



# Scheme Implementation Agreement

in relation to Trilogy International Limited

CITIC Capital China Partners III, L.P. (**Bidder**)  
Trilogy International Limited (**Target**)

# Scheme Implementation Agreement

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# Details

Date 14 December 2017

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## Parties

Name **CITIC CAPITAL CHINA PARTNERS III, L.P.** registered as an exempted limited partnership registered on 1 December 2015 under the Exempted Limited Partnership Law 2014 of the Cayman Islands, whose general partner is CCP III GP Limited

Short form name **Bidder**

Notice details As set out in clause 19

Name **TRILOGY INTERNATIONAL LIMITED** (Company No. 2090514) a duly incorporated company having its registered office at Level 6, Chelsea House, 85 Fort Street, Auckland Central, 1010, New Zealand

Short form name **Target**

Notice details As set out in clause 19

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## Background

- (A) Bidder proposes that a yet to be incorporated company (**BidCo**) will acquire all of the Scheme Shares by means of the Scheme.
- (B) This agreement is entered into to record and give effect to the terms and conditions on which Bidder and Target propose to implement the Scheme.
- (C) Bidder has agreed to guarantee BidCo's obligations under this agreement.

# Agreed terms

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## 1. Defined terms & interpretation

### 1.1 Definitions

In this agreement:

**Additional Amount** has the meaning given in clause 17.3;

**ASX** means ASX Limited or the Australian Securities Exchange operated by ASX Limited, as the context requires;

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

**Authorisation** means any permit, licence, consent, approval, registration, accreditation, certification or other authorisation given or issued by any Government Agency;

**BidCo** has the meaning in Recital A of the Background;

**Bidder Group** means Bidder and its Related Entities (but excluding members of the Target Group);

**Bidder Indemnified Persons** means each member of the Bidder Group and each of their respective directors, officers and employees;

**Bidder Information** means all information given by Bidder to Target for inclusion in the Scheme Booklet concerning Bidder, BidCo, their Related Entities, businesses and interests and dealings in the Shares;

**Bidder Undertakings** means the undertakings set out in Part 2 of Schedule 3;

**Bidder Warranties** means the statements set out in Part 1 of Schedule 3;

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

**Break Fee** means NZ\$2,000,000 plus GST, if applicable;

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are generally open in Auckland, New Zealand, Hong Kong and the Cayman Islands for normal business;

**CIDSUR** means Compañía de Inversiones y Desarrollo Sur Limitada;

**Companies Act** means the Companies Act 1993;

**Competing Proposal** means:

- (a) any takeover (whether a full or partial takeover under the Takeovers Code) in respect of Target;
- (b) any scheme of arrangement in respect of Target;

- (c) any transfer or issuance of financial products of Target requiring shareholders' approval under the Takeovers Code; and
- (d) any sale of assets or financial products constituting a material part of the Target Group's business, which includes the sale of any one or more of:
  - (i) the Target Group's operating segments as disclosed in its annual report for the period ending 31 March 2017 (**Operating Segments**); and
  - (ii) the business operated by Lanocorp New Zealand Limited, Lanocorp Pacific Limited, LTM Holdings Limited, Canterbury Cosmetics Limited, Lanocorp UK Limited, Lanocorp Pacific Pty Limited, Lanocorp USA Inc and Tiaki UK Limited,

for the purposes of the definition of Competing Proposal, paragraphs (c) and (d) above, include any agreement (within the meaning of section 6 of the FMCA) whereby such a transaction is effected through a series of linked or related transactions which if conducted as a single transaction would constitute a Competing Proposal within the meaning of either of paragraphs (c) or (d).

**Conditions** mean the conditions precedent set out in the first column of the table in clause 3.1;

**Confidentiality Agreement** means the confidentiality agreement between CITIC Capital Partners Management Limited and Target, dated 27 February 2017;

**Constitution** means the constitution of Target for the time being;

**Consideration** means NZ\$2.90 in respect of each Share held by a Scheme Shareholder, as reduced by the per Share amount or value of any dividend the record date for which falls on or between the date of this agreement and the Implementation Date;

**Control** means, in relation to a person (the "**relevant person**") and one or more other persons, where those one or more persons, directly or indirectly, whether by the legal or beneficial ownership of shares, securities or other equity, the possession of voting power, by contract, trust, or otherwise:

- (a) has the power to appoint or remove the majority of the members of the governing body of the relevant person;
- (b) controls or has the power to control the affairs or policies of the relevant person; or
- (c) is in a position to derive more than 50% of the economic benefit of the existence or activities of the relevant person;

**Counter Proposal** has the meaning given in clause 12.7(c)(iii);

**Court** means the High Court of New Zealand, Auckland Registry;

**Data Room Information** means:

- (a) the written information and documents made available to Bidder or its Representatives on or before 27 November 2017, in the electronic data room

assembled by Target, an index to which has been initialled for the purposes of identification by or on behalf of the parties; and

- (b) the written answers or written confirmations provided to Bidder or its Representatives on or before 27 November 2017 in response to requests for information, copies of which have been compiled and initialled for the purposes of identification by or on behalf of the parties;

**Deed Poll** means the deed poll to be entered into by Bidder and BidCo in favour of the Scheme Shareholders in the form attached as Annex 2 or in such other form as the parties agree in writing;

**EBITDA** means earnings before interest, tax, depreciation and amortisation;

**Effective** means, when used in relation to the Scheme, the coming into effect under section 236(3) of the Companies Act of the order of the Court made under section 236(1) of the Companies Act in relation to the Scheme and all of the conditions to the implementation of the Scheme having been satisfied or waived in accordance with this agreement and the Scheme;

**Encumbrance** means any security interest (within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999) and any option, right to acquire, right of pre-emption, assignment by way of security, trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind (other than any reservation of title by suppliers in the ordinary course of business), and any agreement to create any of the foregoing;

**End Date** means 31 May 2018 or any other date agreed in writing by the parties;

**Excluded Event** means any event or change in circumstances:

- (a) the occurrence of which and the effect on the Target Group have both been fairly disclosed to Bidder in writing prior to being specifically agreed to by Bidder; or
- (b) resulting from the exercise by any party of its rights, or the discharge by any party of its obligations, under this agreement other than Target's:
  - (i) obligations under clause 9.2(a) and 9.2(c); and
  - (ii) rights under clauses 9.2 and 9.3.

**Excluded Shares** means any Shares nominated in writing by Bidder to Target not less than two Business Days prior to the Record Date which are held or controlled by BidCo or any of its associates (as that term is defined in the Takeovers Code) at 5.00pm on the Record Date;

**Exclusivity Period** means the period starting on the date of this agreement and ending on the first to occur of:

- (a) termination of this agreement;
- (b) the Implementation Date; and
- (c) the End Date;



**Executive Director** means Stephen Sinclair;

**FC** means Sociedad Agricola y Forestal Casino SpA;

**FC Shares** means the 2,615,181 ordinary shares in Target currently held by CIDSUR;

**FC Shareholders Agreement** means the Shareholders Agreement between CIDSUR, Trilogy Natural Products Limited and Sociedad Agricola y Forestal Casino SpA, dated 30 June 2016;

**FC Unwind** means the acquisition and cancellation of the FC Shares by Target;

**Final Orders** means orders on application of Target, that the Scheme shall be binding on Target, BidCo, Bidder, Shareholders and such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act;

**Final Orders Date** means the day on which the Final Orders are granted by the Court;

**First Court Date** means the first date on which the application is made to the Court for the Initial Orders in accordance with section 236(2) of the Companies Act;

**FMCA** means the Financial Markets Conduct Act 2013;

**Government Agency** means any government, any department, officer or minister of any government and any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity;

**GST** means goods and services tax chargeable, or to which a person may be liable, under the GST Act, and any penalties, additional tax or interest payable in respect of goods and services tax;

**GST Default Amounts** means any penalties, additional tax or interest payable in respect of goods and services tax;

**GST Exclusive Consideration** has the meaning given in clause 17.2;

**GST Act** means the Goods and Services Tax Act 1985;

**Implementation Date** means the day on which the Scheme is to be implemented, being 5 Business Days after the Record Date, or such other date agreed between the parties in writing;

**Independent Adviser** means Grant Samuel & Associates Limited, appointed by Target as independent adviser to prepare the Independent Adviser's Report and approved by the Takeovers Panel;

**Independent Adviser's Report** means the independent adviser's report prepared by the Independent Adviser in relation to the Scheme as amended or updated from time to time and including any supplementary or replacement report, stating its opinion on the merits of the Transaction;

**Initial Orders** means, on application by Target, orders by the Court for the purposes of section 236(2) of the Companies Act;

**Insolvency Event** means, in relation to a person, the occurrence of any of the following:

- (a) the person ceases or threatens to cease to carry on all or substantially all of its business or operations;
- (b) an application or an order is made, or a resolution is passed or proposed, for the person's dissolution;
- (c) the person is or becomes unable to pay its debts when due (as defined in the Companies Act), or enters into dealings with any of its creditors with a view to avoiding or in expectation of insolvency, or makes a general assignment or an arrangement or composition with or for the benefit of any of its creditors, or stops or threatens to stop payments generally;
- (d) the person goes into receivership or has a receiver, receiver and manager, official manager, trustee or other similar officer appointed in respect of all or any of its property;
- (e) a distress, attachment or other execution is levied or enforced upon or commenced against any of its assets;
- (f) any resolution is passed, or any proceeding is commenced, for the dissolution of that person;
- (g) the person takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this definition; and
- (h) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any applicable foreign law;

**Lanocorp Companies** means Lanocorp New Zealand Limited, Lanocorp Pacific Limited, LTM Holdings Limited, Canterbury Cosmetics Limited and Lanocorp Pacific Pty Limited;

**Lanocorp Shareholders Agreement** means the shareholders agreement relating to the Lanocorp Companies, between the Lanocorp Companies, Noel Allan Walton, Timothy Robert McIver and Kanara Holdings Limited, dated 7 July 2017;

**Loss** means all losses, damages, costs, expenses, charges and other liabilities provided however that the parties shall not be liable for any indirect loss, economic loss, loss of opportunity or loss of profit whatsoever and however arising, including:

- (a) consequential loss or damage; or
- (b) loss of use, production, revenue, income, profits, business and savings or business interruption (whether or not the indirect loss or damage was foreseeable);

**Material Adverse Change** means any matter, event, condition or change in circumstances or thing which occurs or is announced, and which is not an Excluded Event, (each a **Specified Event**) and which individually, or when aggregated with all other Specified Events, reduces or is reasonably likely to reduce:

- (a) the consolidated net tangible assets of the Target Group as at 30 September 2017 by 15% or more; or

- (b) the consolidated EBITDA (including non-recurring items) of the Target Group over the 12 months ending on the month immediately preceding the Specified Event, by 15% or more,

provided that such event, condition, matter, or change in circumstances is not the result of:

- (a) general changes to the market for products of the Target Group in the markets in which the business operates or trades which are not specific to the Target Group;
- (b) any change in exchange rates or interest rates, general economic, financial, regulatory, legal or political conditions or requirements generally affecting businesses in the industry in which the Target Group operates or the markets in which the Target Group operates or trades;
- (c) any event, change, matter, or circumstance disclosed in the Data Room Information to, or known by, Bidder or its Representatives before the date of this agreement;
- (d) any change in accounting policy required by law;
- (e) any event, change, matter, or circumstance required by this agreement, the Scheme or the transactions contemplated by them; or
- (f) an event, change, matter, or circumstance previously approved in writing by Bidder;

**Minority Entities** means FC and any other entities in which a member of the Target Group has a minority equity interest;

**NZX** means NZX Limited and, where the context requires, the main board financial market that it operates;

**NZX Listing Rules** means the NZX Main Board/Debt Market Listing Rules;

**OIO Laws** means:

- (a) Overseas Investment Act 2005;
- (b) Overseas Investment Regulations 2005;
- (c) any ministerial designation and delegation letter relating to the legislation and regulations in (a) and (b) above, including the Designation and Delegation Letter, dated 22 April 2009;
- (d) any ministerial directive letter relating to the legislation and regulations in (a) and (b) above, including the Ministerial Directive Letter, dated 28 November 2017; and
- (e) guidance issued by the Overseas Investment Office on its website relating to the assessment of applications made to it under the Overseas Investment Act 2005.

**Options** means all options to receive Shares held by Target Group employees, consultants or staff;

**Option Plan Rules** means Target's Share Option Plan Rules;

**Permitted Encumbrances** means in respect of the Target Group's assets, but not the Scheme Shares:

- (a) a reservation of ownership or other purchase money security interest entered into in respect of supplies to a member of the Target Group in the ordinary course of business;
- (b) a right or set-off or combination of arising by operation of law or practice over money deposited with a bank or financial institution in the ordinary course of business;
- (c) a security interest arising by operation of law and in the ordinary course of business provided that the debt it secures is paid when due or contested in good faith by appropriate proceedings;
- (d) a security interest arising under section 17(1)(b) of the *Personal Property Securities Act 1999* that does not secure payment or performance of an obligation,

in each case existing on the date of this agreement or in the period prior to the Implementation Date without breach of clause 9.2;

**Potential Competing Proposal** means any offer, proposal or expression of interest (whether or not conditional, complete or binding) which is not, but could reasonably be expected to become, a Competing Proposal;

**PPSR AU** means the Personal Property Securities Register established under the *Personal Property Securities Act 2009* (Cth);

**PPSR NZ** means the Personal Property Securities Register established under section 139 of the *Personal Property Securities Act 1999*;

**Prescribed Occurrence** means the occurrence of any of the events listed in Schedule 1 other than an event agreed to by Bidder in writing;

**Record Date** means 7.00 pm on the date which is 5 Business Days after the later of:

- (a) the Final Orders Date; and
- (b) the date on which the last of the Conditions set out in clauses 3.1(a), 3.1(b) and 3.1(c) are satisfied or, if capable of waiver, waived in accordance with clause 3.5,

or such other date agreed between the parties in writing;

**Reference Rate** means in relation to interest payable on any payment due under this agreement, the mid or "FRA" rate for 90 day bank accepted bills (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page) at or about 10.45 am on the first Business Day of the period in respect of which such rate of interest is to be calculated, and thereafter on each succeeding Business Day of the period;

**Register** means the register of Shares maintained by Computershare Investor Services Limited on behalf of Target;

**Registrar** has the meaning given in the Companies Act;

**Regulatory Conditions** means the Conditions set out in clauses 3.1(a) (OIO approval), 3.1(b) (FIRB approval), 3.1(c) (Regulatory clearances), and 3.1(f) (No restraints);

**Related Entity** means:

- (a) in respect of Bidder, an entity that:
  - (i) Controls Bidder; or
  - (ii) is under the Control of Bidder;
- (b) in respect of Target, FC and each entity that is under the Control of Target;

**Relevant Interest** has the meaning given in section 235(1) of the FMCA;

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

- (a) any director, officer or employee or agent of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, that person; and
- (b) when used in clauses 2.4, 12.1, 12.2, 12.4, 12.6, 12.7 and 15.2 only, also includes any Related Entity and any director, officer or employee or agent of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, any Related Entity;

**Reverse Break Fee** means NZ\$1,000,000 plus GST, if applicable;

**Rosehip Oil Agreement** means the supply agreement for rosehip oil between FC and Trilogy Natural Products Limited, dated 25 May 2016;

**Scheme** means a scheme of arrangement under Part 15 of the Companies Act under which all of the Shares held by Scheme Shareholders will be transferred to BidCo and the Scheme Shareholders will be entitled to receive the Consideration, in the form attached as Annex 1 or in such other form as Target and Bidder agree in writing and the Court approves under section 236(1) of the Companies Act;

**Scheme Booklet** means the explanatory memorandum (including the notice of meeting and proxy form), the despatch of which is to be approved by the Court and which is to be sent to Shareholders in advance of the Scheme Meeting;

**Scheme Meeting** means the meeting of Shareholders ordered by the Court to be convened pursuant to the Initial Orders in respect of the Scheme and includes any adjournment of that meeting;

**Scheme Resolution** means the resolution to be put to Shareholders at the Scheme Meeting to approve the Scheme;

**Scheme Shareholder** means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date, except CIDSUR;

**Scheme Shares** means all of the Shares on issue at 7.00pm on the Record Date other than Excluded Shares;

**Second Court Date** means the later of:

- (a) the last date Target files affidavit(s) verifying the results of the Scheme Meeting and such other information as prescribed in the Initial Orders so as to obtain the Final Orders; and
- (b) if there is a hearing in respect of the Final Orders, the first date of such hearing, provided that if such hearing is adjourned, it means the first date on which the adjourned application is heard;

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

**Share Purchase Plan Rules** means the New Zealand and Australian Share Purchase Plan Trust Deeds;

**Shareholder** means a person who is registered in the Register as the holder of one or more Shares from time to time;

**Superior Proposal** means a written bona fide Competing Proposal received after the date of this agreement that the Board determines, acting in good faith and after having taken advice from its external financial and legal advisers:

- (a) does not result from a breach by Target or by any member of the Target Group or its Representatives, of any of its obligations under clause 12 which, if done by Target, would constitute a breach of clause 12 by Target;
- (b) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Proposal, including its conditions precedent; and
- (c) is more favourable to Shareholders than the Scheme, taking into account all the terms and conditions of the Competing Proposal and the Scheme;

**Supplier** has the meaning given in clause 17.3;

**Surviving Clauses** means clause 1 (interpretation), clause 13 (break fee), clause 14.8 (effect of termination), clause 15 (announcements), clause 17 (GST), clause 19 (notices), clause 20 (general) (other than clause 20.7 (further assurance)) and clause 21 (governing law and jurisdiction);

**Takeovers Code** means the takeovers code approved in the Takeovers Code Approval Order 2000 (SR 2000/210) as amended, including by any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993;

**Takeovers Panel** means the Takeovers Panel established by section 5(1) of the Takeovers Act 1993;

**Target Director** means each director of Target from time to time;

**Target Group** means Target and its Related Entities;

**Target Indemnified Persons** means each member of the Target Group and each of their respective directors, officers and employees;

**Target Independent Directors** means each Target Director other than the Executive Director or the TBB Directors;



**Target Information** means all information included in the Scheme Booklet other than the Bidder Information and the Independent Adviser's Report;

**Target Undertakings** means the undertakings set out in Part 2 of Schedule 2;

**Target Warranties** means the statements set out in Part 1 of Schedule 2;

**Tax** means a tax, levy, charge, impost, fee, deduction, withholding or duty of any nature, including stamp and transaction duty or any goods and services tax, value added tax or consumption tax, which is imposed or collected by a Government Agency and includes any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts;

**TBB Directors** means the Executive Director, Grant Baker and Geoff Ross;

**Third Party** means a person other than a member of the Bidder Group;

**Timetable** means the timetable set out in Schedule 5, or such other timetable as Target and Bidder agree in writing; and

**Transaction** means the acquisition by a member of the Bidder Group of all the Scheme Shares through implementation of the Scheme in accordance with the terms of this agreement.

## **1.2 Target awareness**

Where any Target Warranty is qualified by the expression **so far as Target is aware** or any similar expression, Target will be deemed to know or be aware of all matters or circumstances of which any of Steve Sinclair, Grant Baker, Angela Buglass and Lindsay Render is actually aware as at the date of this agreement or should have reasonably been expected to have been aware if he or she would have made reasonable enquiries. For avoidance of doubt, and without limiting clause 11.1, none of the individuals referred to in this clause 1.2 has any personal liability in respect of the Target Warranties.

## **1.3 Things required to be done other than on a Business Day**

Unless otherwise indicated, if the day on which any act, matter or thing is to be done is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.

## **1.4 Other rules of interpretation**

In this agreement:

- (a) any reference, express or implied, to any legislation in any jurisdiction includes:
  - (i) that legislation as amended, extended or applied by or under any other legislation made before or after execution of this agreement;
  - (ii) any legislation which that legislation re-enacts with or without modification; and
  - (iii) any subordinate legislation made before or after execution of this agreement under that legislation, including (where applicable) that legislation as amended, extended or applied as described in clause 1.4(a)(i), or under any legislation which it re-enacts as described in clause 1.4(a)(ii);

- (b) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
- (c) references to an individual or a natural person include his estate and personal representatives;
- (d) a reference to a clause, schedule or annex is a reference to a clause, schedule or annex of or to this agreement (and the schedules and annexes form part of this agreement);
- (e) subject to clause 20.2, references to a party to this agreement include the successors or assigns (immediate or otherwise) of that party;
- (f) a reference to any instrument or document includes any variation or replacement of it;
- (g) unless otherwise indicated, a reference to any time is, a reference to that time in New Zealand;
- (h) a reference to \$, NZ\$ or dollars is to New Zealand currency;
- (i) singular words include the plural and vice versa;
- (j) a word of any gender includes the corresponding words of any other gender;
- (k) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (l) general words must not be given a restrictive meaning just because they are followed by particular examples intended to be embraced by the general words;
- (m) nothing is to be construed adversely to a party just because that party put forward this agreement or the relevant part of this agreement; and
- (n) the headings do not affect interpretation.

## **1.5 Consents and approvals**

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

## **2. Proposal and Implementation of Scheme**

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

Target must, as soon as reasonably practicable, propose and, subject to the Scheme becoming Effective, implement the Scheme on and subject to the terms of this agreement.



## **2.2 Scheme Consideration**

Each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder subject to and in accordance with the terms of this agreement and the Scheme.

## **2.3 BidCo to pay Consideration**

Bidder will procure that BidCo undertakes in favour of Target (in its own right and on behalf of the Scheme Shareholders) to, in consideration for and simultaneously with the transfer to BidCo of each Scheme Share held by each Scheme Shareholder under the terms of the Scheme, pay (or procure the payment of) the Consideration to each Scheme Shareholder in accordance with the Scheme and the Deed Poll.

## **2.4 General implementation obligations**

Each party must do everything reasonably necessary, including by procuring that its Representatives work in good faith and in a timely and co-operative manner with, in the case of Bidder or BidCo, Target and its Representatives and, in the case of Target, Bidder and BidCo and their Representatives, to implement the Scheme in accordance with this agreement and all applicable laws and regulations applicable to the Scheme.

## **2.5 Timetable**

Each party must use all reasonable endeavours to ensure that the Scheme is implemented in accordance with the Timetable. Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of this clause 2.5 to the extent that such failure is due to circumstances and matters outside the party's control and only if such party has used reasonable endeavours to meet the Timetable. Each party will keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable. If any date in the Timetable is not able to be achieved due to matters outside of a party's control, the parties must consult in good faith with a view to amending the Timetable to the extent required to permit the Scheme to be implemented before the End Date.

## **2.6 No amendment to Scheme without Bidder's consent**

Target must not consent to any modification of, or amendment to, the Scheme or the Final Orders, or the making or imposition by the Court or any Government Agency of any condition to the Scheme, without Bidder's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).

# **3. Conditions Precedent**

## **3.1 Conditions**

The Scheme will not become Effective and the obligations of Bidder under clause 2.2 do not become binding unless and until each of the conditions set out in the first column of the following table has been satisfied or waived in accordance with this clause 3.1:

Condition	Responsibility	Waiver
<p>(a) <b>(OIO approval)</b> before 5.00pm on the Business Day before the End Date, Bidder has obtained all consents required under the Overseas Investment Act 2005 to the implementation of the Scheme on terms or conditions acceptable to Bidder acting reasonably, provided that Bidder may not withhold its approval to the terms or conditions of any consent if the terms or conditions imposed:</p> <ul style="list-style-type: none"> <li>(i) are standard Overseas Investment Office consent conditions; or</li> <li>(ii) arise directly from plans, intentions or undertakings referred to in Bidder's application;</li> </ul>	Bidder	None
<p>(b) <b>(FIRB approval)</b> before 8.00am on the End Date, one of the following has occurred:</p> <ul style="list-style-type: none"> <li>(i) Bidder has received written advice under the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) (<b>FATA</b>), by or on behalf of the Treasurer of the Commonwealth of Australia (<b>Treasurer</b>), advising that there is no objection to the Transaction, either unconditionally or on terms or conditions acceptable to Bidder, acting reasonably; or</li> <li>(ii) the Treasurer ceases to be empowered to make an order under the FATA in relation to the Transaction;</li> </ul>	Bidder	None
<p>(c) <b>(Regulatory clearances)</b> before 8.00am on the End Date Bidder and Target have received all approvals or consents from the Takeovers Panel, NZX and ASX as are required to implement the Transaction.</p>	Target and Bidder	None
<p>(d) <b>(Court approval)</b> subject to clause 3.2, the Court approves the Scheme in accordance with section 236 of the Companies Act;</p>	Bidder and Target	None
<p>(e) <b>(Shareholder approval)</b> Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act;</p>	Bidder and Target	None

Condition	Responsibility	Waiver
(f) <b>(No restraint)</b> no judgment, order, restraint or prohibition enforced or issued by any Government Agency is in effect at 5.00pm on the Business Day before the Implementation Date, that prohibits, prevents or materially restricts the implementation of the Scheme;	Bidder and Target	Bidder and Target
(g) <b>(No Material Adverse Change)</b> no Material Adverse Change occurs between the date of this agreement and 5.00pm on the Business Day before the Implementation Date;	None	Bidder
(h) <b>(No Prescribed Occurrence)</b> no Prescribed Occurrence occurs between the date of this agreement and 5.00pm on the Business Day before the Implementation Date;	Target	Bidder
(i) <b>(Target Warranties and Undertaking)</b> no material breach of the Target Undertakings up to 5:00pm on the Business Day before the Implementation Date and Target Warranties are true and correct in all material respects as at 5:00pm on the Business Day before the Implementation Date;	Target	Bidder
(j) <b>(Rosehip Oil Agreement)</b> Bidder and FC agreeing to amend the Rosehip Oil Agreement on terms reasonably satisfactory to Bidder acting reasonably; and	Target and Bidder	Bidder and Target
<p>(k) <b>(McIver Consent)</b> the Target obtaining any consent required from Noel Allan Walton and Timothy Robert McIver under the Lanocorp Shareholders Agreement:</p> <p>(i) so that the Lanocorp Companies can provide guarantees and security in favour of any financier of the Bidder or its Related Entities <b>(Bidder Financier)</b> promptly following completion of the Transaction;</p> <p>(ii) so that security over the shares in the Lanocorp Companies (other than shares held by Noel Allan Walton and Timothy Robert McIver) may be granted in favour of any Bidder Financier including a waiver of any pre-emptive rights should the Bidder Financier exercise its security over those shares.</p>	Target	Bidder

### **3.2 Court approval**

If the Court's approval of the Scheme in accordance with section 236(1) of the Companies Act would impose any terms or conditions other than those set out in the Scheme in the form attached as Annex 1, then each such term or condition must be approved in writing by Target and Bidder (both acting reasonably) prior to the Court granting the Final Orders.

### **3.3 Satisfaction of Conditions**

In respect of each Condition:

- (a) each party specified in the second column of the table in clause 3.1 opposite that Condition must use all reasonable endeavours to procure that the Condition is satisfied:
  - (i) in the case of the Conditions in clauses 3.1(a) to 3.1(e), 3.1(j) and 3.1(k), as soon as practicable and in any event before the End Date; and
  - (ii) in the case of the Conditions in clauses 3.1(f) to 3.1(i), at all times before 5.00pm on the Business Day before the Implementation Date;
- (b) the other party must promptly provide all information and other assistance reasonably required by the party referred to in clause 3.3(a) for the purposes of procuring the satisfaction of the Condition; and
- (c) each party must not take any action that will or is likely to hinder or prevent the satisfaction of the Condition.

### **3.4 Regulatory applications**

Without limiting clause 3.3:

- (a) Bidder must promptly make all applications necessary to satisfy the Regulatory Conditions, and provide Target with a copy of those applications (provided that any commercially sensitive information may be redacted from the copy provided);
- (b) each party 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 Government Agency relating to any approval or consent required to satisfy a Regulatory Condition, or any action taken or proposed by, or any enquiries made by, a Government Agency in relation to the Scheme and:
  - (i) provide the other party with drafts of any material written communications to be sent to a Government Agency and take any reasonable comments made by the other party into account in good faith when making any amendments; and
  - (ii) provide copies of any material written communications sent to or received from a Government Agency to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonably practicable to do so; and

- (c) subject to the terms of the applicable Regulatory Condition, each party must promptly offer to the relevant Government Agency, and agree or accept, all undertakings, commitments and conditions reasonably necessary or appropriate in order to obtain the approval or consent (as the case may be) as soon as possible, unless it would be unreasonable to do so.

### **3.5 Waiver of Conditions**

Where the third column of the table in clause 3.1 opposite a Condition states "none", that Condition may not be waived. Each other Condition is only for the benefit of, and may only be waived in writing by:

- (a) if one party is specified in the third column of the table in clause 3.1 opposite that Condition, that party; or
- (b) if both Target and Bidder are specified in the third column of the table in clause 3.1 opposite that Condition, those parties jointly.

A party entitled to waive, or to join in the waiver of, a Condition may do so in its absolute discretion.

### **3.6 Effect of waiver**

If a party waives or joins in the waiver of a Condition in accordance with this clause 3.6 that waiver does not:

- (a) preclude that party from bringing a claim against the other party for any breach of this agreement; or
- (b) constitute a waiver of any other Condition.

### **3.7 Delay in satisfaction of Regulatory Conditions**

Without limiting the generality of clause 2.5, if any event or change in circumstances occurs that prevents or is reasonably likely to prevent any of the Regulatory Conditions being satisfied as at 8.00am on the End Date, and the breach of the Regulatory Condition which would otherwise occur has not been (or cannot be) waived, then the parties must consult in good faith to determine whether:

- (a) to change the End Date to a later date; or
- (b) the Transaction may proceed by way of alternative means or methods.

### **3.8 Termination**

Notwithstanding anything in this clause 3 or any rights of termination implied by law, this agreement may only be terminated in accordance with clause 14.

## **4. Scheme Booklet**

### **4.1 Target's obligations**

Without limiting clause 2, Target must:

- (a) subject to clauses 4.1(c) and 4.2(a), prepare the Scheme Booklet so that it contains:
  - (i) all information required by the Companies Act, the NZX Listing Rules or ASX Listing Rules and any other applicable laws or regulations, including any requirements of the Takeovers Panel;
  - (ii) the responsibility statements referred to in clause 4.4; and
  - (iii) a statement by the Target Directors reflecting the recommendation and undertaking referred to in clause 8.1;
- (b) if not already appointed, appoint the Independent Adviser (including obtaining approval from the Takeovers Panel for that appointment), and provide all assistance and information reasonably requested by the Independent Adviser to enable it to prepare the Independent Adviser's Report;
- (c) give Bidder drafts of the Scheme Booklet in a timely manner, give Bidder a reasonable opportunity to review those drafts and consider in good faith the reasonable comments of Bidder and its Representatives when preparing revised drafts of the Scheme Booklet;
- (d) as soon as practicable after preparation of an advanced draft of the Scheme Booklet suitable for review by the Takeovers Panel and NZX, give that draft to Bidder;
- (e) as soon as practicable after receipt of the confirmation from Bidder referred to in clause 4.2(e), give the Takeovers Panel and NZX the draft Scheme Booklet;
- (f) keep Bidder reasonably informed of any issues raised by any of the Takeovers Panel and NZX in relation to the Scheme Booklet and consult with Bidder to resolve any such issues;
- (g) as soon as practicable after the approval of the Scheme Booklet by the Takeovers Panel and NZX, procure that a meeting of the Board is convened to approve the Scheme Booklet for lodgement with the Court and, subject to the Initial Orders, for dispatch to Shareholders; and
- (h) advise Bidder if Target becomes aware either:
  - (i) of new information which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Scheme Booklet under any applicable law; or
  - (ii) that any part of the Target Information in the Scheme Booklet is misleading or deceptive in any material respect, including by omission,
 and in either case, if Target becomes aware at any time, or receives advice from Bidder under clause 4.2(f):
  - (iii) between the approval of the Scheme Booklet in accordance with clause 4.1(g) and the date of the Scheme Meeting, then, if considered by Target that supplementary disclosure is required, provide supplementary disclosure to Shareholders in accordance with applicable law and after consulting with

Bidder as to the content and presentation of that supplementary disclosure; and

- (iv) between the date of the Scheme Meeting and the Second Court Date, then, if considered by Target that supplementary disclosure is required, apply to the Court for orders as to the procedure to be followed for the provision of supplementary disclosure to Shareholders and the effect on the approval of the Scheme, after consulting with Bidder.

## **4.2 Bidder's obligations**

Without limiting clause 2, Bidder must:

- (a) prepare and give to Target for inclusion in the Scheme Booklet:
  - (i) information about the Bidder Group;
  - (ii) confirmation that Bidder will have sufficient funds in place to fund the Consideration; and
  - (iii) information equivalent to the information that would meet the requirements of Schedule 1 to the Takeovers Code,as required to be included in Scheme Booklet by the Companies Act, the Takeovers Panel, the NZX Listing Rules, the ASX Listing Rules and any other applicable laws or regulations;
- (b) give Target drafts of the information referred to in clause 4.2(a) in a timely manner, to give Target a reasonable opportunity to review those drafts and consider in good faith the reasonable comments of Target and its Representatives when preparing revised drafts of that information;
- (c) provide all assistance and information reasonably requested by the Independent Adviser to enable it to prepare the Independent Adviser's Report;
- (d) as soon as practicable after receipt of any draft of the Scheme Booklet from Target, review and provide comments on that draft;
- (e) subject to clause 4.3, before Target provides the Scheme Booklet to the Takeovers Panel and NZX in accordance with clause 4.1(e), deliver to Target written consent from Bidder to the inclusion of the Bidder Information in the Scheme Booklet in the form and context it appears;
- (f) advise Target if Bidder becomes aware at any time either:
  - (i) of new information which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Bidder Information under any applicable law; or
  - (ii) that any part of the Bidder Information is misleading or deceptive in a material respect, including by omission;
- (g) if requested by Target, procure that it is represented by counsel at the Court hearings convened for the purposes of considering the Initial Orders and the Final



Orders, at which through its counsel, Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme. For the avoidance of doubt, Target will prepare the Court documentation for the Initial Orders and Final Orders and Bidder's Counsel will only prepare submissions to the Court, if required, in support of Target's application; and

- (h) before a draft of the Scheme Booklet is lodged with the Takeovers Panel and NZX, and again before the Scheme Booklet is despatched to Shareholders, confirm to Target the accuracy and completeness of the Bidder Information in the Scheme Booklet, including that it does not contain any material statement that is false or misleading in a material respect including because of any omission.

#### **4.3 Bidder confirmations and approvals**

If Bidder requires any change to be made to the form or content of the Bidder Information as a condition of giving its consent as referred to in clause 4.2(e) then:

- (a) if Target disagrees with the change the parties must consult in good faith about the change and the reasons for it with a view to agreeing an alternative change that satisfies both parties; and
- (b) if the parties are unable to reach agreement, Target must make such changes to the Bidder Information as Bidder reasonably requires.

#### **4.4 Responsibility statements**

The Scheme Booklet must contain responsibility statements, in a form to be agreed between the parties, to the effect that:

- (a) Target has provided, and is responsible for, the Target Information in the Scheme Booklet, and that none of Bidder, BidCo or their respective officers, directors and employees assumes any responsibility for the accuracy or completeness of the Target Information; and
- (b) Bidder has provided, and is responsible for, the Bidder Information, and that none of Target or its officers, directors and employees assumes any responsibility for the accuracy or completeness of the Bidder Information.

### **5. Scheme Implementation Steps**

#### **5.1 Target's obligations**

Without limiting clause 2, Target must:

- (a) before the First Court Date apply to the Takeovers Panel for a letter of intention indicating that the Takeover Panel is minded to issue a no objection statement and that it does not intend to appear at the Court in respect of the Initial Orders;
- (b) apply to the Court for Initial Orders convening the Scheme Meeting, and if the Court makes those orders, dispatch the Scheme Booklet to Shareholders and hold the Scheme Meeting in accordance with, and otherwise complying in all respects with, the Initial Orders;



- (c) upon sending the Scheme Booklet to Scheme Shareholders and CIDSUR, lodge a copy of that Scheme Booklet with NZX in accordance with NZX Listing Rule 10.6.2 and with ASX;
- (d) if the Scheme Resolution is passed by the requisite majorities of Shareholders, before the Final Orders Date, apply to the Takeovers Panel for the production of a statement under section 236A(2)(b)(ii) of the Companies Act stating that the Takeovers Panel has no objection to the Court granting Final Orders;
- (e) if the Scheme Resolution is passed by the requisite majorities of Shareholders, promptly apply to the Court for its approval of the Final Orders; and
- (f) if the Scheme becomes Effective:
  - (i) promptly deliver to the Registrar for registration a copy of the Final Order;
  - (ii) use its best endeavours to procure that NZX and ASX suspend trading in the Shares from the close of trading on the later of:
    - (A) the Final Orders Date; and
    - (B) the date on which the last of the Conditions in clauses 3.1(a), 3.1(b) and 3.1(c) satisfied or, if capable of waiver, waived in accordance with clauses 3.5 and 3.6,
 or such other date as is agreed between the parties in writing; and
  - (iii) close the Register as at the Record Date to determine the identity of the Scheme Shareholders and their entitlements to the Consideration;
  - (iv) on the Implementation Date effect the FC Unwind prior to or simultaneously with the transfer of the Scheme Shares to BidCo;
  - (v) subject to Bidder satisfying its obligations under clause 5.2(b), effect the transfer of the Scheme Shares to BidCo in accordance with the Scheme on the Implementation Date; and
  - (vi) do all other things contemplated of it under the Scheme and all other things (if any) within its power as may be reasonably necessary for the implementation of the Transaction on a basis consistent with this agreement or necessary for Target to do to lawfully give effect to the Scheme and the orders of the Court.

## 5.2 Bidder's obligations

Without limiting clause 2, Bidder will, and will procure that BidCo will, execute all documents and do all acts and things within its power as may be reasonably necessary or desirable for the implementation of the Transaction on a basis consistent with this agreement and as expeditiously as possible, and in particular Bidder must:

- (a) before the Second Court Date, deliver to Target a copy of the Deed Poll executed by BidCo and Bidder;

- (b) procure that, if the Scheme becomes Effective, BidCo accepts a transfer of the Scheme Shares and provides the Consideration in accordance with clause 2.2 and the Deed Poll on or before the Implementation Date.

## **6. Target's Other Implementation Obligations**

### **6.1 Information about Shareholders**

Target must:

- (a) comply with any reasonable request by Bidder to require disclosure of information in accordance with sections 290 and 291 of the FMCA and, subject to its statutory and contractual obligations, give Bidder the information obtained as a result of requiring such disclosure;
- (b) procure that its share registry provides to Bidder details of the Register and all other information about the Shareholders which Bidder reasonably requires in order to:
  - (i) canvas approval of the Scheme by Shareholders; or
  - (ii) facilitate the provision by Bidder of the Consideration in accordance with this agreement, the Scheme and the Deed Poll; and
- (c) deliver to the Bidder within 15 Business Days of the date of this agreement, a certificate signed by the Board of Target stating that the shareholding information set out in Schedule 4 is true and accurate, accompanied by copies of the share registers of each member of the Target Group except Target and FC.

### **6.2 Promotion of Transaction**

- (a) During the Exclusivity Period, Target will provide all reasonable cooperation to Bidder in promoting the merits of the Transaction to Shareholders, including:
  - (i) providing (subject to Target's statutory or contractual obligations) such information regarding Shareholders and their holdings as Bidder reasonably requests; and
  - (ii) procuring that senior executives of the Target Group are available on reasonable notice to meet with key Shareholders if reasonably requested to do so by Bidder,

subject to there being no Superior Proposal and the Independent Adviser's Report concluding that the Consideration is within or above the Independent Advisers valuation range for Target.

### **6.3 Options and Share Purchase Plan**

- (a) Bidder acknowledges that after the First Court Date but prior to the Scheme becoming Effective outstanding Options will vest in accordance with the Option Plan Rules, resulting in up to a maximum of 720,000 additional Shares being issued which will be included as Scheme Shares assuming that no Options are exercised under Rule 6.4 of the Option Plan Rules.

- (b) Target must ensure that:
  - (i) no more than the number of Options noted above vest or are paid;
  - (ii) Shares issued due to vesting of the Options are issued prior to the Record Date such that they are Scheme Shares; and
  - (iii) any Options not exercised lapse or are cancelled prior to the Record Date such that on the Implementation Date there are no Options.
- (c) Target will ensure that any Shares subject to the Share Purchase Plan Rules are dealt with under the clause 5.8(b)(i) and any Unallocated Shares (as defined in the Scheme Purchase Plan Rules) are sold to BidCo as Scheme Shares.

#### **6.4 Board changes**

Subject to the Consideration having been paid to the Shareholders, Target must procure that:

- (a) such persons as Bidder nominates (by notice to Target no later than 5 Business Days before the Implementation Date) and who have provided to Target a signed consent to act by that time are appointed as additional directors of Target on the Implementation Date; and
- (b) unless otherwise agreed by Bidder in writing, each member of the Board, other than those appointed in accordance with clause 6.4(a), resigns as a director of Target with effect from the Implementation Date and acknowledges in writing that he or she has no claim against any member of the Target Group other than:
  - (i) in the case of the Target Independent Directors, for accrued directors fees and expenses; and
  - (ii) in the case of the Executive Director, for accrued salary and other employee entitlements.

#### **6.5 Release of Encumbrances**

After the signing of this agreement and in addition to its obligations under clause 9.1(d)(ii), Target will assist Bidder to identify any Encumbrances over the assets of the Target Group which are not Permitted Encumbrances and procure their release and removal from the PPSR NZ and PPSR AU, as the case may be, with effect on the Implementation Date.

#### **6.6 Update of trade mark register**

Target will use all reasonable endeavours to obtain the amendment of the trade mark register in China such that trade mark no. 842109 TRILOGY, currently in the name of Supercritical Extraction NZ Ltd, is updated to record the correct proprietor as Trilogy Natural Products Limited before the Implementation Date.

## 7. Court Proceedings

### 7.1 Court documents

- (a) In relation to each Court application made in relation to the Scheme, including any appeal, Target must give Bidder drafts of all documents required to be given by Target to the Court (including the originating applications, affidavits, memoranda, submissions and draft Court orders) a reasonable time before they are due to be submitted to the Court (and in any event not less than 48 hours before submission unless it is impractical in the circumstances) and must consider in good faith the reasonable comments of Bidder and its Representatives on those documents.
- (b) Target must not provide the Court with any Court orders (whether in draft or not) or applications for Court orders, or consent to any changes to any Court orders, without Bidder having approved such documents being submitted to the Court or such changes being consented to.

### 7.2 Representation

In relation to each Court application made in relation to the Scheme, including any appeal:

- (a) Target must if requested by Bidder consent to the separate representation of Bidder by counsel; and
- (b) Bidder may appear and be represented in relation to the Court applications.

### 7.3 Court proceedings and conditionality

- (a) If the Court declines to make the orders sought by Target under clause 5.1(b) or 5.1(e), due in whole or in part to the lack of satisfaction of, or the potential timing for satisfaction of (or where capable of waiver, waiver of) the Conditions, Target must promptly make a further application for Initial Orders or Final Orders (as applicable), as soon as practicable after the earlier of:
  - (i) the parties satisfying the steps or matters specified by the Court or apparent from its directions or reasons as required, or desirable, in order to grant the Initial Orders or Final Orders (as the case may be) (**Court Guidance**); or
  - (ii) the conditions in clauses 3.1(a), 3.1(b) and 3.1(c) having been satisfied, or where capable or waiver, waived.
- (b) Target will use its best endeavours to follow the Court Guidance and any guidance or requirements of the Takeovers Panel including, if indicated, providing supplementary information to Shareholders and/or convening a second Scheme Meeting.

### 7.4 Appeal if orders not made

If the Court does not make any order sought by Target under clause 5 (the **Decision**) to the extent clause 7.3 does not apply:

- (a) Target and Bidder must consult in good faith as to the effect of the refusal and whether to appeal the Decision; and

- (b) if, within 10 Business Days after the Decision, Target and Bidder agree to appeal the Decision or either of those parties obtains an opinion from an independent Queens Counsel, practising in Auckland in the field of corporate and securities law litigation, to the effect that there are reasonable prospects of successfully appealing the Decision, then:
  - (i) Target must appeal the Court's decision within the timeframe set out in rule 29 of the Court of Appeal (Civil) Rules 2005;
  - (ii) the cost of any such appeal is to be borne:
    - (A) if Target and Bidder agreed to appeal the Decision, equally between the parties; or
    - (B) if Target and Bidder did not agree to appeal the Decision, by the party who obtained the opinion from the independent Queens Counsel.
  - (iii) if the End Date would otherwise occur before the appeal is finally determined, the End Date is deferred to the date that is 10 Business Days after the appeal from the Decision is finally determined; and
  - (iv) if the appeal is successful and the relevant order is made, the End Date is further deferred to the date which is **D** days after the original End Date (disregarding the effect of clause 7.4(b)(iii)) where **D** is equal to the number of days between the date of the Decision and the date on which the appeal from the Court's decision is finally determined, or to such other date as the parties agree in writing.

## 8. Recommendation and Voting Intentions

### 8.1 Recommendation and voting intentions of Target Directors

Target must ensure that each Target Director recommends that Shareholders vote in favour of the Scheme and each Target Director undertakes to vote, or procure the voting of, all Shares held or controlled by him or her in favour of the Scheme subject to:

- (a) there being no Superior Proposal; and
- (b) the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares,

provided that reliance on the exclusions to this clause 8.1, will not prevent the Bidder from relying on and getting the benefit of clauses 13.2(b) and 14.1(a).

### 8.2 Change to recommendation or voting intentions

Target must use all reasonable endeavours to ensure that no Target Director changes, qualifies or withdraws the recommendation or the undertaking referred to in clause 8.1 or makes any statement inconsistent with that recommendation or that undertaking unless:

- (a) the Independent Adviser's Report concludes that the Consideration is below the Independent Adviser's valuation range for the Shares; or

- (b) Target receives a Superior Proposal,

provided that reliance on the exclusions to this clause 8.2, will not prevent the Bidder from relying on and getting the benefit of clauses 13.2(b) and 14.1(a).

## 9. Access, Information and Conduct of Business

### 9.1 Access and information

Until and including the Implementation Date, Target must:

- (a) procure that Bidder and its Representatives are given reasonable access to the properties, books and records, management, suppliers and customers of the Target Group during normal business hours at mutually convenient times and on reasonable notice to Target for the purposes of:

- (i) enabling Bidder and its financiers to understand the Target Group's business and operations and its financial position, transactional banking requirements, financial performance and prospects;
- (ii) implementing the Scheme and enabling Bidder to prepare for the transition of ownership of the Target Group to Bidder; and
- (iii) any other purpose agreed between Target and Bidder in writing,

except to the extent that the provision of such access is prohibited by law or any confidentiality obligations owed to third parties and provided that:

- (iv) Bidder will focus on material issues, having regard to management commitments and the impact of information requests on the Target Group's business;
  - (v) providing access or information pursuant to this clause 9.1(a) does not result in unreasonable disruptions to the Target Group's business in the opinion of Target, require Target to make further disclosure to any other entity or Government Agency or require the disclosure of any document that would compromise the Target Group's legal professional privilege; and
  - (vi) nothing in this clause 9.1(a) will require Target to provide information concerning its directors and management's consideration of the Scheme or any Competing Proposal (but this proviso does not limit Target's obligations under clause 12);
- (b) give Bidder copies of papers provided to the Board (including monthly management accounts for the Target Group) within 3 Business Days after they are provided to Board members, however, Target may redact information from such papers to the extent it is commercially sensitive or relates to the Transaction or a Potential Competing Proposal or Competing Proposal;
- (c) procure that one or more members of the Board meets with Bidder and its Representatives (either in person or by teleconference) at such times as Bidder reasonably requests for the purposes of keeping Bidder informed of material developments in relation to the Target Group and discussing and resolving matters arising in relation to this agreement or the Transaction; and

- (d) Without limiting clause 9.1(a), Target agrees to:
- (i) provide reasonable and timely assistance to Bidder to finalise the preparation of any definitive financing documentation (having regard to the Target Group's existing transactional banking requirements); and
  - (ii) provide reasonable assistance to Bidder to prepare for the repayment of the Target Group's existing indebtedness to Bank of New Zealand (including the preparation for the termination and release of related security interests), including, without limitation, by sending notices of intention to repay Bank of New Zealand prior to the Implementation Date,

provided, in each case, that:

- (iii) Bidder must indemnify and hold harmless and hereby does indemnify and hold harmless, Target, members of the Target Group and their respective Representatives from and against any Losses suffered or incurred by any of them in connection with, or as a result of, any act or omission in relation to any matter covered by this clause 9.1(d) or in connection with, or as a result of, any debt financing and any information utilised in connection therewith, in each case other than to the extent any of the foregoing arises from the bad faith or wilful misconduct of, or breach of this agreement by Target, a member of the Target Group or their respective Representatives;
- (iv) nothing in this clause 9.1(d), shall require cooperation to the extent that it would:
  - (A) cause any condition precedent in clause 3.1 to not be satisfied or otherwise cause a breach of this agreement; or
  - (B) require Target or a member of the Target Group to take any action that would reasonably be expected to conflict with or violate its constituent documents, any law, stock exchange listing rules or any agreement to which it is party or by which it is bound; or
  - (C) require the approval of Shareholders of Target;
- (v) no member of the Target Group shall be required to execute prior to implementation of the Scheme any agreements, including any credit or other agreements, pledge or security documents, or other certificates, legal opinions or documents in connection with the debt financing.

## **9.2 Conduct of business**

From the date of this agreement until and including the Implementation Date, Target must ensure that it and each other member of the Target Group:

- (a) carries on its business in the ordinary course and in substantially the same manner as conducted in the 12 months prior to the date of this agreement and does not make any significant change to the nature or scale of its business or enter any business or undertake any activities in which it was not engaged as at the date of this agreement;



- (b) maintains insurance in respect of the Target Group's business and assets covering such risks and for such amounts as would be maintained in accordance with the Target Group's ordinary practice and in any event to a level no less than that in place immediately prior to the date of this agreement;
- (c) uses all reasonable endeavours to:
  - (i) keep available the services of its directors and the senior leadership team of Target and each Operating Segment (together, the **Key Employees**); and
  - (ii) preserve its relationships with all Key Employees, Government Agencies and all customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings;
- (d) does not:
  - (i) incur unbudgeted capital expenditure exceeding \$250,000 or, except in the ordinary course of trading, transfer or otherwise dispose of or create any Encumbrance in respect of, assets having a value exceeding \$250,000;
  - (ii) increase the aggregate level of its borrowings except for increases in the ordinary course of business not exceeding \$500,000 (including trading, capital expenditure and making investments permitted pursuant to clause 9.2(d)(i) above), or enter into, vary or terminate:
    - (A) any financing facilities or arrangements (in relation to variations only to the extent that such variation impacts on the Target Group's ability to, or cost of, repaying amounts under or terminating the arrangement) except in the ordinary course of business not exceeding \$500,000; or
    - (B) any swap, option, futures contract, forward commitment or other derivative transaction except in the ordinary course of business;
  - (iii) enter into, extend, renew or waive any material rights under any contract, commitment or arrangement relating to procurement (including for the purchases of raw materials or renewals of existing procurement arrangements for goods or services) where the aggregate annual payments by the Target Group exceed \$250,000, other than contracts entered into, extended, or renewed or any waiver in the ordinary course of business and in accordance with the business plan of the relevant member of the Target Group. For the avoidance of doubt, this clause 9.2(d)(iii) does not apply to purchases made on a purchase order basis in the ordinary course to the extent the commitment under the purchase order does not exceed 6 months or any amendment to the Rosehip Oil Agreement approved in writing by Bidder.
  - (iv) enter into, waive any material rights under, vary or terminate any contract, commitment or arrangement which:
    - (A) may require annual expenditure by the relevant member of the Target Group in excess of \$500,000 or may result in annual revenues to the relevant member of the Target Group in excess of \$1,000,000; or



- (B) restrains any member of the Target Group from engaging in or competing with any business in any place,

or vary any other existing contract, commitment or arrangement in a way that may increase the expenditure by or annual revenues to the relevant member of the Target Group by more than \$500,000 or has the effect referred to in clause 9.2(d)(iv)(B) except for any amendment to the Rosehip Oil Agreement approved in writing by Bidder;

- (v) give any guarantee of, or security for, or indemnity in connection with the obligations of any person other than a member of the Target Group;
  - (vi) increase the remuneration of, make any bonus payment, retention payment or termination payment to, or otherwise change the terms and conditions of employment of any Target Director or any employee of any member of the Target Group whose salary exceeds \$150,000 except:
    - (A) in accordance with any contractual entitlement existing as at the date of this agreement;
    - (B) for salary increases in the normal course and not exceeding \$25,000; and
    - (C) vesting of Options (in each case in accordance with clause 6.3).
  - (vii) change its constitution or pass any resolution of shareholders or any class of shareholders (other than the Scheme Resolution);
  - (viii) fail to comply in all material respects with all laws and regulations applicable to the Business or do or omit to do anything which might result in the termination, revocation, suspension, modification or non-renewal of any material Authorisation held by it;
  - (ix) commence, compromise or settle any litigation or similar proceedings for an amount exceeding \$100,000 and Target will keep Bidder reasonably informed of any commencement, compromise or settlement of any litigation or similar proceedings for an amount exceeding \$100,000; or
  - (x) agree, conditionally or otherwise, to do any of the things referred to in the preceding paragraphs of this clause 9.2(d), or announce or represent to any person that any of those things will be done; and
- (e) keep Bidder reasonably informed regarding proposed increases to remuneration for Target Group personnel.

### **9.3 Exception**

Any member of the Target Group (and any Minority Entities) may do any thing referred to in clause 9.2(d), or not do any thing required to be done under clauses 9.2(a) or 9.2(c):

- (a) with the prior written consent of Bidder (such consent not to be unreasonably withheld, conditioned or delayed);

- (b) necessary to comply with any law or any regulatory requirement or direction of a Government Agency;
- (c) necessary for any member of the Target Group to perform its statutory or contractual obligations;
- (d) necessary to respond to any emergency, act of god or other disaster; or
- (e) to the extent required to permit Target to comply with its obligations under any other provision of this agreement;

and in the case of the situations described in (c), (d) or (e) above, only for as long as those things are strictly required and provided that Target informs Bidder as soon as possible of the actions taken or proposed to be taken, and considers, in good faith, any feedback or suggestions made by Bidder as to the proposed course of action. The parties note that the objective of this clause is that no action is taken or not taken, which may affect the future prospects of the Target Group, including its relationships with constituencies, without reasonable involvement of Bidder.

#### **9.4 Consents to change of control**

In respect of each contract notified to Target in writing:

- (a) Target and Bidder will agree in good faith a communications plan to notify the relevant counterparty of the change of control of Target that will occur if the Scheme becomes Effective and request that such counterparty provides any consents required in relation to that change of control; and
- (b) each party must promptly provide to the relevant counterparty all information reasonably required for the purposes of making any notification or seeking any consent referred to in clause 9.4(a).

### **10. Representations, Warranties and Undertakings**

#### **10.1 Target representations, warranties and undertakings**

- (a) Target represents and warrants to Bidder on the date of this agreement and at 8.00am on the Implementation Date that each of the Target Warranties is true, accurate and not misleading.
- (b) Target undertakes to Bidder to comply with each of the Target Undertakings.
- (c) The Target Warranties are given subject to and are qualified by matters and circumstances that:
  - (i) have been fairly disclosed to Bidder in the Data Room Information and/or any NZX or ASX announcement made by Target before the date of this agreement; or
  - (ii) as at the date of this agreement are within the actual knowledge of Bidder or any of Bidder's directors or employees who have been involved in the assessment and/or negotiation of the transactions contemplated by this agreement.

## **10.2 Bidder representations, warranties and undertakings**

- (a) Bidder represents and warrants to Target on the date of this agreement and at 8.00am on the Implementation Date that each of the Bidder Warranties is true, accurate and not misleading.
- (b) Bidder undertakes to Target to comply with each of the Bidder Undertakings.

## **10.3 Indemnity by Target**

Subject to clause 13.6, Target indemnifies Bidder against, and must pay to Bidder on demand an amount equal to, all Losses directly incurred or suffered by the Bidder Indemnified Persons arising out of or in connection with:

- (a) any matter or circumstance that results in any of the Target Warranties being untrue, inaccurate or misleading when given; or
- (b) any breach of the Target Undertakings.

## **10.4 Indemnity by Bidder**

Subject to clause 13.6, Bidder indemnifies Target against, and must pay to Target on demand an amount equal to, all Losses directly incurred or suffered by the Target Indemnified Persons arising out of or in connection with:

- (a) any matter or circumstance that results in any of the Bidder Warranties being untrue, inaccurate or misleading when given; and
- (b) any breach of the Bidder Undertakings.

## **10.5 Status of representations, warranties, undertakings and indemnities**

Each representation and warranty, undertaking and indemnity made or given under this clause 10 is severable and survives termination of this agreement and each undertaking and indemnity given in this clause 10 is a continuing obligation.

## **10.6 Scheme becoming Effective**

After the Scheme becomes Effective, any breach of the representations and warranties or the undertakings made or given under this clause 10 may only give rise to a claim for damages or under the indemnities in this clause 10 and does not entitle a party to terminate this agreement.

# **11. Releases and insurance**

## **11.1 Release of Target Indemnified Persons**

Bidder waives and releases, and must procure that each member of the Bidder Group waives and releases, all rights and claims which it may have against any Target Indemnified Person (other than Target) in respect of any misrepresentation, inaccuracy or omission in or from any information or advice given by that Target Indemnified Person in connection with any representation, warranty or undertaking given by Target in this agreement or the preparation of the Target Information or the Data Room Information

except where the Target Indemnified Person has engaged in wilful misconduct or fraud. The parties acknowledge and agree that:

- (a) Target has sought and obtained the waiver and release in this clause 11.1 as agent for and on behalf of each Target Indemnified Person and may enforce the provisions of this clause 11.1 on behalf of any Target Indemnified Person;
- (b) any Target Indemnified Person may plead this clause 11.1 in response to any claim made by any member of the Bidder Group against them; and
- (c) the undertakings contained in this clause 11.1 are given for the benefit of each Target Indemnified Person and are intended to be enforceable against Bidder by each Target Indemnified Person in accordance with the provisions of the Contract and Commercial Law Act 2017.

## **11.2 Release of Bidder Indemnified Persons**

Target waives and releases, and must procure that each member of the Target Group waives and releases, all rights and claims which it may have against any Bidder Indemnified Person (other than Bidder) in respect of any misrepresentation, inaccuracy or omission in or from any information or advice given by that Bidder Indemnified Person in connection with any representation, warranty or undertaking given by Bidder in this agreement or the preparation of the Bidder Information except where the Bidder Indemnified Party has engaged in wilful misconduct or fraud. The parties acknowledge and agree that:

- (a) Bidder has sought and obtained the waiver and release in this clause 11.2 as agent for and on behalf of each Bidder Indemnified Person and may enforce the provisions of this clause 11.2 on behalf of any Bidder Indemnified Person;
- (b) any Bidder Indemnified Person may plead this clause 11.2 in response to any claim made by any member of the Target Group against them; and
- (c) the undertakings contained in this clause 11.2 are given for the benefit of each Bidder Indemnified Person and are intended to be enforceable against Target by each Bidder Indemnified Person in accordance with the provisions of the Contract and Commercial Law Act 2017.

## **12. Exclusivity**

### **12.1 No shop restriction**

Subject to clause 12.11, during the Exclusivity Period, Target must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) solicit, invite, encourage or initiate any Competing Proposal or any offer, proposal, expression of interest, enquiry, negotiation or discussion with any Third Party in relation to, or for the purpose of, or that may reasonably be expected to encourage or lead to, a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 12.1(a) on its behalf.

## **12.2 No talk restriction**

Subject to clause 12.3 and clause 12.11, during the Exclusivity Period Target must not, and must procure that none of its Representatives, directly or indirectly:

- (a) enter into, permit, continue or participate in, negotiations or discussions with any Third Party in relation to a Competing Proposal, or for the purpose of or that may reasonably be expected to encourage or lead to a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 12.2(a) on its behalf,

even if the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Target or any of its Representatives or has been publicly announced.

## **12.3 No talk exception**

The restriction in clause 12.2 does not apply to the extent that it restricts Target or the Board from taking or refusing to take any action with respect to a bona fide Competing Proposal or Potential Competing Proposal (in either case which was not encouraged, solicited, invited, facilitated or initiated in contravention of clause 12.1 or 12.2) if acting in good faith and after having taken written advice from its external legal advisers, the Board has determined that failing to respond to such Competing Proposal or Potential Competing Proposal would be likely to constitute a breach of the fiduciary duties or statutory obligations of any member of the Board.

## **12.4 No due diligence restriction**

Subject to clause 12.5 and clause 12.11 but without limiting clause 12.2, during the Exclusivity Period, Target must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) make available to any Third Party, or cause or permit any Third Party to receive, any non-public information relating to Target or any of its Related Entities that may reasonably be expected to assist such Third Party in formulating, developing or finalising a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 12.4(a) on its behalf.

## **12.5 No due diligence exception**

The restriction in clause 12.4 does not apply in respect of a bona fide Competing Proposal or Potential Competing Proposal (in either case which was not encouraged, solicited, invited, facilitated or initiated in contravention of clause 12.1 or 12.2) if all of the following requirements are satisfied:

- (a) acting in good faith and after having obtained written advice from its external legal advisers, the Board has determined that failing to respond to such Competing Proposal or Potential Competing Proposal would be likely to constitute a breach of the fiduciary duties or statutory obligations of any member of the Board; and
- (b) the Third Party has first entered into a written agreement in favour of Target restricting the use and disclosure by the Third Party and its affiliates and advisers of

the information made available to the Third Party, on terms not substantially more favourable to the Third Party than those in the Confidentiality Agreement; and

- (c) to the extent that any information made available to the Third Party has not previously been provided to the Recipient, Target provides that information to the Recipient at the same time as it is provided to the Third Party.

## 12.6 General notification obligations

During the Exclusivity Period, Target must as soon as practicable in the circumstances, and no later than 48 hours after the event, notify Bidder if:

- (a) Target or any of its Representatives receives any Competing Proposal or Potential Competing Proposal; or
- (b) Target proposes to take any action in reliance on the exceptions in clause 12.3 or clause 12.5.

## 12.7 Matching rights

If Target or any of its Representatives receives a Competing Proposal or a Potential Competing Proposal then:

- (a) Target must as soon as reasonably practicable:
  - (i) give Bidder a notice setting out all material terms of the Competing Proposal or Potential Competing Proposal including the amount and form of consideration to be offered, the source of any cash component of the consideration, the conditions to which it is subject, the proposed timetable and any break fee arrangements;
  - (ii) use reasonable endeavours to obtain the consent of the person who has made the Competing Proposal or Potential Competing Proposal to disclose to Bidder on a confidential basis that person's name and other details which identify that person (the **Identifying Details**); and
- (b) Target must as soon as reasonably practicable disclose the Identifying Details to Bidder on a confidential basis except that if the consent referred to in clause 12.7(a)(ii) has not been obtained then Target may withhold any part of the Identifying Details from disclosure if the Board, acting in good faith determines that giving those details to Bidder would be likely to constitute a breach of the fiduciary duties or statutory or contractual obligations of any member of the Board;
- (c) from the time that Target receives the Competing Proposal or Potential Competing Proposal until the day that is 10 Business Days after Target gives notice to Bidder under clause 12.7(a) in respect of it (**Matching Period**):
  - (i) Target must not enter into, or agree to enter into, any binding documentation to give effect or implement the Competing Proposal or Potential Competing Proposal;
  - (ii) Target must use best endeavours to ensure that no Target Director makes any public statement recommending the Competing Proposal or Potential Competing Proposal to Shareholders; and

- (iii) Bidder may offer to amend the terms of the Scheme and this agreement or make an alternative proposal to Target or Shareholders with a view to providing an equivalent or a superior outcome for Shareholders than those offered under the relevant Competing Proposal or Potential Competing Proposal (a **Counter Proposal**). In preparing a Counter Proposal, Bidder is entitled to take into account all elements of the Competing Proposal or Potential Competing Proposal, including that it may be for less than all the Shares or assets of the Target Group.

## 12.8 Target's response to Counter Proposal

If during the Matching Period Bidder makes a Counter Proposal:

- (a) Target must use all reasonable endeavours to procure that Target's Board considers the Counter Proposal in good faith; and
- (b) if Target's Board acting in good faith determines that the terms and conditions of the Counter Proposal taken as a whole are no less favourable to Shareholders than those in the relevant Competing Proposal or Potential Competing Proposal, then:
  - (i) the parties must use their reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Counter Proposal as soon as reasonably practicable; and
  - (ii) Target must use all reasonable endeavours to procure that each Target Director makes a public statement recommending the Counter Proposal to Shareholders.

## 12.9 Changes to Proposals

- (a) Any material change to a Competing Proposal or Potential Competing Proposal including:
  - (i) any material change to the terms referred to in clause 12.7(a)(i); or
  - (ii) any incomplete or non-binding proposal or expression of interest becoming complete, capable of acceptance or, subject to clause 12.9(b), binding on the Third Party bidder,

will be taken to constitute a new Competing Proposal or Potential Competing Proposal in respect of which Target must separately comply with its obligations under clause 12.6 to clause 12.8.

- (b) For the avoidance of doubt, if Target intends to enter into a binding implementation agreement or similar binding arrangement in respect of a Competing Proposal it must require the relevant Third Party bidder to provide a duly executed copy of such agreement (which is not subject to any due diligence, financing, board approval or similar conditions) which remains open for entry by Target for a minimum of 10 Business Days. If, after notifying the Bidder of the status and terms of that Competing Proposal at that stage in accordance with clause 12.7, the Bidder declines to match or has not done so within 10 Business Days, Target may execute the agreement and the matching right under this agreement will end in respect of that Competing Proposal.



## **12.10 Standstill arrangements with other parties**

During the Exclusivity Period, except with the prior written consent of Bidder, Target must not amend or waive the terms of any standstill agreement or arrangement between Target and any person other than a member of the Bidder Group.

## **12.11 Normal provision of information**

Nothing in this clause 12 prevents a party from:

- (a) providing information required to be provided by law, any court of competent jurisdiction, any Government Agency or the NZX Listing Rules or the ASX Listing Rules; or
- (b) making presentations to, and responding to bona fide enquiries from, stockbrokers, portfolio investors and equity market analysts in relation to the Scheme or in accordance with its usual practices.

## **13. Break Fee and Reverse Break Fee**

### **13.1 Acknowledgement and agreement**

Target (on the one hand) and Bidder (on the other hand) each acknowledges and agrees that:

- (a) the other and its Related Entities have incurred and will continue to incur significant costs and expenses in pursuing the Transaction including:
  - (i) advisory costs;
  - (ii) costs of management and directors' time;
  - (iii) in respect of Bidder, funding costs;
  - (iv) out of pocket expenses; and
  - (v) opportunity costs of pursuing the Transaction or in not pursuing alternative transactions or business opportunities;
- (b) the costs and expenses actually incurred by each party and its Related Entities are of such nature that they cannot accurately be ascertained;
- (c) the Break Fee and Reverse Break Fee are each a genuine and reasonable estimate of the costs and expenses that have been or will be actually incurred by the relevant party and its Related Entities in pursuing the Transaction;
- (d) the parties have negotiated the inclusion of this clause 13 in this agreement and would not have entered into this agreement without it; and
- (e) each party has received external legal and financial advice in relation to this clause 13 and has concluded that it is reasonable and appropriate for it to agree to payment of the Break Fee or Reverse Break Fee (as applicable) in the circumstances described in clause 13.2 or 13.3 (as applicable) in order to secure the other party's entry into this agreement.



### **13.2 Circumstances where Break Fee payable**

Subject to clause 13.5 and clause 13.7, Target must pay the Break Fee to Bidder if:

- (a) at any time before this agreement is terminated a Competing Proposal or Potential Competing Proposal is announced and the person making the Competing Proposal or Potential Competing Proposal or one or more persons that Control, or are under the Control of, that person completes in all material respects a transaction of the kind referred to in the definition of Competing Proposal;
- (b) any Target Director fails to make the recommendation or any Target Director fails to give the undertaking referred to in clause 8.1 or changes, qualifies or withdraws that recommendation or undertaking or makes any statement inconsistent with that recommendation or that undertaking; or
- (c) Bidder terminates this agreement as permitted under clause 14.1(b) due to a Prescribed Occurrence occurring on or after the date of this agreement (but not, for the avoidance of doubt, where Bidder terminates this agreement as permitted under clause 14.1(b) due to a Material Adverse Change).

### **13.3 Circumstances where Reverse Break Fee payable**

Subject to clause 13.5 and clause 13.7, Bidder must pay the Reverse Break Fee to Target if:

- (a) this agreement is terminated under clause 14.4; or
- (b) this agreement is terminated otherwise than under clause 14.4, and Target was (at the time of such termination) entitled to terminate this agreement under clause 14.4,

provided, however, that the Reverse Break Fee will not be payable under this agreement if the Condition in clause 3.1(a) has not been satisfied or becomes incapable of satisfaction due to a change in the OIO Laws or a reason other than Bidder's application being declined for not meeting one or more of the grounds in section 18(1) of the Overseas Investment Act 2005 on the basis of the OIO Laws in force as at the date of the Bidder submitting its application.

### **13.4 Payment of Break Fee or Reverse Break Fee**

If the Break Fee or Reverse Break Fee become payable under this agreement, Target or Bidder (as the case requires) must pay it to or as directed by the other party without withholding or set-off (except as required by law) within 10 Business Days after receipt of a written demand for payment from the other party.

### **13.5 Break Fee or Reverse Break Fee not payable**

Notwithstanding anything else in this agreement:

- (a) neither the Break Fee nor Reverse Break Fee is payable if the Scheme becomes Effective; and
- (b) the Break Fee and Reverse Break Fee are payable only once.

### 13.6 Sole and exclusive remedy

- (a) Bidder acknowledges and agrees that payment of the Break Fee is the sole and exclusive remedy available to Bidder in connection with any event or occurrence referred to in clause 13.2 (Circumstances where Break Fee payable) and Target is not liable for any loss or damage arising in connection with any such event or occurrence other than for any liability that it may have to pay Bidder the Break Fee under this clause 13.
- (b) Target acknowledges and agrees that payment of the Reverse Break Fee is the sole and exclusive remedy available to Target in connection with any event or occurrence referred to in clause 13.3 (Circumstance where Reverse Break Fee payable) and Bidder is not liable for any loss or damage arising in connection with any such event or occurrence other than for any liability that it may have to pay Target the Reverse Break Fee under this clause 13.

### 13.7 Amendments to Break Fee Arrangements

If any of the following occurs:

- (a) The Takeovers Panel indicates to either party in writing that it requires any modification to the amount of the Break Fee or Reverse Break Fee or the circumstances in which either is to be paid (the **Break Fee Arrangements**) as a condition of not opposing the Scheme; or
- (b) the Court requires any modification to the Break Fee Arrangements as a condition of making orders convening the Scheme Meeting,

then the parties must amend this clause 13 to the extent required to give effect to the requirements of the Court or the Takeovers Panel, as the case may be, and in the circumstances referred to in clause 13.7(b) must give the required undertakings.

## 14. Termination

### 14.1 Events affecting the Target Group

Subject to clause 14.3, Bidder may terminate this agreement by giving notice in writing to Target before 5.00pm on the Business Day before the Implementation Date if:

- (a) Target is in breach of this agreement and that breach is material in the context of the Scheme and the Target Group taken as a whole. For the avoidance of doubt, it will be a material breach of this agreement if any Target Director fails to make the recommendation, or any Target Director fails to give the undertaking, referred to in clause 8.1 or changes, qualifies or withdraws that recommendation or undertaking once made or makes any statement inconsistent with that recommendation or that undertaking;
- (b) a Material Adverse Change or a Prescribed Occurrence occurs on or after the date of this agreement; or
- (c) an Insolvency Event occurs in respect of Target or any of its Related Entities.

## **14.2 Events affecting Bidder or BidCo**

Subject to clause 14.3, Target may terminate this agreement by giving notice in writing to the other parties before 5.00pm on the Business Day before the Implementation Date if:

- (a) Bidder is in breach of this agreement and that breach is material in the context of the Scheme and the Bidder Group taken as a whole;
- (b) an Insolvency Event occurs in respect of Bidder or BidCo.

## **14.3 Notice of termination**

A party may only exercise a right of termination under clause 14.1 or clause 14.2 if:

- (a) the party wishing to terminate has given notice to the other party or parties (as applicable) setting out the circumstances that it considers permit it to do so and stating its intention to do so;
- (b) the relevant circumstances have not been remedied within 10 Business Days after the time that the notice is given or any shorter period ending at 5.00pm on the Business Day before the Implementation Date; and
- (c) the party wishing to terminate does so before the earlier to occur of 15 Business Days after the time that the notice is given and 5.00pm on the Business Day before the Implementation Date.

## **14.4 Regulatory Conditions not satisfied**

Either Target or Bidder may terminate this agreement by giving notice in writing to the other if any of the Regulatory Conditions that are for the benefit of that party (or both parties) has not been satisfied (or waived, if capable of waiver) by the End Date or becomes incapable of satisfaction before the End Date.

## **14.5 Scheme Resolution not passed**

Either Target or Bidder may terminate this agreement by giving notice in writing to the other if:

- (a) the Scheme Meeting is held but the Scheme Resolution is not passed by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act; and
- (b) the terminating party has complied in all material respects with its obligations under this agreement.

## **14.6 Court determines not to grant the Final Orders**

Either party may terminate this agreement by giving notice in writing to the other party if the Court determines not to grant the Final Orders and the terminating party has complied in all material respects with its obligations under this agreement.

## **14.7 End Date**

Either Target or Bidder may terminate this agreement by giving notice in writing to the other if the Scheme has not become Effective by the End Date, provided that the terminating

party's failure to comply with its obligations under this agreement has not directly and materially contributed to the Scheme not becoming Effective by the End Date.

#### **14.8 Effect of termination**

If this agreement is terminated under this clause 14 then:

- (a) except as provided in clause 14.8(c), all the provisions of this agreement cease to have effect and each party is released from its obligations to further perform this agreement;
- (b) each party retains all rights that it has against the other party in respect of any breach of this agreement occurring before termination; and
- (c) the provisions of, and the rights and obligations of each party under, this clause 14 and each of the Surviving Clauses survive termination of this agreement.

### **15. Announcements**

#### **15.1 Initial announcements**

As soon as reasonably practicable after this agreement is signed Target must issue an announcement in a form agreed with Bidder and including a statement that:

- (a) each Target Director recommends that Shareholders vote in favour of the Scheme subject to appropriate disclosure of interest from TBB Directors; and
- (b) each Target Director undertakes to vote, or procure the voting of, all Shares held or controlled by him or her in favour of the Scheme,

in each case in the absence of a Superior Proposal and subject to the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares.

#### **15.2 Other announcements**

Each party must not make, and must procure that its Representatives do not make, any public announcement concerning the Scheme or the subject matter of this agreement other than:

- (a) the announcement referred to in clause 15.1;
- (b) with the written consent of the other party, which must not be unreasonably withheld or delayed; or
- (c) if required by law, any court of competent jurisdiction, any Government Agency or the NZX Listing Rules or the ASX Listing Rules, but if either party is so required to make any announcement, it must promptly notify the other party, where practicable and lawful to do so, before the announcement is made and must co-operate with the other party regarding the timing and content of such announcement or any action which the other party may reasonably elect to take to challenge the validity of such requirement.

## 16. Payments

### 16.1 Manner of payments

Unless otherwise expressly stated (or as otherwise agreed in the case of a given payment), each payment to be made under this agreement must be made in NZ\$ by transfer of the relevant amount into the relevant account on or before the date on which the payment is due and in immediately available funds. The relevant account for a given payment is the account that the party due to receive the payment specifies, not less than 10 Business Days before the date on which payment is due, by giving notice to the party due to make the payment.

### 16.2 Default interest

If a party defaults in making any payment when due of any sum payable under this agreement, it must pay interest on that sum from (and including) the date on which payment is due until (but excluding) the date of actual payment (after as well as before judgment) at an annual rate of 10% above the Reference Rate on that sum, which interest accrues from day to day and must be compounded monthly.

## 17. GST

### 17.1 Interpretation

Words and expressions that are defined in the GST Act have the same meaning when used in this clause 17. For the purposes of this clause 17, references to GST chargeable and input tax credit entitlements of any entity include GST chargeable against, and the input tax credit entitlements of, the representative member of the GST group of which the entity is a member.

### 17.2 Consideration exclusive of GST

Except as otherwise expressly provided in this agreement, all amounts payable or consideration to be provided under or in connection with this agreement are exclusive of GST (**GST Exclusive Consideration**).

### 17.3 Payment of GST

If GST is chargeable on any supply made under or in connection with this agreement the recipient must pay to the party that has made or will make the supply (the **Supplier**), in addition to the GST Exclusive Consideration, an additional amount equal to the GST chargeable on that supply (the **Additional Amount**). The recipient must pay the Additional Amount without set-off, demand or deduction, at the same time and in the same manner as any GST Exclusive Consideration for that supply is required to be paid, except that the recipient is not required:

- (a) to pay the Additional Amount unless and until the Supplier has issued a tax invoice under clause 17.4; or
- (b) to pay any GST Default Amounts included in the Additional Amount if those GST Default Amounts result from the Supplier failing to comply with its obligations under the GST Act.

#### **17.4 Tax invoice**

For any supply to which clause 17.3 applies, the Supplier must issue a tax invoice which complies with the GST Act.

#### **17.5 Adjustments**

If the GST amount expressed in a tax invoice in respect of a supply differs from the GST chargeable on that supply under the GST Act:

- (a) the Additional Amount paid or payable by the recipient must be recalculated, taking into account any previous adjustments under this clause 17.5, and the Supplier or the recipient, as the case requires, must pay to the other the amount required to reflect the recalculation of the Additional Amount; and
- (b) the Supplier must provide a debit note or credit note (as applicable) to the recipient as soon as practicable after the Supplier becomes aware of the circumstance causing the application of this clause 17.5.

#### **17.6 Input tax credits**

Notwithstanding any other provision of this agreement, if an amount payable under or in connection with this agreement is calculated by reference to any loss, damage, cost, expense, charges or other liability incurred or suffered by a party, then the amount payable must be reduced by the amount of any input tax credit or other deduction from output tax to which that entity is entitled in respect of the acquisition of any supply to which the loss, damage, cost, expense, charge or other liability relates.

### **18. Guarantee**

#### **18.1 Unconditional guarantee**

In consideration of Target entering into this agreement, Bidder unconditionally and irrevocably guarantees by way of continuing obligation to Target the due and punctual performance by BidCo of all of its obligations under this agreement or under any judgment or award relating to this agreement (**Buyer Obligations**).

#### **18.2 Indemnity**

Bidder indemnifies Target against any Loss incurred or sustained by Target in respect of any failure by BidCo to perform any of the Buyer Obligations.

#### **18.3 Principal debtor**

Although Bidder may only be a surety, as between Bidder and Target, Bidder is deemed a principal debtor and Target may demand the performance of any Buyer Obligation from Bidder, without first taking any steps against BidCo.

#### **18.4 No discharge**

Bidder is not to be discharged, nor are Bidder's obligations to be affected, by any matter or thing which, but for this clause 18.4, would or might have discharged Bidder or affected its obligations, including:

- (a) the variation of any term of this agreement or the assignment of the benefit of it or novation of it (in whole or in part);
- (b) BidCo being incompetent to enter the Deed Poll or failing to be legally bound in whole or in part by it or the validity, irregularity and enforceability of any provisions of this agreement;
- (c) the dissolution of BidCo, any change in the status, function, control or ownership of BidCo, or any consolidation, merger or conveyance of BidCo; or
- (d) any other act, matter or circumstance, indulgence, granting of time, variation, waiver or forbearance to sue or any other act or omission on the part of Target or any law whereby Bidder would, but for the provision of this clause have been released from liability under this guarantee and indemnity,

it being the intention of the parties that the guarantee and obligations of Bidder are to be the same as if Bidder owed all the obligations owed by BidCo under the Deed Poll.

### **18.5 Void payment**

If any payment made by or on behalf of BidCo to Target or Scheme Shareholders is avoided by law, that payment is not to be deemed to have discharged the liability of BidCo or Bidder in respect of it.

### **18.6 Payment on demand**

Bidder will make all payments under this clause 18 on demand.

### **18.7 Bidder not to compete**

Bidder will not exercise:

- (a) any right to prove in the bankruptcy, insolvency or liquidation of BidCo in competition with Target;
- (b) any other right of a surety to discharge any Buyer Obligations; or
- (c) any right of subrogation or indemnity which Bidder may have against BidCo,

for so long as any Buyer Obligations remain outstanding.

### **18.8 Rights cumulative**

The rights of Target under this clause 18 are cumulative and not exclusive of any rights provided by law and are to remain in full force until the discharge by BidCo of all of its obligations under the Deed Poll.

## **19. Notices**

### **19.1 Manner of giving notice**

Any notice or other communication to be given under this agreement must be in writing (which includes email) and may be delivered or sent by post or email to the party to be served as follows:



- (a) to Target at:
- Address: Trilogy International Limited, Level 6, Chelsea House, 85 Fort Street, Auckland Central, Auckland 1010, New Zealand
- Email: [Stephen@thebakery.co.nz](mailto:Stephen@thebakery.co.nz)
- For the attention of: Stephen Sinclair
- with a copy to:
- Address: Chapman Tripp, Level 38, 23 Albert Street, Auckland Central, Auckland 1010, New Zealand
- Email: [roger.wallis@chapmantripp.com](mailto:roger.wallis@chapmantripp.com)
- For the attention of: Roger Wallis
- (b) to Bidder at:
- Address: CITIC Capital China Partners III, L.P., c/- MinterEllisonRuddWatts, Lumley Centre, 88 Shortland Street, Auckland, 1010, New Zealand
- Email: [yangshi@citiccapital.com](mailto:yangshi@citiccapital.com)
- For the attention of: Yang Shi
- with a copy to:
- Address: MinterEllisonRuddWatts, Lumley Centre, 88 Shortland Street, Auckland, 1010, New Zealand
- Email: [silvana.schenone@minterellison.co.nz](mailto:silvana.schenone@minterellison.co.nz)
- For the attention of: Silvana Schenone

or at any such other address or email address notified for this purpose to the other parties under this clause. Any notice or other communication sent by post must be sent by prepaid ordinary post (if the country of destination is the same as the country of origin) or by airmail (if the country of destination is not the same as the country of origin).

## 19.2 When notice given

Any notice or other communication is deemed to have been given:

- (a) if delivered, on the date of delivery; or
- (b) if sent by post, on the third day after it was put into the post (for post within the same country) or on the fifth day after it was put into the post (for post sent from one country to another); or
- (c) if sent by e-mail, upon the generation of a receipt notice by the recipient's server or, if such notice is not so generated, upon delivery to the recipient's server,

but if the notice or other communication would otherwise be taken to be received after 5.00 pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or

communication is taken to be received at 9.00 am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

### **19.3 Proof of service**

In proving service of a notice or other communication, it is sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid post or by prepaid airmail or that the e-mail was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's e-mail system, as the case may be.

### **19.4 Documents relating to legal proceedings**

This clause 19 does not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this agreement.

## **20. General**

### **20.1 Amendments**

- (a) This agreement may only be amended prior to the Scheme becoming Effective.
- (b) Any amendment to this agreement will only be effective if it is in writing and signed by all the parties.
- (c) Notwithstanding clauses 11.1(c) and 11.2(c) this agreement may be varied by the parties to it without the approval of any Target Indemnified Person, any Bidder Indemnified Person or any director, officer or employee of Target or of any other member of the Target Group.

### **20.2 Assignments**

None of the rights or obligations of a party under this agreement may be assigned, transferred or novated without the prior written consent of the other party (such consent not to be unreasonably withheld).

### **20.3 Costs**

Except as otherwise expressly provided in this agreement, each party must pay the costs and expenses incurred by it in connection with entering into and performing its obligations under this agreement, the Scheme and the Deed Poll.

### **20.4 Entire agreement**

This agreement contains the entire agreement between the parties relating to the Transaction and supersedes all previous agreements, whether oral or in writing, between the parties relating to the Transaction except for the Confidentiality Agreement.

### **20.5 Execution in counterparts**

This agreement may be executed in counterparts, which taken together must constitute one and the same agreement, and any party (including any duly authorised representative of a

party) may enter into this agreement by executing a counterpart. Scanned signatures are taken to be valid and binding to the same extent as original signatures.

## **20.6 Exercise and waiver of rights**

The rights of each party under this agreement:

- (a) may be exercised as often as necessary;
- (b) except as otherwise expressly provided by this agreement, are cumulative and not exclusive of rights and remedies provided by law; and
- (c) may be waived only in writing and specifically,

and delay in exercising or non-exercise of any such right is not a waiver of that right.

## **20.7 Further assurance**

Each party undertakes, at the request, cost and expense of the other party, to sign all documents and to do all other acts, which may be necessary to give full effect to this agreement.

## **20.8 Severability**

The provisions contained in each clause of this agreement are enforceable independently of each other clause of this agreement and the validity and enforceability of any clause of this agreement will not be affected by the invalidity or unenforceability of any other clause.

# **21. Governing Law and Jurisdiction**

## **21.1 Governing law**

This agreement and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.

## **21.2 Jurisdiction**

The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this agreement (including a dispute relating to any non-contractual obligations arising out of or in connection with this agreement) and each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.

## **21.3 Service of process**

Bidder:

- (a) appoints MinterEllisonRuddWatts as its agent in New Zealand for service of process and other documents in any legal action or proceedings arising out of or in connection with this agreement; and
- (b) will ensure that at all times prior to the Implementation Date or termination of this agreement, the agent noted in clause 21.3(a) or a replacement appointed by Bidder

and notified to Target, is authorised and able to accept service of process and other documents on its behalf in New Zealand.

**THIS AGREEMENT** has been executed by the parties or their duly authorised representatives on the date stated at the beginning of this agreement.

# SCHEDULE 1 – Prescribed Occurrences

1. Target authorises, declares, pays, or makes any dividends, bonuses or other payments or distributions (within the meaning of the Companies Act) of any nature (including, without limitation, any Share buybacks, redemptions or other form of capital reduction) on or in respect of, any of the Shares.
2. Any Target Group member issuing, agreeing to issue, or granting an option or right to subscribe for, shares, convertible securities, other securities or financial products of any nature (including warrants, options, phantom or cash settled rights over Shares, convertible notes, entitlements, rights or interests in any ordinary shares) other than the issue, or purchase and transfer, of Shares due to exercise of Options or transfer of Shares under the Share Purchase Plan Rules as permitted under clause 6.3 or the FC Unwind or the issuing of shares by a wholly owned subsidiary of Target to Target or another wholly owned subsidiary of Target.
3. Target or a member of the Target Group (and to the extent Target Group is able to prevent it, any Minority Entity):
  - (a) altering the rights, privileges, benefits, entitlements or restrictions attaching to any securities (including the Shares) or other securities or financial products (if any) of any member of the Target Group; or
  - (b) converting all or any of the Shares into a larger or smaller number.
4. Any alteration to the constitutional documents of any member of the Target Group (or to the extent Target Group is able to prevent it, any Minority Entity).
5. An Insolvency Event occurs in respect of a member of the Target Group that is material to the Target Group taken as a whole.
6. A resolution is passed for any amalgamation of any member of the Target Group (or to the extent Target Group is able to prevent it, any Minority Entity), or any of them is involved in any merger or scheme of arrangement (other than a solvent scheme of arrangement or an amalgamation, merger or scheme of arrangement involving solely Target and/or one or more wholly owned subsidiaries of Target).
7. Target materially breaches any of the provisions in clause 9.2.
8. Target or another Target Group member (and to the extent Target Group is able to prevent it, any Minority Entity), amending in a material respect any agreement or arrangement with any financial advisor in relation to the Transaction or a Competing Proposal, or entering into an agreement or arrangement with a new financial advisor, in respect of the Transaction or a Competing Proposal.
9. The Shares cease to be quoted on the ASX and NZX.
10. Once the Condition referred to in clause in 3.1(j) is satisfied or waived, the Rosehip Oil Agreement:
  - (a) being terminated or notice of its termination being received by any Target Group member; or

- (b) any amendment being made to the Rosehip Oil Agreement, without Bidder's prior written consent.
- 11. Once granted, the consent sought under the Condition in clause 3.1(k) being withdrawn, qualified or varied.

# SCHEDULE 2 – Target Warranties and Undertakings

## PART 1

### TARGET WARRANTIES

1. Target is a corporation validly existing under the laws of its place of incorporation.
2. Target has the power to execute this agreement and to perform its obligations under this agreement and the Scheme, and has taken all necessary corporate action to authorise such execution and the performance of such obligations.
3. Target's obligations under this agreement are legal, valid and binding obligations enforceable subject to and in accordance with their terms.
4. The execution by Target of this agreement and the performance of its obligations under this agreement and the Scheme do not and will not conflict with or constitute a default under any provision of:
  - (a) its constitution; or
  - (b) any law, order, judgment, award, injunction, decree, rule or regulation by which Target is bound.
5. Target has filed with the Registrar, NZX and ASX all documents required to be filed with the Registrar, NZX or ASX including pursuant to NZX Listing Rule 10.1 (**Target Reporting Documents**) and is not in breach of its continuous and periodic disclosure obligations under the Companies Act, the NZX Listing Rules, the ASX Listing Rules and is not relying on the carve-out in NZX Listing Rule 10.1 to withhold any information from public disclosure.
6. Each member of the Target Group, and so far as Target is aware each Minority Entity, has complied in all material respects with all New Zealand and foreign laws and regulations applicable to them, has all material Authorisations for them to conduct the business of the Target Group (or Minority Entity) as presently being conducted and so far as Target is aware no member of the Target Group or Minority Entity is under investigation with respect to the violation of any laws or applicable Authorisations.
7. As at the date of this agreement Target's capital structure is as set out in Schedule 4 Part A, and the Target Group's capital structure as set out in Part B and there are no other shares, options or other securities (including equity securities, debt securities (other than those referred to in paragraph 8 below) or convertible securities) or other instruments which are convertible into securities in a member of the Target Group on issue nor has any member of the Target Group offered or agreed to issue or grant, and no person has any right to call for the issue or grant of, any such shares, options or other securities or other instruments to any third party.
8. No Prescribed Occurrence has occurred on or after the date of this agreement.
9. Target has terminated all negotiations and discussions (other than with Bidder and its Representatives) relating to any Competing Proposal.



10. Target Group does not have any outstanding Options on issue except for 720,000 Options.
11. The execution of this agreement by Target will not affect any waiver or amendment of any standstill agreement or arrangement between Target and any person other than a member of the Bidder Group.
12. Target Group does not have any outstanding financing that is not reflected in either its financial statements and notes thereto for the year ended 31 March 2017 or its financial statements and notes thereto for the six months ended 30 September 2017, and since 30 September 2017 no member of Target Group has engaged in any financing of a type which is not required to be shown or reflected in its financial statements or notes thereto.
13. It has prepared the Data Room Information in good faith.
14. As far as Target is aware all information in the Data Room Information is true and correct in all material respects and is not misleading or deceptive in any material respect, including by omission.

## **PART 2**

### **TARGET UNDERTAKINGS**

1. Target will ensure that no Options or Shares under the Share Purchase Plan Rules are issued and that all actions have been taken or arrangements put in place so that the Options outstanding and any Shares (including Unallocated Shares) subject to the Share Purchase Plans Rules at the date of this agreement will be dealt with in accordance with clause 6.3 and there will be no Options outstanding as at the Implementation Date.
2. Target will ensure that the Target Information:
  - (a) is prepared in good faith and on the understanding that each of the Bidder Indemnified Parties will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet;
  - (b) complies with the Companies Act, FMCA and all other applicable laws and the NZX Listing Rules and the ASX Listing Rules; and
  - (c) in the form and context in which it appears in the Scheme Booklet is true and correct in all material respects and is not misleading or deceptive, including by omission as at the date the Scheme Booklet is sent to Shareholders.
3. Target will provide to Shareholders and Bidder all new material information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date of the Scheme Meeting which is necessary to ensure that the Target Information, in the form and context in which it appears in the version of the Scheme Booklet sent to Shareholders, is not misleading or deceptive, including by omission.
4. All information provided by or on behalf of Target to the Independent Adviser will be provided in good faith and on the understanding that the Independent Adviser will rely upon that information for the purpose of preparing the Independent Adviser's report for inclusion in the Scheme Booklet, will be true and correct in all material respects and will not be misleading or deceptive including by omission.

# SCHEDULE 3 – Bidder Warranties and Undertakings

## PART 1

### BIDDER WARRANTIES

1. Bidder is a corporation validly existing under the laws of its place of incorporation.
2. BidCo will be a corporation validly existing under the laws of its place of incorporation on the Second Court Date.
3. Bidder has the power to execute and deliver and to perform its obligations under this agreement and the Deed Poll, and has taken all necessary corporate action to authorise such execution and delivery and the performance of such obligations.
4. BidCo will have the power to execute and deliver and to perform its obligations under the Deed Poll, and has taken all necessary corporate action to authorise such execution and delivery and the performance of such obligations.
5. The obligations of Bidder under this agreement are, and the obligations of BidCo under the Deed Poll will, on execution of the Deed Poll be, legal, valid and binding obligations enforceable subject to and in accordance with their terms.
6. The execution and delivery by Bidder of this agreement and the execution and, in due course, delivery by BidCo of the Deed Poll do not and will not conflict with or constitute a default under any provision of:
  - (a) any agreement or instrument to which Bidder or BidCo is a party;
  - (b) the constitution or equivalent documents of Bidder or BidCo; or
  - (c) any law, order, judgment, award, injunction, decree, rule or regulation by which Bidder or BidCo is bound.
7. As at 8.00am on the Second Court Date Bidder will have binding agreements in place to fund its obligation to pay the Scheme Consideration in accordance with the Scheme and the Deed Poll conditional only upon:
  - (a) the Court approving the Scheme and the Scheme becoming Effective; and
  - (b) the Conditions (to the extent they have not been satisfied or waived prior to the Second Court Date) and other customary conditions precedent to draw down.

## PART 2

### BIDDER UNDERTAKINGS

1. Bidder will ensure that the Bidder Information:
  - (a) is prepared in good faith and on the understanding that each of the Target Indemnified Parties will rely on that information to prepare the Scheme Booklet and to propose and implement the Scheme in accordance with the Companies Act;
  - (b) complies with the Companies Act and the FMCA and all other applicable laws; and
  - (c) in the form and context in which it appears in the Scheme Booklet is true and correct in all material respects and is not misleading or deceptive, including by omission as at the date the Scheme Booklet is sent to Shareholders.
2. All information provided by or on behalf of Bidder to the Independent Adviser will be provided in good faith and on the understanding that the Independent Adviser will rely upon that information for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet, will be true and correct in all material respects and will not be misleading or deceptive, including by omission.
3. Subject to the Companies Act and the Scheme becoming Effective, Bidder undertakes in favour of Target and each Target Indemnified Party that it will:
  - (a) subject to clause 4 below, for a period of 7 years from the Implementation Date, ensure that the constitutions of Target and each Target Group member continue to have equivalent obligations to those currently contained in their constitutions at the date of this agreement that provide for each company to indemnify each of its current and former directors and officers against any liability (excluding for fraud or wilful misconduct) incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the Target Group member; and
  - (b) procure that Target and each Target Group member complies with any provisions in deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, Bidder will ensure that the directors' and officers' run-off insurance cover already in place and fully paid before the date of this agreement, for those directors and officers is maintained on no less favourable terms than Target's current directors and officers policy, subject to clause 4 below, for a period of 7 years from the retirement date of each director and officer. For the avoidance of doubt, this clause does not intend to impose any obligation on Bidder to pay for run-off insurance or any further insurance to achieve these purposes.
4. The undertakings contained in clause 3 above are given until the earlier of the end of the relevant period specified in that clause or the relevant Target Group member ceasing to be part of the Bidder Group.

# SCHEDULE 4 – Capital Structure

## PART A

Type of security	Total number on issue
Shares	72,766,907
Options	720,000

## PART B

Entity name	Total number on issue	Class	Name of shareholder(s)
Kanara Holdings Limited	100	Ordinary	Trilogy International Limited (100%)
Ecoya New Zealand Limited	1,000	Ordinary	Trilogy International Limited (100%)
Goodness Skincare Limited	100	Ordinary	Trilogy International Limited (100%)
Ecoya Pty Ltd	359	Ordinary	Trilogy International Limited (100%)
Kakara Limited	100	Ordinary	Trilogy International Limited (100%)
Ecoya USA Inc	100,000	Ordinary	Trilogy International Limited (100%)
Lanocorp Pacific Limited	100,000	Ordinary	Kanara Holdings Limited (80%) Noel Walton and Timothy McIver (20%)
LTM Holdings Limited	100	Ordinary	Kanara Holdings Limited (80%) Noel Walton and Timothy McIver (20%)
Canterbury Limited      Cosmetics	4,000	Ordinary	Kanara Holdings Limited (80%) Noel Walton and Timothy McIver (20%)

<b>Entity name</b>	<b>Total number on issue</b>	<b>Class</b>	<b>Name of shareholder(s)</b>
Lanocorp New Zealand Limited	100,010	Ordinary	Kanara Holdings Limited (80%)  Noel Walton and Timothy McIver (20%)
Trilogy Natural Products Limited	500,000	Ordinary	Kanara Holdings Limited (100%)
C S Company Limited	98,557	Ordinary	Kakara Limited (100%)
Lanocorp UK Limited	1	Ordinary	Lanocorp Pacific Limited (100%)
Lanocorp Pacific Pty Limited	1	Ordinary	Lanocorp Pacific Limited (100%)
Lanocorp USA Inc	100	Ordinary	Lanocorp Pacific Limited (100%)
Tiaki UK Limited	1	Ordinary	Canterbury Cosmetics Limited (100%)
Trilogy Natural Products (UK) Limited	100	Ordinary	Trilogy Natural Products Limited (100%)
Sociedad Agricola y Forestal Casino	3,400,000	Ordinary	Compañía de Inversiones y Desarrollo Sur Limitada (75%)  Trilogy Natural Products Limited (25%)

## SCHEDULE 5 – Timetable

	Event	Indicative Date
1.	Execution of this agreement by Target	14 December 2017
2.	Announcement that this agreement has been entered into	15 December 2017
3.	Bidder to submit its application under the Overseas Investment Act 2005	Within 10 Business Days of item 2
4.	Draft Scheme Booklet provided to Bidder	Within 15 Business Days of item 1
5.	Draft Scheme Booklet provided to the Takeovers Panel and NZX for review	Within 5 Business Days of item 4
6.	Scheme Booklet (including Independent Adviser's Report) approved by Takeovers Panel and NZX	Within 15 Business Days of item 5
7.	First Court Date	Within 5 Business Days of item 6
8.	Scheme Booklet sent to Shareholders (including Independent Adviser's Report)	Within 5 Business Days of receiving the Initial Orders
9.	Time and date for determining eligibility to vote at Scheme Meeting	48 hours before the scheduled meeting time for the Scheme Meeting
10.	Scheme Meeting	15 Business Days of item 7
11.	Second Court Date	Later of: (a) 2 Business Days after the Scheme Meeting; and (b) 1 Business Day after the satisfaction the Conditions set out in clauses 3.1(a), 3.1(b) and 3.1(c).
12.	Final Orders Date	Estimated to be between 2 and 3 weeks after the Second Court Date
13.	Record Date	5 Business Days after the Final Orders Date
14.	Implementation Date	5 Business Days after the Record Date

# EXECUTION PAGE

Each attorney executing this agreement states that he or she has no notice of revocation or suspension of his or her power of attorney.

**EXECUTED** by **CITIC CAPITAL CHINA PARTNERS III, L.P.** by CCP III GP LTD., its general partner:



\_\_\_\_\_  
Signature

**Hanxi Zhao**  
\_\_\_\_\_  
Name

**Senior Managing Director**  
\_\_\_\_\_  
Title

**EXECUTED** on behalf of **TRILOGY INTERNATIONAL LIMITED:**

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director



# EXECUTION PAGE

Each attorney executing this agreement states that he or she has no notice of revocation or suspension of his or her power of attorney.


**EXECUTED** by **CITIC CAPITAL CHINA PARTNERS III, L.P.** by CCP III GP LTD., its general partner:

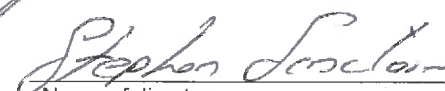
\_\_\_\_\_  
Signature


\_\_\_\_\_  
Name


\_\_\_\_\_  
Title

**EXECUTED** on behalf of **TRILOGY INTERNATIONAL LIMITED:**

  
\_\_\_\_\_  
Signature of director

  
\_\_\_\_\_  
Name of director

  
\_\_\_\_\_  
Signature of director

  
\_\_\_\_\_  
Name of director

# ANNEX 1

## SCHEME PLAN



# Scheme Plan

in relation to a scheme or arrangement under Part 15 of  
the Companies Act 1993

—

Trilogy International Limited (**Target**)

Scheme Shareholders (as defined below)

[Insert company name] (**BidCo**)

CITIC Capital China Partners III, L.P. (**Bidder**)

—

# Details

## Date

---

## Parties

Name **Trilogy International Limited** (Company No. 2090514)  
Short form name **(Target)**  
Notice details Address: Level 6, Chelsea House, 85 Fort Street, Auckland Central, 1010, New Zealand  
Email: [Stephen@thebakery.co.nz](mailto:Stephen@thebakery.co.nz)  
Attention: Stephen Sinclair

Name **[insert company name]** (Company No. [insert company number])  
Short form name **(BidCo)**  
Notice details Address: CITIC Capital China Partners III, L.P., c/- MinterEllisonRuddWatts, Level 20, Lumley Centre, 88 Shortland Street, Auckland 1010, New Zealand  
Email: [yangshi@citiccapiatal.com](mailto:yangshi@citiccapiatal.com)  
Attention: Yang Shi

Name **CITIC Capital China Partners III, L.P.** registered as an exempted limited partnership registered on 1 December 2015 under the Exempted Limited Partnership Law 2014 of the Cayman Islands  
Short form name **(Bidder)**  
Notice details Address: CITIC Capital China Partners III, L.P., c/- MinterEllisonRuddWatts, Level 20, Lumley Centre, 88 Shortland Street, Auckland 1010, New Zealand  
Email: [yangshi@citiccapiatal.com](mailto:yangshi@citiccapiatal.com)  
Attention: Yang Shi

Name Each registered holder of ordinary shares in the capital of Trilogy International Limited on issue as at the Scheme Record Date  
Short form name **(Scheme Shareholders)**

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# Agreed terms

## 1. Definitions and interpretation

### 1.1 Definitions

In this Scheme Plan:

**ASX** means ASX Limited or the Australian Securities Exchange, as the context requires;

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Auckland, New Zealand, Hong Kong and the Cayman Islands;

**CIDSUR** means Compañía de Inversiones y Desarrollo Sur Limitada;

**Companies Act** means the Companies Act 1993 (New Zealand);

**Computershare** means Computershare Investor Services Limited;

**Conditions** means:

- (a) the conditions set out in clause 3.1 of the Scheme Implementation Agreement; and
- (b) such other conditions made or required by the Court under section 236(1) of the Companies Act;

**Court** means the High Court of New Zealand, Auckland Registry;

**Deed Poll** means the deed poll to be entered into by BidCo and Bidder in favour of the Scheme Shareholders;

**End Date** means 31 May 2018, or such later date as Target and Bidder agree in writing;

**FC Shares** means the Target Shares held by CIDSUR;

**Final Orders Date** means the date on which final orders of the Court made under section 236(1) (and section 237, if applicable) of the Companies Act are granted;

**Government Authority** means any government, any department, officer or minister of any government and any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity;

**Implementation Date** means the day on which the Scheme is to be implemented, being the date 5 Business Days after the Scheme Record Date, or such other date as Bidder and Target agree in writing;

**NZX** means NZX Limited or the main board financial market that it operates, as the context requires;

**Register** means the register of Target Shares maintained by Computershare on behalf of Target;

**Registered Address** means, in relation to a Target Shareholder, the address shown in the Register as at the Scheme Record Date;

**Scheme** means this scheme of arrangement, subject to any alterations or conditions made or required by the Court under Part 15 of the Companies Act and approved by Bidder and Target in writing;

**Scheme Booklet** means the notice of meeting (including proxy form) and scheme booklet dated [●] 2017 prepared by Target in relation to the Scheme;

**Scheme Consideration** means NZ\$2.90 in cash in respect of each Target Share held by a Scheme Shareholder, as reduced by the per share amount of any dividend the record date for which falls on or between the date of the Scheme Implementation Agreement and the Implementation Date;

**Scheme Implementation Agreement** means the scheme implementation agreement dated [●] 2017 between Bidder and Target;

**Scheme Record Date** means the date which is 5 Business Days after the later of:

- (a) the Final Orders Date; and
- (b) the date on which the last of the conditions set out in clauses 3.1(a), (b) and (c) of the Scheme Implementation Agreement are satisfied or, if capable of waiver, waived in accordance with clause 3.5 of that agreement,

or such other date agreed between Bidder and Target in writing;

**Scheme Shareholder** means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Scheme Record Date other than CIDSUR;

**Scheme Shares** means all of the Target Shares on issue at 7:00pm on the Scheme Record Date other than the FC Shares;

**Special Meeting** means the special meeting of Target Shareholders ordered by the Court to be convened pursuant to section 236(2)(b) of the Companies Act in respect of the Scheme and including any meeting convened following any adjournment or postponement of that meeting;

**Target Share** means an ordinary share in the capital of Target;

**Target Shareholder** means a person who is registered in the Register as the holder of one or more Target Shares from time to time; and

**Unconditional** means the coming into effect pursuant to section 236(3) of the Companies Act of the order of the Court made under section 236(1) of the Companies Act in relation to the Scheme and the satisfaction or waiver (as the case may be) of all conditions of the Scheme.

## 1.2 Interpretation

In this Scheme Plan:

- (a) headings are for convenience only and do not affect the interpretation of this Scheme Plan;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Authority, as well as an individual;
- (e) a reference to a clause, is a reference to a clause of this Scheme Plan;
- (f) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Authority with legal power to do so);
- (g) a reference to a document (including this Scheme Plan) includes all amendments or supplements to, or replacements or novations of, that document;
- (h) the word 'includes' in any form is not a word of limitation;
- (i) a reference to '\$', 'NZ\$' or 'dollar' is to New Zealand currency, unless denominated otherwise;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Auckland, New Zealand;
- (k) a reference to a party to a document includes that party's successors and permitted assignees; and
- (l) no provision of this Scheme Plan will be construed adversely to a party because that party was responsible for the preparation of this Scheme Plan or that provision.

## 1.3 Business Day

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

## 2. Conditions

The implementation of the Scheme is conditional in all respects on:

- (a) all of the Conditions having been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement by 8.00am on the Implementation Date;
- (b) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with its terms before 8.00am on the Implementation Date;
- (c) such other conditions made or required by the Court under section 236(1) and 237 of the Companies Act and agreed to by Target and Bidder having been satisfied or waived; and
- (d) the orders of the Court made under subsection 236(1) of the Companies Act approving this Scheme Plan coming into effect, pursuant to subsection 236(3) of the Companies Act on or before the End Date.

## 3. Scheme Consideration into trust account

### 3.1 Obligation to pay into trust account

BidCo must, by no later than 5.00pm on the Business Day before the Implementation Date, subject to the Scheme having become Unconditional, deposit (or procure the deposit of) in immediately available cleared funds an amount equal to the aggregate amount of the Scheme Consideration payable to Scheme Shareholders in a New Zealand dollar denominated trust account operated by Computershare (**Funds**).

### 3.2 Details of trust account

- (a) Subject to clause 3.2(b), the trust account will be held and operated by Computershare on the basis that the Funds are held on trust for BidCo and to its order, such that only BidCo may direct how the Funds will be paid from the trust account.
- (b) Clause 3.2(a) is subject to a standing direction from BidCo to Target and Computershare to make payment of the Scheme Consideration to the Scheme Shareholders upon transfer of the Scheme Shares to BidCo under clause 4(b).
- (c) The details of the trust account will be provided to BidCo by Computershare not less than 6 Business Days before the Implementation Date.

### 3.3 Interest

Any interest earned on the amount deposited will be payable to BidCo by Computershare as directed by BidCo.

### 3.4 Scheme not implemented

Should the implementation of the Scheme not occur by 3.00pm on the Implementation Date for any reason, Computershare will immediately repay such monies to BidCo to such New Zealand dollar denominated account(s) instructed to Computershare by BidCo.

## 4. Implementation

Subject to the conditions set out in clause 2 being satisfied and the Scheme Consideration having been deposited in accordance with clause 3.1, commencing at 9.00am on the Implementation Date and in the following order:

- (a) the FC Shares will be acquired by Target and cancelled;
- (b) without any further act or formality, all the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred to BidCo and Target must enter, or procure the entry of, the name of BidCo in the Register in respect of all of the Scheme Shares; and then
- (c) in accordance with the instructions in clause 3.2(a) and subject to compliance in full with clauses 3.1 and 4(b), Target must instruct Computershare to pay or procure the payment from the trust account referred to in clause 3 of the Scheme Consideration to each



Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Register on the Scheme Record Date.

## **5. Payment of the Scheme Consideration**

### **5.1 Method of payment**

- (a) The payment obligations of Target under clause 4(c) will be satisfied by:
  - (i) where a Scheme Shareholder has, not less than 5 Business Days before the Scheme Record Date, made a valid election in accordance with the requirements of Computershare to receive payments from Target by electronic funds transfer to a bank account nominated by that Scheme Shareholder, paying the relevant amount by electronic transfer in accordance with that election or an election made in accordance with the instructions in the Scheme Booklet; or
  - (ii) otherwise dispatching, or procuring the dispatch of, a cheque for the relevant amount to the Scheme Shareholder by prepaid post to their Registered Address (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 5.2).
- (b) For the purposes of clause 5.1(a), where a Scheme Shareholder has agreed that distributions may be made to them in a currency other than New Zealand dollars, then Target may procure that the payment pursuant clause 5.1 can be made in the applicable currency, provided however that this will be a matter between Target and the applicable Scheme Shareholder. BidCo will satisfy its obligation by complying with clause 3.

### **5.2 Joint holders**

In the case of Scheme Shares held in joint names:

- (a) subject to clause 5.1, the Scheme Consideration is payable to the joint holders and any cheque required to be sent under this Scheme Plan will be made payable to the joint holders and sent to either, at the sole discretion of Target, the holder whose name appears first in the Register as at the Scheme Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme Plan, will be forwarded to either, at the sole discretion of Target, the holder whose name appears first in the Register as at the Scheme Record Date or to the joint holders.

### **5.3 Surplus in trust account**

To the extent that, following satisfaction of the obligations under clause 4(c), there is a surplus in the trust account referred to in clause 3, that surplus may be retained by Target.

### **5.4 Unclaimed monies**

- (a) Target may cancel a cheque issued under clause 5.1(a)(ii) if the cheque is returned to Target or has not been presented for payment within one year after the Implementation Date.
- (b) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Target, Target must reissue, or procure the reissue of, a cheque that was previously cancelled under clause 5.4(a).

### **5.5 Orders of a court or Government Authority**

Notwithstanding any other provision of this Scheme Plan, if written notice is given to Target prior to the Scheme Record Date of an order or direction made by a court of competent jurisdiction or a Government Authority that:

- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder by Target in accordance with clause 4(c), Target will be entitled to procure that provision of that consideration is made in accordance with that order or direction; or

- (b) prevents the consideration from being provided to any particular Scheme Shareholder in accordance with clause 4(c), or the payment or issuance of such consideration is otherwise prohibited by applicable law, the payment (equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration) will be retained in the trust account referred to in clause 3 until such time as provision of the consideration to the Scheme Shareholder in accordance with clause 4(c) is permitted by that order or direction or otherwise by law. Any amount so retained under this clause 5.5(b) may be held by Target or any of Target's related companies, provided that BidCo procures that such company complies with the obligations under this clause to pay such consideration to any applicable Scheme Shareholders,

and such provision or retention (as the case may be) will constitute the full discharge of BidCo's and Target's obligations under clause 4(c) with respect to the amount so provided or retained.

## **6. Dealing in Target Shares**

### **6.1 Recognition of dealings**

To establish the identity of the Scheme Shareholders:

- (a) dealings in Target Shares will only be recognised if:
  - (i) in the case of dealings of the type to be effected through NZX's clearing and settlement system or CHESS on ASX, the transferee is registered in the Register as the holder of the relevant Target Shares as at the Scheme Record Date; and
  - (ii) in all other cases, registrable transmission applications or transfers in respect of those dealings, or valid requests in respect of other alterations, are received on or before 5.00pm on the Scheme Record Date at the place where the Register is kept; and
- (b) Target must not accept for registration, nor recognise for any purpose (except a transfer to BidCo pursuant to this Scheme Plan and any subsequent transfer by BidCo or its successors in title), any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable forms.

### **6.2 Register**

- (a) Target must register registrable transmission applications or transfers of the Scheme Shares in accordance with clause 6.1(a)(ii) on or before 5.00pm on the Scheme Record Date provided that, for the avoidance of doubt, nothing in this clause 6.2(a) requires Target to register a transfer that:
  - (i) relates to a transfer of Target Shares on which Target has a lien; or
  - (ii) would result in a Target Shareholder holding a parcel of Target Shares that is less than a 'minimum holding' (for the purposes of this clause 6.2(a) 'minimum holding' has the meaning given in the NZX Main Board Listing Rules).
- (b) A holder of Scheme Shares (and any person claiming through that holder) or FC Shares must not dispose of, or purport or agree to dispose of, any Scheme Shares or FC Shares or any interest in them, on or after the Scheme Record Date otherwise than pursuant to this Scheme Plan, and any attempt to do so will have no effect and Target and BidCo shall be entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Target must maintain the Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) From 5.00pm on the Scheme Record Date, each entry that is current on the Register (other than entries on the Register in respect of BidCo) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of Target Shares relating to that entry.
- (e) As soon as possible after 5.00pm on the Scheme Record Date and in any event by 5.00pm on the first Business Day after the Scheme Record Date, Target must make

available to BidCo in the form BidCo reasonably requires, details of the names, Registered Addresses and holdings of Target Shares for each Scheme Shareholder and CIDSUR as shown in the Register on the Scheme Record Date.

## **7. General provisions**

### **7.1 Title to and rights in Scheme Shares**

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme Plan to BidCo will, at the time of transfer of them to BidCo, vest in BidCo free from and the FC Shares at the time of their transfer to Target and cancellation will be free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999) and interests of third parties of any kind, whether legal or otherwise and free from any restrictions on transfer of any kind.
- (b) Each Scheme Shareholder and CIDSUR is taken to have warranted to BidCo on the Implementation Date that all of their Scheme Shares and FC Shares, as the case may be, (including any rights and entitlements attaching to those shares) which are transferred or cancelled, as applicable, under this Scheme Plan will, at the time of transfer or cancellation, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Target Shares to BidCo or in respect of the FC Shares, to Target for their cancellation, together with any rights and entitlements attaching to those shares.

### **7.2 Authority given to Target**

Each Scheme Shareholder, without the need for any further act:

- (a) on the date which is the later of:
  - (i) the Final Orders Date; and
  - (ii) the date on which Target announces to NZX and ASX that the last of the conditions set out in clauses 3.1(a), (b) and (c) of the Scheme Implementation Agreement has been satisfied or waived in accordance with clause 3.5 of that agreement,irrevocably appoints Target and each of its directors (jointly and each of them severally) as its attorney and agent for the purpose of enforcing the Deed Poll against Bidder and BidCo (but without limiting each Scheme Shareholder's right to itself enforce the Deed Poll); and
- (b) on the Implementation Date, irrevocably appoints Target and each of its directors (jointly and each of them severally) as its attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to the Scheme and the transactions contemplated by it,

and Target, for itself and on behalf of each of its directors, accepts each such appointment. Each such attorney and agent, may sub-delegate its functions, authorities or powers under this clause 7.2 to one or more of Target's officers.

### **7.3 Binding effect of Scheme**

- (a) The Scheme binds:
  - (i) Target;
  - (ii) Bidder;
  - (iii) BidCo;
  - (iv) CIDSUR; and

- (v) all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on the Scheme, did not vote at the Scheme Meeting, or voted against the Scheme at the Scheme Meeting).
- (b) In the event of any inconsistency, this Scheme Plan overrides the constitution of Target.

#### **7.4 End Date**

The Scheme will become void and be of no further force or effect if it does not become Unconditional on or before the End Date (other than any provision of the Scheme or this Scheme Plan relating to the repayment to BidCo of any Funds deposited in accordance with clause 3 and the interest thereon (less bank fees and other third party charges directly in connection with the account)).

#### **7.5 Target Obligations**

To the extent that any provision of the Scheme or this Scheme Plan imposes any obligation on Target that continues or arises after the implementation of the Scheme, such obligation may instead be performed by any successor or related company of Target in which case the obligation will be satisfied as if performed by Target.

#### **7.6 Bidder guarantee**

- (a) Bidder guarantees, as primary obligor and not merely as surety, the due and punctual performance by BidCo of all of its obligations under this Scheme Plan.
- (b) Clauses 18.4 to 18.8 of the Scheme Implementation Agreement will apply *mutatis mutandis* to Bidder's guarantee under clause 7.6(a) as if set out in full in this Scheme Plan.

#### **7.7 Governing law**

- (a) This Scheme Plan is governed by the laws of New Zealand.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New Zealand in respect of any proceedings arising out of or in connection with this Scheme Plan. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

# ANNEX 2

## DEED POLL



# Deed Poll

in relation to

a scheme of arrangement pursuant to Part 15 of the Companies Act 1993 (New Zealand) involving Trilogy International Limited

—

[insert name of company] (**Bidco**)

CITIC Capital China Partners III, L.P. (**Bidder**)

Each registered holder of ordinary shares in the capital of Trilogy International Limited on issue as at the Scheme Record Date (**Scheme Shareholders**)

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# Deed Poll

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# Details

## Date

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## Parties

Name	[insert name of company]
Short form name	<b>Bidco</b>
Notice details	Address: CITIC Capital China Partners III, L.P. c/- MinterEllisonRuddWatts, Level 20, Lumley Centre, 88 Shortland Street, Auckland, New Zealand Email: <a href="mailto:yangshi@citiccapiatal.com">yangshi@citiccapiatal.com</a> Attention: Yang Shi
Name	CITIC Capital China Partners III, L.P.
Short form name	<b>Bidder</b>
Notice details	Address: CITIC Capital China Partners III, L.P. c/- MinterEllisonRuddWatts, Level 20, Lumley Centre, 88 Shortland Street, Auckland, New Zealand Email: <a href="mailto:yangshi@citiccapiatal.com">yangshi@citiccapiatal.com</a> Attention: Yang Shi
Name	Each registered holder of ordinary shares in the capital of Trilogy International Limited on issue as at the Scheme Record Date
Short form name	<b>Scheme Shareholders</b>

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## Background

- A Trilogy International Limited (**Target**) and Bidder are parties to the Scheme Implementation Agreement.
- B Target has agreed in the Scheme Implementation Agreement to propose a scheme of arrangement between Target, BidCo, Bidder, the Scheme Shareholders and CIDSUR, the effect of which will be that all Scheme Shares will be transferred to BidCo and BidCo will provide or procure the provision of the Scheme Consideration to the Scheme Shareholders.
- C BidCo is entering into this Deed Poll for the purpose of undertaking in favour of Scheme Shareholders to pay the Scheme Consideration to Scheme Shareholders in accordance with the terms of the Scheme Plan. Bidder is entering into this Deed Poll for the purposes of undertaking in favour of Scheme Shareholders to guarantee BidCo's obligation to pay the Scheme Consideration to the Scheme Shareholders.

# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Defined terms

In this document:

**Final Orders** means orders under section 236(1) (and section 237, if applicable) of the Companies Act in respect of the Scheme;

**Scheme Implementation Agreement** means the scheme implementation agreement between Target and Bidder, dated *[insert date]* whereby Target has agreed to propose a scheme of arrangement between Target, BidCo, Bidder, the Scheme Shareholders and CIDSUR; and

**Scheme Plan** means the scheme plan attached as Annexure 1 to the Scheme Implementation Agreement, subject to any alterations or conditions approved by Bidder and Target in writing and which are disclosed to the Court prior to the Court making the Final Orders,

and words defined in the Scheme Plan which are not separately defined in this Deed Poll have the same meaning when used in this Deed Poll.

### 1.2 Interpretation

Clauses 1.2 and 1.3 of the Scheme Plan apply to the interpretation of this Deed Poll, except that references to “this Scheme Plan” are to be read as reference to “this Deed Poll”.

## 2. Nature of this Deed Poll

### 2.1 Third party rights and appointment of attorney

BidCo and Bidder each acknowledge that:

- (a) this Deed Poll is intended to confer a benefit upon, and therefore be relied upon and enforced by, any Scheme Shareholder in accordance with its terms under the Contract and Commercial Law Act 2017 (but not otherwise), even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme Plan each Scheme Shareholder appoints Target and each of its directors (jointly and each of them severally) as its agent and attorney to enforce this Deed Poll against BidCo and Bidder on the date prescribed for such appointment in the Scheme Plan (but without limiting each Scheme Shareholder's right to itself enforce this Deed Poll).

Notwithstanding the foregoing, this Deed Poll may be varied by the parties to it in accordance with clause 8.2 without the approval of any Scheme Shareholder.

### 2.2 Continuing obligations

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

- (a) BidCo and Bidder have fully performed their obligations under it; or
- (b) it is terminated under clause 3.2.

## 3. Conditions

### 3.1 Conditions

This Deed Poll, and the obligations of BidCo and Bidder under it, are conditional in all respects upon the Scheme becoming Unconditional.

### 3.2 Termination

The obligations of BidCo and Bidder under this Deed Poll will automatically terminate, and the terms of this Deed Poll will be of no force or effect, if:

- (a) the Scheme Implementation Agreement is terminated in accordance with its terms before the Scheme becomes Unconditional; or

(b) the Scheme does not become Unconditional before the End Date, unless Bidder and Target otherwise agree in writing.

### **3.3 Consequences of termination**

If this Deed Poll is terminated under clause 3.2, then BidCo and Bidder are released from their obligations to further perform this Deed Poll.

## **4. Scheme Consideration**

Subject to clause 3, BidCo:

- (a) undertakes in favour of each Scheme Shareholder to deposit, or procure the deposit of, in immediately available cleared funds, by no later than 5.00pm on the Business Day before the Implementation Date an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders as set out in the Scheme Plan, such deposit to be made into the trust account to be held and dealt with in accordance with clauses 3 and 4 of the Scheme Plan; and
- (b) irrevocably acknowledges and agrees that, subject to compliance in full with clause 4(b) of the Scheme Plan, the Scheme Consideration deposited into the trust account referred to in clause 4(a) must be applied to Scheme Shareholders in satisfaction of their respective entitlements to receive the Scheme Consideration under the Scheme in accordance with the Scheme Plan.

## **5. Warranties**

BidCo and Bidder each warrants in favour of each Scheme Shareholder that:

- (a) it is a company or other body corporate validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into, and perform its obligations under, this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Deed Poll and has taken, or will take, all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) this Deed Poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (e) this Deed Poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

## **6. Bidder guarantee**

### **6.1 Guarantee**

Bidder guarantees, as primary obligor and not merely as surety, the due and punctual performance by BidCo of all of its obligations under clause 4(a).

### **6.2 No discharge**

Clauses 18.4 to 18.8 of the Scheme Implementation Agreement will apply *mutatis mutandis* to Bidder's guarantee under clause 6.1 as if set out in full in this Deed Poll.

## **7. Notices**

### **7.1 Manner of giving notice**

Any notice or other communication to be given under this Deed Poll must be in writing and may be delivered or sent by post or email to BidCo and Bidder as follows:

Address: CITIC Capital China Partners III, L.P. c/o MinterEllisonRuddWatts,  
Lumley Centre, 88 Shortland Street, Auckland, 1010, New Zealand

Email: [yangshi@citiccapital.com](mailto:yangshi@citiccapital.com)

For the attention of: Yang Shi

with a copy to:

Address: MinterEllisonRuddWatts, Lumley Centre, 88 Shortland Street,  
Auckland, 1010, New Zealand

Email: [silvana.schenone@minterellison.co.nz](mailto:silvana.schenone@minterellison.co.nz)

For the attention of: Silvana Schenone

Any notice or other communication sent by post must be sent by prepaid ordinary post (if the country of destination is the same as the country of origin) or by airmail (if the country of destination is not the same as the country of origin).

## **7.2 When notice given**

Any notice or other communication is deemed to have been given:

- (a) if delivered, on the date of delivery; or
- (b) if sent by post, on the third day after it was put into the post (for post within the same country) or on the fifth day after it was put into the post (for post sent from one country to another); or
- (c) if sent by email, upon the generation of a receipt notice by the recipient's server or, if such notice is not so generated, upon delivery to the recipient's server,

but if the notice or other communication would otherwise be taken to be received after 5.00 pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9.00 am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

## **7.3 Proof of service**

In proving service of a notice or other communication, it shall be sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid post or by prepaid airmail or that the email was properly addressed and transmitted as the case may be.

# **8. General**

## **8.1 Waiver**

- (a) BidCo and Bidder may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right in respect of the Scheme unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) For the purposes of clause 8.1(a):
  - (i) conduct includes a delay in exercising a right;
  - (ii) right means any right arising under or in connection with this Deed Poll and includes the right to rely on this clause; and
  - (iii) waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

## **8.2 Variation**

- (a) Subject to clauses 8.2(b) and 8.2(c), this Deed Poll may not be varied.
- (b) Before the date on which the Final Orders are made, this Deed Poll may be varied by agreement in writing between BidCo, Bidder and Target, in which event BidCo and Bidder will enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.

- (c) If the Court orders that it is a condition of the Scheme that Bidco and Bidder enter into a new deed poll which has the effect of reversing any variation under clause 8.2(b), then, if BidCo and Bidder so agree, BidCo and Bidder must promptly enter into a further deed poll in favour of the Scheme Shareholders to give effect to the reversal of that variation.

### **8.3 Cumulative rights**

The rights, powers and remedies of BidCo, Bidder and Scheme Shareholders under this Deed Poll are cumulative and do not exclude any other rights, power or remedies provided by law independently of this Deed Poll.

### **8.4 Assignment**

The rights and obligations of BidCo, Bidder and each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with at law or in equity. Any purported dealing in contravention of this clause 8.4 is invalid.

### **8.5 Further assurance**

Each of BidCo and Bidder must, at its own expense, do all things reasonably required of it to give full force and effect to this Deed Poll and the transactions contemplated by it.

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

- (a) This Deed Poll is governed by the laws in force in New Zealand.
- (b) BidCo and Bidder each irrevocably submit to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand in respect of any proceedings arising out of or in connection with any proceeding arising out of or in connection with this Deed Poll and irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.
- (c) Bidder appoints BidCo as its agent in New Zealand for service of process and other documents in any legal action or proceedings arising out of or in connection with this Deed Poll.

# Signing page

**Executed** as a deed poll.

**[INSERT NAME OF BIDCO]** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

**CITIC CAPITAL CHINA PARTNERS III, L.P.** by CCP  
III GP LTD., its general partner:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title