

12 April 2013

## Norfolk Board unanimously recommends cash scheme at A\$0.48 per share

### Summary

- **Proposed acquisition of all of the issued shares in Norfolk for a cash consideration of A\$0.48 per share (the Scheme Consideration) to be implemented by scheme of arrangement (the Scheme)**
- **The Scheme supersedes the indicative proposal announced on 22 March 2013**
- **Unanimous recommendation by the Norfolk Board that shareholders vote in favour of the Scheme in the absence of a superior proposal and subject to an independent expert concluding that the Scheme is in the best interests of Norfolk shareholders**
- **Substantial shareholder, Maui Capital, reaffirms its intention to support the Scheme in the absence of a superior proposal and subject to an independent expert concluding that the Scheme is in the best interests of Norfolk shareholders**

Norfolk Group Limited (ASX: NFK) (**Norfolk** or the **Company**) has entered into a Scheme Implementation Deed (**SID**) with RCR Tomlinson Limited (**RCR**) under which it is proposed that RCR will acquire all of the issued shares in Norfolk for a cash consideration of A\$0.48 per share (the **Scheme**). The Scheme implies an equity value for Norfolk of approximately A\$77.9 million on a fully diluted basis.<sup>1</sup>

Norfolk advises that the Scheme supersedes the terms of the indicative RCR proposal announced on 22 March 2013. In considering RCR's revised proposal, the Board of Norfolk has had regard to the financial position of the Company and the risks, timing to collect and associated costs to Norfolk shareholders from any mechanism implemented to enable the release of any incremental value from the Uncollected Working Capital (as defined in the ASX announcement on 22 March 2013).

The Board of Norfolk has for some time held the view, in the context of the current operating environment, that the Company requires increased scale and financial capacity to successfully pursue larger project opportunities and to continue to diversify its exposures. The Board of Norfolk is of the view that in the event that a sale or merger does not occur in the short term, the Company would require a capital raising to reduce debt levels. As such, the Board of Norfolk has had particular regard to the benefits of certainty afforded to Norfolk shareholders under the Scheme relative to the Company's other alternatives.

The Board of Norfolk **unanimously recommends** that shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to the independent expert concluding that the Scheme is in the best interests of Norfolk shareholders.

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<sup>1</sup> As at the date of this announcement, Norfolk has 158,890,730 ordinary shares on issue and 3,349,951 unlisted performance rights outstanding.

Norfolk Chairman, Mr Rod Keller said: *“The Scheme provides the certainty of a cash return for Norfolk shareholders and represents a clear and definitive value for the Company. It also permits the Company’s balance sheet to be effectively and rapidly restructured to take advantage of the opportunities lying before it. The combination with RCR is expected to create a significantly enhanced company and greater opportunities for both its staff and customers.”*

### **Board Voting Intentions**

Each Norfolk Director will also vote any Norfolk shares they directly or indirectly own, control or represent in favour of the Scheme, subject to no superior proposal emerging and the independent expert, Lonergan Edwards & Associates, concluding that the Scheme is in the best interests of Norfolk shareholders.

### **Shareholder Support**

Maui Capital Limited and its associates (**Maui Capital**) are shareholders in Norfolk and hold a relevant interest in excess of 20 per cent of the Company. Maui Capital has a nominee on the Norfolk Board. Maui Capital has authorised Norfolk to announce its intention to vote its shares in favour of the Scheme, subject to no superior proposal emerging and the independent expert concluding that the Scheme is in the best interests of Norfolk shareholders.

### **Scheme Conditions**

The Scheme is intended to be effected by way of a scheme of arrangement under Part 5.1 of the Corporations Act 2001 (Cth) and is conditional on, among other things, shareholder and court approval. A copy of the SID is attached to this announcement in Annexure A. A full list of the conditions to the Scheme is contained in clause 3 of the SID.

### **Independent Expert**

Norfolk has appointed Lonergan Edwards & Associates to prepare an independent expert’s report on whether the Scheme is in the best interests of Norfolk shareholders.

### **Next Steps**

Norfolk expects to send a scheme booklet to shareholders in June 2013 containing full details of the Scheme. The scheme booklet will include, among other things, the reasons for the Board’s unanimous recommendation and a copy of the independent expert’s report.

Further details on the expected timetable are set out in Annexure C of the SID.

### **Other Items**

Norfolk shareholders should consult their stockbroker, accountant, tax, financial or other professional adviser about the impact of the Scheme on their particular investment objectives.

Norfolk is being advised by KPMG Corporate Finance and Allens.

--- ENDS ---

**For further information**

John Gardner or Catherine Suen

MAGNUS Investor Relations + Corporate Communication

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**Norfolk Group Limited**

Norfolk is a leading provider of integrated engineering services in the electrical, HVAC (heating, ventilation and airconditioning) and facilities management markets.

Norfolk employs more than 2,700 people, including highly skilled engineers, electricians, air conditioning technicians and apprentices, across more than 120 locations throughout Australia, New Zealand and Asia. Norfolk has more than 10,000 customers across a range of sectors including infrastructure, industrial, commercial, resources, retail, government and communications.

For further information on Norfolk, please visit [www.norfolkgl.com](http://www.norfolkgl.com).

**Annexure A**

# Allens › ‹ Linklaters

## Scheme Implementation Deed

**RCR Tomlinson Limited**

**Norfolk Group Limited**

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Corner Hunter and Phillip Streets  
Sydney NSW 2000  
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**Table of Contents**

|                                                             |           |
|-------------------------------------------------------------|-----------|
| <b>1. Definitions and Interpretation</b>                    | <b>2</b>  |
| <b>2. Agreement to Proceed with Scheme</b>                  | <b>10</b> |
| <b>3. Conditions Precedent and Pre-implementation Steps</b> | <b>10</b> |
| <b>4. Transaction Steps</b>                                 | <b>14</b> |
| <b>5. Implementation</b>                                    | <b>14</b> |
| <b>6. Representations and Warranties</b>                    | <b>22</b> |
| <b>7. Public Announcements</b>                              | <b>23</b> |
| <b>8. Exclusivity</b>                                       | <b>23</b> |
| <b>9. Break Fee</b>                                         | <b>25</b> |
| <b>10. Termination</b>                                      | <b>28</b> |
| <b>11. Confidentiality</b>                                  | <b>29</b> |
| <b>12. GST</b>                                              | <b>29</b> |
| <b>13. Notices</b>                                          | <b>30</b> |
| <b>14. General Provisions</b>                               | <b>31</b> |
| <b>Schedule 1 – Bidder Representations and Warranties</b>   | <b>33</b> |
| <b>Schedule 2 – Norfolk Representations and Warranties</b>  | <b>34</b> |
| <b>Schedule 3 – Norfolk Prescribed Occurrences</b>          | <b>36</b> |
| <b>Annexure A – Form of Scheme</b>                          | <b>38</b> |
| <b>Annexure B – Deed Poll</b>                               | <b>48</b> |
| <b>Annexure C – Indicative Timetable</b>                    | <b>54</b> |

|          |                                                                                                                                                                                                     |
|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Date     | <u>12 April 2013</u>                                                                                                                                                                                |
| Parties  |                                                                                                                                                                                                     |
| 1.       | <b>RCR Tomlinson Limited</b> (ACN 008 898 486) registered in Western Australia of Level 6, 251 St Georges Terrace, Perth WA 6000 ( <b>RCR</b> ); and                                                |
| 2.       | <b>Norfolk Group Limited</b> (ACN 125 709 971) registered in New South Wales of Level 5, 50 Berry Street, North Sydney NSW 2060 ( <b>Norfolk</b> ).                                                 |
| Recitals |                                                                                                                                                                                                     |
| A        | The parties have agreed on the terms of this deed that Bidder will acquire Norfolk by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Norfolk and its shareholders. |
| B        | Norfolk has agreed to propose and implement, and Bidder has agreed to assist Norfolk to propose and implement, the scheme of arrangement on the terms of this deed.                                 |

It is agreed as follows.

## 1. Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Adviser** means, in relation to an entity:

- (a) a financier to the entity; or
- (b) a financial, corporate, legal, or other expert adviser, consultant, contractor or agent or other person acting on behalf of the entity.

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

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

**Bidder** means:

- (a) RCR; or
- (b) a wholly-owned subsidiary of RCR nominated by RCR and notified to Norfolk in accordance with clause 2.3.

**Bidder Group** means RCR, and each of its related bodies corporate (excluding, at any time, Norfolk and its subsidiaries to the extent that Norfolk and its subsidiaries are

subsidiaries of Bidder at that time). A reference to a **member of the Bidder Group** is a reference to RCR or any such related body corporate.

**Bidder Information** means information about the Bidder Group provided or approved by Bidder to Norfolk in writing for inclusion in the Scheme Booklet.

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

**Bidder Representation and Warranty** means a representation and warranty of Bidder set out in schedule 1.

**Break Fee** means \$1,000,000.

**Business Day** means a business day as defined in the ASX Listing Rules.

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

**Competing Proposal** means a transaction or arrangement or any proposal in relation to a transaction or arrangement, pursuant to which a Third Party will, directly or indirectly, if the transaction or arrangement is entered into, implemented, or completed:

- (a) acquire an interest or relevant interest in or become the holder of:
  - (i) 20% or more of Norfolk Shares; or
  - (ii) all or a substantial or material part of the business of the Norfolk Group taken as a whole,whether by way of takeover bid, scheme of arrangement, capital reduction, sale of shares or assets or joint venture,
- (b) acquire control of Norfolk within the meaning of section 50AA of the Corporations Act;
- (c) otherwise acquire or merge with Norfolk (including by way of reverse takeover bid or dual listed company structure); or
- (d) effect any transaction or arrangement having the same economic effect as any of the above.

**Confidentiality Agreement** means the confidentiality agreement between Bidder and Norfolk dated 22 March 2013.

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

**Court** means the Federal Court of Australia (New South Wales Registry) or such other court of competent jurisdiction under the Corporations Act agreed to in writing between the parties.

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

**Due Diligence Material** means:

- (a) the information disclosed by or on behalf of the Norfolk Group (including in response to requests for information and matters minuted during management presentations and/or meetings) to a Bidder Party:
  - (i) prior to 6.00 pm on Friday, 5 April 2013 via the electronic data room; and
  - (ii) between 6.00 pm on Friday, 5 April 2013 and the execution of this deed but limited to such information being written responses to questions or requests for further information sought by a Bidder Party,such information to be provided to Bidder in electronic form on CD on 15 April 2013; and
- (b) any other information agreed between the parties on or before the date of this deed to constitute "Due Diligence Material" for the purpose of this deed.

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

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

**End Date** means the date which is 4 months after the date of this deed, subject to any extension under clause 3.4.

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

- (a) the date this deed is validly terminated under clause 11; and
- (b) the End Date.

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

**Government Agency** means any Australian government or governmental, semi-governmental or judicial entity or authority. It also includes any self-regulatory organisation established under statute or any securities exchange.

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

**Independent Expert** means Lonergan Edwards & Associates Limited (ACN 095 445 560).

**Independent Expert's Report** means a report (including any updates to such report) of the Independent Expert stating whether or not in its opinion the Scheme is in the best interests of Norfolk Shareholders.

**Insolvency Event** means, in the case of any entity:

- (a) it ceases, suspends, or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of all or a substantial part of its assets;

- (b) it stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (c) it is, or under legislation is presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or Claim the subject of a good faith dispute);
- (d) it has an administrator, controller or similar officer appointed, or any step preliminary to the appointment of such an officer is taken;
- (e) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for:
  - (i) its winding up, dissolution or administration; or
  - (ii) it entering into an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them,  
(other than frivolous or vexatious applications, orders, proceedings, notices or steps);
- (f) a:
  - (i) receiver, receiver and manager, administrative receiver or similar officer is appointed to;
  - (ii) security interest becomes enforceable or is enforced over; or
  - (iii) distress, attachment or other execution is levied or enforced or applied for over,  
all or a substantial part of its assets; or
- (g) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any foreign law.

**Key Contracts** means the list of contracts identified by the parties as “Key Contracts” (a copy of such list being agreed by the parties for identification on execution of this deed).

**Losses** means all claims, demands, damages, losses, costs, expenses and liabilities.

**Material Contract** means any contract or commitment (or any series of related contracts or commitments) involving:

- (a) a lump sum based contract sum of a member of the Norfolk Group (either alone or together with any other member of the Norfolk Group) of \$5 million or more;
- (b) a costs reimbursement based contract sum or revenue of a member of the Norfolk Group (either alone or together with any other member of the Norfolk Group) of \$10 million or more; or
- (c) expenditure of a member of the Norfolk Group (either alone or together with any other member of the Norfolk Group) of \$2 million or more,

over the period of the contract or commitment.

**Maui Capital** means Maui Capital Limited and each of its subsidiaries.

**Norfolk Board** means the board of directors of Norfolk.

**Norfolk Deferred Employee Share Plan** means the deferred employee share plan established by Norfolk.

**Norfolk Group** means Norfolk and each of its subsidiaries. A reference to a **member of the Norfolk Group** is a reference to Norfolk or any such subsidiary.

**Norfolk Material Adverse Change** means any event, occurrence or matter that:

- (a) occurs after the date of this deed;
- (b) occurs before the date of this deed but is only announced or publicly disclosed after the date of this deed; or
- (c) will or is likely to occur after the date of this deed and which has not been publicly announced prior to the date of this deed,

which, individually or when aggregated with all such events, could be reasonably expected to result in a material adverse change which is reasonably likely to negatively impact on the value of the business, financial condition or results of operation or prospects of the Norfolk Group as a result of or resulting in forecast earnings before interest and tax of Norfolk as disclosed to ASX as at the date of this deed for the financial year ending 31 March 2014 being reduced by at least \$3,000,000 or net assets of Norfolk being reduced by at least \$5,000,000, other than an event, occurrence or thing:

- (a) relating to any impairment which is made with the consent of the Bidder;
- (b) that arises from any change occurring directly or indirectly as a result of any matter, event or circumstance required or permitted by this deed, the Scheme or the transactions contemplated by them;
- (c) to the extent that it was fully and fairly disclosed in the Due Diligence Material;
- (d) notified to ASX or disclosed in a document lodged with ASIC by or on behalf of Norfolk prior to the date of this deed;
- (e) that arises from any actual or proposed change in any tax, law or accounting standards or mandatory policies or codes;
- (f) relating to or arising from general economic, regulatory or political conditions (including financial market fluctuations or changes in taxation or interest rates) or to or from conditions in a sector in which the Norfolk Group operates, or changes in those conditions (except where such an event, occurrence or thing has a disproportionately larger impact on the assets, liabilities, business, financial position, profitability or prospects of the Norfolk Group taken as a whole than on other entities operating within the industries in which the Norfolk Group operates); or
- (g) relating to or arising from an act of terrorism, war (whether or not declared), natural disaster or the like.

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

**Norfolk Performance Rights Plan** means the performance rights plan established by Norfolk and approved by Norfolk Shareholders in 2011.

**Norfolk Prescribed Occurrence** means any of the occurrences set out in schedule 3, other than an occurrence required or permitted by this deed or the Scheme. **Norfolk Registry** means Link Market Services Limited, Level 12, 680 George Street, Sydney, NSW, Australia, 2000 or any replacement provider of share registry services to Norfolk.

**Norfolk Representation and Warranty** means a representation and warranty of Norfolk set out in schedule 2.

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

**Norfolk Shareholder** means a person who is registered as the holder of Norfolk Shares from time to time.

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

**Performance Rights** means the 3,349,951 performance rights on issue as at the date of this deed pursuant to the Norfolk Performance Rights Plan and any other similar employee incentive arrangement established by Norfolk.

**RCR Subsidiary** means the wholly-owned subsidiary of RCR nominated by RCR in accordance with clause 2.3.

**Recovered Amounts** has the meaning given in clause 4.3.

**Regulatory Approvals** means:

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

**Relevant Date** means, in relation to a condition precedent, the date or time specified in this deed for its fulfilment (or where no such date or time is specified, the Business Day before the End Date), subject to extension under clause 3.4.

**Representative** means, in relation to Bidder or Norfolk:

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

**Retention Amount** has the meaning given in clause 4.3.

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

**Scheme Booklet** means the information described in clause 5.1(a) to be approved by the Court and despatched to Norfolk Shareholders and which must include the Scheme, an explanatory statement complying with the requirements of the Corporations Act, the Independent Expert's Report, notice of the Scheme Meeting and a proxy form for the Scheme Meeting.

**Scheme Consideration** has the meaning given in clause 4.2.

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

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

**Scheme Share** means a Norfolk Share held by a Scheme Shareholder.

**Scheme Shareholder** means a Norfolk Shareholder at the Scheme Record Date.

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

**Superior Proposal** means a bona fide Competing Proposal that the Norfolk Board determines, acting in good faith and after taking advice from its legal and financial advisers:

- (a) is reasonably capable of being completed without undue delay taking into account all legal, regulatory, financial and other aspects of the proposal and the party making the proposal;
- (b) would, if consummated in accordance with its terms, but without assuming away the risk of non-completion, result in a transaction which is more favourable to Norfolk Shareholders than the terms of the Transaction; and
- (c) that failure to recommend to Norfolk Shareholders would be reasonably likely to constitute a breach of the fiduciary duties of the directors of Norfolk.

**Third Party** means a person other than a Bidder Party and their associates.

**Timetable** means the indicative timetable for the implementation of the Transaction set out in Annexure C.

**Transaction** means the acquisition of Norfolk by Bidder through implementation of the Scheme in accordance with the terms of this deed.

## 1.2 Interpretation

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

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.

- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this deed.
- (f) A reference to an *agreement* or *document* (including a reference to this deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this deed or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
- (g) A reference to a party to this deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (j) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (k) A reference to *dollars* and \$ is to Australian currency.
- (l) All references to time are to Sydney, Australia time.
- (m) Mentioning anything after *includes*, *including*, *for example*, or similar expressions, does not limit what else might be included.
- (n) Nothing in this deed is to be interpreted against a party solely on the ground that the party put forward this deed or a relevant part of it.
- (o) A reference to *associate*, *control* (by an entity of another entity), *officer*, *related body corporate*, *subsidiary*, *relevant interest* or *voting power* is to that term as it is defined in the Corporations Act.

### 1.3 Business Day

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

### 1.4 Consents or approvals

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

**1.5 Listing requirements included as law**

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

**2. Agreement to Proceed with Scheme**

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**2.1 Norfolk to propose the Scheme**

Norfolk agrees to propose and implement the Scheme on and subject to the terms of this deed.

**2.2 Bidder to assist**

Bidder agrees to assist Norfolk to propose and implement the Scheme on and subject to the terms of this deed.

**2.3 Nomination of Bidder**

At any time prior to the Business Day before the First Court Date, RCR may nominate a wholly-owned subsidiary of RCR (**RCR Subsidiary**) to act as the “Bidder” in connection with the Transaction by promptly providing a notice which sets out the details of the RCR Subsidiary to Norfolk. If RCR decides to nominate the RCR Subsidiary to act as the Bidder, the parties agree and acknowledge that, on from the date of the nomination:

- (a) all references to the “Bidder” in this deed shall be taken to be a reference to the RCR Subsidiary;
- (b) the RCR Subsidiary will be the “Bidder” for the purposes of this deed and the Scheme; and
- (c) RCR agrees to procure that (i) the RCR Subsidiary complies with all of the obligations of the Bidder under this deed and the Scheme; and (ii) the RCR Subsidiary will enter into a deed of assumption to become party to the Bidder Group deed of cross guarantee before the Implementation Date.

**3. Conditions Precedent and Pre-implementation Steps**

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**3.1 Conditions precedent**

Subject to this clause 3, the obligations of Bidder under clause 4.3 are not binding, unless each of the following conditions precedent is satisfied or waived in accordance with clauses 3.2 and 3.3:

**Conditions precedent for the benefit of all parties**

- (a) (**ASIC or ASX consents**) before 8:00 am on the Second Court Date, ASIC and ASX issue or provide such consents or approvals or have done such other acts which Norfolk and Bidder agree are reasonably necessary or desirable to implement the transactions contemplated by this deed;

- (b) **(Norfolk Shareholder approval)** Norfolk Shareholders approve the Scheme by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act at the Scheme Meeting;
- (c) **(Court approval)** the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;
- (d) **(Third party consents)** all approvals of a third party (other than ASIC or ASX) which Norfolk and Bidder agree are necessary or desirable to implement the Transaction are obtained;

**Conditions precedent for the benefit of Bidder only**

- (e) **(Performance Rights)** all outstanding Performance Rights are converted into Norfolk Shares or cancelled on or before the Second Court Date;
- (f) **(No Norfolk Material Adverse Change)** no Norfolk Material Adverse Change occurs between the date of this deed and 8:00 am on the Second Court Date;
- (g) **(No Norfolk Prescribed Occurrence)** no Norfolk Prescribed Occurrence occurs between the date of this deed and 8:00 am on the Second Court Date;
- (h) **(Index decline)** the S&P ASX 200 Index does not fall to a level that is below 4,500 points and remain at or below that level for at least 3 Business Days or until the date immediately prior to the Second Court Date;
- (i) **(Disputes)** prior to the Second Court Date, no person announces, commences or threatens any Claim of more than \$10,000,000 or increases any existing Claim by more than \$10,000,000 against a member of the Norfolk Group (whether in aggregate or for any single matter) which may or may reasonably result in an order or judgement against a member of the Norfolk Group.
- (j) **(Bidder finance condition)** prior to the Second Court Date, Bidder and its financiers execute a facility agreement on substantially the terms contemplated by the term sheet attached to the commitment letter executed by Bidder and its financiers (a copy of a letter confirming the terms of the commitment letter provided to Norfolk on execution of this deed) and each of the conditions to drawdown under the facility agreement has been and remains, satisfied or waived in accordance with the terms of the facility agreement.
- (k) **(Norfolk Representations and Warranties)** each Norfolk Representation and Warranty is true and correct in all material respects on the date of this deed and at 8:00 am on the Second Court Date.
- (l) **(Key Contracts)** the relevant counterparties of each Key Contract consents to, or waives its rights under, such contract in respect of the change of control which arises as a result of the Transaction.

**Conditions precedent for the benefit of Norfolk only**

- (m) **(Bidder Insolvency Event)** Bidder does not suffer an Insolvency Event between the date of this deed and 8:00 am on the Second Court Date; and

- (n) **(Bidder Representations and Warranties)** each Bidder Representation and Warranty is true and correct in all material respects on the date of this deed and at 8:00 am on the Second Court Date.

### 3.2 Satisfaction

- (a) Each party must use reasonable endeavours to procure that the conditions precedent in clauses 3.1(a) to 3.1(d) are satisfied.
- (b) Norfolk must use reasonable endeavours to procure that the conditions precedent in clauses 3.1(e), 3.1(f), 3.1(g), 3.1(k) and 3.1(l) are satisfied.
- (c) Bidder must use best endeavours to procure that the condition precedent in clause 3.1(j) is satisfied.
- (d) Bidder must use reasonable endeavours to procure that the conditions precedent in clauses 3.1(m) and 3.1(n) are satisfied.
- (e) Each party must:
  - (i) consult and co-operate fully with the other party in relation to the satisfaction of the conditions precedent, including in relation to all material communications with Government Agencies in relation to Regulatory Approvals;
  - (ii) promptly notify the other if it becomes aware that any condition precedent has been satisfied; and
  - (iii) promptly notify the other of any failure to satisfy a condition precedent or of any fact or circumstance that will result in a condition precedent becoming incapable of being satisfied or that may result in a condition precedent not being satisfied in accordance with its terms (having regard to the obligations of the parties under this clause).
- (f) Each party must:
  - (i) give the Court on the Second Court Date a certificate confirming (in respect of matters within its knowledge) whether or not the conditions precedent in clause 3.1 (other than 3.1(c)) have been satisfied or waived; and
  - (ii) give the other a draft of its certificate by 5pm on the Business Day before the Second Court Date.

### 3.3 Waiver of conditions precedent

- (a) The conditions precedent in clauses 3.1(a) to 3.1(d) are for the benefit of each of Bidder and Norfolk and can only be waived by both of them in writing (except in the cases of the conditions precedent in clauses 3.1(b) and 3.1(c), which cannot be waived).
- (b) The conditions precedent in clauses 3.1(e) to 3.1(l) are for the sole benefit of Bidder and may only be waived by Bidder in writing.
- (c) The conditions precedent in clauses 3.1(m) and 3.1(n) are for the sole benefit of Norfolk and may only be waived by Norfolk in writing.

- (d) A party entitled to waive a condition precedent may do so conditionally or unconditionally in its absolute discretion.
- (e) If a party waives the breach or non-fulfilment of a condition precedent, that waiver will not preclude it from suing the other party for any breach of this deed that resulted from the breach or non-fulfilment of the condition precedent that was waived or arising from the same event which gave rise to the breach or non-fulfilment of the condition precedent.
- (f) Waiver of a breach or non-fulfilment in respect of a condition precedent does not constitute:
  - (i) a waiver of the breach or non-fulfilment of any other condition precedent resulting from the same event; or
  - (ii) a waiver of the breach or non-fulfilment of that condition precedent resulting from any other event.

#### **3.4 If a condition precedent is not fulfilled or waived**

If a condition precedent has not been fulfilled or waived by the Relevant Date, or an event has occurred which would prevent a condition precedent being fulfilled by the Relevant Date and the condition precedent has not been waived, then either Norfolk or Bidder may serve notice on the other party of the failure of the relevant condition precedent, and Norfolk and Bidder must consult in good faith to agree whether:

- (a) the Scheme may proceed by way of alternative means or methods and, if so, agree on the terms of such alternative means or methods;
- (b) to extend the Relevant Date;
- (c) to adjourn or change the date of the Scheme Meeting; and/or
- (d) to extend the End Date.

#### **3.5 Termination on failure of condition precedent**

- (a) If a condition precedent has not been fulfilled or waived by the Relevant Date, or an event has occurred which would prevent a condition precedent being fulfilled by the Relevant Date and the condition precedent has not been waived in accordance with clause 3.3, and the parties are unable to reach agreement under clause 3.4 within 5 Business Days after the delivery of the notice under that clause, then, subject to clause 3.5(b), either party may terminate this deed without any liability to the other party because of that termination.
- (b) A party will not be entitled to terminate this deed pursuant to clause 3.5(a) if the relevant occurrence, or the failure of the satisfaction of a condition precedent, or of the Scheme becoming Effective, arises out of, or is contributed to by:
  - (i) a breach of this deed (including without limitation clause 3.2) by that party; or
  - (ii) a deliberate act or omission of that party.
- (c) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination of this deed, on termination of this deed no party

will have any rights against or obligations to any other party under this deed except for those rights and obligations which accrued before termination.

## 4. Transaction Steps

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### 4.1 Scheme

Norfolk must propose a scheme of arrangement under which:

- (a) all of the Scheme Shares will be transferred to Bidder; and
- (b) the Scheme Shareholders will be entitled to receive the Scheme Consideration.

### 4.2 Scheme Consideration

The ***Scheme Consideration***, in respect of a Scheme Shareholder, means \$0.48 (less the amount of any dividend or return of capital declared or paid by Norfolk on or before the Implementation Date), per Scheme Share held by that Scheme Shareholder.

### 4.3 Provision of Scheme Consideration

Bidder undertakes to Norfolk (in its own right and on behalf of the Scheme Shareholders) that, in consideration of the transfer to Bidder of each Scheme Share under the terms of the Scheme, on the Implementation Date it will:

- (a) accept that transfer; and
- (b) before 12 noon, pay the Scheme Consideration for each Scheme Share in accordance with the Scheme and the Deed Poll.

## 5. Implementation

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### 5.1 Norfolk's obligations

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

- (a) **(Preparation of Scheme Booklet)** Prepare the Scheme Booklet so that it complies with all applicable laws, including the Corporations Act, ASIC Regulatory Guide 60 and the ASX Listing Rules. The Scheme Booklet must include a statement that:
  - (i) other than the Bidder Information and the Independent Expert's Report, the Scheme Booklet has been prepared by Norfolk and is the responsibility of Norfolk, and that no Bidder Party assumes any responsibility for the accuracy or completeness of the Scheme Booklet (other than the Bidder Information); and

- (ii) the Bidder Information has been provided by Bidder and is the responsibility of Bidder, and that no Norfolk Party assumes any responsibility for the accuracy or completeness of the Bidder Information.

The Scheme Booklet must also include the recommendation and statement required under clause 5.10.

- (b) **(Independent Expert)** Promptly:
  - (i) appoint the Independent Expert (if the Independent Expert has not been appointed prior to the date of this deed), and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report; and
  - (ii) on receipt, provide Bidder with a copy of the final Independent Expert's Report received from the Independent Expert, and subject to obtaining the Independent Expert's consent pursuant to the terms of its engagement, provide Bidder with a copy of drafts of the Independent Expert's Report promptly after those drafts are provided to Norfolk.
- (c) **(Consultation with Bidder)** Consult with Bidder as to the content and presentation of the Scheme Booklet, such consultation to include:
  - (i) allowing Bidder a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet a reasonable time before its lodgement with ASIC and take any comments by Bidder into account in good faith when preparing revised drafts of the Scheme Booklet; and
  - (ii) obtaining Bidder's consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet).
- (d) **(liaison with ASIC)** As soon as reasonably practicable after the date of this deed but no later than 14 days before the First Court Date, provide an advanced draft of the Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act, and to the Bidder, and (to the extent reasonably practicable) keep the Bidder reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet (and of any resolution of those matters), and use reasonable endeavours, in co-operation with the Bidder, to resolve any such matters.
- (e) **(Norfolk Registry details)** subject to the terms of the Scheme:
  - (i) provide the report on Norfolk Shareholders as at 31 March 2013 and at the Bidder's cost in relation to third party fees, any further reports on Norfolk Shareholders that Bidder reasonably requests; and
  - (ii) at the Bidder's cost in relation to third party fees, provide all necessary directions to the Norfolk Registry to promptly provide information that Bidder reasonably requests in relation to the Norfolk Share Register and where requested by Bidder, Norfolk must procure such information to be provided to Bidder in such electronic form as is reasonably requested by Bidder.

- (f) **(indication of intent)** Apply to ASIC for a letter indicating whether ASIC proposes to make submissions to the Court, or intervene to oppose the Scheme, on the First Court Date.
- (g) **(approval of Scheme Booklet)** As soon as practicable after ASIC has provided its indication of intent in accordance with paragraph (f), procure that a meeting of the Norfolk Board is convened for the purpose of approving the Scheme Booklet for despatch to Norfolk Shareholders.
- (h) **(Court direction)** Apply to the Court for orders directing Norfolk to convene the Scheme Meeting, and consult with Bidder as to the content of all relevant originating process, affidavits, submissions and draft minutes of Court orders.
- (i) **(ASIC registration)** Request ASIC to register the Scheme Booklet in the form approved by the Court.
- (j) **(Despatch)** Send the Scheme Booklet to Norfolk Shareholders as soon as practicable after ASIC registers the Scheme Booklet.
- (k) **(Update Scheme Booklet)** If it becomes aware of information after the Scheme Booklet has been sent to Norfolk Shareholders that is material for disclosure to Norfolk Shareholders in deciding whether to approve the Scheme or that is required to be disclosed to Norfolk Shareholders under any applicable law, inform Norfolk Shareholders of the information in an appropriate and timely manner, in accordance with applicable law.
- (l) **(Scheme Meeting)** Convene the Scheme Meeting to approve the Scheme (in accordance with any orders made by the Court).
- (m) **(Court approval)** Subject to all conditions precedent in clause 3.1 (other than that in clause 3.1(c)) being satisfied or waived in accordance with this deed, apply to the Court for orders approving the Scheme, and consult with Bidder as to the content of all relevant affidavits, submissions and draft minutes of Court orders.
- (n) **(Court order)** Lodge with ASIC an office copy of any Court order approving the Scheme on the day such office copy is received (or such later date as Bidder may agree in writing).
- (o) **(Implementation)** If the Scheme becomes Effective:
  - (i) procure ASX to suspend trading in Norfolk Shares from the close of trading on the Effective Date;
  - (ii) close the Norfolk Share Register at the Scheme Record Date to determine the identity of Scheme Shareholders and their entitlements to the Scheme Consideration; and
  - (iii) subject to Bidder satisfying its obligations under clause 4.2, execute proper instruments of transfer of the Scheme Shares on behalf of the Scheme Shareholders and procure the registration in the Norfolk Share Register of all transfers of Scheme Shares under those instruments on the Implementation Date.

- (p) **(ASX listing)** Maintain Norfolk's admission to the official list of ASX and the quotation of Norfolk Shares on ASX up to and including the Implementation Date.

## 5.2 Appeal process

If the Court refuses to make any orders convening the Scheme Meeting or approving the Scheme, Norfolk and Bidder must:

- (a) consult with each other in good faith as to whether to appeal the Court's decision; and
- (b) appeal the Court's decision (unless the parties agree otherwise, or an independent senior counsel of the New South Wales bar advises that, in their view, an appeal would have no reasonable prospect of success before the End Date).

## 5.3 Bidder's obligations

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

- (a) **(Bidder Information)** Prepare and provide to Norfolk the Bidder Information for inclusion in the Scheme Booklet to comply with all applicable laws, including the Corporations Act, ASIC Regulatory Guide 60 and the ASX Listing Rules relevant to the Bidder Information and consult with Norfolk as to the content and presentation of the Bidder Information in the Scheme Booklet, such consultation to include allowing Norfolk a reasonable opportunity to review and make comments on successive drafts of the Bidder Information before lodgement of the Scheme Booklet with ASIC.
- (b) **(Review drafts of Scheme Booklet)** As soon as practicable after delivery, review drafts of the Scheme Booklet prepared by Norfolk and provide any comments on those drafts.
- (c) **(Independent Expert information)** Provide all assistance and information reasonably requested by Norfolk or by the Independent Expert in connection with the preparation of the Independent Expert's Report.
- (d) **(Confirmation of Bidder Information)** Before the Scheme Booklet is provided to ASIC pursuant to section 411(2) of the Corporations Act procure that a meeting of the board of directors of the Bidder is held to consider approving those sections of the draft Scheme Booklet that relate to the Bidder as being in a form appropriate for provision to ASIC for review, and either:
  - (i) confirm in writing to Norfolk that the Bidder Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission; or
  - (ii) provide to Norfolk the changes required to ensure that the Bidder Information in the form and context in which it appears in the Scheme

Booklet is not misleading or deceptive in any material respect and does not contain any material omission.

- (e) **(Approval of Scheme Booklet)** As soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the board of directors of the Bidder is held to consider approving those sections of the Scheme Booklet that relate to the Bidder or the Bidder Group as being in a form appropriate for despatch to Norfolk Shareholders, subject to approval of the Court.
- (f) **(Update Bidder Information)** Provide to Norfolk such further or new Bidder Information as may arise after the Scheme Booklet has been sent until the date of the Scheme Meeting as may be necessary to ensure that the Bidder Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements misleading or deceptive in any material respect (whether by omission or otherwise).
- (g) **(Deed Poll)** Before the First Court Date, enter into the Deed Poll and deliver it to Norfolk.
- (h) **(Court representation)** Procure that it is represented by counsel at the Court hearings referred to in clauses 5.1(h) and (m), at which, through its counsel or solicitors, Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme.
- (i) **(Scheme Consideration)** If the Scheme becomes Effective, provide the Scheme Consideration in the manner and amount contemplated by clause 4.3 on the Implementation Date.

#### 5.4 Verification

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

#### 5.5 Conduct of Norfolk business

- (a) From the date of this deed up until and including the Implementation Date, Norfolk must ensure that:
  - (i) except as contemplated in this deed;
  - (ii) notified to ASX or disclosed in a document lodged with ASIC by or on behalf of Norfolk prior to the date of this deed; or
  - (iii) otherwise agreed in writing between Bidder and Norfolk:  
it and the other members of the Norfolk Group:
  - (iv) conduct their businesses in the ordinary course and substantially (subject to any applicable laws, regulations and Regulatory Approvals) in the manner in which each such business and operation has been conducted in the period before the date of this deed;

- (v) seeks to maintain and develop its business and assets and any relationships with customers, suppliers, licensors, licensees, joint venturers and others with whom the relevant entity has business dealings to further the interests of the business as a whole;
  - (vi) make reasonable efforts to keep available the services of their officers and employees;
  - (vii) notify Bidder of any new or increased Claim or dispute, or events, matters or circumstances which may give rise to a new or increased Claim or dispute in relation to any member of the Norfolk Group exceeding \$2 million as soon as practicable after Norfolk becomes aware of it and keep Bidder informed about the status of any outstanding Claim or dispute by providing the Purchaser with regular reports not less frequently than monthly;
  - (viii) identify any change of control or similar provisions in any Material Contracts and use reasonable endeavours to obtain the consents of relevant persons who have rights in respect of such contracts to the transactions contemplated by the Scheme (and in doing so, provide any draft consent letters to those persons to the Bidder for review prior to despatching those letters);
  - (ix) respond to any reasonable request from Bidder and its Representatives for information concerning the Norfolk Group and its business and operations; and
  - (x) provide Bidder and its Representatives reasonable access to officers and employees, offices and other facilities, and books and records of members of the Norfolk Group as reasonably requested by them, and provide reasonable access to officers, employees and Advisers to Bidder and its Representatives, for the purpose of the Bidder and its Representatives understanding Norfolk's financial position (including its cashflow and working capital position), trading performance and management control systems), implementing the Transaction or planning for the integration of the Norfolk Group into the Bidder Group following the Implementation Date.
- (b) Norfolk must ensure that no Norfolk Prescribed Occurrence occurs after the date of this deed and prior to the Implementation Date and must take no step or action which might reasonably be expected to give rise to such an occurrence.
- (c) Nothing in this clause 5.4 requires Norfolk to provide Bidder with any information:
- (i) in breach of an obligation of confidentiality which it has to any person as at the date of this deed; or
  - (ii) concerning the consideration of the Transaction by the Norfolk Board or Norfolk management.

## 5.6 Transaction Implementation Committee

- (a) The parties must establish a Transaction Implementation Committee as soon as possible after the date of this deed. The role of the Transaction Implementation

Committee will be to act as a forum for consultation and planning by parties to implement the Transaction and discuss any steps which could be taken to promote the merits of the Scheme, including for members of the Norfolk Board and management to meet with key Norfolk Shareholders.

- (b) Subject to this deed, nothing in this clause requires either party to act at the direction of the other. The business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this agreement constitutes the relationship of a partnership or a joint venture between the parties.

## 5.7 Prohibited actions

From the date of this deed up until and including the Implementation Date, other than with the prior approval of Bidder (which approval must not be unreasonably withheld or delayed) or as required by this deed, Norfolk must not, and must procure that a member of the Norfolk Group does not:

- (a) **(Business activities)** Enter into any lines of business or other activities in which members of the Norfolk Group are not engaged at the date of this deed.
- (b) **(Material Contracts)** Enter into or terminate, or offer, propose, respond to, announce a bid or tender for, a Material Contract unless the terms of that contract have been disclosed to, and agreed by, Bidder or waive any material default by a third party under a Material Contract.
- (c) **(Employment agreements)** Increase the remuneration of or pay any bonus (other than in accordance with existing arrangements or in the ordinary course) or issue any securities, performance rights or options to, enter into retention arrangements with, or otherwise vary the employment agreements with, any director or employee of a member of the Norfolk Group.
- (d) **(Accelerate rights)** Accelerate the rights of any director or employee of a member of the Norfolk Group to benefits of any kind, other than under or in connection with the Norfolk Performance Rights Plan or the Norfolk Deferred Employee Share Plan.
- (e) **(Termination payments)** Pay a director, executive or employee a termination payment, other than in accordance with existing contractual or statutory entitlements.
- (f) **(Dividends)** Announce, declare or pay any dividends or other distributions.
- (g) **(Financing arrangements)** Cancel (or enter into any arrangement to cancel) any indebtedness for money owed to the entity, or waive any claim or right in respect of such indebtedness, or raise any new financial accommodation, but this does not prevent the use of existing facilities in the ordinary course of business, or the entry into guarantees of contractual obligations of members of the Norfolk Group.
- (h) **(Settlement of Claims)** Settle or compromise any Claim involving any member of the Norfolk Group in respect of a matter involving an amount of more than \$2 million.

**(Acquisitions)** Acquire or dispose of, or agree to acquire or dispose of, any business, assets, entity or undertaking the value of which exceeds \$5 million (calculated as either book value, acquisition value or disposal value).

- (i) **(Agreement)** Agree to do any of the matters set out in paragraphs (a) to (g) above.

## 5.8 Appointment of directors

On the Implementation Date, but subject to the Scheme Consideration having been paid in full to Scheme Shareholders and receipt by Norfolk of signed consents to act, Norfolk must:

- (a) take all actions necessary to appoint the persons nominated by the Bidder as new directors of Norfolk and other members of the Norfolk Group; and
- (b) procure that all directors on the Norfolk Board (other than the new directors of Norfolk appointed pursuant to clause 5.6(a)) resign from the Norfolk Board.

## 5.9 D&O Insurance

Bidder acknowledges that, before the Implementation Date, Norfolk may take out and maintain, an insurance policy, and Bidder undertakes to maintain such policy for a period of at least 7 years from the Implementation Date, in respect of each person who was a director and officer of a member of the Norfolk Group prior to implementation of the Scheme (including each director resigning pursuant to clause 5.5(b)), insuring each such former director or officer against liabilities incurred in their capacity as an officer of a member of the Norfolk Group (which policy must provide a level of cover equal to the level of cover under Norfolk's D&O policy as at the date of this deed).

## 5.10 Norfolk Board recommendation

- (a) Subject to clause 5.10(b), Norfolk must ensure that:
- (i) the Norfolk Board unanimously recommends that, in the absence of a Superior Proposal and subject to the Independent Expert opining that the Scheme is in the best interests of Norfolk Shareholders, Norfolk Shareholders vote in favour of the Scheme at the Scheme Meeting;
  - (ii) the Scheme Booklet will include a statement by the Norfolk Board to the effect of paragraph (i), and to the effect that each director of Norfolk will, in the absence of a Superior Proposal, vote (or procure the voting of) all Norfolk Shares directly or indirectly held, controlled or represented by him or her in favour of the Scheme at the Scheme Meeting (and will procure that any Norfolk Shareholder associated with, or represented by, him or her will vote in favour of the Scheme); and
  - (iii) a director of Norfolk does not change, withdraw or modify his or her recommendation under paragraph (a)(i) or statement under paragraph (a)(ii) or make a recommendation or statement that is inconsistent with such recommendation or statement.

- (b) Paragraph (a) will cease to apply in either of the following circumstances:
  - (i) the Independent Expert opines either prior to the despatch of the Scheme Booklet or prior to the Scheme Meeting to the effect that the Scheme is not in the best interests of Norfolk Shareholders; or
  - (ii) Norfolk receives a Competing Proposal that constitutes a Superior Proposal.

## **6. Representations and Warranties**

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### **6.1 Bidder Representations and Warranties**

- (a) Bidder represents and warrants to Norfolk (in its own right and separately as trustee or nominee for each of the directors of Norfolk) that each Bidder Representation and Warranty is true and correct.
- (b) Bidder agrees to promptly notify Norfolk if it or any of its Representatives becomes aware that a Bidder Representation and Warranty ceases to be true and correct at any time on or at any time prior to the Second Court Date.

### **6.2 Bidder's indemnity**

Bidder indemnifies the Norfolk Parties against all Losses incurred directly or indirectly as a result of any of the Bidder Representations and Warranties not being true and correct.

### **6.3 Bidder warranty certificate**

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

### **6.4 Norfolk Representations and Warranties**

- (a) Norfolk represents and warrants to Bidder (in its own right and separately as trustee or nominee for each of the directors of Bidder) that each Norfolk Representation and Warranty is true and correct.
- (b) Norfolk agrees to notify Bidder if it or any of its Representatives becomes aware that a Norfolk Representation and Warranty ceases to be true and correct at any time on or at any time prior to the Second Court Date.

### **6.5 Norfolk's indemnity**

Norfolk indemnifies the Bidder Parties against all Losses incurred directly or indirectly as a result of any of the Norfolk Representations and Warranties not being true and correct.

### **6.6 Norfolk warranty certificate**

Norfolk must provide to Bidder by 8:00 am on the Second Court Date a certificate signed by a director of Norfolk and made in accordance with a resolution of the Norfolk Board

stating, as at that date, that the Norfolk Representations and Warranties remain true and accurate or, if any such representation or warranty is not true and accurate as at that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or inaccurate.

#### **6.7 Timing of representations and warranties**

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

- (a) at the date of this deed; and
- (b) at 8:00 am on the Second Court Date.

#### **6.8 Survival of representations**

Each Bidder Representation and Warranty and Norfolk Representation and Warranty:

- (a) is severable; and
- (b) survives the termination of this deed (but does not survive, and will be taken to have no further force or effect following implementation of the Scheme).

### **7. Public Announcements**

#### **7.1 Announcement of the Transaction**

Immediately after the execution of this deed, the parties must issue public announcements in a form agreed to in writing between them. The Norfolk announcement must include:

- (a) a unanimous recommendation by the directors of Norfolk to Norfolk Shareholders consistent with that set out in clause 5.10(a)(i); and
- (b) a statement consistent with that set out in clause 5.10(a)(ii).

#### **7.2 Other public announcements**

Prior to making any public announcement or disclosure of or in relation to the Transaction or any other transaction the subject of this deed or the Scheme, each party must use its reasonable endeavours, to the extent practicable and lawful, to consult with the other party as to the timing, form and content of that announcement or disclosure.

### **8. Exclusivity**

#### **8.1 No shop restriction**

During the Exclusivity Period, except with the prior written consent of Bidder, Norfolk must not, and must ensure that none of its Representatives or agents, directly or indirectly, solicit, invite, encourage or initiate any Competing Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of those things.

## 8.2 No talk restriction

During the Exclusivity Period, Norfolk must not, and must ensure that none of its Representatives or agents, enter into, continue or participate in negotiations or discussions with, or enter into any agreement or understanding with, any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal.

## 8.3 Notification by Norfolk

During the Exclusivity Period, Norfolk must promptly notify Bidder if it receives an unsolicited approach with respect to a Competing Proposal or any request for information which it has reasonable grounds to suspect may relate to a Competing Proposal, which notice must include full details of any such approach (including the identity of the Third Party making the Competing Proposal, the material terms of the Competing Proposal and all information provided by Norfolk to the Third Party making the Competing Proposal).

## 8.4 Fiduciary exception

The obligations under clause 8.2 and 8.3 do not apply to the extent that the Norfolk Board, determines that, where there is a Competing Proposal:

- (a) the Competing Proposal is from a person of reasonable financial standing and is a Superior Proposal; and
- (b) after having taken written advice from its external legal advisers, failing to respond to that Competing Proposal may constitute a breach of the Norfolk Board's fiduciary or statutory duties or would otherwise be unlawful.

Nothing in this clause affects Norfolk's obligations under clause 8.5.

## 8.5 Response to Competing Proposal

- (a) Norfolk must not, and must procure that its Representatives do not:
  - (i) enter into any legally binding agreement, arrangement or understanding to implement a Competing Proposal; or
  - (ii) withdraw its recommendation in favour of the Transaction or publicly recommend a Competing Proposal,  
unless Norfolk has provided Bidder with:
    - (iii) all material terms of the Competing Proposal (including the identity of the Third Party making the Competing Proposal); and
    - (iv) 3 Business Days after the provision of that information to propose an amendment to the Scheme or propose a new scheme of arrangement which matches or exceeds the Competing Proposal (**Bidder Counter Proposal**).

Norfolk's obligations under this paragraph (a) apply in respect of each new Competing Proposal and any material variation or amendment to a Competing Proposal.

- (b) If the Norfolk Board determines that a Bidder Counter Proposal is no less favourable to Norfolk Shareholders than the Competing Proposal, then Norfolk and

Bidder must use their best endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Bidder Counter Proposal as soon as reasonably practicable, and Norfolk must use its best endeavours to procure that the Norfolk Board unanimously recommends the Bidder Counter Proposal to Norfolk Shareholders and not recommend the applicable Competing Proposal.

## **8.6 Normal provision of information**

Nothing in this clause prevents a party from:

- (a) providing information to its Representatives, provided those Representatives are made aware of the restrictions in this clause 8;
  - (b) providing information to any Government Agency;
  - (c) providing information to its auditors, customers, financiers, joint venturers and suppliers acting in that capacity;
  - (d) providing information required to be provided by law, including to satisfy its obligations of disclosure under the ASX Listing Rules; or
  - (e) making customary presentations to brokers, portfolio investors and analysts,
- in each case, in the ordinary course of business.

## **8.7 Acknowledgement**

Bidder has required Norfolk to agree to the obligations set out in this clause in consideration of it proceeding with the Scheme and incurring significant costs in doing so. In the absence of obtaining these obligations from Norfolk, Bidder would not have entered into this deed.

# **9. Break Fee**

## **9.1 Background**

This clause has been agreed to in circumstances where:

- (a) Norfolk believes the implementation of the Scheme will provide significant benefits to it and Norfolk Shareholders, and acknowledges that, if Bidder enters into this deed and the Scheme is subsequently not implemented, Bidder will have incurred significant costs, including significant opportunity costs;
- (b) Bidder requested provision be made for the payment outlined in this clause 9, without which it would not have entered into this deed;
- (c) the Norfolk Board believes that it is appropriate to agree to the payment referred to in clause 9.2 to secure Bidder's entry into this deed; and
- (d) Norfolk has received separate legal advice in relation to this deed and the operation of this clause 9.

The parties acknowledge and agree that the costs actually incurred by Bidder under paragraph (a) will be of such nature that they cannot be accurately ascertained, but that the

Break Fee is a genuine and reasonable pre-estimate of the cost and loss that would actually be suffered by Bidder.

## 9.2 Payment of Break Fee

Subject to clause 9.3 and 9.6 Norfolk must pay Bidder the Break Fee if:

- (a) at any time before the End Date or, if earlier, the date this deed is validly terminated under clause 10, any director of Norfolk makes a public statement:
  - (i) withdrawing or adversely changing or modifying their recommendation that Norfolk Shareholders vote in favour of the Scheme at the Scheme Meeting; or
  - (ii) that they will not vote (or procure the voting of) all Norfolk Shares held, controlled or represented by him or her in favour of the Scheme at the Scheme Meeting,

other than in circumstances where the Independent Expert concludes that the Scheme is not in the best interests of Norfolk Shareholders (except in circumstances where the Independent Expert reaches that conclusion as a result of a Competing Proposal having been announced or made public which the Independent Expert may reasonably regard to be on more favourable terms than the Transaction);

- (b) at any time before the Scheme Meeting or, if earlier, the date this deed is validly terminated under clause 10, a Competing Proposal is announced by a Third Party of the kind referred to in paragraph (b) of the definition of Superior Proposal;
- (c) Maui Capital withdraws its support for the Scheme or fails to vote in favour of the Scheme in respect of the Norfolk Shares it indirectly or directly holds, owns, controls or represents (including by the sale of any such Norfolk Shares to a Third Party);
- (d) Bidder validly terminates this deed under clause 10.1(a)(i);
- (e) Bidder validly terminates this deed under clause 10.1(b)(i); or
- (f) Bidder validly terminates this deed due to the occurrence of a Norfolk Prescribed Event or Norfolk Material Adverse Change where the relevant occurrence was in the control of Norfolk.

## 9.3 Payment conditions

- (a) Notwithstanding the occurrence of any event under clause 9.2, no amount is payable under the clause if the Scheme becomes Effective, or if, prior to the occurrence of the event, this deed is validly terminated by Norfolk under clause 10.1(a)(i) for material breach by Bidder.
- (b) Norfolk can only ever be liable to pay the Break Fee once.

## 9.4 Timing of payment

If the Break Fee is payable under clause 9.2, Norfolk must pay the Break Fee without set-off or withholding within 5 Business Days of receipt of a demand for payment from Bidder.

**9.5 Nature of payment**

The Break Fee is an amount to compensate Bidder for:

- (a) advisory costs (including costs of advisers other than success fees);
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses; and
- (d) opportunity costs incurred in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives which could have been developed to further business and objectives,

incurred by Bidder.

**9.6 Compliance with law**

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Australian Takeovers Panel or a Court that all or any part of the amount payable under clause 9.2:

- (a) constitutes unacceptable circumstances as declared by the Australian Takeovers Panel;
- (b) involve a breach the fiduciary or statutory duties of the Norfolk Board; and
- (c) or is otherwise unlawful or held to be unenforceable by a Court.

Norfolk's obligation to pay the Break Fee does not apply and if Bidder has received any part of the Break Fee, it must reimburse all or part of the Break Fee (as the case may be) within five Business Days of receipt of a demand for reimbursement from Norfolk.

**9.7 Other claims**

- (a) Despite any other provision of this deed but subject to paragraph (b):
  - (i) if Norfolk becomes liable to pay the Break Fee to Bidder:
    - (A) Norfolk will, upon making payment, have no further liability for any breach of this deed (other than a breach of clauses 7 or 11) other than the payment of any interest that may be awarded for late payment of the Break Fee; and
    - (B) the Break Fee will be reduced by any amounts previously paid by Norfolk for any breach of this deed (other than a breach of clauses 7 or 11); and
  - (ii) subject to paragraph (i), the liability of Norfolk for any breach of this deed (other than a breach of clauses 7 or 11) is limited to the payment of an amount equal to the Break Fee and any interest that may be awarded on that amount.
- (b) Nothing in paragraph (a) in any way:
  - (i) prevents Norfolk or Bidder (in its own right or as trustee for any person contemplated by this deed) from seeking orders from a court of competent

- jurisdiction for the specific performance by any other party of any obligations under this deed; or
- (ii) extinguishes or limits the liability of a party for any breach of this deed arising from criminal acts or fraud by the other party or a Representative of the other party.

## 10. Termination

### 10.1 General rights

- (a) Either party may terminate this deed by written notice to the other at any time before 8:00 am on the Second Court Date:
  - (i) if:
    - (A) the other party is in material breach of any clause of this deed including under clause 9;
    - (B) the party wishing to terminate has, if practical, given written notice to the other in a timely manner setting out the relevant circumstances and stating an intention to terminate this deed; and
    - (C) the relevant circumstances continue to exist after 5 Business Days from the time the notice of intention to terminate is given (or any shorter period ending at 5pm on the Business Day before the Second Court Date); or
  - (ii) if the Court refuses to make any order directing Norfolk to convene the Scheme Meeting and after due consultation with the other party:
    - (A) a decision is made not to appeal the Court's ruling; or
    - (B) following an appeal, the Court has issued a final and non-appealable order, decree or ruling refusing to directing Norfolk to convene the Scheme Meeting;
  - (iii) if the Court or other regulatory authority has issued a final and non-appealable order, decree or ruling or taken other action which permanently restrains or prohibits the Scheme taking effect;
  - (iv) if the Independent Expert opines that the Scheme is not in the best interests of Norfolk Shareholders;
  - (v) if the other party or any of their related bodies corporate suffers an Insolvency Event;
  - (vi) if the Scheme has not become Effective on or before the End Date (other than as a result of a breach by that party of its obligations under this deed); or
  - (vii) in the circumstances set out in, and in accordance with, clause 3.5.

- (b) Bidder may terminate this deed by written notice to Norfolk at any time before 8:00 am on the Second Court Date:
  - (i) if Norfolk is in breach of clause 9;
  - (ii) if after the date of this deed, a Third Party acquires a relevant interest in more than 20% of the Norfolk Shares;
  - (iii) if a director of Norfolk has changed, withdrawn or adversely modified its recommendation that Norfolk Shareholders vote in favour of the Scheme at the Scheme Meeting or has recommended or made a statement supporting a Competing Proposal.
- (c) Norfolk may terminate this deed by written notice to Bidder at any time before 8:00 am on the Second Court Date if a Superior Proposal arises and a majority of the Norfolk Board publicly recommend that the Superior Proposal is in the interests of Norfolk Shareholders, and, if required to pay the Break Fee as a result of such withdrawal, Norfolk has paid Bidder the Break Fee.

## **10.2 Automatic termination**

Without limiting any other term of this deed, this deed will terminate automatically if, at the Scheme Meeting, Norfolk Shareholders do not pass the resolution to approve the Scheme in accordance with the requirements of section 411(4)(a)(ii) of the Corporations Act.

## **10.3 Effect of termination**

If this deed is terminated by a party under clauses 3.5 or 10.1 or pursuant to clauses 10.2 or 10.4, except to the extent that the termination results from a breach by a party of its obligations under this deed, this deed will be of no force or effect, without any liability or obligation on the part of any party, other than in relation to rights and obligations that accrued before termination and the provisions of this clause 11 and of clauses 1, 6.8, 7, 9, 11, 12, 13 and 14, which will remain in force after the termination.

## **10.4 Termination by written agreement**

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

# **11. Confidentiality**

Each party agrees and acknowledges that it is bound by the terms of the Confidentiality Agreement save that the terms of this deed will prevail over the Confidentiality Agreement to the extent of any inconsistency.

# **12. GST**

## **12.1 Recovery of GST**

If GST is payable, or notionally payable, on a supply made under or in connection with this deed, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on

that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

#### 12.2 Liability net of GST

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

#### 12.3 Adjustment events

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

#### 12.4 Survival

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

#### 12.5 GST Amount payable in respect of Break Fee

For the avoidance of doubt, the parties agree and acknowledge their understanding that in the event that Norfolk is required to pay the Break Fee to Bidder pursuant to clause 10, that payment will represent consideration for a taxable supply by Bidder such that Norfolk will also be required to pay to Bidder an additional GST Amount pursuant to clause 12.1.

#### 12.6 Definitions

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

### 13. Notices

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

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender with a copy in each case sent to the email address below or the email address last notified by the intended recipient to the sender:

- (i) to RCR: Level 6, 251 St Georges Terrace  
Perth WA 6000  
Attention: Company Secretary  
Fax No: 08 9361 0724  
Email: darryl.edwards@rcrtom.com.au
- (ii) to Norfolk: Level 5, 50 Berry Street  
North Sydney NSW 2060  
Attention: General Counsel and Company Secretary  
Fax No: 02 9467 0901  
Email: fyiend@norfolkgl.com
- (c) will be conclusively taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error,

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

## 14. General Provisions

### 14.1 Amendment

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

### 14.2 Assignment

A party cannot assign, charge, encumber or otherwise deal with at law or in equity any of its rights or obligations under this deed, or attempt or purport to do so, without the prior consent of each other party.

### 14.3 Costs and stamp duty

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

## **14.4 Counterparts**

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

## **14.5 Entire agreement**

This deed and the Confidentiality Agreement contain the entire agreement between the parties with respect to their subject matter. This deed and the Confidentiality Agreement set out the only conduct relied on by the parties and supersede all earlier conduct and prior agreements and understandings between the parties in connection with their subject matter.

## **14.6 Further assurances**

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

## **14.7 Governing law and jurisdiction**

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

## **14.8 No merger**

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

## **14.9 No waiver**

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

## **14.10 Severability of provisions**

Any provision of this deed that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this deed nor affect the validity or enforceability of that provision in any other jurisdiction.

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Schedule 1 – Bidder Representations and Warranties

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1. **(Status)** It is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
2. **(Power)** It has the power to enter into and perform its obligations under this deed to carry out the transactions contemplated by this deed.
3. **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and the performance of this deed and to carry out the transactions contemplated by this deed.
4. **(Deed binding)** This deed is its valid and binding obligation enforceable in accordance with its terms.
5. **(Transactions permitted)** The execution and performance by it of this deed and each transaction contemplated by this deed did not and will not violate any provision of:
  - (a) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it or any of its related bodies corporate;
  - (b) its constituent documents; or
  - (c) any other document which is binding on it or its assets (or a related body corporate or its assets).
6. **(Solvency)** No member of the Bidder Group is affected by an Insolvency Event.
7. **(Scheme Booklet)** At the time Norfolk commences sending the Scheme Booklet to Norfolk Shareholders, the Bidder Information contained in the Scheme Booklet is true and correct in all material respects, complies with all applicable laws and does not contain any statement which is misleading or deceptive in any material respect (whether by omission or otherwise).
8. **(Funding)** As at the date of this deed, Bidder and its financiers have executed a commitment letter including an agreed form credit approved term sheet in the form initialled by the parties for identification.

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**Schedule 2 – Norfolk Representations and Warranties**

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1. **(Status)** It is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
2. **(Power)** It has the power to enter into and perform its obligations under this deed to carry out the transactions contemplated by this deed.
3. **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of this deed and to carry out the transactions contemplated by this deed.
4. **(Deed binding)** This deed is its valid and binding obligation enforceable in accordance with its terms.
5. **(Transactions permitted)** The execution and performance by it of this deed and each transaction contemplated by this deed did not and will not violate any provision of:
  - (a) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it or any of its related bodies corporate;
  - (b) its constitution or other constituent documents; or
  - (c) any other document which is binding on it or its assets (or a related body corporate or its assets).
6. **(Capital structure)** Norfolk has 158,890,730 Norfolk Shares and 3,349,951 Performance Rights, and no other securities, issued and outstanding at the date of this deed. No member of the Norfolk Group is subject to any obligation (including any contingent obligation) to issue or have transferred to any person securities in or of it or any other member of the Norfolk Group other than the 158,890,730 Norfolk Shares and 3,349,951 Performance Rights Norfolk has issued and outstanding at the date of this deed.
7. **(Continuous disclosure):**
  - (a) it has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1; and
  - (b) as at the date of this deed, it is not withholding any information from public disclosure in reliance on ASX Listing Rule 3.1A (other than the information in relation to any change of control proposal affecting Norfolk).
8. **(Scheme Booklet)** At the time Norfolk commenced sending the Scheme Booklet to Norfolk Shareholders, the information contained in the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report) is true and correct in all material respects, complies with all applicable laws and does not contain any statement which is misleading or deceptive in any material respect (whether by omission or otherwise).
9. **(Solvency)** No member of the Norfolk Group is affected by an Insolvency Event.
10. **(Due Diligence Material)** The Due Diligence Material has been provided to Bidder in good faith and Norfolk has not knowingly and intentionally:

- (a) omitted anything from the Due Diligence Material that it knows would be material to the financial position or performance of the business of the Norfolk Group taken as a whole; or
  - (b) included anything that is false or misleading in the Due Diligence Material and which it knows would be material to the financial position or performance of the business of the Norfolk Group taken as a whole.
- 11. **(Compliance)** No member of the Norfolk Group:
  - (a) has failed to comply in any material respect with:
    - (i) any law or regulation applicable to them; or
    - (ii) any order of any Government Agency having jurisdiction over it;
  - (b) does not hold any material licence or permit necessary for it to conduct the business of the Norfolk Group as it is presently being conducted as at the date of this deed.
- 12. **(Material Contract)** Other than as fully and fairly disclosed in the Due Diligence Material, to the best of Norfolk's knowledge, no member of the Norfolk Group is in default under any Material Contract nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or give another party thereto a termination right or right to accelerate any right or obligation, under the Material Contract.
- 13. **(No litigation)** Other than as fully and fairly disclosed in the Due Diligence Material, to the best of Norfolk's knowledge, no member of the Norfolk Group is a claimant or defendant in, or otherwise a party to, any material litigation, arbitration or mediation proceedings, there are no proceedings of this type pending or to the knowledge of Norfolk, threatened against a member of the Norfolk Group and as far as Norfolk is aware no circumstance exists that is likely to give rise to any proceedings of this type.
- 14. **(Financial position)** Other than as fully and fairly disclosed in documents lodged with the ASX, since 30 September 2012:
  - (a) there has been no material change in the financial condition, assets, liabilities, results of operations, profitability or prospects of the Norfolk Group; and
  - (b) the Norfolk Group has carried on business in the ordinary and usual course consistent with its usual business practices and has not made any significant change to the nature or scale of any activities.

For the purpose of warranties 10, 12 and 13, the knowledge and intention of Norfolk is limited to the actual knowledge and intention of the directors of Norfolk, Peter Richards (CEO), Fiona Yiend (Company Secretary and General Counsel) and Stephen McDonald (CFO), having made reasonable enquiries.

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**Schedule 3 – Norfolk Prescribed Occurrences**

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1. Norfolk converting all or any of its shares into a larger or smaller number of shares.
2. Any member of the Norfolk Group resolves to reduce its share capital in any way.
3. Any member of the Norfolk Group:
  - (a) enters into a buy-back agreement; or
  - (b) resolves to approve the terms of a buy-back agreement under the Corporations Act.
4. Any member of the Norfolk Group issues shares, performance rights or any other security or instrument convertible into shares, to a person other than to another Norfolk Group member, or grants an option over its shares other than to another Norfolk Group member, or agrees to make such an issue or grant such an option, other than shares issued on the vesting of Performance Rights.
5. Any member of the Norfolk Group issues, or agrees to issue, convertible notes or other debt securities.
6. Any member of the Norfolk Group disposes, or agrees to dispose, of the whole or a substantial part of the business or property of the Norfolk Group to a person who is not also a member of the Norfolk Group.
7. Any member of the Norfolk Group grants or agrees to grant, a security interest in the whole or a substantial part of the business or property of the Norfolk Group.
8. Any member of the Norfolk Group resolves to be wound up.
9. A liquidator or provisional liquidator of any member of the Norfolk Group is appointed.
10. A court makes an order for the winding up of any member of the Norfolk Group.
11. An administrator of any member of the Norfolk Group is appointed under section 436A, 436B or 436C of the Corporations Act.
12. Any member of the Norfolk Group executes a deed of company arrangement.
13. A receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of any member of the Norfolk Group.
14. Any member of the Norfolk Group issues, grants or amends the terms of, any securities, options or rights to, or accelerates the rights of, any of the directors or employees of the Norfolk Group to compensation or benefits of any kind, other than shares issued on the vesting of Performance Rights.
15. Norfolk declares, pays or distributes any dividend, bonus or other share of its profits or assets or agrees to return any capital to its members or announces an intention to do so.

**Executed and delivered as a deed**


**Executed** as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
**RCR Tomlinson Limited:**



Director Signature

Roderick J M Brown

Print Name



Director/Secretary Signature

PAUL JOSEPH DALGLISH

Print Name

**Executed** as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
**Norfolk Group Limited:**

Director Signature

Print Name

Director/Secretary Signature

Print Name

## Executed and delivered as a deed

**Executed** as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
**RCR Tomlinson Limited:**

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Executed** as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
**Norfolk Group Limited:**



\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

**Peter Richards**

**Fiona Yiend**

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

## Annexure A – Form of Scheme

**Scheme of Arrangement** under Part 5.1 of the Corporations Act.

| Parties |                                                                                                                                                         |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.      | <b>Norfolk Group Limited</b> (ACN 125 709 971) registered in New South Wales of Level 5, 50 Berry Street, North Sydney NSW 2060 ( <b>Norfolk</b> ); and |
| 2.      | the holders of ordinary shares in Norfolk at the Scheme Record Date.                                                                                    |

### 1. Definitions and interpretation

#### 1.1 Definitions

The meanings of the terms used in this scheme of arrangement are set out below.

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

**ASX** means ASX Limited (ACN 008 624 691) or, as the context requires, the financial market known as the Australian Securities Exchange operated by it.

**Bidder** means [\*].

**Business Day** means a business day as defined in the ASX Listing Rules.

**CHESS** means the clearing house electronic subregister system of share transfers operated by ASX Settlement Pty Limited (ABN 49 008 504 532).

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

**Court** means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing between the parties.

**Deed Poll** means the deed poll dated [\*] 2013 executed by Bidder in favour of the Scheme Shareholders.

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

**Effective Date** means the date on which this scheme becomes Effective.

**End Date** means the 'End Date' determined in accordance with the Scheme Implementation Deed.

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

**Marketable Parcel** means a marketable parcel as defined by the ASX Operating Rules.

**Norfolk Board** means the board of directors of Norfolk.

**Norfolk Registry** means Link Market Services Limited, Level 12, 680 George Street, Sydney, NSW, Australia, 2000 or any replacement provider of share registry services to Norfolk, or any replacement provider of share registry services to Norfolk.

**Norfolk Share** means a fully paid ordinary share in Norfolk.

**Norfolk Shareholders** means each person who is registered as the holder of Norfolk Shares from time to time.

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

**Registered Address** means, in relation to a Norfolk Shareholder, the address shown in the Norfolk Share Register.

**Scheme Booklet** means the scheme booklet sent to holders of Norfolk Shares on or about [\*] 2013.

**Scheme Consideration**, in respect of a Scheme Shareholder, means \$0.48 (less the amount of any dividend or return of capital declared or paid by Norfolk on or before the Implementation Date), per Scheme Share held by that Scheme Shareholder.

**Scheme Implementation Deed** means the Scheme Implementation Deed dated 12 April 2013 between Bidder and Norfolk.

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

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

**Scheme Share** means a Norfolk Share held by a Scheme Shareholder at the Scheme Record Date.

**Scheme Shareholders** means Norfolk Shareholders at the Scheme Record Date.

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

**Trust Account** means an Australian dollar denominated trust account operated by the Trustee, to be held on trust for the Scheme Shareholders, except that any interest on the amounts deposited (less bank fees and other charges) will be to Bidder's account.

**Trustee** means Norfolk as trustee for the Scheme Shareholders.

## 1.2 Interpretation

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

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.

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

### 1.3 Business Day

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

### 1.4 Listing requirements included as law

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

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## 2. Preliminary

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### 2.1 Norfolk

- (a) Norfolk is a public company limited by shares, registered in New South Wales and admitted to the official list of ASX.
- (b) Norfolk Shares are officially quoted on ASX. At [ ] 2013, [ ] Norfolk Shares were on issue.

### 2.2 Consequence of this scheme becoming Effective

If this scheme becomes Effective:

- (a) it will override the constitution of Norfolk, to the extent of any inconsistency;
- (b) Bidder must (pursuant to its obligations under the Deed Poll) pay or procure payment of the Scheme Consideration in the manner contemplated by clause 5; and
- (c) all the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares, will be transferred to Bidder, and Norfolk will enter Bidder in the Norfolk Share Register as the holder of the Scheme Shares on the Implementation Date, with the result that Norfolk will become a wholly-owned subsidiary of Bidder.

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## 3. Conditions

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- (a) This scheme is conditional on:
  - (i) all the conditions precedent in clause 3.1 of the Scheme Implementation Deed (other than the condition in clause 3.1(c)) having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed by 8:00 am on the Second Court Date;
  - (ii) such other conditions imposed by the Court under section 411(6) of the Corporations Act, as are acceptable to the parties, having been satisfied; and
  - (iii) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the Court orders approving this scheme.
- (b) The satisfaction of the conditions referred to in clause 3(a) is a condition precedent to the operation of clauses 4 and 5.
- (c) This scheme will lapse and be of no further force or effect if:
  - (i) the Effective Date does not occur on or before the End Date or any later date as the Court, with the consent of the parties, may order; or
  - (ii) the Scheme Implementation Deed is terminated before implementation of this scheme on the Implementation Date.

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## **4. Implementation**

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### **4.1 Lodgement of Court orders**

Norfolk must lodge with ASIC office copies of any Court orders under section 411 of the Corporations Act approving this scheme by 5pm on the Business Day the Court approves this scheme or by 5pm on the Business Day on which the Court orders are entered, whichever is the later.

### **4.2 Transfer of Scheme Shares**

On the Implementation Date:

- (a) subject to the payment of the Scheme Consideration to the Trust Account, the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by Norfolk or its officers as agent and attorney of the Scheme Shareholders under clause 8.5 or otherwise) by:
  - (i) Norfolk delivering to Bidder a duly completed and executed share transfer form to transfer all the Scheme Shares to Bidder; and
  - (ii) Bidder duly executing such transfer form and delivering it to Norfolk for registration; and
- (b) immediately after receipt of the transfer form in accordance with paragraph (a)(ii), Norfolk must enter the name of Bidder in the Norfolk Share Register in respect of the Scheme Shares.

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## **5. Scheme Consideration**

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### **5.1 Amount of Scheme Consideration**

Subject to clause 5.1(b), on the Implementation Date, each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder.

### **5.2 Joint holders**

In the case of Scheme Shares held in joint names, the relevant Scheme Consideration is payable to and must be sent to the holder whose name appears first in the Norfolk Share Register at the Scheme Record Date or where the joint holders have nominated a bank account, the amount must be deposited directly to the nominated bank account of the joint holders.

### 5.3 Scheme Consideration

- (a) Bidder must (pursuant to its obligations under the Deed Poll) before 12 noon on the Implementation Date pay or procure payment to the Trust Account of an amount at least equal to the aggregate amount of cash Scheme Consideration.
- (b) As soon as practicable following implementation of this Scheme on the Implementation Date, the Trustee must pay from the Trust Account to each Scheme Shareholder such amount of cash as is due to that Scheme Shareholder as Scheme Consideration in respect of that Scheme Shareholder's Scheme Shares.
- (c) The amounts referred to in paragraph (b) must be paid by the Trustee doing any of the following at its election:
  - (i) sending (or procuring the Norfolk Registry to send) it to the Scheme Shareholder's Registered Address by cheque in Australian currency drawn out of the Trust Account; or
  - (ii) depositing (or procuring the Norfolk Registry to deposit) it into an account with any Australian ADI (as defined in the Corporations Act) notified to Norfolk (or the Norfolk Registry) by an appropriate authority from the Scheme Shareholders.
- (d) If there is any surplus in the amount held by the Trustee in the Trust Account, that surplus must be paid by the Trustee to Bidder following the satisfaction of the Trustee's obligations under this clause.
- (e) If any amount is required under any Australian law or by any Australian government or any Australian governmental, semi-governmental or judicial entity or authority to be:
  - (i) withheld from an amount payable under paragraph (c) and paid to that entity or authority; or
  - (ii) retained by the Trustee out of an amount payable under paragraph (c),  
its payment or retention by the Trustee (or the Norfolk Registry) will constitute the full discharge of the Trustee's obligations under this clause 5.5 with respect to the amount so paid or retained until, in the case of paragraph (f)(ii), it is no longer required to be retained.

## 6. Dealings in Norfolk Shares

- (a) To establish the identity of the Scheme Shareholders, dealings in Norfolk Shares will only be recognised if:
  - (i) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Norfolk Share Register as the holder of the relevant Norfolk Shares on or before the Scheme Record Date; and

- (ii) in all other cases, registrable transmission applications or transfers in respect of those dealings are received on or before the Scheme Record Date at the place where the Norfolk Share Register is kept.
- (b) Norfolk must register registrable transmission applications or transfers of the kind referred to in clause 6(a) on the Scheme Record Date (provided that for the avoidance of doubt nothing in this clause 6(b) requires Norfolk to register a transfer that would result in a Norfolk Shareholder holding a parcel of Norfolk Shares that is less than a Marketable Parcel).
- (c) Norfolk will not accept for registration or recognise for any purpose any transmission application or transfer in respect of Norfolk Shares received after the Scheme Record Date.
- (d) For the purpose of determining entitlements to the Scheme Consideration, Norfolk must maintain the Norfolk Share Register in accordance with the provisions of this clause until the Scheme Consideration has been paid to the Scheme Shareholders and Bidder has been entered in the Norfolk Share Register as the holder of all the Scheme Shares. The Norfolk Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (e) From the Scheme Record Date until registration of Bidder in respect of all Scheme Shares under clause 4, no Norfolk Shareholder may deal with Norfolk Shares in any way except as set out in this scheme and any attempt to do so will have no effect.
- (f) All statements of holding for Norfolk Shares will cease to have effect from the Scheme Record Date as documents of title in respect of those shares (other than statements of holding in favour of Bidder, any of its related bodies corporate and their successors in title). As from the Scheme Record Date, each entry current at that date on the Norfolk Share Register (other than entries in respect of Bidder, any of its related bodies corporate and their successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Norfolk Shares relating to that entry.
- (g) As soon as possible after the Scheme Record Date and in any event at least two Business Days before the Implementation Date, Norfolk will ensure that details of the names, Registered Addresses and holdings of Norfolk Shares for each Scheme Shareholder are available to Bidder in the form Bidder reasonably requires.

## 7. Quotation of Norfolk Shares

- (a) It is expected that suspension of trading on ASX in Norfolk Shares will occur from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by Bidder, Norfolk will apply:
  - (i) for termination of the official quotation of Norfolk Shares on ASX; and

- (ii) to have itself removed from the official list of ASX.

Norfolk must do everything it can to ensure that such termination of official quotation and removal from the official list does not occur before the Implementation Date.

## **8. General Scheme Provisions**

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### **8.1 Consent**

If the Court proposes to approve this scheme subject to any alterations or conditions, Norfolk may, by its counsel or solicitors, consent on behalf of all persons concerned to those alterations or conditions to which Bidder has consented in writing.

### **8.2 Agreement of Scheme Shareholders**

- (a) Scheme Shareholders agree to the transfer of their Norfolk Shares, together with all rights and entitlements attaching to those Norfolk Shares, in accordance with the Scheme and agree to the variation, cancellation or modification of the rights attached to their Norfolk Shares constituted by or resulting from this scheme.
- (b) Each of the Scheme Shareholders acknowledges that this scheme binds Norfolk and all Scheme Shareholders (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against this scheme at that Scheme Meeting).

### **8.3 Warranties by Scheme Shareholders**

Each Scheme Shareholder is deemed to have warranted to Norfolk, in its own right and for the benefit of Bidder that:

- (a) all of its Norfolk Shares which are transferred to Bidder under this scheme will, on the date on which they are transferred to Bidder, be free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind;
- (b) all of its Norfolk Shares which are transferred to Bidder under this scheme will, on the date on which they are transferred to Bidder, be fully paid; and
- (c) it has full power and capacity to sell and to transfer its Norfolk Shares to Bidder.

### **8.4 Beneficial entitlement to Norfolk Shares**

From the Implementation Date, Bidder will be beneficially entitled to the Norfolk Shares transferred to it under this scheme pending registration by Norfolk of Bidder in the Norfolk Share Register as the holder of the Norfolk Shares.

### **8.5 Transfer free of encumbrances**

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

**8.6 Authority given to Norfolk**

- (a) Scheme Shareholders will be deemed to have authorised Norfolk to do and execute all acts, matters, things and documents on the part of each Scheme Shareholder necessary to implement the scheme, including executing, as agent and attorney of each Scheme Shareholder, a share transfer or transfers in relation to Scheme Shares as contemplated by clause 4.2.
- (b) Each Scheme Shareholder, without the need for any further act, irrevocably appoints Norfolk and all of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purpose of executing any document necessary to give effect to this scheme including, a proper instrument of transfer of its Scheme Shares for the purposes of section 1071B of the Corporations Act which may be a master transfer of all the Scheme Shares.

**8.7 Appointment of sole proxy**

Upon this scheme becoming Effective and until Norfolk registers Bidder as the holder of all Norfolk Shares in the Norfolk Share Register, each Scheme Shareholder:

- (a) is deemed to have irrevocably appointed Bidder as its attorney and agent (and directed Bidder in such capacity) to appoint an officer or agent nominated by Bidder as its sole proxy and, where applicable, corporate representative to attend shareholders' meetings of Norfolk, exercise the votes attaching to the Scheme Shares registered in its name and sign any Norfolk Shareholders' resolutions, and no Scheme Shareholder may attend or vote at any of those meetings or sign or vote on any resolutions (whether in person, by proxy or by corporate representative) other than as pursuant to this clause 8.6(a); and
- (b) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs.

**9. General**

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**9.1 Stamp duty**

Bidder must (pursuant to its obligations under the Deed Poll) pay all stamp duty payable in connection with the transfer of the Scheme Shares to Bidder.

**9.2 Variations, alterations and conditions**

Norfolk may, with the consent of Bidder (which cannot be unreasonably withheld), by its counsel or solicitor consent on behalf of all persons concerned to any variations, alterations or conditions to this scheme which the Court thinks fit to impose.

**9.3 Definition of 'sending'**

For the purposes of clause 5 the expressions 'sending' means, in relation to each Scheme Shareholder:

- (a) sending by ordinary pre-paid post or courier to the Registered Address of that Scheme Shareholder as at the Scheme Record Date; or

- (b) delivery to the Registered Address of that Scheme Shareholder as at the Scheme Record Date by any other means at no cost to the recipient.

#### **9.4 Notices**

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

#### **9.5 Governing law and jurisdiction**

This scheme is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

#### **9.6 Further assurances**

Norfolk must do anything necessary or expedient (including executing agreements and documents) on its own behalf and on behalf of each Scheme Shareholder to give full effect to this scheme and the transactions contemplated by it.

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**Annexure B – Deed Poll**

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**Date****Deed Poll** by

1. [redacted] registered in Western Australia of Level 6, 251 St Georges Terrace, Perth WA 6000 (**Bidder**).

**in favour of** the **Scheme Shareholders**.**Recitals**

- |   |                                                                                                                                                                |
|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A | On [redacted] 2013, RCR and Norfolk entered into the Scheme Implementation Deed to provide for the implementation of the Scheme.                               |
| B | The effect of the Scheme will be to transfer all Scheme Shares to Bidder in return for the Scheme Consideration.                                               |
| C | Bidder enters this deed poll to covenant in favour of Scheme Shareholders to pay or procure payment of the Scheme Consideration in accordance with the Scheme. |

**It is declared** as follows.

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**1. Definitions and interpretation**

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**1.1 Definitions**

The following definitions apply unless the context requires otherwise.

***Scheme Implementation Deed*** means the scheme implementation deed dated 12 April 2013 between RCR and Norfolk.

**1.2 Terms defined in Scheme Implementation Deed**

Words defined in the Scheme Implementation Deed and not in this deed poll have the same meaning in this deed poll as in the Scheme Implementation Deed unless the context requires otherwise.

**1.3 Incorporation by reference**

The provisions of clauses 1.2, 1.3, 1.4 and 1.5 of the Scheme Implementation Deed form part of this deed poll as if set out at length in this deed poll but with 'deed poll' substituted for 'deed' and with any reference to 'party' being taken to include the Scheme Shareholders.

## 1.4 Nature of this deed poll

Bidder acknowledges that this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not a party to it.

## 2. Conditions

### 2.1 Conditions

Bidder's obligations under clause 3 are subject to the Scheme becoming Effective.

### 2.2 Termination

Bidder's obligations under this deed poll will automatically terminate and this deed poll will be of no further force or effect if:

- (a) the Scheme Implementation Deed is terminated in accordance with its terms; or
  - (b) the Scheme is not Effective by the End Date,
- unless Norfolk and Bidder otherwise agree.

### 2.3 Consequences of termination

If this deed poll terminates under clause 2.2, in addition and without prejudice to any other rights, powers or remedies available to them:

- (a) Bidder is released from its obligations to further perform this deed poll; and
- (b) Scheme Shareholders retain the rights they have against Bidder in respect of any breach of this deed poll which occurred before it terminated.

## 3. Scheme Consideration

- (a) Subject to clause 2, Bidder undertakes in favour of each Scheme Shareholder to provide or procure the provision of the Scheme Consideration to each Scheme Shareholder in accordance with the terms of the Scheme.
- (b) The obligations of Bidder to provide the Scheme Consideration under paragraph (a) will be satisfied if, on or before 12 noon on the Implementation Date, it:
  - (i) pays or procures payment of an amount at least equal to the aggregate amount of the cash Scheme Consideration payable to Scheme Shareholders under the Scheme by depositing in cleared funds in an Australian dollar denominated trust account operated by Norfolk, on trust for the Scheme Shareholders, except that any interest on the amount deposited (less bank fees and other charges) will be to Bidder's account; and
  - (ii) provides Norfolk with written confirmation of that payment.

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#### 4. Warranties

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Bidder represents and warrants to each Scheme Shareholder that:

- (a) **(status)** it is a corporation duly incorporated and validly existing under the laws of the place of its incorporation;
- (b) **(power)** it has the power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) **(corporate authorisations)** it has taken all necessary corporate action to authorise the entry into and performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) **(deed binding)** this deed poll is its valid and binding obligation enforceable in accordance with its terms;
- (e) **(transactions permitted)** the execution and performance by it of this deed poll and each transaction contemplated by this deed poll did not and will not violate in any respect a provision of:
  - (i) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it;
  - (ii) its constitution or other constituent documents; or
  - (iii) any other document which is binding on it or its assets; and
- (f) **(solvency)** it is not affected by an Insolvency Event.

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#### 5. Continuing Obligations

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This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until Bidder has fully performed its obligations under it.

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#### 6. Notices

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Any notice, demand or other communication (a **Notice**) to Bidder in respect of this deed poll:

- (a) must be in writing and signed by the sender or a person duly authorised by it;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below:

- (iii) to Bidder: Level 6, 251 St Georges Terrace  
Perth WA 6000  
Attention: Company Secretary  
Fax No: 08 9361 0724  
Email: [darryl.edwards@rcrtom.com.au](mailto:darryl.edwards@rcrtom.com.au)

- (c) will be conclusively taken to be duly given or made:
- (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error,
- but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 5pm (local time) it will be taken to have been duly given or made at the start of business on the next business day in that place.

## **7. General Provisions**

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### **7.1 Amendment**

This deed poll may be amended only by another deed poll entered into by Bidder and then only if the amendment is agreed to by Norfolk in writing and the Court indicates that the amendment would not itself preclude approval of the Scheme.

### **7.2 Assignment**

The rights of each Scheme Shareholder under this deed poll are personal and cannot be assigned, charged, encumbered or otherwise dealt with at law or in equity without the prior written consent of Bidder.

### **7.3 Cumulative rights**

The rights, powers and remedies of Bidder and each Scheme Shareholder under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

### **7.4 Governing law and jurisdiction**

This deed poll is governed by the laws of New South Wales. In relation to it and related non-contractual matters Bidder irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

### **7.5 Further assurances**

Bidder must do anything necessary (including executing agreements and documents) to give full effect to this deed and the transactions contemplated by it.

## **7.6 No waiver**

If a Scheme Shareholder does not exercise a right arising from a breach of this deed poll at a given time, it may, unless it has waived that right in writing, exercise the right at a later point in time.

## **7.7 Stamp duty**

Bidder must:

- (a) pay or procure the payment of all stamp duty (including fines, penalties and interest) in respect of the Scheme and this deed poll, the Scheme Implementation Deed, the performance of this deed poll, the Scheme Implementation Deed and each transaction effected by or made under the Scheme, this deed poll and the Scheme Implementation Deed; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 7.8(a).

**Executed and delivered as a deed poll**

***[Execution clauses to be inserted]***

**Annexure C – Indicative Timetable**

| Event                                                               | Time (Business Days) | Completion date           |
|---------------------------------------------------------------------|----------------------|---------------------------|
| Announcement and signing of this deed                               | N/A                  | Friday, 12 April 2013     |
| Norfolk submits draft Scheme Booklet to ASIC                        | T- 61                | Friday, 17 May 2013       |
| Bidder to execute Deed Poll                                         | T- 36                | Thursday, 6 June 2013     |
| First Court Date                                                    | T- 35                | Friday, 7 June 2013       |
| Norfolk sends Scheme Booklet to Norfolk Shareholders                | T- 28 clear days     | Friday, 14 June 2013      |
| Deadline for receipt of proxy forms for Scheme Meeting              | T- 2                 | 10am Monday, 15 July 2013 |
| Time and date for determining eligibility to vote at Scheme Meeting | T- 2                 | 7pm Monday, 15 July 2013  |
| Scheme Meeting                                                      | T                    | Wednesday, 17 July 2013   |
| Second Court Date                                                   | T+ 5                 | Monday, 22 July 2013      |
| Effective Date                                                      | T+ 6                 | Tuesday, 23 July 2013     |
| Scheme Record Date                                                  | T+ 13                | Tuesday, 30 July 2013     |
| Implementation Date                                                 | T+ 20                | Tuesday, 6 August 2013    |

