



20 July 2017

ASIC Form 603 in connection with the Emefcy merger by acquisition with RWL Water LLC to form Fluence Corporation Limited

The combination of Emefcy Group Limited with RWL Water LLC to form Fluence Corporation Limited – a global provider of water treatment solutions – involved acquiring all of the limited liability company interests in RWL Water LLC for the issue of Emefcy shares to RSL Investments Corporation. These transactions were overwhelmingly supported by shareholders at the EGM held last week.

The parties to the transaction have agreed that the Emefcy shares issued to RSL Investments Corporation in the RWL acquisition will be subject to voluntary escrow (or a 'lock-up') for 24 months after the completion of that acquisition.

The attached Form 603 has been prepared and lodged due to the technical operation of the Corporations Act 2001. On a technical basis, Fluence is considered to have acquired a relevant interest in the Emefcy shares that were issued to RSL Investments Corporation because of Fluence's negative control rights (that is, the right to prohibit RSL from selling the shares) under the Lock-Up Agreement that was executed as part of the transaction. During the 24 month lock up period, the shares will be owned only by RSL Investments Corporation, and the fact that RSL Investments Corporation has agreed with Fluence that it will not transfer those shares for 24 months will not affect that ownership.

As previously disclosed by Fluence in its notice of EGM dated 8 June 2017 and the accompanying explanatory memorandum, importantly, Fluence does not and will not own any of the above shares.

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Company Secretary & Advisor to the Board

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Form 603
Corporations Act 2001
Section 671B

Notice of initial substantial holder

To: Company Name/Scheme Fluence Corporation Limited

ACN/ARSN 127 734 196

1. Details of substantial holder (1)

Name Fluence Corporation Limited (Fluence)

ACN/ARSN (if applicable) 127 734 196

The holder became a substantial holder on 14 July 2017

2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Ordinary	80,400,000	80,400,000	21.36%

3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
Fluence Corporation Limited	<p>Relevant interest under section 609 of the Corporations Act 2001.</p> <p>These securities were issued to RSL Investments Corporation as 'consideration shares' under the Sale and Purchase Agreement annexed as Annexure A to this notice.</p> <p>As previously disclosed by Fluence in its notice of EGM dated 8 June 2017 and the accompanying explanatory memorandum, Fluence does not and will not own any of the above securities.</p> <p>However, Fluence is technically considered to have acquired a relevant interest in these securities as a result of the negative control rights in the Lock-Up Agreement executed as part of the RSL Investments Corporation transaction (see Annexure B).</p> <p>The acquisition by Fluence of this relevant interest in its own securities was approved by shareholders at the EGM on 12 July 2017.</p>	80,400,000 fully paid ordinary shares

4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holders of relevant interest	Registered holder of Securities	Person entitled to be registered as a holder (8)	Class and number of securities
RSL Investments Corporation	RSL Investments Corporation	RSL Investments Corporation	80,400,000 fully paid ordinary shares

5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
RSL Investments Corporation and Ronald S. Lauder	14 July 2017	In consideration for RSL Investments Corporation having transferred 100% of its shares in RWL Water LLC to Fluence (previously Emefcy Group Limited), as set out in Annexure A.		80,400,000 fully paid ordinary shares

6. Associates

The reasons the person named in paragraph 3 above and associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
N/A	N/A

7. Addresses

The addresses of persons named in this form are as follows:

Name	Address
Fluence Corporation Limited	Level 3, 62 Lygon Street, Carlton, Victoria 3053

Signature

print name Ross Kennedy

capacity Company Secretary

sign here

date 20 / 07 / 2017

DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant issues (eg. A corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in Section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:
 - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
 - (b) any qualification of the power of a person to exercise, control the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).
 See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (8) If the substantial holder is unable to determine the identity of the person (eg. If the relevant interest arises because of an option) write "unknown".
- (9) Details of the consideration must include any and all benefits, money and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.

Annexure A

This is Annexure A of 162 pages referred to in the Form 603 (Notice of Initial Substantial Holder), signed on behalf of Fluence Corporation Limited by me and dated 17 July 2017.

By: 

Name: Ross Kennedy

Capacity: Company Secretary

Annexure A
Sale and Purchase Agreement

See attached.

Sale and Purchase Agreement

RSL Investments Corporation
Emefcy Group Limited

Sale and Purchase Agreement

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Sale and Purchase Agreement

Date May 26, 2017

Parties

RSL Investments Corporation, a Delaware corporation, of 767 Fifth Avenue, Suite 4200, New York, NY, United States of America, 10153 (**Seller**)

Emefcy Group Limited ACN 127 734 196 of Suite 1, 1233 High Street, Armadale, Victoria, Australia, 3143 (**Purchaser**)

Recitals

- A The Seller is the legal and beneficial owner of all of the limited liability company interests in the Company as at the date of this Agreement.
- B The Seller has agreed to sell and the Purchaser has agreed to buy the LLC Interests on the terms and conditions of this Agreement.
- C The consideration for the LLC Interests will be the Completion Cash Consideration and the Consideration Shares, which are to be issued to the Seller on the terms and conditions of this Agreement.
- D Prior to the execution of this Agreement, the Seller delivered the Executive Employment Contracts to the Company and the Purchaser, executed by each Key Employee.
- E Prior to or simultaneously with the execution of this Agreement, the Company delivered or is delivering the Argentina Buyout Agreement to the Purchaser, executed by each of the parties thereto.
- F Prior to or simultaneously with the execution of this Agreement, the Purchaser and the Argentina Founders delivered or are delivering to the Company the executed Argentina Side Agreement.
- G Simultaneously with the execution of this Agreement, the Seller and the Purchaser executed the Private Placement Letter Agreement, the Participation Rights Letter Agreement, and the BOT Projects Letter Agreement.

The Parties agree

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

Accounting Policies means accounting policies, principles and methodologies utilized in the Audited Financial Statements, consistent with U.S. GAAP and with the accounting policies, principles and methodologies utilized in the audited consolidated financial statements of the Target Group for and as at the financial year ended on December 31, 2016.

Accounting Standards means IFRS or, where IFRS does not apply to the relevant jurisdiction, the generally accepted accounting principles in the relevant jurisdiction.

Accounts Date means 31 December 2016.

Affiliate of any person means any other person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first person.

Agreement means this Sale and Purchase Agreement (as the same may be amended from time to time).

Aircraft Sublease Agreement means that certain aircraft sublease agreement, dated October 28, 2016, between Aerovest Leasing, Inc. as sublessor, and the Company, as sublessee, with respect to one Gulfstream G650ER aircraft bearing manufacturer's serial number 6149.

Ancillary Agreements means the Lock-Up Agreement, the Transition Services Agreement, the Private Placement Letter Agreement, the Participation Rights Letter Agreement, the BOT Projects Letter Agreement, the Seller Disclosure Letter, the Purchaser Disclosure Letter, and any other agreement, document or certificate to be entered into by the Seller and the Purchaser in connection with the transactions contemplated by this Agreement.

Angstroms Consulting Agreement means that certain consulting agreement, dated June 1, 2013, between the Company and Angstroms LLC, with respect to certain consulting services provided by Angstroms LLC to the Company.

Argentina Buyout Agreement means the agreement entered into between the Company and the other two shareholders of RWL Argentina as at the date of this Agreement (**Argentina Founders**) with respect to the sale of the Argentina Founders' shares in RWL Argentina.

Argentina Dividend means all dividends in respect of RWL Argentina required to be paid to the Argentina Founders pursuant to the terms of the Argentina Buyout Agreement.

Argentina Side Agreement means the Argentina Side Agreement executed by the Argentina Founders and the Purchaser dated on the date of this Agreement, which, among

other things, sets forth the obligation of the Purchaser to issue, on the Completion Date, certain Purchaser Shares to the Trustee (as defined therein) on behalf of the Sellers.

ASIC means the Australian Securities & Investments Commission.

ASX means ASX Limited ACN 008 624 691 or the securities exchange operated by ASX (as the context requires).

Audited Financial Statements means the consolidated financial statements of the Target Group for and as at the financial year ended on the Accounts Date, prepared in accordance with U.S. GAAP and audited by Weiser Mazars LLP.

Australian Accounting Standards means:

- (a) accounting standards approved under the Corporations Act and its requirements about the preparation and contents of accounts; and
- (b) generally accepted accounting principles in Australia.

Authorisations means all authorisations, including statutory authorisations, licences, consents, accreditations, certifications, registrations, permits, rights and exemptions issued or granted by a Regulatory Authority to the relevant person.

Authorised Persons means, in relation to a party:

- (a) the directors, secretary and any other officers of that party or of a Subsidiary of that party;
- (b) the employees of that party or of a Subsidiary of that party;
- (c) the legal, financial and other advisers of that party or of a Subsidiary of that party; and
- (d) the respective officers and employees of those legal, financial and other advisers.

Available Net Proceeds means, as of any determination time, the aggregate amount of Net Proceeds received by the Seller from sales of Consideration Shares prior to such determination time, less the aggregate amount of Net Proceeds paid to the Purchaser prior to such determination time to satisfy any Determined Claims in favour of the Purchaser under clause 5.4(a)(i) or clause 5.4(b).

Board means the board of directors of the Purchaser.

BOT Land means the land on which any BOT Project is being constructed.

BOT Project means a 'build-own-operate-transfer', 'build-operate-transfer' or similar project in relation to a plant or other facility, any material part of which is, or is proposed to be, designed, constructed, commissioned, owned, operated and/or managed by any Target Group Company.

BOT Projects Letter Agreement means the letter agreement between the Purchaser and the Seller dated on the date of this Agreement with respect to the Seller's entitlement to receive a commission from the Purchaser or the relevant Target Group Company in connection with the achievement of certain milestones on BOT Projects (other than the

Red Dead Project and the Mexico BOT Project), on the terms and conditions set forth therein.

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia or New York, NY, United States of America.

Business Names means all business, trade and brand names used by a person or Group in the operation of its or their business, including, in respect of the Target Group, those listed in item 1 of Schedule 8.

Claim means a claim, action, proceeding, judgment or demand made or brought by or against a person, however arising and whether present, unascertained, future or contingent.

Company means RWL Water LLC, a Delaware limited liability company.

Completion means, subject to clause 3.1, completion of the sale and purchase of the LLC Interests under clause 7.

Completion Cash Consideration means US\$10,000.

Completion Cash Equivalents has the meaning provided in clause 4.1.

Completion Date means the later of 3 July 2017 and the first Business Day after satisfaction of all the Conditions Precedent (other than those Conditions Precedent that the Parties intend will be satisfied by actions taken on the Completion Date), or any other date that the Parties agree on in writing.

Completion Shares has the meaning provided in clause 2.2(a).

Computer Systems means the software and computer hardware used by the Target Group for the operation of the Target Business.

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

Confidential Information means all Information that is disclosed by the Disclosing Party (or its Authorised Persons), in connection with the potential sale of the LLC Interests to the Purchaser or any other transaction contemplated by or relating to this Agreement, to the Receiving Party (or its Authorised Persons) before or after the date of this Agreement, whether orally, in writing or in electronic or machine readable form, but does not include Information that:

- (a) the Receiving Party can prove by contemporaneous written documentation was in the lawful possession of the Receiving Party before the Parties began discussing the potential sale of the LLC Interests to the Purchaser or was independently generated by the Receiving Party;
- (b) is publicly available other than as a result of a breach by the Receiving Party or its Authorised Persons of clause 13 or any other obligation of confidentiality owed to the Disclosing Party; or
- (c) was obtained by the Receiving Party from any source other than the Disclosing Party or any of its Authorised Persons; provided that, to the knowledge of the Receiving Party or its Authorised Persons, such source did not owe an obligation of confidentiality with respect to such Information.

Consequential Loss means special loss or damage, indirect loss or damage or consequential loss or damage, including loss of opportunity or profits or loss of future revenue, income or profits, loss of goodwill, loss of business reputation, loss of future reputation or adverse publicity, diminution of value (other than as expressly provided in clause 9) or damage to credit rating, or remote loss, but does not mean loss arising from the breach naturally and in the usual course of things.

Consideration Shares means 100,500,000 Purchaser Shares, subject to adjustment under clause 5.

Control of a person means the power to, directly or indirectly, direct or cause the direction of the management and policies of such person, whether through ownership of voting securities or other ownership interests, by contract or otherwise, including, with respect to a corporation, partnership or limited liability company, the direct or indirect ownership of more than 50% of the voting securities in such corporation or of the voting interests in a partnership or limited liability company.

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

Covenant Expiry Date means:

- (a) for covenants of the Seller or the Purchaser contained in this Agreement which by their terms are to be performed at or prior to Completion, the date that is the first (1st) anniversary of the Completion Date; and
- (b) for all other covenants of the Seller or the Purchaser contained in this Agreement, the date on which such covenant or agreement expires or is fully performed, whichever is the earlier, in accordance with its terms, but not to exceed the applicable statute of limitations in the event of a breach of such covenant or agreement.

Debt means:

- (a) in relation to the Target Group, all indebtedness for money borrowed, loan facilities, margin loans, amounts to the extent drawn under letters of credit or overdrafts, bill facilities, bonds evidencing indebtedness for money owed and debentures of, or guarantees or other financial support in respect of indebtedness for money borrowed by, a Target Group Company to any person (including outstanding balances on bank lines of credit) as at Completion, including all interest accrued on such indebtedness (but excluding all Permitted Debt, any factorings or borrowings under letters of credit relating to customer contracts, other debt facilities for operational purposes, and guarantees by any Target Group Company to guarantee repayment of Debt of the Target Group to the extent the guaranteed amount duplicates such Debt) and including any unfunded pension liabilities, and excluding, for the avoidance of doubt, any accrued Taxes or liability for Taxes and any amounts taken into account in determining Net Payables; and
- (b) in relation to the Purchaser Group, all indebtedness for money borrowed, loan facilities, margin loans, amounts to the extent drawn under letters of credit or overdrafts, bill facilities, bonds evidencing indebtedness for money owed and debentures of, or guarantees or other financial support in respect of indebtedness for money borrowed by, a Purchaser Group Company to any person (including outstanding balances on bank lines of credit) as at Completion, including all interest accrued on such indebtedness (but excluding all Permitted Debt, any factorings or borrowings under letters of credit relating to customer contracts, other debt facilities for operational purposes, and guarantees by any Purchaser Group

Company to guarantee repayment of Debt of the Purchaser Group to the extent the guaranteed amount duplicates such Debt) and including any unfunded pension liabilities, and excluding, for the avoidance of doubt, any accrued Taxes or liability for Taxes.

Deed of Company Arrangement means the deed of company arrangement executed by the Purchaser (which was then named Savcor Group Limited) on 24 October 2014.

Determination means:

- (a) the settlement of a Claim by agreement between the relevant parties; or
- (b) the determination of a Claim by a court of competent jurisdiction from which no appeal can be made, or from which no appeal is made within the period in which any appeal may properly be brought.

Determined Claim means a Claim in respect of which a Determination has been made.

Determined Holdback Claim means a Determined Claim in favour of the Purchaser arising out of the indemnity under clauses 6.5(e), 9.8 or 10.4.

Disclosing Party means the party to whom the Information relates or, in the case of Information relating to the Target Group, means the Seller.

Documentation means any document or material regardless of form that contains, refers to or stores Information, including emails, abstracts, memoranda, notes, correspondence, records, photographs, drawings, plans, papers, magnetic tapes, computer software or any other documents or medium capable of recording or storing Information.

Domain Names means the rights to use all domain names, URLs and internet sites registered in the name of or operated or maintained by a person or Group in connection with its or their business, including, in respect of the Target Group, those listed in item 2 of Schedule 8.

EGM Notice of Meeting means the notice of meeting and explanatory memorandum (including the Expert's Report) pursuant to which an extraordinary general meeting of the Purchaser is to be convened in order for the Purchaser's shareholders to consider (among other matters) approving the purchase of the LLC Interests and the issue of the Consideration Shares to the Seller under this Agreement.

EGM Notice of Meeting Expiry Date means the date that is the second (2nd) anniversary of the Completion Date.

Employees mean the employees employed by a person, including:

- (a) in respect of the Target Group, the employees of each Target Group Company on the date of this Agreement as listed in Schedule 5; and
- (b) in respect of the Purchaser Group, the employees of each Purchaser Group Company on the date of this Agreement as listed in Schedule 11.

Employee Records means all records relating to Employees that are required to be kept by an employer under the Laws applicable to the respective Employees.

Employee Stock Option Plans means the Purchaser's Employee Share Option Plan which was approved by the Purchaser's shareholders at an extraordinary general meeting held on November 17, 2015 and any other employee share option plans of the Purchaser in effect as of the date of this Agreement.

Encumbrance includes:

- (a) a security interest or lien;
- (b) any right, interest or arrangement that secures the payment of money or the performance of a debt, obligation or liability or which has the effect of giving a person a preferential interest or priority, including a mortgage, debenture, charge, security interest, lien, pledge, bill of sale, hypothecation, title retention arrangement, lease or hire purchase (other than a lease or hire purchase in the ordinary course of business), trust, or assignment or deposit by way of security;
- (c) any right, interest, or arrangement which has the effect of providing a person with a priority or preference over another person, including arising from any option, equity, preferential interest, adverse interest or third party claim or right of any kind;
- (d) a right that a person (other than the owner) has to remove something from an asset (known as *profit à pendre*), or to use or occupy the asset, including a lease or licence (other than a Lease, a lease of Property or a licence of Intellectual Property in the ordinary course of business) or a caveat, easement or restrictive or positive covenant affecting an asset, and any third party right or interest in any right arising as a consequence of the enforcement of a judgement, including a garnishee order or a writ of execution; and
- (e) any agreement to give, create, grant or register any of the above or allow any of the above to exist.

End Date means September 26, 2017.

Enforceability Exceptions means any applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other Laws affecting the enforcement of creditors' rights generally, in each case, that may affect enforceability.

Engage in means to actively participate, market or assist as a member, shareholder, unitholder, beneficiary under a trust, director, consultant, adviser, contractor, principal, agent, manager, financier, employee, partner, trustee or equity investor.

Environmental Law means all Laws in effect as of the date of this Agreement or the Completion Date (as applicable) concerning pollution or protection of the environment, natural resources or human health as it relates to exposure to Hazardous Substances.

Executive Employment Contracts means the respective employment contracts between a Target Group Company and each Key Employee, in the form and having the terms and conditions agreed between the parties thereto and the Purchaser at the date of this Agreement, and which will take effect at (and be subject to) Completion and which include or are accompanied by non-competition agreements on the terms and conditions agreed between the parties thereto and the Purchaser at the date of this Agreement.

Expert means a person appointed under clause 11.1.

Expert's Report means the independent expert's report relating to the consideration to be paid to the Seller for the LLC Interests, to be included in the EGM Notice of Meeting.

Fixed Cost Liabilities means the following categories of liabilities: SG&A salaries, payroll Taxes, refundable VAT and contractor costs; SG&A benefits; travel and entertainment expenses; SG&A costs relating to office or building leases, rentals or occupancies; SG&A costs relating to utilities; bank charges; and insurance costs.

Fixed Cost Liability Amount means US\$1,300,000.

Fraud means fraud causes of action that require as elements, (a) with respect to the Seller, a knowing and intentional misrepresentation of a material fact set forth in Schedule 2, Schedule 3, the Seller Information or in any certificate delivered by the Seller pursuant to this agreement, an intent to deceive the Purchaser through such misrepresentation, and damages suffered by the Purchaser, and (b) with respect to the Purchaser, a knowing and intentional misrepresentation of a material fact set forth in Schedule 4, the Purchaser Information or in any certificate delivered by the Purchaser pursuant to this agreement, an intent to deceive the Seller through such misrepresentation, and damages suffered by the Seller.

Fundamental Purchaser Warranties means each Purchaser Warranty in part B of Schedule 4.

Fundamental Seller Warranties means each Seller Warranty in:

- (a) part B of Schedule 2; and
- (b) part B of Schedule 3.

General Purchaser Warranties means each Purchaser Warranty in part A of Schedule 4.

General Seller Warranties means each Seller Warranty in:

- (a) part A of Schedule 2; and
- (b) part A of Schedule 3.

Group means any or all (as the context requires) of a person, any Subsidiaries of that person and any other entities in which that person has a direct or indirect equity interest of more than 50%. Each of them is a **Group Company**.

Hazardous Substance means any substance that is listed, classified or regulated as a "toxic substance," "hazardous substance," "hazardous waste" or words of similar meaning or effect under any Environmental Law.

Holdback Claim means a Claim by the Purchaser (other than a Determined Claim) arising out the indemnity under clause 6.5(e), 9.8 or 10.4.

Holdback Period means the twelve (12) month period beginning on the Completion Date and ending on the first (1st) anniversary of the Completion Date.

Holdback Shares has the meaning provided in clause 2.2(b).

IFRS means the international financial reporting standards issued by the International Accounting Standards Board, to the extent and in the form adopted or modified in the relevant jurisdiction.

Illegitimate Circumstances means circumstances where the benefit was not legitimately due to that person or the person was not legally permitted to be influenced by the benefit.

Information means information regardless of form relating to a party (other than the Receiving Party) or a Group Company of that party, or relating to any person (not being a party) to whom a party owes an obligation of confidentiality, or the business of that party or person, including information relating to financial affairs, projections, forecasts, accounts, prospects, strategies, business processes and system functionality, know how and other proprietary information, business operations, assets, liabilities, customers, personnel, suppliers, contracts, products, services and sales information, and includes the terms of this Agreement.

Insolvency Event means:

- (a) in relation to a body corporate:
 - (i) a liquidation, bankruptcy or winding up, the appointment of a controller, administrator, receiver, manager or similar insolvency administrator to a party or any substantial part of its assets or the entering into a scheme or arrangement with creditors or the occurrence of any event that has a substantially similar effect to any of these events; or
 - (ii) the inability to pay its debts as and when they become due;
- (b) in relation to an individual, becoming bankrupt or entering into a scheme or arrangement with creditors or the occurrence of any event that has a substantially similar effect to any of these events; or
- (c) in relation to a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control or the occurrence of any event that has a substantially similar effect to any of these events.

Insurance Policies mean all insurance policies in which the relevant person has an interest.

Intellectual Property includes trademarks, copyright, patents, patentable inventions and designs, whether existing now or in the future and whether or not registered or registrable, and includes any rights subsisting in or relating to trade secrets, know how, inventions, discoveries, geographical indications of origin, circuit layouts, programming tools, object code, source code, methods, techniques, recipes, formulae, algorithms, modules, libraries and databases, and further includes the right to apply for the registration or grant of any such intellectual property.

Intellectual Property Licences means all licences granted to the relevant person or Group to use Intellectual Property in the operation of its or their business, including:

- (a) in respect of the Target Group, those listed in part 4 of Schedule 9; and
- (b) in respect of the Purchaser those listed in part 4 of Schedule 15.

Key Employees means Henry Charrabé and Philippe Laval.

Knowledge of the Purchaser means the actual knowledge of Richard Irving, Ross Haghighat, Ross Kennedy, Eytan Levy, Ronen Shechter, Ilan Wilf, Yaron Bar-Tal and Lior Zitzershpil.

Knowledge of the Seller means the actual knowledge of Ronald Lauder, Henry Charrabé, Philippe Laval, Robert Wowk, Phil Elovic, Mario Pastinante, Nii Mensah, Claudio Picento, and Spencer Smith.

Law means, with respect to any person, place or thing, any statute, law (including common law), code, treaty, ordinance, legally binding policy, rule or regulation of any Regulatory Authority applicable to such person, place or thing as at the relevant date.

Leases means the leases relating to the Leased Premises.

Leased Premises means (i) with respect to the Target Group Companies, the premises leased by one or more Target Group Companies in the operation of the Target Business, including the premises listed in part 2 of Schedule 6, and (ii) with respect to the Purchaser Group Companies, the premises leased by one or more Purchaser Group Companies in the operation of the Purchaser Business, including the premises listed in Schedule 12.

Liability includes any liability, loss, cost (including all out-of-pocket or incurred legal costs and expenses), expense, damage, charge, penalty or payment, in each case that is recoverable as damages under the laws of Victoria, Australia, but, notwithstanding the foregoing, excludes Consequential Loss and exemplary or punitive damages.

Limited Liability Company Agreement of the Company, means the limited liability company agreement of the Company dated 8 April 2010 (as amended on 9 November 2010 and 4 April 2011), and as may be further amended from time to time (provided that the Purchaser has been given a copy of any such amendment).

LLC Interests means the limited liability company interests in the Company described in Schedule 1, which are all of the limited liability company interests in the Company as at the date of this Agreement and as at Completion.

Lock-Up Agreement means a voluntary restriction deed to be entered into between the Seller and the Purchaser restricting the Seller from selling, transferring or otherwise disposing of any Consideration Shares, including Holdback Shares that have been issued to the Seller under clause 5.2, (except in the circumstances described in clause 5.4 or if there is a takeover bid or merger by way of a scheme of arrangement under the circumstances described in ASX Listing Rule 9.18) for a two year period commencing on Completion (**Lock-Up Period**), in the form and having the terms and conditions set out in Annexure C.

Market VWAP Price means the 30-trading day arithmetic average of the daily VWAP of the Purchaser Shares on the ASX during the 30-trading day period immediately preceding the date on which such calculation is made.

Material Adverse Change means a matter, event or circumstance that has resulted, or would reasonably be expected to result, individually, or when aggregated with other matters, events or circumstances, in (a) a material adverse change in the financial condition or operations of the relevant person or Group or the relevant person's or Group's businesses (taken as a whole) or (b) an adverse change in the cash flows of the Group that immediately threatens the viability of the Group, taken as a whole, as a going concern;

provided in each case that any such change or effect resulting from any of the following, individually or in the aggregate, shall not be considered when determining whether a Material Adverse Change has occurred: (i) any change in economic conditions generally or capital or financial markets generally (including in any jurisdiction in which such person or its Group operates), including changes in interest or exchange rates, (ii) any change in the industry in which the Target Business or the Purchaser Business operates or in which products of the Target Business or the Purchaser Business are used or distributed, including increases in energy, electricity, raw material or other operating costs, (iii) any change in Laws, IFRS, Australian Accounting Standards or other Accounting Standards or U.S. GAAP, or the enforcement or interpretation thereof, applicable to the Target Business or the Purchaser Business, (iv) any change in conditions in jurisdictions in which the Target Business or the Purchaser Business operates, including hostilities, acts of war, riots, civil unrest, sabotage, terrorism or military actions, or any escalation or worsening of any of the foregoing, (v) any change resulting from the negotiation, execution, announcement or consummation of the transactions contemplated by, or the performance of obligations under, this Agreement or the transactions contemplated by it (other than a breach of this Agreement), including any such change relating to the identity of, or facts and circumstances relating to, the Purchaser or the Seller and including any actions by customers, suppliers or personnel resulting from the identity of the Purchaser or the Seller, (vi) any hurricane, flood, tornado, earthquake or other natural disaster or any other force majeure event, (vii) any actions required to be taken or omitted pursuant to this Agreement or the transactions contemplated by it or taken with the Purchaser's or the Seller's consent under this Agreement (as applicable) or not taken because the Purchaser or the Seller withheld, delayed or conditioned its consent, (viii) the failure of the Target Business or the Purchaser Business to achieve any financial projections or forecasts; or (ix) any matter fully and fairly disclosed in the Target Disclosure Material or the Purchaser Disclosure Material.

Material Contracts has, with respect to the Target Group, the meaning provided in paragraph 10.1 of Schedule 2 and, with respect to the Purchaser Group, the meaning provided in 10.1 of Schedule 4.

Mexico BOT Funds means US\$5,400,000, which is to be used by the relevant Target Group Company to pay its equity commitments under the Mexico BOT Project.

Mexico BOT Equity Account means the bank account in the name of the Company and designated by the Purchaser, into which the Mexico BOT Funds are to be deposited at Completion.

Mexico BOT Project means the BOT Project, known as the 'San Quintin Project', for which RWL Desal Holding S. de R.L. de C.V., Libra Ingenieros Civiles S.A. de C.V. and RJ Ingenieria S.A. de C.V. incorporated a Mexican company, Desaladora Kenton S.A. de C.V. (RJ) on December 17, 2015 for the sole purpose of participating in the BOT Project for the desalination plant in San Quintin, Ensenada, Baja California.

Motor Vehicles means all motor vehicles used by a Group Company in the operation of its business.

Net Payables has the meaning provided in clause 8.1(a).

Net Proceeds means the proceeds received from the sale of Purchaser Shares in cash, net of out-of-pocket costs, fees and expenses paid or required to be paid in connection therewith.

Other Return means any Tax return of the Company or an RWL Operating Company (but, for the avoidance of doubt, does not mean any Tax return of the Seller) that is not a Pre Completion Return or an Overlap Return, to the extent that it relates to any act or omission of the Company or the RWL Operating Company, as applicable, on or before Completion.

Overlap Return means an income tax return of the Company or an RWL Operating Company (but, for the avoidance of doubt, does not mean any Tax return of the Seller) for an income year commencing before but ending on or after Completion.

Owned Intellectual Property means the Intellectual Property registered or owned by the relevant person or Group, including:

- (a) with respect to the Target Group, the granted or applied for and pending trademarks, patents and designs described in Schedule 9; and
- (b) with respect to the Purchaser, the granted or applied for and pending trademarks, patents and designs described in Schedule 15.

Passive Investment means (a) an investment in funds, vehicles or accounts that are managed, sponsored or advised by an unaffiliated third party, provided that the person who is Engaging in such investment may not have any Control over management of the operations of any Related Business Opportunity, or (b) an investment in a Related Business Opportunity solely by virtue of holding in the aggregate less than five percent (5%) of the issued securities of a body corporate or unit trust listed on the ASX or other public stock exchange.

PDVSA Agreement means the agreement dated June 30, 2014 between PDVSA Agricola and RWL Argentina.

Permitted Debt means the Debt listed in Schedule 7.

Permitted Encumbrances means, with respect to the Target Group or the Purchaser Group (as applicable), (i) Encumbrances for Taxes, assessments or other governmental charges not yet due and payable or due and payable but not delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings, (ii) mechanics', materialmen's, carriers', workers', repairers' and other Encumbrances arising or incurred in the ordinary course of business, or in connection with construction contracts, in each case for amounts that are not yet delinquent or are being contested in good faith, (iii) zoning, entitlement, building codes and other land use regulations, ordinances or legal requirements imposed by any Regulatory Authority having jurisdiction over the Property or Leased Premises, (iv) all rights relating to the construction and maintenance in connection with any public utility of wires, poles, pipes, conduits and appurtenances thereto, on, under or above the Property or Leased Premises, (v) all Encumbrances disclosed in the Target Disclosure Material or the Purchaser Disclosure Material (as applicable), (vi) any state of facts which an accurate survey or inspection of the Property or Leased Premises would disclose, (vii) title exceptions disclosed by any title insurance commitment or title insurance policy for any such Property issued by a title company and delivered or otherwise made available to Purchaser or the Seller (as applicable) prior to the date hereof, (viii) statutory Encumbrances in favour of lessors arising in connection with any property leased to any Target Group Company or Purchaser Group Company (as applicable), where the applicable lessor has not exercised any of its rights in respect of any such Encumbrance, (ix) other encumbrances, defects, irregularities or imperfections of title, encroachments, easements, servitudes, permits, rights of way, flowage rights, restrictions, leases, licenses, covenants, sidetrack agreements and oil, gas, mineral and mining reservations, rights, licenses and leases in respect of the Property, which, in each case, do not materially impair

the present use or occupancy of the Property, (ix) Encumbrances that will be discharged prior to Completion, and (x) Encumbrances that do not, and would not reasonably be expected to, materially detract from the value of any of the property, rights or assets of the Business of the Target Group or materially interfere with the use thereof as currently used by the Target Group Companies, or materially detract from the value of any of the property, rights or assets of the business of the Purchaser Group or materially interfere with the use thereof as currently used by the Purchaser Group (as applicable).

person means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust or Regulatory Authority.

Plant and Equipment means all plant, equipment, machinery, furniture, computer and communications hardware, consumables, spare parts, tools, maintenance items, office supplies, fixtures and fittings owned by the relevant person or Group and referable to its or their businesses.

Pre Completion Return means an income tax return of the Company or an RWL Operating Company (but, for the avoidance of doubt, does not mean any Tax return of the Seller) for an income year ended before Completion.

Participation Rights Letter Agreement means the letter agreement between the Seller and the Purchaser dated on the date of this Agreement pursuant to which the Purchaser has agreed to give the Seller certain participation rights on private placements of securities by the Purchaser, on the terms and conditions set forth therein.

Private Placement Letter Agreement means the letter agreement by and between the Purchaser and the Seller dated as of the date of this Agreement pursuant to which the Seller has, on the terms and conditions set forth therein, agreed to subscribe for Purchaser Shares for a subscription price of US\$20,000,000.

Property means, with respect to the Target Group Companies, the premises owned by one or more Target Group Companies in the operation of the Target Business, consisting of the premises listed in part 1 of Schedule 6.

Purchaser Assets means all of the assets owned by the Purchaser Group, including the following:

- (a) the Purchaser Group's Plant and Equipment;
- (b) the benefit of the Purchaser Group's Leases;
- (c) the benefit of the Purchaser Group's Material Contracts;
- (d) the Purchaser Group's Owned Intellectual Property;
- (e) the benefit of the Purchaser Group's Intellectual Property Licences;
- (f) the benefit of the Purchaser Group's Business Names;
- (g) the benefit of the Purchaser Group's Domain Names;
- (h) the benefit of the Purchaser Group's Insurance Policies;

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- (i) the Purchaser Group's Authorisations;
 - (j) the Purchaser Group's Stock;
 - (k) the Purchaser Group's Motor Vehicles;
 - (l) all Records of the business of the Purchaser Group; and
 - (m) the goodwill of the Purchaser Group in respect of the business of the Purchaser Group.

Purchaser Business means the business carried on by the Purchaser Group as a provider of innovative wastewater treatment solutions, as it is presently conducted by the Purchaser Group.

Purchaser Data Room Material means all Documentation in the electronic data room set up by the Purchaser, located at the link set out below, on or before 9:00 a.m. Australian Eastern Standard Time on 26 May, 2017, the index to which is included in item 1 of Annexure B:

<https://collaborate.hallandwilcox.com.au/haw/LoginRequiredPage.action>

Purchaser Disclosure Letter means the letter dated as of the date of this Agreement, from the Purchaser to the Seller in relation to the Purchaser Warranties.

Purchaser Disclosure Material means:

- (a) the Purchaser Data Room Material;
- (b) the Seller's requests for information and the Purchaser's responses, as set out in item 2 of Annexure B; and
- (c) the Purchaser Disclosure Letter.

Purchaser EGM has the meaning provided in clause 3.1(a).

Purchaser Financial Statements means the consolidated financial statements of the Purchaser Group for and as at the financial year ended on the Accounts Date, prepared in accordance with Australian Accounting Standards and audited by BDO East Coast Partnership.

Purchaser Group means any or all (as the context requires) of the Purchaser and its Group Companies. Each of them is a **Purchaser Group Company**.

Purchaser Information means all information contained in the EGM Notice of Meeting, other than the Seller Information and the Expert's Report.

Purchaser Project means any project in relation to a plant or other facility, any material part of which is, or is proposed to be, designed, constructed, commissioned, owned, operated and/or managed by any Purchaser Group Company.

Purchaser Project Land means the land on which any Purchaser Project is being constructed.

Purchaser Shares means ordinary shares in the capital of the Purchaser.

Purchaser Tax Warranty means a warranty given by the Purchaser referring to Tax matters as set out in Schedule 4.

Purchaser Warranties means each of the representations and warranties given by the Purchaser referred to in clause 9 and set out in Schedule 4.

Receiving Party means a party who receives Information (or on whose behalf Information is received) from or on behalf of the other party.

Records means all original and copies of material records, documents, books, files, reports, accounts, plans, correspondence, letters and papers or every description and other materials, regardless of their form or medium, belonging to or relating to or used by the relevant person or Group Company and which relates to the business of such person or Group Company, including certificates of registration, minute books, statutory records and registers, books of account, taxation returns, title deeds and other documents of title, customer or Employee information, contracts, computer programs and software, and trading and financial records.

Red Dead Project means the development and execution of the Red Sea- Dead Sea Water Project (Phase i) in the Hashemite Kingdom of Jordan on a Build, Operate and Transfer Basis.

Regulatory Authority means any governmental, semi-governmental, municipal, statutory, judicial, quasi-judicial, industry or securities exchange authority, department, agency, body, entity, organisation, association, commission or tribunal.

Related Business Opportunity has the meaning set forth in clause 12.1(a).

Related Party Payable means the total amounts owed by a Target Group Company to the Seller or to any of the Seller's Affiliates (other than a Target Group Company).

Related Party Receivable means the total amounts owed by the Seller or by any of the Seller's Affiliates (other than a Target Group Company) to a Target Group Company.

Release Date means the day immediately after the end of the Holdback Period.

Restraint Area means:

- (a) worldwide;
- (b) any country in which the Target Group operates any part of the Target Business during the Restraint Period;
- (c) each of the United States of America, Israel, Italy, the United Kingdom, Brazil and Argentina; and
- (d) each of Venezuela, Mexico, Mauritania, Dubai and any other jurisdiction in which a Target Group Member is constructing, has constructed or is proposing to construct any facility.

If any of the areas listed above is held by a court to be unreasonable or invalid for any reason, then that area will be deleted to the extent necessary for the Restraint Area to be enforceable.

Restraint Period means:

- (a) five (5) years after Completion;
- (b) four (4) years after Completion;
- (c) three (3) years after Completion; and
- (d) two (2) years after Completion.

If any of the periods listed above is held by a court to be unreasonable or invalid for any reason, then that period will be deleted to the extent necessary for the Restraint Period to be enforceable.

Right of First Refusal has the meaning set forth in clause 12.5(a).

ROFR Related Business Opportunity has the meaning set forth in clause 12.1(a).

RWL Argentina means Unitek S.A. and **RWL Argentina Group** means RWL Argentina and all Subsidiaries (whether wholly or partly owned) of RWL Argentina.

RWL Investments means RWL Water Investments Ltd. and **RWL Investments Group** means RWL Investments and all Subsidiaries (whether wholly or partly owned) of RWL Investments.

RWL Israel means RWL Water Israel Ltd. and **RWL Israel Group** means RWL Israel and all Subsidiaries (whether wholly or partly owned) of RWL Israel.

RWL Italy means RWL Water Italia S.r.l. and **RWL Italy Group** means RWL Italy and all Subsidiaries (whether wholly or partly owned) of RWL Italy.

RWL Operating Company means RWL Argentina, RWL Investments, Nirosoft Trading (1987) Ltd., RWL Water Middle East FZE, RWL Israel, RWL Italy or RWL USA (as the context requires).

RWL Operating Group means any or each (as the context requires) of the RWL Argentina Group, the RWL Investments Group, the RWL Israel Group, the RWL Italy Group and RWL USA.

RWL USA means Aeromix Systems Inc.

Second Milestone Shares means the 22,500,000 Purchaser Shares to be issued once the 'Second Milestone' has been achieved (as defined in the Share Exchange and Purchase Agreement between the Purchaser (then named Savcor Group Limited), Emefcy Ltd and the then shareholders of Emefcy Ltd).

Seller Disclosure Letter means the letter, dated as of the date of this Agreement, from the Seller to the Purchaser in relation to the Seller Warranties.

Seller Information means information regarding the Seller or the Target Group provided by or on behalf of the Seller to the Purchaser in writing for inclusion in the EGM Notice of Meeting, as set out in sections 2.4, 2.5, 6.4(a) and 6.5(b) of the EGM Notice of Meeting or as identified in the schedule to the confirmation letter from the Seller to the Purchaser relating to information regarding the Seller or the Target Group included in the EGM Notice of Meeting.

Seller Tax Warranty means a warranty given by the Seller referring to Tax matters as set out in Schedule 2.

Seller Warranties means each of the representations and warranties given by the Seller and referred to in clause 9 and set out in Schedule 2 and Schedule 3.

Signing VWAP Price means the 30-trading day arithmetic average of the daily VWAP of the Purchaser Shares on the ASX during the 30-trading day period immediately preceding the date of this Agreement.

Stock means all marketable and saleable inventory of stock, goods and components owned and held by or in transit to a person for use or sale in the operation of its business, including raw materials, work in progress, finished products, packaging and packaging materials, but does not include damaged or unusable items.

Stock Adjustment Amount means (a) if the Stock Value is between US\$3,000,000 and US\$4,000,000, zero, (b) if the Stock Value is less than US\$3,000,000, a negative amount equal to US\$3,000,000 minus the Stock Value, and (c) if the Stock Value is greater than US\$4,000,000, a positive amount equal to the Stock Value minus US\$4,000,000.

Stock Value has the meaning provided in clause 8.1(b)(iii)(B).

Subsidiary has the meaning given to that expression in section 46 of the Corporations Act.

Target Assets means all of the assets owned by the Target Group, including the following:

- (a) the Target Group's Property;
- (b) the Target Group's Plant and Equipment;
- (c) the benefit of the Target Group's Leases;
- (d) the benefit of the Target Group's Material Contracts;
- (e) the Target Group's Owned Intellectual Property;
- (f) the benefit of the Target Group's Intellectual Property Licences;
- (g) the benefit of the Target Group's Business Names;
- (h) the benefit of the Target Group's Domain Names;
- (i) the benefit of the Target Group's Insurance Policies;
- (j) the Target Group's Authorisations;
- (k) the Target Group's Stock;
- (l) the Target Group's Motor Vehicles;
- (m) all Records of the Target Business; and
- (n) the goodwill of the Target Group in respect of the Target Business.

Target Business means the business carried on by the Target Group of providing global solutions for desalination, wastewater, waste-to-energy and waste recovery and reuse, as it is presently conducted by the Target Group.

Target Data Room Material means all Documentation in the electronic data room set up by the Company and Seller, located at the link set out below, on or before 9:00 a.m. Australian Eastern Standard Time on 26 May, 2017, the index to which is included in item 1 of Annexure A:

<https://rw/water1.sharepoint.com/Dataroom/Shared%20Documents/Forms/AllItems.aspx>.

Target Disclosure Material means:

- (a) the Target Data Room Material;
- (b) the Purchaser's requests for information and the Seller's responses, as set out in item 2 of Annexure A; and
- (c) the Seller Disclosure Letter.

Target Equity Incentive Plan means the 'RWL Water LLC Equity Incentive Plan' having an effective date of November 25, 2013.

Target Group means any or all (as the context requires) of the Company, those entities listed in item 2 of Schedule 1 and any other entities in which the Company has a direct or indirect equity interest of more than 50%. Each of them is a **Target Group Company**.

Tax means any tax, rate, duty or other charge assessed by or payable to any Regulatory Authority and includes any additional tax, interest, penalty, charge, fee or other amount imposed in relation to a failure to file a return or to pay the tax, rate, duty or other charge.

Third Party Claim means a Claim or potential Claim by a third party against a Target Group Company or a Purchaser Group Company, or against the Seller, that gives rise to or is reasonably likely to give rise to a Claim by the Purchaser or the Seller, as the case may be, under or in connection with this Agreement.

Transaction Costs has the meaning provided in clause 16.2(a).

Transfer Taxes means all transfer, sales, use, real property transfer, goods and services, value added, documentary, stamp duty, gross receipts, excise, transfer and conveyance Taxes and other similar Taxes, duties, fees or charges.

Transition Services Agreement means a Transition Services Agreement between RSL Management Corporation and the Company substantially in the form of Annexure E.

Uncommitted BOT Project means a proposed BOT Project in respect of which none of the Target Group Companies has material legally binding obligations in relation to operation of the BOT Project as at the date of this Agreement, including the BOT Project based in Togo, but not including the Red Dead Project or the Mexico BOT Project.

U.S. GAAP means the generally accepted auditing standards promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants.

VAT means any value-added Tax, goods and services Tax or other similar consumption Tax imposed under any Law.

VWAP means the daily volume weighted average sale price of Purchaser Shares traded on the ASX during the relevant period, excluding any crossings which occur off market (including, for example, any transaction described in the ASX Operating Rules as a 'special crossing', crossings with price improvement which occur off market, crossings prior to the commencement of normal trading, crossings during the closing phase and the afterhours adjust phase and any overnight crossings).

Warranty means a Seller Warranty or a Purchaser Warranty, or both of them, as the context requires.

Warranty Expiry Date means:

- (a) for Warranties that are not Seller Tax Warranties, Purchaser Tax Warranties, Fundamental Seller Warranties or Fundamental Purchaser Warranties, the date that is the first (1st) anniversary of the Completion Date;
- (b) for Seller Tax Warranties and Purchaser Tax Warranties, the date that is the second (2nd) anniversary of the Completion Date; and
- (c) for Fundamental Seller Warranties or Fundamental Purchaser Warranties, the date on which the statute of limitations for making Claims for breach of such Fundamental Seller Warranties or Fundamental Purchaser Warranties expires.

1.2 Interpretation

In this Agreement, headings are inserted for convenience only and do not affect the interpretation of this Agreement and unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other gender;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;
- (e) a reference to a document or instrument, including this Agreement, includes all of its clauses, paragraphs, recitals, parts, schedules and annexures and includes the document or instrument as amended, varied, novated, supplemented or replaced from time to time;
- (f) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) a reference to a party is to a party to this Agreement and includes the party's successors and permitted transferees and assigns and if a party is an individual, includes executors and personal legal representatives;
- (h) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trust, an association (whether incorporated or not) and a Regulatory Authority;

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- (i) unless otherwise specified in this Agreement, a reference to a group of persons (including the Seller) or things is a reference to any two or more of them jointly and to each of them separately;
 - (j) an agreement, representation, warranty or indemnity by two or more persons binds them jointly and each of them separately;
 - (k) an agreement, representation, warranty or indemnity in favour of two or more persons is for the benefit of them jointly and each of them separately;
 - (l) no provision of this Agreement will be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the agreement or the inclusion of the provision in the agreement;
 - (m) all monetary amounts are in US dollars, unless otherwise stated, and a reference to a payment means payment in US dollars, unless otherwise stated;
 - (n) if the day on or by which something must be done is not a Business Day, that thing must be done on or by the next Business Day; and
 - (o) a period of time dating from a given day or the day of a given act or event is to be calculated exclusive of that day.

2 Agreement to sell and purchase

2.1 Sale and purchase of LLC Interests

The Seller agrees to sell the LLC Interests and the Purchaser agrees to buy the LLC Interests (together with the benefits, rights and entitlements attaching to the LLC Interests), free from any Encumbrances, on the terms and conditions of this Agreement.

2.2 Consideration

The Completion Cash Consideration and the Consideration Shares are the consideration for the LLC Interests. The Consideration Shares are to be issued to the Seller as follows:

- (a) subject to clause 5.3, 80% of the Consideration Shares (**Completion Shares**) on Completion; and
- (b) subject to clause 5, 20% of the Consideration Shares (**Holdback Shares**) on the Release Date.

2.3 Title and risk

The title to and risk in the LLC Interests:

- (a) remains solely with the Seller until Completion; and
- (b) passes to the Purchaser on and from Completion.

3 Conditions Precedent

3.1 Conditions Precedent

Completion is conditional on:

- (a) **(Shareholder approval)** the Purchaser's shareholders approving the purchase of the LLC Interests and the issue of the Consideration Shares to the Seller under this Agreement at an extraordinary general meeting held pursuant to and in accordance with the requirements of item 7 of section 611 of the Corporations Act and the ASX Listing Rules (**Purchaser EGM**);
- (b) **(Appointment of Henry Charrabé)** the appointment by the Board of Henry Charrabé as Managing Director of the Purchaser, effective as at Completion;
- (c) **(Appointment of Dr Rengarajan Ramesh)** the Purchaser's shareholders approving the appointment of Dr Rengarajan Ramesh as a non-executive director of the Purchaser at the extraordinary general meeting referred to in clause 3.1(a) or, in the event that such shareholder approval is not obtained, the appointment by the Board of Dr Rengarajan Ramesh as a non-executive director of the Purchaser, in either case effective as at Completion;
- (d) **(Regulatory waivers)** the Purchaser having obtained the following waiver from ASIC in respect of the transactions contemplated by this Agreement: waiver relating to Section 606 of the Corporations Act due to the escrow arrangements over the Purchaser Shares under the Lock-Up Agreement;
- (e) **(Mexico BOT Funds)** the Seller having deposited the Mexico BOT Funds into the Mexico BOT Equity Account;
- (f) **(Lock-Up Agreement)** the Seller executing and delivering to the Purchaser the Lock-Up Agreement;
- (g) **(Target Material Adverse Change)** no Material Adverse Change in respect of the Target Group or the Target Business (taken as a whole) has occurred between the date of this Agreement and Completion;
- (h) **(Purchaser Material Adverse Change)** no Material Adverse Change in respect of the Purchaser or the business of the Purchaser Group (taken as a whole) has occurred between the date of this Agreement and Completion;
- (i) **(No Orders, Injunctions or Restraints)** no Law, material injunction or order of any court or Regulatory Authority having competent jurisdiction preventing the consummation of the transactions contemplated by this Agreement is in effect;
- (j) **(Seller Warranties)** each Seller Warranty is not untrue or inaccurate, in each case in any respect (after disregarding any notice that may have been given by the Seller under clause 6.7) that would, or would be reasonably likely to, by itself or when combined with other Seller Warranties that are untrue or inaccurate, constitute a Material Adverse Change in respect of the Target Group or the Target Business (taken as a whole);
- (k) **(Purchaser Warranties)** each Purchaser Warranty is not untrue or inaccurate, in each case in any respect (after disregarding any notice that may have been given by the Purchaser under clause 6.7) that would, or would be reasonably likely to, by

itself or when combined with other Purchaser Warranties that are untrue or inaccurate, constitute a Material Adverse Change in respect of the Purchaser or the business of the Purchaser Group (taken as a whole);

- (l) **(Seller's obligations)** the Seller having complied with or satisfied, in all material respects, its obligations and undertakings required by this Agreement to be complied with or satisfied at or prior to Completion;
- (m) **(Purchaser's obligations)** the Purchaser having complied with or satisfied, in all material respects, its obligations and undertakings required by this Agreement to be complied with or satisfied at or prior to Completion;
- (n) **(Private Placement)** the Seller (or its Affiliate) being ready, willing and able to complete the acquisition of Purchaser Shares under the Private Placement Letter Agreement, on the terms and subject to satisfaction of the conditions set forth therein, substantially concurrently with Completion;
- (o) **(Private Placement)** the Purchaser being ready, willing and able to issue Purchaser Shares under the Private Placement Letter Agreement, on the terms and subject to satisfaction of the conditions set forth therein, substantially concurrently with Completion; and
- (p) **(Termination of Certain Contracts)** the Seller having caused the Company (i) to have terminated the Aircraft Sublease Agreement, and (ii) to have either terminated, or given notice to Angstroms LLC to terminate, the Angstroms Consulting Agreement in accordance with the terms of the Angstroms Consulting Agreement.

3.2 Best endeavours

Each Party must use its best endeavours to satisfy the Conditions Precedent by 10 July 2017, or as promptly as practicable thereafter, including co-operating with each other and using its best endeavours to procure that any relevant third party gives its consent or carries out any other act that is required to satisfy a Condition Precedent.

3.3 Obligations of co-operation

Without limiting clause 3.2, each Party must do, or refrain from doing, each of the following to enable the Conditions Precedent to be fulfilled:

- (a) make all necessary and appropriate applications to Regulatory Authorities;
- (b) supply all necessary and appropriate information, including, in the case of the Seller, information relating to the Seller, the Target Group, the Target Business or the LLC Interests to the extent necessary or otherwise reasonably requested by the Purchaser to satisfy disclosure requirements under the Corporations Act or the ASX Listing Rules, for inclusion in the EGM Notice of Meeting. All Seller Information must, to the Knowledge of Seller, not be false, misleading or deceptive in any material respect (including because of any material omission);
- (c) not withdraw, or procure the withdrawal of, any application or information made or supplied under clauses 3.3(a) or 3.3(b), other than, in the case of any such information, in order to correct or update that information; and

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- (d) supply to the other Party copies of all applications made and information supplied under clauses 3.3(a) or 3.3(b).

3.4 Parties to advise of progress

Each of the Purchaser and the Seller must keep the other informed of progress towards satisfaction of the Conditions Precedent, including any circumstances which may result in the Conditions Precedent not being satisfied in accordance with their terms by 10 July 2017 (subject only to any confidentiality obligations that a Party may have), and provided that the Purchaser will not be required to provide any information to the Seller or the Seller's Authorised Persons that would constitute inside information (as that expression is defined in the Corporations Act) or that is required to be disclosed to the ASX under the ASX Listing Rules but has not yet been so disclosed.

3.5 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a), 3.1(d) and 3.1(i) are for the benefit of both the Purchaser and the Seller and may only be waived by both Parties, acting in their absolute discretion, giving written notice to one another.
- (b) The Conditions Precedent in clauses 3.1(b), 3.1(c), 3.1(h), 3.1(k), 3.1(m) and 3.1(o) are for the benefit of the Seller and may only be waived by the Seller, acting in its absolute discretion, giving written notice to the Purchaser.
- (c) All other Conditions Precedent are for the benefit of the Purchaser and may only be waived by the Purchaser, acting in its absolute discretion, giving written notice to the Seller.

3.6 Conditions Precedent not waived or satisfied

If any Condition Precedent is not:

- (a) satisfied; or
- (b) waived in writing by the relevant Party in accordance with clause 3.5,

and Completion does not occur on or before the End Date, either Party may terminate this Agreement at any time thereafter by notice to each other Party before Completion occurs, provided that (x) the terminating Party must not have been responsible for frustrating the satisfaction of the Condition Precedent that has failed to occur and (y) in the event that the failure of Completion to occur prior to the End Date results from a failure to satisfy the Conditions Precedent in clause 3.1(a) or clause 3.1(d), the Purchaser may not terminate this Agreement unless Completion has not occurred on or before the date that is 30 days after the End Date.

4 Cash sufficiency and Stocktake

4.1 Definitions

In this clause 4:

Cash Equivalents means cash or any other asset that is easily and readily convertible into a known amount of cash, but excluding any Customer Advances), it being understood that Cash Equivalents can only be positive amounts.

Completion Cash Equivalents means the Cash Equivalents owned by the Target Group as at Completion.

Completion Cash Sufficiency Statement means a statement prepared and finalized in accordance with clauses 4.3 and 4.4, relating to the Completion Cash Equivalents and the Debt of the Target Group, but not to any Net Payables, which is to be dealt with instead by the Net Payables and Stock Statement referred to in clause 8.1.

Customer Advances means customer advances or other prepayments by customers to the Target Group under contracts with the Target Group.

4.2 Cash sufficiency at Completion

The Seller must ensure that the Target Group has Completion Cash Equivalents (after payment of \$300,000 of the Argentina Dividend to be paid at Completion in accordance with clause 7.15) at least equal to the Fixed Cost Liability Amount.

4.3 Preparation of Completion Cash Sufficiency Statement

The Seller must prepare and give to the Purchaser the Seller's draft of the Completion Cash Sufficiency Statement by no later than four (4) Business Days before the scheduled Completion Date.

The Seller's draft of the Completion Cash Sufficiency Statement must:

- (a) identify and set out the Seller's calculation of:
 - (i) the Completion Cash Equivalents; and
 - (ii) the Debt of the Target Group as at Completion;
- (b) be prepared in good faith; and
- (c) be prepared on a consolidated basis and expressed in US dollars.

4.4 Finalisation of Completion Cash Sufficiency Statement

- (a) Within 45 days after the Completion, the Purchaser must prepare and provide to the Seller the Purchaser's revised draft of the Completion Cash Sufficiency Statement. The Purchaser's draft of the Completion Cash Sufficiency Statement must:
 - (i) identify in detail each item of and set out the Purchaser's calculation of:
 - (A) the Completion Cash Equivalents; and
 - (B) the Debt of the Target Group as at Completion;
 - (ii) be prepared in accordance with the Accounting Principles; and
 - (iii) be prepared on a consolidated basis and expressed in US dollars.

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- (b) If the Seller does not dispute any amount in the Purchaser's revised draft of the Completion Cash Sufficiency Statement within 10 Business Days after receiving it from the Purchaser, that statement will be taken to be the final Completion Cash Sufficiency Statement and will be binding on the Parties.
 - (c) If the Seller wishes to dispute any amount in the Purchaser's revised draft of the Completion Cash Sufficiency Statement:
 - (i) within 10 Business Days after receiving it from the Purchaser, the Seller must give notice to the Purchaser of each amount set out in the Purchaser's draft of the Completion Cash Sufficiency Statement that the Seller wishes to dispute and the Seller's reasons for disputing each such amount;
 - (ii) senior representatives of the Purchaser and the Seller must meet and use their reasonable endeavours to resolve any such disputed amounts within 10 Business Days (or such other period as agreed by the Parties) after Seller delivered its notice referred to in paragraph (i) above to the Purchaser; and
 - (iii) if the dispute is not resolved by the end of the period referred to in paragraph (ii) above, the Parties shall refer the disputed amounts to the Target Group's auditors, Weiser Mazars LLP, for resolution by them no later than 10 Business Days after the date of such referral. The Seller and the Purchaser must provide to the auditors all information reasonably requested by them in relation to the disputed amounts. The Purchaser's draft of the Completion Cash Sufficiency Statement as amended to incorporate any changes agreed between the Parties or (if applicable) required by the auditors in resolving any disputed amounts will be the final Completion Cash Sufficiency Statement and will be binding on the Parties.

4.5 Access to information

- (a) Each Party must provide to the other Party all information reasonably requested by the other Party or its Authorised Persons to the extent necessary or desirable for the other Party to carry out its review of the applicable draft Completion Cash Sufficiency Statement.
- (b) Each Party must permit the other Party and its Authorised Persons to have reasonable access to, and take extracts from, or make copies of, the Records to the extent necessary or desirable for the other Party to review the applicable draft Completion Cash Sufficiency Statement.

4.6 Estimate of Target Group's Stock

- (a) Immediately prior to the Completion Date, or during such other period as may be agreed between the Purchaser and the Seller, the Seller must carry out a stocktake of all of the Target Group's Stock as at the Business Day immediately before Completion.
- (b) The Seller must give reasonable advance notice to the Purchaser of the times and locations at which the stocktake will take place, and the Purchaser will be entitled to have representatives present during all or any part of the stocktake. The Seller and the Purchaser must each pay their own costs relating to the stocktake.

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- (c) Seller will provide to the Purchaser, by no later than 10:00 am, Australian Eastern Standard Time on the Completion Date, a good faith estimate of the total value of the Target Group's Stock as at the Business Day immediately before Completion.

4.7 PDVSA

At the Completion, the Seller shall cause the applicable Target Group Company(ies) to ensure that the Customer Advances with respect to the PDVSA Agreement held in the relevant Target Group Company's bank accounts have a minimum balance of US\$54,758,000.

5 Treatment of Holdback Shares and Completion Shares

5.1 Reduction to number of Holdback Shares

- (a) The Seller acknowledges that the Holdback Shares are not being issued to the Seller on the Completion Date so that the value of the Holdback Shares can be applied to satisfy any Determined Holdback Claims that arise during the Holdback Period. Accordingly, if there are:
- (i) any Determined Holdback Claims during the Holdback Period; or
 - (ii) any Holdback Claims of which Purchaser notifies the Seller in good faith during the Holdback Period but are not Determined by the Release Date,
- the number of Holdback Shares that the Seller is entitled to receive on the Release Date will be reduced (but not to less than none) or deferred in accordance with this clause 5, and an amount of the Determined Holdback Claim(s) equal to the value of the Holdback Shares (based on the Market VWAP Price) that otherwise would have been issued to the Seller will be taken to have been satisfied through the reduction in the number of Holdback Shares that the Purchaser is required to issue.
- (b) If, before or on the Release Date, the Purchaser has any Determined Holdback Claims against the Seller, the number of Holdback Shares to be issued to the Seller on the Release Date will be reduced (but not to less than none) by a number of Purchaser Shares equal to the aggregate amount (in Australian dollars) of all such Determined Holdback Claims, divided by the Market VWAP Price as at the date the relevant Holdback Claim was Determined.
- (c) In addition, if, as at the Release Date, the Purchaser has in good faith given written notice to the Seller of any Holdback Claims against the Seller for which a Determination has not been made as of the Release Date (**Unresolved Holdback Claims**) and either there were no Determined Holdback Claims or, after the number of Holdback Shares has been reduced in accordance with clause 5.1(a), there are Holdback Shares left (**Remaining Holdback Shares**), the issue of the number of Remaining Holdback Shares determined below will be deferred as described below.

The number of Remaining Holdback Shares whose issue is so to be deferred (**Deferred Holdback Shares**) will be equal to the lesser of the following:

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- (i) a number of Purchaser Shares equal to the aggregate amount (in Australian dollars) of all such Holdback Claims for which a Determination has not been made as of the Release Date, divided by the Market VWAP Price; and
 - (ii) the number of Remaining Holdback Shares.
 - (d) If and when, after the Release Date, each Unresolved Holdback Claim becomes a Determined Holdback Claim, the then number of Deferred Holdback Shares will be reduced (but not to less than none) by a number of Purchaser Shares equal to the aggregate amount (in Australian dollars) of the Determined Holdback Claim, divided by the Market VWAP Price.
 - (e) To the extent that the aggregate amount of the Determined Holdback Claims exceeds the value of the Holdback Shares (based on the Market VWAP Price), the Purchaser has no further remedy with respect to the indemnities under clauses 6.5(e), 9.8 and 10.4 or otherwise in connection with this Agreement except:
 - (i) as described in clause 5.4;
 - (ii) under clause 12 (Restraint of trade) or clause 13 (Confidentiality); and
 - (iii) to the extent of Fraud by the Seller.

5.2 Issue of Holdback Shares

- (a) **(Release Date)** The Purchaser must:
 - (i) on the Release Date, issue to the Seller such number of Holdback Shares as the Seller is entitled to receive after any reduction or deferral (as applicable) is applied in accordance with clause 5.1(b) or 5.1(c) (**Release Date Holdback Shares**), by registering the Seller as the holder of the Release Date Holdback Shares; and
 - (ii) within two Business Days after the Release Date:
 - (A) procure the Purchaser's share registry to give the Seller a holding statement showing it as the registered holder of the Release Date Holdback Shares;
 - (B) apply for the quotation on the ASX of the Release Date Holdback Shares and use reasonable endeavours to have the Release Date Holdback Shares quoted on ASX;
 - (C) lodge a notice pursuant to section 708A(5) of the Corporations Act which complies with section 708A(6) of the Corporations Act in respect of the Release Date Holdback Shares or, if the conditions in sections 708A(5)(a) to 708A(5)(d) of the Corporations Act are not satisfied or there is a determination in force under section 708A(2) of the Corporations Act in respect of the Purchaser, the Purchaser must, at its expense, prepare and issue such other documents (including disclosure documents) as are required to permit the Release Date Holdback Shares to be on-sold by the Seller without the Seller or any other person being in breach of Part 6D of the Corporations Act, provided, that if the Purchaser is

required to prepare and issue such other documents, the Release Date may be delayed for a reasonable period to enable the Purchaser to prepare and issue such other documents; and

- (D) take any other action required under the rules of the ASX in respect of an issue of securities.
- (b) **(Deferred Release Date)** If the issue of any Holdback Shares was deferred under clause 5.1(c), the Purchaser must:
 - (i) on each date on which an Unresolved Holdback Claim is Determined, if the value of the remaining Deferred Holdback Shares (based on the Market VWAP Price) (after any reduction pursuant to clause 5.1(d) is applied) exceeds the aggregate amount (in Australian dollars) of all then outstanding Holdback Claims in respect of which a Determination has not been made (each such date, a **Deferred Release Date**), issue to the Seller such number of Deferred Holdback Shares equal to such excess amount divided by the Market VWAP Price on that date (collectively, **Final Holdback Shares**) by registering the Seller as the holder of such Final Holdback Shares; and
 - (ii) within two Business Days after each Deferred Release Date:
 - (A) procure the Purchaser's share registry to give the Seller a holding statement showing it as the registered holder of such Final Holdback Shares;
 - (B) apply for the quotation on the ASX of such Final Holdback Shares and use reasonable endeavours to have such Final Holdback Shares quoted on ASX;
 - (C) lodge a notice pursuant to section 708A(5) of the Corporations Act which complies with section 708A(6) of the Corporations Act in respect of such Final Holdback Shares or, if the conditions in sections 708A(5)(a) to 708A(5)(d) of the Corporations Act are not satisfied or there is a determination in force under section 708A(2) of the Corporations Act in respect of the Purchaser, the Purchaser must, at its expense, prepare and issue such other documents (including disclosure documents) as are required to permit the Final Holdback Shares to be on-sold by the Seller without the Seller or any other person being in breach of Part 6D of the Corporations Act, provided, that if the Purchaser is required to prepare and issue such other documents, the relevant Deferred Release Date may be delayed for a reasonable period to enable the Purchaser to prepare and issue such other documents; and
 - (D) take any other action required under the rules of the ASX in respect of an issue of securities.

5.3 Impact of a reorganisation of Purchaser Shares

- (a) If, before Holdback Shares are issued, a reorganisation of the Purchaser Shares occurs of a type described in ASX Listing Rule 7.22, the number of Holdback Shares issuable after that reorganisation will be adjusted in the applicable manner specified in Listing Rule 7.22 as if the Holdback Shares were options.

- (b) If, before Completion, there is a reorganisation of the Purchaser Shares of a type described in ASX Listing Rule 7.22, the number of Consideration Shares will be adjusted in the applicable manner specified in Listing Rule 7.22 as if the Consideration Shares were options.

5.4 Sale of Consideration Shares to satisfy Determined Claims in favour of the Purchaser

- (a) At any time following such time as there are no longer any Holdback Shares that have not been reduced pursuant to clause 5.1 or released to the Seller pursuant to clause 5.2, if there are one or more Determined Claims in favour of the Purchaser arising from (w) a breach of a Fundamental Seller Warranty and the related indemnity under clause 9.8; (x) Fraud by the Seller; (y) the Tax indemnity under clause 10.4 or (z) the indemnity under clause 6.5(e) (in each case prior to the expiration of the applicable survival period):
 - (i) the Seller shall use reasonable efforts to, and the Purchaser shall permit the Seller to, sell (in off-market transactions managed by a broker acceptable to both the Seller and the Purchaser) a number of Consideration Shares equal to the aggregate amount (in Australian dollars) of such Determined Claims in favour of the Purchaser, divided by the Market VWAP Price at the time such Determined Claims in favour of the Purchaser were Determined; and
 - (ii) if at the time such Determined Claims in favour of the Purchaser were Determined the Seller does not hold any Consideration Shares (after taking into account any Consideration Shares actually sold pursuant to clause 5.4(a)(i)), the Seller shall pay to the Purchaser, from the Available Net Proceeds, the amount (in Australian dollars) of such Determined Claims in favour of the Purchaser that was not satisfied through the sale of Consideration Shares under clause 5.4(a)(i) and such payment shall be deemed to be in full satisfaction of such Determined Claims in favour of the Purchaser; provided that in no event shall the Seller be required to pay to the Purchaser any amount in excess of the then Available Net Proceeds.
- (b) If, at any time during the Holdback Period (or after the end of the Holdback Period in the case of any Unresolved Claims):
 - (i) the number of Holdback Shares was reduced in order to satisfy any Determined Claims in favour of the Purchaser arising from (w) a breach of a Fundamental Seller Warranty and the related indemnity under clause 9.8; (x) Fraud by the Seller; or (y) the Tax indemnity under clause 10.4 or (z) the indemnity under clause 6.5(e); and
 - (ii) there are one or more Determined Claims in favour of the Purchaser or Unresolved Holdback Claims arising from a breach of a General Seller Warranty and the related indemnity under clause 9.8 or otherwise in connection with this Agreement (other than a Determined Claim or Unresolved Holdback Claim of the kind referred to in paragraph (i) above) after such time as there are no longer any Holdback Shares that have not been reduced pursuant to clause 5.1 or released to the Seller pursuant to clause 5.2,

the Seller shall use reasonable efforts to sell, and the Purchaser shall permit the Seller to sell (in off-market transactions managed by a broker acceptable to both

the Seller and the Purchaser), a number of Consideration Shares equal to the lesser of (A) the aggregate amount (in Australian dollars) of such Determined Claims in favour of the Purchaser or Unresolved Holdback Claims (once they are Determined in favour of the Purchaser), divided by the Market VWAP Price at the time such Determined Claims were Determined in favour of the Purchaser, and (B) the number of Holdback Shares that was reduced as described in paragraph (i) above, provided that, at the request of Seller, Purchaser has used its commercially reasonable efforts to cooperate with Seller to avoid any applicable withholding taxes, including by (i) if requested by Seller, providing a statutory declaration that the Consideration Shares are not indirect Australian real property interests and (ii) if necessary to avoid any applicable withholding taxes, allowing the Seller to sell such shares in an on-market transaction (instead of an off-market transaction) unless the Purchaser has a reasonable good faith belief that such on-market transaction would have, or would reasonably be expected to have, a material adverse effect on the trading price of Purchaser Shares.

- (c) All Net Proceeds from a sale of Consideration Shares under clause 5.4(a)(i) or clause 5.4(b) (as applicable) must be paid to the Purchaser to satisfy the Determined Claims in favour of the Purchaser referred to in that clause and such payment shall be deemed to be in full satisfaction of such Determined Claims in favour of the Purchaser.

6 Conduct before Completion

6.1 Conduct of the Target Group before Completion

- (a) Until Completion, the Seller must, unless required, contemplated or otherwise provided for by this Agreement or any Ancillary Agreement or unless the Purchaser provides prior written consent, ensure that each Target Group Company manages and conducts its affairs in all material respects in the ordinary and usual course of business (having regard to the nature of the Target Business and the past practice of the relevant Target Group Company).
- (b) Until Completion, the Seller must not, and must ensure that each Target Group Company does not, unless required, contemplated or otherwise provided for by this Agreement or unless the Purchaser provides prior written consent (not to be unreasonably withheld):
- (i) dispose of, agree to dispose of, grant an option over or grant an interest in, any of the LLC Interests or any equity interests in a Target Group Company;
 - (ii) grant any Encumbrance over any of the LLC Interests;
 - (iii) take any action to progress, make any commitment or arrangement in respect of, or enter into, or agree to enter into, any binding contract, agreement or understanding in relation to, an Uncommitted BOT Project;
 - (iv) alter or agree to alter the rights attaching to the LLC Interests or any options or other entitlements to have LLC Interests issued;

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- (v) determine, declare or pay any dividends or make any other distribution of a Target Group Company's capital, income or profits or repayments of shareholders' loans, whether of cash, specific assets or otherwise, other than (x) distributions of Cash Equivalents in excess of the Completion Cash Equivalents required to be owned by the Target Group pursuant to clause 4.2 or (y) any payments provided for in the Argentina Buyout Agreement that may be required to effectuate the buyout by the Target Group of RWL Argentina's minority shareholders or otherwise under the Argentina Buyout Agreement;
 - (vi) effect any merger, consolidation, reorganisation, recapitalization, reclassification, stock split or like change in its capitalization or entity structure;
 - (vii) alter or agree to alter the Company's Limited Liability Company Agreement or the constituent documents of any other Target Group Company, in each case as in effect as of the date of this Agreement;
 - (viii) authorise, allot or issue or agree to authorise, allot or issue any security, equity interest or rights in respect of any equity interest in a Target Group Company, including any option, share, limited liability company interest, debt instrument or any security convertible into a share;
 - (ix) enter into, terminate or vary in a material respect any Material Contract, except in the ordinary course of business or required by applicable Law or any such activity otherwise permitted pursuant to another clause of this clause 6.1;
 - (x) enter into, terminate or vary in a material respect any material Lease;
 - (xi) enter into any commitment for capital expenditure greater than US\$2,000,000, other than in the ordinary course of business consistent with past practice or in accordance with the amounts budgeted to be expended by the relevant Target Group Company (which amounts were disclosed to the Purchaser prior to the date of this Agreement);
 - (xii) acquire or dispose of any material Target Assets (other than in the ordinary course of business consistent with past practice);
 - (xiii) grant any Encumbrance over any material Target Assets (other than Permitted Encumbrances);
 - (xiv) settle or compromise any Claims in excess of US\$1,000,000;
 - (xv) provide any material price reductions or materially increase any discounts, rebates or allowances charged for products or services offered or sold by a Target Group Company without first notifying the Purchaser;
 - (xvi) incur any Debt of any kind in excess of US\$1,000,000, other than (A) the usual payment terms extended by supplier to a Target Group Company and short-term working capital financing, in each case, incurred in the

ordinary course of business consistent with past practice, or (B) any Debt that will be repaid and/or as to which the Target Group Companies shall be released from obligations thereunder at or prior to Completion;

- (xvii) lend money or provide debt finance of any kind in excess of US\$1,000,000, other than the usual payment terms extended to customers of a Target Group Company in the ordinary course of business consistent with past practice;
- (xviii) hire or engage any new permanent employee or long term contractor (any contractor hired for a term in excess of 12 months) for an annual salary in excess of US\$250,000 (by way of clarity the Target Group Companies may engage at-will employees and short term contractors);
- (xix) materially increase salaries, bonuses or other compensation or benefits payable to any of its officers, employees, contractors or agents, or grant or pay any severance or termination pay to (or amend any such existing arrangement with) any of its officers, employees, contractors or agents, except pursuant to an obligation binding on the Target Group Company prior to the date of this Agreement; or
- (xx) authorise, commit or enter into any agreement to take any of the actions described in clauses 6.1(b)(i) to 6.1(b)(xix).

6.2 Conduct of the Purchaser Group before Completion

- (a) Until Completion, the Purchaser must, unless required, contemplated or otherwise provided for by this Agreement or any Ancillary Agreement or unless the Seller provides prior written consent, ensure that each Purchaser Group Company manages and conducts its affairs in all material respects in the ordinary and usual course of business (having regard to the nature of the business of the Purchaser Group Company and the past practice of the relevant Purchaser Group Company).
- (b) Until Completion, the Purchaser must not, and must ensure that each other Purchaser Group Company does not, unless required, contemplated or otherwise provided for by this Agreement or unless the Seller provides prior written consent (not to be unreasonably withheld):
 - (i) dispose of, agree to dispose of, grant an option over or grant an interest in, any equity interests in a Purchaser Group Company other than Purchaser Shares;
 - (ii) grant any Encumbrance over any of the Consideration Shares;
 - (iii) alter or agree to alter the rights attaching to the Purchaser Shares or any options or other entitlements to have Purchaser Shares issued;
 - (iv) determine, declare or pay any dividends or make any other distribution of the Purchaser's capital, income or profits or repayments of shareholders' loans, whether of cash, specific assets or otherwise;

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- (v) effect any merger, consolidation, reorganisation, recapitalization, reclassification, stock split or like change in its capitalization or company structure;
 - (vi) alter or agree to alter the Purchaser's constitution;
 - (vii) authorise, allot or issue or agree to authorise, allot or issue any Purchaser Shares or any other security, equity interest or rights in respect of any equity interest in a Purchaser Group Company, including any option, share, limited liability company interest, debt instrument or any security convertible into a share, other than:
 - (A) in connection with the Purchaser's Employee Stock Option Plans,
 - (B) the issuance of the Second Milestone Shares;
 - (C) a private placement to institutional or sophisticated investors for a total subscription price of up to US\$20,000,000 where the price per Purchaser Share is not less than A\$0.85 and the other terms of such placement (taken as a whole) are no more favourable to such person than the terms of the Private Placement Letter Agreement;
 - (D) equity interests in the Purchaser to directors or prospective directors of the Purchaser (or their Affiliates) up to the aggregate amount of equity interests disclosed in the Purchaser Disclosure Letter or covered by resolutions in the EGM Notice of Meeting; or
 - (E) pursuant to contractual commitments or obligations under agreements in effect on the date of this Agreement and as disclosed in the Purchaser Disclosure Letter;
 - (viii) settle or compromise any Claims that are reasonably likely to have an effect on Purchaser's ability to perform its obligations under this Agreement;
 - (ix) incur any Debt of any kind in excess of US\$1,000,000, other than the usual payment terms extended by supplier to a Purchaser Group Company and short-term working capital financing, in each case, incurred in the ordinary course of business consistent with past practice; or
 - (x) authorise, commit or enter into any agreement to take any of the actions described in clauses 6.2(b)(i) to 6.2(b)(ix).

6.3 Standstill

The Seller must not, and must ensure that any Controlled Affiliate of the Seller (including a Target Group Company) does not, unless required by this Agreement or any Ancillary Agreement or unless the Purchaser provides its prior written consent, directly or indirectly:

- (a) acquire, purchase or sell or agree to acquire, purchase or sell any securities (or direct or indirect rights, warrants or options to acquire any securities) of the Purchaser;

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- (b) enter into any agreement or arrangement which confers rights the economic effect of which is equivalent or substantially equivalent to the acquisition, holding or disposal of securities of the Purchaser (including cash-settled derivative contracts, contracts for differences or other derivative contracts);
 - (c) solicit proxies from shareholders of the Purchaser, or otherwise seek to influence or control the management or policies of the Purchaser; or
 - (d) aid, abet, counsel or induce any other person in doing any of the things mentioned in clauses 6.3(a), 6.3(b) or 6.3(c),

until the earlier of:

- (i) Completion; and
- (ii) 28 November 2017.

6.4 Target Equity Incentive Plan awards and bonuses under employment contracts

- (a) The Seller acknowledges and agrees that it (and not any Target Group Company) is responsible for any and all payments to which Henry Charrabe, Philippe Laval and any other person is entitled under the Target Equity Incentive Plan (or any other equity incentive plan of the Target Group) to the extent that such payments are triggered by, or otherwise payable as a result of, the change of control of the Company that will occur upon Completion. The Seller must make all such payments in full to such persons in accordance with the terms of the Target Equity Incentive Plan.
- (b) The Seller acknowledges and agrees that it (and not any Target Group Company) is responsible for any and all bonuses or other similar payments which an Employee is entitled to receive from a Target Group Company or its Affiliate to the extent that such bonuses or payments have been earned or have vested and are payable at or prior to Completion. If the Seller has not already done so, the Seller must make all such payments in full to such persons at Completion.

6.5 Purchaser EGM

- (a) Within three Business Days after each of ASIC and ASX has approved in writing the EGM Notice of Meeting, the Purchaser must send the EGM Notice of Meeting to its shareholders (with a copy to be lodged with the ASX on the ASX Announcements Platform). The EGM Notice of Meeting must include:
 - (i) all information required by the Corporations Act and required by ASIC Regulatory Guide 74;
 - (ii) a recommendation by the Board that shareholders vote in favour of (x) the purchase of the LLC Interests, (y) the issue of the Consideration Shares to the Seller under this Agreement, and (z) the appointment (effective as at Completion) of Dr Rengarajan Ramesh as a non-executive director of the Purchaser; and
 - (iii) a statement that each of the directors of the Board and their Affiliates who hold Purchaser Shares have indicated their intention to vote their

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- › Purchaser Shares in favour of the resolutions described in clause 6.5(a)(ii)).
- (b) The Purchaser will use its best endeavours to ensure that the Purchaser EGM is held as soon as reasonably practicable (and in any event within 60 days after the date of this Agreement).
- (c) For the purposes of clause 6.5(a), the Purchaser must:
- (i) prepare draft documents for the Purchaser EGM and procure that an independent expert prepares a draft report for the purposes of the Purchaser EGM;
 - (ii) give the Seller a reasonable opportunity to comment on the form of the EGM Notice of Meeting; and
 - (iii) convene a general meeting of the Purchaser's shareholders (by way of an EGM Notice of Meeting which includes the information provided by the Seller under clause 3.3(b) and takes into account all reasonable comments of the Seller given pursuant to clause 6.5(c)(ii)).
- (d) Seller consents to the inclusion of the Seller Information in the EGM Notice of Meeting on the basis that the EGM Notice of Meeting will state that the Purchaser solely is responsible for the EGM Notice of Meeting (other than the Seller Information and the Expert's Report) and the Purchaser hereby indemnifies the Seller against any Liability suffered or incurred by reason of any claim or action arising in connection with the EGM Notice of Meeting (except to the extent such claim or action relates to the Seller Information). The indemnity set forth in this clause 6.5(d) is a continuing obligation until the EGM Notice of Meeting Expiry Date. If the Seller gives the Purchaser notice of a Claim under this clause 6.5(d) prior to the EGM Notice of Meeting Expiry Date, the indemnity in this clause 6.5(d) will continue in full force and effect to the extent required to enable the Seller to prosecute such Claim.
- (e) The Seller hereby indemnifies the Purchaser against any Liability suffered or incurred by reason of any claim or action arising in connection with the EGM Notice of Meeting to the extent such claim or action relates to the Seller Information. The indemnity set forth in this clause 6.5(e) is a continuing obligation until the EGM Notice of Meeting Expiry Date. If the Purchaser gives the Seller notice of a Claim under this clause 6.5(e) prior to the EGM Notice of Meeting Expiry Date, the indemnity in this clause 6.5(e) will continue in full force and effect to the extent required to enable the Purchaser to prosecute such Claim.
- (f) No Claim may be brought with respect to the indemnities in clauses 6.5(d) and 6.5(e) after the EGM Notice of Meeting Expiry Date, and such Claim that is brought after the EGM Notice of Meeting Expiry Date will for the purposes of this Agreement, be deemed to be out of time, invalid and unenforceable.

6.6 Notice of Material Adverse Change

If, on or before Completion, a Party is or becomes aware of any event, matter, act or omission that constitutes a Material Adverse Change in respect of itself, its equity interests, its Group Companies or their businesses (taken as a whole), the Party must give prompt

written notice to the other Party of all relevant details of the Material Adverse Change and the likely effect of that Material Adverse Change on itself, its equity interests, its Group Companies or their businesses (taken as a whole).

6.7 Notice of possible breach of warranty

If on or before Completion, the Seller or the Purchaser (as applicable) is or becomes aware of any event, matter, act or omission that occurs after the date of this Agreement and that makes, with respect to the Seller, a Seller Warranty, or, with respect to the Purchaser, a Purchaser Warranty, untrue or inaccurate, then the Seller or the Purchaser (as applicable) shall have the right to give notice to the other Party of all relevant details of that event, matter, act or omission and the Seller Warranty or Purchaser Warranty (as the case may be) that is the subject of the notice, by no less than two (2) Business Days prior to the Completion Date. Any such notice shall be treated as if it had not been given for the purpose of determining the satisfaction of the conditions set forth in clause 3.1. If Completion occurs, then for purposes of indemnification under this Agreement, such notice shall be deemed to have cured any breach of a Seller Warranty or Purchaser Warranty (as applicable) made in this Agreement that would have existed in the absence of such notice.

6.8 Notice by Purchaser of resignation of officers of Target Group Companies

- (a) At least five (5) Business Days before the Completion Date, the Purchaser may notify the Seller of the names of the people (if any) who will be required to resign as directors, managers or other officers of a Target Group Company, or to cease as authorised signatories of the bank accounts of a Target Group Company, with effect from Completion.
- (b) The Seller agrees to provide to the Purchaser at Completion, following the provision of a notice under clause 6.8(a) above, all necessary documentation to remove Ronald S. Lauder (if applicable), and any other existing signatories of the bank accounts of a Target Group Company specified by the Purchaser, as such signatories at Completion.

6.9 Access for Purchaser

Until Completion, the Seller must, subject to clause 13, use reasonable efforts to ensure that the Purchaser and any of the Purchaser's Authorised Persons have reasonable access (so long as such access does not unreasonably interfere with the normal business operations of the Target Group Company) to each Target Group Company's premises on reasonable notice during normal business hours and allow any of those persons to:

- (a) observe the conduct of the Company, the Target Group and the Target Business to become familiar with the Company, the Target Group and the Target Business;
- (b) examine and, if desired, copy at the Purchaser's expense, any of the Target Group's Records, as may be reasonably requested, provided, in each case, that the Seller may withhold any Record (or portion thereof) or information (i) that is subject to the terms of a non-disclosure agreement with a third party, (ii) that may constitute privileged attorney-client communications and the transfer of which, or the provision of access to which, as reasonably determined by the Seller's counsel, constitutes a waiver of any such privilege, (iii) if the provision of access to such Record (or the portion thereof), as determined by the Seller's counsel, would reasonably be expected to conflict with applicable Laws; and

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- (c) with the Seller's consent (which shall not be unreasonably withheld), consult Henry Charrabé, Philippe Laval, Robert Wowk and Spencer Smith, and, with the Seller's consent (in its discretion), consult other employees of the Target Group from time to time, concerning the Company, the Target Group or the Target Business. For the avoidance of doubt, this clause 6.9(c) does not in any way limit any rights the Purchaser may have under any existing agreement with the Company or any other Target Group Company.

6.10 Confidentiality

Any Information obtained by the Purchaser or any of the Purchaser's Authorised Persons under this clause 6 is taken to be Confidential Information for the purposes of clause 13.

6.11 Third party consents

Until Completion, to the extent requested by Purchaser, Seller shall, or shall cause the Company to, use best endeavours to obtain a consent from any counterparty whose consent is required to be obtained under any Target Group contract in order to consummate the transactions contemplated by this Agreement; provided that neither the Seller nor any Target Group Company shall be obligated to make, or cause to be made, any payment to any third party in order to obtain the consent or approval of such third party.

7 Completion and post-Completion

7.1 Time and place of Completion

Completion will take place on the Completion Date and at such place and time, or by any process, as agreed between the Seller and the Purchaser in writing.

For the avoidance of doubt, the Parties agree that the documents to be delivered at Completion may be exchanged by email, so long as the manually executed hard copies of any such documents (where required by a Party) are delivered to the relevant Party promptly after Completion.

7.2 Obligations of the Seller at Completion

At Completion, the Seller must:

- (a) deliver to the Purchaser:
- (i) a duly executed instrument of transfer of the LLC Interests in favour of the Purchaser as contemplated in clause 2.1;
 - (ii) a certificate, dated as of the Completion Date, signed by a duly authorized officer of the Seller, confirming the satisfaction of the conditions contained in clauses 3.1(g), 3.1(j) and 3.1(l);
 - (iii) an executed counterpart to the Lock-Up Agreement, executed by the Seller;
 - (iv) an executed counterpart to the Transition Services Agreement, executed by the Company and RSL Management Corporation;

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- (v) written resignations (in the form reasonably required by the Purchaser) of each director, manager or other officer of a Target Group Company requested by the Purchaser at least five (5) Business Days prior to Completion;
 - (vi) documentation effecting the resignation of Ronald Lauder as the manager, the appointment of the Purchaser as replacement manager, the withdrawal of the Seller as member and the admission of the Purchaser as member, under the Company's Limited Liability Company Agreement, executed by the Seller;
 - (vii) the constituent documents of each Target Group Company and any certificates evidencing change of name of a Target Group Company;
 - (viii) any common seal, share seal or official seal of a Target Group Company;
 - (ix) all accounts of each Target Group Company, including the Audited Financial Statements; and
 - (x) the complete and up to date Records of each Target Group Company (other than those that the Seller are entitled to retain under clause 7.8),

provided that, in the case of the items referred to in clauses 7.2(a)(vii) to 7.2(a)(x), those items will be taken to have been delivered by leaving those items in the relevant Target Group Company's possession or any other place agreed on by the Seller and the Purchaser;

- (b) deposit the Mexican BOT Funds into the Mexico BOT Equity Account;
- (c) ensure that all Encumbrances (other than Permitted Encumbrances) over any of the Assets securing Debt in excess of US\$5,000,000 (excluding any such Debt that is taken into account as Debt under clause 4.3 and for which the Purchaser has not requested that the applicable Target Company repay prior to Completion) are released or discharged;
- (d) ensure that all outstanding Related Party Receivables (other than Related Party Receivables arising under this Agreement or any of the Ancillary Agreements) and all outstanding Related Party Payables (other than Related Party Payables arising under this Agreement or any of the Ancillary Agreements), in each case as at the Completion Date are forfeited effective as of Completion, so that at Completion there are no Liabilities outstanding between a Target Group Company and the Seller or any of its Affiliates (other than Liabilities arising under this Agreement or any of the Ancillary Agreements); and
- (e) ensure that the relevant Target Group Company's governing body pass resolutions that approve the transfer of the LLC Interests to the Purchaser (as necessary).

7.3 Obligations of the Purchaser at Completion

At Completion, the Purchaser must:

- (a) deliver to the Seller any ASIC waiver that was required to be obtained under clause 3.1(d);

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- (b) deliver to the Seller a certificate, dated as of the Completion Date, signed by a duly authorized officer of the Purchaser, confirming the satisfaction of the conditions contained in clauses 3.1(h), 3.1(k) and 3.1(m);
 - (c) deliver an executed counterpart to the Lock-Up Agreement, executed by the Purchaser;
 - (d) ensure that:
 - (i) the Board has passed a resolution appointing Henry Charrabé as Managing Director of the Purchaser, effective as at Completion and subject to Henry Charrabé submitting a consent to act as a director as required by Section 201D of the Corporations Act; and
 - (ii) the Purchaser's shareholders have passed a resolution approving the appointment of Dr Rengarajan Ramesh as a non-executive director of the Purchaser at the extraordinary general meeting referred to in clause 3.1(a) or, in the event that such shareholder approval is not obtained, that the Purchaser's Board has passed a resolution appointing Dr Rengarajan Ramesh as a non-executive director of the Purchaser, effective as at Completion, in either case subject to Dr Rengarajan Ramesh submitting a consent to act as a director as required by Section 201D of the Corporations Act
 - (e) issue the Completion Shares to the Seller, register the Seller as the holder of the Completion Shares and procure the Purchaser's share registry to give the Seller a holding statement showing it as the registered holder of the Completion Shares;
 - (f) apply for the quotation on the ASX of the Completion Shares, and thereafter use reasonable endeavours to have the Completion Shares quoted on ASX; and
 - (g) pay the Completion Cash Consideration to the Seller by wire transfer of immediately available funds to a bank account of the Seller designated in writing to the Purchaser at least two (2) Business Days prior to the Completion Date.

7.4 Simultaneous actions at Completion

At Completion:

- (a) the obligations of the Parties under this Agreement are interdependent; and
- (b) all actions that must be performed at Completion are taken to have occurred simultaneously on the Completion Date but no delivery or payment is taken to have been made until all deliveries and payments have been made.

7.5 Non-compliance with Completion obligations

If a Party fails to perform an action required by clauses 7.2 or 7.3 as applicable, and, despite that failure, the Parties proceed with Completion so far as it is practical to do so:

- (a) the participation of the Party entitled to the benefit arising from the performance of the particular obligation at Completion does not constitute a waiver of that Party's accrued rights under this Agreement; and

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- (b) the requirement of the other Party to perform the relevant obligation does not merge on Completion and the relevant obligation remains in force.

7.6 Cleansing notice

Within five (5) Business Days after Completion, the Purchaser must lodge a notice pursuant to section 708A(5) of the Corporations Act, which complies with s708A(6) of the Corporations Act, in respect of the Completion Shares or, if the conditions in sections 708A(5)(a) to 708A(5)(d) of the Corporations Act are not satisfied or there is a determination in force under section 708A(2) of the Corporations Act in respect of the Purchaser, the Purchaser must, at its expense, prepare and issue such other documents (including disclosure documents) as are required to permit the Completion Shares to be on-sold by the Seller without the Seller or any other person being in breach of Part 6D of the Corporations Act.

7.7 Target Company Group names

On and from Completion, the Seller agrees that it will not use, and will ensure that none of it or the Seller's Affiliates uses, any business name, trading name, internet domain name, trade mark or logo that is substantially identical to, deceptively similar to, likely to be mistaken for or confused with any Business Name or Domain Name (including the name 'Fluence').

7.8 Records

The Seller may retain copies of any of the Records necessary for it to comply with any applicable Law (including Tax law) and to prepare Tax or other returns required of it by applicable Law.

7.9 Mexico BOT Funds

Following Completion, the Purchaser must ensure that the relevant Target Group Company uses the Mexico BOT Funds to pay its equity commitments in respect of the Mexico BOT Project. The Purchaser acknowledges and agrees that the Mexico BOT Funds cannot be used for any other purpose without the Seller's consent.

7.10 Seller nomination of Purchaser director

- (a) For so long as the Seller (together with its Affiliates and other entities that are part of the same corporate group) owns or controls at least 50,250,000 Purchaser Shares (or such adjusted number of Purchaser Shares as applicable pursuant to the mechanism described in ASX Listing Rule 7.22 in the case of a subsequent reorganisation of Purchaser Shares), then the Seller retains a right to (i) appoint a nominee to the Board as a director or, at the Seller's election, as a board observer (with its initial nominee director being Dr Rengarajan Ramesh) and (ii) replace that nominee at any time when that nominee has ceased to be a director of the Purchaser, and, subject to clause 7.10(b), the Purchaser must appoint or so replace such nominee if so requested by the Seller.
- (b) To the extent that Dr Ramesh (or a subsequent Seller nominee director) ceases to be a member of the Board (either voluntarily, because the nominee's election or re-election is not approved by Purchaser shareholders, or because of removal from office for any reason including misconduct or removal by Purchaser shareholders), then the Seller is entitled, after consultation with the Board and acting reasonably, to nominate at any time (by written notice to the Purchaser) a replacement director

or observer to be appointed to the Board. Upon receipt of such a nomination, the Purchaser must procure that the Board appoints the nominee director to the Board at the next meeting of the Board and in any event within one month of the Seller's nomination, unless the Board (acting reasonably and in good faith) considers that the person would bring the Purchaser into disrepute, in which case the Board must communicate to the Seller the grounds upon which it has formed such a view. If the Board rejects the Seller's nominee then the Seller is entitled to nominate a different nominee to the Board, in which case the process set out in this clause is to be followed in respect of the replacement nominee.

- (c) All appointments by the Board will (in due course pursuant to the Purchaser's constitution and the ASX Listing Rules) be required to be referred to Purchaser shareholders for re-election at the next annual general meeting following the Board appointment. However, if shareholders do not re-elect the Seller's nominee, the Seller is entitled to immediately nominate another nominee for appointment by the directors to the Board in accordance with this clause. The Purchaser must ensure that at all times there are sufficient vacancies available on the Board so as to accommodate the Seller's nominee. The Purchaser must also ensure that, if section 203D of the Corporations Act is applicable, any resolution to remove any nominee of the Seller as a director does not take effect until a replacement to represent the Seller's interests has been appointed.

7.11 Sale of Seller's Purchaser Shares

The Purchaser agrees that the Seller is free to sell its Purchaser Shares at any time, except to the extent restricted under the Lock-Up Agreement.

7.12 Indemnification and D&O insurance

- (a) The certificates of incorporation, by-laws and all other organization documents of the Target Group Companies shall not be amended, repealed or otherwise modified for a period of six (6) years from the Completion Date in any manner that would adversely affect the rights thereunder of individuals who at or at any time prior to the Completion Date were directors, managers or officers of any Target Group Company or otherwise entitled to indemnification pursuant to such Target Group Company's certificate of incorporation, by-laws or other organizational documents.
- (b) The Purchaser shall or shall cause the Target Group Companies to obtain as and from the Completion Date and shall or shall cause the Target Group Companies to maintain in effect for six (6) years after the Completion Date a "run-off" or "tail" directors', managers' and officers' liability insurance policy with respect to matters occurring prior to Completion and having coverage limits in the same aggregate amount as provided in the current policy for such six-year period and terms and conditions otherwise no less advantageous to the indemnitees than the terms and conditions of the current policy for the Target Group Companies, provided that such coverage and terms and conditions are available on commercially reasonable terms.
- (c) The provisions of this clause 7.12 are intended to be for the benefit of, and shall be enforceable by, each current and former director, manager or officer entitled to indemnification under this clause 7.12, his or her heirs and his or her representatives and are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such person may have by contract or

otherwise, and such persons are hereby made express third party beneficiaries of this clause 7.12.

7.13 Employees and employee benefits

- (a) Except as otherwise agreed with an Employee, Purchaser shall, for a period of one (1) year immediately following the Completion Date, provide each Employee of the Target Group Companies with (i) base salary (or wages) no less than the base salary (or wages) provided to such Employee immediately prior to the Completion, (ii) target incentive compensation opportunities no less than the target incentive compensation opportunities provided to such Employee immediately prior to the Completion, (iii) employee benefits (other than pension benefits) that are substantially comparable in the aggregate to the employee benefits (other than pension benefits) that were provided to such Employee immediately prior to the Completion, and (iv) severance benefits that are no less than the severance benefits provided by Seller and its Affiliates in effect immediately prior to the Completion. For the avoidance of doubt, this clause does not limit the right of the Purchaser or any Target Group Company to terminate the employment of any Employee (whether by reason of redundancy or otherwise) following the Completion Date.
- (b) Seller acknowledges that, upon the Executive Employment Contract with Henry Charrabé coming into effect at Completion, Henry Charrabé will cease to be an employee of RSL Management Corporation.

7.14 Replacement guarantees

The Purchaser covenants and agrees that it shall use best efforts to obtain the release of any guarantees extended by the Seller or its Affiliates (other than a Target Group Company) on behalf of a Target Group Company or the Target Business (Seller Guarantees) from and after such time that Seller identifies any such Seller Guarantees to the Purchaser. From and after the Completion, the Purchaser shall indemnify and hold the Seller and its Affiliates harmless from any and all payments required to be made under, and costs and expenses incurred in connection with, such Seller Guarantees.

7.15 Argentina Dividend

At the Completion, the Company shall pay to the Argentina Founders, in the portions to which such Argentina Founders are respectively entitled, a portion of the Argentina Dividend equal to US\$300,000 in the aggregate for both Argentina Founders. After the Completion, Purchaser shall be solely responsible for the payment of the remaining portion of any Argentina Dividends.

8 Post Completion adjustment for Completion Cash Equivalents sufficiency and Stock value

8.1 Determination of Net Payables and Stock Value

- (a) The **Net Payables** is the amount calculated as follows:

Net Payables = X – Y (which may be a positive or negative number)¹

Where:

X = all payables (other than for (i) income Taxes, (ii) in respect of the Fixed Cost Liabilities and (iii) any payables that can be satisfied through payment by the Target Group out of Customer Advances) of the Target Group (on a consolidated basis) as at Completion which are payable at or within 30 days after Completion; and

Y = all receivables (other than relating to income Taxes) of the Target Group (on a consolidated basis) as at Completion which are receivable at or within 30 days after Completion.

- (b) Within 45 days after Completion, the Purchaser must:
- (i) determine the payables within X and the receivables within Y for the calculation of the Net Payables, which determination must be in accordance with the Accounting Policies;
 - (ii) determine the value, in accordance with the Accounting Policies, of the Target Group's Stock as at the Business Day immediately before Completion, excluding any obsolete Stock and writing down the value (in accordance with the Accounting Policies) of any impaired Stock; and
 - (iii) prepare and provide to the Seller a statement (**Net Payables and Stock Statement**) which must:
 - (A) set out the calculation of the Net Payables and identify each line item within X and Y for the calculation of the Net Payables;
 - (B) set out the total value of the Target Group's Stock as at the Business Day immediately before Completion (**Stock Value**);
 - (C) be prepared in accordance with the Accounting Policies; and
 - (D) be prepared on a consolidated basis and expressed in US dollars.
- (c) The Purchaser must:
- (i) provide to the Seller all information reasonably requested by the Seller or its Authorised Persons (including working papers) in relation to its review of the Net Payables and Stock Statement; and
 - (ii) permit the Seller and its Authorised Persons to have reasonable access to, and take extracts from, or make copies of, the Records that are relevant to its review of the Net Payables and Stock Statement.
- (d) If the Seller does not dispute any amount in the Net Payables and Stock Statement within 30 days after receiving it from the Purchaser, that statement will be taken to be the final Net Payables and Stock Statement and will be binding on the Parties.

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- (e) If the Seller wishes to dispute either or both of the Net Payables or the Stock Value set out in the Net Payables and Stock Statement:
 - (i) within 30 days after the Net Payables and Stock Statement was provided to the Seller, the Seller must give a notice (**Dispute Notice**) to the Purchaser of:
 - (A) each amount set out in the Net Payables and Stock Statement that the Seller wishes to dispute; and
 - (B) the Seller's reasons for disputing each such amount;
 - (ii) senior representatives of the Purchaser and the Seller must meet and use their reasonable endeavours to negotiate in good faith to resolve the disputed amounts within 15 Business Days (or such other period as agreed by the Parties) after the Dispute Notice was delivered to the Purchaser; and
 - (iii) if the dispute is not resolved by the end of the period referred to in paragraph (ii) above, the Parties shall refer the dispute to an Expert for determination under clause 11.

8.2 When the Net Payables and Stock Value are final and binding

- (a) For the avoidance of doubt, if the Seller does not give a Dispute Notice to the Purchaser under clause 8.1(e)(i), the Seller will be deemed to have accepted the correctness of the Net Payables and Stock Value set out in the Net Payables and Stock Statement.
- (b) If the Seller gives a Dispute Notice to the Purchaser under clause 8.1(e)(i), the following will apply:
 - (i) if the dispute is resolved by the Purchaser and the Seller within the period referred to in clause 8.1(e)(ii), then the Net Payables and the Stock Value as agreed by the Parties will be final and binding on the Parties at the end of that period; or
 - (ii) if the dispute is not so resolved, then the Net Payables and Stock Value amounts, as adjusted by the Expert in resolving the disputed amounts, will be final and binding on the Parties on the date on which the Expert makes that determination.

8.3 Timing for Adjustment payment

Within five (5) Business Days after the date on which each of the following are final and binding on the Parties:

- (a) the Completion Cash Sufficiency Statement;
- (b) the Net Payables; and
- (c) the Stock Value,

(such date being the **Adjustment Date**), the relevant Party must make the payment to the other Party set out in either clause 8.4 or clause 8.5 (whichever is applicable).

8.4 Adjustment in favour of the Purchaser

If:

- (a) the Completion Cash Equivalents; plus
- (b) the Stock Adjustment Amount (which may be zero or a positive or negative amount); minus
- (c) the Debt of the Target Group Companies at Completion; minus
- (d) the Fixed Cost Liability Amount; minus
- (e) the Net Payables (which may be a positive or negative amount)

is a negative amount (determined by reference to the final and binding Completion Cash Sufficiency Statement and the final and binding Net Payables and Stock Value), the Seller, by no later than the Adjustment Date, must deposit into a bank account of the Target Group a cash amount equal to such shortfall.

8.5 Adjustment in favour of the Seller

If:

- (a) the Completion Cash Equivalents; plus
- (b) the Stock Adjustment Amount (which may be zero or a positive or negative amount); minus
- (c) the Debt of the Target Group Companies at Completion; minus
- (d) the Fixed Cost Liability Amount; minus
- (e) the Net Payables (which may be a positive or negative amount)

is a positive amount (determined by reference to the final and binding Completion Cash Sufficiency Statement and the final and binding Net Payables and Stock Value), the Purchaser, by no later than the Adjustment Date, must deposit into a bank account of the Seller a cash amount equal to such amount.

9 Warranties and Indemnification

9.1 Seller Warranties

- (a) Except as set forth in the Target Disclosure Material, the Seller represents and warrants to the Purchaser that each Seller Warranty set out in Schedule 2 and Schedule 3 is true and accurate.
- (b) The Purchaser acknowledges and agrees that it:
 - (i) has conducted its own independent review and analysis of, and, based thereon, has formed an independent judgment concerning, the Target

Business and the Target Group Companies and their assets, condition, operations and prospects; and

- (ii) has been furnished with or given full access to such information about the Target Business and the Target Group Companies and their operations as it has reasonably requested.

In entering into this Agreement, the Purchaser has relied solely upon its own investigation and analysis, and the Seller Warranties expressly set forth in Schedule 2 and Schedule 3 (in each case, as qualified by the Target Disclosure Material), and the Purchaser acknowledges that, except for the Seller Warranties expressly set forth in Schedule 2 and Schedule 3 (in each case, as qualified by the Target Disclosure Material):

- (iii) neither the Seller nor any Target Group Company nor any of their respective agents, Affiliates, officers, directors, employees or representatives nor any other person makes or shall be deemed to make any representation or warranty to Purchaser, express or implied, at law or in equity, on behalf of the Seller, a Target Group Company or any Affiliate of the Seller or of a Target Group Company;
 - (iv) each of Seller, the Target Group Companies and each of their respective Affiliates by this Agreement disclaims any such representation or warranty, whether by Seller, a Target Group Company or any of their respective agents, Affiliates, officers, directors, employees or representatives or any other person, notwithstanding the delivery or disclosure to Purchaser, or any of its officers, directors, employees, agents or representatives or any other person of any documentation or other information by Seller, a Target Group Company or any of their respective agents, Affiliates, officers, directors, employees or representatives or any other person, including with respect to (A) any one or more of the foregoing, (B) the accuracy or completeness of any of the information provided or made available to the Purchaser or any of its respective agents, representatives, lenders or Affiliates prior to the execution of this Agreement or (C) any projections, forecasts, estimates, plans or budgets of future revenues, expenses or expenditures, future results of operations (or any component thereof), future cash flows (or any component thereof) or future financial condition (or any component thereof) of the Target Group Companies heretofore or hereafter delivered to or made available to Buyer or any of its respective agents, representatives, lenders or Affiliates; and
 - (v) it has not been induced by or relied upon any representation, warranty or other statement, express or implied, made by either the Seller, a Target Group Company or any of their respective agents, Affiliates, officers, directors, employees or representatives or any other person, except as expressly set forth in Schedule 2 and Schedule 3 (in each case, as qualified by the Target Disclosure Material).
- (c) The parties hereby acknowledge that due diligence conference calls were held between the Seller and the Purchaser and their respective representatives on the following dates and at the following times, but agree that such acknowledgement shall not limit in any way the acknowledgments and agreements in clause 9.1(b):

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- (i) the RWL Argentina due diligence call held on 21 March 2017 at 10.30pm Australian Eastern Standard Time (part 1) and 22 March 2017 at 11.00pm Australian Eastern Standard Time part 2);
 - (ii) RWL Israel due diligence call held on 2 February 2017 at 11.00pm Australian Eastern Standard Time; and
 - (iii) the due diligence call held on 3 February 2017 at 7.00am Australian Eastern Standard Time.

9.2 Purchaser Warranties

- (a) Except as set forth in the Purchaser Disclosure Material and subject to clause 9.2(b), the Purchaser represents and warrants to the Seller that each Purchaser Warranty set out in Schedule 4 is true and accurate.
- (b) To the extent that any Purchaser Warranty extends to the period of time prior to the termination of the Deed of Company Arrangement, such Purchaser Warranty shall not apply to Savcor Group Limited (as the Purchaser was then named) and its activities or business during such period.
- (c) For the avoidance of doubt, the limitation in clause 9.2(b) does not apply to any other Purchaser Group Companies.
- (d) The Seller acknowledges and agrees that it:
 - (i) has conducted its own independent review and analysis of, and, based thereon, has formed an independent judgment concerning, the Purchaser Group Companies and their businesses, assets, condition, operations and prospects; and
 - (ii) has been furnished with or given full access to such information about the Purchaser Group Companies and their operations as it has reasonably requested.

In entering into this Agreement, the Seller has relied solely upon its own investigation and analysis and the Purchaser Warranties expressly set forth in Schedule 4 (in each case, as qualified by the Purchaser Disclosure Material), and the Seller acknowledges that, except for Purchaser Warranties expressly set forth in Schedule 4 (in each case, as qualified by the Purchaser Disclosure Material):

- (iii) neither the Purchaser nor any Purchaser Group Company nor any of their respective agents, Affiliates, officers, directors, employees or representatives nor any other person makes or shall be deemed to make any representation or warranty to the Seller, express or implied, at law or in equity, on behalf of a Purchaser Group Company or any Affiliate of a Purchaser Group Company;
- (iv) each of the Purchaser Group Companies and each of their respective Affiliates by this Agreement disclaims any such representation or warranty, whether by a Purchaser Group Company or any of their respective agents, Affiliates, officers, directors, employees or representatives or any other person, notwithstanding the delivery or disclosure to the Seller, or any of its officers, directors, employees, agents or representatives or any other person of any documentation or other information by a Purchaser Group

Company or any of their respective agents, Affiliates, officers, directors, employees or representatives or any other person, including with respect to (A) any one or more of the foregoing, (B) the accuracy or completeness of any of the information provided or made available to the Seller or any of its respective agents, representatives, lenders or Affiliates prior to the execution of this Agreement or (C) any projections, forecasts, estimates, plans or budgets of future revenues, expenses or expenditures, future results of operations (or any component thereof), future cash flows (or any component thereof) or future financial condition (or any component thereof) of the Purchaser Group Companies heretofore or hereafter delivered to or made available to the Seller or any of its respective agents, representatives, lenders or Affiliates; and

- (v) it has not been induced by or relied upon any representation, warranty or other statement, express or implied, made by either a Purchaser Group Company or any of their respective agents, Affiliates, officers, directors, employees or representatives or any other person, except as expressly set forth in Schedule 4 (as qualified by the Purchaser Disclosure Material).

9.3 Scope of Warranties

Each Warranty is given as at the date of this Agreement and as at Completion, except where a Warranty is expressed to be given as at a specific date, in which case that Warranty is given as at that date only.

9.4 Interpretation of Warranties

Each Warranty is to be construed separately and the meaning of each Warranty is in no way limited by reference to any other covenant, warranty or representation in this Agreement.

9.5 Duration of Warranties and Covenants

Subject to clause 9.6:

- (a) each Warranty remains in full force and effect until the relevant Warranty Expiry Date, at which point it expires; and
- (b) all covenants of the Seller and the Purchaser contained in this Agreement remain in full force and effect until the relevant Covenant Expiry Date, at which point it expires.

Notwithstanding the foregoing, except as set forth in clause 17.3, no Seller Warranty, Purchaser Warranty, covenant or agreement made in this Agreement shall survive any termination of this Agreement.

9.6 Continuation of warranties or covenants

If a Party gives the other Party notice of a Claim under clause 9.19(a) for a breach of a Warranty or covenant contained in this Agreement, that Warranty or covenant does not cease to have force and effect on the relevant Warranty Expiry Date or Covenant Expiry Date with respect to the specific breach underlying such Claim but will continue in full force and effect solely to the extent required to enable the other Party to prosecute a Claim for such breach of that Warranty or covenant.

9.7 No Claims after Warranty Expiry Date or Covenant Expiry Date

No Claim may be brought for breach of a Warranty or covenant contained in this Agreement after the relevant Warranty Expiry Date or Covenant Expiry Date, and any Claim that is brought after the relevant Warranty Expiry Date or Covenant Expiry Date will, for the purposes of this Agreement, be deemed to be out of time, invalid and unenforceable.

9.8 Seller indemnity

- (a) From and after Completion, subject to the provisions of this clause 9, the Seller indemnifies the Purchaser against any Liability incurred by the Purchaser or a Target Group Company arising from any breach of a Seller Warranty or any breach by the Seller of any of its covenants contained in this Agreement.
- (b) The Purchaser acknowledges that, for the purposes of this indemnity, in the case of any such Liability incurred by a Target Group Company, the amount against which the Purchaser is indemnified under this clause will be taken to be equal to the amount of the Target Group Company's Liability, subject to the qualifications and limitations on the Seller's indemnification obligation and liability under this Agreement.

9.9 Purchaser indemnity

- (a) From and after Completion, subject to the provisions of this clause 9, the Purchaser indemnifies the Seller against any Liability incurred by the Seller arising from any breach of a Purchaser Warranty or any breach by the Purchaser of any of its covenants contained in this Agreement.
- (b) The Seller acknowledges that, for the purposes of this indemnity, in the case of any such Liability incurred by a Purchaser Group Company, the amount against which the Seller is indemnified under this clause will be the amount determined in accordance with clause 9.15, subject to the qualifications and limitations on the Purchaser's indemnification obligation and liability under this Agreement.

9.10 Continuing obligation

Each indemnity in clause 9.8 and clause 9.9 is a continuing obligation, but is subject to the qualifications and limitations set out in this clause 9.

9.11 Remedy for breach of a Seller Warranty or covenant

From and after Completion, except in the case where Purchaser seeks to obtain specific performance pursuant to clause 28 and in the case of Fraud, the Purchaser's sole and exclusive remedy against Seller or any of its Affiliates or representatives for any Claim relating to the transactions contemplated by this Agreement (whether at law, in equity, in contract, in tort or otherwise), including for breach of any Seller Warranty or covenant by the Seller contained in this Agreement or with respect to any Claim in respect of the indemnities of the Seller under clauses 6.5(e) or 10.4, but excluding a Claim for breach of clause 4.2, 4.6, 6.4, 7.2(b) or 8.5, a restraint under clause 12 or for breach of the obligations under clause 13 (in each case for which the Purchaser is entitled to make a claim for the amount required to be paid under that clause or damages in the ordinary course, as applicable) is to recover Consideration Shares (or the proceeds in respect thereof) to the extent set forth in clause 5.

9.12 Remedy for breach of a Purchaser Warranty or covenant

- (a) From and after Completion, except in the case where a party seeks to obtain specific performance pursuant to clause 28 or in the case of Fraud, the Seller's sole and exclusive remedy for any Claim against the Purchaser or any of its Affiliates or representatives relating to the transactions contemplated by this Agreement (whether at law, in equity, in contract, in tort or otherwise), including for breach of a Purchaser Warranty or covenant by the Purchaser contained in this agreement or with respect to any Claim in respect of the indemnity of the Purchaser under clause 6.5(d), is the issue (subject to clause 9.12(b)) of further Purchaser Shares to the Seller, having a market value (based on the Market VWAP Price during the 30-trading day period immediately preceding the date on which the related Claim is Determined in favour of the Seller) equal to the amount of the related Claims in respect of which a Determination in favour of the Seller has been made.
- (b) Any issue of further Purchaser Shares in satisfaction of the breach of a Purchaser Warranty or covenant by the Purchaser contained in this agreement or with respect to any Claim in respect of the indemnity of the Purchaser under clause 6.5(d):
 - (i) must be made, to the extent applicable, under and in accordance with either item 9 of section 611 of the Corporations Act (**3% Creep Exception**) or item 7 of section 611 of the Corporations Act (**Shareholder Approval Exception**). If the market value (determined under clause 9.12(a)) of the Purchaser Shares issued to the Seller in any six (6) month period under the 3% Creep Exception is not sufficient to satisfy the aggregate amount of the Claims in respect of which a Determination in favour of the Seller has been made arising out of the indemnities under clauses 6.5(d) and/or 9.9 at such time, the Purchaser's liability (to the extent of any shortfall) with respect to those Claims will carry over to the earlier of (x) future six (6) month periods as required to satisfy those Claims in full through the issue of Purchaser Shares under the 3% Creep Exception and (y) the date on which the issue of the Purchaser Shares in full satisfaction of the Purchaser's liability with respect to those Claims is approved under the Shareholder Approval Exception; and
 - (ii) is subject to the Purchaser having sufficient placement or issue capacity under ASX Listing Rule 7.1. If the Purchaser does not have sufficient placement or issue capacity under ASX Listing Rule 7.1 at the relevant time, it must seek shareholder approval at its next scheduled general meeting (provided that the Seller's Claim is Determined at least five Business Days before the notice of meeting in respect of that general meeting is sent to shareholders), for the issue of the further Purchaser Shares to the Seller under ASX Listing Rule 7.1.
- (c) The Purchaser shall use reasonable best efforts to ensure that the issue of Purchaser Shares to the Seller in full satisfaction of Purchaser's liability with respect to Determined Claims in favour of the Seller arising out of the indemnities under clauses 6.5(d) and/or 9.9 is completed as soon as reasonably practicable, including without limitation by taking the following actions:
 - (i) for a period of two years following the date of this Agreement, except where it has received consent from the Seller to do otherwise, the Purchaser shall, to the greatest extent possible, maintain a placement or issue capacity under ASX Listing Rule 7.1 equal to the greater of:

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- (A) 3% of the Purchaser Shares issued at such time; and
 - (B) an amount sufficient to issue Purchaser Shares in full satisfaction of the Purchaser's potential liability under any outstanding Claim(s) made by the Seller in good faith arising out of the indemnities under clauses 6.5(d) and/or 9.9 which have not then been Determined and paid through the issue of Purchaser Shares;
- (ii) in addition, if at, or any time following, the end of the two year period referred to in paragraph (i) above, the Seller has in good faith given written notice to the Purchaser of any Claims against the Purchaser arising out of the indemnities under clauses 6.5(d) and/or 9.9 for which a Determination has not yet been made (**Unresolved Seller Claims**), until and including the earlier of the date that (x) the Unresolved Seller Claim(s) have been Determined in favour the Purchaser or (y) the Unresolved Seller Claim(s) have been Determined in favour of the Seller and the issue of the Purchaser Shares in full satisfaction of the Purchaser's liability with respect to such Determined Claims in favour of the Seller has been completed, as applicable, the Purchaser shall, to the greatest extent possible, maintain a placement or issue capacity under ASX Listing Rule 7.1 sufficient to issue Purchaser Shares in full satisfaction of the Purchaser's potential liability under such Claim(s); and
- (iii) if, without limiting the foregoing, the Purchaser does not at any time have sufficient placement or issue capacity under ASX Listing Rule 7.1 to issue enough Purchaser Shares to satisfy all Determined Claims in favour of the Seller that are then outstanding, the Purchaser shall seek all necessary shareholder approvals at its next meeting of shareholders (provided that the Seller's Claim(s) are Determined at least five Business Days before the notice of meeting in respect of that general meeting is sent to shareholders) for the issue of such Purchaser Shares in full and include in the notice of meeting and explanatory memorandum for such general meeting a recommendation from the Board that the shareholders vote in favour of all resolutions in connection with such issue.
- (d) If at any time any Purchaser Shares in satisfaction of a Determined Claim in favour of the Seller arising out of the indemnities under clauses 6.5(d) and/or 9.9 have not been issued to the Seller in full as a result of the operation of the Corporations Act or the ASX Listing Rules, and the Purchaser or its Board declares a dividend on the Purchaser Shares, the Purchaser shall pay to the Seller an amount in cash equal to the amount of dividends that the Purchaser would otherwise be entitled to receive in respect of such non-issued Purchaser Shares had such Purchaser Shares been issued at the time of declaration of such dividends (together with a gross up, if any, as is necessary to ensure receipt by the Seller of a cash payment amount (net of taxes) that is equal to the amount (net of taxes) which the Seller would have received but for the limitations set forth in clause 9.12(b)).

9.13 Thresholds for Claims for breach

Despite any other provision in this Agreement, a Party is not liable for any breach of a Warranty or covenant under this Agreement and is not entitled to recover under the indemnities under clauses 6.5(d), 6.5(e), 9.8, 9.9 and 10.4 (as applicable) unless:

- (a) the other Party has given notice under clause 9.19(a);

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- (b) in the case of any breach of a Warranty, the Liability of the Party for breach of the Warranty (including for a breach or series of substantially similar and related breaches of a single Warranty, or a single matter giving rise to a breach or breaches of more than one Warranty) is AU\$400,000;
 - (c) the aggregate Liability of the Party for breaches of Warranties that satisfy the applicable threshold in paragraph (b) above is at least equal to AU\$4,000,000.

Once the amount of the Liabilities for breach of Warranties exceeds the applicable aggregate Liability threshold amount, then the Purchaser or the Seller (as the case may be) may (subject to this clause, clause 9.14 and clause 9.15) claim for all of the Liabilities suffered by the Purchaser or the Seller (as applicable) for breaches of Warranties that satisfy the threshold in paragraph (b) above.

9.14 Maximum Liability

- (a) In addition to any other provision of this Agreement, the Seller's maximum aggregate Liability for:
 - (i) breaches of General Seller Warranties and covenants under this Agreement (other than clauses 4.2, 4.6, 6.4, 7.2(b) and 8.5, a restraint under clause 12 and the obligations under clause 13), including the related indemnity in clause 9.8, is the value of, and recourse solely to, the Holdback Shares; and
 - (ii) all breaches of Seller Warranties (being, for the avoidance of doubt, all General Seller Warranties and all Fundamental Seller Warranties) and under the related indemnity in clause 9.8 and the indemnities given under clauses 6.5(e) and 10.4 is limited to recourse to the Consideration Shares (or the proceeds in respect thereof) as provided in this Agreement.
- (b) In addition to any other provision of this Agreement, and subject to clause 9.15, the Purchaser's maximum aggregate Liability for:
 - (i) breaches of General Purchaser Warranties and covenants under this Agreement (including the related indemnity in clause 9.9) is the value of the Holdback Shares (based on a price per Purchaser Share of A\$0.85); and
 - (ii) all breaches of Purchaser Warranties (being, for the avoidance of doubt, all General Purchaser Warranties and all Fundamental Purchaser Warranties) and under the related indemnities under clauses 6.5(d) and 9.9 is the value of the Consideration Shares (based on a price per Purchaser Share of A\$0.85).

9.15 Calculation of the Purchaser's Liability

The amount of the Purchaser's Liability with respect to any breach of a Purchaser Warranty (being, for the avoidance of doubt, all General Purchaser Warranties and all Fundamental Purchaser Warranties) or under the related indemnities in clauses 6.5(d) and 9.9, to the extent that the breach results in Liability to the Seller solely by reason of a Liability of the Purchaser and/or the Purchaser Group (i.e., any such Liability that only indirectly affects Seller by virtue of Seller's ownership of equity in the Purchaser) shall be calculated as:

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- (a) (the dollar amount of the applicable Liability of the Purchaser and/or the Purchaser Group; multiplied by
 - (b) (the proportion determined by dividing:
 - (i) the number of Consideration Shares (less the number (as at the date of determination) of Purchaser Shares (if any) by which the Holdback Shares were reduced under clause 5.1 and any Consideration Shares the Seller has been required to sell or apply the Net Proceeds of under clause 5.4) by
 - (ii) the total number of Purchaser Shares at Completion (determined as if all of the Second Milestone Shares had been issued and all in-the-money options over Purchaser Shares had been exercised); multiplied by
 - (c) (x) one plus (y) the fraction obtained by dividing clause 9.15(b)(i) above by clause 9.15(b)(ii).

9.16 Other limitations on indemnity

The amount of any Liabilities indemnifiable pursuant to clauses 6.5(d), 6.5(e), 9.8, 9.9 and 10.4 shall be determined net of any amounts recovered by the Purchaser or the Seller (as applicable) under Insurance Policies or other collateral sources (such as contractual indemnities of any person which are contained outside of this Agreement) with respect to such Liabilities, in each case, net of costs of collection and any increase to premiums resulting from making any claim thereunder. In any case where a Party recovers, under Insurance Policies or from other collateral sources, any amount in respect of a matter for which such Party was indemnified pursuant this Agreement, in each case to the extent not already taken into account pursuant to clause 9.16, such Party shall promptly pay over to the indemnifying Party the amount so recovered (after deducting therefrom the amount of the expenses incurred by such Party in procuring such recovery), but not in excess of the sum of (a) any amount previously so paid to or on behalf of such Party in respect of such matter and (ii) any amount expended by the indemnifying Party in pursuing or defending any claim arising out of such matter.

9.17 Qualifications to the Warranties

Despite any other provision in this Agreement, a Party may not bring a Claim, and the other Party is not liable, for any breach of a Warranty to the extent that the breach is based on any fact, matter or circumstance:

- (a) provided for in this Agreement;
- (b) that was either:
 - (i) properly disclosed to the Party in the Target Disclosure Material (with respect to a disclosure by the Seller) or the Purchaser Disclosure Material (with respect to a disclosure by the Purchaser); or
 - (ii) otherwise disclosed in writing to the other Party not less than two (2) Business Days before Completion pursuant to clause 6.7, provided that the event or events that gave rise to the disclosure must have occurred after the date of this Agreement; or
- (c) to the extent that the Claim arises or is increased as a result of any change in Accounting Standards after Completion.

9.18 Each Party's undertakings

- (a) Each Party agrees that the Warranties given by the other Party and any other warranties or representations made by that Party under or in relation to this Agreement are the only representations and warranties of that Party that the first Party may rely on; and
- (b) at the time of entering into this Agreement, neither the Party nor (so far as that Party is aware) any of the Party's Authorised Persons are in possession of any information that the Party knows to be inconsistent with, or to constitute a breach of any of the provisions of this Agreement, including the other Party's Warranties.

9.19 Procedure for Claims for breaches of Warranties or covenants after Completion

If, after Completion but on or before the relevant Warranty Expiry Date or Covenant Expiry Date or the EGM Notice of Meeting Date, a Party becomes aware of a Claim or potential Claim for breach of any Warranty or covenant given by the other Party or in respect of the indemnities given by the other Party in clauses 6.5(d), 6.5(e) or 10.4 (as applicable), the first Party must:

- (a) give prompt notice to the other Party of:
 - (i) all relevant details of any event, matter, act or omission that the first Party relies on as giving rise to the Claim;
 - (ii) the Warranty or covenant that is the subject of the Claim; and
 - (iii) all relevant details of the Claim, including an estimate of the amount of the Claim; and
- (b) use reasonable endeavours to mitigate any Liability that may arise from the Claim, including by making a claim under an Insurance Policy or other collateral sources (such as contractual indemnities of any person which are contained outside of this Agreement) to recover the Liability if the Liability is covered under an Insurance Policy or other collateral source and it would be commercially reasonable to do so (without giving effect to the indemnity hereunder).

9.20 Procedure for Third Party Claims

- (a) If an indemnified Party becomes aware of a Third Party Claim, the Party must give notice to the indemnifying Party of all relevant details of the Third Party Claim, including:
 - (i) any event, matter, act or omission that the third party relies on as giving rise to the Third Party Claim; and
 - (ii) an estimate of the amount of the Third Party Claim,

within five (5) Business Days of it becoming aware of such Third Party Claim. Failure by the indemnified Party to give such notice will not relieve the indemnifying Party of its obligations to indemnify the indemnified Party with respect to such Third Party Claim, other than to the extent that the delay in notifying the indemnifying Party of the Third Party Claim results in an increase in the amount of the Claim or

Liability, in which case the indemnifying Party will be so relieved only to the extent of such increase.

- (b) In relation to any Third Party Claim, the indemnified Party must:
 - (i) use reasonable endeavours to mitigate any Liability that may arise from the Third Party Claim, including by making a claim under an Insurance Policy or other collateral sources (such as contractual indemnities of any person which are contained outside of this Agreement) to recover the Liability if the Liability is covered under an Insurance Policy or other collateral source and it would be commercially reasonable to do so (without giving effect to the indemnity hereunder);
 - (ii) not make any admission of liability or enter into any agreement, settlement or compromise with any person about anything without obtaining prior approval of the indemnifying Party; and
 - (iii) at the indemnifying Party's expense, take all action that the indemnifying Party, acting reasonably, directs to avoid, remedy or mitigate the breach, including bringing legal proceedings and disputing, defending or appealing any Third Party Claim.
- (c) The indemnifying Party will be entitled, by notice to the indemnified Party, to assume control of the defence of a Third Party Claim with counsel reasonably satisfactory to the indemnified Party; provided, however, that:
 - (i) the indemnifying Party must assume control of the defence within 30 days after receiving notice from the indemnified Party of the Third Party Claim;
 - (ii) the indemnified Party will be entitled to participate in the defence of such Third Party Claim and to employ legal counsel at its own expense to assist in the handling of such Claim; and
 - (iii) the indemnifying Party may not consent to the entry of any judgement or enter into any settlement that is not for a monetary amount only or that does not include as an unconditional term the release of the indemnified Party from any liability in respect of the Third Party Claim.

10 Tax matters

10.1 Preparation of Pre-Completion Returns by Seller

The Seller will be responsible for:

- (a) the preparation and filing of all Pre-Completion Returns that are due on or before Completion;
- (b) preparation and filing of any Other Returns that are due on or before Completion; and
- (c) all costs of preparing the Pre-Completion Returns and any Other Returns referred to in clauses 10.1(a) and 10.1(b).

10.2 Obligations relating to Pre-Completion Returns and Other Returns

- (a) The Purchaser must:
 - (i) provide all information and assistance that may be reasonably requested by the Seller or the Seller's Authorised Persons in connection with the preparation and filing of the Pre-Completion Returns and any Other Returns described in clause 10.1;
 - (ii) execute all documents and give or make all notices and declarations as the Seller may reasonably require in connection with the preparation and filing of the Pre-Completion Returns and any Other Returns described in clause 10.1; and
 - (iii) permit the Seller and the Seller's Authorised Persons to have access to and take extracts or copies from any of the Records for the purpose of preparing the Pre-Completion Returns and any Other Returns described in clause 10.1.
- (b) The Purchaser must not, and must ensure that a Target Group Company does not, unless the Seller gives its prior consent, with that consent not to be unreasonably withheld or delayed:
 - (i) file any Pre-Completion Return, Overlap Return or Other Return with the relevant Regulatory Authority;
 - (ii) amend, lodge any objection to or appeal any Pre-Completion Return, Overlap Return or Other Return; or
 - (iii) apply to the relevant Regulatory Authority for any opinion, ruling or other determination (including any Tax election or change in method of accounting) in relation to any Pre-Completion Return, Overlap Return or Other Return or to any event or omission on or before Completion.
- (c) The Seller must not file any Pre-Completion Return or Other Return or enter into any correspondence with the relevant Regulatory Authority relating to a Tax for which Purchaser is responsible under this Agreement without first providing a copy of the relevant return or correspondence to the Purchaser, which the Seller must do at least ten (10) Business days before filing the relevant return or entering into the relevant correspondence.
- (d) The Seller must consider in good faith and take into account any response or Information from the Purchaser in preparing the relevant return or correspondence described in clause 10.2(c) to the greatest practical extent, but need not do so to the extent that it would cause the Seller to suffer detriment.

10.3 Preparation of Returns by Purchaser

- (a) The Purchaser will:
 - (i) with due care, skill and diligence, prepare and file all Overlap Returns, Pre-Completion Returns (other than those described in clause 10.1) and Other Returns (other than those described in clause 10.1); and
 - (ii) bear all costs of preparing such returns.

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- (b) The Seller must:
- (i) provide all information and assistance that may be reasonably requested by the Purchaser or the Purchaser's Authorised Persons in connection with the preparation and filing of the returns described in clause 10.3(a);
 - (ii) execute all documents and give or make all notices and declarations as the Purchaser may reasonably require in connection with the preparation and filing of the returns described in clause 10.3(a); and
 - (iii) permit the Purchaser and the Purchaser's Authorised Persons to have access to and take extracts or copies from any of the Records for the purpose of preparing the returns described in clause 10.3(a).
- (c) The Purchaser must not and the Purchaser must ensure that a Target Group Company does not, file any return described in clause 10.3(a) or enter into any correspondence with the relevant Regulatory Authority relating to a period on or before Completion in relation to the Target Group Company without first providing a copy of the relevant return or correspondence to the Seller, which the Purchaser must do at least ten (10) Business Days before filing the relevant return or entering into the relevant correspondence.
- (d) The Purchaser must cause the relevant Target Group Company to consider in good faith and take into account any response or Information from the Seller in making the relevant return or correspondence to the greatest practical extent, but need not do so to the extent that it would cause the Target Group Company to suffer detriment.

10.4 Seller's indemnity

- (a) Subject to clause 10.5, the Seller indemnifies the Purchaser and the Target Group against an amount equal to the income Tax payable by any Target Group Company (or, if the Target Group Company is part of a tax consolidated group, the head company of that group, to the extent of any income Taxes arising from any Target Group Company) (Taxpayer) under a Tax assessment related to any Target Group Company or the Target Business to the extent that such Tax:
- (i) is imposed on, allocated or attributable to or incurred or payable by the Taxpayer for any Tax period ending on or before Completion and, with respect to a Tax period that begins on or before Completion and ends thereafter, the portion of such Tax period ending on Completion; or
 - (ii) arises because of a Tax obligation of Seller or any of its Affiliates (other than any Target Group Company).
- (b) The Purchaser holds the benefit of all indemnities of the Target Group set out in clause 10.4(a) above and will be entitled to recover on behalf of any Target Group Company any amounts payable by the Seller under those indemnities.

10.5 Exceptions to Tax indemnity

The indemnity in clause 10.4 does not apply to an amount of Tax to the extent that:

- (a) the Taxpayer's claim under the indemnity in clause 10.4 is made outside of the Warranty Expiry Period applicable to the Seller Tax Warranties;

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- (b) the Tax would not have arisen or would have been reduced or eliminated but for an action, failure or omission on the part of the relevant Target Group Company or the Purchaser after Completion, including any action, failure or omission by the Target Group Company or the Purchaser to supply information to the Seller in a timely manner or to comply with its obligations under any Tax law in a timely manner;
 - (c) the Taxpayer's claim under the indemnity in clause 10.4 is offset by a Tax savings attributable to the subject matter of that claim;
 - (d) the Taxpayer's claim under the indemnity in clause 10.4 is offset by an amount of money received from the relevant Regulatory Authority by way of a refund where a disputed Tax assessment is resolved in favour of the Taxpayer;
 - (e) the Taxpayer's claim under the indemnity in clause 10.4 arises solely because of the unavailability after Completion of a Tax loss, deduction or other Tax asset; or
 - (f) the Tax Liability has been fully provided for in the Audited Financial Statements.

10.6 Continuing indemnity

The indemnity in clause 10.4 is a continuing obligation until the date that is the second (2nd) anniversary of the Completion Date. If the Purchaser gives the Seller notice of a Claim under clause 10.4 prior to the second (2nd) anniversary of the Completion Date, the indemnity will continue in full force and effect to the extent required to enable the Purchaser to prosecute such Claim.

10.7 Tax audits

If the Taxpayer is notified or becomes aware of a Tax audit or proposed Tax audit of any Target Group Company by relevant Regulatory Authority after Completion that relates to any event or omission on or before Completion or any period before Completion, the Purchaser must:

- (a) give written notice to the Seller of the Tax audit within ten (10) Business Days of the Taxpayer receiving notice of or becoming aware of the Tax audit;
- (b) not to settle or compromise any issue without the consent of the Seller, which consent shall not be unreasonably withheld; and
- (c) ensure that the Seller or the Seller's Authorised Persons are entitled to participate in any way in the conduct of the Tax audit.

10.8 Confidentiality

Any information obtained by the Seller or any of the Seller's Authorised Persons after Completion under this clause 10 is taken to be Confidential Information for the purposes of clause 13.

11 Expert determination

11.1 Appointing an Expert

- (a) If a dispute in relation to the Net Payables or the Stock Value is referred by a Party under clause 8.1(e)(iii) for resolution by an Expert, the dispute must be resolved through Expert determination under this clause 11; and the Parties must appoint a person to act as Expert. If the Parties are unable to agree on who should be appointed within ten (10) Business Days after the date referred to above that the dispute is referred to an Expert for resolution, either Party may promptly request the Resolution Institute of Victoria to nominate a suitable independent accountant with at least ten years' experience from a chartered accounting firm of international repute to be the Expert.
- (b) The Parties agree that the Expert must be an independent person with appropriate expertise in the matter that is the subject of the dispute and that an independent person means a person who has not had any business dealings with any Target Group Company or Purchaser Group Company or any Affiliate of a Target Group Company or Purchaser Group Company in the three years before the date of appointment.

11.2 Referring a disagreement to the Expert

Within five (5) Business Days after the Expert has been appointed, each Party must:

- (a) give a written submission (**Expert Submission**) to the Expert:
 - (i) setting out the matters about which the Expert is requested to make a decision and the Party's position on the matters in dispute (including the bases for that position);
 - (ii) setting out the estimated amount for each item that is the subject of the disagreement;
 - (iii) where appropriate, requiring the Expert to make a decision on the disagreement applying the Accounting Policies and the Accounting Standards; and
- (b) give the other Party a copy of its Expert Submission.

11.3 Parties to assist the Expert

If necessary, the Parties:

- (a) must give the Expert full access to their books, records and working papers and any information the Expert reasonably requests to make a decision; and
- (b) may make further submissions, to the extent requested by the Expert, about the matters the subject of the disagreement.

11.4 Expert's decision and costs

The Expert must make its decision as soon as practicable and, in any event, within 20 Business Days after it receives the Expert Submissions from each Party and deliver a

report to the Parties setting out its opinion as to the disputed matters and the impact on the estimated amount for each item that is the subject of the disagreement. The Parties will share the fees and expenses of the Expert equally. The Expert's decision will be final and binding on the Parties, in the absence of manifest error.

11.5 Expert's role

In making a decision, the Expert acts as an expert and not as an arbitrator.

11.6 Survival of clause

This clause 11 survives the termination of this Agreement.

12 Restraint of trade

12.1 Restraint during Restraint Period

Subject to clause 12.5, during the Restraint Period, the Seller must not and must ensure that each of its Affiliates does not, directly or indirectly, do any of the following without the prior written consent of the Purchaser:

- (a) Engage in a business or project that competes with or is substantially similar to the Target Business in a Restraint Area (a **Related Business Opportunity**) without (in the case of an ROFR Related Business Opportunity) complying with clause 12.5(a);
- (b) solicit or persuade or attempt to solicit or persuade any person who the Seller or its current shareholder is at the time aware is a customer of the Target Business to stop or reduce its business with the Target Business; or
- (c) induce or persuade or attempt to induce or persuade any senior management employee of the Purchaser or its Controlled Affiliates who is involved in the Target Business to cease his or her employment with the Purchaser or its Controlled Affiliates.

12.2 Reasonable restraints

The Seller agrees that the restraints in this clause 12 are reasonable in its scope and duration and goes no further than is necessary to protect the Purchaser and the Target Business.

12.3 Construction

Each part of the restraint in this clause 12 constitutes a separate restraint that is severable from the other restraints. If any part of the restraint is judged to be void, voidable, unenforceable or illegal by a court or tribunal because it goes beyond what is reasonable to protect the Purchaser and the Target Business or for any other reason, then that part will be severed and the other restraints remain in force.

12.4 Relief

In addition to any other remedies available, the Purchaser will be entitled to seek an injunction against the Seller or any of the Seller's Affiliates as a remedy for any potential or

actual breach of this clause 12 and the Seller and its Affiliates will not raise any objection to this on the basis that damages are an adequate remedy.

12.5 Exceptions

- (a) If during the Restraint Period, the Seller, either directly or through any of its Affiliates, wishes to Engage in any single or series of related projects or business opportunities (as opposed to ongoing operating business enterprises that have a broader focus than one-off or a series of related projects or business opportunities) that competes with or is substantially similar to the Target Business in a Restraint Area (a **ROFR Related Business Opportunity**) (other than Engagement in a Passive Investment or the Red Dead Project), the Seller must first offer to the Purchaser (in writing) the right to Engage in the ROFR Related Business Opportunity (**Right of First Refusal**). If, within 30 days after receiving the Seller's offer, the Purchaser does not provide notice in writing to the Seller that it accepts the Right of First Refusal (or does provide such notice, but does not reasonably and in good faith promptly and diligently pursue such ROFR Related Business Opportunity), the Seller thereafter can then Engage in that ROFR Related Business Opportunity without committing a breach of clause 12.1(a).
- (b) Clause 12.1(a) does not apply to, and are not breached by, the Seller or any of the Seller's Affiliates to the extent to which that person:
 - (i) is acting only in his, her or its professional capacity as a liquidator, administrator, receiver or other form of external administrator of a body corporate or business; or
 - (ii) is acting only in his, her or its capacity as a professional adviser to the owner or operator of a business; or
 - (iii) Engages in a Passive Investment.
- (c) Clauses 12.1(b) and 12.1(c) do not apply to, and are not breached by, the Seller or any of the Seller's Affiliates solely by reason of that person's Engagement in a Passive Investment.
- (d) Clauses 12.1(a) and 12.1(b) do not apply to, and are not breached by, the Seller or any of the Seller's Affiliates to the extent to which such activities arise from or are in connection with the Red Dead Project.
- (e) Clause 12.1(c) does not apply to, and is not breached by, the Seller or any of the Seller's Affiliates:
 - (i) engaging in general solicitations or any hiring resulting from such general solicitations of employment not specifically directed at employees of the Purchaser or its Controlled Affiliates;
 - (ii) soliciting or hiring any employee who has been terminated by the Purchaser or its Controlled Affiliates at the time of solicitation; or
 - (iii) hiring any person who approaches the Seller or any of its Affiliates on his or her own initiative without any direct or indirect encouragement from the Seller or any of its Affiliates.

13 Confidentiality

13.1 Obligation of confidence

The Receiving Party must:

- (a) maintain the confidential nature of the Confidential Information;
- (b) only disclose the Confidential Information;
 - (i) to an Authorised Person where the Authorised Person has a need to know and after the Receiving Party has made the Authorised Person fully aware of the confidential nature of the Confidential Information;
 - (ii) with the prior consent of the Disclosing Party; or
 - (iii) as required by law provided that the Receiving Party must give the Disclosing Party reasonable prior notice of the proposed disclosure; and
- (c) not use the Confidential Information for the Receiving Party's own or another's advantage, or to the competitive disadvantage of the Disclosing Party.

13.2 Security and control

The Receiving Party must take all reasonable, proper and effective precautions to maintain the confidential nature of the Confidential Information.

13.3 Value of Confidential Information

The Receiving Party agrees that:

- (a) the Confidential Information constitutes valuable and proprietary Information of the Disclosing Party;
- (b) any breach of this clause 13 will diminish the value of the Disclosing Party's business or assets; and
- (c) in addition to any other remedies available at law or in equity, the Disclosing Party may be entitled to specific performance or an injunction, as appropriate, against the Receiving Party as a remedy for any potential, suspected or actual breach of this clause 13 and, if necessary, to require it to return the Documentation to the Disclosing Party.

13.4 Return and destruction

If requested to do so by the Disclosing Party, the Receiving Party must promptly, at its own expense:

- (a) return to the Disclosing Party or destroy, at the Receiving Party's election, all Documentation to the extent such Documentation contains Confidential Information, whether prepared by the Receiving Party or for the Receiving Party as is in the possession, power or control of the Receiving Party or the Receiving Party's Authorised Persons; and

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- (b) provide to the Disclosing Party a certification duly executed by the Receiving Party confirming that the Receiving Party has complied with all of its obligations under this clause 13.4.

13.5 No release

Return or destruction of Documentation and Confidential Information does not release the Receiving Party from its obligations of confidence under this clause 13.

13.6 Use and disclosure of Business related Confidential Information after Completion

On and from Completion, all Confidential Information relating to the Target Business or the Company will be deemed to be the Confidential Information of the Purchaser for the purposes of this Agreement. The provisions of this Agreement will then apply to that Confidential Information as though the Confidential Information were disclosed by the Purchaser to the Seller.

13.7 Termination

The obligations in this clause 13 shall terminate on the second (2nd) anniversary of the Completion Date.

14 Publicity and public announcements

Neither the Purchaser nor the Seller may make or authorise the making of any press release or other public announcement relating to the negotiations of the Parties, the subject matter of this Agreement or any of the transactions contemplated by this Agreement unless:

- (a) it has the prior approval of the other Party; or
- (b) in the case of the EGM Notice of Meeting, such information is reasonably necessary to be disclosed in the EGM Notice of Meeting and the Seller has approved all statements made about the Seller and the Target Group in that document; or
- (c) in the case of any other release or announcement that is required to be made by Law or the rules of a securities exchange, the Party making the release or announcement must give the other Party reasonable notice (to the extent practicable) and a reasonable opportunity to comment on the contents of the release or announcement before its release.

15 Method of payment

Any payment to be made under this Agreement must be made by one of the following methods:

- (a) a bank cheque;

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- (b) by credit of cleared funds to the bank account specified by the payee at least two (2) Business Days before the anticipated date of the payment;
 - (c) wire transfer of immediately available funds; or
 - (d) any other lawful form of payment that the Parties agree in writing.

16 Costs

16.1 Purchaser to pay value-added and other similar Taxes

The Purchaser must pay all transfer, documentary, sales, use, registration, value-added and other similar Taxes incurred in connection with the execution of, or Completion under, this Agreement (including penalties, interest and fines) but excluding, for the avoidance of any doubt, any income or capital gains Tax and similar Taxes.

16.2 Costs

- (a) Except where clause 16.1 applies, each Party must pay its own costs of negotiating, preparing and executing this Agreement and any Ancillary Agreements and performing its obligations under this Agreement and such Ancillary Agreements (**Transaction Costs**).
- (b) No Transaction Costs of the Seller are to be borne in any way by the Target Group.

17 Termination

17.1 Purchaser's right to terminate before Completion

The Purchaser may terminate this Agreement by notice to the Seller at any time before Completion if:

- (a) the Seller commits a breach of a representation or warranty or any covenant or agreement contained in this Agreement in each case in a manner that would result in a failure of the Conditions Precedent set forth in clauses 3.1(j) and 3.1(l) and the breach is incapable of remedy or, where the breach is capable of remedy, fails to remedy that breach prior to the earlier of (i) the Business Day prior to the End Date or (ii) the date that is 30 days of notice from the Purchaser requesting that the Seller do so; provided that the Purchaser shall not have the right to terminate this Agreement pursuant to this clause 17.1(a) if Purchaser is then in material breach of its representations, warranties or covenants contained in this Agreement;
- (b) the Purchaser exercises its rights under clause 3.6;
- (c) the Seller gives notice of a Material Adverse Change in respect of the the Target Group or the Target Business (taken as a whole); or
- (d) the Seller is subject to an Insolvency Event.

17.2 Seller's right to terminate before Completion

The Seller may terminate this Agreement by notice to the Purchaser at any time before Completion if:

- (a) the Purchaser commits a breach of a representation or warranty or any covenant or agreement contained in this Agreement in each case in a manner that would result in a failure of the Conditions Precedent set forth in clauses 3.1(k) and 3.1(m) and the breach is incapable of remedy or, where the breach is capable of remedy, fails to remedy that breach prior to the earlier of (i) the Business Day prior to the End Date or (ii) the date that is 30 days of notice from the Seller requesting that the Purchaser do so; provided that the Purchaser shall not have the right to terminate this Agreement pursuant to this clause 17.2(b) if Seller is then in material breach of its representations, warranties or covenants contained in this Agreement;
- (b) the Seller exercises its rights under clause 3.6;
- (c) the Purchaser gives notice of a Material Adverse Change in respect of the Purchaser or the business of the Purchaser Group (taken as a whole); or
- (d) the Purchaser is subject to an Insolvency Event.

17.3 Effect of termination

If this Agreement is terminated in accordance with clauses 17.1 or 17.2, then:

- (a) each Party is released from its obligations under this Agreement and has no liability to the other Party, other than as provided in this clause 17.3;
- (b) clauses 1, 11, 12, 13, 14 and 28 shall survive such termination; and
- (c) no such termination (nor any provision of this Agreement) shall relieve any Party from any liability for any damages for Fraud or wilful breach of this Agreement prior to such termination (which shall be deemed to include any failure by the Purchaser or the Seller, as the case may be, to consummate the transactions contemplated by this Agreement if it is obligated to do so hereunder).

18 Notices

18.1 General

Unless this Agreement expressly states otherwise, a notice, consent, approval, waiver or other communication (**notice**) in connection with this Agreement must be in writing and shall be given by hand delivery, prepaid post, facsimile or electronic mail, to the recipient as follows, or to such other address, facsimile number or electronic mail address as such Party may specify to the other Party by notice from time to time.

- (a) if to the Seller, to:

RSL Management Corporation
767 Fifth Avenue, Suite 4200
New York, New York, United States of America 10153
Attention: Jacqueline Scalisi

Facsimile: +1 212 893 7737
Email: jscalisi@rslmgmt.com

with a copy (which shall not constitute notice) to:

Debevoise & Plimpton LLP
919 Third Avenue
New York, New York, United States of America 10022
Attention: Uri Herzberg
Facsimile: +1 212 521 7431
Email: uherzberg@debevoise.com

(b) if to the Purchaser, to:

Emefcy Group Limited
1233 High Street, Suite 1
Armadale, Victoria, Australia 3143
Attention: Ross Kennedy

Email: rossk@emefcy.com and ross@milvianbridge.com.au

with a copy (which shall not constitute notice) to:

Hall & Wilcox
Level 11, Rialto South Tower
525 Collins Street
Melbourne VIC, Australia 3000
Attention: Deborah Chew
Facsimile: +61 3 9670 9632
Email: deborah.chew@hallandwilcox.com.au

18.2 When effective

Notice given under clause 18.1 will be deemed to be received:

- (a) if hand delivered, at the time of delivery;
- (b) if sent by prepaid post, three (3) Business Days after the date of posting or seven (7) Business Days after the date of posting if posted to another country;
- (c) if sent by facsimile, when the sender's fax machine produces a report confirming the successful transmission of the entire notice including the relevant number of pages and the correct destination fax machine number or name of recipient; or
- (d) if sent by electronic mail, on the date of receipt (with confirmation of receipt),

unless a notice is received after 5.00 pm on a Business Day in the place of receipt or at any time on a non Business Day, in which case, that notice is deemed to have been received at 9.00 am on the next Business Day.

19 Assignment

19.1 Restriction on Assignment

A Party may not assign or novate any of its rights or obligations under this Agreement without the prior consent of each other Party, which must not be unreasonably withheld. Any attempted assignment of this Agreement not in accordance with the terms of this clause 19 shall be null and void.

19.2 Conditions on Assignment

If either Party assigns or novates its rights or obligations under this Agreement (with the consent of the other Party) then the assignment or novation is not effective unless and until the assignee covenants with the non-assigning or non-novating Party in terms reasonably acceptable to the non-assigning or non-novating Party, to be bound by all of the obligations of the assigning or novating Party under this Agreement.

20 Amendment

This Agreement may only be amended or varied by a document in writing signed by each Party.

21 Waiver

21.1 No waiver

No failure to exercise or delay in exercising any right given by or under this Agreement to a Party constitutes a waiver and the Party may still exercise that right in the future.

21.2 Waiver must be in writing

Waiver of any provision of this Agreement or a right created under it must be in writing signed by the Party giving the waiver and is only effective to the extent set out in that written waiver.

22 Counterparts

This Agreement may be signed in any number of counterparts. All signed counterparts taken together constitute one agreement.

23 Severability

If any term or provision of this Agreement or the application thereof to any person or circumstances shall be held invalid or unenforceable, the remaining terms and provisions hereof and the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and such

unenforceable or invalid term or provision hereof shall be deemed to be severed from the remainder of this Agreement.

24 No merger

On completion or termination of the transactions contemplated by this Agreement, the rights and obligations of the Parties set out in this Agreement will not merge and any provision that has not been fulfilled remains in force.

25 Further steps

Each Party agrees to promptly do all things reasonably necessary to give full effect to this Agreement and the transactions contemplated by it, including obtaining consents and signing documents.

26 Time of the essence

Time is of the essence of this Agreement.

27 Entire agreement

This Agreement and the Ancillary Agreements (when executed and delivered) constitutes the entire agreement between the Parties about the subject matter covered hereby and thereby, and supersede all previous communications, representations, understandings or agreements between the Parties on such subject matter.

28 Specific performance

- (a) The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof in any court specified in clause 30, in addition to any other remedy to which they are entitled at law or in equity. The Parties hereby waive, in any action for specific performance, the defense of adequacy of a remedy at law and the posting of any bond or other security in connection therewith.
- (b) Each Party further agrees that (i) by seeking the remedies provided for in this clause 28, a Party hereto shall not in any respect waive its right to seek any other form of relief that may be available to such Party under this Agreement or in the event that the remedies provided for in this clause 28 are not available or otherwise are not granted, and (ii) nothing set forth in this clause 28 shall require any Party hereto to institute any action for (or limit any Party's right to institute any action for) specific performance under this clause 28 prior or as a condition to exercising any termination right under clause 17, nor shall the commencement of any action pursuant to this clause 28 or anything set forth in this clause 28 restrict or limit any

such Party's right to terminate this Agreement in accordance with clause 17 or pursue any other remedies under this Agreement that may be available then or thereafter.

29 Conflicts; Privilege

- (a) The Purchaser acknowledges that Debevoise & Plimpton LLP has acted as legal counsel to the Target Group Companies, the Seller and certain of their respective Affiliates in respect of the transactions contemplated hereby, and in respect of certain other matters prior to date hereof, and agrees that Debevoise & Plimpton LLP may continue to act as legal counsel to Seller and their respective Affiliates after the Completion. Accordingly, the Purchaser agrees to cause the Target Group Companies to waive any conflicts that may arise in connection with Debevoise & Plimpton LLP representing the Seller or any Affiliate of the Seller after the Completion as such representation may relate to the Target Group Entities or the transactions contemplated hereby, and agrees to cause the Target Group Companies not to assert any such conflict or breach of any fiduciary or other duty owed to the Target Group Companies as a basis for disqualifying Debevoise & Plimpton LLP from any such representation.
- (b) The Purchaser agrees that (i) all communications involving attorney-client confidences between Seller, the Target Group Companies and their respective Affiliates, on the one hand, and Debevoise & Plimpton LLP, on the other hand, relating to the negotiation, documentation and consummation of the transactions contemplated hereby, including in respect of persons other than the Purchaser (collectively, **Privileged Communications**), shall be deemed to be attorney-client confidences that belong solely to the Seller and not to the Target Group Companies, (ii) to the extent that files of Debevoise & Plimpton LLP in respect of such engagement constitute property of the client, only the Seller (and not the Target Group Companies) shall hold such property rights, and (iii) Debevoise & Plimpton LLP shall have no duty to reveal or disclose any Privileged Communications or any such files to the Target Group Companies by reason of any attorney-client relationship between Debevoise & Plimpton LLP and the Target Group Companies or otherwise.
- (c) The Purchaser agrees (i) not to use (and to cause the Target Group Companies not to use) any Privileged Communications for the purpose of asserting, prosecuting or litigating any claims against the Seller or its Affiliates relating to this Agreement and the transactions contemplated hereby, including any claims for indemnification hereunder, and (ii) upon the request of the Seller, to return to the Seller or destroy any Privileged Communications held by the Target Group Companies after the Completion and to certify compliance with such request.
- (d) The Purchaser agrees not to disclose, and to cause each Target Group Company not to disclose, any Privileged Communications to any person following Completion, unless compelled to disclose by judicial or administrative process or by other requirements of law. Upon receipt by any Target Group Company of any subpoena, discovery or other request that calls for the production or disclosure of any Privileged Communications, the Purchaser will promptly notify the Seller of the existence of the request and provide the Seller a reasonable opportunity to assert the rights it or the Seller may have to prevent the production or disclosure of such Privileged Communications.

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- (e) This clause 29 will be irrevocable and no term of this clause 29 may be amended, waived or modified, without the prior written consent of Debevoise & Plimpton LLP, with respect to clause 29(a) hereof, or the Seller, with respect to clauses 29(b), (c) or (d) hereof.

30 Governing law and dispute resolution

30.1 Governing law

This Agreement is governed by the laws in force in Victoria, Australia.

30.2 Dispute resolution

Subject to clause 11, the parties submit to the non-exclusive jurisdiction of the courts of Victoria and the Federal Court of Australia and any courts that may hear appeals from those courts about any proceedings in connection with this agreement.

EXECUTED as an agreement.

Sale and Purchase Agreement

Schedule 1 – Company and Target Group Companies

Schedule 1 of the Seller Disclosure Letter is incorporated by reference herein.

Sale and Purchase Agreement

Schedule 2 –Seller Warranties about the Company

PART A – GENERAL SELLER WARRANTIES

1 No Insolvency Event

No Target Group Company is subject to a current, or, to the Knowledge of the Seller, threatened Insolvency Event.

2 Statutory Filings

All returns, filings and other documents required to be filed with any Regulatory Authority in the three years preceding the date of this Agreement in respect of a Target Group Company have been duly filed and are complete and accurate in all material respects.

3 Audited Financial Statements and financial information

3.1 Audited Financial Statements

The Audited Financial Statements:

- (a) are based upon the Records of the Target Group;
- (b) fairly present in all material respects the financial position, the assets and the Liabilities of the Target Group as of the Accounts Date, and the income or loss for the 12 month period then ended; and
- (c) have been prepared in accordance with U.S. GAAP applied on a consistent basis (except as may be indicated in the notes thereto).

3.2 Material change

- (a) Except as contemplated by this Agreement, no circumstance has arisen, nor has any information become available, since the Accounts Date, that if the circumstance or information had arisen or become available before the Audited Financial Statements were prepared, would have constituted a Material Adverse Change on the Audited Financial Statements, taken as a whole.
- (b) Other than as provided for in this Agreement or disclosed in the Target Disclosure Material, since the Accounts Date:
 - (i) the Target Group has not incurred Debt (other than Permitted Debt or payment terms extended by suppliers) or loaned money other than in the ordinary course of business;
 - (ii) the Target Business has been conducted in all material respects in the ordinary course of business; and

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- (iii) there has not been any creation of any agreement or liability for capital expenditure other than in accordance with the amounts budgeted to be expended by the relevant Target Group Company (which amounts were disclosed to the Purchaser prior to the date of this Agreement) in excess of \$200,000.

4 Related Party transactions

4.1 Related Party benefits

Other than as disclosed in the Target Disclosure Material, no Target Group Company has granted a material financial benefit or extended any material financial accommodation to the Seller or an Affiliate of the Seller (other than a Target Group Company) in the three years preceding the date of this Agreement.

4.2 No Liabilities from Target Group Company to Seller or Seller's Affiliates

Other than Debts or Liabilities pursuant to this Agreement or any Ancillary Agreement, there are no Debts or other Liabilities owed by, or proposed to be owed by, a Target Group Company to the Seller or an Affiliate of the Seller (other than a Target Group Company).

4.3 Corporate actions

Since the Accounts Date, except as provided for in this Agreement or where such action was taken with the prior written consent of Purchaser:

- (a) there have been no Material Adverse Changes in respect of the LLC Interests, the Target Group or the Target Business;
- (b) the Company has not disposed of, agreed to dispose of, granted an option over or granted any interest in, any of the LLC Interests or any material Target Asset outside of the ordinary course of business; and
- (c) no Target Group Company has:
 - (i) determined, declared or paid any dividends or made any other distribution of its capital, income or profits or repayments of shareholders' loans, whether of cash, specific assets or otherwise; or
 - (ii) disposed of, agreed to dispose of, granted an option over or granted any interest in any of the equity interests in it or any material Target Assets owned by it, outside of the ordinary course of business, including granting any Encumbrance over any of its material Target Assets (other than Permitted Encumbrances).

5 Financing arrangements

5.1 Debt

None of the Target Group Companies has any Debt other than Permitted Debt.

5.2 No defaults

There is no existing or unremedied material breach by any Target Group Company of, or any event of default, cancellation event, prepayment event or similar event, under any agreement or arrangement relating to Permitted Debt and the transactions contemplated by this Agreement will not trigger any such breach, event of default, cancellation event, prepayment event or similar event.

5.3 No demands

No notices or demands have been served on a Target Group Company that remain outstanding in relation to default or non-compliance under an agreement or arrangement relating to Permitted Debt.

5.4 Enforcement

No legal or enforcement action has been taken, or demand has been made, by any party to enforce any security or other arrangement relating to Permitted Debt.

6 Target Assets

6.1 Title

At Completion, with the exception of any Permitted Encumbrances, the Target Assets will be:

- (a) either legally and beneficially owned solely by the relevant Target Group Company, or used by the relevant Target Group Company under a contract or other legal right under which it is entitled to use the Target Assets on the terms and conditions of such contract or legal right; and
- (b) in the Target Group's possession or control.

6.2 No Encumbrances

At Completion there will be no Encumbrances over or affecting any of the Target Assets other than the Permitted Encumbrances.

6.3 No other assets required

There are no material assets, other than the Target Assets, that are necessary for the ordinary operation of the Target Business.

7 Plant and Equipment

7.1 Title and rights to use

At Completion, with the exception of any Permitted Encumbrances, the material Plant and Equipment of the Target Group will be:

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- (a) either legally and beneficially owned solely by the relevant Target Group Company, or used by the relevant Target Group Company under a contract or other legal right under which it is entitled to use the Target Group Plant and Equipment on the terms and conditions of such contract or legal right; and
 - (b) in the Target Group's possession or control.

7.2 No other plant or equipment

There is no material plant or equipment, other than the Target Group's Plant and Equipment, that is necessary for the ordinary operation of the Target Business.

7.3 Condition of Plant and Equipment

All of the Target Group's material Plant and Equipment is in working order and a reasonable state of repair for the purpose for which it is currently used in the ordinary and usual course of the Target Business.

7.4 No Claims

In relation to the Target Group's Plant and Equipment, there are no:

- (a) current or, to the Knowledge of the Seller, threatened material Claims by any supplier of Target Group's Plant and Equipment or by any supplier of maintenance services for the Target Group's Plant and Equipment against a Target Group Company alleging that the Target Group Company is in material breach of the terms, conditions or provisions of the particular agreement relating to such Plant and Equipment;
- (b) current or, to the Knowledge of the Seller, threatened material Claims by a Target Group Company against any supplier of Target Group's Plant and Equipment or against any supplier of maintenance services for the Target Group's Plant and Equipment alleging that the other party is in material breach of the terms, conditions or provisions of the particular agreement relating to such Plant and Equipment.

8 Intellectual Property

8.1 Ownership

- (a) A Target Group Company:
 - (i) is the sole legal and beneficial owner of, registered proprietor of, or applicant in respect of, the Target Group's Owned Intellectual Property, free and clear of all Encumbrances; and
 - (ii) has obtained the consent of any employee of a Target Group Company and, to the Knowledge of the Seller, any other person who has or may have moral rights in the Target Group's Owned Intellectual Property, if and as required by Law, so as to enable the relevant Target Group Company to fully use and enjoy the Owned Intellectual Property without infringing such moral rights.

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- (b) All of the Target Group's Intellectual Property that has been developed on behalf of a Target Group Company by another entity or person (including any person or entity retained by a Target Group Company to provide services to the Target Group Company) and that is material to the Target Business is owned by the relevant Target Group Company or is used by the relevant Target Group Company under licence.

8.2 Right to use

A Target Group Company has valid and enforceable rights to use and continue to use the Intellectual Property for which such rights are granted to such Target Group Company by an Intellectual Property Licence.

8.3 No other Intellectual Property required

The Owned Intellectual Property and the Intellectual Property for which rights are granted to the Target Group by the Intellectual Property Licences represent all of the Intellectual Property that is necessary for the ordinary operation of the Target Business.

8.4 Registrations of Owned Intellectual Property are valid

- (a) Each registration or grant of the Target Group's Owned Intellectual Property that is material to the Target Business is valid and enforceable.
- (b) All registrations and grants of all Target Group Owned Intellectual Property are current.
- (c) The relevant Target Group Company has paid all application, registration and renewal fees in respect of all Target Group Owned Intellectual Property, except where the failure to do so would not have a material adverse effect on the Target Business.
- (d) There is no decree, order, judgement, agreement or other circumstance which would obligate a Target Group Company to grant a licence or any other interest in the Target Group's Owned Intellectual Property.

8.5 Data

- (a) To the Knowledge of the Seller, all collection, storage, use or disclosure of data or information or other activities of the Target Group in respect of data or information collected from customers and consumers via proprietary databases of the Target Business or otherwise collected by the Target Group has not in any way, breached any applicable privacy Laws, except where any such breach would not have a material adverse effect on the Target Business, whether or not such breach has yet been the subject of any Claim.
- (b) To the Knowledge of the Seller, there are no rights or claims from third parties to ownership of, rights to access or ownership of Intellectual Property in respect of any data or information collected from customers and consumers via proprietary databases of the Target Business or otherwise collected by a Target Group Company.

8.6 Royalties or fees payable under Intellectual Property Licences paid

No royalties, licence fees or other amounts that are, in the aggregate, material to the Target Business are due or will be payable to any person under any of the Target Group's Intellectual Property Licences as a result of the transaction contemplated hereunder.

8.7 No breach of Intellectual Property Licences

In relation to any of the Target Group's Intellectual Property Licences, there are no actual or, to the Knowledge of Seller, alleged material breaches of any of the terms, conditions or provisions of any of the Target Group's Intellectual Property Licences by a Target Group Company or, to the Knowledge of Seller, by any of the other parties to any of the Target Group's Intellectual Property Licences.

8.8 Effect of entering into Agreement

Neither the Seller entering into and performing its obligations under this Agreement or the change in the ownership of the Company from the Seller to the Purchaser will result in:

- (a) the material breach of any of the terms, conditions or provisions of any of the Target Group's Intellectual Property Licences; or
- (b) a third party being entitled to terminate or in any way alter the terms of any of the Target Group's Intellectual Property Licences.

8.9 No infringements or Claims relating to Owned Intellectual Property

In relation to the Target Group's Owned Intellectual Property, there are no:

- (a) actual or, to the Knowledge of the Seller, alleged infringements or unauthorised uses of any of the Target Group's Owned Intellectual Property by any person that would have a material adverse effect on the Target Business; or
- (b) current or, to the Knowledge of the Seller, threatened Claims by any Regulatory Authority or by any person against a Target Group Company challenging the validity or effectiveness of any of the Target Group's Owned Intellectual Property.

8.10 No infringements or Claims relating to third party Intellectual Property

- (a) To the Knowledge of the Seller, the use of the Target Group's Owned Intellectual Property by a Target Group Company has not, and will not, infringe in any material respect the Intellectual Property or other similar rights of any third party, except for any such infringements that would not have a material adverse effect on the Target Group Company.
- (b) In relation to the Intellectual Property of any third party, there are no:
 - (i) actual or, to the Knowledge of the Seller, alleged material infringements or material unauthorised uses of the Intellectual Property of any third party by a Target Group Company, except for any such infringements or unauthorised uses that would not have a material adverse effect on the Target Group Company;
 - (ii) current or, to the Knowledge of the Seller, threatened Claims by any third party against a Target Group Company alleging that the relevant member:

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- (A) is in material breach of the terms, conditions or provisions of any agreement or licence relating to the Intellectual Property of that person;
 - (B) is materially infringing any Intellectual Property of that person; or
 - (C) is in breach of any obligation of confidence owed to that person.

9 Property and Leased Premises

9.1 Title and rights to use the Target Group's Property

The Target Group Companies set forth opposite the relevant Target Group Property in part 1 of Schedule 6 are the legal and beneficial owners of such Property.

9.2 Leasehold interests

The only leasehold interests directly or indirectly held or used by the Target Group are the leasehold interests granted under the Target Group's Leases (as listed in part 2 of Schedule 6).

9.3 Title and rights to use Leased Premises

A Target Group Company has valid and enforceable rights to occupy and use the Target Group's Leased Premises for the business purposes for which they are used.

9.4 No other premises required

The Target Group's Leased Premises and the Target Group's Property represent all of the real property and leased premises that are necessary for the ordinary operation of the Target Business.

9.5 Exclusive occupation

A Target Group Company has quiet enjoyment of the Target Group's Property and each of the Target Group's Leased Premises and neither the Target Group's Property nor any of the Target Group's Leased Premises are subject to any lease, tenancy or right of occupation by any person other than the relevant Target Group Company.

9.6 Leases current and valid

The Target Group's Leases, including any variations or renewals, are current, valid and binding, subject to the Enforceability Exceptions.

9.7 No breach of Leases

In relation to the Target Group's Leases, there are no actual or, to the Knowledge of the Seller, alleged material breaches of any of the terms, conditions or provisions of the Target Group's Leases by a Target Group Company, or by any of the other parties to the Target Group's Leases.

9.8 No assignment

No Target Group Company has assigned, sublet, parted with possession of or surrendered a Target Group's Leased Premises and no Target Group Company has agreed to do any of these acts in relation to a Target Group's Leased Premises, other than as required under this Agreement or with the prior written consent of Purchaser.

9.9 Effect of entering into agreement

The Seller entering into and performing its obligations under this Agreement will not result in the material breach of any of the terms, conditions or provisions of the Target Group's Leases.

9.10 Consents

The Seller entering into and performing its obligations under this Agreement will not require consent under any of the Target Group's Leases.

9.11 Restrictions and obligations

There is no Property or Target Group Leased Premises that, to the Knowledge of the Seller, is:

- (a) except for any Permitted Encumbrances, subject to any restrictive covenant, exception or reservation that adversely affects their value or use (including their use in the ordinary and usual course of the Target Business); or
- (b) subject to any pending or actual proposals for compulsory acquisition.

9.12 Developments

To the Knowledge of the Seller, there are no material:

- (a) buildings or structures forming part of, or constructed or located on the Property or Target Group's Leased Premises that materially encroach on abutting land;
- (b) buildings, structures or alterations thereto located on the Property or Target Group's Leased Premises that lack any material permits, approvals, consents or certificates from any Regulatory Authority; or
- (c) buildings or structures owned by a third party that materially encroach on the Property or Target Group's Leased Premises.

9.13 No Claims

In relation to the Target Group's Property and the Target Group's Leased Premises, there are no current or, to the Knowledge of the Seller, threatened Claims by any person against a Target Group Company, including disputes with the owner or occupier of any adjoining property over boundary walls or fences or regarding any easement, or right or means of access to the Target Group's Property or Leased Premises that would materially affect the use of the Target Group's Property or Leased Premises for the ordinary operation of the Target Business.

10 Material Contracts

10.1 All Material Contracts disclosed

Except as disclosed in the Target Disclosure Material, no Target Group Company is a party to or bound by any Material Contract. **Material Contracts** mean:

- (a) any agreement relating to indebtedness for money borrowed, loan facilities, margin loans, amounts to the extent drawn under letters of credit or overdrafts, bill facilities, bonds evidencing indebtedness for money owed and debentures of, or guarantees or other financial support in respect of indebtedness for money borrowed (whether incurred, assumed, guaranteed or secured by any asset) with a principal amount borrowed in excess of US\$200,000;
- (b) any finance or operating lease under which the Target Group has made payments of US\$200,000 or more during the twelve-month period ending on the Accounts Date;
- (c) any shareholders agreement, joint venture, partnership, limited liability company, strategic alliance or other similar agreements or arrangements (including any agreement providing for joint research, development, marketing or distribution);
- (d) any agreement or series of agreements relating to grants relating to the Target Group's products or the development of Intellectual Property (including with respect to research and development) or similar agreements or arrangements with any Regulatory Authority or other person;
- (e) any agreement or series of related agreements, including any option agreement, relating to the acquisition or disposition of any business, capital stock or substantially all of the assets of any other person or any material real property (whether by merger, sale of stock, sale of assets or otherwise);
- (f) any agreement or series of related agreements for the purchase of materials, supplies, goods, services, equipment or other assets under which the Target Group made payments of US\$200,000 or more during the twelve-month period ending on the Accounts Date;
- (g) any sales, distribution, agency or other similar agreement providing for the sale by the Target Group of materials, supplies, goods, services, equipment or other assets that provides for aggregate payments to the Target Group over the remaining term of the agreement of US\$200,000 or more or under which payments of US\$200,000 or more were made to the Company or its Subsidiaries during the twelve-month period ending on the Accounts Date;
- (h) any agreement or series of related agreements providing for the manufacture, production, assembly or shipment of water-based products by the Target Group or a third party (as applicable), either (i) under which the Target Group has made payments of US\$200,000 or more during the twelve-month period ending on the Accounts Date or (ii) which provides for aggregate payments to the Target Group over the remaining term of the agreement of US\$200,000 or more or under which payments of US\$200,000 or more were made to the Company or its Subsidiaries during the twelve-month period ending on the Accounts Date;
- (i) any agreement relating to any interest rate, derivatives or hedging transaction;

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- (j) any agreement (including any "take-or-pay" or keepwell agreement) under which the Target Group has directly or indirectly guaranteed any Liabilities or obligations of any other person (in each case other than endorsements for the purpose of collection in the ordinary course of business);
 - (k) any material agreement relating to the planning, financing, development or construction of any BOT Project;
 - (l) all leases, lease agreements, subleases, renewals, variations, licences, sublicences or other terms of occupancy for Target Group Property and Leased Premises;
 - (m) any licences, sub licences, other user agreements and assignments for all material Intellectual Property used under licence granted to a Target Group Company by third parties;
 - (n) any licences, sub licences, other user agreements and assignments for all material Intellectual Property licensed by a Target Group Company to third parties;
 - (o) all material Insurance Policies held by a Target Group Company; and
 - (p) any agreement that is currently in effect with an advisor, consultant, broker or other intermediary relating to a BOT Project or other transaction in respect of which such intermediary is or would reasonably be expected to be entitled to be paid a finder's fee, commission or other similar charge totalling US\$200,000 or more.

10.2 Material Contracts current and valid

Each of the Target Group's Material Contracts is current and in full force and effect, and constitutes, subject to the Enforceability Exceptions, legal, valid and binding obligations enforceable in accordance with its respective terms against the relevant Target Group Company and, to the Knowledge of the Seller, against each of the other parties to the relevant Target Group's Material Contract.

10.3 No breach or termination of Material Contracts

In relation to the Target Group's Material Contracts, there are no actual or, to the Knowledge of Seller, alleged material breaches of any of the terms, conditions or provisions of any of the Target Group's Material Contracts by a Target Group Company or, to the Knowledge of Seller, by any of the other parties to any of the Target Group's Material Contracts.

10.4 Effect of entering into agreement

The Seller entering into and performing their obligations under this Agreement will not require the consent of any party to, or result in the material breach of, or result in the termination of or a material change in the rights of a party under, any of the terms, conditions or provisions of, any of the Target Group's Material Contracts.

10.5 Outstanding offers or tenders

No Target Group Company has made offers, tenders or quotations outside of the ordinary course of business that are still outstanding and capable of acceptance by a third party that would give rise to a material contractual obligation binding on a Target Group Company.

10.6 No indication that customers will cease or reduce business

Neither the Seller nor the Target Group has received any written notice from any of the top 10 customers (measured by the amount of revenue of the Target Business attributable to that customer) of the Target Business for the 12-month period ended on the Accounts Date that any such customer intends to materially reduce or cease its business with the relevant Target Group Company.

11 Authorisations

11.1 No other authorisations required

The Target Group Companies, collectively, hold all authorisations, licences, consents, certifications, accreditations or permits that are necessary for the ordinary operation of the Target Business, except where failure to do so would not be materially adverse to the operation of the Target Business.

11.2 Authorisations current and valid

Each of the Target Group's Authorisations is current and valid.

11.3 Effect of entering into agreement

Other than those consents, approvals and notifications which the Seller is required to procure under clause 3.1 of this Agreement, to the Knowledge of Seller, the Seller entering into and performing its obligations under this Agreement and the change in the ownership of the Company from the Seller to the Purchaser will not result in any of the Target Group's Authorisations being modified, suspended, revoked, terminated, cancelled or not renewed.

11.4 No breach or revocation of Authorisations

In relation to the Target Group's Authorisations, there are no actual or, to the Knowledge of the Seller, alleged material breaches of any of the provisions of any of the Target Group's Authorisations by a Target Group Company.

12 BOT Projects

12.1 All BOT Projects disclosed

All of the BOT Projects and all Material Contracts relating to BOT Projects have been disclosed to the Purchaser by the Seller in the Target Disclosure Material. None of the Target Group Companies has made any commitment to progress, or otherwise has any material obligations in relation to, the Red Dead Project.

12.2 Penalties and defaults

During the three years immediately preceding the date hereof, no material penalties have been payable by a Target Group Company, and no defaults or events of default have occurred, in respect of any BOT Project.

12.3 Effect of entering into agreement

The Seller entering into and performing its obligations under this Agreement will not require the consent of any party to, or result in the material breach of, or result in the termination of or a material change in the rights of a party under, any of the terms, conditions or provisions of, any BOT Project contract.

13 Stock

13.1 Sufficiency of Target Group Stock

The Target Group has sufficient Stock on hand or in transit to enable the Target Business to continue to operate in the ordinary course of business consistent with past practice.

13.2 Extent of Target Group Stock

Since the Accounts Date, the Target Group has made no material purchases, sales, transfers, write offs or accumulations of Target Group Stock other than in the ordinary course of business.

14 Information technology

14.1 Computer Systems

The Computer Systems owned or used by the Target Group:

- (a) are in good operating order and are adequate for the present needs of the Target Business;
- (b) have adequate security, backups, disaster recovery and business continuity plans in place; and
- (c) have support and maintenance adequate for the Target Business.

14.2 Target Group software

All of the material software forming part of the Computer Systems that is Owned Intellectual Property or is the subject of Intellectual Property Licences granting rights to a Target Group Company with respect to such software is lawfully used by the Target Group and does not infringe the Intellectual Property of any person.

14.3 No Claims

In relation to the Computer Systems, there are no:

- (a) current or, to the Knowledge of the Seller, threatened Claims by any manufacturer or supplier of computer hardware or supplier of any IT support or maintenance services against a Target Group Company; or

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- (b) current or, to the Knowledge of the Seller, threatened Claims by a Target Group Company against a manufacturer or supplier of computer hardware or supplier of any IT support or maintenance services.

15 Environment

15.1 No other environmental authorisations required

The Target Group Companies collectively hold all of the environmental licences, consents, authorisations, certifications, accreditations or permits that are necessary for the current ordinary operation of the Target Business (including each BOT Project) and/or required under applicable Environmental Laws, except where failure to do so would not be materially adverse to operation of the Target Business.

15.2 Compliance

The Target Business is currently conducted in compliance in all material respects with all applicable Environmental Laws, regulations, standards and requirements.

15.3 No contravention of Environmental Laws

During the three years immediately preceding the date of this Agreement, to the Knowledge of the Seller, there have been no material infringements or allegations of any material contravention of any applicable Environmental Laws, or related regulations, standards or requirements.

15.4 Contaminants or other hazardous substances

- (a) During the three years immediately preceding to the date of this Agreement, to the Knowledge of the Seller, no Target Group Company has released any Hazardous Substances in, on or under, including groundwater, any part of the Target Group's Property, a Target Group's Leased Premises or any BOT Land or any property adjacent to the Target Group's Property, a Target Group's Leased Premises or BOT Land that has originated or emanated from the Target Group's Property, a Target Group's Leased Premises or the BOT Land, which, as of the date of this Agreement, would require notification to any Regulatory Authority (other than where notification has already been provided and disclosed to the Purchaser) or would entitle any Regulatory Authority to require monitoring, closure, clean up or remediation under any applicable Environmental Law, except in such quantities and stored in such a manner as is allowed by an applicable Environmental Law.
- (b) To the Knowledge of the Seller, there is no Hazardous Substance or asbestos present on or at the Property, a Target Group Leased Premises or any BOT Land except in such quantities and stored in such a manner as is allowed by an applicable environmental law.

15.5 No Claims or audits

There are no:

- (a) current or, to the Knowledge of the Seller, threatened Claims by any person against a Target Group Company;

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- (b) current or, to the Knowledge of the Seller, threatened audits, investigations, inspections, inquiries, reports, prosecutions or proceedings by any Regulatory Authority other than those of a routine or periodic nature; or
 - (c) outstanding notices, orders, directions or fines from any Regulatory Authority;

in each case, regarding the discharge of a Hazardous Substance in a manner requiring remediation by any of the Target Group Companies pursuant to applicable Environmental Laws, or a breach of any applicable Environmental Law.

16 Employees and superannuation

16.1 Definition

For the purpose of this paragraph 16, '**Employer**' refers to the Target Group Company that employs the Employee.

16.2 Compliance

The Target Group conducts the Target Business in compliance, in all material respects, with all employment Laws, regulations, standards and requirements applicable to the Employees.

16.3 Employee entitlements

- (a) The entitlements of the Employees to annual leave, personal/carer's leave, long service leave, vacation or holiday pay and parental leave are adequate, and the accrual and calculation of such entitlements have been determined in accordance with all applicable legislation, relevant industrial instruments, company policies and/or employment agreements, and the usual accounting policies and practices of the Employer and are not less than the legal entitlements of the Employees, and the Employer has paid all amounts due and payable to the Employees.
- (b) The Employee Records have been kept in accordance with the applicable Laws.

16.4 No liability for employee entitlements

The Employer has no liability for any wages, overtime worked, annual leave, long service leave, personal/carer's leave, special leave, parental leave, accident pay, debts, remuneration, bonuses (including retention, success and similar payments), incentives, benefits, commissions, allowances, severance, notice, termination or redundancy or any other payments or liabilities due to any employee of the Employer under any industrial instrument, agreement with a union or Laws or under any contract, agreement or arrangement (including as a result of or in connection with any transaction proposed under or in connection with this Agreement), other than as disclosed in the Target Disclosure Material or as provided for in the Executive Employment Contracts.

16.5 No other agreements or instruments

- (a) The Employer is not bound by or in the process of negotiating any service contracts, employment agreements, collective bargaining agreements, industrial instruments or other agreements with a union in respect of its employees, other

than the Executive Employment Contracts or as disclosed or as required under this Agreement.

- (b) There are no agreements or unwritten understandings between the Employer and any Employee and no representation has been made to any Employee which is not reflected in the written terms and conditions of an agreement between the Employer and the relevant Employee, including but not limited to any contract, agreement or arrangement that entitles the relevant Employee to any benefit, monetary or otherwise, if ownership of the Employee changes, including the change of ownership of the Company from the Seller to the Purchaser.

16.6 Share or option plan

None of the Target Group Companies has any employee share ownership or option plan in place with, or to benefit, its Employees.

16.7 No contraventions of employment laws

There are no:

- (a) material infringements by the Employer or, to the Knowledge of the Seller, allegations against the Employer of any material contravention of any employment Laws, requirements or industrial instruments applicable to any employee of the Employer, including in relation to workplace health and safety; or
- (b) to the Knowledge of the Seller, facts, matters or circumstances that would or are reasonably likely to give rise to any infringements or allegations of the type referred to in paragraph (a) above.

16.8 No industrial action

There is no current or, to the Knowledge of the Seller, threatened industrial or collective bargaining action by any of the Employees of the Employer or by any union or other industrial organisation that would or is reasonably likely to materially disrupt the ordinary operation of the Target Business or cause the Employer to have to pay out a material sum of money.

16.9 Employee claims

There are no current or, to the Knowledge of the Seller, threatened material Claims by any Employee, or former employee, of the Employer against the Employer, or prosecutions by a Regulatory Authority against the Employer, including any Claims or prosecutions in a state or federal industrial tribunal, a state or federal commission or the court system for:

- (a) termination of employment;
- (b) known or alleged breaches of contract or for any employee entitlements;
- (c) workplace injury or illness;
- (d) discrimination or bullying;
- (e) negligence; or

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- (f) non-compliance or breaches of any applicable employment Laws, regulations, standards, requirements or industrial instruments.

16.10 Superannuation and pension benefits

- (a) The Target Disclosure Material contains details of all material superannuation schemes or other material pension or employee benefit arrangements to which a Target Group Company contributes or is required to contribute in respect of the Employees.
- (b) None of the Target Group Companies has any defined benefit pension plans or funds.
- (c) The Employer has complied, in all material respects, with all:
 - (i) of its obligations in respect of the Employees' superannuation, pension and other employee benefits, and other entitlements relating to superannuation and pension funds and employee benefits;
 - (ii) agreements and other arrangements between the Employer and the trustees of a pension or superannuation fund; and
 - (iii) agreements and other arrangements between the Employer and an Employee in respect of the Employee's superannuation and pension entitlements.
- (d) There are no:
 - (i) current or, to the Knowledge of the Seller, threatened Claims by any Employees or former employees of the Employer, or deemed Employees of the Employer, against the Employer alleging any material breach by the Employer of its superannuation or pension commitments (other than routine Claims for benefits); or
 - (ii) current audits, investigations, inspections, inquiries, prosecutions or proceedings by any Regulatory Authority (nor has notice been received of a potential audit, investigation, inquiry, prosecution or proceeding) with respect to any fund to which the Company makes or made contributions.

16.11 Independent contractors

The Target Group has disclosed in the Target Disclosure Material to the Purchaser details of all independent contractors, consultants and agents paid in excess of \$100,000 who provide services to the Target Group, including the name of each such independent contractor, consultant or agent, the terms of engagement and details of fees payable.

17 Insurance

17.1 Adequate insurance

During the three years immediately preceding the date of this Agreement, the Target Group have at all times:

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- (a) maintained valid liability insurance in respect of areas of the Target Business, and at amounts, customarily carried by persons carrying on a similar business to the Target Business or as required by Law, including public risk, product liability, worker's compensation, fire and theft; and
 - (b) paid all premiums due in respect of each of the Insurance Policies.

17.2 Insurance not void, voidable or unenforceable

During the three years immediately preceding the date of this Agreement, no Target Group Company has, to the Knowledge of the Seller, done or omitted to do any act that would or is reasonably likely to:

- (a) make any Target Group Insurance Policy void, voidable or unenforceable; or
- (b) permit an insurer to:
 - (i) cancel a Target Group Insurance Policy;
 - (ii) refuse or materially reduce a Claim under a Target Group Insurance Policy; or
 - (iii) materially increase a premium payable on a Target Group Insurance Policy.

17.3 No Claims

In relation to the Target Group Insurance Policies, there are no current or, to the Knowledge of the Seller, threatened Claims by a Target Group Company under any of the Target Group Insurance Policies.

18 Applicable Laws

During the three years immediately preceding to the date of this Agreement, each Target Group Company:

- (a) has complied in all material respects with all legal requirements for the filing of returns, particulars, notices and other documents with all Government Authorities;
- (b) has conducted the affairs of the Target Group Company in compliance in all material respects with all constituent or organisational documents of that Target Group Company; and
- (c) has conducted the affairs of the Target Group Company in compliance in all material respects with all applicable Laws and regulations.

The Seller makes no representation or warranty in this paragraph 18 with respect to environmental matters, employment matters, anti-bribery and corruption matters, anti-money laundering and counter-terrorism matters or Tax matters, which matters are exclusively addressed in paragraphs 15, 16, 19, 20 and 24 of this Schedule 2.

19 Anti-bribery and corruption

During the three years immediately preceding to the date of this Agreement:

- (a) None of the Seller, a Target Group Company or, to the Knowledge of the Seller, any of their Authorised Persons has provided, or offered or promised to provide, a financial or other benefit to another person in Illegitimate Circumstances in violation of Law with the intention to obtain or retain business or an advantage in the conduct of business of a Target Group Company.
- (b) The Seller and the Target Group have suitable policies and procedures designed to reasonably prevent the provision of a financial or other benefit to another person in Illegitimate Circumstances in violation of Law with the intention to obtain or retain business or an advantage in the conduct of business of a Target Group Company.

20 Anti-money laundering and counter-terrorism

During the three years immediately preceding to the date of this Agreement, each Target Group Company has conducted its affairs in compliance, in all material respects, with all Laws relating to anti-money laundering or counter-terrorism financing, economic or trade sanctions or import, export, and re-export requirements made by a Regulatory Authority and the rules, regulations and other instruments for the purposes of those Laws (including, without limitation, those made by a government agency or regulator).

21 Legal proceedings

21.1 No litigation or other proceedings

There are no current or, to the Knowledge of the Seller, threatened civil, criminal, administrative proceedings, arbitration or other judicial or quasi judicial proceedings by or against the Target Group for a stated amount individually, or in the aggregate with respect to any series of related matters, greater than US\$200,000 and except for debt collection in the ordinary course of business.

21.2 Regulatory Authority audits

There are no:

- (a) current or, to the Knowledge of the Seller, threatened audits, investigations, inspections, enquiries, reports, prosecutions or proceedings by any Regulatory Authority into a Target Group Company for a stated amount individually, or in the aggregate with respect to any series of related matters, greater than US\$200,000 and except for reviews or investigations of a routine or periodic nature; or
- (b) outstanding notices, orders, directions or fines from any Regulatory Authority regarding a Target Group Company for a stated amount individually, or in the aggregate with respect to any series of related matters, greater than US\$200,000.

21.3 No unsatisfied judgments

There are no unsatisfied fines, judgments, orders, arbitral awards or decisions of any court, tribunal or arbitrator or terms of settlement that a Target Group Company is bound by for a stated amount individually or, in the aggregate with respect to any series of related matters, greater than US\$200,000 and except for debt collection in the ordinary course of business.

22 Powers of attorney

There are no powers of attorney, appointments of agents or other authorities to act on behalf of a Target Group Company given by a Target Group Company, other than authorities given by a Target Group Company to directors, officers or employees of the Target Group for the ordinary operation of the Target Business.

23 Brokers

There is no investment banker, broker, finder or other intermediary retained by or authorized to act on behalf of the Seller, the Company or any Target Group Company who might be entitled to any fee or commission from the Purchaser or any of its Affiliates (including, after Completion, the Target Group) upon consummation of the transactions contemplated hereby.

24 Tax Warranties

24.1 All Tax paid

Each Target Group Company has paid, or provided for in the Audited Financial Statements, all material Taxes, including any penalties or interest, that have been assessed or that are otherwise due and payable on the due date for payment.

24.2 Deductions and withholding

Each Target Group Company has complied in all material respects with its obligations under any Tax law requiring the deduction or withholding of Tax from payments made by it including interest, royalties, dividends, remuneration payable to employees or contractors and payments to non residents and, where necessary, each Target Group Company has properly accounted for and disclosed all Tax deducted or withheld in accordance with the applicable Tax law requirements.

24.3 Transfer Taxes

Except in respect of this Agreement, and documents or transactions contemplated by this Agreement, all material deeds, agreements or other documents or transactions that:

- (a) a Target Group Company is or has been a party to;
- (b) a Target Group Company has an interest in enforcing; or

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- (c) are necessary to establish the title of a Target Group Company to the Target Assets,

have had Transfer Taxes and other Taxes of a similar nature paid in full in accordance with the applicable Laws and no such deed, agreement or other document is unstamped or insufficiently stamped.

24.4 VAT

Each Target Group Company which is required to be registered for VAT:

- (a) is registered for VAT;
- (b) complies in all material respects with the relevant VAT law;
- (c) is not in material default of any obligation to make or lodge any payment or VAT return;
- (d) has in all material respects accounted correctly for VAT in respect of any intra-Group transactions; and
- (e) has, in all material respects, correctly and on a timely basis, returned VAT on all taxable supplies and has no material outstanding VAT liabilities (other than those provide for in the Accounts).

24.5 Payroll Tax

All material amounts of payroll tax required by law to be paid by each Target Group Company in relation to employees or contractors for any period up to Completion which are due and payable by Completion have been or will be paid when due (excluding any such amounts that are taken into account in the calculation of Net Payables).

24.6 Liability for Tax

For the period:

- (a) up to and including the Accounts Date, no Target Group Company will become subject to any material Tax on or in respect of, or by reference to, any profits, gains or income that is materially different from the Tax already provided for in the Audited Financial Statements; and
- (b) after the Accounts Date, the only Liabilities for Tax of a Target Group Company that have arisen or may arise on or before the Completion Date are, or will be, Liabilities arising out of the normal business and trading activities of the relevant Target Group Company or the transactions contemplated by this Agreement.

24.7 Returns

As far as the Seller is aware, each Target Group Company has:

- (a) filed or lodged all material Tax returns and any other material information required to be lodged by the Target Group Company with the appropriate Government Authority within the applicable time limits and all of those Tax returns and other information were materially accurate, complete and not misleading on lodgement, were made on a proper basis and are not the subject of any dispute; and

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- (b) kept and preserved all material Records that are required to be kept and preserved by Law.

24.8 No audits or disputes

- (a) No Target Group Company is involved in or received written notice of any audits, demands, questions or disputes with or from any Government Authority in relation to a Tax matter, other than any such audit, demand, question or dispute that has been completely resolved.
- (b) There are no Encumbrances over any of the Target Assets that arose in connection with any failure (or alleged failure) to pay any Tax.

24.9 Transfer pricing

- (a) Each Target Group Company is in material compliance with any applicable transfer pricing provisions of any Tax law.
- (b) To Seller's knowledge, no Target Group Company has entered into or been a party to any transaction which contravenes the anti-avoidance provisions of any Tax law.

24.10 Statute of limitations

No Target Group Company has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

24.11 Tax allocation and sharing

No Target Group Company is a party to any Tax allocation or sharing agreement, arrangement or understanding (excluding any customary commercial contracts which do not primarily relate to the allocation or sharing of Tax liabilities).

24.12 Sole and Exclusive Representations

Notwithstanding anything to the contrary in this Agreement, the Seller makes no representation or warranty in this Agreement with respect to environmental matters, employment or superannuation matters, anti-bribery and corruption matters, anti-money laundering and counter-terrorism matters or Tax matters other than as set forth and exclusively addressed in paragraphs 15, 16, 19, 20 and 24 of this Schedule 2.

PART B – FUNDAMENTAL SELLER WARRANTIES

1 Formation and power of Target Group Companies

Each Target Group Company:

- (a) is duly organised, validly existing and in good standing under the laws of the place of its incorporation or organization;
- (b) has the power to own its assets and conduct its business as it is now being conducted; and
- (c) has conducted its business in compliance in all material respects with all constituent or organisational documents of that Target Group Company.

2 Target Group structure

- (a) The structure diagram set out in item 3 of Schedule 1 is accurate and complete with respect to the Target Group and, except where indicated otherwise, equity holdings are 100%.
- (b) No Target Group Company is the holder of any equity interest in another Target Group Company except as set out in the structure diagram in item 3 of Schedule 1.

3 LLC Interests

3.1 Ownership of LLC Interests

The LLC Interests constitute all of the issued and outstanding limited liability company interests in the Company and are validly issued and outstanding.

3.2 Encumbrances and restrictions

- (a) Except as may be imposed by applicable securities Laws, there are no:
 - (i) Encumbrances over or affecting the LLC Interests; or
 - (ii) agreements to give or create any Encumbrances over or affecting the LLC Interests.
- (b) Except as may be imposed by applicable securities Laws, there are no restrictions or competing rights on the transfer of the LLC Interests to the Purchaser on the terms of this Agreement, including, but not limited to, pre-emptive rights or rights of first refusal.
- (c) No Target Group Company has issued securities with conversion rights to limited liability company interests or other securities in it and there are no agreements or arrangements under which options or convertible notes have been issued by a Target Group Company.

3.3 No obligations to issue other securities

There are no agreements, arrangements, understandings, plans or other entitlements in place under which a Target Group Company is or may be obliged to grant, allot, issue, create, sell, transfer or otherwise dispose of any limited liability company interests, shares or other securities in a Target Group Company or rights or interests to or in any limited liability company interests, shares or other securities in a Target Group Company, other than this Agreement.

Sale and Purchase Agreement

Schedule 3 –Seller Warranties about the Seller

PART A – GENERAL SELLER WARRANTIES

1 Compliance

The Seller has complied in all material respects with all applicable regulatory and statutory requirements regarding the operation of the Target Business owned by the Seller.

2 No conflict for Seller

The execution, delivery and performance of this Agreement and all other documents contemplated by this Agreement (including the Ancillary Agreements to which the Seller is a party) by the Seller:

- (a) do not result in a breach of, or a default under, the Seller's constituent or organisational documents or any other agreement to which the Seller is a party or by which it is bound, except as would not be materially adverse to the Target Business; or
- (b) do not constitute a breach of any Law or cause or result in a default under any Encumbrance, by which it is bound and that would prevent it from execution, delivery or performance of this Agreement and all other documents contemplated by this Agreement (including the Ancillary Agreements to which the Seller is a party).

3 No Insolvency Event in relation to Seller

The Seller is not subject to a current or, to the Knowledge of the Seller, threatened Insolvency Event and, to the Knowledge of the Seller, there are no facts, matters or circumstances that are reasonably likely to give rise to the occurrence of any Insolvency Event in relation to the Seller.

4 United States securities laws

The Seller is an 'accredited investor' as such expression is defined in Regulation D promulgated under the *United States Securities Act of 1933*, as amended. The Seller has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of accepting the Consideration Shares, and is acquiring the Consideration Shares under this Agreement for its own account and not on behalf of any other person or persons.

PART B – FUNDAMENTAL SELLER WARRANTIES

1 Seller's formation, existence, power, authority, etc.

- (a) The Seller is duly organised, validly existing and in good standing under the laws of the State of Delaware.
- (b) The Seller is the owner of, and has good and marketable title to, the LLC Interests (being all of the issued and outstanding limited liability company interests in the Company), has all requisite power and authority to own the LLC Interests, and has not granted any Encumbrance over any of the LLC Interests.
- (c) The Seller does not own any equity interests in the Company other than the LLC Interests.
- (d) The Seller has all requisite power and authority to enter into, execute, deliver and perform this Agreement and the Ancillary Agreements to which the Seller is a party and to carry out the transactions that this Agreement and the Ancillary Agreements to which the Seller is a party contemplate and no other action is necessary on the part of the Seller to enter into, execute, deliver and perform this Agreement and the Ancillary Agreements to which the Seller is a party or to carry out the transactions that this Agreement or the Ancillary Agreements to which the Seller is a party contemplate.
- (e) The execution, delivery and performance of this Agreement and all other documents contemplated by this Agreement (including the Ancillary Agreements to which the Seller is a party) by the Seller constitute legal, valid and binding obligations of the Seller enforceable in accordance with the relevant document's terms and conditions, subject to the Enforceability Exceptions.

Sale and Purchase Agreement

Schedule 4 - Purchaser Warranties

PART A – GENERAL PURCHASER WARRANTIES

1 No Insolvency Event

No Purchaser Group Company is subject to a current, or, to the Knowledge of the Purchaser, threatened Insolvency Event.

2 Statutory Filings

All returns, filings and other documents required to be filed with any Regulatory Authority in the three years preceding the date of this Agreement in respect of a Purchaser Group Company have been duly filed and are complete and accurate in all material respects.

3 Purchaser Financial Statements and financial information

3.1 Purchaser Financial Statements

The Purchaser Financial Statements:

- (a) are based upon the Records of the Purchaser Group;
- (b) fairly present in all material respects the financial position, the assets and the Liabilities of the Purchaser Group as of the Accounts Date, and the income or loss for the 12 month period then ended; and
- (c) have been prepared in accordance with Australian Accounting Standards applied on a consistent basis (except as may be indicated in the notes thereto).

3.2 Material change

- (a) Except as contemplated by this Agreement, no circumstance has arisen, nor has any information become available, since the Accounts Date, that if the circumstance or information had arisen or become available before the Purchaser Financial Statements were prepared, would have constituted a Material Adverse Change on the Purchaser Financial Statements, taken as a whole.
- (b) Other than as provided for in this Agreement or disclosed in the Purchaser Disclosure Material, since the Accounts Date:
 - (i) the Purchaser Group has not incurred Debt (other than Permitted Debt or payment terms extended by suppliers) or loaned money other than in the ordinary course of business;
 - (ii) the Purchaser Business has been conducted in all material respects in the ordinary course of business; and

there has not been any creation of any agreement or liability for capital expenditure other than in accordance with the amounts budgeted to be expended by the relevant Purchaser Group Company (which amounts were disclosed to the Purchaser prior to the date of this Agreement) in excess of \$200,000.

4 Related Party transactions

4.1 Related Party benefits

Other than as disclosed in the Purchaser Disclosure Material, no Purchaser Group Company has granted a material financial benefit or extended any material financial accommodation to the Purchaser or an Affiliate of the Purchaser (other than a Purchaser Group Company) in the three years preceding the date of this Agreement.

4.2 No Liabilities from Purchaser Group Company to Purchaser or Purchaser's Affiliates

Other than Debts or Liabilities pursuant to this Agreement or any Ancillary Agreement, there are no Debts or other Liabilities owed by, or proposed to be owed by, a Purchaser Group Company to the Purchaser or an Affiliate of the Purchaser (other than a Purchaser Group Company).

4.3 Corporate actions

Since the Accounts Date, except as provided for in this Agreement or where such action was taken with the prior written consent of Seller:

- (a) there have been no Material Adverse Changes in respect of the Purchaser Shares, the Purchaser Group or the Purchaser Business;
- (b) the Purchaser has not disposed of, agreed to dispose of, granted an option over or granted any interest in, any of the Purchaser Shares or any material Purchaser Asset outside of the ordinary course of business; and
- (c) no Purchaser Group Company has:
 - (i) determined, declared or paid any dividends or made any other distribution of its capital, income or profits or repayments of shareholders' loans, whether of cash, specific assets or otherwise; or
 - (ii) disposed of, agreed to dispose of, granted an option over or granted any interest in any of the equity interests in it or any material Purchaser Assets owned by it, outside of the ordinary course of business, including granting any Encumbrance over any of its material Purchaser Assets (other than Permitted Encumbrances).

5 No Debt

None of the Purchaser Group Companies has any Debt.

6 Purchaser Assets

6.1 Title

At Completion, with the exception of any Permitted Encumbrances, the Purchaser Assets will be:

- (a) either legally and beneficially owned solely by the relevant Purchaser Group Company, or used by the relevant Purchaser Group Company under a contract or other legal right under which it is entitled to use the Purchaser Assets on the terms and conditions of such contract or legal right; and
- (b) in the Purchaser Group's possession or control.

6.2 No Encumbrances

At Completion there will be no Encumbrances over or affecting any of the Purchaser Assets other than the Permitted Encumbrances.

6.3 No other assets required

There are no material assets, other than the Purchaser Assets, that are necessary for the ordinary operation of the Purchaser Business.

7 Plant and Equipment

7.1 Title and rights to use

At Completion, with the exception of any Permitted Encumbrances, the material Plant and Equipment of the Purchaser Group will be:

- (a) either legally and beneficially owned solely by the relevant Purchaser Group Company, or used by the relevant Purchaser Group Company under a contract or other legal right under which it is entitled to use the Purchaser Group Plant and Equipment on the terms and conditions of such contract or legal right; and
- (b) in the Purchaser Group's possession or control.

7.2 No other plant or equipment

There is no material plant or equipment, other than the Purchaser Group's Plant and Equipment, that is necessary for the ordinary operation of the Purchaser Business.

7.3 Condition of Plant and Equipment

All of the Purchaser Group's material Plant and Equipment is in working order and a reasonable state of repair for the purpose for which it is currently used in the ordinary and usual course of the Purchaser Business.

7.4 No Claims

In relation to the Purchaser Group's Plant and Equipment, there are no:

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- (a) current or, to the Knowledge of the Purchaser, threatened material Claims by any supplier of Purchaser Group's Plant and Equipment or by any supplier of maintenance services for the Purchaser Group's Plant and Equipment against a Purchaser Group Company alleging that the Purchaser Group Company is in material breach of the terms, conditions or provisions of the particular agreement relating to such Plant and Equipment;
 - (b) current or, to the Knowledge of the Purchaser, threatened material Claims by a Purchaser Group Company against any supplier of Purchaser Group's Plant and Equipment or against any supplier of maintenance services for the Purchaser Group's Plant and Equipment alleging that the other party is in material breach of the terms, conditions or provisions of the particular agreement relating to such Plant and Equipment.

8 Intellectual Property

8.1 Ownership

- (a) A Purchaser Group Company:
 - (i) is the sole legal and beneficial owner of, registered proprietor of, or applicant in respect of, the Purchaser Group's Owned Intellectual Property, free and clear of all Encumbrances; and
 - (ii) has obtained the consent of any employee of a Purchaser Group Company and, to the Knowledge of the Purchaser, any other person who has or may have moral rights in the Purchaser Group's Owned Intellectual Property, if and as required by Law, so as to enable the relevant Purchaser Group Company to fully use and enjoy the Owned Intellectual Property without infringing such moral rights.
- (b) All of the Purchaser Group's Intellectual Property that has been developed on behalf of a Purchaser Group Company by another entity or person (including any person or entity retained by a Purchaser Group Company to provide services to the Purchaser Group Company) and that is material to the Purchaser Business is owned by the relevant Purchaser Group Company or is used by the relevant Purchaser Group Company under licence.

8.2 Right to use

A Purchaser Group Company has valid and enforceable rights to use and continue to use the Intellectual Property for which such rights are granted to such Purchaser Group Company by an Intellectual Property Licence.

8.3 No other Intellectual Property required

The Owned Intellectual Property and the Intellectual Property for which rights are granted to the Purchaser Group by the Intellectual Property Licences represent all of the Intellectual Property that is necessary for the ordinary operation of the Purchaser Business.

8.4 Registrations of Owned Intellectual Property are valid

- (a) Each registration or grant of the Purchaser Group's Owned Intellectual Property that is material to the Purchaser Business is valid and enforceable.
- (b) All registrations and grants of all Purchaser Group Owned Intellectual Property are current.
- (c) The relevant Purchaser Group Company has paid all application, registration and renewal fees in respect of all Purchaser Group Owned Intellectual Property, except where the failure to do so would not have a material adverse effect on the Purchaser Business.
- (d) There is no decree, order, judgement, agreement or other circumstance which would obligate a Purchaser Group Company to grant a licence or any other interest in the Purchaser Group's Owned Intellectual Property.

8.5 Data

- (a) To the Knowledge of the Purchaser, all collection, storage, use or disclosure of data or information or other activities of the Purchaser Group in respect of data or information collected from customers and consumers via proprietary databases of the Purchaser Business or otherwise collected by the Purchaser Group has not in any way, breached any applicable privacy Laws, except where any such breach would not have a material adverse effect on the Purchaser Business, whether or not such breach has yet been the subject of any Claim.
- (b) To the Knowledge of the Purchaser, there are no rights or claims from third parties to ownership of, rights to access or ownership of Intellectual Property in respect of any data or information collected from customers and consumers via proprietary databases of the Purchaser Business or otherwise collected by a Purchaser Group Company.

8.6 Royalties or fees payable under Intellectual Property Licences paid

No royalties, licence fees or other amounts that are, in the aggregate, material to the Purchaser Business are due or will be payable to any person under any of the Purchaser Group's Intellectual Property Licences as a result of the transaction contemplated hereunder.

8.7 No breach of Intellectual Property Licences

In relation to any of the Purchaser Group's Intellectual Property Licences, there are no actual or, to the Knowledge of Purchaser, alleged material breaches of any of the terms, conditions or provisions of any of the Purchaser Group's Intellectual Property Licences by a Purchaser Group Company or, to the Knowledge of Purchaser, by any of the other parties to any of the Purchaser Group's Intellectual Property Licences.

8.8 Effect of entering into Agreement

Neither the Purchaser entering into and performing its obligations under this Agreement or the change in the ownership of the Company from the Seller to the Purchaser will result in:

- (a) the material breach of any of the terms, conditions or provisions of any of the Purchaser Group's Intellectual Property Licences; or

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- (b) a third party being entitled to terminate or in any way alter the terms of any of the Purchaser Group's Intellectual Property Licences.

8.9 No infringements or Claims relating to Owned Intellectual Property

In relation to the Purchaser Group's Owned Intellectual Property, there are no:

- (a) actual or, to the Knowledge of the Purchaser, alleged infringements or unauthorised uses of any of the Purchaser Group's Owned Intellectual Property by any person that would have a material adverse effect on the Purchaser Business; or
- (b) current or, to the Knowledge of the Purchaser, threatened Claims by any Regulatory Authority or by any person against a Purchaser Group Company challenging the validity or effectiveness of any of the Purchaser Group's Owned Intellectual Property.

8.10 No infringements or Claims relating to third party Intellectual Property

- (a) To the Knowledge of the Purchaser, the use of the Purchaser Group's Owned Intellectual Property by a Purchaser Group Company has not, and will not, infringe in any material respect the Intellectual Property or other similar rights of any third party, except for any such infringements that would not have a material adverse effect on the Purchaser Group Company.
- (b) In relation to the Intellectual Property of any third party, there are no:
 - (i) actual or, to the Knowledge of the Purchaser, alleged material infringements or material unauthorised uses of the Intellectual Property of any third party by a Purchaser Group Company, except for any such infringements or unauthorised uses that would not have a material adverse effect on the Purchaser Group Company;
 - (ii) current or, to the Knowledge of the Purchaser, threatened Claims by any third party against a Purchaser Group Company alleging that the relevant member:
 - (A) is in material breach of the terms, conditions or provisions of any agreement or licence relating to the Intellectual Property of that person;
 - (B) is materially infringing any Intellectual Property of that person; or
 - (C) is in breach of any obligation of confidence owed to that person.

9 Property and Leased Premises

9.1 No owned real property

The Purchaser Group does not own any real property.

9.2 Leasehold interests

The only leasehold interests directly or indirectly held or used by the Purchaser Group are the leasehold interests granted under the Purchaser Group's Leases (as listed in Schedule 12)

9.3 Title and rights to use Leased Premises

A Purchaser Group Company has valid and enforceable rights to occupy and use the Purchaser Group's Leased Premises for the business purposes for which they are used.

9.4 No other premises required

The Purchaser Group's Leased Premises represent all of the leased premises that are necessary for the ordinary operation of the Purchaser Business.

9.5 Exclusive occupation

A Purchaser Group Company has quiet enjoyment of each of the Purchaser Group's Leased Premises and none of the Purchaser Group's Leased Premises are subject to any lease, tenancy or right of occupation by any person other than the relevant Purchaser Group Company.

9.6 Leases current and valid

The Purchaser Group's Leases, including any variations or renewals, are current, valid and binding, subject to the Enforceability Exceptions.

9.7 No breach of Leases

In relation to the Purchaser Group's Leases, there are no actual or, to the Knowledge of the Purchaser, alleged material breaches of any of the terms, conditions or provisions of the Purchaser Group's Leases by a Purchaser Group Company, or by any of the other parties to the Purchaser Group's Leases.

9.8 No assignment

No Purchaser Group Company has assigned, sublet, parted with possession of or surrendered a Purchaser Group's Leased Premises and no Purchaser Group Company has agreed to do any of these acts in relation to a Purchaser Group's Leased Premises, other than as required under this Agreement or with the prior written consent of Purchaser.

9.9 Effect of entering into agreement

The Purchaser entering into and performing its obligations under this Agreement will not result in the material breach of any of the terms, conditions or provisions of the Purchaser Group's Leases.

9.10 Consents

The Purchaser entering into and performing its obligations under this Agreement will not require consent under any of the Purchaser Group's Leases.

9.11 Restrictions and obligations

There is no Purchaser Group Leased Premises that, to the Knowledge of the Purchaser, is:

- (a) except for any Permitted Encumbrances, subject to any restrictive covenant, exception or reservation that adversely affects their value or use (including their use in the ordinary and usual course of the Purchaser Business); or
- (b) subject to any pending or actual proposals for compulsory acquisition.

9.12 Developments

To the Knowledge of the Purchaser, there are no material:

- (a) buildings or structures forming part of, or constructed or located on the Purchaser Group's Leased Premises that materially encroach on abutting land;
- (b) buildings, structures or alterations thereto located on the Purchaser Group's Leased Premises that lack any material permits, approvals, consents or certificates from any Regulatory Authority; or
- (c) buildings or structures owned by a third party that materially encroach on the Purchaser Group's Leased Premises.

9.13 No Claims

In relation to the Purchaser Group's Leased Premises, there are no current or, to the Knowledge of the Purchaser, threatened Claims by any person against a Purchaser Group Company, including disputes with the owner or occupier of any adjoining property over boundary walls or fences or regarding any easement, or right or means of access to the Purchaser Group's Leased Premises that would materially affect the use of the Purchaser Group's Leased Premises for the ordinary operation of the Purchaser Business.

10 Material Contracts

10.1 All Material Contracts disclosed

Except as disclosed in the Purchaser Disclosure Material, no Purchaser Group Company is a party to or bound by any Material Contract. **Material Contracts** mean:

- (a) any agreement relating to indebtedness for money borrowed, loan facilities, margin loans, amounts to the extent drawn under letters of credit or overdrafts, bill facilities, bonds evidencing indebtedness for money owed and debentures of, or guarantees or other financial support in respect of indebtedness for money borrowed (whether incurred, assumed, guaranteed or secured by any asset) with a principal amount borrowed in excess of US\$200,000;
- (b) any finance or operating lease under which the Purchaser Group has made payments of US\$200,000 or more during the twelve-month period ending on the Accounts Date;

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- (c) any shareholders agreement, joint venture, partnership, limited liability company, strategic alliance or other similar agreements or arrangements (including any agreement providing for joint research, development, marketing or distribution);
 - (d) any agreement or series of related agreements relating to grants relating to the Purchaser Group's products or the development of Intellectual Property (including with respect to research and development) or similar agreements or arrangements with any Regulatory Authority or other person;
 - (e) any agreement or series of related agreements, including any option agreement, relating to the acquisition or disposition of any business, capital stock or substantially all of the assets of any other person or any material real property (whether by merger, sale of stock, sale of assets or otherwise);
 - (f) any agreement or series of related agreements for the purchase of materials, supplies, goods, services, equipment or other assets under which the Purchaser Group made payments of US\$200,000 or more during the twelve-month period ending on the Accounts Date;
 - (g) any sales, distribution, agency or other similar agreement providing for the sale by the Purchaser Group of materials, supplies, goods, services, equipment or other assets that provides for aggregate payments to the Purchaser Group over the remaining term of the agreement of US\$200,000 or more or under which payments of US\$200,000 or more were made to the Purchaser or its Subsidiaries during the twelve-month period ending on the Accounts Date;
 - (h) any agreement or series of related agreements providing for the manufacture, production, assembly or shipment of water-based products by the Purchaser Group or a third party (as applicable), either (i) under which the Purchaser Group has made payments of US\$200,000 or more during the twelve-month period ending on the Accounts Date or (ii) which provides for aggregate payments to the Purchaser Group over the remaining term of the agreement of US\$200,000 or more or under which payments of US\$200,000 or more were made to the Company or its Subsidiaries during the twelve-month period ending on the Accounts Date;
 - (i) any agreement relating to any interest rate, derivatives or hedging transaction;
 - (j) any agreement (including any "take-or-pay" or keepwell agreement) under which the Purchaser Group has directly or indirectly guaranteed any Liabilities or obligations of any other person (in each case other than endorsements for the purpose of collection in the ordinary course of business);
 - (k) any material agreement relating to the planning, financing, development or construction of any Purchaser Project;
 - (l) all leases, lease agreements, subleases, renewals, variations, licences, sublicences or other terms of occupancy for Purchaser Group Leased Premises;
 - (m) any licences, sub licences, other user agreements and assignments for all material Intellectual Property used under licence granted to a Purchaser Group Company by third parties;
 - (n) any licences, sub licences, other user agreements and assignments for all material Intellectual Property licensed by a Purchaser Group Company to third parties;

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- (o) all material Insurance Policies held by a Purchaser Group Company; and
 - (p) any agreement that is currently in effect with an advisor, consultant, broker or other intermediary relating to any Purchaser Project or other transaction in respect of which such intermediary is or would reasonably be expected to be entitled to be paid a finder's fee, commission or other similar charge totalling US\$200,000 or more.

10.2 Material Contracts current and valid

Each of the Purchaser Group's Material Contracts is current and in full force and effect, and constitutes, subject to the Enforceability Exceptions, legal, valid and binding obligations enforceable in accordance with its respective terms against the relevant Purchaser Group Company and, to the Knowledge of the Purchaser, against each of the other parties to the relevant Purchaser Group's Material Contract.

10.3 No breach or termination of Material Contracts

In relation to the Purchaser Group's Material Contracts, there are no actual or, to the Knowledge of Purchaser, alleged material breaches of any of the terms, conditions or provisions of any of the Purchaser Group's Material Contracts by a Purchaser Group Company or, to the Knowledge of Purchaser, by any of the other parties to any of the Purchaser Group's Material Contracts.

10.4 Effect of entering into agreement

The Purchaser entering into and performing their obligations under this Agreement will not require the consent of any party to, or result in the material breach of, or result in the termination of or a material change in the rights of a party under, any of the terms, conditions or provisions of, any of the Purchaser Group's Material Contracts.

10.5 Outstanding offers or tenders

No Purchaser Group Company has made offers, tenders or quotations outside of the ordinary course of business that are still outstanding and capable of acceptance by a third party that would give rise to a material contractual obligation binding on a Purchaser Group Company.

10.6 No indication that customers will cease or reduce business

Neither the Purchaser nor the Purchaser Group has received any written notice from any of the top 10 customers (measured by the amount of revenue of the Purchaser Business attributable to that customer) of the Purchaser Business for the 12-month period ended on the Accounts Date that any such customer intends to materially reduce or cease its business with the relevant Purchaser Group Company.

11 Authorisations

11.1 No other authorisations required

The Purchaser Group Companies, collectively, hold all authorisations, licences, consents, certifications, accreditations or permits that are necessary for the ordinary operation of the

Purchaser Business, except where failure to do so would not be materially adverse to the operation of the Purchaser Business.

11.2 Authorisations current and valid

Each of the Purchaser Group's Authorisations is current and valid.

11.3 Effect of entering into agreement

Other than those consents, approvals and notifications which the Purchaser is required to procure under clause 3.1 of this Agreement, to the Knowledge of Purchaser, the Purchaser entering into and performing its obligations under this Agreement and the change in the ownership of the Company from the Seller to the Purchaser will not result in any of the Purchaser Group's Authorisations being modified, suspended, revoked, terminated, cancelled or not renewed.

11.4 No breach or revocation of Authorisations

In relation to the Purchaser Group's Authorisations, there are no actual or, to the Knowledge of the Purchaser, alleged material breaches of any of the provisions of any of the Purchaser Group's Authorisations by a Purchaser Group Company.

12 Purchaser Projects

12.1 All Purchaser Projects disclosed

All of the Purchaser Projects and all Material Contracts relating to Purchaser Projects have been disclosed to the Seller by the Purchaser in the Purchaser Disclosure Material.

12.2 Penalties and defaults

During the three years immediately preceding the date hereof, no material penalties have been payable by a Purchaser Group Company, and no defaults or events of default have occurred, in respect of any Purchaser Project.

12.3 Effect of entering into agreement

The Purchaser entering into and performing its obligations under this Agreement will not require the consent of any party to, or result in the material breach of, or result in the termination of or a material change in the rights of a party under, any of the terms, conditions or provisions of, any Purchaser Project contract.

13 Stock

13.1 Sufficiency of Purchaser Group Stock

The Purchaser Group has sufficient Stock on hand or in transit to enable the Purchaser Business to continue to operate in the ordinary course of business consistent with past practice.

13.2 Extent of Purchaser Group Stock

Since the Accounts Date, the Purchaser Group has made no material purchases, sales, transfers, write offs or accumulations of Purchaser Group Stock other than in the ordinary course of business.

14 Information technology

14.1 Computer Systems

The Computer Systems owned or used by the Purchaser Group:

- (a) are in good operating order and are adequate for the present needs of the Purchaser Business;
- (b) have adequate security, backups, disaster recovery and business continuity plans in place; and
- (c) have support and maintenance adequate for the Purchaser Business.

14.2 Purchaser Group software

All of the material software forming part of the Computer Systems that is Owned Intellectual Property or is the subject of Intellectual Property Licences granting rights to a Purchaser Group Company with respect to such software is lawfully used by the Purchaser Group and does not infringe the Intellectual Property of any person.

14.3 No Claims

In relation to the Computer Systems, there are no:

- (a) current or, to the Knowledge of the Purchaser, threatened Claims by any manufacturer or supplier of computer hardware or supplier of any IT support or maintenance services against a Purchaser Group Company; or
- (b) current or, to the Knowledge of the Purchaser, threatened Claims by a Purchaser Group Company against a manufacturer or supplier of computer hardware or supplier of any IT support or maintenance services.

15 Environment

15.1 No other environmental authorisations required

The Purchaser Group Companies collectively hold all of the environmental licences, consents, authorisations, certifications, accreditations or permits that are necessary for the current ordinary operation of the Purchaser Business (including each Purchaser Project) and/or required under applicable Environmental Laws, except where failure to do so would not be materially adverse to operation of the Purchaser Business.

15.2 Compliance

The Purchaser Business is currently conducted in compliance in all material respects with all applicable Environmental Laws, regulations, standards and requirements.

15.3 No contravention of Environmental Laws

During the three years immediately preceding to the date of this Agreement, to the Knowledge of the Purchaser, there have been no material infringements or allegations of any material contravention of any applicable Environmental Laws, or related regulations, standards or requirements.

15.4 Contaminants or other hazardous substances

- (a) During the three years immediately preceding to the date of this Agreement, to the Knowledge of the Purchaser, no Purchaser Group Company has released any Hazardous Substances in, on or under, including groundwater, any part of a Purchaser Group's Leased Premises or any Purchaser Project Land or any property adjacent to a Purchaser Group's Leased Premises or Purchaser Project Land that has originated or emanated from a Purchaser Group's Leased Premises or Purchaser Project Land, which, as of the date of this Agreement, would require notification to any Regulatory Authority (other than where notification has already been provided and disclosed to the Seller) or would entitle any Regulatory Authority to require monitoring, closure, clean up or remediation under any applicable Environmental Law, except in such quantities and stored in such a manner as is allowed by an applicable Environmental Law.
- (b) To the Knowledge of the Purchaser, there is no Hazardous Substance or asbestos present on a Purchaser Group Leased Premises or Purchaser Project Land except in such quantities and stored in such a manner as is allowed by an applicable environmental law.

15.5 No Claims or audits

There are no:

- (a) current or, to the Knowledge of the Purchaser, threatened Claims by any person against a Purchaser Group Company;
- (b) current or, to the Knowledge of the Purchaser, threatened audits, investigations, inspections, inquiries, reports, prosecutions or proceedings by any Regulatory Authority other than those of a routine or periodic nature; or
- (c) outstanding notices, orders, directions or fines from any Regulatory Authority;

in each case, regarding the discharge of a Hazardous Substance in a manner requiring remediation by any of the Purchaser Group Companies pursuant to applicable Environmental Laws, or a breach of any applicable Environmental Law.

16 Employees and superannuation

16.1 Definition

For the purpose of this paragraph 16, 'Employer' refers to the Purchaser Group Company that employs the Employee.

16.2 Compliance

The Purchaser Group conducts the Purchaser Business in compliance, in all material respects, with all employment Laws, regulations, standards and requirements applicable to the Employees.

16.3 Employee entitlements

- (a) The entitlements of the Employees to annual leave, personal/carer's leave, long service leave, vacation or holiday pay and parental leave are adequate, and the accrual and calculation of such entitlements have been determined in accordance with all applicable legislation, relevant industrial instruments, company policies and/or employment agreements, and the usual accounting policies and practices of the Employer and are not less than the legal entitlements of the Employees, and the Employer has paid all amounts due and payable to the Employees.
- (b) The Employee Records have been kept in accordance with the applicable Laws.

16.4 No liability for employee entitlements

The Employer has no liability for any wages, overtime worked, annual leave, long service leave, personal/carer's leave, special leave, parental leave, accident pay, debts, remuneration, bonuses (including retention, success and similar payments), incentives, benefits, commissions, allowances, severance, notice, termination or redundancy or any other payments or liabilities due to any employee of the Employer under any industrial instrument, agreement with a union or Laws or under any contract, agreement or arrangement (including as a result of or in connection with any transaction proposed under or in connection with this Agreement), other than as disclosed in the Purchaser Disclosure Material.

16.5 No other agreements or instruments

- (a) The Employer is not bound by or in the process of negotiating any service contracts, employment agreements, collective bargaining agreements, industrial instruments or other agreements with a union in respect of its employees other than as disclosed or as required under this Agreement.
- (b) There are no agreements or unwritten understandings between the Employer and any Employee and no representation has been made to any Employee which is not reflected in the written terms and conditions of an agreement between the Employer and the relevant Employee, including but not limited to any contract, agreement or arrangement that entitles the relevant Employee to any benefit, monetary or otherwise, if ownership of the Employee changes, including the change of ownership of the Company from the Seller to the Purchaser.

16.6 Share or option plan

The Employee Stock Option Plans are the only employee share ownership or option plans that a Purchaser Group Company has in place with, or to benefit, its Employees.

16.7 No contraventions of employment laws

There are no:

- (a) material infringements by the Employer or, to the Knowledge of the Purchaser, allegations against the Employer of any material contravention of any employment Laws, requirements or industrial instruments applicable to any employee of the Employer, including in relation to workplace health and safety; or
- (b) to the Knowledge of the Purchaser, facts, matters or circumstances that would or are reasonably likely to give rise to any infringements or allegations of the type referred to in clause 16.7(a).

16.8 No industrial action

There is no current or, to the Knowledge of the Purchaser, threatened industrial or collective bargaining action by any of the Employees of the Employer or by any union or other industrial organisation that would or is reasonably likely to materially disrupt the ordinary operation of the Purchaser Business or cause the Employer to have to pay out a material sum of money.

16.9 Employee claims

There are no current or, to the Knowledge of the Purchaser, threatened material Claims by any Employee, or former employee, of the Employer against the Employer, or prosecutions by a Regulatory Authority against the Employer, including any Claims or prosecutions in a state or federal industrial tribunal, a state or federal commission or the court system for:

- (a) termination of employment;
- (b) known or alleged breaches of contract or for any employee entitlements;
- (c) workplace injury or illness;
- (d) discrimination or bullying;
- (e) negligence; or
- (f) non-compliance or breaches of any applicable employment Laws, regulations, standards, requirements or industrial instruments.

16.10 Superannuation and pension benefits

- (a) The Purchaser Disclosure Material contains details of all material superannuation schemes or other material pension or employee benefit arrangements to which a Purchaser Group Company contributes or is required to contribute in respect of the Employees.
- (b) None of the Purchaser Group Companies has any defined benefit pension plans or funds.

-
- (c) The Employer has complied, in all material respects, with all:
- (i) of its obligations in respect of the Employees' superannuation, pension and other employee benefits, and other entitlements relating to superannuation and pension funds and employee benefits;
 - (ii) agreements and other arrangements between the Employer and the trustees of a pension or superannuation fund; and
 - (iii) agreements and other arrangements between the Employer and an Employee in respect of the Employee's superannuation and pension entitlements.
- (d) There are no:
- (i) current or, to the Knowledge of the Purchaser, threatened Claims by any Employees or former employees of the Employer, or deemed Employees of the Employer, against the Employer alleging any material breach by the Employer of its superannuation or pension commitments (other than routine Claims for benefits); or
 - (ii) current audits, investigations, inspections, inquiries, prosecutions or proceedings by any Regulatory Authority (nor has notice been received of a potential audit, investigation, inquiry, prosecution or proceeding) with respect to any fund to which the Company makes or made contributions.

16.11 Independent contractors

The Purchaser Group has disclosed in the Purchaser Disclosure Material to the Seller details of all independent contractors, consultants and agents paid in excess of \$100,000 who provide services to the Purchaser Group, including the name of each such independent contractor, consultant or agent, the terms of engagement and details of fees payable.

17 Insurance

17.1 Adequate insurance

During the three years immediately preceding the date of this Agreement, the Purchaser Group have at all times:

- (a) maintained valid liability insurance in respect of areas of the Purchaser Business, and at amounts, customarily carried by persons carrying on a similar business to the Purchaser Business or as required by Law, including public risk, product liability, worker's compensation, fire and theft; and
- (b) paid all premiums due in respect of each of the Insurance Policies.

17.2 Insurance not void, voidable or unenforceable

During the three years immediately preceding the date of this Agreement, no Purchaser Group Company has, to the Knowledge of the Purchaser, done or omitted to do any act that would or is reasonably likely to:

-
- (a) make any Purchaser Group Insurance Policy void, voidable or unenforceable; or
 - (b) permit an insurer to:
 - (i) cancel a Purchaser Group Insurance Policy;
 - (ii) refuse or materially reduce a Claim under a Purchaser Group Insurance Policy; or
 - (iii) materially increase a premium payable on a Purchaser Group Insurance Policy.

17.3 No Claims

In relation to the Purchaser Group Insurance Policies, there are no current or, to the Knowledge of the Purchaser, threatened Claims by a Purchaser Group Company under any of the Purchaser Group Insurance Policies.

18 Applicable Laws

During the three years immediately preceding the date of this Agreement, each Purchaser Group Company:

- (a) has complied in all material respects with all legal requirements for the filing of returns, particulars, notices and other documents with all Government Authorities;
- (b) has conducted the affairs of the Purchaser Group Company in compliance in all material respects with all constituent or organisational documents of that Purchaser Group Company; and
- (c) has conducted the affairs of the Purchaser Group Company in compliance in all material respects with all applicable Laws and regulations.

The Purchaser makes no representation or warranty in this paragraph 18 with respect to environmental matters, employment matters, anti-bribery and corruption matters, anti-money laundering and counter-terrorism matters or Tax matters, which matters are exclusively addressed in paragraphs 15, 16, 19, 20 and 24 of this Schedule 4.

19 Anti-bribery and corruption

During the three years immediately preceding to the date of this Agreement:

- (a) None of the Purchaser, a Purchaser Group Company or, to the Knowledge of the Purchaser, any of their Authorised Persons has provided, or offered or promised to provide, a financial or other benefit to another person in Illegitimate Circumstances in violation of Law with the intention to obtain or retain business or an advantage in the conduct of business of a Purchaser Group Company.
- (b) The Purchaser and the Purchaser Group have suitable policies and procedures designed to reasonably prevent the provision of a financial or other benefit to another person in Illegitimate Circumstances in violation of Law with the intention

to obtain or retain business or an advantage in the conduct of business of a Purchaser Group Company.

20 Anti-money laundering and counter-terrorism

During the three years immediately preceding to the date of this Agreement, each Purchaser Group Company has conducted its affairs in compliance, in all material respects, with all Laws relating to anti-money laundering or counter-terrorism financing, economic or trade sanctions or import, export, and re-export requirements made by a Regulatory Authority and the rules, regulations and other instruments for the purposes of those Laws (including, without limitation, those made by a government agency or regulator).

21 Legal proceedings

21.1 No litigation or other proceedings

There are no current or, to the Knowledge of the Purchaser, threatened civil, criminal, administrative proceedings, arbitration or other judicial or quasi judicial proceedings by or against the Purchaser Group for a stated amount individually, or in the aggregate with respect to any series of related matters, greater than US\$200,000 and except for debt collection in the ordinary course of business.

21.2 Regulatory Authority audits

There are no:

- (a) current or, to the Knowledge of the Purchaser, threatened audits, investigations, inspections, enquiries, reports, prosecutions or proceedings by any Regulatory Authority into a Purchaser Group Company for a stated amount individually, or in the aggregate with respect to any series of related matters, greater than US\$200,000 and except for reviews or investigations of a routine or periodic nature; or
- (b) outstanding notices, orders, directions or fines from any Regulatory Authority regarding a Purchaser Group Company for a stated amount individually, or in the aggregate with respect to any series of related matters, greater than US\$200,000.

21.3 No unsatisfied judgments

There are no unsatisfied fines, judgments, orders, arbitral awards or decisions of any court, tribunal or arbitrator or terms of settlement that a Purchaser Group Company is bound by for a stated amount individually or, in the aggregate with respect to any series of related matters, greater than US\$200,000 and except for debt collection in the ordinary course of business.

22 Powers of attorney

There are no powers of attorney, appointments of agents or other authorities to act on behalf of a Purchaser Group Company given by a Purchaser Group Company, other than authorities given by a Purchaser Group Company to directors, officers or employees of the Purchaser Group for the ordinary operation of the Purchaser Business.

23 Brokers

There is no investment banker, broker, finder or other intermediary retained by or authorized to act on behalf of the Purchaser or any Purchaser Group Company who might be entitled to any fee or commission from the Purchaser or any of its Affiliates (including, after Completion, the Purchaser Group) upon consummation of the transactions contemplated hereby.

24 Tax Warranties

24.1 All Tax paid

Each Purchaser Group Company has paid, or provided for in the Purchaser Financial Statements, all material Taxes, including any penalties or interest, that have been assessed or that are otherwise due and payable on the due date for payment.

24.2 Deductions and withholding

Each Purchaser Group Company has complied in all material respects with its obligations under any Tax law requiring the deduction or withholding of Tax from payments made by it including interest, royalties, dividends, remuneration payable to employees or contractors and payments to non residents and, where necessary, each Purchaser Group Company has properly accounted for and disclosed all Tax deducted or withheld in accordance with the applicable Tax law requirements.

24.3 Transfer Taxes

Except in respect of this Agreement, and documents or transactions contemplated by this Agreement, all material deeds, agreements or other documents or transactions that:

- (a) a Purchaser Group Company is or has been a party to;
- (b) a Purchaser Group Company has an interest in enforcing; or
- (c) are necessary to establish the title of a Purchaser Group Company to the Purchaser Assets,

have had Transfer Taxes and other Taxes of a similar nature paid in full in accordance with the applicable Laws and no such deed, agreement or other document is unstamped or insufficiently stamped.

24.4 VAT

Each Purchaser Group Company which is required to be registered for VAT:

-
- (a) is registered for VAT;
 - (b) complies in all material respects with the relevant VAT law;
 - (c) is not in material default of any obligation to make or lodge any payment or VAT return;
 - (d) has in all material respects accounted correctly for VAT in respect of any intra-Group transactions; and
 - (e) has, in all material respects, correctly and on a timely basis, returned VAT on all taxable supplies and has no material outstanding VAT liabilities (other than those provide for in the Accounts).

24.5 Payroll Tax

All material amounts of payroll tax required by law to be paid by each Purchaser Group Company in relation to employees or contractors for any period up to Completion which are due and payable by Completion have been or will be paid when due (excluding any such amounts that are taken into account in the calculation of Net Payables).

24.6 Liability for Tax

For the period:

- (a) up to and including the Accounts Date, no Purchaser Group Company will become subject to any material Tax on or in respect of, or by reference to, any profits, gains or income that is materially different from the Tax already provided for in the Purchaser Financial Statements; and
- (b) after the Accounts Date, the only Liabilities for Tax of a Purchaser Group Company that have arisen or may arise on or before the Completion Date are, or will be, Liabilities arising out of the normal business and trading activities of the relevant Purchaser Group Company or the transactions contemplated by this Agreement.

24.7 Returns

As far as the Purchaser is aware, each Purchaser Group Company has:

- (a) filed or lodged all material Tax returns and any other material information required to be lodged by the Purchaser Group Company with the appropriate Government Authority within the applicable time limits and all of those Tax returns and other information were materially accurate, complete and not misleading on lodgement, were made on a proper basis and are not the subject of any dispute; and
- (b) kept and preserved all material Records that are required to be kept and preserved by Law.

24.8 No audits or disputes

- (a) No Purchaser Group Company is involved in or received written notice of any audits, demands, questions or disputes with or from any Government Authority in relation to a Tax matter, other than any such audit, demand, question or dispute that has been completely resolved.

-
- (b) There are no Encumbrances over any of the Purchaser Assets that arose in connection with any failure (or alleged failure) to pay any Tax.

24.9 Transfer pricing

- (a) Each Purchaser Group Company is in material compliance with any applicable transfer pricing provisions of any Tax law.
- (b) To Purchaser's knowledge, no Purchaser Group Company has entered into or been a party to any transaction which contravenes the anti-avoidance provisions of any Tax law.

24.10 Statute of limitations

No Purchaser Group Company has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

24.11 Tax allocation and sharing

No Purchaser Group Company is a party to any Tax allocation or sharing agreement, arrangement or understanding (excluding any customary commercial contracts which do not primarily relate to the allocation or sharing of Tax liabilities).

24.12 Sole and Exclusive Representations

Notwithstanding anything to the contrary in this Agreement, the Purchaser makes no representation or warranty in this Agreement with respect to environmental matters, employment or superannuation matters, anti-bribery and corruption matters, anti-money laundering and counter-terrorism matters or Tax matters other than as set forth and exclusively addressed in paragraphs 15, 16, 19, 20 and 24 of this Schedule 4.

25 Compliance

The Purchaser has complied in all material respects with all applicable regulatory and statutory requirements regarding the operation of the Purchaser Business.

26 No conflict for Purchaser

The execution, delivery and performance of this Agreement and all other documents contemplated by this Agreement (including the Ancillary Agreements to which the Purchaser is a party) by the Purchaser:

- (a) do not result in a breach of, or a default under, the Purchaser's constituent or organisational documents or any other agreement to which the Purchaser is a party or by which it is bound, except as would not be materially adverse to the Purchaser Business; or
- (b) do not constitute a breach of any Law or cause or result in a default under any Encumbrance, by which it is bound and that would prevent it from execution, delivery or performance of this Agreement and all other documents contemplated

by this Agreement (including the Ancillary Agreements to which the Seller is a party).

PART B – FUNDAMENTAL PURCHASER WARRANTIES

1 Formation and power of Purchaser Group Companies

- (a) Each Purchaser Group Company:
 - (i) is duly organised, validly existing and in good standing under the laws of the place of its incorporation or organization;
 - (ii) has the power to own its assets and conduct its business as it is now being conducted; and
 - (iii) has conducted its business in compliance in all material respects with all constituent or organisational documents of that Purchaser Group Company.
- (b) The Purchaser has all requisite power and authority to enter into, execute, deliver and perform this Agreement and the Ancillary Agreements to which the Purchaser is a party and to carry out the transactions that this Agreement and the Ancillary Agreements to which the Purchaser is a party contemplate and no other action is necessary on the part of the Purchaser to enter into, execute, deliver and perform this Agreement and the Ancillary Agreements to which the Purchaser is a party or to carry out the transactions that this Agreement or the Ancillary Agreements to which the Purchaser is a party contemplate.
- (c) The execution, delivery and performance of this Agreement and all other documents contemplated by this Agreement (including the Ancillary Agreements to which the Purchaser is a party) by the Purchaser constitute legal, valid and binding obligations of the Purchaser enforceable in accordance with the relevant document's terms and conditions, subject to the Enforceability Exceptions.

2 Purchaser Group structure

- (a) The structure diagram set out in item 3 of Schedule 10 is accurate and complete with respect to the Purchaser Group and, except where indicated otherwise, equity holdings are 100%.
- (b) No Purchaser Group Company is the holder of any equity interest in another Purchaser Group Company except as set out in the structure diagram in item 3 of Schedule 10.

3 Consideration Shares and Purchaser Shares

3.1 Encumbrances and restrictions

- (a) Except as may be imposed by applicable securities Laws or provided for under the terms of this Agreement or the Lock-Up Agreement, upon issue of the Consideration Shares:
 - (i) there will be no Encumbrances (other than those created by the Seller) over or affecting the Consideration Shares; or
 - (ii) agreements to which the Purchaser is a party to give or create any Encumbrances over or affecting the Consideration Shares.
- (b) Except as may be imposed by applicable securities Laws or restrictions provided for in this Agreement with respect to Holdback Shares, there are no restrictions on the issuance of the Consideration Shares to the Seller on the terms of this Agreement.

3.2 Purchaser Group securities

Except as disclosed by the Purchaser as company announcements on the ASX Market Announcements Platform, no Purchaser Group Company has issued securities with conversion rights to Purchaser Shares or other securities in it and there are no agreements or arrangements under which options or convertible notes have been issued by a Purchaser Group Company.

3.3 No obligations to issue other securities

Except as disclosed by the Purchaser as company announcements on the ASX Market Announcements Platform or provided for or expressly permitted under the terms of this Agreement there are no agreements, arrangements, understandings, plans or other entitlements in place under which a Purchaser Group Company is or may be obliged to grant, allot, issue, create, sell, transfer or otherwise dispose of shares or other securities in a Purchaser Group Company or rights or interests to or in shares or other securities in a Purchaser Group Company, other than this Agreement.

Sale and Purchase Agreement

Schedule 5 – Target Group Employees

Schedule 5 of the Seller Disclosure Letter is incorporated by reference herein.

Sale and Purchase Agreement

Schedule 6 – Target Group Property and Leased Premises

Schedule 6 of the Seller Disclosure Letter is incorporated by reference herein.

Sale and Purchase Agreement

Schedule 7 – Target Group Permitted Debt

Schedule 7 of the Seller Disclosure Letter is incorporated by reference herein.

Sale and Purchase Agreement

Schedule 8 – Target Group Business Names and Domain Names

Schedule 8 of the Seller Disclosure Letter is incorporated by reference herein.

Sale and Purchase Agreement

Schedule 9 – Target Group Intellectual Property

Schedule 9 of the Seller Disclosure Letter is incorporated by reference herein.

Sale and Purchase Agreement

Schedule 10 – Purchaser and Purchaser Group Companies

Sale and Purchase Agreement

Schedule 11 - Purchaser Group Employees

Sale and Purchase Agreement

Schedule 12 – Purchaser Group Leases

Sale and Purchase Agreement

Schedule 13 - Purchaser Group Permitted Debt

Sale and Purchase Agreement

Schedule 14 – Purchaser Group Business Names and Domain Names

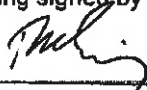
Sale and Purchase Agreement

Schedule 15 – Purchaser Group Intellectual Property

Sale and Purchase Agreement

Purchaser Signing Page

EXECUTED by **EMEFCY GROUP LTD ACN 127 734 196** in accordance with the *Corporations Act 2001* by being signed by the following officers:



Signature of director

Signature of director / company secretary

Richard Irving

Name of director *(please print)*

Name of director / company secretary *(please print)*


Sale and Purchase Agreement

Purchaser Signing Page

EXECUTED by **EMEFCY GROUP LTD ACN 127 734 196** in accordance with the *Corporations Act 2001* by being signed by the following officers:

Signature of director

Name of director *(please print)*



Signature of ~~director~~ / company secretary

Ross Kennedy

Name of ~~director~~ / company secretary *(please print)*

Sale and Purchase Agreement

Seller Signing Page

EXECUTED by RSL INVESTMENTS
CORPORATION:

By: Ronald S. Lauder

Name: Ronald S. Lauder

Title: Director

Sale and Purchase Agreement

Annexure A – Target Disclosure Material

1 Data Room index

See attached index.

2 RFIs and responses

See attached RFIs and responses.

Sale and Purchase Agreement

Annexure B – Purchaser Disclosure Material

1 Data Room index

See attached index.

2 RFIs and responses

The documented titled "2017-02-13 Debevoise & Plympton DD questions V6.0.docx (13 Feb 2017 16:48)" in the Purchaser Data Room index and included in the Purchaser Data Room Material is incorporated by reference herein.

Sale and Purchase Agreement

Annexure C – Lock-Up Agreement

Voluntary Restriction Deed

Voluntary Restriction Deed

Contents

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2	Voluntary escrow restriction	3
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Voluntary Restriction Deed

Date _____

Parties

Emefcy Group Limited ACN 127 734 196 of Suite 1, 1233 High Street, Armadale, Victoria, 3143 (**Entity**)

The party named and described at Item 1 of the Schedule (**Holder**)

Recitals

- A The Entity is admitted to the official list of ASX.
- B The Entity intends to issue securities to the Holder. The Holder has agreed to the voluntary restriction (escrow) of a number of the securities (**Restricted Securities**) with effect from the issue of the securities. The Holder will hold the Restricted Securities as set out in this Deed. It is a condition of the issue of the Restricted Securities that the Parties will comply with this Deed.

The parties agree

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

Affiliates means, in respect of any entity or other person, an entity or other person that directly, or indirectly through one or more intermediaries, controls or manages, is controlled or managed by, or is under common control or management with the entity or other person.

ASX means ASX Limited ACN 008 624 691.

Claim has the meaning provided in the SPA.

Claim Securities has the meaning provided in clause 4.1.

Completion has the meaning provided in the SPA.

Determined has the meaning provided in the SPA.

Determined Claim has the meaning provided in the SPA.

Lock-Up Period means the period set out in Item 3 of the Schedule.

Listing Rules means the listing rules of ASX.

Market VWAP Price has the meaning provided in the SPA.

Party or Parties means the Entity and the Holder.

Restricted Securities means the securities set out in Item 4 of the Schedule.

Schedule means the schedule to this Deed.

Security Interest means a security interest as defined in the Listing Rules.

SPA means the Sale and Purchase Agreement between the Entity and the Holder dated 26 May 2017.

Unresolved Holdback Claim has the meaning provided in the SPA.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (c) a reference to any Party to this Deed, or any other document or arrangement, includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- (d) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure, or exhibit of or to this Deed; and
- (e) a recital, schedule, annexure or a description of the Parties forms part of this Deed.

2 Voluntary escrow restriction

2.1 Subject to clauses 3 and 4, the Holder agrees that during the Lock-Up Period, it will not do any of the following:

- (a) dispose of, or agree or offer to dispose of, the Restricted Securities;
- (b) create, or agree or offer to create, any Security Interest in the Restricted Securities; or
- (c) do, or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of the Restricted Securities.

2.2 Subject to clauses 3 and 4, if the Restricted Securities are kept on an issuer sponsored subregister, the Holder hereby agrees in writing to the application of a holding lock to the Restricted Securities for the Lock-Up Period.

-
- 2.3 Subject to clauses 3 and 4, if the Restricted Securities are kept on a certificated subregister, the Holder must, if required by the Entity, deposit the certificates for the Restricted Securities with a bank or recognised trustee for the Lock-Up Period.
- 2.4 The terms of this deed will have no effect on any rights of the Holder to receive or participate in dividends, any rights issue, bonus issue or other distributions in connection with the Restricted Securities or to exercise voting rights in respect of the Restricted Securities.
- 2.5 Clause 2 will not apply to the extent necessary to enable the Holder to undertake a reorganisation subject to its ultimate shareholder retaining ultimate control of the Restricted Securities, provided that if that reorganisation results in any of the Restricted Securities being registered in the name of a new holder, that new holder must become a party to this deed.
- 2.6 This clause 2 and this deed terminates with immediate effect and without action of any party upon the expiry of the Lock-Up Period. The Entity must cause the release of any holding lock in respect of the Restricted Securities to occur with effect from the expiry of the Lock-Up Period.

3 Takeover bid or scheme of arrangement

- 3.1 Clause 2 will not apply to the extent necessary to enable the Holder to accept an offer under a takeover bid or to enable the Restricted Securities to be transferred or cancelled as part of a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act, the Entity must consent to the bank or recognised trustee releasing the certificates or the removal of a holding lock on the Restricted Securities.
- 3.2 The Entity is not required to consent under clause 3.1 unless, to the extent to which they are applicable, all of the following conditions are met:
- (a) in the case of a takeover bid, the offers are for all of the ordinary shares in the Entity;
 - (b) in the case of a takeover bid, holders of at least half of the securities in the bid class that are not Restricted Securities to which the offers relate have accepted;
 - (c) in the case of an off-market bid, if the offer is conditional, the bidder and the Holder agree in writing that the certificates will be returned to the bank or recognised trustee or a holding lock will be applied, for each Restricted Security that is not bought by the bidder under the off-market bid; and
 - (d) in the case of a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act, the Holder and the Entity agree in writing that the certificates will be returned to the bank or recognised trustee or a holding lock will be applied, if the merger does not take effect.

4 Release to satisfy Entity Claims

- 4.1 In accordance with clause 5.4(a) of the SPA, to enable the Holder during the Lock-Up Period to sell a number of Restricted Securities equal to (i) the aggregate amount (in Australian dollars) of any Determined Claims in favour of the Entity arising from the matters referred to in clause 5.4(a) of the SPA, divided by (ii) the Market VWAP Price at the time such Determined Claims in favour of the Purchaser were Determined, the Entity must consent to the bank or recognised trustee releasing the certificates or the removal of a holding lock (as applicable) on such number of Restricted Securities.
- 4.2 In accordance with clause 5.4(b) of the SPA, if, at any time during the 12 month period after Completion (or after the end of that 12 month period in the case of any Unresolved Holdback Claim), the circumstances described in clause 5.4(b)(i) and (ii) of the SPA arise, to enable the Holder to sell a number of Restricted Securities equal to (i) the lesser of (x) the aggregate amount (in Australian dollars) of such Determined Claims in favour of the Entity or Unresolved Holdback Claims (once they are Determined in favour of the Entity), divided by (y) the Market VWAP Price at the time such Determined Claims were Determined in favour of the Entity, and (ii) the number of Holdback Shares that was reduced as described in clause 5.4(b)(i) of the SPA, the Entity must consent to the bank or recognised trustee releasing the certificates or the removal of a holding lock (as applicable) on such number of Restricted Securities.

5 Warranties

- 5.1 If Item 5 of the Schedule is completed, the full particulars of Security Interests which have been created, or are agreed or offered to be created, in the Restricted Securities are set out. Apart from this, before the Lock-Up Period begins, the Holder has not done, or omitted to do, any act which would breach clause 2.1 if done or omitted to be done during the Lock-Up Period. The Holder gives this warranty.
- 5.2 A breach of any of these warranties is a breach of this Deed.

6 Consequences of breaching this Deed

- 6.1 If it appears to the Entity that the Holder may breach this Deed, the Entity must take the steps necessary to prevent the breach, or to enforce the Deed.
- 6.2 If the Holder breaches this Deed, each of the following applies:
- (a) the Entity must take the steps necessary to enforce the Deed, or to rectify the breach; and
 - (b) the Entity must refuse to acknowledge, deal with, accept or register any sale, assignment, transfer or conversion of any of the Restricted Securities. This is in addition to other rights and remedies of the Entity.

7 General

The Entity may communicate with and/or consult with ASX regarding any matter concerning the Restricted Securities or this Deed, its operation or enforcement.

8 Waiver

The non-exercise of or delay in exercising any power or right of a Party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the Party to be bound by the waiver.

9 Jurisdiction

This Deed shall be governed by and shall be construed in accordance with the law of the State of Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria, Australia and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Deed. Each of the Parties irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

10 Amendment

This Deed may not be amended or waived without the written consent of the parties. The Entity may seek the consent of ASX to any amendment or waiver, provided that if ASX notifies the Entity that this Deed may not be amended without the consent of ASX the Entity must seek such consent.

11 Counterparts

This Deed may be signed in any number of counterparts. All counterparts executed separately when taken together constitute one Deed and counterparts executed separately may be consolidated into a single document.

12 Entire agreement

This Deed, together with the SPA, contain the entire agreement between the parties about their subject matter and supersede all previous communications, representations or agreements between the parties on the subject matter.

13 Inconsistency

13.1 If there is any inconsistency between the documents forming part of or contemplated by the entire agreement between the parties as set out in clause 12, then the following order of priority applies to determine which provisions prevail to the extent of the inconsistency:

- (a) the SPA; and
- (b) this Deed.

13.2 For the avoidance of doubt, an inconsistency between a clause of this Deed and a clause in the SPA will only be considered to exist if the subject matter of the particular clause is dealt with in both this Deed and the SPA. If the SPA is silent on any particular subject matter, then that silence will not be taken to constitute an inconsistency between this Deed and the SPA.

EXECUTED as a deed.

Voluntary Restriction Deed

Schedule

Item	Description	Details
1	Holder	RSL Investments Corporation, a Delaware corporation 767 Fifth Avenue, Suite 4200 New York, NY 10153 Attention: Jacqueline Scalisi
2	Lock-Up Period	24 months from Completion
3	Particulars of Restricted Securities	80,400,000 Completion Shares (as that term is defined in the SPA) and, if, as and when issued during the Lock-Up Period in accordance with clause 5.2 of the SPA, 20,100,000 Holdback Shares (as that term is defined in the SPA). The Completion Shares and the Holdback Shares together are the Consideration Shares.
4	Particulars of Security Interests over Restricted Securities	None

Voluntary Restriction Deed

Signing page

SIGNED SEALED AND DELIVERED by
EMEFCY GROUP LTD ACN 127 734 196 in
accordance with section 127 of the
Corporations Act 2001 (Cth) by being signed
by the following officers:

Signature of director

Signature of director/company secretary

Name of director *(please print)*

Name of director/company secretary
(please print)

**EXECUTED as a deed by RSL
INVESTMENTS CORPORATION:**

By: _____

Name: Ronald S. Lauder

Title: Director

Sale and Purchase Agreement

Annexure D –Audited Financial Statements

Sale and Purchase Agreement

Annexure E –Transition Services Agreement

Sale and Purchase Agreement

Annexure F – Purchaser Group Financial Statements

Annexure B
Lock-Up Agreement
See attached.

Voluntary Restriction Deed

Voluntary Restriction Deed

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Voluntary Restriction Deed

Date _____

Parties

Emefcy Group Limited ACN 127 734 196 of Suite 1, 1233 High Street, Armadale, Victoria, 3143 (**Entity**)

The party named and described at Item 1 of the Schedule (**Holder**)

Recitals

- A The Entity is admitted to the official list of ASX.
- B The Entity intends to issue securities to the Holder. The Holder has agreed to the voluntary restriction (escrow) of a number of the securities (**Restricted Securities**) with effect from the issue of the securities. The Holder will hold the Restricted Securities as set out in this Deed. It is a condition of the issue of the Restricted Securities that the Parties will comply with this Deed.

The parties agree

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

Affiliates means, in respect of any entity or other person, an entity or other person that directly, or indirectly through one or more intermediaries, controls or manages, is controlled or managed by, or is under common control or management with the entity or other person.

ASX means ASX Limited ACN 008 624 691.

Claim has the meaning provided in the SPA.

Claim Securities has the meaning provided in clause 4.1.

Completion has the meaning provided in the SPA.

Determined has the meaning provided in the SPA.

Determined Claim has the meaning provided in the SPA.

Lock-Up Period means the period set out in Item 3 of the Schedule.

Listing Rules means the listing rules of ASX.

Market VWAP Price has the meaning provided in the SPA.

Party or Parties means the Entity and the Holder.

Restricted Securities means the securities set out in Item 4 of the Schedule.

Schedule means the schedule to this Deed.

Security Interest means a security interest as defined in the Listing Rules.

SPA means the Sale and Purchase Agreement between the Entity and the Holder dated 26 May 2017.

Unresolved Holdback Claim has the meaning provided in the SPA.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (c) a reference to any Party to this Deed, or any other document or arrangement, includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- (d) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure, or exhibit of or to this Deed; and
- (e) a recital, schedule, annexure or a description of the Parties forms part of this Deed.

2 Voluntary escrow restriction

2.1 Subject to clauses 3 and 4, the Holder agrees that during the Lock-Up Period, it will not do any of the following:

- (a) dispose of, or agree or offer to dispose of, the Restricted Securities;
- (b) create, or agree or offer to create, any Security Interest in the Restricted Securities; or
- (c) do, or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of the Restricted Securities.

2.2 Subject to clauses 3 and 4, if the Restricted Securities are kept on an issuer sponsored subregister, the Holder hereby agrees in writing to the application of a holding lock to the Restricted Securities for the Lock-Up Period.

-
- 2.3 Subject to clauses 3 and 4, if the Restricted Securities are kept on a certificated subregister, the Holder must, if required by the Entity, deposit the certificates for the Restricted Securities with a bank or recognised trustee for the Lock-Up Period.
- 2.4 The terms of this deed will have no effect on any rights of the Holder to receive or participate in dividends, any rights issue, bonus issue or other distributions in connection with the Restricted Securities or to exercise voting rights in respect of the Restricted Securities.
- 2.5 Clause 2 will not apply to the extent necessary to enable the Holder to undertake a reorganisation subject to its ultimate shareholder retaining ultimate control of the Restricted Securities, provided that if that reorganisation results in any of the Restricted Securities being registered in the name of a new holder, that new holder must become a party to this deed.
- 2.6 This clause 2 and this deed terminates with immediate effect and without action of any party upon the expiry of the Lock-Up Period. The Entity must cause the release of any holding lock in respect of the Restricted Securities to occur with effect from the expiry of the Lock-Up Period.

3 Takeover bid or scheme of arrangement

- 3.1 Clause 2 will not apply to the extent necessary to enable the Holder to accept an offer under a takeover bid or to enable the Restricted Securities to be transferred or cancelled as part of a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act, the Entity must consent to the bank or recognised trustee releasing the certificates or the removal of a holding lock on the Restricted Securities.
- 3.2 The Entity is not required to consent under clause 3.1 unless, to the extent to which they are applicable, all of the following conditions are met:
- (a) in the case of a takeover bid, the offers are for all of the ordinary shares in the Entity;
 - (b) in the case of a takeover bid, holders of at least half of the securities in the bid class that are not Restricted Securities to which the offers relate have accepted;
 - (c) in the case of an off-market bid, if the offer is conditional, the bidder and the Holder agree in writing that the certificates will be returned to the bank or recognised trustee or a holding lock will be applied, for each Restricted Security that is not bought by the bidder under the off-market bid; and
 - (d) in the case of a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act, the Holder and the Entity agree in writing that the certificates will be returned to the bank or recognised trustee or a holding lock will be applied, if the merger does not take effect.

4 Release to satisfy Entity Claims

- 4.1 In accordance with clause 5.4(a) of the SPA, to enable the Holder during the Lock-Up Period to sell a number of Restricted Securities equal to (i) the aggregate amount (in Australian dollars) of any Determined Claims in favour of the Entity arising from the matters referred to in clause 5.4(a) of the SPA, divided by (ii) the Market VWAP Price at the time such Determined Claims in favour of the Purchaser were Determined, the Entity must consent to the bank or recognised trustee releasing the certificates or the removal of a holding lock (as applicable) on such number of Restricted Securities.
- 4.2 In accordance with clause 5.4(b) of the SPA, if, at any time during the 12 month period after Completion (or after the end of that 12 month period in the case of any Unresolved Holdback Claim), the circumstances described in clause 5.4(b)(i) and (ii) of the SPA arise, to enable the Holder to sell a number of Restricted Securities equal to (i) the lesser of (x) the aggregate amount (in Australian dollars) of such Determined Claims in favour of the Entity or Unresolved Holdback Claims (once they are Determined in favour of the Entity), divided by (y) the Market VWAP Price at the time such Determined Claims were Determined in favour of the Entity, and (ii) the number of Holdback Shares that was reduced as described in clause 5.4(b)(i) of the SPA, the Entity must consent to the bank or recognised trustee releasing the certificates or the removal of a holding lock (as applicable) on such number of Restricted Securities.

5 Warranties

- 5.1 If Item 5 of the Schedule is completed, the full particulars of Security Interests which have been created, or are agreed or offered to be created, in the Restricted Securities are set out. Apart from this, before the Lock-Up Period begins, the Holder has not done, or omitted to do, any act which would breach clause 2.1 if done or omitted to be done during the Lock-Up Period. The Holder gives this warranty.
- 5.2 A breach of any of these warranties is a breach of this Deed.

6 Consequences of breaching this Deed

- 6.1 If it appears to the Entity that the Holder may breach this Deed, the Entity must take the steps necessary to prevent the breach, or to enforce the Deed.
- 6.2 If the Holder breaches this Deed, each of the following applies:
- (a) the Entity must take the steps necessary to enforce the Deed, or to rectify the breach; and
 - (b) the Entity must refuse to acknowledge, deal with, accept or register any sale, assignment, transfer or conversion of any of the Restricted Securities. This is in addition to other rights and remedies of the Entity.

7 General

The Entity may communicate with and/or consult with ASX regarding any matter concerning the Restricted Securities or this Deed, its operation or enforcement.

8 Waiver

The non-exercise of or delay in exercising any power or right of a Party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the Party to be bound by the waiver.

9 Jurisdiction

This Deed shall be governed by and shall be construed in accordance with the law of the State of Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria, Australia and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Deed. Each of the Parties irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

10 Amendment

This Deed may not be amended or waived without the written consent of the parties. The Entity may seek the consent of ASX to any amendment or waiver, provided that if ASX notifies the Entity that this Deed may not be amended without the consent of ASX the Entity must seek such consent.

11 Counterparts

This Deed may be signed in any number of counterparts. All counterparts executed separately when taken together constitute one Deed and counterparts executed separately may be consolidated into a single document.

12 Entire agreement

This Deed, together with the SPA, contain the entire agreement between the parties about their subject matter and supersede all previous communications, representations or agreements between the parties on the subject matter.

13 Inconsistency

13.1 If there is any inconsistency between the documents forming part of or contemplated by the entire agreement between the parties as set out in clause 12, then the following order of priority applies to determine which provisions prevail to the extent of the inconsistency:

- (a) the SPA; and
- (b) this Deed.

13.2 For the avoidance of doubt, an inconsistency between a clause of this Deed and a clause in the SPA will only be considered to exist if the subject matter of the particular clause is dealt with in both this Deed and the SPA. If the SPA is silent on any particular subject matter, then that silence will not be taken to constitute an inconsistency between this Deed and the SPA.

EXECUTED as a deed.

Voluntary Restriction Deed

Schedule

Item	Description	Details
1	Holder	RSL Investments Corporation, a Delaware corporation 767 Fifth Avenue, Suite 4200 New York, NY 10153 Attention: Jacqueline Scalisi
2	Lock-Up Period	24 months from Completion
3	Particulars of Restricted Securities	80,400,000 Completion Shares (as that term is defined in the SPA) and, if, as and when issued during the Lock-Up Period in accordance with clause 5.2 of the SPA, 20,100,000 Holdback Shares (as that term is defined in the SPA). The Completion Shares and the Holdback Shares together are the Consideration Shares.
4	Particulars of Security Interests over Restricted Securities	None

Voluntary Restriction Deed

Signing page

SIGNED SEALED AND DELIVERED by
EMEFCY GROUP LTD ACN 127 734 196 in
accordance with section 127 of the
Corporations Act 2001 (Cth) by being signed
by the following officers:

Signature of director



Name of director (please print)

RICHARD IRVING

Signature of director/company secretary



Name of director/company secretary
(please print)

ROSS KENNEY

**EXECUTED as a deed by RSL
INVESTMENTS CORPORATION:**

By: _____

Name: Ronald S. Lauder

Title: Director

Voluntary Restriction Deed

Signing page

SIGNED SEALED AND DELIVERED by
EMEFCY GROUP LTD ACN 127 734 196 in
accordance with section 127 of the
Corporations Act 2001 (Cth) by being signed
by the following officers:

Signature of director

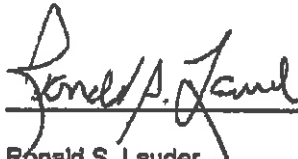
Signature of director/company secretary

Name of director *(please print)*

Name of director/company secretary
(please print)

**EXECUTED as a deed by RSL
INVESTMENTS CORPORATION:**

By: _____



Name: Ronald S. Lauder

Title: Director