



## ASX Release

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### **MSD and Viralytics Announce Acquisition Agreement, Expanding MSD's Leading Immuno-Oncology Pipeline**

***Proposed Acquisition of Viralytics Would Add Investigational Oncolytic Immunotherapy, CAVATAK<sup>®</sup>, Supporting MSD's Strategy to Broaden Its Pipeline with the Best Scientific Assets***

KENILWORTH, N.J. & SYDNEY, AUSTRALIA, February 21, 2018 – MSD (tradename of Merck & Co., Inc., Kenilworth, N.J., USA (NYSE: MRK)), and Viralytics Limited (ASX: VLA, OTC: VRACY) today announced that the companies have signed a definitive agreement under which it is proposed that MSD, through a subsidiary, will acquire Viralytics, an Australian publicly traded company focused on oncolytic immunotherapy treatments for a range of cancers by way of a scheme of arrangement (Scheme) for AUD 1.75 cash per Viralytics share. The proposed acquisition values the total issued shares in Viralytics at approximately AUD 502 million (USD 394 million). The cash consideration of AUD 1.75 per share represents a premium of 160% to the one month volume weighted average price (VWAP) of Viralytics shares.

On completion of the transaction, Viralytics will become a wholly-owned subsidiary of MSD, and MSD will gain full rights to CAVATAK<sup>®</sup> (CVA21), Viralytics's investigational oncolytic immunotherapy. CAVATAK is based on Viralytics's proprietary formulation of an oncolytic virus (Coxsackievirus Type A21) that has been shown to preferentially infect and kill cancer cells.

CAVATAK is currently being evaluated in multiple Phase 1 and Phase 2 clinical trials, both as an intratumoural and intravenous agent, including in combination with MSD's KEYTRUDA<sup>®</sup> (pembrolizumab), an anti-PD-1 therapy. Under an agreement between Viralytics and a subsidiary of

MSD, announced in November 2015, a study is investigating the use of the CAVATAK and KEYTRUDA combination in melanoma, prostate, lung and bladder cancers.

“Viralytics’s approach of engaging the innate immune system to target and kill cancer cells complements our immuno-oncology strategy, which is focused on the rapid advancement of innovative monotherapy approaches and synergistic combinations to help the broadest range of cancer patients,” said Dr. Roy Baynes, senior vice president and head of global clinical development, chief medical officer, Merck Research Laboratories. “We are eager to further build on Viralytics’s science as we continue our efforts to harness the immune system to improve long-term disease control and survival outcomes for people with cancer.”

“This proposed acquisition culminates years of dedicated work by the Viralytics team and represents an opportunity for significant value creation for our shareholders. Viralytics is proud to have progressed its lead investigational candidate CAVATAK to Phase 1 and Phase 2 clinical trials and, we believe that MSD, the leader in immuno-oncology, is best suited to advance CAVATAK for the benefit of patients globally, and to realise its potential,” said Dr. Malcolm McColl, managing director and chief executive officer, Viralytics.

The board of directors of Viralytics unanimously recommends that its company’s shareholders vote in favour of the Scheme, subject to there being no superior proposal and an independent expert concluding that the Scheme is in the best interest of the company’s shareholders. It is the intention of Viralytics’s directors to vote all the shares of Viralytics held or controlled by them in favour of the Scheme, subject to those same qualifications. MSD and Viralytics anticipate the transaction will be implemented by the second quarter of 2018. Implementation of the transaction is subject to a Viralytics’s shareholder vote and customary regulatory approvals.

Viralytics’s largest shareholder, Lepu Medical Group, which currently holds voting power in 13 percent of the Viralytics’s shares, has informed Viralytics that it intends to vote the shares it holds at the time of the Scheme meeting in favour of the Scheme, in the absence of a superior proposal and subject to the Viralytics directors maintaining their recommendation to vote in favour of the Scheme.

Chairman of Lepu Medical Group, Dr. Pu stated, “Lepu Medical Group acknowledges this is an attractive opportunity for Viralytics and, as such, is supportive of the transaction. In line with its existing strategy, Lepu Medical Group intends to continue to focus on developing immuno-oncology therapies, including in collaboration with companies globally.”

### **Transaction Terms and Implementation Process**

The Scheme proposes that MSD acquires 100 percent of the issued shares in Viralytics. Implementation of the Scheme will be subject to customary conditions, including Viralytics

shareholder approval, court approval, regulatory approval, an independent expert concluding, and continuing to conclude, that the Scheme is in the best interest of shareholders, and no material adverse change or prescribed event occurring.

More information on the Scheme and conditions is provided in a copy of the scheme implementation agreement, which has been appended to this announcement. The agreement also contains exclusivity provisions that are customary in Australia, including “no shop”, “no talk” and “no due diligence” provisions, a break fee, as well as a notification obligation and matching right. The “no talk”, “no due diligence” and notification obligation provisions are subject to the directors’ fiduciary obligations.

A scheme booklet is expected to be dispatched to Viralytics shareholders in April 2018. The scheme booklet will contain information relating to the Scheme, the independent expert’s report on whether the Scheme is in the best interests of Viralytics shareholders, the reasons for the directors’ unanimous recommendation and details of the Scheme meeting and other matters relevant to Viralytics shareholders’ vote on the Scheme.

### **Indicative timetable**

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

<b>Key milestones</b>	<b>Date (AEDT)</b>
Announcement of the proposed acquisition	February 21, 2018
First court hearing	April 23, 2018
Scheme booklet dispatched to Viralytics shareholders	April 27, 2018
Viralytics shareholder meeting to approve the scheme	May 28, 2018
Final court hearing	June 4, 2018
Implementation date	June 20, 2018

### **Advisers**

Credit Suisse Securities (USA) LLC is serving as financial adviser to MSD, and Baker & McKenzie is serving as MSD’s legal counsel. Lazard is serving as financial adviser and McCullough Robertson is serving as legal counsel to Viralytics.

### **About CAVATAK**

Viralytics is developing oncolytic immunotherapy treatments for a range of cancers. The company’s lead investigational product, CAVATAK<sup>®</sup>, is currently being studied in clinical trials for the

treatment of melanoma, as well as bladder and lung cancers. CAVATAK is a proprietary formulation of the Coxsackievirus Type A21 (CVA21) that preferentially binds to specific 'receptor' proteins highly expressed on multiple cancer types. CAVATAK acts to kill both local and metastatic cancer cells through cell lysis and the potential generation of an immune response against the cancer cells – a two-pronged mechanism of action known as oncolytic immunotherapy.

### **About Viralytics Limited**

Viralytics is focused on the development and commercialisation of oncolytic immunotherapies that harness the power of specific viruses to preferentially infect and kill cancer cells. Based in Sydney Australia, the company is listed on the Australian Securities Exchange (ASX: VLA) while Viralytics's ADRs also trade under VRACY on the US OTCQX International market. For more information, please visit [www.viralytics.com](http://www.viralytics.com).

### **MSD's Focus on Cancer**

MSD's goal is to translate breakthrough science into innovative oncology medicines to help people with cancer worldwide. At MSD, helping people fight cancer is our passion and supporting accessibility to our cancer medicines is our commitment. Our focus is on pursuing research in immuno-oncology and we are accelerating every step in the journey – from lab to clinic – to potentially bring new hope to people with cancer.

As part of our focus on cancer, MSD is committed to exploring the potential of immuno-oncology with one of the fastest-growing development programs in the industry. We are currently executing an expansive research program evaluating our anti-PD-1 therapy across more than 30 tumour types. We also continue to strengthen our immuno-oncology portfolio through strategic acquisitions and are prioritising the development of several promising immunotherapeutic candidates with the potential to improve the treatment of advanced cancers.

For more information about our oncology clinical trials, visit [www.merck.com/clinicaltrials](http://www.merck.com/clinicaltrials).

### **About MSD**

For more than a century, MSD, a leading global biopharmaceutical company, has been inventing for life, bringing forward medicines and vaccines for the world's most challenging diseases. MSD is a trade name of Merck & Co., Inc., with headquarters in Kenilworth, N.J., U.S.A. Through our prescription medicines, vaccines, biologic therapies and animal health products, we work with customers and operate in more than 140 countries to deliver innovative health solutions. We also demonstrate our commitment to increasing access to health care through far-reaching policies, programs and partnerships. Today, MSD continues to be at the forefront of research to advance the

prevention and treatment of diseases that threaten people and communities around the world - including cancer, cardio-metabolic diseases, emerging animal diseases, Alzheimer's disease and infectious diseases including HIV and Ebola.

For more information, visit [www.merck.com](http://www.merck.com) and connect with us on [Twitter](#), [Facebook](#), [Instagram](#), [YouTube](#) and [LinkedIn](#).

### **Viralytics Forward-Looking Statements**

Certain statements made in this presentation are forward looking statements within the meaning of the safe harbor provisions of the United States Private Securities Litigation Reform Act of 1995. These forward-looking statements are not historical facts but rather are based on Viralytics's current expectations, estimates, assumptions and projections about the industry in which Viralytics operates. Material referred to in this document that use the words 'estimate', 'project', 'intend', 'expect', 'plan', 'believe', 'guidance' and similar expressions are intended to identify forward looking statements and should be considered an at-risk statement. These forward-looking statements are not a guarantee of future performance and involve known and unknown risks and uncertainties, some of which are beyond the control of Viralytics or which are difficult to predict, which could cause the actual results, performance or achievements of Viralytics to be materially different from those which may be expressed or implied by these statements. These statements are based on our management's current expectations and are subject to a number of uncertainties and risks that could change the results described in the forward-looking statements. Risks and uncertainties include, but are not limited to, general industry conditions and competition, general economic factors, the impact of pharmaceutical industry regulation and health care legislation in the United States and internationally, and challenges inherent in new product development. Investors should be aware that there are no assurances that results will not differ from those projected and Viralytics cautions shareholders and prospective shareholders not to place undue reliance on these forward-looking statements, which reflect the view of Viralytics only as of the date of this presentation. Viralytics is not under a duty to update any forward-looking statement as a result of new information, future events or otherwise, except as required by law or by any appropriate regulatory authority.

### **Forward-Looking Statement of Merck & Co., Inc., Kenilworth, N.J., USA**

This news release of Merck & Co., Inc., Kenilworth, N.J., USA (the "company") includes "forward-looking statements" within the meaning of the safe harbor provisions of the U.S. Private Securities Litigation Reform Act of 1995. These statements are based upon the current beliefs and

expectations of the company's management and are subject to significant risks and uncertainties. There can be no guarantees with respect to pipeline products that the products will receive the necessary regulatory approvals or that they will prove to be commercially successful. If underlying assumptions prove inaccurate or risks or uncertainties materialise, actual results may differ materially from those set forth in the forward-looking statements.

Risks and uncertainties include but are not limited to, general industry conditions and competition; general economic factors, including interest rate and currency exchange rate fluctuations; the impact of pharmaceutical industry regulation and health care legislation in the United States and internationally; global trends toward health care cost containment; technological advances, new products and patents attained by competitors; challenges inherent in new product development, including obtaining regulatory approval; the company's ability to accurately predict future market conditions; manufacturing difficulties or delays; financial instability of international economies and sovereign risk; dependence on the effectiveness of the company's patents and other protections for innovative products; and the exposure to litigation, including patent litigation, and/or regulatory actions.

The company undertakes no obligation to publicly update any forward-looking statement, whether as a result of new information, future events or otherwise. Additional factors that could cause results to differ materially from those described in the forward-looking statements can be found in the company's 2016 Annual Report on Form 10-K and the company's other filings with the Securities and Exchange Commission (SEC) available at the SEC's Internet site ([www.sec.gov](http://www.sec.gov)).

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## Scheme implementation agreement

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Merck Sharp & Dohme (Holdings) Pty Ltd ACN 000 235 245

Viralytics Limited ACN 010 657 351

# Table of contents

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<b>Parties.....</b>	<b>1</b>
<b>Background.....</b>	<b>1</b>
<b>Agreed terms .....</b>	<b>1</b>
<b>1 Definitions and interpretation.....</b>	<b>1</b>
1.1 Definitions	1
1.2 Interpretation	16
1.3 Headings	17
<b>2 Agreement to propose and implement the Scheme .....</b>	<b>17</b>
2.1 The Target to propose the Scheme	17
2.2 Agreement to implement Scheme	17
<b>3 Conditions precedent .....</b>	<b>17</b>
3.1 Conditions precedent	17
3.2 Benefit of certain Conditions Precedent	17
3.3 Share splitting	17
3.4 Waiver of Conditions Precedent	18
3.5 Reasonable endeavours	18
3.6 Regulatory matters	18
3.7 Notices in relation to Conditions Precedent	19
3.8 Effect of waiver or non-fulfilment	20
3.9 Consultation on failure of Condition Precedents	20
3.10 Failure to agree	20
3.11 Regulatory Approval	21
<b>4 Outline of Scheme .....</b>	<b>21</b>
4.1 Agreement to propose and implement Scheme	21
4.2 Outline of Scheme	21
4.3 No amendments to Scheme without consent	21
4.4 Scheme Consideration	21
4.5 Bidder Nominee	22
4.6 Target Options	22
4.7 Target Performance Rights	23
<b>5 Co-operation and timing .....</b>	<b>23</b>
5.1 General obligations	23
5.2 Transaction Implementation Committee	23



5.3	Access to people and information	24
5.4	Access to Target employees	24
5.5	Audits	25
5.6	Right to separate representation	25
5.7	Business matters	25
<b>6</b>	<b>Implementation obligations of the parties.....</b>	<b>25</b>
6.1	Target's obligations	25
6.2	Bidder's obligations	25
<b>7</b>	<b>Scheme Booklet.....</b>	<b>26</b>
7.1	Preparation	26
7.2	Content of the Scheme Booklet	26
7.3	Bidder Information	27
7.4	Disagreement on content	27
7.5	Verification	27
<b>8</b>	<b>Conduct of business .....</b>	<b>27</b>
8.1	The Target's obligations	27
8.2	Procedure for resolving differences	29
<b>9</b>	<b>Board composition .....</b>	<b>29</b>
<b>10</b>	<b>Removal of Target from official list of ASX .....</b>	<b>29</b>
<b>11</b>	<b>Exclusivity .....</b>	<b>30</b>
11.1	Termination of existing discussions	30
11.2	No-shop	30
11.3	No-talk	30
11.4	No due diligence	30
11.5	Notice of unsolicited approach	31
11.6	Exceptions	31
11.7	Matching right	31
11.8	Legal advice	32
<b>12</b>	<b>Restriction on acquiring securities.....</b>	<b>32</b>
<b>13</b>	<b>Break fees .....</b>	<b>32</b>
13.1	Background	32
13.2	Payment by the Target to the Bidder	33
13.3	Payment by the Bidder to the Target	34
13.4	Demand for payment	34
13.5	Exclusive remedy	34
<b>14</b>	<b>Representations and warranties .....</b>	<b>34</b>

14.1	Target's representations and warranties	34
14.2	Target's indemnity	35
14.3	Target warranty certificate	35
14.4	Bidder's representations and warranties	35
14.5	Bidder's indemnity	35
14.6	Bidder warranty certificate	35
14.7	Maximum recovery	35
14.8	Parties to notify of potential breaches	35
<b>15</b>	<b>Deeds of access, indemnity and insurance.....</b>	<b>36</b>
<b>16</b>	<b>Court proceedings .....</b>	<b>37</b>
16.1	Appeal process	37
16.2	Defence of proceedings	37
16.3	Costs	37
<b>17</b>	<b>Termination.....</b>	<b>37</b>
17.1	Termination events	37
17.2	Termination	38
17.3	Effect of termination	38
17.4	Damages	39
<b>18</b>	<b>Releases .....</b>	<b>39</b>
18.1	The Target release	39
18.2	Bidder release	39
<b>19</b>	<b>Public announcements .....</b>	<b>40</b>
19.1	No Announcement	40
19.2	Notice of Announcement	40
<b>20</b>	<b>Confidential information .....</b>	<b>40</b>
20.1	Obligations of confidence	40
20.2	Exclusions	40
20.3	Restriction on disclosure	41
20.4	Knowledge of Confidential Information	41
20.5	Injunctive relief	41
20.6	Continuing obligation	42
<b>21</b>	<b>Duty, costs and expenses.....</b>	<b>42</b>
21.1	Stamp duty	42
21.2	Costs and expenses	42
<b>22</b>	<b>GST.....</b>	<b>42</b>
<b>23</b>	<b>General.....</b>	<b>42</b>

23.1	Amendments	42
23.2	Counterparts	43
23.3	No merger	43
23.4	Entire agreement	43
23.5	Further assurances	43
23.6	No waiver	43
23.7	Discretion in exercising rights	43
23.8	No liability for loss	43
23.9	Approvals and consents	43
23.10	Conflict of interest	43
23.11	Remedies cumulative	44
23.12	Indemnities	44
23.13	Enforceability	44
23.14	Construction	44
23.15	Governing law and jurisdiction	44
23.16	Severability	44
23.17	Consents	44
23.18	Notices	44
<b>Schedule 1</b>		<b>47</b>
	<b>The Target Prescribed Events</b>	<b>47</b>
<b>Schedule 2</b>		<b>50</b>
	<b>Conditions Precedent (clause 3.1)</b>	<b>50</b>
<b>Schedule 3</b>		<b>52</b>
	<b>Timetable (clause 5.1)</b>	<b>52</b>
<b>Schedule 4</b>		<b>53</b>
	<b>The Target's Obligations (clause 6.1)</b>	<b>53</b>
<b>Schedule 5</b>		<b>55</b>
	<b>Bidder's Obligations (clause 6.2)</b>	<b>55</b>
<b>Schedule 6</b>		<b>56</b>
	<b>The Target's representations and warranties (clause 14.1)</b>	<b>56</b>
<b>Schedule 7</b>		<b>60</b>
	<b>Bidder's representations and warranties (clause 14.4)</b>	<b>60</b>
<b>Execution</b>		<b>62</b>
<b>Annexure A</b>		<b>64</b>
	<b>Scheme</b>	<b>64</b>
<b>Annexure B</b>		<b>81</b>
	<b>Deed Poll</b>	<b>81</b>

<b>Annexure C.....</b>	<b>89</b>
<b>Registered Intellectual Property.....</b>	<b>89</b>

# Scheme implementation agreement

Dated 21 February 2018

## Parties

<b>Bidder</b>	<b>Merck Sharp &amp; Dohme (Holdings) Pty Ltd ACN 000 235 245</b> of Building A, Level 1, 26-38 Talavera Road, Macquarie Park, NSW 2113
<b>Target</b>	<b>Viralytics Limited ACN 010 657 351</b> of Suite 305, Level 3, 66 Hunter Street, Sydney, NSW 2000

## Background

- A The Bidder wishes to acquire all of the Target Shares by means of a scheme of arrangement under Part 5.1 Corporations Act between the Bidder and the Scheme Participants.
- B At the request of the Bidder, the Target intends to propose the Scheme and issue the Scheme Booklet to the Target Shareholders.
- C The Bidder and the Target have agreed to implement the Scheme on the terms and conditions of this document.

## Agreed terms

### 1 Definitions and interpretation

#### 1.1 Definitions

In this document:

Term	Definition
<b>Announcement</b>	means a press release, announcement or other public statement (other than a draft explanatory statement, an explanatory statement or a supplementary explanatory statement as required under Part 5.1 of the Corporations Act).
<b>Anti-Bribery Laws</b>	means: <ul style="list-style-type: none"> <li>(a) the Australian Criminal Code;</li> <li>(b) the U.S. Foreign Corrupt Practices Act of 1977;</li> <li>(c) the U.K. Bribery Act of 2010;</li> <li>(d) any applicable law promulgated to implement the OECD Convention on</li> </ul>

Term	Definition
	Combating Bribery of Foreign Public Officials in International Business Transactions, signed on 17 December 1997; and
	(e) any other applicable law of similar purpose and scope in any jurisdiction, including books and records offences relating directly or indirectly to a bribe.
<b>ASIC</b>	means the Australian Securities & Investments Commission.
<b>ASX</b>	means ASX Limited ACN 008 624 691 or the securities exchange operated by it (as the case requires).
<b>Authorised Officer</b>	means, in respect of a party, a director or secretary of the party or any other person appointed by a party to act as an Authorised Officer under this document.
<b>Bidder Break Fee</b>	means an amount equal to the Break Fee payable by the Bidder to the Target under clause 13.3.
<b>Bidder Board</b>	means the board of directors of the Bidder.
<b>Bidder Group</b>	means the Bidder and its Subsidiaries.
<b>Bidder Indemnified Parties</b>	means the Bidder's officers, employees and advisers, its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.
<b>Bidder Information</b>	<p>means such information regarding the Bidder and its Related Bodies Corporate that is reasonably requested by the Target or the Independent Expert and provided by or on behalf of the Bidder:</p> <ul style="list-style-type: none"> <li>(a) to the Target pursuant to clause 5.3;</li> <li>(b) to the Independent Expert to enable the Independent Expert's Report to be completed;</li> <li>(c) to the Target to enable the Scheme Booklet to be completed; and</li> <li>(d) to enable applications for Regulatory Approvals to be made.</li> </ul> <p>For the avoidance of doubt, Bidder Information does not include information about the Target Group (except to the extent it relates to any statement of intention relating to the Target Group following the Effective Date).</p>
<b>Bidder Representative</b>	means Elizabeth Naldi-Jacob or such other representative nominated by the Bidder in writing to the Target.

Term	Definition
<b>Bidder Warranties</b>	means the warranties set out in Schedule 7.
<b>Break Fee</b>	<p>means a fee of \$5,022,092 being the aggregate of:</p> <p>(a) \$1.75 per Target Share multiplied by the issued share capital of Target; and</p> <p>(b) the total Option Consideration payable under this document (of \$15,249,115), multiplied by 1%.</p>
<b>Business Contract</b>	means all agreements, leases, contracts and arrangements to which the Target or any Subsidiary of the Target is a party.
<b>Business Day</b>	means a day that is not a Saturday, Sunday or public holiday in Sydney, New South Wales or New Jersey, United States of America.
<b>Competing Transaction</b>	<p>means any proposal, agreement, arrangement or transaction, which, if entered into or completed substantially in accordance with its terms, would have the same effect as, or be similar in economic terms to the Scheme or any other transaction described in paragraphs (a) to (g) below arising after the date of this document:</p> <p>(a) a third party (either alone or with its associates) acquiring (directly or indirectly) (including by way of joint venture, alliance, dual listed company structure or otherwise) any interest in all or a substantial part of the business or assets of the Target;</p> <p>(b) a third party (either alone or with its associates) becoming (directly or indirectly) the holder or controller of, or otherwise acquiring, all or substantially all of the shares in the Target;</p> <p>(c) a third party (either alone or with its associates) acquiring Control of, or merging or amalgamating with the Target Group, including by way of takeover bid, scheme of arrangement or capital reduction or contractual arrangement;</p> <p>(d) the Target implementing any reorganisation of capital or dissolution;</p> <p>(e) a third party acquiring (whether directly or indirectly) a Relevant Interest in, or becoming the holder of, or having the right to acquire a legal, beneficial, or economic interest in, or control of, 20% or more of the Target Shares;</p>

Term	Definition
	<p>(f) enter into any transaction or arrangement which would cause the Directors to change their recommendation from a recommendation in favour of Scheme; or</p> <p>(g) any other transaction which affects, prejudices or jeopardises, or might reasonably be expected to affect, prejudice or jeopardise, the consummation of the Scheme.</p>
<b>Conditions Precedent</b>	means the conditions precedent set out in Schedule 2.
<b>Confidential Information</b>	<p>means:</p> <p>(a) the terms of this document, the parties' negotiations and information relating to the Scheme;</p> <p>(b) any information relating to the business and affairs of a party;</p> <p>(c) any information relating to the customers, clients, employees, subcontractors or other persons doing business with a party;</p> <p>(d) information which is by its nature confidential;</p> <p>(e) information which is designated as confidential by that party; or</p> <p>(f) information which the other party knows or ought to know, is confidential,</p> <p>and includes all trade secrets, knowhow, financial information and other commercially valuable information of that party.</p>
<b>Control</b>	has the meaning given to that term in the Corporations Act.
<b>Controller</b>	has the meaning given to that term in section 50AA of the Corporations Act.
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth).
<b>Corporations Regulations</b>	means the <i>Corporations Regulations 2001</i> (Cth).
<b>Court</b>	means a court of competent jurisdiction under the Corporations Act.
<b>Data Room</b>	means the data room established by the Target, an index to which has been initialled by, or on behalf of, each of the Bidder and the Target on or prior to the date of this document as a true record of those documents contained in the data room.



Term	Definition
<b>Deed Poll</b>	means a deed poll substantially in the form of Annexure B to this document.
<b>Disclosure Materials</b>	means: <ul style="list-style-type: none"> <li>(a) the documents and information contained in the Data Room or made available to the Bidder and its Representatives two Business Days prior to the date of this document; and</li> <li>(b) the document containing the written responses from the Target and its Representatives to requests for further information made by the Bidder and its Representatives, a copy of which has been initialled by, or on behalf of, the relevant parties for identification and delivered to the Bidder two Business Days prior to the date of this document.</li> </ul>
<b>Effective</b>	when used in relation to the Scheme, means the coming into effect, pursuant to section 411(10) Corporations Act, of the order of the Court made under section 411(4)(b) Corporations Act in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.
<b>Effective Date</b>	means the date on which the Scheme becomes Effective.
<b>Encumbrance</b>	means any one or more of the following: <ul style="list-style-type: none"> <li>(a) any interest, right or power that in substance secures payment or performance of any obligation, for example a mortgage, charge or security interest under the <i>Personal Property Securities Act 2009</i> (Cth);</li> <li>(b) any preferential or adverse interest of any kind;</li> <li>(c) a right to buy or use assets, for example a hire purchase agreement, option, licence, lease or agreement to purchase;</li> <li>(d) a right to set-off or right to withhold payment of a deposit or other money;</li> <li>(e) an easement, restrictive covenant, caveat or similar restriction over property;</li> <li>(f) an agreement to create any of the items referred to in paragraphs (a) to (e) above or to allow any of those items to exist; or</li> <li>(g) a notice under section 255 Tax Act</li> </ul>

Term	Definition
	(1936), subdivision 260-A in schedule 1 <i>Taxation Administration Act 1953</i> (Cth) or any similar legislation.
<b>End Date</b>	means 31 July 2018.
<b>Exclusivity Period</b>	means the period from and including the date of this document to the earlier of: <ul style="list-style-type: none"> <li>(a) the termination of this document in accordance with its terms;</li> <li>(b) the Effective Date; and</li> <li>(c) the End Date.</li> </ul>
<b>Fairly Disclosed</b>	means disclosed in sufficient detail so as to enable a reasonable and sophisticated buyer (or one of its Representatives) experienced in transactions similar to the Scheme and experienced in a business similar to any business conducted by the Target Group, to identify the nature and scope, budgeted cost (if any) and the intended timing (where applicable) for implementation of the relevant matter, event or circumstance.
<b>First Court Date</b>	means the first day on which an application is made to the Court, in accordance with item 11 of Schedule 4, for orders under section 411(1) Corporations Act convening the Scheme Meeting to consider the Scheme is heard.
<b>Government Agency</b>	means: <ul style="list-style-type: none"> <li>(a) a supranational, national, state, provincial, municipal or local government or government department or other fully or partially governmental-owned or governmental controlled body (including but not limited to commercial or non-profit bodies and administrative agencies);</li> <li>(b) a governmental, semi-governmental or judicial person or person with governmental or quasi-governmental authority or powers; or</li> <li>(c) a person (whether autonomous or not) who is charged with the administration of a law.</li> </ul>
<b>Governmental Official</b>	includes, but is not limited to: <ul style="list-style-type: none"> <li>(a) officers, employees or representatives of any national, regional, local or other Government Agency (as defined above);</li> <li>(b) any individual who, although temporarily or without payment, holds</li> </ul>

Term	Definition
	a public position, employment, or function;
	(c) officers, employees or representatives of entities in which a Government Agency owns an interest;
	(d) any private person acting in an official capacity for or on behalf of any Government Agency (such as a consultant retained by a Government Agency);
	(e) candidates for political office at any level;
	(f) political parties and their officials;
	(g) royal family members, including ones who may lack formal authority but could otherwise be influential in advancing the Bidder's or Target's business interests, through, for example, partially owning or managing a Government Agency; and
	(h) officers, employees or representatives of public international organisations.
<b>GST Act</b>	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Headcount Test</b>	means the requirement under section 411(4)(a)(ii)(A) Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of Target Shareholders present and voting, either in person or by proxy.
<b>HSR Act</b>	means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.
<b>HSR Filing</b>	means a filing under the federal premerger notification program established under the HSR Act.
<b>Implementation Date</b>	means the fifth Business Day following the Record Date or such other date agreed in writing by the Bidder and the Target.
<b>Independent Expert</b>	means the independent expert to be appointed by the Target under item 3 of Schedule 4.
<b>Independent Expert's Report</b>	means the report to be prepared by the Independent Expert expressing an opinion, for inclusion in the Scheme Booklet, on whether the Scheme is in the best interests of the Target Shareholders.
<b>Input Tax Credit</b>	has the meaning given to that term in the GST Act.
<b>Insolvent</b>	a person is Insolvent if:

Term	Definition
	(a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
	(b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property;
	(c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document);
	(d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
	(e) it is taken (under section 459F(1) Corporations Act) to have failed to comply with a statutory demand;
	(f) it is the subject of an event described in section 459C(2)(b) or section 585 Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject);
	(g) it is otherwise unable to pay its debts when they fall due; or
	(h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Term	Definition
<b>Intellectual Property</b>	all rights in any patent, copyright, database rights, registered design or other design right, utility model, trade mark (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade name, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights owned, used, or intended to be used, by the Target whether or not registered, registrable or patentable, and include rights in any patent, trade mark or design applications, rights in the nature of copyright, new plant varieties, circuit layouts, product formulations, processes, methods and inventions.
<b>Key Personnel Contract</b>	means a contract of employment (including any secondment agreement) of any key personnel (including Malcolm McColl, Robert Vickery, Darren Shafren, Jennifer Rosenthal or Rae Saltzstein) with the Target or any Subsidiary of the Target.
<b>Lease</b>	means a lease or licence held by the Target or any Subsidiary of the Target of real property.
<b>Liability Cap</b>	means: <ul style="list-style-type: none"> <li>(a) for the Bidder: <ul style="list-style-type: none"> <li>(i) for any claim in relation to a breach by the Bidder of its obligations under this document arising after the Effective Date, an amount equal to the aggregate of the Scheme Consideration (calculated by multiplying the Scheme Consideration by the number of Target Shares on issue at the date of this document) and the Option Consideration; and</li> <li>(ii) for any other claims, an amount equal to the Break Fee; and</li> </ul> </li> <li>(b) for the Target, an amount equal to the Break Fee.</li> </ul>
<b>Listing Rules</b>	means the official listing rules of the ASX.
<b>Losses</b>	means all claims, demands, damages, losses,

<b>Term</b>	<b>Definition</b>
	costs, expenses and liabilities.
<b>Material Contract</b>	<p>means a contract or commitment:</p> <p>(a) which is not entered into in the ordinary course of the business of the Bidder or the Target (as applicable); and</p> <p>(b) requiring total payments in excess of \$1,000,000.</p> <p>For the avoidance of doubt, a contract or commitment relating to clinical trials or the supply of drug substances will be treated as a contract entered into in the ordinary course of the Target's business.</p>
<b>Nominee</b>	has the meaning given in clause 4.5(a).
<b>Notification Date</b>	has the meaning given in clause 4.5(b).
<b>Option Cancellation Deed</b>	means a deed between the Target and each holder of Target Options under which those parties agree to cancel all of that holder's Options with effect on the Implementation Date, conditional on the Scheme becoming Effective, and any necessary ASX waivers being obtained, in return for the Option Consideration.
<b>Option Consideration</b>	means, in respect of the Target Options, the consideration payable for the cancellation of the Target Options, being the amount equal to the Scheme Consideration less the exercise price of the Target Option being cancelled.
<b>Optionholder</b>	means each person who is a holder of a Target Option.
<b>Record Date</b>	means 5.00pm on the fifth Business Day following the Effective Date or such other date as the Target and the Bidder agree in writing.
<b>Register</b>	means the share register of the Target and Registry has a corresponding meaning.
<b>Registered Intellectual Property</b>	means any patents owned by the Target and any trademarks owned by the Target that are the subject of registration or a pending application for registration, and includes registered intellectual property described in Annexure C..
<b>Regulator's Draft</b>	means the draft of the Scheme Booklet in a form acceptable to both parties which is provided to ASIC for approval in respect of the Scheme pursuant to section 411(2) Corporations Act.
<b>Regulatory Approval</b>	means any approval of a Regulatory Authority,

Term	Definition
<b>Regulatory Authority</b>	<p>including any approval under the HSR Act to the Scheme or any aspect of it which is necessary or desirable to implement the Scheme.</p> <p>includes:</p> <ul style="list-style-type: none"> <li>(a) ASX;</li> <li>(b) ASIC;</li> <li>(c) the Takeovers Panel;</li> <li>(d) a government or governmental, semi-governmental or judicial entity or authority;</li> <li>(e) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and</li> <li>(f) any regulatory organisation established under statute; and</li> <li>(g) any department or commission with any authority under or in respect of the operation of the HSR Act.</li> </ul>
<b>Regulatory Review Period</b>	<p>means the period from the date on which the Regulator's Draft is submitted to ASIC to the date on which ASIC confirms that it does not intend to make any submissions at the Court hearing on the First Court Date or otherwise object to the Scheme.</p>
<b>Related Body Corporate</b>	<p>has the meaning given to that term in the Corporations Act.</p>
<b>Relevant Interest</b>	<p>has the same meaning as given by sections 608 and 609 Corporations Act.</p>
<b>Representative</b>	<p>means any person acting for or on behalf of a party including any director, officer, employee, agent, contractor or professional advisor of a party.</p>
<b>Scheme</b>	<p>means the scheme of arrangement under Part 5.1 Corporations Act under which all the Target Shares will be transferred to the Bidder substantially in the form of Annexure A together with any amendment or modification made pursuant to section 411(6) Corporations Act.</p>
<b>Scheme Booklet</b>	<p>means the information booklet to be despatched to the Target Shareholders and approved by the Court and which must:</p> <ul style="list-style-type: none"> <li>(a) include the Scheme, an explanatory statement complying with the requirements of the Corporations Act, the Independent Expert's Report and, in the case of the Scheme, notices of</li> </ul>

Term	Definition
	meeting and proxy forms; and (b) comply with the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Target Constitution.
<b>Scheme Consideration</b>	means \$1.75 per share for each Target Share held by a Scheme Participant to be paid pursuant to the Scheme.
<b>Scheme Meeting</b>	means the meeting of the Target Shareholders to be convened by the Court under section 411(1) Corporations Act at which the Target Shareholders will vote in relation to the implementation of the Scheme.
<b>Scheme Participant</b>	means each person who is a Target Shareholder at the Record Date.
<b>Second Court Date</b>	means the first day on which an application made to the Court for an order under section 411(4)(b) Corporations Act approving the Scheme is heard.
<b>Share Splitting</b>	means the splitting by a holder of Target Shares of those Target Shares into two or more parcels of Target Shares whether or not it results in any change in beneficial ownership of the Target Shares.
<b>Subsidiaries</b>	has the meaning given to that term in the Corporations Act.
<b>Superior Proposal</b>	means a bona fide Competing Transaction which the Target Board, acting in good faith and after consultation with its financial and legal advisers, determines is: (a) reasonably capable of being completed taking into account all aspects of the Competing Transaction; and (b) more favourable to the Target Shareholders than the Scheme, taking into account all terms and conditions of the Competing Transaction.
<b>Takeovers Panel</b>	means the body called the Takeovers Panel continuing in existence under section 261 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth) and given various powers under Part 6.10 Corporations Act.
<b>Target Board</b>	means the board of directors of the Target.
<b>Target Break Fee</b>	means an amount equal to the Break Fee payable by the Target to the Bidder under clause 13.2.
<b>Target Constitution</b>	means the constitution of the Target.



Term	Definition
<b>Target Due Diligence Information</b>	<p>means any form of information, communication or disclosure contained in any of the following categories of information:</p> <ul style="list-style-type: none"> <li>(a) all documents in the Data Room;</li> <li>(b) all available by searches of public registers of: <ul style="list-style-type: none"> <li>(i) ASIC;</li> <li>(ii) IP Australia;</li> <li>(iii) the Personal Property Securities Register;</li> <li>(iv) the ASX;</li> <li>(v) the High Court, Federal Court and the Supreme Courts of each State and Territory,</li> </ul> </li> </ul> <p>on the date that is two Business Days before the date of this document.</p>
<b>Target Group</b>	means the Target and its Subsidiaries.
<b>Target Indemnified Parties</b>	means the Target's officers, employees, and advisers and its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.
<b>Target Information</b>	<p>means all information regarding the Target Group and businesses that is provided by the Target or is reasonably requested by The Bidder or the Independent Expert and provided by or on behalf of the Target:</p> <ul style="list-style-type: none"> <li>(a) to the Bidder pursuant to clause 5.3;</li> <li>(b) to the Independent Expert to enable the Independent Expert's Report to be completed;</li> <li>(c) in the Scheme Booklet, excluding The Bidder Information and the Independent Expert's Report; and</li> </ul> <p>to enable applications for Regulatory Approvals to be made.</p>
<b>Target Options</b>	means the 14,183,667 issued options to subscribe for the Target Shares.
<b>Target Performance Rights</b>	means the 131,500 performance rights on issue in the Target.
<b>Target Material Adverse Change</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) Malcolm McColl or Darren Shafren cease to be an employee of the Target or its Subsidiaries or an employee of Newcastle Innovation Ltd under an effective seconding contract to provide services to the Target or its Subsidiaries;</li> </ul> <p>or one or more occurrences or any fact, matter</p>

Term	Definition
	<p>or circumstance (whenever occurring) that is announced or becomes known to Bidder after the date of this document that individually, or when aggregated with all such occurrences, facts, matters or circumstances, has had or is reasonably likely to have one of the following effects:</p> <ul style="list-style-type: none"> <li>(b) to materially adversely affect the status or terms of any Regulatory Approval that is applicable to the Target Group;</li> <li>(c) to prevent or would be likely to prevent Target from materially discharging its obligations under this document;</li> <li>(d) to otherwise materially adversely affect the assets, financial results or prospects of the Target Group (as a whole) including: <ul style="list-style-type: none"> <li>(i) a clinical trial of CAVATAK being terminated or suspended in circumstances where the suspension is due to serious adverse events that are directly attributable to CAVATAK and is not resolved within a reasonable time frame;</li> <li>(ii) any material default by the Target Group or any member of the Target Group under their existing financing facilities; or</li> <li>(iii) any material litigation threatened or commenced against any member of the Target Group; or</li> <li>(iv) the termination of any Material Contract of the Target Group,</li> </ul> </li> </ul> <p>unless that occurrence, fact, matter or circumstance:</p> <ul style="list-style-type: none"> <li>(e) was previously approved by the Bidder;</li> <li>(f) was Fairly Disclosed in the Target Due Diligence Information on or before the date of this document at least two Business Days prior to the date of this document;</li> <li>(g) was publicly announced by Target or otherwise Fairly Disclosed in publicly available filings by Target or any of its Subsidiaries with ASX or ASIC at least two Business Days prior to the date of this document;</li> <li>(h) comprises a change in applicable law (or a change in accounting policy required</li> </ul>

Term	Definition
	<p>by law) after the date of this document;</p> <p>(i) is required to be undertaken by Target or its Subsidiary (as the case may be) in connection with the Scheme or this document, or Target or its Subsidiary (as the case may be) otherwise elects (acting reasonably) to undertake an action or event in connection with the Scheme or this document;</p> <p>(j) any change, event or circumstance generally affecting the industry that develops and commercialises oncolytic immunotherapies; or</p> <p>(k) comprises or results from a change in, or disruption to, the existing financial markets' conditions of Australia, Japan, the United Kingdom, the United States of America, Singapore, Hong Kong, China or the international financial markets or a change in national or international political, financial or economic conditions in Australia, Japan, the United Kingdom, the United States of America, Singapore, Hong Kong, China provided that the change or disruption does not have a disproportionate effect on the Target Group compared to other participants in the industries in which the Target Group's businesses operate.</p>
<b>Target Prescribed Event</b>	<p>means, except to the extent publicly disclosed prior to the date of this document or contemplated by this document or the Scheme, any of the events listed in Schedule 1 provided that a Target Prescribed Event listed in Schedule 1 will not occur where the Target has first consulted with the Bidder relation to the event and the Bidder approved the proposed event or has not objected to the proposed event within five Business Days of having being so consulted.</p>
<b>Target Representative</b>	<p>means Malcolm McColl or such other representative nominated by the Target in writing to the Bidder.</p>
<b>Target Share</b>	<p>means a fully paid ordinary share in the capital of the Target.</p>
<b>Target Shareholder</b>	<p>means each person registered in the Register as a holder of the Target Shares.</p>
<b>Target Warranties</b>	<p>means each warranty set out in Schedule 6.</p>
<b>Tax Invoice</b>	<p>has the meaning given to that term in the GST Act.</p>

Term	Definition
<b>Timetable</b>	means the timetable set out in Schedule 3 or as otherwise agreed in writing by the Target and the Bidder.
<b>Transaction Implementation Committee</b>	means a committee to be made up of such persons as the parties may agree from time to time.
<b>401(k) Plan</b>	means the tax-qualified defined contribution retirement plan established by Viralytics Services Inc. on 1 April 2017.

## 1.2 Interpretation

In this document:

- (a) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (b) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (e) a reference to this document includes the agreement recorded by this document;
- (f) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (h) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (i) a reference to Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (j) the words 'include', 'including', 'for example' or 'such as' when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (k) a reference to 'month' means calendar month; and
- (l) time is a reference to New South Wales time.

### **1.3 Headings**

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

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

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### **2.1 The Target to propose the Scheme**

The Target agrees to propose the Scheme in good faith on and subject to the terms and conditions of this document.

### **2.2 Agreement to implement Scheme**

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

## **3 Conditions precedent**

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### **3.1 Conditions precedent**

Subject to this clause 3, the Scheme will not become Effective unless and until each of the Conditions Precedent contained in Schedule 2 is satisfied or waived to the extent and in the manner set out in clauses 3.2 and 3.5.

### **3.2 Benefit of certain Conditions Precedent**

- (a) A Condition Precedent may only be waived in writing by a party entitled to the benefit of that Condition Precedent as noted in the table set out in Schedule 2 and will be effective only to the extent specifically set out in that waiver.
- (b) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.2 may do so in its absolute discretion.

### **3.3 Share splitting**

If the Scheme is not approved by Target Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and the Target and Bidder agree (acting reasonably) that Share Splitting or some other abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied, then Target must:

- (a) apply for an order of the Court of the type contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as counsel engaged by Target to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) Corporations Act by making an order to disregard the Headcount Test.

### 3.4 Waiver of Conditions Precedent

If either party waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause, then:

- (a) subject to subclause 3.4(b), that waiver precludes that party from suing the other for any breach of this document arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; but
- (b) if the waiver of the Condition Precedent is itself conditional and the other party:
  - (i) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with subclause 3.4(a); or
  - (ii) does not accept the condition, the Condition Precedent has not been waived.

### 3.5 Reasonable endeavours

Each party agrees to use reasonable endeavours to procure that:

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

### 3.6 Regulatory matters

- (a) Without limiting clause 3.5 each party:
  - (i) **(Regulatory Approvals)** must promptly apply for all relevant Regulatory Approvals (and in any event use their best efforts to make their respective HSR Filings within 30 days of the date of this document) and take all steps it is responsible for as part of the approval process, including responding to requests for information from the relevant Regulatory Authority at the earliest practicable time;
  - (ii) **(representation)** subject to the requirements of the relevant Regulatory Authority, has the right to be represented and make submissions at any proposed meeting with any Regulatory Authority relating to any Regulatory Approval; and
  - (iii) **(information)** must promptly provide to the other all information reasonably required by that party to make an application for a Regulatory Approval;
  - (iv) **(early termination)** will request early termination of the applicable waiting period in their HSR Filing;
  - (v) **(consultation)** subject to clause 3.6(b), must consult with the other party in advance in relation to all material communications (whether written or

oral, and whether direct or via a Representative) with any Regulatory Authority relating to any Regulatory Approval (**Communications**) and, without limitation:

- (A) provide the other party with drafts of any material written Communications to be sent to a Regulatory Authority, and consider in good faith, and make such amendments as the other party reasonably requires; and
- (B) provide copies of any material written Communications sent to or received from a Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so, and providing that either party may, in its absolute discretion, withhold or redact any information which is commercially sensitive to that party.

- (b) Nothing in this clause 3.6 requires the Bidder to consult with the Target requiring any HSR Filing, or any correspondence in relation to any HSR Filing (including correspondence with the United States Department of Justice or Federal Trade Commission or any other applicable Regulatory Authority) sought by the Bidder in respect of the Scheme.

### 3.7 Notices in relation to Conditions Precedent

Each party must:

- (a) **(notice of satisfaction)** promptly notify the other in writing of satisfaction of a Condition Precedent and must keep the other informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;
- (b) **(notice of failure)** immediately give written notice to the other of a breach or non-fulfilment of a Condition Precedent, or of any event which will prevent a Condition Precedent being satisfied;
- (c) **(notice of waiver)** upon receipt of a notice given under clause 3.7(b), give written notice to the other party as soon as reasonably possible (and in any event before 5.00pm on the day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question; and
- (d) **(certificates)** give to:
  - (i) the other (in draft), by 5.00pm on the Business Day immediately prior to the Second Court Date; and
  - (ii) the Court (in final form), on the Second Court Date,

a certificate signed as a deed and in a form acceptable to the Court (in respect of the Conditions Precedent relating to it, other than the Condition Precedent in item 4 of Schedule 2) whether or not those Conditions Precedent have been satisfied or waived.

### **3.8 Effect of waiver or non-fulfilment**

A waiver of such breach or non-fulfilment in respect of one Condition Precedent does not constitute:

- (a) a waiver of the breach or non-fulfilment of any other Condition Precedent resulting from the same event; or
- (b) a waiver of the breach or non-fulfilment of that Condition Precedent resulting from any other event.

### **3.9 Consultation on failure of Condition Precedents**

If:

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

then the parties must consult in good faith with a view to determining whether:

- (d) the Scheme, or the transaction contemplated by the Scheme, may proceed by way of alternative means or methods (including the types of transactions referred to in paragraphs (a) to (g) of the definition of Competing Proposal);
- (e) to extend the relevant time for satisfaction of the Condition Precedent or to adjourn or change the date of an application to the Court; or
- (f) to extend the End Date.

### **3.10 Failure to agree**

If the parties are unable to reach agreement within five Business Days of commencing consultations under clause 3.9 (or any shorter period ending at 8.00am on the Second Court Date):

- (a) subject to subclause 3.10(b), either party may terminate this document (and such termination will be in accordance with clause 17.1(e)(i)); or
- (b) if a Condition Precedent may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this document (and such termination will be in accordance with clause 17.1(e)(ii)),

in each case before 8.00am on the Second Court Date. A party will not be entitled to terminate this document pursuant to this clause 3.10 if the relevant Condition Precedent has not been satisfied or agreement cannot be reached as a result of:

- (c) a breach of this document by that party; or



- (d) a deliberate act or omission of that party (that is not permitted by this document).

### **3.11 Regulatory Approval**

A Regulatory Approval will be regarded as having been obtained notwithstanding that a condition or conditions may have been attached to that Regulatory Approval if that condition is, or, as the case may be, those conditions are:

- (a) where the Regulatory Approval is required to be obtained by the Target, reasonably satisfactory to the Target and the Bidder; and
- (b) where the Regulatory Approval is required to be obtained by the Bidder, reasonably satisfactory to the Bidder.

## **4 Outline of Scheme**

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

- (a) The Target agrees to propose and implement the Scheme in accordance with Part 5.1 of the Corporations Act and subject to the terms of this document, and must use all reasonable endeavours to do so in accordance with the Timetable.
- (b) The Bidder agrees to assist the Target to propose and implement the Scheme in accordance with Part 5.1 of the Corporations Act and subject to the terms of this document, and must use all reasonable endeavours to do so in accordance with the Timetable.

### **4.2 Outline of Scheme**

The parties agree that:

- (a) the Target must propose the Scheme in the form set out in Annexure A, or in such other form as the parties agree in writing; and
- (b) the Scheme, if approved by the Court, will be subject to any alterations or conditions that are made or required by the Court and approved in writing by each party.

### **4.3 No amendments to Scheme without consent**

The Target must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of the Bidder.

### **4.4 Scheme Consideration**

The Bidder undertakes and warrants to the Target (in its own right and separately as nominee for each of the Scheme Participants) that, if the Scheme becomes Effective, in consideration of the transfer to the Bidder of each Target Share held by a Scheme Participant under the terms of the Scheme, the Bidder will:

- (a) procure the payment to a trust account operated by the Target or the Target Share Registry as agent for the Target of cleared funds equal to the aggregate amount of the Scheme Consideration for all Target Shares by no later than the Business Day before the Implementation Date; and

- (b) accept the transfer of the Target Shares on the Implementation Date, in accordance with the Scheme and Deed Poll.

#### 4.5 Bidder Nominee

- (a) The Bidder may by notice to Target not later than five Business Days before an advanced draft of the Scheme Booklet is submitted to ASIC for review, nominate a Related Body Corporate of the Bidder (**Nominee**) to pay the Scheme Consideration and to be the entity to which the Target Shares will be transferred in accordance with this document and the Scheme if the Scheme becomes Effective.
- (b) From the date of receipt by the Target of the notice referred to in clause 4.5(a) (**Notification Date**) the Bidder must procure that the Nominee complies with this document and the Deed Poll as if the Nominee were a party to it in place of Bidder.
- (c) Despite clauses 4.5(a) and 4.5(b):
  - (i) the Bidder will continue to be bound by all of the obligations of the Bidder under this document and will not be released from any obligations or liabilities under this document following the Notification Date. However, the Target agrees that the Bidder will not be in breach of this document for failing to discharge an obligation of the Bidder under this document if the Nominee fully discharges that obligation and that any notice or certificate to be provided under this document that is provided by the Nominee will be treated for all purposes as if it was given by the Bidder;
  - (ii) the Bidder guarantees to the Target (in its own right and as trustee for each Scheme Participant) the punctual payment of the Scheme Consideration and the performance by the Nominee of its obligations under the Deed Poll or as a consequence of its nomination; and
  - (iii) if the Nominee fails to pay the Scheme Consideration or otherwise perform its obligations under or as contemplated by this document and the Deed Poll or as a consequence of its nomination, the Bidder must, on demand by the Target, immediately do that thing in the same manner as, and to the extent that, the Nominee was otherwise required to do it; and
  - (iv) the Bidder indemnifies the Target and each Scheme Participant against all Losses which any of them may suffer or incur in respect of the Nominee's failure to pay the Scheme Consideration or otherwise perform the Nominee's obligations under the Deed Poll or as a consequence of its nomination, including any Losses caused or contributed to by the Nominee being or becoming Insolvent, provided that the Bidder's liability under this clause cannot exceed any liability it would have suffered if it, and not the Nominee, failed to pay the Scheme Consideration, Option Consideration, or otherwise perform any obligations under the Deed Poll.

#### 4.6 Target Options

- (a) The Target must make an offer to each Optionholder to enter into, and ensure that such Optionholders enter into an Optionholder Cancellation Deed prior to the Second Court Date.
- (b) The Bidder covenants in favour of the Target (in its own right and as trustee for each Optionholder) that in consideration of the cancellation of each Target Option held by an

Optionholder, the Bidder will, on the Implementation Date, provide the Target with sufficient funds to pay, or at the direction of the Target pay, to each Optionholder the Option Consideration payable under the terms of each Optionholder Cancellation Deed.

#### **4.7 Target Performance Rights**

The Target Board must take all steps in accordance with the plan rules governing the Target Performance Rights to give notice to the holders of the Target Performance Rights before the Second Court Date that the performance rights have become vested (on such terms and conditions as the Target Board may determine, after obtaining the Bidder's consent, such consent not to be unreasonably withheld), and issue Target Shares to those holders by no later than the Record Date.

### **5 Co-operation and timing**

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#### **5.1 General obligations**

The Target and the Bidder must each:

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

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

#### **5.2 Transaction Implementation Committee**

- (a) The parties must establish a Transaction Implementation Committee as soon as possible after the date of this document.
- (b) The role of the Transaction Implementation Committee will be to act as a forum for consultation and planning by parties to:
  - (i) facilitate satisfaction of the Conditions Precedent;
  - (ii) produce the Scheme Booklet; and
  - (iii) implement the Scheme.
- (c) The Transaction Implementation Committee will meet in person or by telephone as and when deemed necessary from the date of this document until the Scheme is fully implemented.
- (d) The Implementation Committee will consider all matters relevant to ensuring that the Scheme becomes Effective, including the following:
  - (i) the structure and timetable for accomplishing the Scheme;
  - (ii) applying for all necessary Regulatory Approvals;

- (iii) communication strategies, including with any Regulatory Authority, employees, the Target Shareholders, shareholders of the Bidder and the media; and
  - (iv) matters requiring consultation under clause 8.1(e).
- (e) The parties agree that nothing in this document is intended to create or constitutes the relationship of a partnership, trust, joint venture or any other relationship of a fiduciary nature between the parties. Unless this document expressly provides otherwise, no party has the power to incur any obligation or liability on behalf of, or to pledge the credit of, any other party.
- (f) Notwithstanding the above:
  - (i) each party may act in its own interests; and
  - (ii) each member of the Transaction Implementation Committee may act in the interests of the party they represent in participating in the Transaction Implementation Committee.

### **5.3 Access to people and information**

Between the date of this document and the earlier of 5.00pm on the Business Day immediately before the Second Court Date and the date this document is terminated, the parties and their Subsidiaries must promptly provide one another and their respective employees and advisers with reasonable access to their respective employees and advisers and documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) which the other party reasonably requests (including monthly management accounts) for the purposes of:

- (a) implementation of the Scheme;
  - (b) applying for all relevant Regulatory Approvals; and
  - (c) any other purpose agreed in writing between the parties,
- provided in every case that:
- (d) such access is reasonably necessary to the party requesting the information;
  - (e) neither the request nor the access places an unreasonable burden on the ability of the other party to run its business; and
  - (f) the request is made by contacting the Target Representative or the Bidder Representative, as the case may be.

### **5.4 Access to Target employees**

The Target agrees to facilitate access by the Bidder to all employees of the Target and its Subsidiaries for the purposes of discussing with those employees their ongoing employment with the Target (or its Subsidiaries) provided that:

- (a) the Bidder provides reasonable notice to the Target;
- (b) the access is during normal business hours; and

- (c) the access does not unreasonably impact on the operation of the Target's business or the Target's ability to comply with its obligations under this document.

## **5.5 Audits**

The Target agrees to use reasonable endeavours to:

- (a) facilitate sufficient access during business hours to all premises where the Target's business is operated (including sites where manufacturing is undertaken) to allow a quality and environmental health and safety audit by or on behalf of the Bidder of:
  - (i) the contract manufacturers within the Cavatak supply chain responsible for manufacturing or storage of cell banks or virus seed stock or manufacturing of Cavatak drug substance, Cavatak drug product or Cavatak packaged product, whether for clinical or commercial use; and
  - (ii) any Target facilities owned or leased by it or its Subsidiaries;
- (b) implement the Bidder's recommended remediation steps based upon the Bidder's audit findings of Target Group's contract manufacturers within the Cavatak supply chain.

## **5.6 Right to separate representation**

Each party is entitled to separate representation at all Court proceedings relating to the Scheme. Nothing in this document is to be taken to give the Bidder or the Target (as applicable) any right or power to make or give undertakings to the Court for or on behalf of the other party.

## **5.7 Business matters**

Where a matter is required to be the subject of consultation under clause 8.1(f), in determining its action, if any, on that matter, the Target will have regard to the potential effect of the action on integration planning issues and the Bidder's intentions for the future operation of the business conducted by the Target as communicated to the Target in writing or as set out in the Scheme Booklet, and subject to the fiduciary duties of the Target Board in relation to the matter, the Target will select the action which has no or the least effect on those issues.

# **6 Implementation obligations of the parties**

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## **6.1 Target's obligations**

The Target must comply with the obligations of the Target set out in Schedule 4 and take all reasonable steps to propose and implement the Scheme (including doing anything required on behalf of the Target Shareholders which the Target is authorised to do) as soon as is reasonably practicable having regard to the Timetable and in any event prior to the End Date.

## **6.2 Bidder's obligations**

The Bidder must comply with the obligations of the Bidder set out in Schedule 5 and take all reasonable steps to assist the Target to implement the Scheme as soon as reasonably practicable having regard to the Timetable and in any event prior to the End Date.

## 7 Scheme Booklet

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### 7.1 Preparation

Without limiting clauses 6.1 or 6.2:

- (a) **(preparation)** subject to clauses 7.1(b), 7.3(c) and 7.5, the Target is generally responsible for the preparation of the Scheme Booklet but will provide drafts to and consult with the Bidder in accordance with clause 7.2; and
- (b) **(compliance)** the Target must take all necessary steps to endeavour to ensure that the Scheme Booklet:
  - (i) complies with the requirements of:
    - (A) the Corporations Act and Corporations Regulations;
    - (B) ASIC Regulatory Guide 60;
    - (C) the Target Constitution; and
    - (D) the Listing Rules; and
  - (ii) is not, having regard to applicable disclosure requirements, misleading or deceptive in any material respect (including because of any material omission).

### 7.2 Content of the Scheme Booklet

The Target must:

- (a) **(consult the Bidder):**
  - (i) provide to the Bidder a draft of the Scheme Booklet (including the draft of any related proposed amendments to the Target Constitution) for the purpose of enabling the Bidder to review and comment on that draft document;
  - (ii) take the comments made by the Bidder into account in good faith when producing a revised draft of the Scheme Booklet (and related proposed amendments to the Target Constitution); and
  - (iii) provide to the Bidder the proposed Regulator's Draft at least five days before it is submitted to ASIC to enable the Bidder to review and comment on the proposed Regulator's Draft;
- (b) **(amend the Scheme Booklet)** implement such changes to those parts of the Scheme Booklet relating to the Bidder which are provided in accordance with clause 7.2(a) as reasonably requested by the Bidder and prior to finalising the Regulator's Draft;
- (c) **(Regulatory Review Period)** during the Regulatory Review Period:
  - (i) promptly provide to the Bidder, and include in a revised draft of the Scheme Booklet, any new information not included in the Regulator's Draft which is required by the Corporations Act, Corporations Regulations, ASIC Regulatory

Guide 60, the Listing Rules or the Target Constitution to be included in the Scheme Booklet; and

- (ii) promptly keep the Bidder informed of any matters raised by ASIC in relation to the Scheme Booklet and use all reasonable endeavours, in co-operation with the Bidder, to resolve any such matters; and
- (d) **(Bidder Information)** obtain approval from the Bidder for the form and context in which the Bidder Information appears in the Scheme Booklet which approval must not be unreasonably delayed or withheld.

### 7.3 Bidder Information

The Bidder:

- (a) must consult with the Target as to the content of the Bidder Information;
- (b) consents to the inclusion of the Bidder Information in the Scheme Booklet; and
- (c) acknowledges that:
  - (i) it is responsible for ensuring that the Bidder Information is not misleading or deceptive in any material respect (whether by omission or otherwise) and that the Target will not verify or edit that information in the Scheme Booklet; and
  - (ii) the Scheme Booklet will state that the Bidder is responsible for the Bidder Information.

### 7.4 Disagreement on content

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

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

### 7.5 Verification

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

## 8 Conduct of business

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### 8.1 The Target's obligations

During the period from the date of this document to the Implementation Date, the Target must, and must cause each of its Subsidiaries to:

- (a) carry on its business in the usual, regular and ordinary course and in compliance in all material respects with all applicable laws and regulations and consistent with the most recent business plans and budgets disclosed by the Target to the Bidder prior to the date of this document;
- (b) to the extent consistent with clause 8.1(a), use reasonable efforts to preserve intact its current business organisation and goodwill, keep available the services of its current officers and employees and preserve its relationship with suppliers, licensors, licensees and others having business dealings with it but nothing in this paragraph requires the Target to act contrary to its interests;
- (c) observe its obligations under each Business Contract and each Lease;
- (d) maintain its assets at normal levels having regard to historical trading levels and projected trading levels;
- (e) obtain the Bidder's consent (not to be unreasonably withheld) prior to:
  - (i) commencing a clinical trial after the date of this document (other than clinical trial in respect of CLEVER that was announced to be commencing in early 2018 by way of ASX announcement dated 24 January 2018);
  - (ii) making any material amendments to any protocols or guidelines in respect of a clinical trial that was commenced or announced prior to the date of this document; or
  - (iii) entering into any new borrowing facility.
- (f) consult the Bidder before:
  - (i) making amendments to existing programs and budgets relating to its business (including capital expenditure) by more than an aggregate amount of \$1,000,000;
  - (ii) entering into any proposed contract involving the introduction of new products or services which are not already in operation as at the date of this document;
  - (iii) altering or terminating (including but not limited to an alteration involving a break fee arrangement) a material Business Contract, Key Personnel Contract or a Lease;
  - (iv) renewing a material Business Contract, Key Personnel Contract or a Lease outside of the ordinary course of the Target's business;
  - (v) entering into a material Business Contract, Key Personnel Contract or a Lease outside of the ordinary course of the Target's business;
  - (vi) adopting or varying employment policies, including any redundancy policy (except if required by law);
  - (vii) commencing any litigation which may involve costs greater than \$2,500,000;
  - (viii) proposing the settlement of any litigation which may involve a claim greater than \$2,500,000;



- (ix) employing or engaging any person, if this would increase the annual costs associated with the Target's personnel by more than \$150,000;
  - (x) altering the terms of employment or engagement of any person if this would increase the annual costs associated with the Target's personnel by more than \$150,000; or
  - (xi) undertaking any activity listed in Schedule 1; and
- (g) provide the Bidder with copies of all future notices of meetings, board minutes, accounts, programs, budgets and like documents relating to the Target to the extent such documents do not contain information confidential to third parties (the Target must, however, use its best endeavours to obtain the approval of that third party to the disclosure of that information to the Bidder if requested to do so by the Bidder) or contain information regarding the Scheme or contain information which the Target directors consider is not in the best interests of the Target to disclose (acting in good faith and for a proper purpose), which information may be omitted or redacted.

## 8.2 Procedure for resolving differences

If there is any difference of opinion between the parties regarding the access the Bidder is to be provided to the documents referred to in clause 8.1(g) or the manner in which the Target otherwise proposes to comply with its obligations under clause 8.1 (other than clause 8.1(e)), the following steps are to apply and they apply in the following order for the purposes of seeking to resolve that difference. The time for each step runs from the time the initial consultation for that step is required by either party. After each step, a party may take the next step if the difference has not been resolved within the time indicated for that step.

Step	Description of step	Time limit
1	Consultation between the Bidder Representative and the Target Representative	48 hours
2	Mediation facilitated by, and under a procedure determined by, a person selected by agreement between the parties, or failing agreement within two Business Days, by the Bidder.	5 Business Days

## 9 Board composition

As soon as practicable after the Second Court Date, the Bidder must determine, and must notify the Target of, the required composition of the board of directors of each Target Group entity, and the Target must use its best endeavours to cause the resignation or appointment (as the case may be) of each incoming and outgoing director to the board of each Target Group entity to take effect on and from the Implementation Date.

## 10 Removal of Target from official list of ASX

If directed by the Bidder, the Target must take all steps necessary for the Target to be removed from the official list of ASX on such Business Day after the Implementation Date as nominated by the Bidder, including lodging a request for removal with ASX prior to the Implementation Date and the Target and/or the Bidder satisfying any conditions reasonably required by ASX for it to act on that request.

## **11 Exclusivity**

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### **11.1 Termination of existing discussions**

On and from the date of this document, the Target must cease any and all existing discussions with any person regarding a Competing Transaction.

### **11.2 No-shop**

- (a) During the Exclusivity Period, the Target must ensure that neither it nor any of its Related Bodies Corporate nor any of its Representatives directly or indirectly:
  - (i) solicits, invites, encourages or initiates any enquiries, negotiations or discussions; or
  - (ii) communicates any intention to do any of these things,
 with a view to obtaining any offer, proposal or expression of interest from any person in relation to a Competing Transaction.
- (b) Nothing in clause 11.2(a) prevents the Target from continuing to make normal presentations to, and to respond to enquiries from, any person in the ordinary course in relation to the Scheme or its business generally.

### **11.3 No-talk**

Subject to clause 11.6 during the Exclusivity Period, the Target must ensure that neither it nor any of its Related Bodies Corporate nor any of its Representatives:

- (a) negotiates or enters into;
  - (b) provides any non-public information (including due diligence information) to a third party in connection with (or with a view to obtaining); or
  - (c) participates in negotiations or discussions with any other person regarding,
- a Competing Transaction, even if that person's Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by the Target or any of its Related Bodies Corporate or Representatives or the person has publicly announced the Competing Transaction.

### **11.4 No due diligence**

- (a) Subject to clause 11.6 and clause 11.4(b), during the Exclusivity Period, the Target must ensure that neither it nor any of its Related Bodies Corporate or Representatives:
  - (i) solicits, invites, initiates, encourages, or permits any other person other than the Bidder and their Representatives to undertake due diligence investigations on the Target or any of its Related Bodies Corporate; or
  - (ii) makes available to any other person or permits any other person to receive other than the Bidder and its Representatives (in the course of due diligence investigations or otherwise) any non-public information relating to the Target or any of its Related Bodies Corporate.

- (b) If the Target undertakes any of the activities referred to in clause 11.4(a)(i) or 11.4(a)(ii) in reliance on the exception in clause 11.6(a), it must provide to the Bidder any information (including non-public information) that it makes available to the other person where the Bidder has not already been provided with such information.

## **11.5 Notice of unsolicited approach**

Subject to clause 11.6 during the Exclusivity Period, the Target must promptly inform the Bidder if it, or any of its Related Bodies Corporate or Representatives, receives any unsolicited approach with respect to any Competing Transaction and must disclose to the Bidder the fact that such an approach has been made and the key terms of the Competing Transaction including price and the identity of the party making the proposal and any other person or persons involved in the Competing Proposal.

## **11.6 Exceptions**

- (a) Clause 11.3 and clause 11.4 do not apply to the extent that the relevant clause restricts the Target or the Target Board from taking or refusing to take any action with respect to a bona fide Competing Transaction (which was not solicited, invited, encouraged or initiated in contravention of clause 11.1) provided that the Target Board has determined, in good faith and acting reasonably that:
  - (i) after consultation with its financial advisors, such a bona fide Competing Transaction could reasonably be considered to become a Superior Proposal; and
  - (ii) after receiving written legal advice from Queen's Counsel or Senior Counsel, that failing to respond to such a bona fide Competing Transaction would be reasonably likely to constitute a breach of the Target Board's fiduciary or statutory obligations.
- (b) Clause 11.5 does not apply if the Target Board has determined, in good faith and acting reasonably, that complying with clause 11.5 would cause the Target Board to breach fiduciary or statutory obligations to which it or the Target is subject.

## **11.7 Matching right**

- (a) During the Exclusivity Period, the Target:
  - (i) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a third party or the Target proposes to undertake or give effect to a Competing Transaction; and
  - (ii) must use its best endeavours to procure that none of the directors that have made a recommendation change their recommendation in favour of the Scheme to publicly recommend a Competing Transaction,
 unless:
  - (iii) the Target Board acting in good faith and acting reasonably (after consultation with its financial advisors) determines that the Competing Transaction would or would likely to be a Superior Proposal;
  - (iv) the Target has provided the Bidder with the material terms and conditions of the Competing Transaction, including price and the identity of the party making the proposal and any other person or persons involved in the Competing Transaction; and

- (v) the Target has given the Bidder at least five Business Days after the provision of the information referred to in clause 11.7(a)(iv) during which time the Bidder has the right, but not the obligation, to:
  - (A) propose amendments to the terms of the Scheme; or
  - (B) propose any other transaction,
 in writing to the Target Board (in each case a **Matching Offer**).
- (b) This clause 11.7 has repeating applications so that if any further proposal which constitutes a Competing Transaction is made after the Bidder has made a Matching Offer, the Target must comply with clauses 11.7(a)(i) and (ii) of this clause in respect of any new Competing Transaction, unless clauses 11.7(a)(iii) to (v) (inclusive) apply.
- (c) The Target Board must consider any Matching Offer and if it determines, acting in good faith, that the Matching Offer would be more favourable to the Target Members than the relevant Competing Transaction (taking into account all terms and conditions of both proposals), the Target and the Bidder must use their best endeavours to agree any amendments to this document and the contents of the Scheme Booklet, which are reasonably necessary to reflect the Matching Offer, and to enter into an appropriate amending agreement to give effect to those amendments and to implement the Matching Offer, in each case, as soon as reasonably practicable.

## 11.8 Legal advice

The Target acknowledges that it has received legal advice on this document and the operation of this clause 11.

## 12 Restriction on acquiring securities

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- (a) Subject to clause 12(b), until the End Date, (other than as a result of the transfer of shares by the Target to the Bidder under the Scheme) the Bidder must procure that the Bidder Group does not (and must ensure that their Related Bodies Corporate do not) acquire or offer to acquire, any securities or derivatives or property or any right or option to acquire any securities or property of the Target unless it has received the prior written consent of the Target.
- (b) The restriction in clause 12(a) does not apply where a person (other than any existing institutional or portfolio investor who is a Target Shareholder at the date of this document) either alone or with its associates:
  - (i) acquires (directly or indirectly) an interest in securities so as to have voting power in 5% or more of Target Shares on issue; and
  - (ii) announces a Competing Transaction, or the intention to propose a Competing Transaction to the Target.

## 13 Break fees

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### 13.1 Background

- (a) Each of the Target and the Bidder confirms its belief that the Scheme will provide significant benefits to it and its shareholders and acknowledges that each of them has

and will incur significant costs in connection with performing their respective obligations under this document and the Scheme.

- (b) The parties have requested that provisions be made in this document for the payments set out in clauses 13.2 and 13.3 in the absence of which it would not have entered into this document. The parties each confirm they believe that it is appropriate to agree to the payment which it agrees to make under this clause 13 in order to secure the other party's participation in the Scheme. The parties each acknowledge that the amount it has agreed to pay to the other party under this clause 13 is an amount which is appropriate to compensate the other party for its reasonable external and internal costs and opportunity costs in connection with the Scheme.

### **13.2 Payment by the Target to the Bidder**

The Target undertakes to pay the Bidder the Target Break Fee if:

- (a) prior to the End Date, the Target accepts or enters into or offers to accept or enter into, any agreement, arrangement or understanding regarding a Competing Transaction;
- (b) prior to the End Date, any Target director capable of making a recommendation does not recommend the Scheme or withdraws or adversely modifies an earlier recommendation or approves or recommends or makes an announcement in support of a Competing Transaction or announces an intention to do any of these acts, other than:
  - (i) in circumstances where the Target is entitled to terminate this document:
    - (A) because any Condition Precedent which is specified in this document for satisfaction by a time after 8am on the Second Court Date will not be fulfilled, provided that the reason the relevant Condition Precedent has not been fulfilled is not as a result of a breach by the Target of its obligations under this document; or
    - (B) under clause 3.10 of this document; or
    - (C) under clause 17.1(b)(ii) of this document; or
    - (D) because of the Effective Date not occurring by the End Date; or
  - (ii) because the Independent Expert's Report concludes that the Scheme is not either fair and reasonable or in the best interest of the Target Shareholders;
- (c) a Competing Transaction is announced, made or becomes open for acceptance before the Second Court Date and, whether before or within three months of the termination of this document under that Competing Transaction, the relevant bidder:
  - (i) acquires a relevant interest in more than 50% of all the Target Shares and that Competing Transaction is (or becomes) free from any defeating conditions;
  - (ii) acquires all or a substantial part of the assets of the Target or the Target Group;
  - (iii) acquires control of the Target, within the meaning of section 50AA of the Corporations Act; or

- (iv) otherwise acquires or merges with the Target (including by way of reverse takeover bid, reverse scheme of arrangement of dual listed companies structure); or
- (d) the Target is in material breach of any provision of this document and this document is terminated.

### **13.3 Payment by the Bidder to the Target**

The Bidder undertakes to pay the Target the Bidder Break Fee if the Target is entitled to terminate, and has terminated, this agreement in accordance with clause 17.1(b)(ii).

### **13.4 Demand for payment**

- (a) If an event referred to in clause 13.2 or 13.3 occurs, any demand by the Bidder or the Target for payment under clause 13.2 or 13.3 must be in writing and the receiving party must pay the amount referred to in clause 13.2 to the other party within 10 Business Days of receipt of the demand.
- (b) The parties acknowledge and agree that if an amount is paid to it under clause 13.2 or 13.3, that payment constitutes its sole and exclusive remedy under this document in respect of the matter giving rise to the payment.

### **13.5 Exclusive remedy**

- (a) Despite any other provision of this document, where the Target Break Fee becomes payable to Bidder under this document (or would be payable if a demand was made), the Bidder cannot make any claim against the Target or any other Target Indemnified Party in relation to any loss to the Bidder or any Bidder Indemnified Party arising from the Scheme not proceeding and any and all liability of the Target and the Target Indemnified Parties in relation to any breach by the Target of its obligations under this document or any breach of any Target Warranty.
- (b) Despite any other provision of this document, where the Bidder Break Fee becomes payable to the Target under this document (or would be payable if a demand was made), the Target may not make any claim against the Bidder or any Bidder Indemnified Party in relation to any loss to the Target or any Target Indemnified Party arising from the Scheme not proceeding and any breach by the Bidder of its obligations under this document or any breach of any Bidder Warranty.

## **14 Representations and warranties**

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### **14.1 Target's representations and warranties**

The Target represents and warrants to the Bidder (on its own behalf and separately as trustee or nominee for each of the Bidder directors) that:

- (a) each of the statements set out in Schedule 6 is true and correct in all material respects as at the date of this document;
- (b) each of the statements numbered 1 to 18 set out in Schedule 6 is true and correct in all material respects as at 8.00am on the Second Court Date

## **14.2 Target's indemnity**

Subject to clause 14.7, the Target indemnifies the Bidder and the Bidder Indemnified Parties against all Losses incurred directly or indirectly as a result of any of a breach of the Target Warranties.

## **14.3 Target warranty certificate**

The Target must provide to the Bidder at 8.00am on the Second Court Date a certificate signed by a director of the Target and made in accordance with a resolution of the Target Board stating, as at that date, that the representations or warranties given by the Target in clause 14.1(b) remain true and accurate or, if any such representation or warranty is not true and accurate as at that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or inaccurate.

## **14.4 Bidder's representations and warranties**

The Bidder represents and warrants to the Target (on its own behalf and separately as trustee or nominee for each of the Target directors) that each of the statements set out in Schedule 7 is true and correct in all material respects as at the date of this document and as at 8.00am on the Second Court Date.

## **14.5 Bidder's indemnity**

Subject to clause 14.7, the Bidder indemnifies the Target and the Target Indemnified Parties against all Losses incurred directly or indirectly as a result of a breach of the Bidder Warranties.

## **14.6 Bidder warranty certificate**

The Bidder must provide to the Target by 8:00am on the Second Court Date a certificate signed by a director of the Bidder and made in accordance with a resolution of the Bidder Board stating, as at that date, that the representations and warranties given by the Bidder in clause 14.4 remain true and accurate or, if any such representation or warranty is not true and accurate as at that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or inaccurate.

## **14.7 Maximum recovery**

- (a) Despite any other provision of this document, each party's sole and absolute liability for a breach of this document will be limited to a maximum of their respective Liability Cap (in aggregate for all Claims) and no further damages, fees, expenses or reimbursements of any kind are payable by either party under or in connection with this document whatsoever.
- (b) This clause 14.7 does not exclude the availability of equitable remedies (including the right to seek specific performance of this document).

## **14.8 Parties to notify of potential breaches**

- (a) If before the Second Court Date, the Target becomes aware of any fact, matter or circumstance which results in or is reasonably likely to result in a breach of any statement set out in Schedule 6, the Target must promptly provide to the Bidder notice describing that fact, matter or circumstance in reasonable detail provided that nothing in this clause 14.8 obliges the Target to make enquiries as to whether any fact, matter or circumstance of that type has arisen.



- (b) If before the Second Court Date, the Bidder becomes aware of any fact, matter or circumstance which results in or is reasonably likely to result in a breach of any statement set out in Schedule 7, the Bidder must promptly provide to the Target notice describing that fact, matter or circumstance in reasonable detail provided that nothing in this clause 14.8 obliges the Bidder to make enquiries as to whether any fact, matter or circumstance of that type has arisen.

## **15 Deeds of access, indemnity and insurance**

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- (a) Subject to the Scheme becoming Effective and having been implemented, the Bidder undertakes in favour of the Target and each director and officer of the Target or a Subsidiary of the Target that it will:
  - (i) to the extent permitted by law, for a period of 7 years from the Implementation Date, ensure that the constitutions of the Target and each other member of the Target Group as at the date of this document continue to contain such rules as are contained in those constitutions as at the date of this document that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company (and the Target undertakes not to vary, and must ensure there is no variation of, those constitutional arrangements); and
  - (ii) procure that the Target and each other member of the Target Group as at the date of this document complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers as at the date of this document (and the Target undertakes not to vary, and must ensure there is no variation of, those arrangements, except that it may enter into such deeds with newly appointed directors and officers on terms materially consistent with existing deeds as at the date of this document) and, without limiting the foregoing, not take any action which would prejudice or adversely affect any directors' and officers' runoff insurance cover taken out prior to the Implementation Date.
- (b) This clause 15 is subject to any restriction contained in the Corporations Act and will be read down accordingly.
- (c) The Target receives and holds the benefit of this clause 15 as trustee for each Target Director and each officer of each member of the Target Group.
- (d) Notwithstanding any other provision of this Deed, the Target may, prior to the Implementation Date, enter into a run-off insurance policy in respect of any officer of the Target and its Subsidiaries for a 7 year period (or longer if the Bidder agrees, acting reasonably) (**D&O Run Off Policy**) providing that the annualised premium for such D&O Run Off Policy does not exceed 300% of the annual premiums currently paid by the Target in respect of any run-off policy in place at the date of this document, and that any actions to facilitate that insurance or in connection therewith will not breach any provision of this Deed.
- (e) The Bidder covenants in favour of each person who is an officer of the Target as at the date of this Deed that it will not:
  - (i) amend or modify the terms of any indemnities, rights of advancement of expenses, rights to insurance and/or rights of access to documents or information, under deeds of indemnity, insurance and access (or other



agreements) from their terms as at the date of this document or to terms that are less favourable than their terms as at the date of this document; or

- (ii) amend or cancel the D&O Run Off Policy at any time after the Implementation Date, or do anything or fail to do anything which would prejudice or adversely affect the D&O Run Off Policy (or the cover under such) at any time after Implementation Date.

## 16 Court proceedings

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### 16.1 Appeal process

If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, the Bidder and the Target must consult with each other in good faith as to whether to appeal the Court's decision and, unless the parties agree in writing not to appeal the Court's decision, the parties must appeal the Court's decision to the fullest extent possible except to the extent that:

- (a) Queen's Counsel or Senior Counsel representing that party in relation to the Scheme indicates, in writing that, in their opinion, an appeal would likely have less than a 50% prospect of success; or
- (b) there is, in the bona-fide view of the Target Board a Superior Proposal in relation to a Competing Transaction received by the Target which should be recommended in preference to the Scheme,

in which case either party may terminate this document in accordance with clause 17.1(e)(iii).

### 16.2 Defence of proceedings

Each of the Bidder and the Target must vigorously defend, or must cause to be vigorously defended, any lawsuits or other legal proceeding brought against it (or any of its Subsidiaries) challenging this document or the completion of the Scheme. Neither the Bidder nor the Target will settle or compromise (or permit any of its Subsidiaries to settle or compromise) any claim brought in connection with this document without the prior written consent of the other, such consent not to be unreasonably withheld.

### 16.3 Costs

Any costs incurred as a result of the operation of this clause 16 will be borne equally by each party.

## 17 Termination

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### 17.1 Termination events

Without limiting any other provision of this document (including clauses 3.10 and 16.1), this document may be terminated:

- (a) **(End Date)** by either party, if the Scheme has not become Effective on or before the End Date, providing that a party (**Relevant Party**) will not be entitled to terminate this document under this clause 17.1(a) if the relevant Condition Precedent has not been satisfied or agreement cannot be reached as a result of:
  - (i) a breach of this document by the Relevant Party; or

- (ii) a deliberate act or omission of the Relevant Party (that is not permitted by this document);
- (b) **(lack of support or breach)** at any time prior to 8.00am on the Second Court Date:
  - (i) by the Bidder if any member of the Target Board changes his or her recommendation to the Scheme Participants or the Target Shareholders (as applicable) that they vote in favour of the resolution to approve the Scheme, including any adverse modification to his or her recommendation, or otherwise makes a public statement indicating that he or she no longer supports the Scheme; or
  - (ii) by either the Bidder or the Target if the other is in material breach of any clause of this document (including a warranty), taken in the context of the Scheme as a whole, provided that either the Bidder or the Target, as the case may be, has, if practicable, given notice to the other setting out the relevant circumstances and stating an intention to terminate and, the relevant circumstances continue to exist five Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date) after the time such notice is given;
- (c) **(not approved)** by either party if the Scheme resolution submitted to the Scheme Meeting is not approved by the requisite majorities;
- (d) **(restraint)** by either party if a Court or other Regulatory Authority has issued a final and non-appealable order, decree or ruling or taken other action which permanently restrains or prohibits the Scheme;
- (e) **(consultation or appeal failure)** in accordance with and pursuant to:
  - (i) clause 3.10(a);
  - (ii) clause 3.10(b); or
  - (iii) clause 16.1;
- (f) **(Insolvency)** by either party if the other party or any of their Related Bodies Corporate becomes Insolvent; or
- (g) **(agreement)** if agreed to in writing by the Bidder and the Target.

## 17.2 Termination

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

## 17.3 Effect of termination

In the event that a party terminates this document, or if this document otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this document, other than the obligations set out in clauses 16.1, 20 and 22 will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause releases any party from liability for any pre-termination breach of this document.

## **17.4 Damages**

In addition to the right of termination under clause 17.1 where there is no appropriate remedy for the breach in the agreement (other than termination), the non-defaulting party is, subject to clause 14.7, entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this document.

## **18 Releases**

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### **18.1 The Target release**

- (a) The Target releases its rights, and agrees with the Bidder that it will not make a claim, against any Bidder Indemnified Party as at the date of this document and from time to time in connection with:
  - (i) any breach of any representations and warranties of the Bidder or any other member of the Bidder Group in this document (including the Bidder Warranties); or
  - (ii) any disclosures containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Bidder Indemnified Party has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 18.1(a) limits the Target's rights to terminate this document under clause 17.1(b)(ii).
- (b) This clause is subject to any Corporations Act restriction and will be read down accordingly.
- (c) The Bidder receives and holds the benefit of this clause to the extent it relates to each Bidder Indemnified Party as trustee for each of them.

### **18.2 Bidder release**

- (a) The Bidder releases its rights, and agrees with the Target that it will not make a claim, against any Target Indemnified Party as at the date of this document and from time to time in connection with:
  - (i) any breach of any representations and warranties of the Target (including the Target Warranties) or any other member of the Target Group in this document; or
  - (ii) any disclosures containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Target Indemnified Party has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 18.2(a) limits the Bidder's rights to terminate this document under clause 17.1(b)(ii).
- (b) This clause is subject to any Corporations Act restriction and will be read down accordingly.

- (c) The Target receives and holds the benefit of this clause to the extent it relates to each the Target Indemnified Party as trustee for each of them.

## **19 Public announcements**

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### **19.1 No Announcement**

Neither party may make an Announcement relating to the subject matter of this document or its termination or make public this document (or any of its terms) unless the Announcement or publication:

- (a) is required by this document;
- (b) the other party has been provided with a copy of the Announcement and had a reasonable opportunity to comment on the content and form of the Announcement; or
- (c) is required to be made by any applicable law or the ASX Listing Rules.

### **19.2 Notice of Announcement**

If a party is required to make an Announcement under clause 19.1(c), it must, to the extent practicable without that party breaching any applicable law, give to the other party:

- (a) such notice as is reasonable in the circumstances of its intention to make the Announcement; and
- (b) a draft of the Announcement and an opportunity, to the extent practicable in the circumstances, to comment on the contents of the draft Announcement.

## **20 Confidential information**

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### **20.1 Obligations of confidence**

Each party agrees to keep confidential, and not to use or disclose, other than as permitted by this document, any Confidential Information relating to the Scheme or of the other party provided or obtained before or after entry into this document.

### **20.2 Exclusions**

Subject to clause 20.3, the obligations of confidence in clause 20.1 do not apply to Confidential Information:

- (a) that is required to be disclosed by applicable law, or under compulsion of law by a court or Government Agency or by the rules of any relevant stock exchange or regulator, as long as the disclosing party:
  - (i) discloses the minimum amount of Confidential Information required to satisfy the law or rules;
  - (ii) before disclosing any information, gives a reasonable amount of notice to the other party and takes all reasonable steps (whether required by the other party or not) to maintain such Confidential Information in confidence;
  - (iii) invite the other party to comment on the disclosure being made; and

- (iv) where appropriate, give due regard to the comments of the other party;
- (b) that is in the public domain otherwise than as a result of a breach of this document or any other obligation of confidence; or
- (c) that is already known by, or rightfully received, or independently developed, by the recipient of that Confidential Information free of any obligation of confidence.

### **20.3 Restriction on disclosure**

Each party may use and disclose Confidential Information relating to the Scheme or of the other party only:

- (a) with the prior written consent of the other party;
- (b) to that party's Related Bodies Corporate, directors, agents, professional advisors, employees, contractors and permitted sub-contractors solely for the exercise of rights or the performance of obligations under this document;
- (c) to any third party to whom disclosure is required in order to procure the satisfaction of the Conditions Precedent; or
- (d) as is properly and reasonably required for the purpose of review by any advisor, consultant, expert, banker, financier, contractor or subcontractor employed or retained by the party in connection with the Scheme.

### **20.4 Knowledge of Confidential Information**

- (a) Each party must take all steps reasonably necessary to ensure that Confidential Information is known only to people (including any employees of that party) who reasonably require that knowledge in the course of their duties or functions.
- (b) Despite clause 20.3, each party must, to the extent permitted by law:
  - (i) have in place a written undertaking with any person to whom it intends to disclose Confidential Information (who is not under a statutory, professional or contractual duty to keep the information or data confidential) requiring that person to keep Confidential Information confidential; or
  - (ii) require any person to whom it intends to disclose Confidential Information (who is not under a statutory, professional or contractual duty to keep the information or data confidential) to give a written undertaking to keep Confidential Information confidential.

### **20.5 Injunctive relief**

Each party acknowledges that:

- (a) the other party may suffer financial and other loss and damage if any unauthorised act occurs in relation to Confidential Information relating to the Scheme or of the other party, and that monetary damages would be an insufficient remedy; and
- (b) in addition to any other remedy available at law or in equity, the other party is entitled to injunctive relief to prevent a breach of, and to compel specific performance of clause 20.

## **20.6 Continuing obligation**

Despite anything to the contrary in this document, each party acknowledges and agrees that the obligations about Confidential Information imposed under clause 20 survive termination of this document.

## **21 Duty, costs and expenses**

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### **21.1 Stamp duty**

The Bidder must pay all stamp duties and any fines and penalties with respect to stamp duty in respect of this document or the Scheme or the steps to be taken under this document or the Scheme.

### **21.2 Costs and expenses**

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

## **22 GST**

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- (a) The consideration specified under this document is exclusive of GST.
- (b) If GST is or becomes payable on a supply made under or in connection with this document, an additional amount is payable by the recipient equal to the amount of GST payable on that supply as calculated by the supplier in accordance with the GST Act.
- (c) The additional amount payable under clause 22(b) is payable at the same time and in the same manner as the consideration for the supply, provided that a Tax Invoice has been provided to the recipient in respect of the additional amount.
- (d) If the amount of GST payable on a supply varies from the additional amount payable under clause 22(b), the parties must adjust the additional amount provided that an adjustment note has been issued in relation to the relevant supply in accordance with the GST Act.
- (e) If a party is entitled to be reimbursed or indemnified under this document, the amount payable does not include any amount for GST for which the party is entitled to an Input Tax Credit.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a creditable acquisition by that party but to which the representative member of a GST group of which the party is a member is entitled.

## **23 General**

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### **23.1 Amendments**

This document may only be amended by written agreement between the parties.

### **23.2 Counterparts**

This document may be executed in any number of counterparts. All counterparts together make one instrument.

### **23.3 No merger**

None of the terms or conditions of this document, or any act, matter or thing done under or by virtue of this document or any other agreement, instrument or document, or judgment or order of any court or judicial proceeding, operate as a merger of any of the rights and remedies of the parties under this document, and those rights and remedies must at all times continue in force.

### **23.4 Entire agreement**

This document supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.

### **23.5 Further assurances**

Each party must do all things reasonably necessary to give effect to this document and the transactions contemplated by it.

### **23.6 No waiver**

- (a) The failure of a party to require full or partial performance of a provision of this document does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of 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.
- (c) A right under this document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

### **23.7 Discretion in exercising rights**

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this document expressly states otherwise.

### **23.8 No liability for loss**

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this document.

### **23.9 Approvals and consents**

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

### **23.10 Conflict of interest**

The parties' rights and remedies under this document may be exercised even if it involves a conflict of duty or a party has a personal interest in their exercise.

### **23.11 Remedies cumulative**

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

### **23.12 Indemnities**

The indemnities in this document are continuing obligations, independent from the other obligations of the parties under this document and continue after this document ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this document.

### **23.13 Enforceability**

For the purpose of this document:

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

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

### **23.14 Construction**

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

### **23.15 Governing law and jurisdiction**

- (a) New South Wales law governs this document.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the New South Wales courts and courts competent to hear appeals from those courts.

### **23.16 Severability**

- (a) A clause or part of a clause of this document that is illegal or unenforceable may be severed from this document and the remaining clauses or parts of the clause of this document continue in force.
- (b) If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of this document will not be affected.

### **23.17 Consents**

Any consent referred to in, or required under, this document from any party may not be unreasonably withheld, unless this document expressly provides for that consent to be given in that party's absolute discretion.

### **23.18 Notices**

- (a) A notice, consent or communication under this document is only effective if it is:



- (i) in writing, signed by or on behalf of the person giving it;
- (ii) addressed to the person to whom it is to be given; and
- (iii) given as follows:
  - (A) delivered by hand to that person's address;
  - (B) sent to that person's address by prepaid mail or by prepaid airmail, if the address is overseas; or
  - (C) sent by email to that person's email address unless the sender receives a computer generated report that the email was not successfully sent, within two hours after the email being sent.

- (b) A notice, consent or communication given under clause 23.18(a) is given and received on the corresponding day set out in the table below. The time expressed in the table is the local time in the place of receipt.

If a notice is	It is given and received on
Delivered by hand or sent by email	(a) that day, if delivered or sent by 5.00pm on a Business Day; or (b) the next Business Day, in any other case.
Sent by post	(a) three Business Days after posting, if sent within Australia; or (b) seven Business Days after posting, if sent to or from a place outside Australia.

- (c) A person's address and email address are those set out below, or as the person notifies the sender:

<b>Name</b>	Bidder
<b>Attention</b>	Director Merck Sharp & Dohme (Holdings) Pty Ltd
<b>Address</b>	Level 1, Building A, 26 Talavera Road, Macquarie Park, NSW 2113 Australia
<b>Email</b>	riad_eldada@merck.com

with a copy to:

<b>Attention</b>	Assistant General Counsel, Corporate Transactions
<b>Address</b>	2000 Galloping Hill Road, Mailstop K-1-3045, Kenilworth, N7 07033-130, United States Of America
<b>Email</b>	lauren.dalessio@merck.com

and the Bidder Representative as follows:

<b>Attention</b>	Elizabeth Naldi-Jacob
<b>Address</b>	2000 Galloping Hill Road, Mailstop K-1-3045, Kenilworth, N7 07033-130, United States Of America
<b>Email</b>	elizabeth.naldi-jacob@merck.com

<b>Name</b>	Target
<b>Attention</b>	Robert Vickery
<b>Address</b>	Suite 305, Level 3, 66 Hunter Street, Sydney NSW 2000
<b>Email</b>	robert.vickery@viralytics.com

# Schedule 1

## The Target Prescribed Events

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- 1      **(Conversion)** the Target converts all or any of its shares into a larger or smaller number of shares.
- 2      **(Reduction of share capital)** the Target or any of its Subsidiaries resolves to reduce its share capital in any way or reclassifies, combines, splits or redeems or repurchases directly or indirectly any of its shares.
- 3      **(Buy-back)** the Target or any of its Subsidiaries:
  - (a) enters into a buy-back agreement; or
  - (b) resolves to approve the terms of a buy-back agreement under the Corporations Act.
- 4      **(Distribution)** the Target makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie).
- 5      **(Issuing or granting shares or options)** the Target or any of its Subsidiaries:
  - (a) issues shares;
  - (b) grants an option over its shares; or
  - (c) agrees to make such an issue or grant such an option,in each case to a person outside the Target Group other than as disclosed by the Target to the Bidder before the date of this document.
- 6      **(Securities or other instruments)** the Target or any of its Subsidiaries:
  - (a) issues securities or other instruments convertible into shares or debt securities; or
  - (b) agrees to issue securities or other instruments convertible into shares or debt securities,in each case to a person outside the Target Group other than as disclosed by the Target to the Bidder before the date of this document.
- 7      **(Constitution)** the Target adopts a new constitution or modifies or repeals its constitution or a provision of it, other than in respect of any amendments required because of the Scheme or as otherwise approved by the Bidder.
- 8      **(Disposals)** the Target or any of its Subsidiaries disposes, or agrees to dispose of the whole or a substantial part of the Target Group's business or property.
- 9      **(Acquisitions, disposals or tenders)** the Target or any of its Subsidiaries:
  - (a) acquires or disposes of;
  - (b) agrees to acquire or dispose of;

- (c) offers, proposes, announces a bid or tenders for,  
any business, assets, entity or undertaking the value of which exceeds \$5 million.
- 10 **(Encumbrances)** other than in the ordinary course of business and consistent with past practice, the Target or any of its Subsidiaries creates, or agrees to create, any Encumbrance over the whole or a substantial part of its business or property.
- 11 **(Employment arrangements)** other than in the ordinary course of business and consistent with past practice, the Target or any of its Subsidiaries:
- (a) increases the remuneration of, or otherwise varies the employment arrangements with, any of its directors or employees;
  - (b) accelerates the rights of any of its directors or employees to compensation or benefits or any kind other than as contemplated by clauses 4.5 and 4.7; or
  - (c) pays or agrees to pay any of its directors or employees a termination or retention payment (otherwise than in accordance with an existing contract in place at the date of this document).
- 12 **(Commitments and settlements)** other than if agreed in writing between the Bidder group representative and the Target group representative, the Target or any of its Subsidiaries:
- (a) enters into or agrees to enter into any Material Contract;
  - (b) terminates or amends in a material manner any Material Contract;
  - (c) waives any material third party default of a Material Contract; or
  - (d) accepts as a settlement or compromise of a material matter relating to a Material Contract, less than the full compensation due to the Target or a Subsidiary of the Target.
- 13 **(Insolvency)** the Target or any of its Related Bodies Corporate becomes Insolvent.
- 14 **(capital expenditure)** a member of the Target Group undertakes or agrees to undertake capital expenditure in excess of \$1,000,000 in aggregate.
- 15 **(financial indebtedness)** a member of the Target Group provides financial accommodation (irrespective of what form of financial indebtedness that accommodation takes) to a third party in excess of \$1,000,000.
- 16 **(derivatives)** a member of the Target Group enters into any agreement, arrangement or transaction with respect to derivative instruments (including swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments, except foreign currency hedges made in the ordinary course of business and in accordance with past practice.
- 17 **(breach of law)** a member of the Target Group takes or omits to take action which results in a breach of law material to a member of the Target Group.
- 18 **(accounting policy)** a member of the Target Group changes any accounting policy applied by them to report their financial position.
- 19 **(related party)** a member of the Target Group enters into or resolves to enter into a transaction with any related party of the Target as defined in section 228 Corporations Act, other

than in respect of a transaction which is subject to an exception in sections 210 to 216 Corporations Act.

- 20 **(tax liability)** the Target or any other member of the Target Group does anything that results in a taxable gain for the Target Group by either causing a Subsidiary to cease being a member of the Target Group or causing the Target Group to cease being a consolidated group (as that term is defined in the *Income Tax Assessment Act 1997* (Cth)).
- 21 A Target Prescribed Event does not include:
- (a) an event that is fully and fairly disclosed by the Target in the Disclosure Materials;
  - (b) an event that is fully and fairly disclosed in an announcement made to ASX prior to the date of this document that is publicly available;
  - (c) an event that is required to be done by law;
  - (d) circumstances where shares or options may be issued pursuant to an employee share plan, dividend reinvestment plan, option plan or on the exercise of the options or rights;
  - (e) any matter required to be done or brought about by the Target under this document; or
  - (f) any other matter, the undertaking of which the Bidder has approved in writing.

## Schedule 2

Conditions Precedent (clause 3.1)

Condition	Party entitled to benefit
<p><b>1. Regulatory Approvals</b></p> <p>A. Before 8.00am on the Second Court Date, the Treasurer of the Commonwealth of Australia:</p> <ul style="list-style-type: none"> <li>(i) ceasing to be empowered under the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) to prohibit the Scheme; or</li> <li>(ii) giving written notice of a decision that the Commonwealth Government has no objection to the Scheme and that notice is either free from conditions or subject to conditions that are acceptable to the parties.</li> </ul> <p>B. Before 8:00am on the Second Court Date, all other approvals required to be obtained from a Government Agency or Regulatory Authority in respect of the Scheme having been obtained.</p>	Both
<p><b>2. Scheme approval</b></p> <p>The Target Shareholders approve the Scheme by the requisite majorities in accordance with the Corporations Act.</p>	Cannot be waived
<p><b>3. Court approval</b></p> <p>The Court approves the Scheme in accordance with section 411(4)(b) Corporations Act.</p>	Cannot be waived
<p><b>4. Order lodged with ASIC</b></p> <p>An office copy of the Court order approving the Scheme is lodged with ASIC as contemplated by section 411(4)(b) Corporations Act on or before the End Date.</p>	Cannot be waived
<p><b>5. Independent Expert</b></p> <p>The Independent Expert issues a report which concludes and continues to conclude that the Scheme is in the best interests of the Target Shareholders.</p>	Target
<p><b>6. No Target Prescribed Event</b></p> <p>No Target Prescribed Event occurs between the date of this document and 8.00am on the Second Court Date.</p>	Bidder
<p><b>7. Target Options and Target Performance Rights</b></p> <p>The Target has satisfied its obligations under clauses 4.6 and 4.7 prior to 8.00am on the Second Court Date.</p>	Bidder

Condition	Party entitled to benefit
<b>8. No Target Material Adverse Change</b> No Target Material Adverse Change occurs between the date of this Agreement and 8.00 am on the Second Court Date.	Bidder
<b>9. Termination of 401(k) Plan</b> The Target and its Subsidiary have adopted appropriate resolutions that provide for termination of the 401(k) Plan in accordance with its terms and has provided the Bidder with evidence satisfactory to the Bidder (acting reasonably) of the adoption of such resolutions.	Bidder

## Schedule 3

Timetable (clause 5.1)

Event	Date	Target date
Sign Scheme Implementation Agreement and announce Scheme	Day 0	21 February 2018
Lodge Scheme Booklet with ASIC ( <b>Lodgement Date</b> )	Day 35	28 March 2018
Deed Poll executed by the Bidder	Day 35	28 March 2018
First Court Date	Day 58	20 April 2018
Scheme Booklet registered by ASIC and released on ASX	Day 58	20 April 2018
Printing and despatch of Scheme Booklet	Day 64	26 April 2018
Scheme Meeting held	Day 96	28 May 2018
Second Court Date	Day 103	4 June 2018
Lodge Court order with ASIC ( <b>Effective Date</b> )	Day 104	5 June 2018
Record Date (5.00pm on the date which is the Second Court Date plus five Business Days or such other date as the Target and the Bidder agree)	Day 112	13 June 2018
Implementation Date	Day 119	20 June 2018
End Date		31 July 2018

### Notes

These dates are indicative only and are subject to change.



## Schedule 4

### The Target's Obligations (clause 6.1)

- 1 **(The Target Information)** ensure that the Target Information included in the Scheme Booklet complies with applicable law and applicable ASIC Regulatory Guides.
- 2 **(Further Target Information)** provide to the Bidder, Scheme Participants and the Target Shareholders (as applicable) such further or new Target Information as may arise after the Scheme Booklet has been sent to the Target Shareholders until the date of the Scheme Meeting as may be necessary to ensure that the Target Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission).
- 3 **(Independent Expert)** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare its report for the Scheme Booklet.
- 4 **(Provide a copy of the report)** on receipt, provide the Bidder with a copy of any draft or final report received from the Independent Expert for the purposes of the Bidder confirming any factual information relating to the Bidder.
- 5 **(The Target Constitution)** prepare the required amendments to the Target Constitution (if any) in a form approved by the Bidder.
- 6 **(Announcement)** on the date of this document, make an Announcement, in a form agreed between the Target and the Bidder which includes a statement (on the basis of written statements made to it by each of its directors) that each director of the Target:
  - (a) considers the Scheme to be in the best interests of the Target Shareholders and recommends to the Target Shareholders and that the Scheme be approved; and
  - (b) who holds Target Shares intends to vote his or her Target Shares in favour of the Scheme,subject to no Superior Proposal emerging and the Independent Expert's Report concluding that the Scheme is in the best interests of the Target Shareholders.
- 7 **(Directors' recommendation)** state in the Scheme Booklet and the public announcement contemplated by clause 19.1 (on the basis of statements made to the Target by each member of the Target Board, but provided that in the case of the Scheme Booklet, no director has changed their recommendation or intentions) that each of the directors of the Target Board recommends to Scheme Participants and the Target Shareholders (as applicable) that the Scheme be approved in the absence of a Superior Proposal relating to a Competing Transaction received by the Target, unless:
  - (a) the Independent Expert opines that the Scheme is not in the best interest of the Target Shareholders; or
  - (b) in relation to matters occurring after the date of this document, the Target Board obtains written advice from Queen's Counsel or Senior Counsel that compliance or continued compliance with this clause would involve a breach of their fiduciary duties or would be unlawful on any other basis; or
  - (c) an event in clause 17.1(b)(i) arises.

- 8      **(Directors' voting)** use its reasonable endeavours to procure that:
  - (a) each member of the Target Board votes any Target Shares in which they have a Relevant Interest in favour of the Scheme and any other resolution submitted to the Target Shareholders for their approval in connection with the Scheme; and
  - (b) each member of the Target Board does not change that voting intention, unless a Superior Proposal arises or the Independent Expert opines that the Scheme is not in the best interests of Scheme Participants or the Target Shareholders or that the benefits being provided to the Target Shareholders are not fair and reasonable having regard to any loss of rights and change as to voting rights and rights to participate in the reserves and profits of the Target.
- 9      **(Registry details)** subject to the terms of the Scheme:
  - (a) provide all necessary information about the Scheme Participants and the Target Shareholders (as applicable) to the Bidder which the Bidder requires in order to assist it to solicit votes at the Scheme Meeting in a manner agreed between the Target and the Bidder; and
  - (b) provide any information that the Bidder reasonably requests in relation to the Register and, where requested by the Bidder, the Target must procure such information to be provided to the Bidder in such electronic form as is reasonably requested by the Bidder.
- 10     **(Section 411(17)(b) statement)** apply to ASIC for the production of a statement pursuant to section 411(17)(b) Corporations Act stating that ASIC has no objection to the Scheme.
- 11     **(Court application)** apply to the Court for an order under section 411(1) Corporations Act directing the Target to convene the Scheme Meeting and prepare all documents necessary for the Court proceedings relating to the Scheme in accordance with all applicable laws.
- 12     **(Registration with ASIC)** request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) Corporations Act.
- 13     **(Send Scheme Booklet)** send the Scheme Booklet to the Target Shareholders as soon as practicable after the Court orders the Target to convene the Scheme Meeting.
- 14     **(Scheme Meeting)** convene the Scheme Meeting in accordance with any such orders made by the Court and seek the approval of the Target Shareholders for the Scheme and, for this purpose, the directors of the Target must participate in reasonable efforts to promote the merits of the Scheme.
- 15     **(Court order)** apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) Corporations Act.
- 16     **(Lodge)** lodge with ASIC an office copy of any such Court order approving the Scheme as approved by the Target Shareholders at the Scheme Meeting in accordance with section 411(10) Corporations Act.
- 17     **(Registration)** if the Scheme becomes Effective and subject to the Bidder having issued the Scheme Consideration to Scheme Participants, register all transfers of the Target Shares to the Bidder on the Implementation Date.
- 18     **(Other steps)** do all other things necessary to give effect to the Scheme, this document and the orders of the Court approving the Scheme.

## Schedule 5

### Bidder's Obligations (clause 6.2)

- 1 **(Bidder Information)** provide to the Target for inclusion in the Scheme Booklet such Bidder Information as the Target reasonably requires to prepare and issue the Scheme Booklet (including any information required under the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 or the Target Constitution).
- 2 **(Further Bidder Information)** provide to the Target such further or new Bidder Information as may arise after the Scheme Booklet has been sent until the date of the Scheme Meeting as may be necessary to ensure that the Bidder Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission).
- 3 **(Independent Expert information)** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's report to be included in the Scheme Booklet.
- 4 **(Representation)** procure that it is represented by counsel at the court hearings convened for the purposes of section 411(4)(b) Corporations Act, at which, through its counsel, the Bidder must undertake (if requested by the court) to do all such things and take all such steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this document and the Scheme.
- 5 **(Deed Poll)** prior to the First Court Date, sign and deliver the Deed Poll.
- 6 **(Accuracy of the Bidder Information)** confirm in writing to the Target the accuracy of the Bidder Information in the Scheme Booklet (other than any information regarding the Target Group contained in, or used in the preparation of, the information regarding the merged entity following implementation of the Scheme).
- 7 **(Share transfer)** if the Scheme becomes Effective, the Bidder must accept a transfer of the Target Shares as contemplated by the Scheme.
- 8 **(Scheme Consideration)** if the Scheme becomes Effective, provide, or procure the provision of, the Scheme Consideration in accordance with the terms of the Scheme and the Deed Poll.
- 9 **(Compliance with laws)** do everything reasonably within its power to ensure that the Scheme is effected in accordance with all applicable laws and regulations.

## Schedule 6

The Target's representations and warranties (clause 14.1)

- 
- 1 **(Incorporation)** it is a valid existing corporation registered under the laws of its place of incorporation.
  - 2 **(Execution)** the execution and delivery of this document has been properly authorised by all necessary corporate action of the Target.
  - 3 **(Corporate power)** it has full corporate power and lawful authority to execute and deliver this document and to consummate and perform or cause to be performed its obligations under this document in accordance with its terms.
  - 4 **(Binding obligations)** (subject to laws generally affecting creditors' rights and the principles of equity) this document constitutes legal, valid and binding obligations on it.
  - 5 **(The Target Information)** the Target Information provided in accordance with this document and included in the Scheme Booklet, as at the date of the Scheme Booklet, will be true and correct, and will comply in all material respects with the requirements of the Corporations Act, and all relevant regulatory guides, practice notes and other guidelines and requirements of ASIC and the Target Constitution.
  - 6 **(Reliance)** the Target Information contained in the Scheme Booklet will be included on the understanding that the Bidder and its directors will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet before it is despatched.
  - 7 **(Further information)** the Target will, as a continuing obligation, provide to the Bidder all such further or new information which may arise after the date of the Scheme Booklet until the date of the Scheme Meeting which may be necessary to ensure that there would be no breach of clause 7.1(b) if it applied as at the date upon which that information arose.
  - 8 **(Disclosure)** the Target has provided to the Bidder all information actually known to it (having made reasonable enquiries) as at the date of this document regarding matters affecting or relating to it:
    - (a) which is not already in the public domain; and
    - (b) the disclosure of which might reasonably be expected to result in the Bidder not entering into this document at all or only entering into this document on materially different terms.
  - 9 **(Complete and accurate)** all information given by or on behalf of the Target to the Bidder during the course of negotiations in relation to the Scheme and preparation of the Scheme Booklet is complete, accurate and not misleading in all material respects (including by omission).
  - 10 **(Continuous disclosure)**
    - (a) the Target is not in breach of its continuous disclosure obligations under the Listing Rules and the Corporations Act.
    - (b) as at the date of this document:

- (i) none of the Target's prior announcements to ASX currently require updating or further disclosure;
  - (ii) the Target does not hold any information that is being withheld from disclosure to the market under carve-out to continuous disclosure under ASX Listing Rule 3.1A or otherwise; and
  - (iii) none of the Directors or senior executives of the Target are aware of any other price sensitive information which has not already been publicly disclosed.
- 11 **(Accounting Standards)** The accounts of the Target are prepared on a consistent basis with past practices and in accordance with all relevant accounting standards and relevant provisions of applicable Anti-Bribery Laws.
- 12 **(Reasonable assumptions)** to the extent information provided to the Bidder, whether under due diligence or not, in connection with this document, includes forward looking statements, those forward looking statements are based on assumptions which the Target believes, as at the date the information was provided and continues to believe, to be reasonable.
- 13 **(Opinions)** any statement of opinion or belief contained in the Target Information is honestly held and there are reasonable grounds for holding the opinion or belief.
- 14 **(Provision of information to Independent Expert)** all information provided by or on behalf of the Target to the Independent Expert to enable the Independent Expert's report to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's report.
- 15 **(Compliance)** it and its Subsidiaries have complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over them and have all material licenses, permits and franchises necessary for them to conduct their respective businesses as presently being conducted.
- 16 **(Compliance with Anti-Bribery Laws)**
  - (a) After due and careful enquiry, the Target is not aware of any breach of, or failure to comply with, any Anti-Bribery Laws or any facts that could reasonably give rise to any Anti-Bribery Law investigation, proceeding or inquiry by or against:
    - (i) the Target Group; or
    - (ii) any employee, agent, director, officer or agent of the Target Group; or
    - (iii) any supplier or customer of the Target Group.
  - (b) There is not and has not been any investigation or proceeding (including any court proceedings, internal investigations, or investigations or proceedings brought by a Government Agency) relating to allegations of potential unethical or illegal behaviour (including violations of the Anti-Bribery Laws), retaliation, potential non-compliance with its Code of Conduct, regulations or policies involving:
    - (i) the Target Group; or
    - (ii) any employee, agent, director, officer or agent of the Target Group; or

- (iii) any supplier or customer of the Target Group.
  - (c) The Target has instituted and maintained policies and procedures designed to ensure, and which the Target reasonably believes will continue to ensure, compliance by the Target Group with applicable Anti-Bribery Laws and to prevent any breach of Anti-Bribery Laws by the Target Group ("**Compliance Program**"). So far as the Target is aware, none of the Target Group, or any employee, agent, director, officer or agent of the Target Group have done anything or omitted to do anything which amounts to a breach of the Compliance Program.
- 17 **(Securities)** the Target's issued:
- (a) shares as at the date of this document are 278,262,889 Target Shares ;
  - (b) options as the date of this document are 14,183,667 options; and
  - (c) performance rights as at the date of this document are 131,500 rights,
- and it has not:
- (d) entered into any agreement or other arrangement (whether conditional or unconditional) which remains current to issue any the Target Shares; or
  - (e) issued or agreed to issue any other securities or instruments which are still outstanding and which may convert into the Target Shares.
- 18 **(Solvency)** it is not Insolvent.
- 19 **(Employment contracts)** the Target has not made any material amendments to any contracts of employment with any director or executive other as disclosed by the Target to the Bidder as at the date of this document.
- 20 **(Intellectual Property)** To the best of the knowledge and belief of the directors of the Target (after having made reasonable enquiries):
- (a) it has not infringed or otherwise violated the Intellectual Property rights of any third party, and no person is infringing, misappropriating, or otherwise violating the Intellectual Property rights owned by or exclusively licensed to the Target;
  - (b) it is the sole and exclusive beneficial owner of all of the Registered Intellectual Property, and all inventors/prior owners have executed assignments of their rights in the Registered Intellectual Property to the Target or predecessor or intermediary entity between the relevant assignor and the Target;
  - (c) no third party has any liens or security interest in the Registered Intellectual Property; and
  - (d) the Registered Intellectual Property is valid, subsisting and enforceable, and is not subject to any outstanding claim, order, judgment or decree adversely affecting the Target's use of or rights to the Registered Intellectual Property and there are no pending or threatened claims.

21 **(Premises)**

- (a) The Target does not own or have a fee or freehold interest in, and since 1 January 2012 has not at any time owned or held a fee interest in, whether in whole or in part, any real property.
- (b) No Subsidiary or any affiliate of a Subsidiary (past or present) has owned or has a fee or freehold interest in, or has at any time owned or held a fee interest in, whether in whole or in part, any real property.

22 **(Leases)** To the best of the knowledge and belief of the directors of the Target (after having made reasonable enquiries):

- (a) there is no breach by the Target or any of its Subsidiaries of any Lease; and
- (b) there has been no breach by any landlord or licensor under any Lease.

23 **(Clinical Trials)** To the best of the knowledge and belief of the directors of the Target (after having made reasonable enquiries) and excluding anything Fairly Disclosed in the Target Due Diligence Information, all preclinical studies and clinical trials (and the drug products, including placebos, used in such clinical trials) and other studies and tests conducted by the Target that are directly attributable to CAVATAK have been (and, if still pending, are being) conducted in compliance with all applicable laws (including applicable guidance published by the Therapeutic Goods Administration from time to time) and no clinical trial conducted by the Target that are directly attributable to CAVATAK have been terminated or suspended prior to completion for safety or other non-business reasons, and neither the Therapeutic Goods Administration nor any other Government Agency or Regulatory Authority has commenced or threatened to initiate any action to place a clinical hold order (other than any partial clinical hold order which is Fairly Disclosed in the Target Due Diligence Information) on any ongoing clinical investigation conducted by the Target that is directly attributable to CAVATAK that would have a material adverse impact on that trial.



## Schedule 7

Bidder's representations and warranties (clause 14.4)

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Save as disclosed in in the Disclosure Materials:

- 1      **(Incorporation)** it is a valid existing corporation registered under the laws of its place of incorporation.
- 2      **(Execution)** the execution and delivery of this document has been properly authorised by all necessary corporate action of the Bidder.
- 3      **(Corporate power)** it has full corporate power and lawful authority to execute and deliver this document and to consummate and perform or cause to be performed its obligations under this document in accordance with its terms.
- 4      **(Binding obligations)** (subject to laws generally affecting creditors' rights and the principles of equity) this document constitutes legal, valid and binding obligations on it.
- 5      **(Reliance)** the Bidder Information provided to the Target for inclusion in the Scheme Booklet will be provided on the understanding that the Target and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act.
- 6      **(Bidder Information)** the Bidder Information provided in accordance with this document and included in the Scheme Booklet, as at the date of the Scheme Booklet, will be true and correct, and will comply in all material respects with the requirements of the Corporations Act and all relevant regulatory guides, practice notes and other guidelines and requirements of ASIC and the Target Constitution.
- 7      **(Further information)** the Bidder will, as a continuing obligation, provide to the Target all such further or new information which may arise after the date of the Scheme Booklet until the date of the Scheme Meeting which may be necessary to ensure that there would be no breach of clause 7.1(b) if it applied as at the date on which that information arose.
- 8      **(Disclosure)** the Bidder has provided to the Target all information actually known to it (having made reasonable enquiries) as at the date of this document regarding matters affecting or relating to it:
  - (a)      which is not already in the public domain; and
  - (b)      the disclosure of which might reasonably have resulted in the Target not entering into this document at all or only entering into this document on materially different terms.
- 9      **(Complete and accurate)** all the information provided to the Target by the Bidder in connection with this document, whether under due diligence or not, has been prepared and provided in good faith and has been collated with all reasonable care and skill.
- 10     **(Reasonable assumptions)** to the extent information provided to the Target, whether under due diligence or not, in connection with this document, includes forward looking statements, those forward looking statements are based on assumptions which the Bidder believes, as at the date the information was provided and continues to believe, to be reasonable.



- 11 **(Compliance)** it and its Subsidiaries have complied in all material respects with all Australian laws and regulations applicable to them and orders of Australian governmental agencies having jurisdiction over them and have all material licenses, permits and franchises necessary for them to conduct their respective businesses as presently being conducted.
- 12 **(Opinions)** any statement of opinion or belief contained in the Bidder Information is honestly held and there are reasonable grounds for holding the opinion or belief.
- 13 **(Provision of information to Independent Expert)** all information provided by or on behalf of the Bidder to the Independent Expert to enable the Independent Expert's report to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's report.
- 14 **(Solvency)** it is not Insolvent.


## Execution

EXECUTED as an agreement

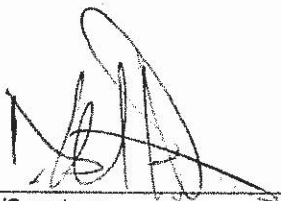
Executed by

Merck Sharp & Dohme (Holdings) Pty Ltd ACN 000

235 245 by:

  
Director

PAUL DODD  
Full name of Director

  
Director/Secretary

DAVID SCOTT  
Full name of Director/Secretary

Executed by

Viralytics Limited ACN 010 657 351 by:

Director

Director/Secretary

Full name of Director

Full name of Director/Secretary

## Execution

EXECUTED as an agreement

Executed by

Merck Sharp & Dohme (Holdings) Pty Ltd ACN 000

235 245 by:

^ \_\_\_\_\_  
Director

^ \_\_\_\_\_  
Director/Secretary

^ \_\_\_\_\_  
Full name of Director

^ \_\_\_\_\_  
Full name of Director/Secretary

Executed by

Viralytics Limited ACN 010 657 351 by:

^ *Malcolm Lindsay McColl*  
Director

^ *Sarah Anne Prince*  
Director/Secretary

^ MALCOLM LINDSAY MCCOLL  
Full name of Director

^ SARAH ANNE PRINCE  
Full name of Director/Secretary

## Annexure A

Scheme

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Annexure A runs from pages 64 to 79 inclusive.

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## Scheme of arrangement

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Viralytics Limited ACN 010 657 351

Scheme Participants

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**Telephone** +61 7 3233 6888 | **Fax** +61 7 3229 9949

**Offices** Brisbane Sydney Melbourne Newcastle

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## Table of contents

<b>Parties .....</b>	<b>1</b>
<b>Agreed terms .....</b>	<b>1</b>
<b>1 Definitions and interpretation .....</b>	<b>1</b>
1.1 Definitions	1
1.2 Reference to certain general terms	4
1.3 Headings	4
<b>2 Preliminary .....</b>	<b>5</b>
2.1 The Target	5
2.2 The Bidder	5
2.3 If Scheme becomes Effective	5
2.4 Scheme Implementation Agreement	5
2.5 Deed Poll	5
<b>3 Conditions precedent .....</b>	<b>5</b>
3.1 Conditions precedent to Scheme	5
3.2 Conditions precedent and operation of clauses 5 and 6	6
3.3 Certificate in relation to conditions precedent	6
<b>4 Scheme .....</b>	<b>6</b>
4.1 Effective Date	6
4.2 End Date	6
<b>5 Implementation of Scheme .....</b>	<b>7</b>
5.1 Lodgement of Court orders with ASIC	7
5.2 Transfer and registration of Scheme Shares	7
5.3 Entitlement to Scheme Consideration	7
5.4 Title and rights in Scheme Shares	7
5.5 Scheme Participants' agreements	7
5.6 Warranty by Scheme Participants	8
5.7 Transfer free of encumbrances	8
5.8 Appointment of the Bidder as sole proxy	8
<b>6 Scheme Consideration .....</b>	<b>8</b>
6.1 Consideration under the Scheme	8
6.2 Satisfaction of obligations	8
6.3 Payment of Scheme Consideration	9
6.4 Unclaimed monies	9

6.5	Orders of a court	9
6.6	Joint holders	10
<b>7</b>	<b>Dealings in Scheme Shares .....</b>	<b>10</b>
7.1	Determination of Scheme Participants	10
7.2	Register	10
7.3	No disposals after Record Date	10
7.4	Maintenance of Target Register	10
7.5	Effect of certificates and holding statements	11
7.6	Details of Scheme Participants	11
7.7	Quotation of Target Shares	11
<b>8</b>	<b>General Scheme provisions .....</b>	<b>11</b>
8.1	Power of attorney	11
8.2	Variations, alterations and conditions	11
8.3	Further action by the Target	12
8.4	Authority and acknowledgement	12
8.5	No liability when acting in good faith	12
8.6	Enforcement of Deed Poll	12
8.7	Stamp duty	12
8.8	Notices	12
<b>9</b>	<b>Governing law and jurisdiction .....</b>	<b>12</b>
	<b>Execution .....</b>	<b>13</b>

# Scheme of arrangement

Dated

## Parties

<b>Target</b>	<b>Viralytics Limited ACN 010 657 351</b> of Suite 305, Level 3, 66 Hunter Street, Sydney, New South Wales 2000
<b>Scheme Participants</b>	<b>Each person registered as a holder of Target Shares as at 7.00pm (Sydney time) on the Record Date (other than Excluded Shareholders).</b>

## Agreed terms

### 1 Definitions and interpretation

#### 1.1 Definitions

In this document terms defined in the Scheme Implementation Agreement have the same meanings when used in this document unless the context otherwise requires, and:

Term	Definition
<b>ASIC</b>	means the Australian Securities and Investments Commission.
<b>Associate</b>	has the meaning given in section 12 Corporations Act.
<b>ASX</b>	means ASX Limited ACN 008 624 691 or the securities exchange operated by it (as the case requires).
<b>Bidder</b>	means Merck, Sharp & Dohme (Holdings) Pty Ltd ACN 000 235 245.
<b>Business Day</b>	means a business day as defined in the Listing Rules.
<b>CHESS</b>	means the Clearing House Electronic Subregister System managed by ASX.
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth).
<b>Court</b>	means the Federal Court of Australia, or the Supreme Court of New South Wales, to be agreed by the Bidder and the Target.
<b>Deed Poll</b>	means the deed poll executed by the Bidder substantially in the form of Annexure B of the Scheme Implementation Agreement, under which the Bidder covenants in favour of each Scheme Participant to perform its obligations under this Scheme.
<b>Effective</b>	means the coming into effect, pursuant to section 411(10) Corporations Act, of the order of the Court



<b>Term</b>	<b>Definition</b>
	made under section 411(4)(b) Corporations Act in relation to this Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.
<b>Effective Date</b>	means the date on which the Scheme becomes Effective.
<b>Encumbrance</b>	means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, claim, covenant, profit a prendre, easement or any other security arrangement having the same effect.
<b>End Date</b>	means 31 July 2018 or such other date as determined in accordance with the terms of the Scheme Implementation Agreement.
<b>Excluded Share</b>	means a Target Share held by an Excluded Shareholder as at the Record Date.
<b>Excluded Shareholder</b>	means the Bidder and its Associates.
<b>Immediately Available Funds</b>	means electronic funds transfer or other form of cleared funds acceptable to the Target.
<b>Implementation Date</b>	means the fifth Business Day following the Record Date or such other date as is agreed in writing by the Bidder and the Target.
<b>Listing Rules</b>	means the Listing Rules of ASX and any other rules of ASX which are applicable while the Company is admitted to the Official List of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.
<b>Record Date</b>	means 7.00pm (Sydney time) on the fifth Business Day following the Effective Date or such other date as the Target and the Bidder agree in writing.
<b>Register</b>	means the share register of the Target and Registry has a corresponding meaning.
<b>Registered Address</b>	means, in relation to a Target Shareholder, the address shown in the Register.
<b>Regulatory Authority</b>	means: <ul style="list-style-type: none"> <li>(a) ASX and ASIC;</li> <li>(b) the Takeovers Panel;</li> <li>(c) a government or governmental, semi-governmental or judicial entity or authority;</li> <li>(d) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and</li> <li>(e) any regulatory organisation established under statute.</li> </ul>
<b>Scheme</b>	means this scheme of arrangement between the Target and Scheme Participants under which all of the Scheme Shares will be transferred to the Bidder under Part 5.1

Term	Definition
	Corporations Act as described in clause 5.2 of this Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) Corporations Act to the extent they are approved in writing by the Target and the Bidder in accordance with clause 8.2 of this Scheme.
<b>Scheme Consideration</b>	means \$1.75 for each Scheme Share.
<b>Scheme Implementation Agreement</b>	means the scheme implementation agreement dated 21 February 2018 between the Target and the Bidder under which, amongst other things, the Target has agreed to propose this Scheme to Target Shareholders, and each of the Bidder and the Target has agreed to take certain steps to give effect to this Scheme.
<b>Scheme Meeting</b>	means the meeting of Target Shareholders ordered by the Court to be convened pursuant to section 411(a) Corporations Act at which Target Shareholders will vote on this Scheme.
<b>Scheme Participant</b>	means each person registered as a Target Shareholder at the Record Date, other than an Excluded Shareholder.
<b>Scheme Share</b>	means a Target Share on issue as at the Record Date other than an Excluded Share.
<b>Second Court Date</b>	means the day on which the Court makes an order pursuant to section 411(4)(b) Corporations Act approving this Scheme.
<b>Share Scheme Transfer</b>	means, for each Scheme Participant, a duly completed and executed proper instrument of transfer of the Scheme Shares held by that Scheme Participant for the purposes of section 1071B Corporations Act, which may be a master transfer of all Scheme Shares.
<b>Takeovers Panel</b>	means the review body continuing in existence under section 261 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth) and given powers under Part 6.10 Corporations Act.
<b>Target Option</b>	means any option issued by the Target in respect of the Target Shares, whether vested or unvested.
<b>Target Performance Rights</b>	means any performance rights issued by the Target in respect of the Target Shares, whether vested or unvested.
<b>Target Share</b>	means a fully paid ordinary share in the capital of the Target.
<b>Target Shareholder</b>	means each person registered in the Register as a holder of the Target Shares.
<b>Trust Account</b>	means the trust account operated by or on behalf of the Target to hold the Scheme Consideration on trust for the Scheme Participants for the purpose of paying the Scheme Consideration to the Scheme Participants in accordance with clause 6.3 of this Scheme, as

Term	Definition
	nominated by the Target at least five Business Days prior to the Implementation Date.

## 1.2 Reference to certain general terms

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

- (a) a document, agreement (including this document) or instrument is a reference to that document, agreement or instrument as amended, consolidated, supplemented, novated or replaced;
- (b) a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document;
- (c) a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) the singular includes the plural and vice versa;
- (f) a party means a party to this Scheme;
- (g) the word 'person' includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Regulatory Authority;
- (h) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (j) a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (k) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) the words 'include', 'including', 'for example' or 'such as' when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (m) time is a reference to Sydney, New South Wales time.

## 1.3 Headings

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

## **2 Preliminary**

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### **2.1 The Target**

- (a) The Target is a public company limited by shares incorporated in Australia and registered in New South Wales. Its registered office is at Suite 305, Level 3, 66 Hunter Street, Sydney, NSW 2000.
- (b) The Target is admitted to the official list of the ASX and Target Shares are officially quoted on the stock market conducted by ASX.
- (c) As at the date of the Scheme Implementation Agreement, 278,262,889 Target Shares were on issue.

### **2.2 The Bidder**

- (a) The Bidder is a proprietary limited by shares and is incorporated in Australia and registered in New South Wales. Its registered office is at Building A, Level 1, 26-38 Talavera Road, Macquarie Park NSW 2113.

### **2.3 If Scheme becomes Effective**

If this Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share to the Bidder, the Target will procure the Bidder to provide the Scheme Consideration to the Target on behalf of each Scheme Participant in accordance with the terms of this Scheme and the Deed Poll;
- (b) all Scheme Shares, and all the rights and entitlements attaching to them, will be transferred to the Bidder on the Implementation Date; and
- (c) the Target will enter the name of the Bidder in the Register in respect of all Scheme Shares transferred to the Bidder in accordance with the terms of this Scheme.

### **2.4 Scheme Implementation Agreement**

By executing the Scheme Implementation Agreement, the Target and the Bidder have agreed to implement the terms of this Scheme.

### **2.5 Deed Poll**

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

## **3 Conditions precedent**

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### **3.1 Conditions precedent to Scheme**

This Scheme is conditional on, 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, neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms;

- (b) all of the conditions precedent in schedule 2 of the Scheme Implementation Agreement having been satisfied or waived (other than the condition precedent relating to the approval of the Court in item 3 and lodgment of an office copy of the Court Order with ASIC in item 4) in accordance with the terms of the Scheme Implementation Agreement;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) Corporations Act, and if applicable, the Target and the Bidder having accepted in writing any modification or condition made or required by the Court under section 411(6) Corporations Act and any such conditions having been satisfied or waived; and
- (d) the coming into effect, pursuant to section 411(10) Corporations Act, of the orders of the Court made under section 411(4)(b) Corporations Act (and, if applicable, section 411(6) Corporations Act) in relation to this Scheme.

### **3.2 Conditions precedent and operation of clauses 5 and 6**

The satisfaction of each condition of clause 3.1 of this Scheme is a condition precedent to the operation of clauses 5 and 6 of this Scheme.

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

The Target and the Bidder must each provide to the other by 8:00am on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent set out in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and clause 3.1(d) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date.

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

## **4 Scheme**

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### **4.1 Effective Date**

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

### **4.2 End Date**

This Scheme will lapse and be of no further force or effect if:

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

unless the Target and the Bidder otherwise agree in writing.

## **5 Implementation of Scheme**

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

The Target must lodge with ASIC in accordance with section 411(10) Corporations Act an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 5.00pm on the first Business Day after the day on which the Court approves this Scheme or such later time as the Bidder and the Target agree in writing.

### **5.2 Transfer and registration of Scheme Shares**

On the Implementation Date, but subject to the Scheme becoming Effective and payment of the Scheme Consideration for the Scheme Shares in accordance with clauses 6.1 to 6.3 and 6.5 of this Scheme and the Bidder having provided the Target with written confirmation thereof:

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to the Bidder without the need for any further act by any Scheme Participant (other than acts performed by the Target as attorney and agent for Scheme Participants under clause 8.1 of this Scheme) by:
  - (i) the Target delivering to the Bidder a duly completed and executed Share Scheme Transfer executed on behalf of the Scheme Participants; and
  - (ii) the Bidder duly executing the Share Scheme Transfer and delivering it to the Target for registration; and
  - (iii) to the extent applicable, the Target effecting a valid transfer of Scheme Shares under section 1074D of the Corporations Act;
- (b) immediately following receipt of the duly executed Share Scheme Transfer, the Target must enter the name of the Bidder in the Register in respect of all Scheme Shares transferred to the Bidder in accordance with the terms of this Scheme.

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

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

### **5.4 Title and rights in Scheme Shares**

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clauses 5.2 and 6.3 of this Scheme, on and from the Implementation Date, the Bidder will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by the Target of the Bidder in the Register as the holder of the Scheme Shares.

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

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

## **5.6 Warranty by Scheme Participants**

Each Scheme Participant warrants to the Bidder and is deemed to have authorised the Target as agent and attorney for the Scheme Participant by virtue of this clause 5.6 to warrant to the Bidder, that:

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

## **5.7 Transfer free of encumbrances**

To the extent permitted by law, all Target Shares (including any rights and entitlements attaching to those shares) which are transferred to the Bidder under this Scheme will, at the date of the transfer of them to the Bidder, vest in the Bidder free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind not referred to in this Scheme.

## **5.8 Appointment of the Bidder as sole proxy**

Subject to the payment of the Scheme Consideration for the Scheme Shares as contemplated by clauses 5.2 and 6.3 of this Scheme, on and from the Implementation Date until the Target registers the Bidder as the holder of all of the Scheme Shares in the Register, each Scheme Participant:

- (a) irrevocably appoints the Bidder and each of its directors from time to time jointly and each of them individually) as its sole proxy and where applicable, corporate representative, to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in its name and sign any shareholders resolution, and no Scheme Participant may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 5.8(a)); and
- (b) must take all other actions in the capacity of the registered holder of Scheme Shares as the Bidder directs; and
- (c) acknowledges and agrees that in exercising the powers referred to in clause 5.8(a), the Bidder and any director, officer, secretary or agent nominated by the Bidder under clause 5.8(a) may act in the best interests of the Bidder as the intended registered holder of the Scheme Shares.

# **6 Scheme Consideration**

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## **6.1 Consideration under the Scheme**

The Target and the Bidder must pay (or procure the payment of) the Scheme Consideration to the Scheme Participants in accordance with this clause 6.

## **6.2 Satisfaction of obligations**

The Bidder must, and the Target must use its best endeavours to procure that the Bidder does, no later than two Business Days before the Implementation Date, deposit (or procure the

deposit) in Immediately Available Funds the aggregate amount of the Scheme Consideration payable to all Scheme Participants into the Trust Account (except that the amount of any interest on the amount deposited (less bank fees and other charges) will be to the Bidder's account).

### **6.3 Payment of Scheme Consideration**

On the Implementation Date, subject to receipt of the Scheme Consideration from the Bidder in accordance with clause 6.2 of this Scheme, the Target must pay or procure payment to each Scheme Participant an amount equal to the Scheme Consideration for each Scheme Share transferred to the Bidder on the Implementation Date by that Scheme Participant, whereby the amounts referred to in this clause 6.3 of this Scheme must be paid by:

- (a) where a Scheme Participant before the Record Date has made an election in accordance with the requirements of the Register to receive dividend payments from the Target by electronic funds transfer to a bank account nominated by the Scheme Participant, paying by direct credit to the nominated bank account; or
- (b) where a Scheme Participant has not made an election referred to in clause 6.3(a), sending a cheque drawn on an Australian bank in Australian currency to each Scheme Participant by pre-paid ordinary post (or, if the address of the Scheme Participant in the Register is outside Australia, by pre-paid airmail post) to their address recorded in the Register at 5.00pm on the Record Date (or in the case of joint holders, in accordance with the procedures set out in clause 6.6).

### **6.4 Unclaimed monies**

- (a) The Target may cancel a cheque issued under clause 6.3 of this Scheme if the cheque:
  - (i) is returned to the Target; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Implementation Date, on a written request from a Scheme Participant, the Target must reissue a cheque that was previously cancelled under this clause 6.4. Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of the Bidder.
- (c) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined under the *Unclaimed Money Act 1995* (NSW)).

### **6.5 Orders of a court**

- (a) In the case of notice having been given to the Target (or the Registry) of an order made by a court of competent jurisdiction:
  - (i) which requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Participant, which would otherwise be payable to that Scheme Participant in accordance with clause 6.3 of this Scheme, then the Target shall procure that payment is made in accordance with that order; or
  - (ii) which would prevent the Target from dispatching payment to any particular Scheme Participant in accordance with clause 6.3 of this Scheme;



- (b) the Target will retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Participant multiplied by the Scheme Consideration until such time as payment in accordance with clause 6.3 of this Scheme is permitted by law.

## **6.6 Joint holders**

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

## **7 Dealings in Scheme Shares**

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### **7.1 Determination of Scheme Participants**

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

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Register as the holder of the relevant Scheme Shares on or before 7.00pm (Sydney time) on the Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received on or before 7.00pm (Sydney time) the Record Date at the place where the Register is kept.

### **7.2 Register**

The Target must register any registrable transmission applications or transfers of the Scheme Shares received in accordance with clause 7.1(b) of this Scheme on or before 7.00pm (Sydney time) on the Record Date.

### **7.3 No disposals after Record Date**

- (a) If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date in any way except as set out in this Scheme and any such disposal will be void and of no legal effect whatsoever.
- (b) The Target will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Shares received after 7.00pm (Sydney time) on the Record Date (except a transfer to the Bidder pursuant to this Scheme and any subsequent transfer by the Bidder or its successors in title) or received prior to the Record Date but not in registrable or actionable form.

### **7.4 Maintenance of Target Register**

For the purpose of determining entitlements to the Scheme Consideration, the Target will maintain the Register in accordance with the provisions of this clause 7 until the Scheme Consideration has been paid to the Scheme Participants and the Bidder has been entered in the Register as the holder of all the Scheme Shares. The Register in this form will solely determine entitlements to the Scheme Consideration.

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

Subject to provision of the Scheme Consideration and registration of the transfer to the Bidder contemplated in clauses 5.2 and 6.3 of this Scheme, any statements of holding in respect of Scheme Shares will cease to have effect after 7.00pm (Sydney time) on the Record Date as documents of title in respect of those shares (other than statements of holding in favour of the Bidder, its Associates and their successors in title). After 7.00pm (Sydney time) on the Record Date, each entry current on the Register as at 7.00pm (Sydney time) on the Record Date (other than entries in respect of the Bidder, its Associates or their successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration.

## **7.6 Details of Scheme Participants**

Within two Business Days after the Record Date, Target will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant, as shown in the Register at 7.00pm (Sydney time) on the Record Date are available to the Bidder in such form as the Bidder reasonably requires.

## **7.7 Quotation of Target Shares**

- (a) The Target will apply to ASX to suspend trading on ASX in Target Shares with effect from the close of trading on ASX on the Effective Date.
- (b) After the Scheme has been fully implemented, the Target will apply:
  - (i) for termination of the official quotation of Target Shares on ASX; and
  - (ii) to have itself removed from the official list of the ASX.

# **8 General Scheme provisions**

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## **8.1 Power of attorney**

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

- (a) executing any document necessary or expedient to give effect to this Scheme including the Share Scheme Transfer;
- (b) enforcing the Deed Poll against the Bidder,

and the Target accepts such appointment. The Target as attorney and agent of each Scheme Participant, may sub-delegate its functions, authorities or powers under this clause 8.1 to all or any of its directors, officers, secretaries or employees jointly, severally or jointly and severally).

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

The Target may, with the consent of the Bidder (which cannot be unreasonably withheld), by its counsel or solicitor consent on behalf of all persons concerned to any variations, alterations or conditions to this Scheme which the Court thinks fit to impose. Each Scheme Participant agrees to any such variation, alteration or condition.

### **8.3 Further action by the Target**

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

### **8.4 Authority and acknowledgement**

Each of the Scheme Participants:

- (a) irrevocably consents to the Target and the Bidder doing all things and executing all deeds, instruments, transfers or other documents necessary or expedient for or incidental to the implementation of this Scheme; and
- (b) acknowledges that this Scheme binds the Target and all Scheme Participants (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against the Scheme at the Scheme Meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the Target's constitution.

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

Neither the Target nor the Bidder, nor any of their respective directors, officers, employees and advisors (as applicable), will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

### **8.6 Enforcement of Deed Poll**

The Target undertakes in favour of each Scheme Participant to enforce the Deed Poll against the Bidder on behalf of and as agent and attorney for the Scheme Participants.

### **8.7 Stamp duty**

The Bidder will pay all stamp duty (including any fines, penalties and interest) payable in connection with this Scheme.

### **8.8 Notices**

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

## **9 Governing law and jurisdiction**

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This Scheme is governed by the law in force in New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place and waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

## Execution

EXECUTED as an agreement

Executed by  
Viralytics Limited ACN 010 657 351  
on     /     /20     by:

▲ _____ Director	▲ _____ Director/Secretary
▲ _____ Full name of Director	▲ _____ Full name of Director/Secretary

## Annexure B

Deed Poll

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Annexure B runs from pages 81 to 87 inclusive.

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## Deed poll

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Merck, Sharp & Dohme (Holdings) Pty Ltd ACN 000 235 245

Scheme Participants

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Level 11 Central Plaza Two 66 Eagle Street Brisbane QLD 4000 | GPO Box 1855 Brisbane QLD 4001 Australia | **ABN** 42 721 345 951  
**Telephone** +61 7 3233 6888 | **Fax** +61 7 3229 9949

**Offices** Brisbane Sydney Melbourne Newcastle

[mccullough.com.au](http://mccullough.com.au)

## Deed poll

Dated

---

By

**Bidder**                      **Merck Sharp & Dohme (Holdings) Pty Ltd ACN 000 235 245** of Building A,  
Level 1, 26-38 Talavera Road, Macquarie Park NSW 2113 (**Bidder**)

In favour of

**Target**                      **Each person registered as a holder of Target Shares as at 7.00pm (Sydney time) on the Record Date (other than Excluded Shareholders)**

## Background

- A     The Target and the Bidder have entered into the Scheme Implementation Agreement.
- B     In the Scheme Implementation Agreement, the Bidder agreed (amongst other things) to pay the Scheme Consideration to the Target on behalf of the Scheme Participants, subject to the satisfaction of certain conditions.
- C     The Bidder is entering into this document for the purpose of covenanting in favour of Scheme Participants to perform its obligations in relation to the Scheme.
- D     The effect of the Scheme will be that the Scheme Shares, together with all rights and entitlements attaching to them, will be transferred to the Bidder in exchange for the Scheme Consideration.

## Agreed terms

### 1 Definitions and interpretation

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#### 1.1 Definitions

In this document, terms defined in the Scheme have the same meaning when used in this document, and:

Term	Definition
<b>Authorised Officer</b>	means: (a) in respect of the Bidder, each of its directors, or any other person nominated by the Bidder to act as an Authorised Officer under this document and notified to the Target in writing; and (b) in respect of the Target, each of its directors, or

Term	Definition
	any other person nominated by the Target to act as an Authorised Officer under this document and notified to the Bidder in writing.
<b>Scheme</b>	means the proposed scheme of arrangement between the Target and Scheme Participants under which all the Scheme Shares will be transferred to the Bidder under Part 5.1 Corporations Act, substantially in the form of Annexure A to this document, or as otherwise agreed by the Bidder and the Target, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) Corporations Act, to the extent they are approved in writing by the Target and the Bidder.
<b>Scheme Implementation Agreement</b>	means the scheme implementation agreement dated 21 February 2018 between the Target and the Bidder under which, amongst other things, the Target has agreed to propose the Scheme to the Target Shareholders, and each of the Bidder and the Target has agreed to take certain steps to give effect to the Scheme.

## 1.2 Interpretation

In this document:

- (a) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (b) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (e) a reference to this document includes the agreement recorded by this document;
- (f) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (h) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- (i) a reference to 'month' means calendar month;



- (j) the words 'include', 'including', 'for example' or 'such as' when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (k) a reference to 'month' means calendar month; and
- (l) time is a reference to New South Wales time.

### **1.3 Headings**

Headings are for convenience only and do not affect the interpretation of this document.

### **1.4 Nature of document**

The Bidder acknowledges that:

- (a) this document may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not a party to it; and
- (b) under the Scheme, the Target undertakes to enforce this document against the Bidder on behalf of and as agent and attorney for each Scheme Participant.

## **2 Conditions precedent and termination**

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### **2.1 Conditions precedent**

The Bidder's obligations under this document are subject to the Scheme becoming Effective.

### **2.2 Termination**

The Bidder's obligations under this document will automatically terminate and the terms of this document will be of no further force or effect if:

- (a) the Scheme has not become Effective on or before the End Date; or
- (b) the Scheme Implementation Agreement is terminated in accordance with its terms prior to the occurrence of the Effective Date for the Scheme,

unless the Bidder and the Target otherwise agree in writing.

### **2.3 Consequences of termination**

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

- (a) the Bidder is released from its obligations to further perform this document except those obligations contained in clause 7.1; and
- (b) each Scheme Participant retains the rights, powers or remedies they have against the Bidder in respect of any breach of this document which occurs before it is terminated.

### **3 Performance of obligations generally**

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The Bidder undertakes in favour of each Scheme Participant that it will fulfil its obligations under the Scheme Implementation Agreement and do all acts and things necessary or desirable on its part to give full effect to the Scheme.

### **4 Scheme Consideration**

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#### **4.1 Provision of Scheme Consideration**

Subject to clause 2, the Bidder undertakes in favour of each Scheme Participant to pay or procure the payment of the Scheme Consideration to the trust account held by the Target on behalf of each Scheme Participant subject to and in accordance with the terms of the Scheme.

#### **4.2 Payment of Scheme Consideration**

The Bidder's obligation to provide the Scheme Consideration to the Target on behalf of each Scheme Participant is satisfied by the Bidder, no later than two Business Days before the Implementation Date, depositing in immediately available funds the aggregate amount of the scheme Consideration payable to all Scheme Participants into the trust account held by the Target on behalf of each Scheme Participant (except that the amount of any interest on the amount deposited (less bank fees and other charges) will be to the Bidder's account).

### **5 Representations and warranties**

---

The Bidder represents and warrants that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this document and to carry out the transactions contemplated by this document;
- (c) it has taken all necessary corporate action to authorise its entry into this document and has taken or will take all necessary corporate action to authorise the performance of this document and to carry out the transactions contemplated by this document; and
- (d) this document is valid and binding upon the Bidder and enforceable against the Bidder in accordance with its terms.

### **6 Continuing obligations**

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

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

## **7 General**

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### **7.1 Stamp duty**

The Bidder must:

- (a) pay all stamp duty (including fines, penalties and interest) payable and assessed on or in connection with this document, the performance of this document, or any instruments entered into under this document and in respect of a transaction effected by or made under the Scheme and this document; and
- (b) indemnify on demand each Scheme Participant against any liability arising from failure to comply with clause 7.1(a).

### **7.2 Notices**

Unless expressly stated otherwise in this document, all notices, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing and sent to the address stated in the Scheme Implementation Agreement, or as otherwise advised by the party from time to time, and marked to the attention of the person stated in the details.

### **7.3 Waiver**

- (a) A waiver of any right arising from a breach of this document or of any right, power, authority, discretion or remedy arising upon default under this document must be in writing and signed by the party giving the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (i) a right arising from a breach of this document; or
  - (ii) a right, power, authority, discretion or remedy created or arising upon default under this document,
 does not result in a waiver of that right, power, authority, discretion or remedy.
- (c) A party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

### **7.4 Variation**

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

- (a) the variation is agreed to by the Target and the Bidder in writing; and
- (b) the Court indicates that the variation, alteration or amendment would not itself preclude approval of the Scheme,

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

#### **7.5 Remedies cumulative**

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

#### **7.6 Assignment**

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

#### **7.7 Governing law and jurisdiction**

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

#### **7.8 Further action**

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

#### **7.9 Service of process**

Without preventing any other mode of service, any document in a legal action, suit or other proceeding in the courts of New South Wales or courts of appeal from them (including any writ of summons or other originating process or any third or other party notice) may be served on the Bidder by being delivered to or left for the Bidder at the address shown in the Scheme Implementation Agreement.

### **Execution**

EXECUTED as a deed poll

Signed, sealed and delivered by  
Merck, Sharp & Dohme (Holdings) Pty Ltd ACN 000  
235 245 by:

^ \_\_\_\_\_  
Signature of authorised person

^ \_\_\_\_\_  
Signature of witness

^ \_\_\_\_\_  
Name of authorised person

^ \_\_\_\_\_  
Name of witness

## Annexure C

Registered Intellectual Property

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Annexure C runs from page 89 to page 95 inclusive.

## PATENT REPORT - External

Viralytics Limited – 9 Feb 2018

### Family Name – Cocksackievirus

Entitled: “A method of treating a malignancy in a subject and a pharmaceutical composition for use in same”.

S&F Case No.	Country	Official No.	Case Status
	Australia	PQ 4256	Provisional application filed 25 Nov 1999. Ceased.
	PCT	PCT/AU00/01461 (WO 01/37866)	PCT application filed 27 Nov 2000. Ceased. National phases shown below.
698317AU	Australia	770517	Patent granted 10 June 2004; expiry date 27 Nov. 2020.
698317AUD1	Australia	2004202292	Patent granted 26 Sept 2007; expiry date 27 Nov. 2020.
698317CA	Canada	2422429	Patent granted 11 March 2014. Expiry date 27 Nov 2020.
698317EP	Europe	EP1235590 (previously 00979268.0)	Patent granted; 22 Oct. 2008; expiry date 27 Nov. 2020. Registered in AT, BE, CH, CY, DE, DK, ES, FI, FR, GB, GR, IE, IT, LU, MC, NL, PT, SE, TR.
698317EPD1	Europe (divisional)	EP2016952 (previously application no. 08018165.4)	Patent granted 25 Dec 2013. Expiry date 27 Nov 2020. Registered in DE, ES, FR, GB, IT.
698317JP	Japan	5085825 (previously application no. 2001-539480)	Patent granted 14 Sept. 2012; expiry date 27 Nov. 2020.
698317NZ	New Zealand	519527	Patent granted 10 May 2004; expiry date 27 Nov. 2020.
698317US	USA	7,361,354 (previously application no. 10/148008)	Patent granted 22 April 2008; expiry date 12 April 2022.
698317USC1	USA	8,722,036 (previously application no. 12/040813)	Patent granted 13 May 2014. Expiry date 30 Sep 2021.

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698317USC4	USA	15/406459	Application pending.
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## Family Name – Echovirus

**Entitled: “A method of treating a malignancy in a subject via direct picornaviral-mediated oncolysis”.**

<b>S&amp;F Case No.</b>	<b>Country</b>	<b>Official No.</b>	<b>Case Status</b>
	Australia prov.	2002953436	Provisional application filed 18 Dec 2002. Ceased.
686338C	PCT	PCT/AU2003/001688 (WO2004/054613)	Application filed 18 Dec 2003. Ceased. National phase entered (see below).
686338AU	Australia	2003287773	Patent granted 26 Nov. 2009; expiry date 18 Dec. 2023.
686338CA	Canada	2510227	Patent granted 31 March 2015; expiry date 18 Dec 2023.
686338CN	China	178242 (previously application no. 200380109808.3)	Patent granted 8 June 2011; expiry date 18 Dec. 2023.
686338CND1	China (divisional)	102166228 (previously application no. 201110091011.1)	Patent granted 19 Feb 2014. Expiry date 17 Dec 2023.
686338EP	Europe	EP1581257 (previously application no. 03779569.7)	Patent granted 30 April 2014. Expiry date 18 Dec 2023. Registration in DE, ES, FR, GB, IT.
686338IN	India	219479 (previously 2950/DELP/0)	Patent granted 7 May 2008; expiry date 18 Dec. 2023.
686338NZ	New Zealand	541230	Patent granted 14 Aug. 2008; expiry date 18 Dec. 2023.
686338SG	Singapore	113802 (Previously application no. 2005039524)	Patent granted 29 June 2007; expiry date 18 Dec. 2023.
686338ZA	South Africa	2005/05389	Patent granted 27 Sept. 2006; expiry date 18 Dec. 2023.
686338KR	South Korea	101171295 (previously application no. 2005-7011510)	Patent granted 31 July 2012; expiry date 18 Dec. 2023.
686338US	USA	7,485,292 (was 10/539219)	Patent granted 3 Feb. 2009; expiry date 13 June 2024.
686338HK	Hong Kong	HK1082194 (previously application no. 06103056.9)	Patent granted 31 Oct 2014; expiry date 18 Dec 2023. Re-registration of EP Patent 1581257.
686338HKD1	Hong Kong	HK1157657 (previously application no. 11112125.0)	Patent granted 4 July 2014; expiry date 18 Dec 2023. Re-registration of Chinese divisional



S&F Case No.	Country	Official No.	Case Status
			CN ZL201110091011.1.

### Family Name – Variants

Entitled: "Modified oncolytic viruses".

S&F Case No.	Country	Official No.	Case Status
	USA prov.	60/552,095	US provisional application filed 11 March 2004. Ceased.
699860C	PCT	PCT/AU2005/000048 (WO2005/087931)	Application filed 17 Jan 2005. Ceased. National phase entered (see below).
699860AU	Australia	2005221725	Patent granted 7 Oct 2010; expiry date 17 Jan. 2025.
699860ZA	South Africa	2006/08222	Patent granted 30 Jan 2009; expiry date 17 Jan. 2025.
699860US	USA	8,114,416 (previously application no. 10/592395)	Patent granted 14 Feb. 2012; expiry date 20 Sept. 2025.

## Family Name – Hematologic

**Entitled: “Methods and compositions for treatment of hematologic cancers”.**

<b>S &amp; F Case No.</b>	<b>Country</b>	<b>Official No.</b>	<b>Case Status</b>
698304	Australia prov.	2004904766	Provisional Application filed 20 Aug 2004. Ceased.
715809	Australia prov.	2005901879	Provisional Application filed 14 Apr 2005. Ceased.
698304C	PCT	PCT/AU2005/001257 (WO2006/017914)	Application filed 22 Aug 2005. Ceased. National phase applications entered (see below).
698304AU	Australia	2005274617	Patent granted 22 Mar 2012; expiry date 22 Aug. 2025.
698304CA	Canada	2577692	Patent granted 6 May 2014. Expiry date 22 Aug 2025 (est.)
698304CN	China	101065144 (previously application no. 200580034763.7)	Patent granted 13 June 2012. Expiry date 22 Aug. 2025.
698304EP	Europe	05773382.6	Patent granted 5 Oct 2016. Registered in DE, FR, GB.
698304HK	Hong Kong	07108488.5	Re-registration proceedings
698304JP	Japan	5054522 (previously application no. 2007-526129)	Patent granted 3 August 2012. Expiry date 22 Aug 2025.
698304KR	South Korea	101295733 (previously application no. 10-2007-7006358)	Patent granted 6 August 2013. Expiry date 22 Aug 2025.
698304SG	Singapore	130382 (previously application no. 2007014285)	Patent granted 15 Mar. 2011; expiry date 22 Aug. 2025.
698304US	United States	US 8,236,298 (previously application no. 11/660,458)	Patent granted on 7 Aug. 2012. Expiry date 20 Jun 2028.
698304ZA	South Africa	2007/02269	Patent granted 25 Sept. 2008; expiry date 22 Aug. 2025.

### Family Name – Naked RNA

**Entitled: "Method and composition for treatment of neoplasms". (WO 2006/074526)**

Item	S& F Case No.	Country	Official No.	Case Status
1.	698478	Australia provisional	2005900179	Provisional Application filed 17 Jan 2005. Ceased.
2.	698478C	PCT	PCT/AU2006/00051 (WO2006/074526)	PCT filed 17 Jan 2006. Ceased. National phase entries (see below)
4.	698478CN	China	101132798 ZL200680006483.X (previously application no. 200680006483.X)	Patent granted 27 April 2011. Expiry date 17 Jan 2026.
8.	698478HK	Hong Kong	HK1110802 (previously application no. 08105564.7)	Patent granted 25 Nov. 2011; expiry date 17 Jan. 2026.

### Family Name – Bladder Cancer

**Entitled: "Methods for the treatment of bladder cancer"**

S& F Case No.	Country	Official No.	Case Status
P079797US	US prov.	61/836083	US Provisional application filed 17 June 2013. Ceased.
P098023C	PCT	PCT/AU2014/000611 (WO2014/201492)	PCT application filed 13 June 2014. Ceased. National phase applications as below.
P098023AU	Australia	2014284100	Application pending.
P098023CA	Canada	2915397	Application pending.
P098023US	USA	14/896913	Application pending.

**Family Name – Combination therapy**

**Entitled “Combination method for treatment of cancer”**

<b>S&amp; F Case No.</b>	<b>Country</b>	<b>Official No.</b>	<b>Case Status</b>
P104361	Australia prov.	2014900647	Provisional application filed on 27 Feb 2014. Ceased.
P104361C	PCT	PCT/AU2015/000111 (WO2015/127501)	PCT application filed 27 Feb 2015. Ceased. National phase entries as shown below.
P104361AU	Australia	2015222685	Application pending.
P104361CA	Canada	2940570	Application pending.
P104361CN	China	201580022374.6	Application pending.
P104361EP	Europe	15754456.0 (re-publication no. 3110443)	Application pending.
P104361HK	Hong Kong	17100893.9	Application pending.
P104361JP	Japan	2016-554571	Application pending.
P104361KR	South Korea	10-2016-7026143	Application pending.
P104361NZ	New Zealand	723574	Application pending.
P104361SG	Singapore	11201607130R	Application pending.
P104361USC1	USA	15/868805	Application pending.