises used, leased, licenced or owned by, any member of the Target Group.

13.5 Limitation to no-talk and no-due diligence

Each of clauses 13.3 and 13.4 do not apply to the extent that it restricts Target or the Target Board from taking or refusing to take any action in relation to a genuine written Competing Proposal (which was not solicited, invited, encouraged or initiated in contravention of clause 13.2) provided that the Target Board has determined, acting in good faith that:

- (a) after consultation with its financial advisers, such a genuine written Competing Proposal is, or could reasonably be considered to become, a Superior Proposal; and
- (b) after receiving written legal advice from its external legal advisers failing to respond to such a genuine written Competing Proposal would be reasonably likely to constitute a breach of the Target Board's fiduciary or statutory obligations,

and, provided that, Target enters into an Acceptable Confidentiality Deed before taking any action set out in clause 13.4.

13.6 Notification by the Target of a Competing Proposal

- (a) During the Exclusivity Period, Target must as soon as practicable and in any case within one Business Day notify the Bidder in writing if:
 - (i) it or any of its Representatives is approached by any other person requesting or proposing that it take any action of a kind referred to in clauses 13.3 or 13.4; or
 - (ii) it or any of its Representatives proposes to take any action of a kind referred to in clauses 13.3 or 13.4,

in which case Target must give the Bidder all material details of the proposed action.

- (b) During the Exclusivity Period, as soon as practicable and in any case within one Business Day after Target receives any Competing Proposal, the Target must give Bidder notice in writing of:
 - (i) the existence of the Competing Proposal; and
 - (ii) the name and identity of the other person who has made the applicable Competing Proposal (and any other person involved in the Competing Proposal) and all other material terms of the applicable Competing Proposal (including details of the proposed price or implied value (including details of the consideration if not cash alone), financing arrangements, conditions, timing and break fee (if any)), together with a copy of any material confidential information concerning the operations of the Target Group provided to any person associated with the Competing Proposal not previously provided to Bidder.

13.7 Bidder matching right

- (a) During the Exclusivity Period, Target must:
 - (i) not enter into, and must ensure that no member of the Target Group enters into, any legally binding agreement to give effect to any Competing Proposal; and
 - (ii) ensure that no member of the Target Board publicly recommends a Competing Proposal or a proposed or potential Competing Proposal,unless, before doing so:
 - (iii) the Target Board, acting in good faith in order to satisfy what the Target Board considers to be its statutory and fiduciary duties (having received written advice from its external legal advisers), determines that the Competing Proposal is a Superior Proposal and notifies Bidder of that determination in writing;

- (iv) Target has given Bidder (or any other member of the Bidder Group) until the Matching Date to provide a matching or superior proposal to the terms of the Competing Proposal (***Bidder Counter Proposal***); and
- (v) either:
 - (A) Bidder has not announced or provided to Target a Bidder Counter Proposal by the end of the Matching Date; or
 - (B) Bidder has, by the end of the Matching Date, announced or provided to Target a Bidder Counter Proposal and:
 - (1) the Target Board has reviewed the Bidder Counter Proposal in good faith and concluded that the Bidder Counter Proposal does not provide an equivalent or superior outcome for Target Shareholders compared with the Competing Proposal; and
 - (2) Target has notified Bidder of that conclusion in writing stating reasons for the conclusion.
- (b) Target agrees that each successive modification of any Competing Proposal will constitute a new Competing Proposal for the purposes of this deed, including the requirements under clauses 13.6, 13.7 and 14.2.
- (c) If, by the end of the Matching Date, Bidder has announced or provided to Target a Bidder Counter Proposal, Target must procure that the Target Board reviews the Bidder Counter Proposal in good faith. If the Target Board, acting in good faith, determines that the Bidder Counter Proposal provides an equivalent or superior outcome for Target Shareholders compared with the applicable Competing Proposal, then Target and Bidder must use their best endeavours to agree the amendments to this deed and the Transactions that are reasonably necessary to reflect the Bidder Counter Proposal.

13.8 Normal provision of information

Nothing in this clause 13 prevents a party from:

- (a) providing information to its Representatives;
- (b) providing information to any Government Agency;
- (c) providing information to its auditors, customers, financiers, joint venturers, and suppliers acting in that capacity in the ordinary course of business;
- (d) engaging with its shareholders (in their capacity as a shareholder), in the ordinary course and consistent with past practice and provided that such engagement does not relate to the Target soliciting, inviting, encouraging or initiating an actual, proposed or potential Competing Proposal;
- (e) providing information required to be provided by law, including to satisfy its obligations of disclosure under the ASX Listing Rules or to any Government Agency; or
- (f) making presentations to brokers, portfolio investors and analysts in the ordinary course of business.

14 Target Break Fee

14.1 Background

- (a) This clause 14 has been agreed to in circumstances where:
 - (i) Target believes the implementation of either of the Transactions will provide significant benefits to it and its shareholders, and acknowledges that, if Bidder

enters into this deed and either Transaction is subsequently not implemented, Bidder will have incurred significant costs, including those set out in clause 14.5; and

- (ii) Bidder requested provision be made for the relevant payment outlined in this clause 14, without which it would not have entered into this deed.
- (b) Target confirms to Bidder that the Target Board has acknowledged that:
 - (i) it is appropriate to agree to the payment referred to in this clause 14 to secure Bidder's entry into this deed; and
 - (ii) the costs actually incurred by Bidder as referred to in clause 14.1(a)(i) will be of such nature that they cannot be accurately ascertained, but that the Target Break Fee is a reasonable pre-estimate of the minimum cost and loss that would actually be suffered by Bidder.

14.2 Payment of Target Break Fee

Subject to clause 14.3 and 14.6, Target must pay Bidder the Target Break Fee if:

- (a) at any time before:
 - (i) in the case of the Scheme Recommendation and the Scheme Voting Intention, the Effective Date; or
 - (ii) in the case of the Takeover Recommendation and Takeover Acceptance Intention, the earlier of the end of the Offer Period and the End Date,
 any director of Target:
 - (iii) fails to provide, or withdraws, adversely changes or modifies, his or her Scheme Recommendation, Takeover Recommendation, Scheme Voting Intention or Takeover Acceptance Intention;
 - (iv) makes any public statement or recommendation that is inconsistent with his or her Scheme Recommendation, Scheme Voting Intention, Takeover Recommendation or Takeover Acceptance Intention or that they no longer support the Scheme, the Takeover Bid or either of them; or
 - (v) recommends, supports or endorses a Competing Proposal,
 other than in circumstances where:
 - (vi) in the case of the Scheme, the Independent Expert concludes in the Independent Expert's that the Scheme is not in the best interests of Target Shareholders (except in circumstances where the Independent Expert reaches that conclusion as a result of a Competing Proposal); or
 - (vii) in the case of the Takeover Bid, the Independent Expert concludes in the Independent Expert's Report that the Takeover Bid is not fair and not reasonable (except in circumstances where the Independent Expert reaches that conclusion as a result of a Competing Proposal);
- (b) at any time before the End Date or, if earlier, the date this deed is terminated under clause 15, a Competing Proposal is announced by a Third Party (whether such proposal is announced before or after the date of this deed and including any Competing Proposal that is or has been announced by Potentia Capital Management Pty Ltd (or any of its

Affiliates)) and, within one year after that occurring, the Third Party or an Associate of the Third Party:

- (i) completes in all material respects a transaction of the kind referred to in the definition of Competing Proposal; or
 - (ii) has a relevant interest in at least 50% of Target Shares under a transaction that is or has become wholly unconditional; or
- (c) Bidder terminates this deed under clause 15.1(a)(i).

14.3 Qualifications

- (a) Notwithstanding the occurrence of any event under clause 14.2, no amount is payable under that clause if:
- (i) the Scheme becomes Effective; or
 - (ii) Bidder becomes the holder of a relevant interest in at least 50.1% of the Target Shares and the Offer has been declared or becomes unconditional.
- (b) Target can only ever be liable to pay the Target Break Fee once.
- (c) To the extent that any amounts have already been paid to Bidder under this clause 14 and:
- (i) the Scheme becomes Effective; or
 - (ii) Bidder becomes the holder of a relevant interest in at least 50.1% of the Target Shares and the Offer has been declared or becomes unconditional,
- such amounts must be immediately refunded to Target.
- (d) Notwithstanding the occurrence of an event referred to in clause 14.2(b)(i) or 14.2(b)(ii), no amount is payable under clause 14.2(b) if, prior to the event occurring:
- (i) Target terminates this deed under clause 15.1(a)(i); or
 - (ii) either party terminates this deed under clause 15.1(a)(ii) due to the failure of the Scheme Condition in clause 3.1(a) or the Takeover Bid Condition in clause 7(a) of Schedule 1.

14.4 Timing of payment

If the Target Break Fee is payable under this clause 14, Target must pay the Target Break Fee without set-off or withholding within five Business Days of receipt of a demand for payment from Bidder.

14.5 Nature of payment

The amount payable by Target to Bidder under clause 14.2 is an amount to compensate Bidder for:

- (a) advisory costs (including costs of Advisers other than success fees);
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;
- (d) opportunity costs incurred in pursuing the Transactions (including the significant disruption of its existing business, and diversion of board and management time and focus from its existing business), or in not pursuing other alternative acquisitions or strategic initiatives which could have been developed to further business and objectives; and

- (e) damage to Bidder's reputation associated with a failed transaction and the implications of that damage to Bidder's business.
- incurred by Bidder.

14.6 Compliance with law

- (a) This clause 14 imposes obligations on Target only to the extent that the performance of all or part of those obligations:
 - (i) does not constitute unacceptable circumstances as declared by the Australian Takeovers Panel; and
 - (ii) is not determined to be unlawful by a court,subject to all proper avenues of appeal and review, judicial and otherwise, having been exhausted.
- (b) The parties must not make, or cause or permit to be made, any application to the Australian Takeovers Panel or a court for or in relation to a declaration or determination of a kind referred to in clause 14.6(a).

14.7 Limitation of liability

Notwithstanding any other provision of this deed and except in relation to wilful or intentional breach of this deed by Target:

- (a) the maximum aggregate liability of Target to Bidder under or in connection with this deed including in respect of any breach of this deed will be the amount of the Target Break Fee; and
- (b) a payment by Target of the Target Break Fee in accordance with this clause 14 represents the sole and absolute liability of Target to Bidder under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by Target to Bidder in connection with this deed.

15 Termination

15.1 General rights

- (a) Either party may terminate this deed by written notice to the other at any time before the later of 8:00am on the Second Court Date and the end of the Offer Period:
 - (i) if:
 - (A) either:
 - (1) the other party is in material breach of any provision of this deed (other than a Bidder Representation and Warranty or a Target Representation and Warranty not being true and correct); or
 - (2) a representation and warranty given by the other party (being the Bidder Representations and Warranties where the 'other party' is Bidder, and being the Target Representations and Warranties (excluding the Additional Warranties) where the 'other party' is Target) is not true and correct, where that breach of representation and warranty is material in the context of the Transactions as a whole, and the parties acknowledge and agree that, without limitation, a breach of the Target Representations and Warranties in paragraphs 1, 2, 3, 4, 5, 6 and 9 of Schedule 3

will be considered material in the context of the Transactions as a whole;

- (B) the party wishing to terminate has given written notice to the other setting out the relevant circumstances and stating an intention to terminate this deed; and
- (C) the relevant circumstances continue to exist for five Business Days from the time the notice of intention to terminate is given (or any shorter period ending at 5:00pm on the Business Day before the end of the Offer Period);
- (ii) in the circumstances set out in, and in accordance with, clause 3.6(b); or
- (iii) if:
 - (A) the Effective Date for the Scheme has not occurred on or before the End Date; and
 - (B) Bidder withdraws the Takeover Bid or the Takeover Bid lapses for any reason, including non-satisfaction of a Takeover Bid Condition.
- (b) Bidder may terminate this deed by written notice to Target prior to the end of the Offer Period if any director of Target:
 - (i) fails to provide, or withdraws, adversely changes or modifies, his or her Scheme Recommendation, Takeover Recommendation, Scheme Voting Intention or Takeover Acceptance Intention; or
 - (ii) makes any public statement or recommendation that is inconsistent with his or her Scheme Recommendation, Scheme Voting Intention, Takeover Recommendation or Takeover Acceptance Intention or that they no longer support the Scheme, the Takeover Bid or either of them; or
 - (iii) recommends, supports or endorses a Competing Proposal.
- (c) Without limiting Target's obligations under clause 9, Target may terminate this deed by written notice to Bidder at any time prior to the end of the Offer Period a majority of the directors of Target withdraw their Scheme Recommendation or Takeover Recommendation provided such withdrawal is expressly permitted by clause 9(c).

15.2 Effect of termination

If this deed is terminated by a party under clause 3.6(b) or 15.1, this deed will be of no force or effect, without any liability or obligation on the part of any party, other than in relation to rights and obligations that accrued before termination and the provisions of this clause 15 and of clauses 1, 10.8, 11, 12, 14, 15, 16, 17, 18, 19 and 20, which will remain in force after the termination.

15.3 Termination by written agreement

The parties may terminate this deed by another written agreement between them.

16 Process Deed

16.1 Termination

Subject to clause 16.2, Target and Bidder agree that, on and from the time of entry into this deed, the Process Deed is hereby terminated and all obligations under the Process Deed are discharged.

16.2 Survival

Target and Bidder agree that each party retains the rights it has against the other in connection with any breach of the Process Deed before entry into this deed.

17 Confidentiality

Each party agrees and acknowledges that it is bound by the terms of the Confidentiality Deed which continues to operate in full force and effect after the date of this deed, save that the terms of this deed will prevail over the Confidentiality Deed to the extent of any inconsistency, and survives any termination of this deed.

18 GST

18.1 Recovery of GST

If GST is or becomes payable, or notionally payable, on a supply made under or in connection with this deed, 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**) as calculated by the party making the supply (the **Supplier**) in accordance with the GST Law. Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time and in the same manner that the other consideration for the supply is provided. This clause 18 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.

18.2 Liability net of GST

Notwithstanding any other provision in this deed, where any indemnity, reimbursement or similar payment under this deed is based on any cost, expense or other liability incurred by a party, it must be reduced by any input tax credit entitlement, or notional input tax credit entitlement, of that party (or its representative member) in relation to the relevant cost, expense, or other liability.

18.3 Adjustment events

If an adjustment event occurs in relation to a supply under or in connection with this deed, the GST Amount will be recalculated in accordance with the GST law to reflect that adjustment and an appropriate payment will be made between the parties and the Supplier must issue an adjustment note to the recipient within 10 Business Days after becoming aware of the occurrence of the adjustment event.

18.4 Survival

This clause 18 will continue to apply after expiration or termination of this deed.

18.5 Definitions

Unless the context requires otherwise, words used in this clause 18 or the Target Representations and Warranties that have a specific meaning in the GST Law have the same meaning in this clause 18 or the Target Representations and Warranties (as applicable).

19 Notices

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

- (a) must be in writing and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the first and last name and position or title of the sender or person duly authorised by the sender);

- (b) subject to paragraph (c), 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 email to the address or email address below or the address or email address last notified by the intended recipient to the sender:
- (i) to Target: Address: Level 7, 330 Collins Street,
Melbourne VIC 3000

Email: Kurt.Johnson@gonitro.com

Attention: Kurt Johnson

With copy to (which by itself does not constitute a Notice):
Tom.Story@allens.com.au;
Noah.Obradovic@allens.com.au
 - (ii) to Bidder: Address: 1600 Carling Avenue, Ottawa,
Canada K1Z 8R7

Email: connie.chen@alludo.com

Attention: Chief Legal Officer

With copy to (which by itself does not constitute a Notice):
akauye@gtlaw.com.au;
leo.greenberg@kirkland.com;
ravi.agarwal@kirkland.com
- (c) will be taken to satisfy the obligations in paragraph (b) if:
- (i) where a party changes its address and fails to notify the other parties of the new address, the Notice is delivered to the intended recipient at that new address; and
 - (ii) where an individual named in paragraph (b) ceases to work in the relevant role or ceases to work for the relevant party and the relevant party fails to notify the other parties in accordance with this clause 19 of an alternative individual to whom Notices should be addressed (and, if relevant, an alternative email address to which Notices should be sent), the Notice is addressed to (and, if relevant, delivered to the email address of) an individual in the same or equivalent role at the intended recipient; and
- (d) 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 express post, to an address in the same country, two Business Days after the date of posting;
 - (iii) in the case of delivery by any other method of post, six Business Days after the date of posting (if posted to an address in the same country) or 10 Business Days after the date of posting (if posted to an address in another country); and
 - (iv) in the case of email, at the earliest of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the intended recipient confirms receipt of the email by reply email; and

- (C) three hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that three-hour period, an automated message that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made:

- (v) on a day that is not a business day, or at a time that is later than 5:00pm, in the place specified by the intended recipient as its postal address under paragraph (b), then 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; or
- (vi) before 9:00am on a business day in the place specified by the intended recipient as its postal address under paragraph (b), it will be conclusively taken to have been duly given or made at 9:00am on that business day in that place.

20 General Provisions

20.1 Amendment

This deed may be amended only by another deed executed by all the parties.

20.2 Assignment

A party cannot assign, charge, encumber or otherwise deal with at law or in equity any of its rights or obligations under this deed, or attempt or purport to do so, without the prior consent of the other party (other than with respect to assignment to a nominee in accordance with clause 1.8 of this deed).

20.3 Costs and stamp duty

- (a) Each party must bear its own costs arising out of the negotiation, preparation, and execution of this deed.
- (b) All Duty (including fines, penalties, and interest) payable on or in connection with this deed and any instrument executed under or any transaction evidenced by this deed must be borne by Bidder.

20.4 Withholding tax

If Bidder is required by applicable law to pay amounts to a Government Agency in respect of the acquisition of Target Shares from certain Target Shareholders, Bidder is permitted to deduct the relevant amounts from the payment of the Scheme Consideration or Takeover Bid Consideration to those Target Shareholders and remit such amounts to the relevant Government Agency. The aggregate sum payable to Target Shareholders shall not be increased to reflect the deduction and the net aggregate sum payable to those Target Shareholders shall be taken to be in full and final satisfaction of the amounts owing to those Target Shareholders.

20.5 Execution and counterparts

This deed may be executed electronically and may be executed in counterparts.

20.6 Entire agreement

This deed, the Confidentiality Deed and any other documents specified by the parties for the purposes of this clause 20.6 contain the entire agreement between the parties with respect to their subject matter. This deed, the Confidentiality Deed and any other documents specified by the parties for the purposes of this clause 20.6 set out the only conduct relied on by the parties

and supersede all earlier conduct and prior agreements and understandings between the parties in connection with their subject matter.

20.7 Further assurances

Each party must do anything necessary (including executing agreements and documents) to give full effect to this deed and the transactions contemplated by it; provided that this clause 20.7 shall not apply in respect of Bidder obtaining any Regulatory Approval or satisfying any Regulatory Condition.

20.8 Governing law and jurisdiction

This deed is governed by the laws of New South Wales. 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.

20.9 No merger

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

20.10 No waiver

A failure to exercise or a delay in exercising any right, power or remedy under this deed 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.

20.11 Severability of provisions

Any provision of this deed 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 deed nor affect the validity or enforceability of that provision in any other jurisdiction.

20.12 Legal advice

Target acknowledges that it has received separate legal advice on this deed, including the operation of clauses 13 and 14.

20.13 KKR-specific limitations

Notwithstanding anything that may be expressed or implied in this deed:

- (a) none of the provisions of this deed will in any way limit the activities of KKR or its Affiliates (other than Bidder); and
- (b) no recourse will be had against:
 - (i) KKR or any current or future Affiliate of KKR (other than Bidder) or any portfolio company of KKR or any such Affiliate;
 - (ii) any current or future direct or indirect shareholder, member, partner, controlling person or other beneficial owner of KKR or any Affiliate or portfolio company referred to in clause 20.13(b)(i); or
 - (iii) any of the respective representatives, successors or assigns of any person referred to in clauses 20.13(b)(i) or 20.13(b)(ii),

it being expressly agreed and acknowledged that no liability whatsoever will attach to, be imposed on or otherwise be incurred by any person referred to in clauses 20.13(b)(i), 20.13(b)(ii) or 20.13(b)(iii) for any obligation of any party under this deed or for any claim based on, in respect of, by reason of or arising out of or in connection with any such obligation.

Schedule 1

Takeover Bid Terms

1 The Offer

- (a) Bidder will offer to acquire all (but not some only) of the Target Shares on and subject to the terms and conditions set out in this Schedule 1.
- (b) The consideration under the Offer will be the Takeover Bid Consideration.
- (c) By accepting the Offer, each Target Shareholder will undertake to transfer to Bidder not only the Target Shares to which the Offer relates, but also all Rights attached to those Target Shares.
- (d) The Offer will be made to each person registered as the holder of Target Shares in the Target Register at open of business (Sydney time) on the Register Date. It will also extend to:
 - (i) holders of securities that come to be Target Shareholders during the period from the Register Date to the end of the Offer Period due to the conversion of, or exercise of rights conferred by, such securities and which are on issue as at the Register Date; and
 - (ii) any person who becomes registered as the holder of Target Shares during the Offer Period.
- (e) The Offer will be dated in accordance with the Timetable.

2 Offer Period

- (a) Unless withdrawn, the Offer will remain open for acceptance during the period commencing on the date of the Offer and ending at 7:00pm (Sydney time) on the later of:
 - (i) the date set pursuant to the Timetable; or
 - (ii) any date to which the Offer Period is extended.
- (b) Despite anything else in this Schedule 1 the Offer Period must not expire prior to the date that is 20 Business Days after the date of the Scheme Meeting.

3 How the Offer will be accepted

- (a) A Target Shareholder will be required to accept the Offer for all (but not some only) of their Target Shares.
- (b) A Target Shareholder will be allowed to accept the Offer at any time during the Offer Period.
- (c) Bidder may establish an institutional acceptance facility to facilitate the acceptance of the Offer by institutional shareholders of Target.

4 Validity of acceptances

- (a) Bidder will be entitled to determine, in its sole discretion, all questions as to the form of documents, eligibility to accept the Offer and time of receipt of an acceptance of the Offer. The determination of Bidder will be final and binding on all parties.
- (b) Bidder will be entitled, in its sole discretion, at any time and without further communication to Target Shareholders, to deem any Acceptance Form it receives to be a valid acceptance in respect of Target Shares, even if a requirement for acceptance has not been complied with but the payment of the consideration in accordance with the Offer may

be delayed until any irregularity has been resolved or waived and any other documents required to procure registration have been received by Bidder.

- (c) Where a Target Shareholder satisfies the requirement for acceptance in respect of only some of its Target Shares, Bidder will be entitled, in its sole discretion, to regard the Offer to be accepted in respect of those Target Shares but not the remainder.

5 **The effect of acceptance**

Target Shareholders who have accepted the Offer will be able to revoke their acceptance at any time until the Takeover Bid Condition in clause 7(a) of this Schedule 1 has been satisfied or waived in accordance with this deed and the Corporations Act. When the Takeover Bid Condition in clause 7(a) has been satisfied or waived, a Target Shareholder that has accepted the Offer will be unable to revoke its acceptance and the contract resulting from their acceptance will be binding on them and they will be unable to withdraw their Target Shares from the Offer or otherwise dispose of their Target Shares, except as permitted under the Corporations Act.

6 **Payment of consideration**

Bidder will provide the consideration due to Target Shareholders for their Target Shares within the time required under the Corporations Act.

7 **Takeover Bid Conditions**

- (a) **(FIRB)** Before the end of the Offer Period, one of the following has occurred:
 - (i) Bidder has received a written notice under FATA from the Treasurer stating that, or to the effect that, the Commonwealth Government does not object to the Takeover Bid Transaction, either without condition or on terms that are acceptable to Bidder (acting reasonably);
 - (ii) following notice of the Takeover Bid Transaction having been given by Bidder to the Treasurer under FATA, the Treasurer ceases to be empowered to make any order under Part 3 of FATA; or
 - (iii) where an interim order is made under the FATA in respect of the Takeover Bid Transaction, the subsequent period for making a final order prohibiting the Takeover Bid Transaction elapses without a final order being made;
- (b) **(Ex-Australian Regulatory Approvals)** Before the end of the Offer Period, all approvals, authorisations, and/or expirations or terminations of applicable waiting periods required under Antitrust and Foreign Investment Laws in connection with the acquisition of the Target Shares contemplated by the Takeover Bid Transaction have been obtained or occurred;
- (c) **(No Target Prescribed Occurrence)** No Target Prescribed Occurrence occurs between (and including) the date of this deed and the end of the Offer Period;
- (d) **(Restraints)** No law, statute, ordinance, regulation, rule, temporary restraining order, preliminary or permanent injunction or other judgment, order or decree issued by any Court of competent jurisdiction or Government Agency or other legal restraint or prohibition preventing or materially restricting the Takeover Bid is in effect at the end of the Offer Period;
- (e) **(Scheme fails)** Either:
 - (iv) the Scheme is not approved at the Scheme Meeting by the requisite majority of Target Shareholders under subparagraph 411 (4)(a)(ii)(B) of the Corporations Act; or

- (v) following the approval of the Scheme at the Scheme Meeting by the requisite majority of Target Shareholders under subparagraph 411 (4)(a)(ii)(B) of the Corporations Act, the Court does not approve the Scheme in accordance with section 411 (4)(b) of the Corporations Act;
- (f) **(Minimum acceptance)** Bidder has a relevant interest in at least 50.1% of the Target Shares on issue (on a fully diluted basis);
- (g) **(No Target Material Adverse Change)** No Target Material Adverse Change occurs or is announced or otherwise becomes known to Bidder between (and including) the date of this deed and the end of the Offer Period; and
- (h) **(Termination of Implementation Deed)** This deed is not terminated by Bidder under clause 15.1(a) before the end of the Offer Period.

8 Nature and waiver of Takeover Bid Conditions

- (a) Each of the Takeover Bid Conditions apart from the Condition in clause 7(a) of this Schedule 1 will be conditions subsequent. The non-fulfilment of any condition subsequent does not, until the end of the Offer Period (or in the case of the Condition in clause 7(b) of this Schedule 1, until the end of the third Business Day after the end of the Offer Period), prevent a contract to sell Target Shares from arising, but will entitle Bidder by written notice to Target Shareholders, to rescind the contract resulting from Target Shareholders' acceptance of the Offer.
- (b) The Takeover Bid Condition in clause 7(a) is a condition precedent to the acquisition of any interest in Target Shares and will prevent a contract to sell Target Shares from arising until it is satisfied or waived in accordance with this deed and the Corporations Act. Notwithstanding the acceptance of the Offer by a Target Shareholder, unless and until the Condition in that clause is fulfilled:
 - (i) no contract for the sale of the Target Shares will come into force or be binding on the Target Shareholder or on Bidder; and
 - (ii) Bidder will have no rights (conditional or otherwise) in relation to the Target Shares.
- (c) Subject to the Corporations Act and clause 8(d) of this Schedule 1, Bidder may declare the Takeover Bid to be free from any Takeover Bid Condition by giving written notice to Target declaring the Offer to be free from the relevant Condition or Conditions specified, in accordance with section 650F of the Corporations Act. This notice may be given:
 - (i) in the case of the Takeover Bid Condition in clause 7(b) of this Schedule 1, not later than three Business Days after the end of the Offer Period; and
 - (ii) in the case of all the other Takeover Bid Conditions in clause 7 of this Schedule 1, not less than seven days before the end of the Offer Period.
- (d) The Takeover Bid Condition in clause 7(e) of this Schedule 1 may only be waived by Bidder with the prior written consent of Target (in its absolute discretion).
- (e) If a Scheme Condition is waived or satisfied, Bidder must declare the Takeover Bid free from the corresponding Takeover Bid Condition.
- (f) If, at the end of the Offer Period (or in the case of the Takeover Bid Condition in clause 7(b) of this Schedule 1, at the end of the third Business Day after the end of the Offer Period), the Takeover Bid Conditions have not been fulfilled and Bidder has not declared

the Offer (or it has not become) free from those Conditions, all contracts resulting from the acceptance of the Offer will be automatically void.

9 **Withdrawal of the Offer**

- (a) Bidder will be entitled to withdraw the Offer with the consent in writing of ASIC, which consent may be subject to conditions. If ASIC gives such consent, Bidder will give notice of the withdrawal to the ASX and to Target and will comply with any other conditions imposed by ASIC.
- (b) If, at the time the Offer is withdrawn, all the Takeover Bid Conditions have been freed, all contracts arising from acceptance of the Offer before it was withdrawn will remain enforceable.
- (c) If, at the time the Offer is withdrawn, the Offer remains subject to one or more of the Takeover Bid Conditions, all contracts arising from its acceptance will become void (whether or not the events referred to in the relevant conditions have occurred).
- (d) A withdrawal pursuant to this clause 9 of this Schedule 1 will be deemed to take effect:
 - (i) if the withdrawal is not subject to conditions imposed by ASIC, on and after the date on which that consent in writing is given by ASIC; or
 - (ii) if the withdrawal is subject to conditions imposed by ASIC, on and after the date on which those conditions are satisfied.

10 **Notice on status of conditions**

The date for giving the notice on the status of the conditions required by section 630(1) of the Corporations Act will be determined in accordance with the Timetable (subject to extension in accordance with section 630(2) of the Corporations Act if the Offer Period is extended).

11 **Variation of the Offer**

Bidder will be entitled to vary the Offer in accordance with the Corporations Act.

12 **Power of attorney**

Immediately upon the Offer being declared or becoming unconditional and until Target registers Bidder as the holder of the relevant Target Shares in the Target Register, each Target Shareholder that has accepted the Offer:

- (a) is deemed to have appointed Bidder as attorney and agent (and directed Bidder in each such capacity) to appoint any director, officer, secretary or agent nominated by Bidder as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the relevant Target Shares registered in their name and sign any shareholders' resolution or document;
- (b) must not attend or vote at any of those meetings or sign any resolutions, whether in person, by direct vote, by proxy or by corporate representative (other than pursuant to clause 12(a) of this Schedule 1);
- (c) must take all other actions in the capacity of a registered holder of the relevant Target Shares as Bidder reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 12(a) of this Schedule 1, Bidder and any director, officer, secretary or agent nominated by Bidder under clause 12(a) of this Schedule 1 may act in the best interests of Bidder as the intended registered holder of the relevant Target Shares.

13 Rights

If Bidder becomes entitled to any Rights as a result of an acceptance of the Offer, it may require the person who accepted the Offer to give to Bidder all documents necessary to vest title to those Rights in Bidder. If those documents are not provided to Bidder, or if a person who accepted the Offer received or is entitled to receive (or any previous holder of the relevant Target Shares received or is entitled to receive) the benefit of those Rights, Bidder will be entitled to deduct the amount (or value as reasonably assessed by Bidder) of such Rights (excluding the value of any franking credit) from any consideration otherwise payable. If Bidder does not, or cannot, make such a deduction, the person who accepted the Offer will be required to pay that amount to Bidder.

14 Offerees**(a) Registered holders**

Offers will be made to each person registered as the holder of Target Shares in the register of Target Shareholders at 7:00pm (Sydney time) on the Register Date. Offers will also extend to:

- (i) holders of Target Shares issued during the period from the Register Date to the end of the Offer Period (inclusive) as a result of the exercise or vesting of the ESS Securities that are on issue as at the Register Date; and
- (ii) any person who becomes registered, or entitled to be registered, as the holder of Target Shares during the Offer Period.

(b) Transferees

Offers will extend to all persons who, during the Offer Period are able to give good title to a parcel of Target Shares as if those persons held the Target Shares on the Register Date.

(c) Trust and nominees

Offers will be made to persons who hold Target Shares in two or more separate parcels within the meaning of section 653B of the Corporations Act (for example, because a person is a trustee or nominee for several distinct beneficial owners), in accordance with section 653B of the Corporations Act so that:

- (i) Bidder will be taken to have made a separate Offer for each separate parcel of Target Shares; and
- (ii) acceptance of the Offer for any distinct parcel of Target Shares will be ineffective unless:
 - (A) the Target Shareholder gives Bidder notice in accordance with the Offer in the Bidder's Statement stating that the Target Shares consist of separate parcels; and
 - (B) the acceptance specifies the number of Target Shares in each separate parcel to which the acceptance relates.

15 Foreign laws

Bidder will not be required to register the Offer in any jurisdiction outside Australia (unless an applicable foreign law treats it as registered as a result of the Bidder's Statement being lodged with ASIC).

16 Stamp duty

Bidder will pay any stamp duty on the transfer of the Target Shares.

17 **Governing law**

The Offer and any contract that results from an acceptance of the Offer will be governed by the laws in force in New South Wales, Australia.

Schedule 2

Bidder Representations and Warranties

- 1 **(Status)** It is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
- 2 **(Power)** It has the power to enter into and perform its obligations under this deed to carry out the transactions contemplated by this deed.
- 3 **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and the performance of this deed by it and to carry out the transactions contemplated by this deed.
- 4 **(Documents binding)** This deed constitutes a valid and binding obligation of it enforceable in accordance with its terms.
- 5 **(Transactions permitted)** The execution and performance by it of this deed and each transaction contemplated by this deed did not and will not violate any provision of:
 - (a) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it or any of its Related Bodies Corporate; or
 - (b) its constituent documents.
- 6 **(Solvency)** Neither Bidder nor any of its Subsidiaries is affected by an Insolvency Event.
- 7 **(Relevant document)** At the time Target commenced sending the Relevant Document to Target Shareholders, the Bidder Information contained in the Relevant Document (in the form consented to by Bidder) is true and correct in all material respects, complies with all applicable laws, and does not contain any statement which is misleading or deceptive in any material respect (whether by omission or otherwise).
- 8 **(No regulatory approvals)** No approval from any Government Agency is required to be obtained by Bidder in order to execute and perform this deed, other than the Regulatory Approvals.
- 9 **(No relevant interests)** As at the date of this deed, no member of the Bidder Group has a relevant interest in any Target Shares.
- 10 **(No dealings with Target Shareholders)** No member of the Bidder Group has any agreement, arrangement or understanding with any Target Shareholder under which that Target Shareholder (or an Associate of that Target Shareholder) would be entitled to receive any collateral benefit in relation to the Scheme, or under which the Target Shareholder has agreed to vote in favour of the Scheme or accept the Takeover Bid (or against any Competing Proposal).
- 11 **(No dealings with Target directors or employees)** Other than as disclosed to Target and approved by the Target Board, no member of the Bidder Group has any agreement, arrangement or understanding with any director or employee of Target relating in any way to the Transactions or operations of Target after the Effective Date.
- 12 **(Unconditional cash reserves)**
 - (a) By 8.00am on the Implementation Date, Bidder will have available to it on an unconditional basis sufficient cash reserves (whether from internal cash reserves or external funding arrangements, including equity financing or a combination of both) to satisfy Bidder's obligations to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.
 - (b) From the time at which the Takeover Bid is declared or becomes unconditional, Bidder will have available to it on an unconditional basis sufficient cash reserves (whether from

internal cash reserves or external funding arrangements, including equity financing or a combination of both) to satisfy Bidder's obligations to pay the Takeover Bid Consideration in accordance with the terms of the Takeover Bid and the timing requirements of the Corporations Act.

Schedule 3

Target Representations and Warranties

- 1 **(Status)** It is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
- 2 **(Power)** It has the power to enter into and perform its obligations under this deed to carry out the transactions contemplated by this deed.
- 3 **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of this deed by it and to carry out the transactions contemplated by this deed.
- 4 **(Deed binding)** This deed constitutes a valid and binding obligation of it enforceable in accordance with its terms.
- 5 **(Transactions permitted)** The execution and performance by it of this deed and each transaction contemplated by this deed did not and will not violate any provision of:
 - (a) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it or any of its Related Bodies Corporate; or
 - (b) its constitution or other constituent documents,and it does not require any approval, consent, clearance, waiver, ruling, relief, confirmation, exemption, declaration or notice from any Government Agency in order to execute and perform this deed, other than, for the avoidance of doubt, from ASIC, ASX and the Court, as contemplated by this deed.
- 6 **(Capital structure)**
 - (a) The capital structure of the Target and each of its Subsidiaries is as set out in Schedule 6.
 - (b) Other than as set out in Schedule 6:
 - (i) it has not issued any other Target Shares or other securities, rights, or instruments which may convert or exchange into, are measured with reference to, or give the holder the right to be issued, Target Shares; and
 - (ii) it is not under any obligation to issue, transfer or sell and no person has any right to require or call for the issue, transfer or sale of, any Target Shares or other securities, rights, or instruments issuable by Target.
- 7 **(Continuous disclosure)**
 - (a) It has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1.
 - (b) As at the date of this deed, it is not withholding any information from public disclosure in reliance on ASX Listing Rule 3.1A (other than the information in relation to the Transaction).
- 8 **(Disclosure document)** At the time Target commenced sending the Relevant Document to Target Shareholders, the information contained in the Relevant Document (other than the Bidder Information and the Independent Expert's Report) is:

- (a) true and correct in all material respects;
 - (b) complies with all applicable laws (including the Corporations Act and the ASX Listing Rules) and relevant ASIC regulatory guides;
 - (c) does not contain any statement which is misleading or deceptive in any material respect (whether by omission or otherwise); and
 - (d) has been prepared and included in the Relevant Document in good faith.
- 9 **(Information provided to the Independent Expert)** All information provided by Target to the Independent Expert, as at the date that information is provided, has been provided in good faith and on the understanding that, to the extent accepted by the Independent Expert, the Independent Expert will rely on that information for the purpose of preparing its report for inclusion in the Transaction Booklet.
- 10 **(Solvency)** No member of the Target Group is affected by an Insolvency Event.
- 11 **(No material breach of laws)** So far as Target is aware, each member of the Target Group has complied in all material respects with all Australian or foreign laws and regulations applicable to it or orders of Australian or foreign Government Agencies having jurisdiction over it.
- 12 **(Material licences and authorisations)** The Target Group has all material licences, permits and franchises necessary for it to conduct its activities as they are conducted as at the date of this deed, and each member of the Target Group has complied with the terms of, and is not in breach of, or default under, any such licences, permits and franchises.
- 13 **(Due Diligence Material)** The Due Diligence Material has been collated and prepared in good faith, and Target is not aware of any information contained in the Due Diligence Material that is false or misleading in any material respect (including by omission). Target has not intentionally withheld information from disclosure to Bidder in the Due Diligence Materials which could reasonably be expected to be material to Bidder's evaluation of the Target Group and the merits of the Transaction.

- 14 **(Target Group)**
- (a) Other than as set out on Schedule 6, no member of the Target Group holds shares, options, units, securities or interests in, or is a member of, any company, trust, partnership, incorporated or unincorporated joint venture or association, or other entity.
 - (b) Each member of the Target Group:
 - (i) is duly incorporated and validly exists under the laws of the place of its incorporation;
 - (ii) has the power to own its assets and carry on its business as it is currently being carried on;
 - (iii) is duly registered and authorised to do business in those jurisdictions which, by the nature of its business and assets, makes registration or authorisation necessary; and
 - (iv) has conducted its business at all times in compliance with its constitution or other constituent or organizational documents.
 - (c) For each member of the Target Group:
 - (i) other than ESS Securities, its issued capital is comprised of ordinary shares only;
 - (ii) all of its shares, equity securities and assets are free and clear of all Security Interests, and there are no agreements or arrangements under which any

Security Interest may be created over such shares, equity securities or assets nor is the Target aware of any facts, matters or circumstances that may result in the creation of a Security Interest over such shares or assets;

- (iii) all of its shares and equity securities have been validly allotted and issued and in accordance with all applicable laws and the organizational documents of the applicable member of the Target Group, and can be sold and transferred free of any competing rights, including pre-emptive rights or rights of first refusal;
 - (iv) all of its shares and equity securities are fully paid and no money is owing in respect of them;
 - (v) other than the ESS Securities, it is not under any obligation to issue, and no person has the right to call for the issue or transfer of or otherwise receive, any shares or other equity securities at any time (whether the performance of such obligation or exercise of such right is conditional or otherwise); and
 - (vi) there are no voting agreements, trusts or arrangements with respect to its shares and equity securities.
- (d) No member of the Target Group acts or has acted as the trustee, general partner, custodian or manager of any trust, partnership, estate, fund or other entity or person.

15 (Accounts and Management Accounts)

- (a) The Accounts:
- (i) are audited and have been prepared in accordance with the Accounting Standards and all other applicable laws;
 - (ii) present a true and fair view of the affairs, the consolidated financial position of the Target Group, assets and liabilities, cash flows and profit or loss of the Target Group for the year ended on Accounts Date;
 - (iii) have been prepared on a basis consistent with the basis on which audited financial statements of the Target Group have been prepared in respect of the preceding two financial periods unless otherwise stated in the audited financial statements of the Target Group;
 - (iv) except as noted in the Accounts, are not affected by any unusual or nonrecurring items; and
 - (v) make full provision of all liabilities (including contingent liabilities) in accordance with the Accounting Standards.
- (b) The Management Accounts:
- (i) have been consistently prepared for periods included in the Management Accounts;
 - (ii) have been prepared in good faith and with reasonable care and attention from the books and records of the Target Group; and
 - (iii) are not materially misleading and do not materially misstate the profit and loss of the Target Group, and financial position and performance of the Target Group as at the respective dates and for the respective periods.
- (c) There are no liabilities, including any liabilities in relation to Tax, of any member of the Target Group other than as specifically provided for in the Management Accounts or incurred in the ordinary and usual course of business since the date of the latest Management Accounts and up to the date of this deed (none of which arise from any

breach of contract, violation of law or infringement, misappropriation or other violation of Intellectual Property Rights).

- (d) The Target Group maintains a system of internal accounting controls sufficient to provide reasonable assurances that their transactions are recorded as necessary to permit the preparation of the Accounts in accordance with the Accounting Standards.
- (e) Since the Accounts Date and up to the date of this deed:
 - (i) the business of the Target Group has been conducted in the ordinary and usual course consistent with its usual business practices, including with respect to the management of working capital and accounts receivable;
 - (ii) no member of the Target Group has acquired or disposed of any of its assets, or created a Security Interest over any of its assets;
 - (iii) no member of the Target Group has failed to pay, perform or discharge any liabilities as and when they fall due;
 - (iv) no member of the Target Group has made any changes to its policy or manner of collection of receivables or payment of payables;
 - (v) no member of the Target Group has changed any accounting or Tax method, practice or principle used by it, including the making of any Tax elections other than as required to comply with the Corporations Act, the Accounting Standards and all other applicable laws and regulations;
 - (vi) no member of the Target Group has incurred any liabilities or obligations other than in the ordinary and usual course of business;
 - (vii) so far as Target is aware, there has been no event, fact, matter, circumstance or thing which could reasonably be expected to cause or contribute to a Target Material Adverse Change;
 - (viii) no dividend or distribution of capital or income has been declared, made, paid or determined by member of the Target Group;
 - (ix) no member of the Target Group has issued any shares or other securities or bought back, purchased or redeemed any shares or other securities, or otherwise restructured or changed its issued capital in any way;
 - (x) no Plan has been established, amended or terminated;
 - (xi) no member of the Target Group has entered into any contract or arrangement:
 - (A) with any related party;
 - (B) containing a non-compete obligation or undertaking given by that member of the Target Group or an exclusivity arrangement binding upon that member of the Target Group; or
 - (C) that is not on arms' length terms.

16 (Business Records)

- (a) All Business Records:
 - (i) are in all material respects complete, accurate and up to date;
 - (ii) have been prepared and properly maintained by the Target Group in accordance with all applicable laws;
 - (iii) do not contain or reflect any material inaccuracies or discrepancies; and

- (iv) are in the possession or control of the Target Group.
- (b) Each material document or filing which is required by law to be delivered or made to any Government Agency by a member of the Target Group has been duly delivered or made.
- (c) The copies of the constituent or other organizational documents of the Target Group included in the Due Diligence Materials are current, accurate and complete in all respects.
- (d) All resolutions passed by a member of the Target Group have been validly passed, and all meetings of the directors or shareholders of Target have been validly convened and held, in accordance with the Target's constituent documents and applicable laws.
- (e) Each member of the Target Group's register of members (or equivalent) has been prepared and maintained in accordance with applicable laws and is in the possession or control of that member of the Target Group and is current, complete and accurate in all respects.
- (f) No member of the Target Group has granted a power or attorney, proxy or similar authority which remains in force.

17 **(Material Contracts and other arrangements)**

- (a) All contracts, agreements and arrangements that could reasonably be considered material to the Target Group (including (i) all contracts, agreements and arrangements of a kind described in clause 8.1(e), (ii) all contracts of employment or engagement of directors, officers, employees or consultants with compensation in excess of US\$175,000 and (iii) all enterprise bargaining agreements or similar collective employment agreements) (**Material Contracts**) have been Fairly Disclosed in the Due Diligence Material, and the copies of such Material Contracts included in the Due Diligence Material are current, accurate and complete (and include any and all amendments, variations, supplements, addendums, annexures, appendices, extensions and/or renewals in respect of such Material Contracts).
- (b) Each Material Contract is valid, binding and enforceable upon and against the parties thereto.
- (c) No member of the Target Group has received or given any notice in respect of any actual, alleged or potential breach of any Material Contract or the termination or intended termination of any Material Contract, nor is Target aware of any facts, matters or circumstances which may result in such a notice being given.
- (d) No member of the Target Group is in default, or would be in default but for the requirements of notice or lapse of time, under any Material Contract, and Target is not aware of any grounds for termination, rescission, avoidance or repudiation of any Material Contract.

18 **(Financing arrangements)**

- (a) There are no:
 - (i) agreements or arrangements entered into by any member of the Target Group for the borrowing of money or the incurrence of any debt or other financial indebtedness (whether contingent or otherwise), or the granting of encumbrances or Security Interests;
 - (ii) debentures, bonds, notes or similar debt instruments issued by any member of the Target Group (whether by one instrument or by all of the instruments in a series);

- (iii) guarantees, letters of comfort, indemnities or other commitments of financial support which have been given or issued in favour of any Third Party in respect of an obligation or liability of any member of the Target Group, and no member of the Target Group has requested that any bank or other financial institution give or issue any such guarantee, letter of comfort, indemnity or other commitment of financial support;
 - (iv) bank guarantees, letters of credit, trade instruments or similar credit support which have been issued in respect of, or at the request of, any member of the Target Group or any arrangements related thereto (including cash-backing);
 - (v) interest rate swaps, foreign currency forward contracts or other derivative contracts to which any member of the Target Group is a party or by which any member of the Target Group is bound; or
 - (vi) financing arrangements that restrict the sale or disposal of any member of the Target Group (or any assets thereof),
- (together, the **Financing Arrangements**).
- (b) No member of the Target Group has provided or advanced any loan or other financial accommodation to any third party or given any guarantee, indemnity or letter of comfort or granted any Security Interest in respect of an obligation or liability of a party that is not a member of the Target Group.
 - (c) There is no existing or unremedied breach of, or any event of default, cancellation event, review event, prepayment event or similar event under, any Financing Arrangements and the transactions contemplated by this deed will not trigger any such breach, event of default, cancellation event, review event, prepayment event or similar event.
 - (d) No notices or demands have been served on a member of the Target Group in relation to default or non-compliance under any Financing Arrangements, nor is Target aware of any facts, matters or circumstances that would entitle or may result in any person serving such a notice or demand.
 - (e) No legal or enforcement action has been taken, nor has any demand been made, by any person to enforce any Financing Arrangement or any Security Interest over any assets of any member of the Target Group, and Target is not aware of any threat to take such action or make such demand or any facts, matters or circumstances that would entitle or may result in any person taking such action or making such demand.

19 (Assets)

- (a) All the assets that are material or necessary for the conduct of the Target Group's business carried on at the date of this deed are:
 - (i) either the absolute property of a member of the Target Group free and clear of all Security Interests or used by a member of the Target Group under a contract under which it is entitled to use the assets on the terms and conditions of such contract;
 - (ii) not the subject of any lease or hire purchase agreement or agreement for purchase on deferred terms;
 - (iii) not the subject of a Security Interest;
 - (iv) in the possession, or under the control, of a member of the Target Group; and
 - (v) not the subject of any agreements or arrangements to dispose or not to dispose or that otherwise restrict their use or disposal.

- (b) The Target Group owns, or has the right to use, all of the assets that are material or necessary for the conduct of its business as carried on at the date of this deed.
- (c) No member of the Target Group has received any written notice, order or direction from any Government Agency or other person in respect of any of its assets or the use of such assets, nor is Target aware of any facts, matters or circumstances which may result in such a notice being given.
- (d) All material assets owned or used by the Target Group:
 - (i) are capable of performing the function for which they are intended to be used;
 - (ii) have been properly maintained throughout their life;
 - (iii) are in good repair and condition and satisfactory working order for their age, and have been maintained, repaired and services in accordance with prudent business practice; and
 - (iv) comply with all applicable laws and standards in all material respects and have not been repaired or modified in a way which would adversely impact a warranty provided by a supplier.

20 **(Properties)**

- (a) The Due Diligence Material includes copies of all agreements or other documents pursuant to which a member of the Target Group leases (or sub-leases), licences, occupies or otherwise uses any parcel of real property (all such agreements and other documents, the **Property Leases**, and all such parcels of real property, the **Leased Properties**), and the copies of such Property Leases included in the Due Diligence Material are current, accurate and complete (and include any and all amendments, variations, supplements, addendums, annexures, appendices, extensions and/or renewals in respect of such Property Leases).
- (b) No member of the Target Group has any interest in land other than the interests in the Leased Properties, and the Target Group does not own or hold the freehold title to any real property.
- (c) Each of the Property Leases is valid, binding, enforceable and subsisting, and (where necessary to be binding and enforceable against successors in title) registered.
- (d) No personal guarantees, bank guarantees or other security has been provided in connection with any Property Lease.
- (e) There are no disputes relating to any of the Leased Properties between any member of the Target Group and any landlord, owner or other person having an interest in any of the Leased Properties.
- (f) No member of the Target Group has received:
 - (i) any notice to vacate or notice to quit pursuant to the Property Leases;
 - (ii) any notice requiring material work to be done or expenditure to be made on or in respect of any of the Leased Properties at the Target Group's expense; or
 - (iii) any notice from a Government Agency related to any of the Leased Properties that will or may materially affect any member of the Target Group's use and enjoyment of the relevant Leased Property or give rise to any material liability for any member of the Target Group.
- (g) Each member of the Target Group has paid all rent, rates and other amounts payable in respect of the Leased Properties.

21 (Intellectual Property Rights)

- (a) The Due Diligence Materials Fairly Discloses a current, complete and accurate list of material Intellectual Property Rights owned by members of the Target Group.
- (b) Ownership:
 - (i) A member of the Target Group exclusively owns and possesses all rights, title and interest in and to the Business Intellectual Property, free and clear of all Security Interests.
 - (ii) No member of the Target Group has licensed, assigned or otherwise disposed of any right, title or interest in or to the Business Intellectual Property, nor is the Business Intellectual Property the subject of any joint venture, co-existence agreements or other arrangements.
 - (iii) No member of the Target Group is under any obligation (whether conditional or otherwise) to grant a licence, assignment or other right in respect of any Business Intellectual Property.
 - (iv) Each director, employee and independent contractor of the Target Group who, either alone or with others, has created, developed or invented Intellectual Property Rights for or on behalf of a member of the Target Group has entered into a written agreement with a member of the Target Group which effectively assigns all rights, title and interest in and to those rights to a member of the Target Group.
- (c) Validity and maintenance:
 - (i) The Business Intellectual Property is valid, subsisting and enforceable.
 - (ii) No member of the Target Group has taken, procured or failed to take any action that would adversely affect the validity or enforceability of the Business Intellectual Property or may put a member of the Target Group's title to the Business Intellectual Property in dispute, and no member of the Target Group has acquiesced in the unauthorised use of the Business Intellectual Property.
 - (iii) Each member of the Target Group has taken reasonable steps to protect the copyright in, and the confidentiality of, the material Intellectual Property Rights developed or owned by the Target Group.
 - (iv) The members of the Target Group have taken all necessary steps to obtain, maintain and enforce appropriate registrations for the Business Intellectual Property that is registrable in the name of a member of the Target Group including the payment of all applicable application and renewal fees.
 - (v) Each member of the Target Group has taken commercially reasonable security measures to protect the secrecy, confidentiality and value of all trade secrets used in or held for the benefit of the Target Group's business (including the source code of any Software). No such trade secrets have been disclosed or authorized to be disclosed to any other person, other than in the ordinary course of business pursuant to a valid and enforceable written contract providing for the confidentiality and non-disclosure by such person of all such trade secrets.
- (d) Right to use:
 - (i) The conduct of the Target Group's business and the possession, exploitation and use of the Business Intellectual Property and Third Party Intellectual Property by the members of the Target Group does not:

- (A) breach or infringe any Intellectual Property Rights of any third party; or
 - (B) breach any obligation of confidence owed to any third party.
- (ii) The relevant member of the Target Group owns or has authority to use all the Third Party Intellectual Property it requires to carry on its business and such ownership or authority will not be affected by the purchase of the Target Shares by Bidder or the performance of this deed.
- (e) Licensed IP:
 - (i) The Due Diligence Material contains complete and accurate copies of all of the material agreements relating to the Target Group's use of Intellectual Property Rights (**IP Licences**).
 - (ii) Each member of the Target Group has materially complied with the terms of each IP Licence.
 - (iii) Each IP Licence is valid, binding and enforceable against the parties to it in accordance with its terms.
 - (iv) No Third Party Intellectual Property Rights are used by the Target Group other than those provided pursuant to the IP Licences (**Licensed IP**).
 - (v) No member of the Target Group has received any written notice of termination of an IP Licence and Target is not aware of any facts or circumstances that would lead to early termination of any of the IP Licences.
 - (vi) No disputes have arisen, and so far as Target is aware are foreseeable, in connection with the IP Licences.
 - (vii) The party granting rights under each of the IP Licences was, at the time of the grant, and continues to be, authorised to grant the rights under the relevant IP Licence.
 - (viii) The IP Licences will not be rendered liable to termination, by virtue of the Transactions or the performance of this deed.
- (f) Licence fees:
 - (i) There are no royalties, licence fees, damages, compensation or other amounts payable by any member of the Target Group in connection with the use of Intellectual Property Rights.
 - (ii) No Third Party has any right, claim or entitlement to:
 - (A) any revenue, profits or other amounts generated or received by any member of the Target Group; or
 - (B) any compensation or payment in respect of any revenue, profits or other amounts generated or received by any member of the Target Group in respect of the Business Intellectual Property.
- (g) Third Party infringement: No Third Party has:
 - (i) made a claim or alleged that the operations or work product relating to any member of the Target Group or its business infringe, misappropriate or misuse the Intellectual Property Rights of any person, nor is Target aware of any intention on the part of any Third Party to make such a claim or allegation or any other facts, matters or circumstances that may result in any Third Party making such a claim or allegation;

- (ii) disputed the right of any member of the Target Group to use the Business Intellectual Property or Third Party Intellectual Property, nor is Target aware of any intention on the part of any Third Party to dispute such right or any other facts, matters or circumstances that may result in any Third Party disputing such right;
 - (iii) infringed, attacked or opposed, in the 6 years prior to the date of this deed, and no such infringement, attack or opposition is anticipated with respect to any of the Business Intellectual Property; or
 - (iv) any right to or in any of the Business Intellectual Property, or any right which would otherwise restrict the disclosure or use by a member of the Target Group of any of the Business Intellectual Property.
- (h) No claims and no other circumstances: There are no:
 - (i) claims, challenges, disputes or proceedings that have been brought or threatened by a Third Party or any Government Agency in relation to the Business Intellectual Property that may adversely affect the right to use, enforce or assign any of the Business Intellectual Property, including opposition proceedings, non-use proceedings or amendment, rectification, revocation or cancellation proceedings, and no member of the Target Group has received any written notice of, nor (so far as Target is aware) are there any facts, matters or circumstances that could give rise to, any claims, challenges, disputes or proceedings of this nature; and
 - (ii) outstanding or threatened claims from current or former directors, employees or independent contractors of a member of the Target Group in any jurisdiction for compensation or remuneration for inventions invented or copyright works created.
- (i) Sufficiency: The:
 - (i) Business Intellectual Property owned by the Target Group; and
 - (ii) Licenced IP,

together comprise all of the Intellectual Property Rights necessary for the carrying on of the Target Group's business in the manner and to the extent conducted in the 12 months prior to the date of this deed.

22 (Information technology)

- (a) Systems:
 - (i) The data, records and information technology and telecommunications systems, hardware and software (including computer systems and computing services provided by third parties, such as cloud computing services or similar and all associated documentation) owned or used by the Target Group in the conduct of its business (**Systems**) comprise all the data, records, information technology and telecommunications systems, hardware and software (including computer systems and computing services provided through third parties, such as cloud computing services or similar and all associated documentation) necessary for the conduct of its business.
 - (ii) Reasonable precautions have been taken in accordance with industry standards to preserve the security and integrity of the Systems and the data and information stored on them and, so far as Target is aware, there has been no unauthorised access to, or use of, the Systems or any of the data or information stored on them.

- (b) IT Licences:
- (i) The Due Diligence Materials contains complete and accurate copies of all of the material agreements relating to the Target Group's use of the Systems (**IT Licences**).
 - (ii) Each member of the Target Group has materially complied with the terms of each IT Licence.
 - (iii) Each IT Licence is valid, binding and enforceable against the parties to it in accordance with its terms.
 - (iv) No third party Systems are used by the Target Group other than those provided pursuant to the IT Licences.
 - (v) No member of the Target Group has received any written notice of termination of an IT Licence and the Target Group is not aware of any facts or circumstances that would lead to early termination of any of the IT Licences.
 - (vi) No disputes have arisen, and so far as Target is aware, are foreseeable, in connection with the IT Licences.
 - (vii) The party granting rights under each of the IT Licences was, at the time of the grant, and continues to be, authorised to grant the rights under the relevant IT Licence.
 - (viii) The IT Licences will not be rendered liable to termination, by virtue of the Transactions or the performance of this deed.
- (c) Open Source Software:
- (i) The Target Group has complied with the conditions of any licenses for any open source software that is used, incorporated, embedded, or is combined, linked, or distributed with, provided to any person as a service in connection with, provided via a network as a service or application in connection with, or made available with any Business Intellectual Property.
 - (ii) No past or current use of open source software requires or conditions any grant of rights on:
 - (A) any member of the Target Group to distribute (or condition any grant of rights on the distribution of) any software source code for or included in any Business Intellectual Property (other than such open source software);
 - (B) any member of the Target Group to grant, or purport to grant, or condition any grant of rights upon the granting, to any third party any rights or immunities under any Intellectual Property Rights, or
 - (C) the imposition of any present economic limitations on any member of the Target Group's commercial exploitation thereof.
- (d) Software:
- (i) The software used by the Target Group in the conduct of its business (**Software**) was:
 - (A) developed by employees of a member of the Target Group in the course of their employment by the Target Group;

- (B) developed by independent contractors that have assigned in writing to a member of the Target Group all such contractors' respective Intellectual Property Rights in the Software; or
 - (C) otherwise acquired by a member of the Target Group from a third party under a written agreement containing an express assignment of Intellectual Property Rights by such third party to the Target Group.
- (ii) The Target Group exclusively owns and possesses all right, title and interest in and to all source code for all Software owned by any member of the Target Group.
- (iii) No Software owned by any member of the Target Group contains any harmful code, including self-replicating and self-propagating programming instructions commonly called "back door", "drop dead device", "Trojan horse", "ransomware", "viruses" or "worms" (which has the ability to damage, interfere with or otherwise adversely affect computer programs, data files or hardware without the consent or intent of the computer user), "time bombs", "key locks", or any other code that could disrupt, disable, or otherwise interfere with the operation of such Software or the integrity of the data, information or signals used or processed by such Software.
- (e) Ownership and use of Systems:
 - (i) All Systems are either owned or validly licensed pursuant to an IT Licence for use by, and are under the control of, a member of the Target Group.
 - (ii) No action is necessary to enable any System to continue to be used in connection with the Target Group's business to the same extent and in the same manner as such System has been used before the date of this deed.
 - (iii) No member of the Target Group is in breach of any IT Licence, including where such breach may result in that member of the Target Group ceasing to be entitled to use that System.
 - (iv) The Systems utilised by the Target Group in the operations of its business, so far as Target is aware:
 - (A) are free of material defects and comply with all applicable laws;
 - (B) are capable of being used for the functions and purposes for which they were designed and/or for which they are currently used in the Target Group's business; and
 - (C) are adequately licensed for the quantities and manner of use within the Target Group's business.
 - (v) In the 3 years prior to the date of this deed there have been no material performance reductions or material breakdowns of any Systems which have had (or are having) a material adverse effect on the Target Group's business and Target is not aware of any fact or matter which may give rise to such a material adverse effect.

23 (Cybersecurity and privacy)

- (a) The Target Group takes and has taken reasonable steps to mitigate cyber risks associated with its business in accordance with industry standards.

- (b) The Target Group has in the 5-year period before the date of this deed undertaken at least annual testing (including penetration testing) of all Systems for weaknesses, security vulnerabilities and instances of unauthorised accesses.
- (c) The Target Group has established and operates industry standard policies, procedures and processes relevant to the Target Group's ability to prepare for, respond to and recover from cyber-attacks or cyber-incidents affecting its business.
- (d) The Target Group maintains disaster recovery plans and business continuity and incident management procedures to maintain the operation of its business in the event of a disaster and other events which may affect the continuity of its business.
- (e) Target is not aware of any cyber-attacks, cyber-incidents or data breaches which, in the 5 years before the date of this deed, have materially compromised the Systems or resulted in information held or stored in such Systems being accessed or disclosed by unauthorised persons.
- (f) The Target Group has and implements processes for ensuring regular system maintenance, including reasonably timely installation of software patches that address security vulnerabilities.
- (g) No member of the Target Group has received any written:
 - (i) complaint from any individual; or
 - (ii) notice alleging non-compliance with or breach of any applicable privacy laws from or has been subject to any investigation, fine or penalty imposed by any Government Agency,
 regarding the Target Group's personal information handling practices in the last 5 years, nor is Target aware of any grounds on which such a complaint could be made or any facts, matters or circumstances that could result in such an investigation, fine or penalty.
- (h) So far as Target is aware, there have been no data breaches or security incidents involving any personal information controlled or processed by any member of the Target Group that would be notifiable to any Government Agency or an affected individual under applicable privacy laws.
- (i) The Target Group holds and has obtained all consents necessary to allow it to collect, hold, use and disclose any personal information which it collects, holds, uses or discloses in the course of conducting its business in accordance with applicable privacy laws.

24 (Litigation and Compliance with Laws)

- (a) No member of the Target Group is, or has in the last three years been, a party to any investigation, prosecution, action, proceedings, dispute, claim, demand, notice, order, direction, declaration, inquiry, arbitration, mediation, disciplinary proceedings, dispute resolution or litigation (**Proceedings**), and so far as Target is aware, no such Proceedings are pending or threatened.
- (b) No member of the Target Group is or has been subject to any audit, investigation or enquiry in any jurisdiction by any Government Agency in the last three years, and so far as Target is aware, no such investigation or enquiry is pending or threatened.
- (c) There are no pending or unsatisfied judgments, Orders, rulings, decrees, declarations, decisions, awards, claims or demands against any member of the Target Group.
- (d) Each member of the Target Group is, and in the last three years, has been in material compliance with all laws applicable to such member of the Target Group and no member of the Target Group.

- (e) The Target Group possess all material permits, authorizations, licenses, registrations and other approvals from any Government Agency (**Permits**) required for the operation of the Target Group as conducted as of the date of this deed and all such Permits are in full force and effect.

25 **(Sanctions and Export Controls)**

- (a) No member of the Target Group nor any of their respective directors, officers, employees, or agents, has in the past five years:
 - (i) been a person with whom transactions are prohibited or limited under any U.S. or other applicable economic sanctions laws, including those administered by the Office of Foreign Assets Control (**Sanctioned Person**);
 - (ii) been located, organised, or resident in a country that is or has been subject to comprehensive economic sanctions (including Cuba, Iran, North Korea, Syria, Sudan, Venezuela, Russia or the Crimea region and so-called Donetsk People's Republic and Luhansk People's Republic of Ukraine) (**Sanctioned Country**);
 - (iii) engaged in any dealings in or with a Sanctioned Person or Sanctioned Country;
 - (iv) violated any economic sanctions laws or anti-boycott requirements (**Trade Control Laws**);
 - (v) violated any laws relating to import and export controls, including the Export Administration Regulations, and customs and import Laws administered by U.S. Customs and Border Protection (**Ex-Im Laws**); or
 - (vi) made, offered, promised or authorized any payment or gift of anything of value, directly or indirectly, to or for the benefit of any government official, or any other person, in order to assist the Target Group or any of its directors, officers, employees, or agents in obtaining or retaining business or otherwise securing any improper advantage in violation of applicable laws of the United States, the United Nations, the United Kingdom, the European Union or enacted by any other applicable Government Agency from time to time concerning or relating to bribery or corruption, including the United Kingdom Bribery Act 2010 and the U.S. Foreign Corrupt Practices Act of 1977 (**Anti-Corruption Laws**).
- (b) No member of the Target Group has in the last five years received from any Government Agency or any other person any notice, inquiry, or internal or external allegation, made any voluntary or involuntary disclosure to a Government Agency or conducted any internal investigation or audit, in each case concerning any actual or potential violation or wrongdoing related to Trade Control Laws, Ex-Im Laws or Anti-Corruption Laws.

26 **(Employees)**

- (a) Entitlements:
 - (i) The Due Diligence Materials Fairly Disclose details of the commencement date, salaries and wages (excluding bonuses), applicable allowances and accrued long service leave, annual leave and personal leave for each employee of the Target Group (**Employee**), and such details are current, complete and accurate in all respects.
 - (ii) No member of the Target Group has given a commitment (whether legally binding or not) to increase or supplement the wages, salaries, incentives, annual leave and leave loading, long service leave, personal/carer's leave or any other remuneration, compensation, gratuities or benefits of any Employee.

- (iii) Each Employee is employed by a member of the Target Group subject to a written contract of employment which comprises the terms and conditions set out in:
 - (A) the employment contract in respect of that Employee disclosed in the Due Diligence Materials; or
 - (B) an applicable template employment contract disclosed in the Due Diligence Materials without any material variations, and no Employee receives or is entitled to any payment, bonus or benefit that is not documented in such written contract.
- (iv) No current or former Employee or other service provider to any entity within the Target Group is, or may become, entitled to (A) any bonus, payment or other benefit, (B) an increase in compensation or other benefits (including severance, or (C) acceleration of vesting, funding or time of payment of any compensation, award or other benefit, in each case of (A), (B) and (C) in connection with this deed or the transaction contemplated by it. No entity within the Target Group is required to make any contribution to any Plan in connection with this deed or the transactions contemplated by it.
- (v) No member of the Target Group is liable to pay any allowance, annuity, benefit, lump sum, pension, premium or other payment in respect of the death, disability, retirement, resignation, dismissal or cessation of employment of any Employee or other person, except as required to comply with any legislation or award.
- (vi) As at the date of this deed, no Employee has given or received notice of termination of their employment, and, so far as Target is aware, no current Employee intends to terminate his or her employment as at the date of this deed.
- (vii) No member of the Target Group has made any offer of work that remains capable of acceptance and that cannot be terminated without penalty on 1 months' notice.
- (viii) No independent contractor engaged by a member of the Target Group (nor any of the personnel of an independent contractor) is an employee of the Target Group at law.
- (ix) The Due Diligence Materials Fairly Disclose complete and correct list of each material Plan and all material documents pursuant to which each Plan is established, maintained, funded or administered.
- (x) The members of the Target Group are neither party to, nor bound by, any collective bargaining agreement or other contract with any labor union, labor organization, or works council (each a **CBA**); there are no CBAs or any other labor-related agreements or arrangements that pertain to any of the Employees; and no Employees are represented by any labor union, works council, or other labor organization with respect to their employment with any member of the Target Group. Prior to the date of this deed, each member of the Target Group have satisfied any pre-signing legal or contractual requirement to provide notice to, or to enter into any consultation or consent procedure with, any labor union, labor organization or works council, which is representing any Employee, in connection with the execution of this deed or the transactions contemplated by this deed.
- (xi) So far as Target is aware, in the past five years, there have been no labor organizing activities with respect to any Employees.

- (b) Compliance:
- (i) Each member of the Target Group has complied, and complies, with its obligations under all applicable legislation and regulations relating to the Employees (including labor, employment and industrial laws, anti-discrimination, anti-harassment and anti-retaliation laws, wage and hour laws (including the classification of independent contractors and exempt and non-exempt employees), immigration laws and work health and safety laws and including with respect to leave accrual), plant closures and layoffs, industrial agreements and awards, and in all material respects complies with all codes of conduct and practice relevant to conditions of service and to the relations between it and the Employees employed by it.
 - (ii) No member of the Target Group has failed to comply in any material respect with any contractual obligations owed to any of its current or former Employees.
 - (iii) Each member of the Target Group has kept adequate and suitable records regarding the service of its Employees.
 - (iv) Each Plan has been established, maintained, funded and administered in compliance in all material respects with its terms and applicable laws, including the Employee Retirement Income Security Act of 1974, as amended (**ERISA**) and the Code and applicable law and no event has occurred and, so far as Target is aware, no condition exists, that has subjected, or would reasonably be expected to subject, any member of the Target Group to any material Tax, fine, lien, penalty or other liability imposed by ERISA, the Code or any other applicable law. Each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and has received a current favourable determination letter from the Internal Revenue Service and nothing has occurred that would adversely affect such Plan's qualification. All contributions, premiums, and other payments required by and due under the terms of each Plan have been timely paid in accordance with the terms of such Plan and applicable law. With respect to each Plan, there has been no prohibited transaction (as defined in Section 406 of ERISA or Section 4975 of the Code) and no breach of fiduciary duty (as determined under ERISA). No Plan is and no member of the Target Group has any current or contingent liability or obligation under or with respect to any: (A) "defined benefit plan" (as defined in Section 3(35) of ERISA) or plan that is or was subject to Section 412 of the Code or Title IV of ERISA, including as a consequence of at any time being considered a single employer under Section 414 of the Code with any other person; (B) "multiemployer plan" (as defined in Section 3(37) of ERISA); (C) multiple employer plan within the meaning of Section 413(c) of the Code; or (D) multiple employer welfare arrangement (as defined in Section 3(40) of ERISA).
 - (v) No member of the Target Group has any obligation to provide post-termination welfare benefits to any person except as required by Section 4980B of the Code for which the covered individual pays the full cost of coverage. There are no pending or threatened claims, actions, suits, proceedings, hearings, or investigations (other than routine claims for benefits) with respect to any Plan or any trust related thereto.
 - (vi) Each Plan that constitutes in any part a "nonqualified deferred compensation plan" (as defined under Section 409A(d)(1) of the Code) has been operated and administered in all respects in operational compliance with, and is in all material

respects in documentary compliance with, Section 409A of the Code, and no amount under any such plan, agreement or arrangement is or has been subject to the interest and additional tax set forth under Section 409A(a)(1)(B) of the Code.

- (vii) No payment or benefit which could be made with respect to any current or former employee, officer, stockholder, director or service provider of any entity within the Target Group who is a "disqualified individual" (as defined in Section 280G of the Code and the regulations thereunder) could be characterised as a "parachute payment" within the meaning of Section 280G(b)(2) of the Code.
 - (viii) There is no contract, agreement, plan or arrangement to which any entity within the Target Group is bound to provide a gross-up or otherwise reimburse any current or former employee, director, service provider or other person for excise taxes paid pursuant to Sections 409A or 4999 of the Code.
 - (ix) Each member of the Target Group has no material liability for (i) any unpaid wages, salaries, wage premiums, commissions, bonuses, fees, or other compensation to their current or former employees and independent contractors under applicable law, contract or company policy; and/or (ii) any fines, Taxes, interest, or other penalties for any failure to pay or delinquency in paying such compensation.
- (c) Employee disputes:
 - (i) No member of the Target Group has been involved in any labour or industrial dispute, unfair labor practice charge, material grievance, arbitration, strike, lockout, work stoppages, slowdowns, picketing, handbilling, or other material labor disputes, whether actual or threatened, with any labor union, works council, or other labor organization or Employee at any time within the 5 years preceding the date of this deed.
 - (ii) There is no actual or pending Claim by an Employee against a member of the Target Group and, so far as Target is aware, there are no facts, matters or circumstances which may give rise to such a Claim.
- (d) Superannuation:
 - (i) Each member of the Group has complied with all their obligations to make superannuation or pension contributions which they are required to make on behalf of Employees in Australia and in each jurisdiction in which the Target Group operates.
 - (ii) There are no overdue or unpaid contributions due on the part of any member of the Target Group or any Employee that are outstanding and unpaid.
 - (iii) No member of the Target Group contributes to any defined benefit fund in respect of any Employees and no member of the Target Group is liable to contribute in respect of any defined benefit fund.
 - (iv) Each Plan required to be registered has been registered and has been maintained in good standing in all material respects with applicable regulatory authorities.
- (e) Work health and safety: No member of the Target Group
 - (i) has been subject to a Work Safety Authority inspection in the five years prior to the date of this deed;

- (ii) has at any time received an improvement notice or prohibition notice from the Work Safety Authority in respect of work health and safety; or
 - (iii) is subject to an investigation or prosecution by any Work Safety Authority and there are no facts, matters or circumstances which may give rise to such an investigation or prosecution.
- (f) Workers compensation: Each member of the Target Group:
 - (i) has workers compensation insurance in place, and has paid its workers compensation insurance up to date; and
 - (ii) is not the subject of any current workers compensation claim and Target is not aware of any future claim or any facts, matters or circumstances which may give rise to a future claim, and reasonable details of all workers compensation claims during the last 3 years have been Fairly Disclosed in the Due Diligence Materials.

27 **(Insurance)**

- (a) The Due Diligence Materials contain current, complete and accurate particulars of all current insurance policies and cover notes taken out in respect of a member of the Target Group or its business **(Insurances)**.
- (b) Each member of the Target Group has effected all insurances required by law or contract.
- (c) Each Insurance is currently in full force and effect in accordance with its terms and all applicable premiums have been paid by the due date for payment.
- (d) Nothing has been done or omitted to be done that would make any Insurance void or voidable or that would permit an insurer to cancel the policy or refuse or reduce a claim or increase the premiums payable under the policy, or otherwise alter the terms of the policy.
- (e) There are no outstanding claims made by a member of the Target Group or any person on its behalf under an Insurance or an insurance policy previously held by a member of the Target Group and in the past three years no claims have been denied by the applicable insurer under any such Insurances.
- (f) There are no threatened or pending claims under an Insurance and, so far as Target is aware, there are no facts, matters or circumstances which could give rise to an entitlement to make a claim under an Insurance.
- (g) The Target Group has notified insurers of relevant claims, facts and circumstances as required by the notification provisions under each Insurance.

28 **(Brokers and Finders)** No member of the Target Group has, directly or indirectly, entered into any agreement with any person that would obligate any member of the Target Group to pay any commission, brokerage fee, or "finder's fee" in connection with the Transactions.

29 **(Affiliate Transactions)** Except for contracts governing employment relationships or the provision of compensation or benefits to employees in the ordinary course, agreements or arrangements between members of the Target Group and agreements with any Advisers, no member of the Target Group or any Affiliate of a member of the Target Group:

- (a) is party to any agreement with any member of the Target Group; and
- (b) has any material financial interest in any property or assets owned by the Target Group; or
- (c) has engaged in any transaction with the Target Group.

30 (Taxes and Duties)

- (a) Tax and Duty paid: any Tax or Duty, for which a member of the Target Group is or was liable, arising under any Tax Law payable:
 - (i) in respect of any transaction, income or assets of a member of the Target Group for all periods up to the time of and including the Implementation Date or the date on which Bidder acquires a relevant interest in at least 50.1% in the Target Shares and the Offer becomes or is declared unconditional (whichever is earlier, the **Relevant Time**);
 - (ii) in respect of any event, omission or instrument executed or performed on or prior to and including the Relevant Time; and
 - (iii) in respect of payments made by a member of the Target Group to another person that must be withheld from that payment prior to and including the Relevant Time, have or will have been so withheld (if applicable) and paid in full prior to the Relevant Time.
- (b) Compliance with Tax Law: each member of the Target Group has complied in all material respects with all obligations imposed on that member of the Target Group by any Tax Law or as requested by any Government Agency.
- (c) Records: each member of the Target Group has maintained proper and adequate records to enable it to comply with its obligations to:
 - (i) prepare and submit any applications, information, notices, computations, returns and payments required in respect of any Tax Law;
 - (ii) (prepare any accounts necessary for compliance with any Tax Law; and
 - (iii) retain necessary records as required by any Tax Law.
- (d) Returns submitted:
 - (i) Each member of the Target Group has submitted all Tax Returns, applications, information, notices and computations that are required to be prepared, lodged or filed by law to the relevant Government Agency in respect of any Tax or Duty relating to the member of the Target Group.
 - (ii) All submitted Tax Returns, information, notices, and computations have been fully and accurately completed and any deduction, rebate, credit, refund, allowance or other relief from Tax or Duty has been properly claimed and is duly allowable.
 - (iii) Any application, information, notice, computation and return that has been submitted by a member of the Target Group to a Government Agency in respect of any Tax or Duty:
 - (A) discloses all facts required to be disclosed under any Tax Law;
 - (B) is not misleading in any particular; and
 - (C) has been submitted on time with the relevant Government Agency.
- (e) No Tax or Duty audit, review or investigation: there is no current or, so far as Target is aware, pending or threatened Tax or Duty audit, review, dispute or investigation relating to a member of the Target Group.
- (f) Franking credits:
 - (i) No member of the Target Group will have a franking or imputation account deficit immediately at or any time after the Relevant Time or has had a franking or

imputation account deficit at the end of any year of income as a result of any act, transaction or omission relating to periods prior to the Relevant Time. No act or omission of a member of the Target Group at or before the Relevant Time will cause any member of the Target Group to be liable for franking tax or a similar Tax at or after the Relevant Time.

- (ii) There will not be any franking debit to the franking account of any member of the Target Group or the Head Company of the Consolidated Group that includes Bidder as a member after the Relevant Time that relates to a transaction or arrangement entered into at or before the Relevant Time.
 - (iii) Each member of the Target Group has complied with and maintained documentation regarding the application of section 205-15(4) of the ITAA 1997 to its franking account.
- (g) No disputes: there are no current, outstanding or, so far as Target is aware, pending or threatened disputes between a member of the Target Group and any Government Agency in respect of any Tax or Duty, and no member of the Target Group has received notice (written or otherwise) of any pending or threatened dispute.
- (h) Transfer pricing: all transactions and other dealings between members of the Target Group and related parties, associates or associated persons for the purposes of the Tax Law have been (and can be demonstrated to have been) conducted at arm's length.
- (i) Debt forgiveness: no debt owed by a member of the Target Group has been, or has been agreed to be, released, waived, forgiven or otherwise extinguished in circumstances which would have attracted any Tax or the operation of the debt forgiveness rules in Division 245 of the ITAA 1997, or the limited recourse debt rules in Division 243 of the ITAA 1997, or any other applicable Tax Law.
- (j) No application of anti-avoidance provisions: no member of the Target Group has entered into or been a party to any transaction or arrangement that contravenes any anti-avoidance or integrity provisions of any Tax Law, including Part IVA of the ITAA 1936.
- (k) Tax or Duty rulings: any ruling, determination or election requested, received or made by a member of the Target Group in respect of Tax or Duty:
 - (i) has been Fairly Disclosed in the Due Diligence Materials; and
 - (ii) has at all times been complied with in all respects by the Target Group.
- (l) True and complete copies: all copies of notices, Tax Returns or other information submitted by a member of the Target Group about Tax or Duty which have been Fairly Disclosed in the Due Diligence Materials are true and complete copies of the originals.
- (m) No agreement with Government Agency: no agreement extending the period for assessment or collection of any Tax or Duty of any member of the Target Group has been executed or filed with any Government Agency.
- (n) Registrations: all registrations required to be maintained by a member of the Target Group with any Government Agency in relation to Tax or Duty are and have at all times been maintained by the member of the Target Group.
- (o) Public officers appointed: each member of the Target Group has at all relevant times appointed a public officer where required under the applicable Tax Laws.
- (p) No indemnity, arrangement or agreement to reimburse: no member of the Target Group has entered into or been a party to an arrangement, agreement or indemnity whereby it is

liable to reimburse or indemnify another party in respect of Tax or Duty, other than pursuant to customary gross up clauses.

- (q) No capital gains tax relief: no member of the Target Group has sought, obtained or is taken to have obtained any form of relief or deferral from Tax in respect of the transfer of an asset, where such relief or deferral will be clawed back as a result of the entry into this deed or completion of the Transactions contemplated by this deed.
- (r) Share capital account: within the meaning of Division 197 of the ITAA 1997 (or any other applicable Tax Law), no member of the Target Group has a tainted share capital account or a share capital account that is taken to be tainted and no member of the Target Group has taken any action, up to and including the Relevant Time, that would cause the member of the Target Group's share capital account to be a tainted share capital account, nor has an election been made at any time up to and including the Relevant Time, to untaint a share capital account.
- (s) Taxation of financial arrangements: no member of the Target Group has made any election or made any choice under Division 230 of the ITAA 1997.
- (t) Dividends: within the meaning of Part 3-6 of the ITAA 1997, no member of the Target Group has been in breach of the benchmark franking percentage rules.
- (u) GST gross up: no member of the Target Group is a party to any document, instrument, contract, agreement, deed or transaction in respect of which it is or will become liable to pay GST in circumstances where the member of the Target Group has no express entitlement to increase the consideration payable under the document, instrument, contract, agreement, deed or transaction or otherwise seek reimbursement so that the member of the Target Group retains the amount it would have retained but for the imposition of GST.
- (v) GST compliance:
 - (i) Each member of the Target Group:
 - (A) that is required to be registered for GST under the GST Law is so registered;
 - (B) has complied with all of its obligations under the GST Law;
 - (C) is not in default of any obligation to make or lodge any payment or GST return or notification under the GST Law;
 - (D) has adequate systems established for it to ensure it complies with the GST Law; and
 - (E) where it has the right to require another party to any such agreement or arrangement to pay to it an amount on account of GST, has enforced that right.
 - (ii) No member of the Target Group has at any time until the Relevant Time been a member of a GST Group.
 - (iii) No member of the Target Group:
 - (A) has paid any amount on account of, or in respect of, GST to any entity which it was not contractually required to pay;
 - (B) has ever been a party to an indirect tax sharing agreement or an indirect tax funding agreement;

- (C) is, and has never been, a member (including a Joint Venture Operator) of a GST Joint Venture, or a partner in a partnership for GST purposes; and
 - (D) has any amended assessments to which an extended or refreshed period of review could apply under section 155-70 of Schedule 1 to the *Tax Administration Act 1953* (Cth) in respect of GST.
- (w) Duty paid and stamping: all documents to which any member of the Target Group is a party or may be interested in the enforcement of, and all transfers of any issued shares (other than as contemplated by this document), including any documents that are required to be created under any law relating to Duty, have been properly stamped under applicable stamp duty legislation and there are no outstanding assessments of Duty in respect of any document, nor any requirement to pay additional Duty on any document in the future on account of any interim stamping.
- (x) No Duty claw back: no event has occurred, or will occur, as a result of anything provided for in this deed, or as a result of this deed itself, as a result of which any Duty from which a member of the Target Group may have obtained an exemption or other relief may become payable on any document, instrument, contract, agreement, deed or transaction.
- (y) Consolidated Group:
 - (i) Each member of the Target Group has only ever been a member of the Consolidated Group of which Target is the Head Company.
 - (ii) No member of the Target Group has (A) ever been a member of any other affiliated, combined, consolidated, unitary or other group for Tax purposes, or (B) is liable for Taxes of another person under Treasury Regulation Section 1.1502-6 (or comparable provisions of U.S. state, local or non-U.S. law) by contract, as a transferee or successor, by operation of law or otherwise.
- (z) Interposed entity election: no member of the Target Group has made an interposed entity election pursuant to section 272-85 of the ITAA 1936.
- (aa) Research and development:
 - (i) All research and development deductions and tax incentive claims which have been claimed by any member of the Target Group have been claimed in compliance with all applicable Tax Laws, including in accordance with Division 355 of the ITAA 1997 or sections 73B to 73Z of the ITAA 1936 (as applicable).
 - (ii) All research and development tax incentive claims lodged by any member of the Target Group were accurate and the relevant member of the Target Group has in its possession supporting material to justify the reasonableness of each claim.
- (bb) No Tax liens: There are no liens for Taxes upon any of the assets of the Target Group other than liens for Taxes not yet due and payable.
- (cc) United States tax matters:
 - (i) No member of the Target Group has ever (A) distributed stock of another person, or had its stock distributed by another person, in a transaction that was purported or intended to be governed in whole or in part by Sections 355 (or so much of Section 356 as relates to Section 355) or 361 of the Code, or (B) engaged in or been a party to any "listed transaction" within the meaning of Treasury Regulations Section 1.6011-4.
 - (ii) No member of the Target Group will be required to include any material item or amount of income in, or exclude any material item or amount of deduction from,

taxable income for any taxable period (or portion thereof) ending after the Relevant Time as a result of any (A) change in or use of an improper method of accounting for a taxable period (or portion thereof) ending on or prior to the date of the Relevant Time, (B) “closing agreement,” as described in Section 7121 of the Code (or any similar provision of U.S. state, local or non-U.S. income Tax law), (C) prepaid income or deferred revenue received prior to the Relevant Time, (D) instalment sale or open transaction disposition made prior to the Relevant Time, or (E) intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local, or non U.S. income Tax law). No member of the Target Group will be required to make any payment after the Relevant Time as a result of an election under Section 965 of the Code.

- (iii) No member of the Target Group is a “United States real property holding corporation” within the meaning of Section 897 of the Code.
- (iv) Nitro Software, Inc. is, and at all times since its formation has been, properly treated as a corporation for U.S. federal and all applicable U.S. state and local income Tax purposes.

Schedule 4

Target Prescribed Occurrences

- 1 Target converts all or any of its shares into a larger or smaller number of shares.
- 2 Any member of the Target Group resolves to reduce its share capital in any way.
- 3 Any member of the Target Group:
 - (a) enters into a buy-back agreement; or
 - (b) resolves to approve the terms of a buy-back agreement under subsection 257C(1) or 257D(1) of the Corporations Act.
- 4 Any member of the Target Group issues shares, or grants an option over its shares, or agrees to make such an issue or grant such an option, other than:
 - (a) where the shares or other securities are issued, or where the options are granted, by a member of the Target Group (other than Target) to another member of the Target Group; or
 - (b) the issue of Target Shares upon the exercise or vesting of ESS Securities that are on issue at the date of this deed.
- 5 Any member of the Target Group issues, or agrees to issue, convertible notes.
- 6 Any member of the Target Group disposes, or agrees to dispose, of the whole or a substantial part of the business or property.
- 7 Any member of the Target Group grants, or agrees to grant, a security interest in the whole, or a substantial part, of its business or property.
- 8 Any member of the Target Group resolves to be wound up.
- 9 A liquidator or provisional liquidator of any member of the Target Group is appointed.
- 10 A court makes an order for the winding up of any member of the Target Group.
- 11 An administrator of any member of the Target Group is appointed under section 436A, 436B or 436C of the Corporations Act.
- 12 Any member of the Target Group executes a deed of company arrangement.
- 13 A restructuring practitioner for any member of the Target Group is appointed under section 453B of the Corporations Act.
- 14 Any member of the Target Group makes a restructuring plan under Division 3 of Part 5.3B of the Corporations Act.
- 15 A receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of any member of the Target Group.

For the purposes of this Schedule 4, "Subsidiary" has the meaning given in the Corporations Act.

Schedule 5**Indicative Timetable**

Event	Indicative Date
Execution of this deed	15 November 2022
Target submits draft Transaction Booklet to ASIC	21 December 2022
Bidder to execute Deed Poll	31 January 2023
First Court hearing for Scheme	31 January 2023
Register Date	1 February 2023
Despatch Transaction Booklet	3 February 2023
Scheme Meeting	3 March 2023
If the Scheme is approved by Target Shareholders	
Second Court hearing for Scheme	6 March 2023
Effective Date	7 March 2023
Scheme Record Date	14 March 2023
Implementation Date	21 March 2023
If Target Shareholders do not approve the Scheme	
Offer closes (unless otherwise extended or withdrawn)	31 March 2023

Schedule 6**Target capital structure**

Security	Total number on issue
Target Shares	251,567,415
ESS Securities	
Options	9,103,051
Non-executive director share rights	172,475
Restricted share awards	7,668,601
Performance rights	1,521,486
Performance shares	682,606

Target Group

Entity	Country of Incorporation	Holding
Nitro Software Limited	Australia	N/A
Nitro Software Inc	United States of America	100%
Nitro Software EMEA Limited	Ireland	100%
Nitro Software Canada Limited	Canada	100%
Connective NV	Belgium	100%
Connective SAS	France	100%
Connective Digital Transformation SL	Spain	100%

Executed and delivered as a Deed.

Target

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
Nitro Software Limited (ACN 079 215 419):



Director Signature

Kurt Johnson

Print Name




Director/Secretary Signature

Sarah Morgan

Print Name

Bidder

Executed as a deed by **Cascade Parent Limited (Company Registration Number 129147)** in the presence of:



Authorised Signatory

Christa S. Quarles

Print Name



Witness Signature

John T. Quarles

Print Name

Annexure A – Form of Scheme

Nitro Software Limited

Each person who holds one or more Scheme Shares

Scheme of Arrangement

Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000 Australia
T +61 2 9230 4000
F +61 2 9230 5333
www.allens.com.au

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Scheme of Arrangement pursuant to section 411 of the *Corporations Act 2001* (Cth)**Between**

Nitro Software Limited (ACN 079 215 419) of Level 7 330 Collins Street Melbourne VIC 3000 (**Target**).

And

The holders of fully paid ordinary shares in the capital of Target.

Recitals

- A Target is a public company limited by shares incorporated in Australia, and has been admitted to the official list of ASX.
- B Cascade Parent Limited (Company Registration Number 129147) (**Bidder**) is a company incorporated in Jersey.
- C Target and Bidder have entered into the Implementation Deed, pursuant to which, amongst other things, Target has agreed to propose the Scheme to Target Shareholders, and each of Target and Bidder has agreed to take certain steps to give effect to the Scheme.
- D If the Scheme becomes Effective, then:
- (a) all the Scheme Shares will be transferred to Bidder and the Scheme Consideration will be provided to the Scheme Shareholders in accordance with the terms of the Scheme; and
 - (b) Target will enter the name and address of Bidder in the Target Register as the holder of the Scheme Shares.
- E Bidder has entered into the Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders that it will observe and perform the obligations contemplated of it under the Scheme.

It is agreed as follows.

1 Definitions and Interpretation**1.1 Definitions**

In this document, unless the context requires otherwise:

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

ASX Listing Rules means the official listing rules of ASX.

Bidder means Cascade Parent Limited (Company Registration Number 129147).

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 that banks are open for business in Sydney Australia.

CHESS means the Clearing House Electronic Subregister System for the electronic transfer of securities, operated by ASX Settlement Pty Limited (ABN 49 008 504 532).

Conditions Precedent means the conditions precedent to the Scheme set out in clause 2.1.

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

Court means the Supreme Court of New South Wales or such other court of competent jurisdiction as Bidder and Target may agree in writing.

Deed Poll means the deed poll dated [] executed by Bidder in favour of the Scheme Shareholders.

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

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

End Date means six months after the date of the Implementation Deed, or such later date as Bidder and Target may agree in writing.

Implementation Date means the fifth Business Day after the Scheme Record Date or such other date agreed to in writing between Bidder and Target.

Implementation Deed means the implementation deed dated [] between Bidder and Target.

Registered Address means, in relation to a Target Shareholder, the address of that Target Shareholder shown in the Target Register.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between Target and Target Shareholders as set out in this document, subject to any alterations or conditions made or required by the Court and agreed to by Bidder and Target.

Scheme Consideration has the meaning given in clause 5.1.

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

Scheme Record Date means 7:00pm on the date that is five Business Days after the Effective Date.

Scheme Shareholder means each person who is registered in the Target Register as a holder of Scheme Shares as at the Scheme Record Date.

Scheme Shares means the Target Shares on issue as at the Scheme Record Date.

Scheme Transfer means, in relation to each Scheme Shareholder, a proper instrument of transfer of their Scheme Shares for the purpose of section 1071B of the Corporations Act, which may be a master transfer of all or part of all of the Scheme Shares.

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

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

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

Target Share Registry means Computershare Investor Services Pty Limited (ABN 48 078 279 277) or any replacement provider of share registry services to the Target.

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

Trust Account means an Australian dollar denominated trust account operated by Target or the Target Share Registry as trustee for the benefit of Scheme Shareholders.

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) The following rules apply unless the context requires otherwise.
 - (i) The singular includes the plural, and the converse also applies.
 - (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 includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
 - (v) A reference to a clause is a reference to a clause of this document.
 - (vi) A reference to an agreement or document (including a reference to this document) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this document or that other agreement or document.
 - (vii) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
 - (viii) A reference to a person includes the person's successors, permitted substitutes and permitted assigns (and, where applicable, the person's legal personal representatives).
 - (ix) 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.
 - (x) A reference to *dollars* or \$ is to Australian currency.
 - (xi) A reference to time is to Sydney, Australia time.
 - (xii) 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.
 - (xiii) Words and phrases not specifically defined in this document have the same meanings (if any) given to them in the Corporations Act.

2 Conditions Precedent

2.1 Conditions Precedent to the Scheme

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

- (a) as at 8:00am on the Second Court Date each of the conditions precedent set out in clause 3.1 of the Implementation Deed (other than the condition precedent relating to the approval of the Court set out in clause 3.1(f) of the Implementation Deed) has been satisfied or waived in accordance with the Implementation Deed;
- (b) as at 8:00am on the Second Court Date, the Implementation Deed has not been terminated;

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

2.2 Certificates

Target and Bidder will each provide to the Court on the Second Court Date certificates signed by Target and Bidder (or such other evidence as the Court requests) confirming (in respect of matters within their knowledge) whether or not the conditions in clauses 2.1(a) and 2.1(b) of this Scheme have been satisfied or waived in accordance with the terms of the Implementation Deed as at 8.00am on the Second Court Date.

2.3 Termination of Implementation Deed

Without limiting any rights under the Implementation Deed, in the event that the Implementation Deed is terminated in accordance with its terms before 8:00am on the Second Court Date, Target and Bidder are each released from:

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

3 Scheme Becoming Effective

3.1 Effective Date of the Scheme

Subject to clause 3.2, the Scheme will take effect on and from the Effective Date.

3.2 End Date

The Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the End Date.

4 Implementation of Scheme

4.1 Transfer of Scheme Shares

On the Implementation Date, subject to the provision of the Scheme Consideration in the manner contemplated by clauses 4.2, 5 and 6, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by Target or any of its directors and officers as attorney and agent for Scheme Shareholders under the Scheme), by Target effecting a valid transfer or transfers of the Scheme Shares to Bidder under section 1074D of the Corporations Act or, if that procedure is not available for any reason, by:

- (a) Target delivering to Bidder for execution duly completed and, if necessary, stamped Scheme Transfers to transfer all of the Scheme Shares to Bidder, duly executed by Target (or any of its directors and officers) as the attorney and agent of each Scheme Shareholder as transferor under clause 9.3;

- (b) Bidder executing the Scheme Transfers as transferee and delivering them to Target for registration; and
- (c) Target, immediately after receipt of the Scheme Transfers under clause 4.1(b), entering, or procuring the entry of, the name and address of Bidder in the Target Register as the holder of all of the Scheme Shares.

4.2 Provision of Scheme Consideration

In consideration for, and prior to, the transfer to Bidder of the Scheme Shares, Bidder will pay into the Trust Account an amount equal to the aggregate amount of the Scheme Consideration payable to Scheme Shareholders, in accordance with clause 6.

5 Scheme Consideration

5.1 Entitlement to Scheme Consideration

Subject to clauses 5.2 and 5.3, the Scheme Consideration, in respect of a Scheme Shareholder, means A\$2.00 per Scheme Share for which a Scheme Shareholder is registered in the Target Register as the holder as at the Scheme Record Date.

5.2 Fractional entitlements

If the number of Scheme Shares held by a Scheme Shareholder as at the Scheme Record Date is such that the aggregate entitlement of that Scheme Shareholder to Scheme Consideration includes a fractional entitlement to a cent in cash, then the entitlement of that Scheme Shareholder must be rounded up or down with:

- (a) any fractional entitlement of less than 0.5 being rounded down to the nearest whole number of cents; and
- (b) any fractional entitlement of 0.5 or more being rounded up to the nearest whole number of cents.

5.3 Shareholding splitting or division

If Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares that results in rounding in accordance with clause 5.2) have, before the Scheme Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, Bidder may give notice to those Scheme Shareholders:

- (a) setting out their names (as shown in the Target Register) and Registered Addresses;
- (b) stating that opinion; and
- (c) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares will, for the purposes of the other provisions of the Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and Registered Addresses are set out in the notice will, for the purposes of the other provisions of the Scheme, be taken to hold no Scheme Shares. Bidder, in complying with the other provisions of the Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of the Scheme.

6 Provision of Scheme Consideration

6.1 Payment of Scheme Consideration

- (a) Bidder must, no later than the Business Day before the Implementation Date, deposit in cleared funds into the Trust Account an amount equal to the aggregate amount of the Scheme Consideration payable to Scheme Shareholders, such amount to be held by Target or the Target Share Registry (as applicable) on trust for the Scheme Shareholders and for the purpose of sending the aggregate amount of the Scheme Consideration to the Scheme Shareholders (except that any interest on the amount will be for the account of Bidder).
- (b) On the Implementation Date and subject to funds having been deposited in accordance with clause 6.1(a), Target must pay or procure the payment of the Scheme Consideration to each Scheme Shareholder from the Trust Account by either (in the sole discretion of Target):
 - (i) despatching, or procuring the despatch, to that Scheme Shareholder of a pre-printed cheque in the name of that Scheme Shareholder and for the relevant amount (denominated in A\$) drawn on the Trust Account, with such despatch to be made by pre-paid post to that Scheme Shareholder's Registered Address (as at the Scheme Record Date); or
 - (ii) making, or procuring the making of, a deposit for the relevant amount (denominated in A\$) in an account with any Australian ADI in Australia notified by that Scheme Shareholder to Target and recorded in or for the purposes of the Target Register as at the Scheme Record Date.
- (c) To the extent that, following satisfaction of Target's obligations under clause 6.1(b), there is any remaining amount held in the Trust Account, Target must pay, or procure the payment of, that amount promptly to Bidder.

6.2 Joint holders

In the case of Scheme Shares held in joint names, any cheque required to be paid to Scheme Shareholders will be payable to the joint holders and will be forwarded to the holder whose name appears first in the Target Register as at the Scheme Record Date.

7 Dealings in Target Shares

7.1 Dealings in Target Shares by Scheme Shareholders

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

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Target Register as the holder of the relevant Target Shares by the Scheme Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Target Share Registry by 5:00pm on the day which is the Scheme Record Date (in which case Target must register such transfers or transmission applications before 7:00pm on that day),

and Target will not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Shareholders, any transfer or transmission application in respect of Target Shares received after such times, or received prior to such times but not in registrable form.

7.2 Target Register

Target will, until the Scheme Consideration has been provided and the name and address of Bidder has been entered in the Target Register as the holder of all of the Scheme Shares, maintain, or procure the maintenance of, the Target Register in accordance with this clause 7, and the Target Register in this form and the terms of the Scheme will solely determine entitlements to the Scheme Consideration. As from the Scheme Record Date (and other than for Bidder following the Implementation Date), each entry in the Target Register as at the Scheme Record Date relating to Scheme Shares will cease to have any effect other than as evidence of the entitlements of Scheme Shareholders to the Scheme Consideration in respect of those Scheme Shares.

7.3 Effect of share certificates and holding statements

As from the Scheme Record Date (and other than for Bidder following the Implementation Date), all share certificates and holding statements for Scheme Shares will cease to have effect as documents of title in respect of those Scheme Shares.

7.4 Information to be given to Bidder

Target must procure that, as soon as practicable after the Scheme Record Date and in any event at least five Business Days before the Implementation Date, details of the names, Registered Addresses and holdings of Target Shares of every Scheme Shareholder as shown in the Target Register as at the Scheme Record Date are given to Bidder (or as it directs) in such form as Bidder may reasonably require.

7.5 No disposals after Scheme Record Date

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

8 Suspension and Termination of Quotation of Target Shares

- (a) Target must apply to ASX for suspension of trading of the Target Shares on ASX with effect from the close of business on the Effective Date, or from such earlier time as may be reasonably appropriate to ensure that all trades made prior to suspension may be completed, and the Target Register amended accordingly, prior to the Scheme Record Date.
- (b) Target must apply to ASX for termination of official quotation of the Target Shares on ASX and the removal of Target from the official list of ASX with effect from the Business Day immediately following the Implementation Date, or from such later date as may be determined by Bidder.

9 General Provisions

9.1 Further assurances

- (a) Each Scheme Shareholder and Target will do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it.
- (b) Without limiting Target's other powers under the Scheme, Target has power to do all things that it considers necessary or desirable to give effect to the Scheme and the Implementation Deed.

9.2 Scheme Shareholders' agreements and consents

Each Scheme Shareholder:

- (a) irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Bidder in accordance with the terms of the Scheme; and
- (b) irrevocably consents to Target and Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it,

without the need for any further act by that Scheme Shareholder.

9.3 Appointment of Target as attorney for implementation of Scheme

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

- (a) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it, including the effecting of a valid transfer or transfers (or the execution and delivery of any Scheme Transfers) under clause 4.1(a); and
- (b) enforcing the Deed Poll against Bidder,

and Target accepts such appointment. Target, as agent and attorney of each Scheme Shareholder, may sub delegate its functions, authorities or powers under this clause 9.3 to all or any of its directors and officers (jointly, severally, or jointly and severally).

9.4 Warranty by Scheme Shareholders

Each Scheme Shareholder is deemed to have warranted to Bidder, and, to the extent enforceable, to have appointed and authorised Target as that Scheme Shareholder's agent and attorney to warrant to Bidder, that all of their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the time of the transfer of them to Bidder pursuant to the Scheme, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to sell and to transfer their Scheme Shares (together with any rights and entitlements attaching to those Scheme Shares) to Bidder pursuant to the Scheme. Target undertakes in favour of each Scheme Shareholder that it will provide such warranty, to the extent enforceable, to Bidder on behalf of that Scheme Shareholder.

9.5 Title to Scheme Shares

Bidder will be beneficially entitled to the Scheme Shares transferred to it under the Scheme pending registration by Target of the name and address of Bidder in the Target Register as the holder of the Scheme Shares.

9.6 Appointment of Bidder as attorney for Scheme Shares

- (a) From the Effective Date until Bidder is registered in the Target Register as the holder of all Scheme Shares, each Target Shareholder:
 - (i) without the need for any further act by that Target Shareholder, irrevocably appoints Bidder as its proxy to (and irrevocably appoints Bidder as its agent and attorney for the purpose of appointing any director or officer of Bidder as that

Target Shareholder's proxy and, where appropriate, its corporate representative to):

- (A) attend shareholders' meetings of Target;
 - (B) exercise the votes attaching to the Target Shares registered in the name of the Target Shareholder; and
 - (C) sign any Target Shareholders' resolution; and
- (ii) must take all other action in the capacity of a Target Shareholder as Bidder reasonably directs.
- (b) From the Effective Date until Bidder is registered in the Target Register as the holder of all Scheme Shares, no Target Shareholder may attend or vote at any meetings of Target Shareholders or sign any Target Shareholders' resolution (whether in person, by proxy or by corporate representative) other than under this clause 9.6.

9.7 Alterations and conditions to Scheme

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

9.8 Binding effect of Scheme

The Scheme binds Target and all of the Target Shareholders from time to time (including those who did not attend the Scheme Meeting, did not vote at that meeting or voted against the Scheme) and, to the extent of any inconsistency, overrides the constitution of Target.

9.9 Enforcement of Deed Poll

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

9.10 Notices

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

9.11 Costs and duty

- (a) Subject to clause 9.11(b), each of Bidder and Target will pay their share of the costs of the Scheme in accordance with the Implementation Deed.
- (b) Bidder will pay all duty (including stamp duty and any related fines, penalties and interest) payable on or in connection with the transfer by Scheme Shareholders of the Scheme Shares to Bidder pursuant to the Scheme.

9.12 Governing law and jurisdiction

This Scheme is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning the Scheme.

Annexure B – Form of Deed Poll

Cascade Parent Limited (Company Registration Number 129147)

Deed Poll

Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000 Australia
T +61 2 9230 4000
F +61 2 9230 5333
www.allens.com.au

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This Deed Poll is made on

Parties

- 1 **Cascade Parent Limited** (Company Registration Number 129147) of 2nd Floor Sir Walter Raleigh House, 48-50 Esplanade, St. Helier, Jersey JE2 3QB (**Bidder**).

In favour of

Each Scheme Shareholder

Recitals

- A Bidder and Nitro Software Limited (ACN 079 215 419) (**Target**) have entered into an implementation deed dated [] (the **Implementation Deed**).
- B Target has agreed in the Implementation Deed to propose the Scheme, pursuant to which, subject to the satisfaction or waiver of certain conditions precedent, Bidder will acquire all of the Scheme Shares from Scheme Shareholders for the Scheme Consideration.
- C In accordance with the Implementation Deed, Bidder is entering into this Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders that it will observe and perform the obligations contemplated of it under the Scheme.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

Terms defined in the Scheme, a copy of which is set out in the Schedule to this Deed Poll, have the same meaning in this Deed Poll, unless the context requires otherwise.

1.2 Interpretation

The provisions of clause 1.2 of the Scheme form part of this Deed Poll as if set out in full in this Deed Poll, and on the basis that references to 'this document' in that clause are references to 'this Deed Poll'.

2 Nature of Deed Poll

Bidder acknowledges that:

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

3 Conditions Precedent and Termination

3.1 Conditions precedent

Bidder's obligations under this Deed Poll are subject to the Scheme becoming Effective.

3.2 Termination

If the Implementation Deed is terminated before the Effective Date or the Scheme does not become Effective on or before the End Date, the obligations of Bidder under this Deed Poll will

automatically terminate and the terms of this Deed Poll will be of no further force or effect, unless Target and Bidder otherwise agree in accordance with the Implementation Deed.

3.3 Consequences of termination

If this Deed Poll is terminated under clause 3.2, then, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Bidder is released from its obligations under this Deed Poll, except those obligations under clause 8.6; and
- (b) each Scheme Shareholder retains any rights, powers or remedies that Scheme Shareholder has against Bidder in respect of any breach of its obligations under this Deed Poll that occurred before termination of this Deed Poll.

4 Compliance with Scheme Obligations

4.1 Obligations of Bidder

Subject to clause 3, in consideration for the transfer to Bidder of the Scheme Shares in accordance with the Scheme, Bidder covenants in favour of each Scheme Shareholder that it will observe and perform all obligations contemplated of it under the Scheme, including the relevant obligations relating to the provision of the Scheme Consideration in accordance with the terms of the Scheme.

5 Representations and Warranties

Bidder makes the following representations and warranties.

- (a) **(Status)** It is a corporation validly existing under the laws of the place of its incorporation.
- (b) **(Power)** It has the power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll.
- (c) **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll.
- (d) **(Document binding)** This Deed Poll is its valid and binding obligation enforceable in accordance with its terms, subject to any necessary stamping and registration.
- (e) **(Transactions permitted)** The execution and performance by it of this Deed Poll and each transaction contemplated by this Deed Poll did not and will not violate in any respect a provision of:
 - (i) a law, judgment, ruling, order or decree binding on it; or
 - (ii) its constitution or other constituent documents.

6 Continuing Obligations

This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) Bidder having fully performed its obligations under this Deed Poll; and
- (b) termination of this Deed Poll under clause 3.

7 Further Assurances

Bidder will, on its own behalf and, to the extent authorised by the Scheme, on behalf of each Scheme Shareholder, do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Deed Poll and the transactions contemplated by it.

8 General

8.1 Notices

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

- (a) must be in writing and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the first and last name and position or title of the sender or person duly authorised by the sender);
- (b) subject to clause (c), 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 email to the address or email address below or the address or email address last notified by the intended recipient to the sender:

- (i) to Target:

Address: Level 7 330 Collins Street
Melbourne VIC 3000
Email: Kurt.Johnson@gonitro.com
Attention: Kurt Johnson
With copy to (which by itself does not constitute a Notice):
Tom.Story@allens.com.au;
Noah.Obradovic@allens.com.au
- (ii) to Bidder:

Address: 1600 Carling Avenue, Ottawa,
Canada K1Z 8R7
Email: connie.chen@alludo.com
Attention: Chief Legal Officer
With copy to (which by itself does not constitute a Notice):
akaue@gtlaw.com.au;
leo.greenberg@kirkland.com;
ravi.agarwal@kirkland.com

- (c) will be taken to satisfy the obligations in clause (b) if:
 - (i) where a party changes its address and fails to notify the other party of the new address, the Notice is delivered to the intended recipient at that new address; and
 - (ii) where an individual named in clause (b) ceases to work in the relevant role or ceases to work for the relevant party and the relevant party fails to notify the other party in accordance with this clause 8.1 of an alternative individual to whom Notices should be addressed (and, if relevant, an alternative email address to which Notices should be sent), the Notice is addressed to (and, if relevant, delivered to the email address of) an individual in the same or equivalent role at the intended recipient; and

- (d) 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 express post, to an address in the same country, two Business Days after the date of posting;
 - (iii) in the case of delivery by any other method of post, five Business Days after the date of posting (if posted to an address in the same country) or 10 Business Days after the date of posting (if posted to an address in another country); and
 - (iv) in the case of email, at the earliest of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the intended recipient confirms receipt of the email by reply email; and
 - (C) three hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that three hour period, an automated message that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made:

- (v) in the case of delivery by hand or post, at a time that is later than 5:00pm;
- (vi) in the case of delivery by email, at a time that is later than 7:00pm; or
- (vii) on a day that is not a business day,

in the place specified by the intended recipient as its postal address under clause (b), 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.

8.2 No waiver

No failure to exercise nor any delay in exercising any right, power or remedy by Bidder or by any Scheme Shareholder operates as a waiver. A single or partial 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 of any right, power or remedy on one or more occasions does not operate as a waiver of that right, power or remedy on any other occasion, or of any other right, power or remedy. A waiver is not valid or binding on the person granting that waiver unless made in writing.

8.3 Remedies cumulative

The rights, powers and remedies of Bidder and of each Scheme Shareholder under this Deed Poll are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

8.4 Amendment

No amendment or variation of this Deed Poll is valid or binding unless:

- (a) either:
 - (i) before the Second Court Date, the amendment or variation is agreed to in writing by Target and Bidder (which such agreement may be given or withheld without reference to or approval by any Target Shareholder); or

- (ii) on or after the Second Court Date, the amendment or variation is agreed to in writing by Target and Bidder (which such agreement may be given or withheld without reference to or approval by any Target Shareholder), and is approved by the Court; and
- (b) Bidder enters into a further deed poll in favour of the Scheme Shareholders giving effect to that amendment or variation.

8.5 Assignment

The rights and obligations of Bidder and of each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, encumbered or otherwise dealt with and no person may attempt, or purport, to do so without the prior consent of Bidder and Target.

8.6 Costs and duty

Bidder must bear their own costs arising out of the negotiation, preparation and execution of this Deed Poll. All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this Deed Poll and any instrument executed under or any transaction evidenced by this Deed Poll must be borne by Bidder. Bidder must indemnify each Scheme Shareholder on demand against any liability for that duty (including any related fines, penalties and interest).

8.7 Governing law and jurisdiction

This Deed Poll is governed by the laws of New South Wales. Bidder submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Deed Poll.

Schedule

Scheme

Executed and delivered as a Deed in New South Wales.

Executed as a deed by **Cascade Parent Limited (Company Registration Number 129147)** in the presence of:

Authorised Signatory

Witness Signature

Print Name

Print Name