

ASX Release

31 August 2018

Zenitas Healthcare Limited (ASX: ZNT)**Zenitas enters into Scheme Implementation Deed with a Consortium comprising Adamantem Capital and Liverpool Partners**

- Zenitas shareholders offered \$1.46 per share in cash
- Scheme Consideration represents a significant premium to pre-announcement share price
- The members of the Zenitas Independent Board Committee unanimously recommend 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 Zenitas shareholders
- Scheme Meeting expected to be held in November 2018, with Scheme implementation in late November (these dates are indicative and subject to change)

Zenitas Healthcare Limited (**Zenitas** or the **Company**) today announces that it has entered into a binding Scheme Implementation Deed (**SID**) with Guardian Alphabet Pty Ltd, an entity wholly-owned by funds advised by Adamantem Capital Management Pty Limited (**Adamantem**) and Liverpool Partners Pty Limited (**Liverpool Partners**) (collectively, **Consortium**), under which it is proposed that the Consortium will acquire 100% of the shares in Zenitas by way of a Scheme of Arrangement (**Scheme**) for \$1.46 per share in cash.

Adamantem is an Australian-based private equity firm with approximately \$600 million of funds under management.

Liverpool Partners is a Sydney based investor and adviser with extensive experience in healthcare. The Managing Partner of Liverpool Partners, Mr Jonathan Lim is a Zenitas Non-Executive Director. Additionally, Zenitas Non-Executive Chairman Mr Shane Tanner will be an upstream investor in one of the entities managed by Liverpool Partners which proposes to acquire Zenitas shares.

In accordance with the Company's Conflicts of Interest and Related Party Transactions Policy, and given the involvement of Mr Tanner and Mr Lim (**Interested Directors**) in the Consortium, the Board of Zenitas has established an Independent Board Committee (**IBC**) to facilitate the evaluation of the Consortium's proposal (and any potential competing proposal or control transaction). The IBC is comprised of the directors of the Zenitas Board other than the Interested Directors.

The IBC engaged Citigroup Markets Australia Pty Ltd as its financial adviser and HWL Ebsworth Lawyers as its legal adviser in relation to the Consortium's proposal.

Overview of the Scheme

Under the terms of the Scheme, Zenitas shareholders will be entitled to receive \$1.46 per share in cash (**Scheme Consideration**), subject to all applicable conditions being satisfied or waived and the Scheme being implemented.



Under the SID, Zenitas is permitted to declare and pay a dividend in relation to the six months to 30 June 2018 (**Final Dividend**). The Scheme Consideration would be reduced by the cash amount per share of the Final Dividend. The amount of the Final Dividend, as declared by the Company in its Full Year FY2018 results, is \$0.015 per share.

The Scheme Consideration of \$1.46 per share represents:

- 34.6% premium to the undisturbed closing price of \$1.09 per share on 27 August 2018¹
- 34.6% premium to the 1-month volume weighted average price (**VWAP**) of \$1.08²
- 40.3% premium to the 3-month VWAP of \$1.04³
- 11.9x EV / FY18 Underlying EBITDA (after deducting minority interests)⁴

The Scheme Consideration implies a fully diluted market capitalisation for Zenitas of \$110 million and an enterprise value of approximately \$122 million⁵.

The members of the IBC unanimously recommend that Zenitas 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 Zenitas shareholders. Subject to those same qualifications, each member of the IBC intends to vote, or cause to be voted, all the Zenitas shares held or controlled by them in favour of the Scheme at a meeting (**Scheme Meeting**) expected to be held in November 2018.

The CEO of Zenitas (and Chairman of the IBC), Justin Walter said, “the Consortium’s proposal represents a significant premium to Zenitas’ recent share price, is 100% cash consideration and offers Zenitas shareholders a high degree of certainty. For these reasons, the IBC considers the Consortium’s offer to be very attractive to shareholders.”

Key terms of the Scheme

The implementation of the Scheme is subject to Zenitas shareholders approving the Scheme by the requisite majorities. Zenitas shareholders will have the opportunity to vote on the Scheme at the Scheme Meeting.

The implementation of the Scheme remains subject to certain other customary conditions including:

- Foreign Investment Review Board approval;
- No “Material Adverse Change” or “Prescribed Occurrences”;
- An Independent Expert opining that the Scheme is in the best interests of Zenitas shareholders; and
- Court approval.

The Scheme does not include any funding condition, with the Consortium having secured committed funding. The SID also includes customary deal protections for the Consortium.

¹ The Zenitas closing price at 27 August 2018 is considered to be the undisturbed price for the stock, given the media speculation relating to the Company as a potential takeover target published before market open on 28 August 2018.

² VWAP based on cumulative trading volume from 28 July 2018 to 27 August 2018 (inclusive).

³ VWAP based on cumulative trading volume from 28 May 2018 to 27 August 2018 (inclusive).

⁴ Calculated based on FY18 Underlying EBITDA of \$13.9 million less EBITDA attributable to minority interests of \$3.7 million.

⁵ Fully diluted market capitalisation calculated based on 75.3 million shares, comprising 74.4 million existing shares and 0.9 million options. Enterprise value calculated as the fully diluted market capitalisation plus Zenitas’ net debt of \$12.2 million as at 30 June 2018.



The SID contains the customary “no shop” and “no talk” provisions, although the “no talk” provision does not apply for the 10 business days from signing, during which period the Company may respond to approaches made to it. After these 10 business days, the customary “no talk” provision will apply, subject to the Zenitas Directors’ fiduciary obligations. Under the SID, Zenitas is bound by other customary provisions including “notification” obligations, as well as “matching” rights. The SID also details circumstances under which a break fee may be payable to the Consortium, or a reverse break fee payable to Zenitas.

A full copy of the Scheme Implementation Deed, including all applicable conditions, is attached to this announcement.

Indicative timetable and next steps

Shareholders do not need to take any action at the present time.

An Explanatory Booklet, containing among other things information relating to the Scheme, reasons for the IBC’s unanimous recommendation, details of the Scheme Meeting and the Independent Expert’s report is expected to be sent to Zenitas shareholders in October 2018. Zenitas has appointed KPMG Financial Advisory Services (Australia) Pty Limited as the Independent Expert.

Zenitas shareholders will be given the opportunity to vote on the Scheme at the Scheme Meeting which is expected to be held in mid November 2018. Zenitas shareholders do not need to take any action at the present time. Subject to Zenitas shareholder approval and the other conditions of the Scheme being satisfied, the Scheme is expected to be implemented in late November 2018. These dates are indicative and subject to change.

ENDS

For further information, please contact:

JUSTIN WALTER
CEO
0439 112 464



HERBERT
SMITH
FREEHILLS

Deed

Final

Project Alphabet/Guardian

Scheme implementation deed

Guardian Alphabet Pty Ltd

Zenitas Healthcare Limited

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Scheme implementation deed

Date ► 31 August 2018

Between the parties

BidCo	Guardian Alphabet Pty Ltd ACN 628 465 663 c/- Liverpool Partners, Suite 3, Level 36. 60 Margaret Street, Sydney NSW 2000
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Zenitas	Zenitas Healthcare Limited ABN 78 009 074 588 of Level 2, 391 St Kilda Road, Melbourne, VIC, 3004
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Recitals	<ol style="list-style-type: none">1 Subject to the conditions in this deed, the parties have proposed that BidCo will acquire all of the ordinary shares in Zenitas (other than the ordinary shares held by an Excluded Shareholder) by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Zenitas and the Scheme Shareholders.2 The parties have agreed to propose and, if approved, to implement the scheme of arrangement on the terms of this deed.
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This deed witnesses as follows:

1 Definitions and interpretation

1.1 Definitions

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

Term	Meaning
Adamantem	each of the entities named in lines 1 to 5 of the table in Schedule 4.
Accounting Standards	<ol style="list-style-type: none">1 the accounting standards required under the Corporations Act (including the Approved Accounting Standards issued by the Australian Accounting Standards Board) and other mandatory professional reporting requirements issued by the joint accounting bodies (including the Australian Accounting Standards issued either jointly by CPA Australia and the Institute of Chartered Accountants in Australia or by the Australian Accounting Research Foundation on behalf of CPA Australia and the Institute of Chartered Accountants in Australia); and2 if no accounting standard applies under the Corporations Act or other mandatory professional reporting requirements, the principles set out in Australian Statements of Accounting Concepts.
Adviser	any person who is engaged to provide professional advice of any type (including legal, accounting, consulting or financial advice) to Zenitas, BidCo, the Consortium or any Consortium Member or any Consortium Related Party, including a Financial Adviser (as applicable).
ASIC	the Australian Securities and Investments Commission.
Associate	has the meaning set out in section 12 of the Corporations Act.
ASX	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.
Authorisation	any approval, licence, consent, authority or permit.



Term	Meaning
BidCo Break Fee	the actual third party adviser and financier fees, expenses and costs of Zenitas incurred in connection with the Scheme up to a maximum of \$2,500,000 (plus GST).
BidCo Facility Agreement	the debt facility agreement to be entered into pursuant to the Debt Commitment Letter.
BidCo Group	BidCo and each of its Related Bodies Corporate, and a reference to a ' BidCo Group Member ' or a ' member of the BidCo Group ' is to BidCo or any of its Related Bodies Corporate.
BidCo Indemnified Parties	BidCo, each Consortium Member, their respective Related Bodies Corporate and Related Persons.
BidCo Information	information regarding the BidCo and the Consortium provided by or on behalf of BidCo or the Consortium to Zenitas in writing for inclusion in the Scheme Booklet, being: <ol style="list-style-type: none">1 information about BidCo, the Consortium, the Consortium's interests and dealings in Zenitas Shares and BidCo's intentions for Zenitas and Zenitas' employees; and2 any other information required under the Corporations Act, Corporations Regulations or RG 60 to enable the Scheme Booklet to be prepared that the parties agree is 'BidCo Information' and that is identified in the Scheme Booklet as such.
BidCo Prescribed Occurrence	the occurrence of an Insolvency Event in relation to BidCo, HoldCo or a Consortium Member.
BidCo Representations and Warranties	the representations and warranties of BidCo set out in Schedule 1.
Business Day	a day that is not a Saturday, Sunday or a public holiday or bank holiday in Melbourne or Sydney.
CAS	Clinical Advisory Services Pty Ltd ACN 151 842 107.
CCA	the <i>Competition and Consumer Act 2010</i> (Cth).



Term	Meaning
Claim	<p>any claim, demand, legal proceedings or cause of action, including any claim, demand, legal proceedings or cause of action:</p> <ol style="list-style-type: none">1 based in contract (including breach of warranty);2 based in tort (including misrepresentation or negligence);3 under common law or equity; or4 under statute (including the Australian Consumer Law (being Schedule 2 of the CCA or Part VI of the CCA, or like provision in any state or territory legislation)), <p>in any way relating to this deed or the Transaction, and includes a claim, demand, legal proceeding or cause of action arising under an indemnity in this deed.</p>
Competing Proposal	<p>any proposal, agreement, arrangement or transaction (or expression of interest therefor), which, if entered into or completed, would result in a Third Party (either alone or together with any Associate):</p> <ol style="list-style-type: none">1 directly or indirectly acquiring a Relevant Interest in, or having a right to acquire, a legal, beneficial or economic interest in, or control of, 20% or more of the Zenitas Shares;2 acquiring Control of Zenitas or any other material Zenitas Group Member;3 directly or indirectly acquiring or become the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a substantial part of Zenitas' business or assets or the business or assets of the Zenitas Group;4 otherwise directly or indirectly acquiring or merging with Zenitas or another material Zenitas Group Member; or5 requiring Zenitas to abandon, or otherwise fail to proceed with, the Transaction, <p>whether by way of takeover bid, members' or creditors' scheme of arrangement, shareholder approved acquisition, capital reduction, buy-back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement or other transaction or arrangement.</p> <p>Each successive material modification or variation of a Competing Proposal will constitute a new Competing Proposal.</p>
Condition Precedent	<p>each of the conditions set out in clause 3.1.</p>
Confidentiality Deed	<p>the mutual confidentiality deed between CAS, Liverpool Partners Private Equity Manager Pty Limited, Adamantem Capital</p>



Term	Meaning
	Management Pty Limited and Zenitas dated 20 July 2018.
Control	has the meaning given in section 50AA of the Corporations Act, disregarding subsection 50AA(4).
Consortium	Adamantem and Liverpool.
Consortium Member	any member of the Consortium.
Consortium Related Person	in respect of a Consortium Member: <ol style="list-style-type: none">1 a Related Body Corporate of that Consortium Member; and2 any director, officer, member or employee of that Consortium Member or of a Related Body Corporate of that Consortium Member.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Corporations Regulations	the <i>Corporations Regulations 2001</i> (Cth).
Court	the Supreme Court of Victoria, the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing by BidCo and Zenitas.
Data Room	the online data room established by Zenitas which is accessed at: https://services.intralinks.com/web/index.html?_ga=2.211892755.649234177.1533190469-1504804354.1532950540#workspace/5590005/documents .
Debt Commitment Letter	the credit-approved, executed commitment letter and accompanying term sheet from certain banks or other financial institutions addressed to BidCo and dated on or about the date of this deed.
Deed Poll	a deed poll to be entered into by BidCo substantially in the form of Attachment 2 under which BidCo covenants in favour of the Scheme Shareholders to perform, subject to satisfaction of the Conditions Precedent, the obligations attributed to BidCo under the Scheme.



Term	Meaning
Disclosure Materials	<ol style="list-style-type: none">1 the documents and information contained in the Zenitas Data Room made available by Zenitas to BidCo and its Related Persons prior to 7 pm on Thursday, 30 August 2018, the index of which has been initialled by, or on behalf of, the parties for identification; and2 written responses from Zenitas and its Related Persons to requests for further information made by BidCo and its Related Persons via the Data Room prior to 7 pm on Thursday, 30 August 2018.
EBITDA	<p>earnings from ordinary, continuing activities of the Zenitas Group before interest, tax, depreciation and amortisation calculated in accordance with the accounting policies and practices applied by Zenitas as at the date of this deed, excluding:</p> <ol style="list-style-type: none">1 all costs and expenses incurred by the Zenitas Group associated with the Scheme process and the Scheme, including all fees payable to external advisers of the Zenitas Group; and2 the impact of any transaction entered into by a member of the Zenitas Group or any other event that is of a non-recurring nature.
Effective	<p>when used in relation to the Scheme, the coming into effect, under subsection 411(10) of the Corporations Act, of the order of the Court made under paragraph 411(4)(b) of the Corporations Act in relation to the Scheme.</p>
Effective Date	<p>the date on which the Scheme becomes Effective.</p>
End Date	<p>15 February 2019, or such other date as agreed in writing by the parties.</p>
Equity Commitment Letters	<p>the binding, executed commitment letters dated on or about 31 August 2018 addressed to HoldCo and BidCo from each of Adamantem and Liverpool.</p>
Excluded Shareholder	<p>any Zenitas Shareholder who is BidCo, a Consortium Member, CAS or a Related Body Corporate of BidCo, a Consortium Member or CAS.</p>
Exclusivity Period	<p>the period from and including the date of this deed to the earliest of:</p> <ol style="list-style-type: none">1 the date of termination of this deed;2 the End Date; and



Term	Meaning
	3 the Effective Date.
Fairly Disclosed	disclosed to a sufficient extent and in sufficient detail so as to enable a reasonable person experienced in transactions with similar effect to the Transaction and experienced in a business similar to the type of business generally conducted by Zenitas to be aware of the significance of the information and to identify the nature and scope of the relevant fact, matter or circumstance.
FATA	the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth).
Financial Adviser	any financial adviser retained by a party in relation to the Transaction or a Competing Proposal from time to time.
Financial Indebtedness	<p>any debt or other monetary liability in respect of (without double counting):</p> <ol style="list-style-type: none">1 moneys borrowed or raised and debit balances at banks or financial institutions;2 any advance, loan, bill, bond, debenture, note or similar instrument;3 any drawing, acceptance, endorsement, collecting or discounting arrangement;4 any finance or capital lease to the extent required in accordance with Accounting Standards to be treated as a borrowing;5 any obligations to pay a purchase price in relation to an acquisition of any business or entity which are or become unconditional (or are unconditional but for the Scheme becoming Effective) and any agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or service;6 any obligation to deliver goods or provide services paid for in advance by any financier and required in accordance with Accounting Standards to be treated as a borrowing;7 any fees outstanding to be paid by any Zenitas Group Member to advisers in connection with the Proposed Transactions that have been accrued or are otherwise payable;8 any agreement for the payment of capital or premium on the redemption of any preference shares at the option of the holder;9 any interest or currency swap or hedge arrangement, financial option, futures contract or analogous transaction; or10 the amount of any liability in respect of any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued



Term	Meaning
	by a bank or financial institution in respect of any of the items listed in paragraphs 1 to 9.
First Court Date	the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Scheme Meeting 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	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.
HoldCo	Guardian Alphabet HoldCo Pty Ltd ACN 628 455 103, being the holder of 100% of the shares on issue in the capital of Guardian Alphabet MidCo Pty Ltd ACN 628 464 773. which is in turn the holder of 100% of the shares on issue in the capital of BidCo.
Implementation Date	the fifth Business Day after the Scheme Record Date, or such other date after the Scheme Record Date as the parties agree in writing.
Independent Expert	the independent expert in respect of the Scheme appointed by Zenitas.
Independent Expert's Report	means the report to be issued by the Independent Expert in connection with the Scheme, such report to be included in or to accompany the Scheme Booklet, and including any subsequent, updated or supplementary report, setting out the Independent Expert's opinion whether or not the Transaction is in the best interests of Zenitas Shareholders and the reasons for holding that opinion.
Insolvency Event	means, in relation to an entity: <ol style="list-style-type: none">1 the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity;2 a Controller (as defined in the Corporations Act), liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;



Term	Meaning
	<p>3 an application is made to a court, a meeting is convened or a resolution is passed for the entity to be wound up or dissolved or for the appointment of a Controller (as defined in the Corporations Act), liquidator, provisional liquidator or administrator to the entity of any of its assets;</p>
	<p>4 the entity:</p> <ul style="list-style-type: none">– resolves to enter into, or enters into, a scheme of arrangement (other than the Scheme), a deed of company arrangement or composition with its creditors or an assignment for their benefit;– proposes or is subject to a moratorium of its debts; or– takes proceedings or actions similar to those mentioned in this paragraph as a result of which the entity's assets are, or are proposed to be, submitted to the control of its creditors;
	<p>5 the entity seeks or obtains protection from its creditors under any statute or any other law;</p>
	<p>6 the entity executing a deed of company arrangement;</p>
	<p>7 the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;</p>
	<p>8 the entity is or becomes unable to pay its debts when they fall due, is insolvent within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation) or is otherwise presumed to be insolvent under the Corporations Act or any analogous circumstances arises under any other statute or law;</p>
	<p>9 the entity being deregistered as a company or otherwise dissolved (whether pursuant to Chapter 5A of the Corporations Act or otherwise);</p>
	<p>10 any attachment, distress, execution or other process is made or levied against any asset of the entity in excess of A\$1,000,000 and is not withdrawn, stayed or dismissed within 20 Business Days;</p>
	<p>11 an event occurs in relation to the entity which is analogous to anything referred to above or which has a substantially similar effect; or</p>
	<p>12 the entity incurs a liability while acting or purporting to act as trustee of a trust and the entity is not entitled to be fully indemnified against the liability out of trust assets because of one or more of the following:</p> <ul style="list-style-type: none">– a breach of trust by the entity;– the entity acting outside the scope of its powers as trustee;– a term of the trust denying, or limiting, the entity's right to be indemnified against the liability; or– the assets of the trust being insufficient to discharge the liability.

Term	Meaning
Listing Rules	the official listing rules of ASX.
Liverpool	each of the entities named in rows 6 and 7 of the table in Schedule 4.
Material Contract	the agreements to which a Zenitas Group Member is a party: <ol style="list-style-type: none"> 1 specified in a letter initialled by the parties for the purposes of identification on or about the date of this deed; or 2 that individually require, or may require, payments by or to that Zenitas Group Member in excess of \$300,000 per annum.
NAB Facility	the finance facility between National Australia Bank Limited (as lender) and Zenitas (as borrower) dated on or about the date of this deed made up of facility A (corporate markets loan with a facility limit of \$65,000,000), facility B (bank guarantees with a facility limit of \$2,000,000) and facility C (leasing and equipment financing).
Net Financial Indebtedness	the Financial Indebtedness less the amount of cash, cash equivalents and short term interest bearing deposits, where the terms "cash" and "cash equivalents" are as defined in the Accounting Standards, and which for the purposes of paragraph 2 of the definition of Zenitas Material Adverse Change means \$91,400,000.
Operating Rules	the official operating rules of ASX.
Permitted Dividend	a single dividend of up to \$0.015 per Zenitas Share for the financial year ending 30 June 2018 (which may be franked).
Permitted Financial Indebtedness	<ol style="list-style-type: none"> 1 any Financial Indebtedness owed by a wholly-owned Zenitas Group Member to another wholly-owned Zenitas Group Member; 2 any Financial Indebtedness under the NAB Facility: <ul style="list-style-type: none"> – in respect of any of the Proposed Acquisitions or other acquisitions that have been approved in writing by BidCo in accordance with this deed; – in connection with the replacement of bank guarantees provided by lenders other than NAB; or – up to \$1,000,000 in respect of working capital of the Zenitas Group; or 3 any Financial Indebtedness under any equipment loans, hire



Term	Meaning
	<p>purchase arrangements, leases or similar arrangements up to A\$1,000,000 (or its equivalent) in aggregate at any time.</p>
Permitted Security Interest	<ol style="list-style-type: none">1 any lien, charge or other Security Interest arising by operation of law that arises in the ordinary course of business and not securing Financial Indebtedness;2 any retention of title or conditional sale arrangement in connection with the acquisition of goods in the ordinary course of business;3 a PPS Lease (as defined in the PPSA);4 any security interest within the meaning of section 12(3) of the PPSA;5 any Security Interest arising under the NAB Facility; and6 any Security Interest approved in writing by BidCo (such consent not to be unreasonably withheld or delayed in respect of any Security Interest granted in the ordinary course of Zenitas' or any Zenitas Group Member's business).
PPS Register	<p>the register established under the PPSA.</p>
PPSA	<p>the <i>Personal Property Securities Act 2009</i> (Cth).</p>
Proposed Acquisition	<p>means an acquisition:</p> <ol style="list-style-type: none">1 proposed by any Zenitas Group Member of a business or any entity (a company or trust) identified in a letter initialled by the parties for the purposes of identification on or about the date of this deed; and2 on the Proposed Acquisition Terms. <p>For the avoidance of doubt, a Zenitas Group Member undertaking, or agreeing to undertake, any such acquisition in a manner that is inconsistent with any material Proposed Acquisition Term, or with any amendments to the Proposed Acquisition Terms that will (or are reasonably likely to) otherwise have a material effect on the Proposed Acquisition, will result in the acquisition ceasing to be considered a Proposed Acquisition to which the exception in clause 6(b)(25) applies and to which clause 6(c)(5) applies, unless such change in terms is approved by BidCo in writing (such approval not be unreasonably withheld or delayed where Zenitas has responded to all reasonable requests for information made by BidCo that relate to the acquisition).</p>
Proposed Acquisition Terms	<p>for each of the Proposed Acquisitions, the terms attached to the letter identifying those acquisitions or such other terms as are approved in writing by BidCo (such agreement not to be</p>



Term	Meaning
	unreasonably withheld or delayed where Zenitas has responded to all reasonable requests for information made by BidCo that relate to the acquisition).
Regulator's Draft	the draft of the Scheme Booklet in a form which is agreed by the parties (acting reasonably) and that is provided to ASIC for approval pursuant to subsection 411(2) of the Corporations Act.
Regulatory Approval	an approval or consent set out in clause 3.1(a).
Reimbursement Fee	the actual third party adviser and financier fees, expenses and costs of BidCo incurred in connection with the Scheme up to a maximum of \$2,500,000 (plus GST).
Related Bodies Corporate	<ol style="list-style-type: none">1 a related body corporate of that person under section 50 of the Corporations Act and includes any body corporate that would be a related body corporate if section 48(2) of the Corporations Act were omitted; and2 in respect of a Consortium Member, includes any fund, limited partnership or other collective investment vehicle which is managed or controlled by that Consortium Member or a related body corporate (as referred to paragraph 1 above) of that Consortium Member.
Related Person	in respect of a person, including each party or its Related Bodies Corporate or the Consortium or a Consortium Member: <ol style="list-style-type: none">1 a director, officer, employee of that person;2 an Adviser of that person (and each director, officer, employee or contractor of that Adviser);3 an agent or representative of that person;4 a Related Body Corporate of that person; and5 where the person is a Consortium Member, a Consortium Related Person of that Consortium Member.
Relevant Interest	has the meaning given in sections 608 and 609 of the Corporations Act.
RG 60	Regulatory Guide 60 issued by ASIC in September 2011.
Scheme	the scheme of arrangement under Part 5.1 of the Corporations Act



Term	Meaning
	between Zenitas and the Scheme Shareholders, the form of which is attached as Attachment 1, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by BidCo and Zenitas.
Scheme Booklet	<p>the scheme booklet to be prepared by Zenitas in respect of the Transaction in accordance with clause 5.2(a) in a form agreed between the parties (acting reasonably) to be dispatched to the Zenitas Shareholders and which must include or be accompanied by:</p> <ol style="list-style-type: none">1 a copy of the Scheme;2 an explanatory statement complying with the requirements of the Corporations Act, the Corporations Regulations and RG 60;3 the Independent Expert's Report;4 a copy or summary of this deed;5 a copy of the executed Deed Poll;6 a notice of meeting; and7 a proxy form.
Scheme Consideration	the consideration to be provided by BidCo to each Scheme Shareholder for the transfer to BidCo of each Scheme Share, being \$1.46 cash for each Zenitas Share held by a Scheme Shareholder as at the Scheme Record Date, less the amount per Zenitas Share of any Permitted Dividend paid in accordance with clause 4.4.
Scheme Meeting	the meeting of Zenitas Shareholders ordered by the Court to be convened under subsection 411(1) of the Corporations Act to consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.
Scheme Record Date	5.00pm on the third Business Day after the Effective Date or such other time and date as the parties agree in writing.
Scheme Shareholder	a Zenitas Shareholder as at the Scheme Record Date (other than an Excluded Shareholder).
Scheme Shares	all Zenitas Shares held by the Scheme Shareholders.
Second Court Date	the first day on which an application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving the



Term	Meaning
	<p>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.</p>
Security Interest	<p>any mortgage, charge, pledge, lien, assignment or other security interest or any other arrangement (including a right of set off or combination) entered into for the purpose of conferring a priority, including any security interest as defined in section 51A of the Corporations Act or in the PPSA.</p>
Senior Managers	<ol style="list-style-type: none">1 Sally Belinda Broad;2 Amanda Mullins; and3 Ulf Lindskog.
Superior Proposal	<p>a <i>bona fide</i> Competing Proposal received by Zenitas from a Third Party:</p> <ol style="list-style-type: none">1 which, if entered into or completed, would result in a Third Party acquiring Control of Zenitas; and2 not resulting from a breach by Zenitas of any of its obligations under clause 12 (it being understood that any actions by the Related Persons of Zenitas in breach of clause 12 shall be deemed to be a breach by Zenitas for the purpose hereof); and <p>which the Zenitas Board, acting in good faith, and after receiving written legal advice from its legal adviser and written advice from its Financial Adviser, determines:</p> <ol style="list-style-type: none">3 is reasonably capable of being valued and completed in a reasonable timeframe; and4 would, if completed substantially in accordance with its terms, be more favourable to Zenitas Shareholders (as a whole) from a financial point of view than the Transaction (as completed, and as the Transaction may be amended or varied following the application of the matching right set out in clause 12.5), <p>in each case, taking into account all terms and conditions and other aspects of the Competing Proposal (including any timing considerations, any conditions precedent or other matters affecting the probability of the Competing Proposal being completed).</p>
Tax	<p>any tax, levy, charge, impost, fee, deduction, goods and services tax, compulsory loan or withholding, stamp, transaction or registration duty or similar charge that is assessed, levied, imposed or collected by any Governmental Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of, any of the above.</p>



Term	Meaning
Tax Act	the <i>Income Tax Assessment Act 1997</i> (Cth).
Third Party	a person other than Zenitas, BidCo, the Consortium Members or their respective Related Bodies Corporate or Associates.
Timetable	the indicative timetable for the implementation of the Transaction agreed between and initialled by the parties' lawyers for the purposes of identification on or about the date of this deed.
Transaction	the acquisition of the Scheme Shares by BidCo through implementation of the Scheme in accordance with the terms of this deed.
Zenitas Board	the board of directors of Zenitas (or any committee of the board of director of Zenitas constituted from time to time to consider the Transaction on behalf of Zenitas), but excluding Jonathan Lim and Shane Tanner.
Zenitas Board Member	any director of Zenitas comprising part of the Zenitas Board.
Zenitas Consolidated Tax Group	the consolidated group of which Zenitas is the head company (where 'consolidated group' and 'head company' have the same meaning as in the Tax Act).
Zenitas Group	Zenitas and each of its Related Bodies Corporate, and a reference to a ' Zenitas Group Member ' or a ' member of the Zenitas Group ' is to Zenitas or any of its Related Bodies Corporate.
Zenitas Indemnified Parties	Zenitas and its Related Bodies Corporate and Related Persons (other than Jonathan Lim and Shane Tanner).
Zenitas Information	information regarding the Zenitas Group prepared by Zenitas for inclusion in the Scheme Booklet, which for the avoidance of doubt comprises the entirety of the Scheme Booklet other than the BidCo Information, the Independent Expert's Report (or references to the Independent Expert's analysis or conclusions), any investigating accountant's report or other report or opinion prepared by an external adviser to Zenitas.
Zenitas Material	an event, change, condition, matter, circumstance or thing occurring, or an event or matter does not occur or condition is not



Term	Meaning
Adverse Change	<p>satisfied (including, where a Third Party counterparty to a Material Contract or material licence, registration, permit or authorisation held by or to which a Zenitas Group Member is a party, does not provide their consent, approval or waiver as may be required having regard to the terms of the Transaction) before, on or after the date of this deed (each a Specified Event) which, whether individually or when aggregated with all such events, changes, conditions, matters, circumstances or things that have occurred, has had or would be considered reasonably likely to have:</p> <ol style="list-style-type: none">1 the effect of a diminution in EBITDA by at least \$1,000,000 in any financial year for the Zenitas Group against what they would reasonably have been expected to have been but for such Specified Event; or2 an increase in the consolidated Net Financial Indebtedness of the Zenitas Group by at least \$2,000,000, <p>other than an event, change, condition, matter, circumstance or thing:</p> <ol style="list-style-type: none">3 required or expressly permitted by this deed, the Scheme or the transactions contemplated by any of them;4 that was Fairly Disclosed in the Disclosure Materials;5 that was Fairly Disclosed in documents that were publicly available prior to the date of this deed from public filings with ASX or ASIC;6 agreed to in writing by BidCo;7 arising as a result of any generally applicable change in law or governmental policy; or8 arising from changes in economic or business conditions that impact on Zenitas and its competitors in a similar manner.
Zenitas Option	<p>an option granted by Zenitas over an unissued ordinary share in Zenitas which has not expired or been cancelled on or before the Implementation Date.</p>
Zenitas Prescribed Occurrence	<p>other than:</p> <ol style="list-style-type: none">1 as required or permitted by this deed, the Scheme or the transactions contemplated by either;2 as Fairly Disclosed in the Disclosure Materials;3 as agreed to in writing by BidCo; or4 as Fairly Disclosed by Zenitas in an announcement made by it to ASX, or a publicly available document lodged by it with ASIC, prior to the date of this deed, <p>the occurrence of any of the following after the date of this deed:</p> <ol style="list-style-type: none">5 Zenitas converting all or any of its shares into a larger or smaller number of shares;



Term	Meaning
	<p>6 a member of the Zenitas Group resolving to reduce its share capital in any way;</p> <p>7 a member of the Zenitas Group:</p> <ul style="list-style-type: none">– entering into a buy-back agreement; or– resolving to approve the terms of a buy-back agreement under the Corporations Act; <p>8 a member of the Zenitas Group issuing shares or securities convertible into shares, or granting a performance right, a phantom performance right or an option over its shares, or agreeing to make such an issue or grant such an option;</p> <p>9 any member of the Zenitas Group issues, or agrees to issue, securities convertible into shares;</p> <p>10 a member of the Zenitas Group disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;</p> <p>11 a member of the Zenitas Group acquiring or agreeing to acquire any business, entity or undertaking without the prior written consent of BidCo (such consent not to be unreasonably withheld or delayed where Zenitas has responded to all reasonable requests for information made by BidCo that relate to the acquisition), other than a Proposed Acquisition undertaken on the relevant Proposed Acquisition Terms;</p> <p>12 a member of the Zenitas Group granting a Security Interest, or agreeing to grant a Security Interest, in the whole, or a substantial part, of its business or property other than a lien which arises by operation of law or legislation securing an obligation that is not yet due;</p> <p>13 an Insolvency Event occurs in relation to a member of the Zenitas Group; or</p> <p>14 Zenitas declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its shareholders, other than the Permitted Dividend.</p>
Zenitas Registry	Automic Registry Service Limited of Level 2, 267 St Georges Terrace, Perth, WA 6000.
Zenitas Representations and Warranties	the representations and warranties of Zenitas set out in Schedule 2.
Zenitas Share	a fully paid ordinary share in the capital of Zenitas.



Term	Meaning
Zenitas Share Register	the register of members of Zenitas maintained by the Zenitas Registry in accordance with the Corporations Act.
Zenitas Shareholder	a person who is registered as the holder of a Zenitas Share in the Zenitas Share Register.

1.2 Interpretation

In this deed:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency, as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to this deed;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assignees;
- (j) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (k) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure;
- (l) no provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision;
- (m) a reference to a body (including an institute, association or authority), other than a party to this deed, whether statutory or not:
 - (1) which ceases to exist; or



- (2) whose powers or functions are transferred to another body,
is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (n) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;
- (o) a reference to any time, unless otherwise indicated, is to the time in Melbourne, Australia;
- (p) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (q) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (r) if an act prescribed under this deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (s) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this deed; and
- (t) a reference to the Listing Rules and the Operating Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

1.3 Interpretation of inclusive expressions

Specifying anything in this deed after the words 'include' or 'for example' or similar expressions does not limit what else is included.

1.4 Awareness

If a representation or warranty is given so far as Zenitas is "aware" or with a similar qualification as to awareness or knowledge, the awareness or knowledge of Zenitas is limited to and deemed only to comprise:

- (a) all facts, matters and circumstances of which the managing director, chief financial officer and/or general counsel of Zenitas (**Key Executives**) was aware at the time when the warranty is given; and
- (b) all facts, matters and circumstances of which the Key Executives would have been aware, at the time when the warranty is given, had that person made reasonable enquiries of the Senior Managers as to the accuracy of the representation or warranty.

1.5 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.

1.6 Deed components

This deed includes any schedule.



2 Agreement to propose the Transaction

- (a) Zenitas agrees to propose the Scheme on and subject to the terms and conditions of this deed.
- (b) BidCo agrees to assist Zenitas to propose the Scheme on and subject to the terms and conditions of this deed.
- (c) Zenitas and BidCo agree to implement the Scheme on and subject to the terms and conditions of this deed.

3 Conditions Precedent and pre-implementation steps

3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties under clause 4 are not binding, until each of the following Conditions Precedent is satisfied or waived to the extent and in the manner set out in this clause 3.

- (a) **(FIRB)** either:
 - (1) BidCo has received a written notice under FATA (without any term or condition which BidCo reasonably and in good faith considers unacceptable), by or on behalf of the Treasurer of the Commonwealth of Australia, stating that the Commonwealth Government does not object to the acquisition by BidCo of the Scheme Shares pursuant to the Scheme; or
 - (2) the Treasurer of the Commonwealth of Australia becomes precluded from making an order under FATA in relation to the acquisition by BidCo of the Scheme Shares pursuant to the Scheme; or
 - (3) if an interim order is made under FATA in respect of the acquisition by BidCo of the Scheme Shares, the subsequent period for making a final order prohibiting the acquisition of the Scheme Shares by BidCo elapses without a final order being made.
- (b) **Restraints:** no temporary restraining order, preliminary or permanent injunction or other order, in each case issued by a court of competent jurisdiction in Australia in a proceeding brought by a Government Agency preventing or delaying the Transaction, unless such order or injunction has been disposed of to the reasonable satisfaction of Zenitas and BidCo acting reasonably and in good faith, is in effect at 8.00am on the Second Court Date.
- (c) **Shareholder approval:** Zenitas Shareholders agree to the Scheme at the Scheme Meeting by the requisite majorities under subparagraph 411(4)(a)(ii) of the Corporations Act.
- (d) **Court approval:** the Court approves the Scheme in accordance with paragraph 411(4)(b) of the Corporations Act.
- (e) **No Zenitas Prescribed Occurrence:** no Zenitas Prescribed Occurrence occurs between the date of this deed and 8.00am on the Second Court Date.
- (f) **No BidCo Prescribed Occurrence:** no BidCo Prescribed Occurrence occurs between the date of this deed and 8.00am on the Second Court Date.



- (g) **No Zenitas Material Adverse Change:** no Zenitas Material Adverse Change occurs or is discovered, announced, disclosed or otherwise becomes known to BidCo, between the date of this deed and 8.00am on the Second Court Date.
- (h) **No material breach of conduct of business provisions:** Zenitas does not materially breach clause 6 between the date of this deed and 8.00am on the Second Court Date.
- (i) **Zenitas Representations and Warranties:** the Zenitas Representations and Warranties are true and correct in all material respects as at the date of this deed and as at 8.00am on the Second Court Date.
- (j) **BidCo Representations and Warranties:** the BidCo Representations and Warranties are true and correct in all material respects as at the date of this deed and as at 8.00am on the Second Court Date.
- (k) **Material Contracts:** in respect of each Material Contract and in respect of each Authorisation agreed in a letter between BidCo and Zenitas, the relevant Third Party counterparty has provided their consent, approval or waiver as required having regard to the terms of the Transaction, in all cases, in a form and subject to conditions acceptable to BidCo (acting reasonably), and such consents, approvals or waivers have not been withdrawn, cancelled or revoked before 8.00am on the Second Court Date.
- (l) **Zenitas Options:** before 8.00am on the Second Court Date, all Zenitas Options are exercised or are cancelled in accordance with clause 5.7.
- (m) **Proposed Acquisitions:** before 8.00am on the Second Court Date, each of the Proposed Acquisitions has either:
 - (1) been completed in accordance with the relevant Proposed Acquisition Terms (without waiver of any conditions, unless consented to by BidCo in writing); or
 - (2) had all conditions to completion of the Proposed Acquisition satisfied (without waiver of any conditions, unless consented to by BidCo in writing).

3.2 Reasonable endeavours

- (a) Zenitas must, to the extent it is within its power to do so, use all reasonable endeavours to procure that each of the Conditions Precedent in clauses 3.1(c), 3.1(d), 3.1(e), 3.1(g), 3.1(h), 3.1(i), 3.1(k), 3.1(l) and 3.1(m) is satisfied as soon as practicable after the date of this deed.
- (b) BidCo must, to the extent it is within its power to do so, use all reasonable endeavours to procure that the Conditions Precedent in clauses 3.1(a), 3.1(f) and 3.1(j) are satisfied as soon as practicable after the date of this deed.
- (c) Each party must, to the extent it is within their power to do so, use its reasonable endeavours to procure that:
 - (1) each of the Conditions Precedent in clauses 3.1(a) and 3.1(d) is satisfied as soon as practicable after the date of this deed; and
 - (2) there is no occurrence within its control or the control of any of its Subsidiaries that would prevent any of the Conditions Precedent being or remaining satisfied.
- (d) Without limiting this clause 3.2, each party must:



- (1) promptly apply for all relevant Regulatory Approvals (as applicable) and provide to the other party a copy of all those applications;
- (2) take all steps it is responsible for as part of the Regulatory Approval process, including responding to requests for information from the relevant Government Agencies at the earliest practicable time;
- (3) provide the other party with all information reasonably requested in connection with the applications for the Regulatory Approvals;
- (4) consult with the other party in advance in relation to the progress of obtaining the Regulatory Approvals; and
- (5) provide the other party with all assistance and information that it reasonably requests in connection with an application for a Regulatory Approval to be lodged by that other party,

provided that:

- (6) the party applying for a Regulatory Approval may withhold or redact information or documents from the other party if and to the extent that they are either confidential to a third party or commercially sensitive and confidential to the applicant;
 - (7) neither party is required to disclose materially commercially sensitive information to the other party; and
 - (8) the party applying for a Regulatory Approval is not prevented from taking any step (including communicating with a Government Agency) in respect of a Regulatory Approval if the other party has unduly delayed responding under clause 3.2(d)(4).
- (e) For the avoidance of doubt, Zenitas will not be in breach of its obligations to use all reasonable endeavours under clause 3.2(a) to the extent that it takes an action or omits to take an action as permitted by clause 12.3.

3.3 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a), 3.1(b), 3.1(c) and 3.1(d) cannot be waived.
- (b) The Conditions Precedent in clauses 3.1(e), 3.1(g), 3.1(h), 3.1(i), 3.1(k), 3.1(l) and 3.1(m) are for the sole benefit of BidCo and may only be waived by BidCo (in its absolute discretion) in writing.
- (c) The Conditions Precedent in clauses 3.1(f) and 3.1(j) are for the sole benefit of Zenitas and may only be waived by Zenitas (in its absolute discretion) in writing.
- (d) Waiver of a breach or non-satisfaction in respect of one Condition Precedent does not constitute:
 - (1) a waiver of breach or non-satisfaction of any other Condition Precedent resulting from the same event; or
 - (2) a waiver of breach or non-satisfaction of that Condition Precedent resulting from any other event.

3.4 Termination on failure of Conditions Precedent

- (a) If:



- (1) there is an event or occurrence that would, or does, prevent any of the Conditions Precedent being satisfied;
- (2) there is an event or occurrence that would, or does, prevent any of the Conditions Precedent being satisfied by the time and date specified in this deed for the satisfaction of that Condition Precedent or such Condition Precedent is otherwise not satisfied by that time and date; or
- (3) it becomes more likely than not that the Scheme will not become Effective on or before the End Date,

the parties must consult in good faith to:

- (4) consider and, if agreed, determine whether the Transaction may proceed by way of alternative means or methods;
- (5) consider and, if agreed, change the date of the application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed to in writing by BidCo and Zenitas (being a date no later than 5 Business Days before the End Date); or
- (6) consider extending and, if agreed, extend the relevant date, provided that neither party shall be under any obligation to extend the End Date.

(b) Subject to clauses 3.4(d) and 3.4(e), if the parties are unable to reach agreement under clause 3.4(a) by the earliest of:

- (1) 5 Business Days after becoming aware of the relevant event or occurrence that would, or does, prevent a Condition Precedent being satisfied;
- (2) 5 Business Days after the time and date specified in this deed for the satisfaction of a Condition Precedent; or
- (3) the End Date,

as appropriate, then, unless that Condition Precedent has been waived in accordance with clause 3.3, either party may terminate this deed without any liability to the other party because of that termination. However, a party may not terminate this deed pursuant to this clause 3.4(b) if the relevant occurrence or event, the failure of the Condition Precedent to be satisfied, or the failure of the Scheme to become Effective, arises out of a breach of clauses 3.2 or 3.5 by that party, although in such circumstances the other party may still terminate this deed. For the avoidance of doubt, nothing in this clause 3.4(b) affects the obligation of Zenitas to pay the Reimbursement Fee, if it is required to do so under clause 13.

(c) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination (including by virtue of clause 15.3), on termination of this deed, no party shall have any rights against or obligations to any other party under this deed except for those rights and obligations which accrued prior to termination.

(d) If the Condition Precedent in clause 3.1(c) is not satisfied only because of a failure to obtain the majority required by sub-subparagraph 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice to the other within 3 Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that sub-subparagraph, provided the party has, in good faith, reasonably formed the



view that the prospect of the Court exercising its discretion in that way is reasonable. If approval is given, the Condition Precedent in clause 3.1(c) is deemed to be satisfied for all purposes.

- (e) If the Court refuses to make an order approving the Scheme which satisfies the Condition Precedent in clause 3.1(d), at BidCo's request Zenitas must appeal the Court's decision to the fullest extent possible (except to the extent that the parties agree otherwise, or an independent Queen's Counsel indicates that, in his or her view, an appeal would have negligible prospects of success before the End Date). Zenitas may bring an appeal even if not requested by BidCo.

3.5 Certain notices relating to Conditions Precedent

- (a) Zenitas and BidCo (as the case may be) must promptly advise each other, orally and in writing, of satisfaction of a Condition Precedent or of any material progress towards such satisfaction.
- (b) If a Condition Precedent is not satisfied by the time and date specified for satisfaction of that Condition Precedent, then, unless there is no reasonable prospect that the Condition Precedent will be satisfied before the End Date, Zenitas must, if requested by BidCo, make an application to defer the Second Court Date until such time (being not later than the Business Day before the End Date) as is reasonably required to enable the relevant Condition Precedent to be satisfied.
- (c) If, before the time and date specified for satisfaction of a Condition Precedent, an event or occurrence that will prevent that Condition Precedent being satisfied occurs, the party with knowledge of that event must give the other party written notice of that event or occurrence as soon as possible.
- (d) Zenitas and BidCo (as the case may be) must promptly advise each other, orally and in writing, of any fact, matter, change, event or circumstance causing, or which, so far as can reasonably be foreseen, would cause:
 - (1) a representation or warranty provided in this deed by the relevant party to be false or misleading in any material respect;
 - (2) a breach or non-satisfaction of any of the Conditions Precedent; or
 - (3) a material breach of this deed by the relevant party.

4 Transaction steps

4.1 Scheme

Zenitas must propose the Scheme to Zenitas Shareholders.

4.2 Scheme Consideration

- (a) Each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder in accordance with the terms of this deed and the Scheme.
- (b) Subject to the terms of the Scheme, BidCo undertakes and warrants to Zenitas that, in consideration of the transfer to BidCo of each Zenitas Share held by a



Scheme Shareholder under the terms of the Scheme, on the Implementation Date BidCo will:

- (1) accept that transfer; and
- (2) provide to each Scheme Shareholder the Scheme Consideration for each Scheme Share in accordance with the terms of this deed and the Scheme.

4.3 No amendment to the Scheme without consent

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

4.4 Permitted Dividend

- (a) Subject to clause 4.4(b), BidCo acknowledges and agrees that at any time on or before the Implementation Date, Zenitas may announce, declare and pay a Permitted Dividend.
- (b) If Zenitas announces, declares and pays a Permitted Dividend in accordance with clause 4.4(a):
 - (1) the payment of the Permitted Dividend will be determined by Zenitas provided that the Permitted Dividend is paid no later than the last Business Day prior to the Implementation Date;
 - (2) the Permitted Dividend may be franked to the maximum extent possible, subject to the franking account of Zenitas not being in deficit after payment of the Permitted Dividend (and prior to the declaration of the Permitted Dividend, Zenitas must provide BidCo with supporting documents evidencing, to BidCo's reasonable satisfaction, that the franking account of Zenitas will not be in deficit after the payment of such);
 - (3) the Permitted Dividend is to be paid from profits, retained earnings or distributable reserves (or a combination of all or some of them) of Zenitas existing prior to the declaration of authorisation of such dividend and otherwise in accordance with the Corporations Act; and
 - (4) the Scheme Consideration per Zenitas Share will be reduced by the amount per Zenitas Share of the Permitted Dividend.

5 Implementation

5.1 Timetable

- (a) Subject to clause 5.1(b), the parties must use their best endeavours to:
 - (1) comply with their respective obligations under this clause 5; and
 - (2) take all necessary steps and exercise all rights necessary to implement the Transaction,in accordance with the Timetable.



- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 5.1(a) to the extent that such failure is due to circumstances and matters outside the party's control.
- (c) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control, the parties will consult in good faith to agree any necessary extension to ensure such matters are completed within the shortest possible timeframe.

5.2 Zenitas' obligations

Subject to any change of recommendation by the Zenitas Board as permitted by clause 5.4, Zenitas must take all necessary steps to implement the Scheme as soon as is reasonably practicable in accordance with the Timetable, including each of the following:

- (a) **preparation of Scheme Booklet:** prepare and dispatch the Scheme Booklet in accordance with all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60 and the Listing Rules;
- (b) **directors' recommendation:** include in the Scheme Booklet a statement by the Zenitas Board:
 - (1) unanimously recommending that Zenitas Shareholders vote in favour of the Scheme in the absence of a Superior Proposal; and
 - (2) that each Zenitas Board Member will (in the absence of a Superior Proposal) vote, or procure the voting of, any Zenitas Shares held or controlled by them or held on their behalf at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting,unless there has been a change of recommendation permitted by clause 5.4;
- (c) **paragraph 411(17)(b) statement:** apply to ASIC for the production of:
 - (1) an indication of intent letter stating that it does not intend to appear before the Court on the First Court Date; and
 - (2) a statement under paragraph 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (d) **Court direction:** apply to the Court for orders pursuant to subsection 411(1) of the Corporations Act directing Zenitas to convene the Scheme Meeting;
- (e) **Scheme Meeting:** convene the Scheme Meeting to seek Zenitas Shareholders' agreement to the Scheme in accordance with the orders made by the Court pursuant to subsection 411(1) of the Corporations Act and must not change the date of the Scheme Meeting without obtaining the prior approval of BidCo (which, unless Zenitas is considering or has agreed to implement a Competing Proposal or one has been announced, must not be unreasonably withheld or delayed);
- (f) **Court documents:** consult with BidCo in relation to the content of the documents required for the purpose of each of the Court hearings held for the purpose of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith, for the purpose of



considering amending drafts of those documents, comments from BidCo and its Related Persons on those documents;

- (g) **Court approval:** (subject to all Conditions Precedent in clause 3.1, other than the Condition Precedent in clause 3.1(d), being satisfied or waived in accordance with this deed) apply to the Court for orders approving the Scheme as agreed to by the Zenitas Shareholders at the Scheme Meeting;
- (h) **Certificate:** at the hearing on the Second Court Date provide to the Court a certificate confirming whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(d)) have been satisfied or waived in accordance with this deed. A draft of such certificate must be provided by Zenitas to BidCo by 4.00 pm on the date that is 3 Business Days prior to the Second Court Date;
- (i) **lodge copy of Court order:** lodge with ASIC an office copy of the Court order in accordance with subsection 411(10) of the Corporations Act approving the Scheme by no later than the Business Day after the date on which the Court order was made (or such later date as agreed in writing by BidCo);
- (j) **Scheme Consideration:** if the Scheme becomes Effective, finalise and close the Zenitas Share Register as at the Scheme Record Date, and determine entitlements to the Scheme Consideration, in accordance with the Scheme and the Deed Poll;
- (k) **transfer and registration:** if the Scheme becomes Effective and subject to BidCo having provided the Scheme Consideration in accordance with the Scheme and Deed Poll:
 - (1) execute, on behalf of Scheme Shareholders, instruments of transfer of Zenitas Shares held by Scheme Shareholders to BidCo; and
 - (2) register all transfers of Zenitas Shares held by Scheme Shareholders to BidCo on the Implementation Date;
- (l) **consultation with BidCo in relation to Scheme Booklet:** consult with BidCo as to the content and presentation of the Scheme Booklet including:
 - (1) providing to BidCo drafts of the Scheme Booklet and the Independent Expert's Report (and any technical expert report) for the purpose of enabling BidCo to review and comment on those draft documents provided that in relation to the Independent Expert's Report, BidCo's review is to be limited to a factual accuracy review;
 - (2) taking all comments made by BidCo into account in good faith when producing a revised draft of the Scheme Booklet;
 - (3) providing to BidCo a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable BidCo to review the Regulator's Draft before the date of its submission;
 - (4) obtaining written consent from BidCo for the form and content in which the BidCo Information appears in the Scheme Booklet (such consent must not unreasonably withheld or delayed by BidCo); and
 - (5) confirming in writing to BidCo the accuracy of the Zenitas Information in the Scheme Booklet;
- (m) **information:** provide all necessary information, and procure that the Zenitas Registry provides all necessary information, in each case in a form reasonably requested by BidCo, about the Scheme, the Scheme Shareholders and Zenitas



Shareholders to BidCo and its Related Persons, which BidCo reasonably requires in order to:

- (1) understand the legal and beneficial ownership of Zenitas Shares, and canvass agreement to the Scheme by Zenitas Shareholders (including the results of directions by Zenitas to Zenitas Shareholders under Part 6C.2 of the Corporations Act); or
- (2) review the tally of proxy appointments and directions received by Zenitas prior to the Scheme Meeting, including directing the Zenitas Registry to report to BidCo on the status of proxy directions received at the date that is 15 Business Days before the Scheme Meeting, at each subsequent Business Day up to the deadline for receipt of proxy forms and at that deadline.

Zenitas must comply with any reasonable request of BidCo for Zenitas to give directions to Zenitas Shareholders pursuant to Part 6C.2 of the Corporations Act from time to time for one of the purposes referred to in (1) or (2) above;

- (n) **BidCo Information:** without the prior written consent of BidCo, not use the BidCo Information for any purposes other than those contemplated by this deed or the Scheme;
- (o) **ASIC and ASX review:** keep BidCo informed of any matters raised by ASIC or ASX in relation to the Scheme Booklet or the Transaction, and use reasonable endeavours to take into consideration in resolving such matters any issues raised by BidCo;
- (p) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (q) **Independent Expert:**
 - (1) promptly appoint the Independent Expert and any technical expert required, and provide all assistance and information reasonably requested by them in connection with the preparation of the Independent Expert's Report or technical expert report (if applicable) for inclusion in the Scheme Booklet (including any updates to such report) and any other materials to be prepared by them for inclusion in the Scheme Booklet (including any updates thereto); and
 - (2) if, after the date of public release of the initial Independent Expert's Report or any technical expert report, Zenitas proposes to provide any new or additional information to the Independent Expert or technical expert (if applicable), Zenitas must provide a copy of that information to BidCo;
- (r) **assistance:** provide BidCo and its Related Persons with reasonable access during normal business hours to information and personnel of the Zenitas Group that BidCo reasonably requests for the purpose of collation and provision of the BidCo Information and implementation of the Transaction;
- (s) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations;
- (t) **listing:** subject to clause 5.2(w), not do anything to cause Zenitas Shares to cease being quoted on ASX or to become permanently suspended from quotation prior to implementation of the Transaction, unless BidCo has agreed in writing;



- (u) **update Scheme Booklet:** until the date of the Scheme Meeting and after consulting with BidCo (where practicable), promptly update the Scheme Booklet with any information that arises after the Scheme Booklet has been dispatched that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (v) **promote Transaction:** subject to the Confidentiality Deed, participate in efforts reasonably requested by BidCo to promote the merits of the Transaction and the Scheme Consideration, including meeting with key Zenitas Shareholders or BidCo Shareholders at the reasonable request of BidCo and providing BidCo with such information and assistance that BidCo reasonably requests to enable it to promote the merits of the Transaction; and
- (w) **suspension of trading:** apply to ASX to suspend trading in Zenitas Shares with effect from the close of trading on the Effective Date.

5.3 BidCo's obligations

BidCo must take all necessary steps to implement the Scheme as soon as is reasonably practicable in accordance with the Timetable, including doing each of the following:

- (a) **BidCo Information:** prepare and promptly provide to Zenitas the BidCo Information for inclusion in the Scheme Booklet, including all information regarding the BidCo Group and the Scheme Consideration, required by all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60 and the Listing Rules, and consent to the inclusion of that information in the Scheme Booklet;
- (b) **review of Scheme Booklet:** review the drafts of the Scheme Booklet prepared by Zenitas and provide comments on those drafts promptly and in good faith;
- (c) **Independent Expert's Report:** provide any assistance or information reasonably requested by Zenitas or by the Independent Expert in connection with the preparation of the Independent Expert's Report to be sent together with the Scheme Booklet;
- (d) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (e) **Deed Poll:** by no later than the Business Day prior to the First Court Date, execute and deliver to Zenitas the Deed Poll;
- (f) **accuracy of BidCo Information:** confirm in writing to Zenitas the accuracy of the BidCo Information in the Scheme Booklet, including that it does not contain any material statement that is false or misleading in a material respect, whether because of any material omission from that statement or otherwise;
- (g) **share transfer:** if the Scheme becomes Effective:
 - (1) accept a transfer of the Scheme Shares as contemplated by clause 4.2(b)(1); and
 - (2) execute instruments of transfer in respect of the Scheme Shares;
- (h) **Scheme Consideration:** if the Scheme becomes Effective, provide the Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Scheme and the Deed Poll;



- (i) **update BidCo Information:** until the date of the Scheme Meeting, provide to Zenitas any information that arises after the Scheme Booklet has been dispatched that is necessary to ensure that the BidCo Information contained in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (j) **promote Transaction:** subject to the Confidentiality Deed, participate in efforts reasonably requested by Zenitas to promote the merits of the Transaction and the Scheme Consideration, including meeting with key Zenitas Shareholders at the reasonable request of Zenitas and providing Zenitas with such information and assistance that Zenitas reasonably requests to enable it to promote the merits of the Transaction;
- (k) **Zenitas Information:** without the prior written consent of Zenitas, not use the Zenitas Information for any purposes other than those contemplated by this deed or the Scheme; and
- (l) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations.

5.4 Zenitas Board recommendation

- (a) Zenitas must use its reasonable endeavours to procure that, subject to clause 5.4(b), each member of the Zenitas Board unanimously recommends that Zenitas Shareholders vote in favour of the Scheme at the Scheme Meeting, including that each member of the Zenitas Board states his or her intention to vote all Shares held or controlled by him or her in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of Scheme Shareholders, and that the Scheme Booklet include a statement by the Zenitas Board to that effect.
- (b) Zenitas must use its reasonable endeavours to procure that the Zenitas Board collectively, and the members of the Zenitas Board individually, do not change, withdraw or modify its, his or her recommendation to vote in favour of the Scheme unless:
 - (1) the Independent Expert's Report concludes that, or is amended so as to conclude that, the Scheme is not in the best interests of Scheme Shareholders (other than where the conclusion is due to the existence of a Competing Proposal); or
 - (2) Zenitas has received, other than as a result of a breach of clause 12, a Superior Proposal and (i) has entered into a legally binding agreement to undertake or give effect to that proposal or (ii) in the case of a proposal by way of takeover bid which is not subject to an agreement with Zenitas, an announcement has been made which attracts section 631(1) of the Corporations Act,and Zenitas has complied with its obligations under clause 12.
- (c) For the purposes of this clause 5.4, customary qualifications and explanations contained in the Scheme Booklet in relation to a recommendation to vote in favour of the Scheme, including to the effect that:
 - (1) the recommendation is made in the absence of a Superior Proposal;



- (2) the recommendation is made subject to the Independent Expert concluding and continuing to conclude in the Independent Expert's Report (including in any amendment of it) that the Scheme is in the best interests of Zenitas Shareholders,

will not be regarded as a failure to make or a withdrawal of a recommendation in favour of the Scheme.

5.5 Responsibility statements

- (a) The Scheme Booklet will contain a responsibility statement to the effect that:
 - (1) BidCo is responsible for the BidCo Information contained in the Scheme Booklet; and
 - (2) Zenitas is responsible for the Zenitas Information contained in the Scheme Booklet.
- (b) If Zenitas and BidCo disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If after 5 Business Days of consultation, Zenitas and BidCo are unable to agree on the form or content of the Scheme Booklet:
 - (1) where the determination relates to BidCo Information, BidCo will make the final determination, acting reasonably, as to the form and content of the BidCo Information; and
 - (2) in any other case, the final determination as to the form and content of the Scheme Booklet will be made by Zenitas, acting reasonably, provided that, if BidCo disagrees with such final form and content, Zenitas must include a statement to that effect in the Scheme Booklet.

5.6 Conduct of Court proceedings

In respect of Court proceedings under Part 5.1 of the Corporations Act:

- (a) Zenitas and BidCo are entitled to separate representation at such Court proceedings;
- (b) this deed does not give Zenitas or BidCo any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent; and
- (c) Zenitas and BidCo must give all undertakings to the Court in such Court proceedings which are reasonably required to obtain Court approval and confirmation of the Transaction as contemplated by this deed.

5.7 Zenitas Options

- (a) As soon as practicable after the date of this deed, Zenitas must use all reasonable endeavours to obtain the written agreement of each person who is a holder of Zenitas Options to have their options cancelled, with effect from the Scheme becoming Effective:
 - (1) in consideration for a payment by Zenitas of the difference between the Scheme Consideration and the exercise price for each option; and
 - (2) otherwise on terms agreed by the parties (acting reasonably).



- (b) Zenitas must as soon as practicable obtain any waiver of the Listing Rules necessary to cancel the options as described in clause 5.7(a).

5.8 Appointment of directors

- (a) Zenitas must, as soon as practicable on the Effective Date, take all actions necessary to appoint up to 2 nominees of BidCo to the Zenitas Board.
- (b) Zenitas must, as soon as practicable on the Implementation Date, after the Scheme Consideration has been dispatched to Scheme Shareholders, take all reasonable steps to:
 - (1) cause the appointment of all other nominees of BidCo to the Zenitas Board;
 - (2) procure that all directors on the Zenitas Board specified in writing by BidCo (not less than 3 Business Days before the Implementation Date):
 - (A) resign; and
 - (B) to the extent it reasonably can, unconditionally and irrevocably release Zenitas from any claims they may have against Zenitas; and
 - (3) procure that all directors on the boards of Zenitas' Subsidiaries specified in writing by BidCo (not less than 3 Business Days before the Implementation Date):
 - (A) resign or are removed; and
 - (B) to the extent it reasonably can, unconditionally and irrevocably release Zenitas and its relevant Subsidiaries from any claims they may have against either of them,and to cause the appointment of nominees of BidCo to those boards.

6 Conduct of business

- (a) Subject to clause 6(b), from the date of this deed up to and including the Implementation Date, and without limiting any other obligations of Zenitas under this deed, Zenitas must:
 - (1) conduct its businesses and operations, and must cause each Zenitas Group Member to conduct its respective business and operations, in the ordinary and usual course generally consistent with the manner in which each such business and operations have been conducted in the 12 month period prior to the date of this deed and use its reasonable endeavours to conduct it generally and materially consistent with the business plan and budget for the Zenitas Group Members for the 2019 financial year, disclosed in the Disclosure Materials;
 - (2) without limiting clause 6(a)(1), ensure each Zenitas Group Member collects receivables and pays payables in a manner generally consistent with its practices in the 12 month period prior to the date of this deed;

- (3) keep BidCo informed of any material developments concerning the conduct of business;
 - (4) not enter into any new line of business or new type of activities in which the Zenitas Group is not engaged as of the date of this deed;
 - (5) on reasonable written request from BidCo, provide reports on the financial affairs of the Zenitas Group, including the provision of the Zenitas Group's monthly management accounts, in a timely manner to BidCo;
 - (6) ensure that there is no Zenitas Prescribed Occurrence;
 - (7) use its reasonable endeavours to avoid the occurrence of an event within its control or the control of any other Zenitas Group Member that would constitute or be likely to constitute a Zenitas Material Adverse Change;
 - (8) make all reasonable efforts, and procure that each other Zenitas Group Member makes all reasonable efforts, to:
 - (A) preserve and maintain the value of the businesses and assets of the Zenitas Group;
 - (B) keep available the services of the directors, officers, contractors and employees of each member of the Zenitas Group; and
 - (C) maintain and preserve their relationships with Government Agencies, customers, suppliers, joint venturers, landlords, licensors, licensees and others having business dealings with any Zenitas Group Member;
 - (9) to the extent within its control or the control of any other Zenitas Group Member, use its reasonable endeavours to avoid a material decrease in the amount of cash in the Zenitas Group other than in the ordinary course of business and generally consistent with forecast utilisation Fairly Disclosed to BidCo prior to the date of this deed; and
 - (10) use best endeavours to ensure that:
 - (A) the unitholder registers in respect of all unit trusts that have a Zenitas Group Member as trustee; and
 - (B) the shareholder registers in respect of all Zenitas Group Members,

are rectified as required so as to be accurate and complete in all material respects.
- (b) Without limiting clause 6(a), Zenitas must not, and must ensure that each other Zenitas Group Member does not:
- (1) declare, pay or distribute any dividend, bonus or other share of its profits or assets or return or agree to return any capital to its members, other than the Permitted Dividend;
 - (2) make any change to its constitution;
 - (3) acquire, lease or dispose of (or agree to acquire, lease or dispose of) any securities, business, assets, interest in any joint venture, entity or undertaking, the value of which exceeds \$400,000 (individually);



- (4) enter into any contracts or commitments (including in respect of Financial Indebtedness) requiring payments by the Zenitas Group in excess of \$500,000 (in aggregate);
- (5) without limiting clause 6(b)(4), agree to incur capital expenditure of more than \$250,000 (individually);
- (6) either:
 - (A) acquire, lease or dispose of;
 - (B) agrees to acquire, lease or dispose of; or
 - (C) offers, proposes, announces a bid or tenders for the acquisition, leasing or disposal of, any business, asset, security, entity or undertaking, the value of which exceeds \$400,000 (individually or in aggregate);
- (7) enter into, amend or terminate any contracts or commitments with an annual value in excess of \$350,000 or with a value over the life of the contracts or commitments in excess of \$350,000;
- (8) write-down any of its material assets other than in accordance with the Accounting Standards;
- (9) amend the terms of any option, performance right, incentive or share plan;
- (10) accelerate the rights of any of their employees to compensation or benefits of any kind (including under any option, performance right, incentive or share plan) for, in aggregate, in excess of \$100,000;
- (11) incur or draw down any Financial Indebtedness other than:
 - (A) to pay interest in the ordinary course;
 - (B) Permitted Financial Indebtedness; or
 - (C) draw down of less than \$200,000 (in aggregate);
- (12) create any Security Interest (other than a Permitted Security Interest) over any of its assets securing in excess of \$10,000 (in aggregate);
- (13) other than as Permitted Financial Indebtedness, provide financial accommodation to any person other than to members of the Zenitas Group (irrespective of what form of Financial Indebtedness that accommodation takes);
- (14) enter into any agreement, arrangement or transaction with respect to derivative instruments (including swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments;
- (15) enter into or materially alter, vary or amend any employment agreement or arrangement with any person, including for an officer, director, executive or other employee whose total employment cost exceeds (or would exceed in the case of an agreement or arrangement not on foot on the date of this deed) \$150,000 (**Key Person**), or accelerate or otherwise materially increase compensation, benefits or entitlements for any Key Person, in each case other than relating to rights or entitlements in effect on the date of this deed and which are Fairly Disclosed in the Disclosure Materials;



- (16) terminate or encourage the resignation of a Key Person, except in accordance with current personnel practices;
 - (17) pay any of its officers, directors, executives or other employees a bonus, severance, termination or retention payment in excess of \$75,000 (in aggregate), other than pursuant to contractual arrangements in effect on the date of this deed and which are Fairly Disclosed in the Disclosure Materials;
 - (18) enter into any enterprise bargaining agreement other than in the ordinary course of business or pursuant to contractual arrangements in effect on the date of this deed and which are Fairly Disclosed in the Disclosure Materials;
 - (19) settle any legal proceedings, disputed claim, investigation, arbitration or other like proceeding where the settlement amount payable by any member of the Zenitas Group exceeds \$250,000;
 - (20) change any accounting policy applied to a party to report its financial position, other than any change in policy required by a change in accounting standards;
 - (21) cancel any existing insurance policy in the name of or for the benefit of a Zenitas Group Member in respect of any material assets or material risks unless a replacement policy (on the same or substantially similar terms) has been put in place;
 - (22) vary or terminate or intentionally fail to renew any Material Contract or material Authorisation;
 - (23) do anything that would result in a change in the Zenitas Consolidated Tax Group;
 - (24) amend any arrangements with its advisers, or appoint any new adviser, resulting in an increase in fees payable by the Zenitas Group to any existing or new adviser of \$250,000 or more (in aggregate), in respect of the Transaction or a Competing Proposal. For the avoidance of doubt, Zenitas may make any payment as and when required to be made under an engagement existing at the date of this deed in accordance with the terms of that engagement (without amendment);
 - (25) enter into any acquisition or acquisitions of any business or entity (company or trust) (other than a Proposed Acquisition) without the prior written consent of BidCo, such consent not to be unreasonably withheld or delayed where Zenitas has responded to all reasonable requests for information made by BidCo that relate to the acquisition; or
 - (26) authorise, commit or agree to do any of the matters set out above.
- (c) Nothing in clauses 6(a) or 6(b) restricts the ability of Zenitas (or any Zenitas Group Member) to take any action:
- (1) which is required by any applicable law or Government Agency;
 - (2) which is required or permitted by this deed or the Scheme;
 - (3) which has been agreed to in writing by BidCo (such agreement not to be unreasonably withheld or delayed);
 - (4) which is Fairly Disclosed in the Disclosure Materials;



- (5) required under any transaction document entered into in connection with a Proposed Acquisition and which is consistent with the terms of that Proposed Acquisition; or
 - (6) which was Fairly Disclosed to ASX or in a document lodged with ASIC prior to the date of this deed.
- (d) From the date of this deed until the Second Court Date, Zenitas will promptly notify BidCo orally and in writing of anything of which it becomes aware that:
- (1) makes any material information publicly filed by Zenitas (either on its own account or in respect of any other Zenitas Group Member) to be, or reasonably likely to be, incomplete, incorrect, untrue or misleading in any material respect;
 - (2) makes any of the Zenitas Representations and Warranties false, inaccurate, misleading or deceptive in any material respect;
 - (3) makes any material information provided in the Disclosure Materials incomplete, incorrect, untrue or misleading in any material respect; or
 - (4) would constitute or be likely to constitute a Zenitas Prescribed Occurrence, Zenitas Material Adverse Change or breach of this clause 6.

7 Integration planning

7.1 Access to information

- (a) Between the date of this deed and the Implementation Date, Zenitas must:
- (1) make available to BidCo and its Related Persons:
 - (A) all information reasonably requested by BidCo (subject to clause 7.1(b)(2));
 - (B) such senior executives of Zenitas as reasonably requested by BidCo at mutually convenient times; and
 - (C) afford reasonable co-operation,for the purpose of:
 - (D) implementation of the Scheme;
 - (E) BidCo understanding the operations of the Zenitas Group's business, financial position, prospects and affairs in order to facilitate the integration of the parties' businesses following implementation of the Scheme;
 - (F) keeping BidCo informed of material developments relating to the Zenitas Group; and
 - (G) any other purpose agreed between the parties; and
 - (2) keep BidCo informed of all material developments relating to the Zenitas Group, to the extent reasonable.
- (b) In carrying out these investigations:



- (1) nothing in this clause will require Zenitas to provide information concerning its directors' and management's consideration of the Scheme or a Competing Proposal;
- (2) information need not be provided if that would result in unreasonable disruptions to Zenitas' business, is (in the reasonable opinion of Zenitas) commercially sensitive, would breach a confidentiality obligation owed to a Third Party or any applicable law or require Zenitas to make any disclosure that would compromise legal privilege; and
- (3) the parties acknowledge that their investigations and obligations under this clause 7.1 are subject to the Confidentiality Deed.

7.2 Financing arrangements

- (a) Between the date of this deed and the Implementation Date, Zenitas must provide assistance requested by BidCo in connection with any repayment of the Zenitas Group's Financial Indebtedness (which BidCo will procure to be repaid on the Implementation Date) that BidCo reasonably requires in connection with the Transaction, including:
 - (1) liaising with its creditors to obtain information on any of the Zenitas Group's Financial Indebtedness or Security Interests granted by any of them;
 - (2) providing BidCo with information reasonably requested by BidCo in relation to use of existing cash reserves of the Zenitas Group for such purpose;
 - (3) issuing repayment notices in relation to the existing Zenitas Group debt facilities; and
 - (4) using reasonable endeavours to procure discharge of registrations on the PPS Register from secured parties in relation to any Security Interests granted by a Zenitas Group Member in favour of that party.
- (b) Subject to confidentiality arrangements reasonably acceptable to Zenitas, Zenitas agrees to provide reasonable assistance in connection with the arrangement or syndication of any debt financings by any member of the BidCo Group (**Transaction Financing**) as may be reasonably requested by BidCo and from time to time, including:
 - (1) furnishing BidCo and the financing sources of BidCo Group within a reasonable timeframe with financial and other pertinent information regarding the Zenitas Group or an entity in which any member of the Zenitas Group has an investment, as may be reasonably requested by BidCo;
 - (2) providing reasonable information in relation to:
 - (A) acquisitions proposed to be made by the Zenitas Group after the date of this deed; and
 - (B) the quantum of any security or escrow retention amounts held by the Zenitas Group in respect of acquisitions made prior to the date of this deed

subject to any Zenitas confidentiality obligations in place prior to the date of this deed;



- (3) providing reasonable assistance in facilitating the grant of security over shares and units held by the Zenitas Group Members in connection with the Transaction Financing; and
 - (4) providing reasonable information required to complete a reconciliation of financial statements to applicable accounting standards,
- provided, in each case, that no Zenitas Group Member will be required to incur any liability in connection with any Transaction Financing (other than remuneration of its employees) prior to implementation of the Scheme that is not reimbursable by BidCo.
- (c) Nothing in this clause 7.2 will require co-operation to the extent that it would cause any Condition Precedent to not be satisfied or otherwise cause a breach of this deed.

7.3 Change of control provisions

- (a) As soon as practicable after the date of this deed, Zenitas and BidCo must seek to identify any change of control or unilateral termination rights in leases or material contracts to which Zenitas or another Zenitas Group Member is party which may be triggered by or exercised in response to the implementation of the Transaction.
- (b) In respect of those leases and contracts:
 - (1) the parties will agree a proposed course of action and then Zenitas will initiate contact, including joint discussions if required, with the relevant counterparties and request that they provide any consents or confirmations required or appropriate;
 - (2) Zenitas must take all reasonable action necessary to obtain such consents or confirmations as expeditiously as possible, including by promptly providing any information reasonably required by counterparties. Zenitas must strongly resist any requirements of landlords or contract counterparties that new or increased bank guarantees or security deposits be provided and ensure that no directors or other personal guarantees are offered or agreed to; and
 - (3) BidCo must cooperate with, and provide all reasonable assistance to, Zenitas to obtain such consents or confirmations, including by promptly providing any information reasonably required by counterparties.

8 Representations and warranties

8.1 BidCo's representations and warranties

BidCo represents and warrants to Zenitas (in its own right and separately as trustee or nominee for each of the other Zenitas Indemnified Parties) each of the BidCo Representations and Warranties.



8.2 BidCo's indemnity

BidCo agrees with Zenitas (in its own right and separately as trustee or nominee for each of the other Zenitas Indemnified Parties) to indemnify Zenitas and each of the Zenitas Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Zenitas or any of the other Zenitas Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the BidCo Representations and Warranties.

8.3 Zenitas' representations and warranties

Zenitas represents and warrants to BidCo (in its own right and separately as trustee or nominee for each of the other BidCo Indemnified Parties) each of the Zenitas Representations and Warranties.

8.4 Zenitas' indemnity

Zenitas agrees with BidCo (in its own right and separately as trustee or nominee for each BidCo Indemnified Party) to indemnify BidCo and each of the BidCo Indemnified Parties from any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that BidCo or any of the other BidCo Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Zenitas Representations and Warranties.

8.5 Qualifications on Zenitas' representations, warranties and indemnities

The Zenitas Representations and Warranties in clause 8.3 and the indemnity in clause 8.4, are each subject to matters that have been Fairly Disclosed in:

- (a) the Disclosure Materials; and
- (b) Zenitas' announcements to ASX, or a publicly available document lodged with ASIC, in the 12 month period prior to the date of this deed.

8.6 Survival of representations and warranties

Each representation and warranty in clauses 8.1 and 8.3:

- (a) is severable;
- (b) survives the termination of this deed; and
- (c) is given with the intention that liability under it is not confined to breaches that are discovered before the date of termination of this deed.

8.7 Survival of indemnities

Each indemnity in this deed (including those in clauses 8.2 and 8.4):

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



8.8 Timing of representations and warranties

Each representation and warranty made or given under clauses 8.1 or 8.3 is given at the date of this deed and repeated continuously thereafter until 8.00am on the Second Court Date, unless that representation or warranty is expressed to be given at a particular time, in which case it is given at that time.

8.9 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it, are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

8.10 Notification of material breaches

- (a) During the period from the date of this deed up to and including the Implementation Date, Zenitas must promptly notify BidCo in writing of any material breach of this deed by Zenitas (including any material breach of any of the Zenitas Representations and Warranties) of which Zenitas becomes aware.
- (b) During the period from the date of this deed up to and including the Implementation Date, BidCo must promptly notify Zenitas in writing of any material breach of this deed by BidCo (including any material breach of any of the BidCo Representations and Warranties) of which BidCo becomes aware.
- (c) Any written notification provided by a party under clause 8.10(a) or clause 8.10(b) must include a reasonable summary of the relevant material breach, to the extent detail are known to the party providing the notice.

9 Releases

9.1 Zenitas and Zenitas directors and officers

- (a) BidCo releases its rights, and agrees with Zenitas that it will not make a claim (including any Claim), against any Zenitas Indemnified Party (other than Zenitas and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:
 - (1) any breach of any representations and warranties of Zenitas or any other member of the Zenitas Group in this deed; or
 - (2) any disclosures containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Zenitas Indemnified Party has not



acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 9.1(a) limits BidCo's rights to terminate this deed under clause 15.2(a).

- (b) This clause is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Zenitas receives and holds the benefit of this clause to the extent it relates to each Zenitas Indemnified Party as trustee for each of them.

9.2 BidCo and BidCo directors and officers

- (a) Zenitas releases its rights, and agrees with BidCo that it will not make a claim (including any Claim), against any BidCo Indemnified Party (other than BidCo and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:

- (1) any breach of any representations and warranties of BidCo or any other member of the BidCo Group in this deed; or
- (2) any disclosure containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the BidCo Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 9.2(a) limits Zenitas' rights to terminate this deed under clause 15.2(b).

- (b) This clause is subject to any Corporations Act restriction and will be read down accordingly.
- (c) BidCo receives and holds the benefit of this clause to the extent it relates to each BidCo Indemnified Party as trustee for each of them.

9.3 Deeds of indemnity and insurance

- (a) Subject to the Scheme becoming Effective and the Transaction completing, BidCo undertakes in favour of Zenitas and each other person who is a Zenitas Indemnified Party that it will:

- (1) for a period of 7 years from the Implementation Date, ensure that those constitutions of Zenitas and each other Zenitas Group Member which contain such rules continue to do so materially in the form as are contained in those constitutions as at the date of this deed or otherwise in a standard form that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a Zenitas Group Member; and
- (2) procure that Zenitas and each Zenitas Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that directors' and officers' run-off insurance cover for such directors and officers is maintained for a period of 7 years from the retirement date of each director and officer so long as it is available on commercially reasonable terms.

- (b) The undertakings contained in clause 9.3(a) are subject to any Corporations Act restriction and will be read down accordingly.



- (c) Zenitas receives and holds the benefit of clause 9.3(a), to the extent it relates to the other Zenitas Indemnified Parties, as trustee for them.

10 Public announcement

10.1 Announcement of the Transaction

- (a) Immediately after the execution of this deed, Zenitas, BidCo and the Consortium must issue public announcements in a form previously agreed to in writing between them.
- (b) The Zenitas announcement must include a unanimous recommendation by the Zenitas Board to Zenitas Shareholders that, in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent's Expert's Report that the Scheme is in the best interests of Scheme Shareholders, Zenitas Shareholders vote in favour of the Scheme and that, subject to the same qualifications, all the members of the Zenitas Board intend to vote (or procure the voting of) all Zenitas Shares held or controlled by them or held on their behalf at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting.

10.2 Subsequent announcements and disclosure

Where a party proposes to make any public announcement in connection with the Transaction or the Scheme, it must to the extent practicable and lawful to do so, consult with the other parties prior to making the relevant disclosure and take account of any reasonable comments received from the other parties in relation to the form and content of the announcement or disclosure.

11 Confidentiality

Zenitas and BidCo acknowledge and agree that they continue to be bound by the confidentiality and use obligations in the Confidentiality Deed after the date of this deed. The rights and obligations of the parties under the Confidentiality Deed survive termination of this deed. To the extent of any inconsistency between the Confidentiality Deed and this deed, the terms of this deed shall prevail.

12 Exclusivity

12.1 No shop

- (a) During the Exclusivity Period, Zenitas must not, and must ensure that each of its Related Persons does not, directly or indirectly, solicit, invite, encourage or initiate (including by the provision of non-public information to any Third Party) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or



communicate to any person an intention to do anything referred to in this clause 12.1(a).

- (b) Nothing in clause 12.1(a) prevents Zenitas from providing, in the period from the execution of this deed to the end of the 10th Business Day after the date of this deed, non-public information about the business or affairs of the Zenitas Group to a Third Party from whom Zenitas or its Related Persons receives an inquiry, expression of interest, offer or proposal during that period (provided that inquiry, expression of interest, offer or proposal was not solicited, invited, encouraged or initiated by Zenitas or a Related Person).

12.2 No talk

On and from the 11th Business Days after the date of this deed until the end of the Exclusivity Period and subject to clause 12.3, Zenitas must not, and must ensure that each of its Related Persons does not, directly or indirectly:

- (a) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or participate in or continue any negotiations or discussions with respect to any actual, proposed or potential Competing Proposal;
- (b) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal;
- (c) disclose or otherwise provide any non-public information about the business or affairs of the Zenitas Group to a Third Party (other than a Government Agency) with a view to obtaining, or which would reasonably be expected to encourage or lead to receipt of, an actual, proposed or potential Competing Proposal (including, without limitation, providing such information for the purposes of the conduct of due diligence investigations in respect of the Zenitas Group whether by that Third Party or another person); or
- (d) communicate to any person an intention to do anything referred to in the preceding paragraphs of this clause 12.2,

but nothing in this clause 12.2 prevents Zenitas from making normal presentations to brokers, portfolio investors and analysts in the ordinary course of business or promoting the merits of the Transaction.

12.3 Fiduciary exception

Clause 12.2 does not prohibit any action or inaction by Zenitas or any of its Related Persons in relation to any actual, proposed or potential Competing Proposal, which the Zenitas Board acting in good faith determines, having regard to written advice from its external legal and Financial Advisers:

- (a) is a Superior Proposal (or which may reasonably be expected to result in the Competing Proposal becoming a Superior Proposal); and
- (b) the failure to take or not take such action would constitute, or would be likely to constitute, a breach of the fiduciary or statutory duties of the Zenitas Board Members,

provided that the actual, proposed or potential Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of clause 12.1.



12.4 Notification of approaches

- (a) During the Exclusivity Period, Zenitas must within 24 hours notify BidCo in writing if it, or any of its Related Persons, becomes aware of any:
- (1) negotiations or discussions, approach or attempt to initiate any negotiations or discussions or attempt to initiate any negotiations or discussions in relation to an actual, proposed or potential Competing Proposal;
 - (2) proposal made to Zenitas or any of its Related Persons, in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal; or
 - (3) provision by Zenitas or any of its Related Persons of any non-public information concerning the business or operations of Zenitas or the Zenitas Group to any Third Party (other than a Government Agency) in connection with an actual, proposed or potential Competing Proposal,
- whether direct or indirect, solicited or unsolicited, and in writing or otherwise. For the avoidance of doubt, any of the acts described in clauses 12.4(a)(1) to (3) may only be taken if not prohibited by clause 12.1 or if permitted by clause 12.3.
- (b) A notification given under clause 12.4(a) must include the identity of the relevant person making or proposing the relevant actual, proposed or potential Competing Proposal (if the person has not objected to that disclosure), together with all material terms and conditions of the actual, proposed or potential Competing Proposal.
- (c) Commencing upon the provision of any notice referred to in clause 12.4(a), Zenitas must as soon as possible advise BidCo of any material developments in relation to an actual, proposed or potential Competing Proposal, including material amendments or proposed amendments to the terms of such actual, proposed or potential Competing Proposal, and advise BidCo of the timing of any board meeting to consider that proposal.

12.5 Matching right

- (a) During the Exclusivity Period, without limiting clause 12.1, Zenitas:
- (1) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, Zenitas or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal; and
 - (2) must use its best endeavours to procure that none of its directors change their recommendation in favour of the Transaction or publicly recommend an actual, proposed or potential Competing Proposal or recommend against the Transaction (provided that a statement that no action should be taken by Zenitas Shareholders pending the assessment of a Competing Proposal by the Zenitas Board and its advisers shall not contravene this clause),
- unless:
- (3) the Zenitas Board acting in good faith and in order to satisfy what the members of the Zenitas Board consider to be their statutory or fiduciary duties (having received written advice from its external



- financial and legal advisers) determines that the Competing Proposal would be or would be likely to be an actual, proposed or potential Superior Proposal;
- (4) Zenitas has provided BidCo with a copy of the proposed agreement containing all terms and conditions of the actual, proposed or potential Competing Proposal, including price and the identity of the Third Party making the actual, proposed or potential Competing Proposal;
 - (5) Zenitas has given BidCo at least 5 Business Days after the date of the provision of the information referred to in clause 12.5(a)(4) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal; and
 - (6) BidCo has not announced or otherwise formally proposed to Zenitas a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal by the expiry of the 5 Business Day period in clause 12.5(a)(5) above.
- (b) If BidCo proposes to Zenitas, or announces, amendments to the Scheme or a new proposal that constitute a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal (**BidCo Counterproposal**) by the expiry of the 5 Business Day period in clause 12.5(a)(5) above, Zenitas must procure that the Zenitas Board considers the BidCo Counterproposal and if the Zenitas Board, acting reasonably and in good faith, determines that the BidCo Counterproposal (as completed) would provide an equivalent or superior outcome for Zenitas Shareholders as a whole (other than Excluded Shareholders) compared with the Competing Proposal, then Zenitas and BidCo must use their best endeavours to agree the amendments to this deed and, if applicable, the Scheme and Deed Poll that are reasonably necessary to reflect the BidCo Counterproposal and to implement the BidCo Counterproposal, in each case as soon as reasonably practicable, and Zenitas must use its best endeavours to procure that each of the Zenitas Board Members continues to recommend the Transaction (as modified by the BidCo Counterproposal) to Zenitas Shareholders.

12.6 Cease discussions

- (a) Zenitas must, and must procure that each of its Related Persons, cease any discussions or negotiations existing as at the date of this deed relating to:
 - (1) any actual, proposed or potential Competing Proposal; or
 - (2) any transaction that would, or would reasonably be expected to, reduce the likelihood of success of the Transaction.
- (b) If Zenitas holds any negotiations or discussions with a Third Party in relation to an actual, proposed or potential Competing Proposal in reliance on clause 12.3:
 - (1) Zenitas must, and must procure that each of its Related Persons, cease those discussions or negotiations 28 days after the date on which the Third Party was first in contact with Zenitas or its Related Persons, unless by that date Zenitas has triggered the matching right under clause 12.5 and has complied with clause 12.5(a)(4) and 12.5(a)(5); and
 - (2) Zenitas and its Related Persons may only subsequently rely upon clause 12.3 again in respect of the same Competing Proposal if the Third Party materially improves its proposal.



12.7 Provision of information by Zenitas

- (a) Subject to clause 12.7(b), Zenitas must as soon as possible provide BidCo with:
- (1) in the case of written materials, a copy of; and
 - (2) in any other case, a written statement of,
any material non-public information about the business or affairs of Zenitas or the Zenitas Group disclosed or otherwise provided to any Third Party in connection with an actual, proposed or potential Competing Proposal that has not previously been provided to BidCo.
- (b) Zenitas will not, and will procure that none of its Related Persons provide any information to a Third Party in relation to an actual, proposed or potential Competing Proposal, unless:
- (1) permitted by clause 12.2 or 12.3; and
 - (2) that Third Party has entered into a confidentiality agreement with Zenitas on customary terms and which is no more favourable to the Third Party, including as to confidentiality, no approach, no poach and standstill provisions, than the Confidentiality Deed.
- (c) If Zenitas is required by this deed to cease discussions or negotiations with a Third Party, it must require all confidential information that has been given to that party to be immediately returned or destroyed and terminate access to further information.

12.8 Compliance with law

- (a) If it is determined by a court, or the Takeovers Panel, that the agreement by the parties under this clause 12 or any part of it:
- (1) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the Zenitas Board;
 - (2) constituted, or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the Corporations Act; or
 - (3) was, or is, or would be, unlawful for any other reason,
- then, to that extent (and only to that extent) Zenitas will not be obliged to comply with that provision of clause 12. Any such determination must be final or an independent Queen's Counsel indicates that, in his or her view, an appeal would have negligible prospects of success.
- (b) The parties must not make or cause to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 12.8.

13 Reimbursement Fee

13.1 Background to Reimbursement Fee

- (a) Each party acknowledges that, if they enter into this deed and the Scheme is subsequently not implemented, BidCo will incur significant costs, including those set out in clause 13.4.



- (b) In these circumstances, the parties have agreed that provision be made for the payment outlined in clauses 13.2, without which BidCo would not have entered into this deed or otherwise agreed to implement the Scheme.
- (c) Zenitas and the Zenitas Board believe, having taken advice from its legal adviser and Financial Adviser, that the implementation of the Scheme will provide benefits to it and its shareholders, and that it is reasonable that Zenitas agree to the payments referred to in clauses 13.2 in order to secure BidCo's participation in the Transaction.

13.2 Reimbursement Fee triggers

Subject to clauses 13.5, 13.7 and 13.8, Zenitas must pay the Reimbursement Fee to BidCo, without set-off or withholding, if before the earlier of the Second Court Date and the End Date:

- (a) any one or more members of the Zenitas Board withdraws, adversely revises or adversely qualifies his or her support of the Scheme or his or her recommendation that Zenitas Shareholders vote in favour of the Scheme or fails to recommend that Zenitas Shareholders vote in favour of the Scheme in the manner described in clause 5.4, or, having made such a recommendation, withdraws, adversely revises or adversely qualifies that recommendation for any reason:
 - (1) unless the Independent Expert concludes in the Independent Expert's Report (or in any update of, or revision, amendment or addendum to that report), that the Scheme is not in the best interests of Scheme Shareholders (other than where the conclusion is due to the existence of a Competing Proposal);
 - (2) unless Zenitas is entitled to terminate this deed pursuant to clause 15.1(a)(1); or
 - (3) other than as a result of the non-satisfaction of a Condition Precedent in clause 3.1(a) (FIRB), 3.1(b) (Restraints), 3.1(c) (Shareholder approval), 3.1(d) (Court approval), 3.1(f) (No BidCo Prescribed Occurrence), 3.1(j) (BidCo Representations and Warranties) or 3.1(k) (Material Contracts), except where such non-satisfaction is a result of a breach by Zenitas of clause 3.2;
- (b) any one or more members of the Zenitas Board recommends that Zenitas Shareholders accept or vote in favour of, or otherwise supports or endorses (including support by way of accepting or voting, or by way of stating an intention to accept or vote, in respect of any Zenitas Shares held or controlled by them or held on their behalf), a Competing Proposal of any kind that is announced (whether or not such proposal is stated to be subject to any pre-conditions);
- (c) a Competing Proposal of any kind is announced (whether or not such proposal is stated to be subject to any pre-conditions) and, within 12 months of the date of such announcement, a Third Party completes a Competing Proposal of the kind referred to in paragraphs 1 (but only where the acquisition is through an issue of new Zenitas Shares), 2, 3 and 4 of the definition of Competing Proposal;
- (d) BidCo has terminated this deed pursuant to clauses 15.1(a)(1) or 15.2(a) and the Transaction does not complete; or



- (e) a Condition Precedent in clause 3.1(e) (No Zenitas Prescribed Occurrence), 3.1(g) (No Zenitas Material Adverse Change), 3.1(h) (No material breach of conduct of business provisions), 3.1(i) (Zenitas Representations and Warranties), 3.1(l) (Zenitas Options) or 3.1(m) (Proposed Acquisitions) is not satisfied or waived by BidCo and the Transaction does not complete.

13.3 Timing of payment of Reimbursement Fee

- (a) A demand by BidCo for payment of the Reimbursement Fee under clause 13.2 must:
 - (1) be in writing;
 - (2) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (3) state the circumstances which give rise to the demand; and
 - (4) nominate an account into which Zenitas is to pay the Reimbursement Fee.
- (b) Zenitas must pay the Reimbursement Fee into the account nominated by BidCo, without set-off or withholding, within 5 Business Days after receiving a demand for payment where BidCo is entitled under clause 13.2 to the Reimbursement Fee.

13.4 Basis of Reimbursement Fee

The amount payable by Zenitas pursuant to clause 13.2 is purely and strictly compensatory in nature and has been calculated to reimburse BidCo for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
- (b) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
- (c) costs of management and directors' time in planning and implementing the Transaction;
- (d) out of pocket expenses incurred by BidCo and BidCo's employees, advisers and agents in planning and implementing the Transaction;
- (e) costs associated with the financing arrangements in respect of the Transaction; and
- (f) any damage to the Consortium Members' reputation associated with a failed transaction and the implications of those damages if the Consortium Members seek to execute alternative acquisitions in the future,

and the parties agree that:

- (g) the costs actually incurred by BidCo will be of such a nature that they cannot all be accurately ascertained; and
- (h) the amount payable by Zenitas is a genuine and reasonable pre-estimate of those costs,

and Zenitas represents and warrants that it has received advice from its legal adviser on the operation of this clause 13.



13.5 Compliance with law

- (a) This clause 13 does not impose an obligation on Zenitas to pay the Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the Reimbursement Fee:
- (1) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
 - (2) is determined to be unenforceable or unlawful by a court, provided that, in either case, all lawful avenues of appeal and review, judicial and otherwise, have been exhausted or an independent Queen's Counsel indicates that, in his or her view, an appeal or review would have negligible prospects of success.
- (b) For the avoidance of doubt, any part of the Reimbursement Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by Zenitas.
- (c) The parties must not make or cause to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 13.5(a).

13.6 Reimbursement Fee payable only once

Where the Reimbursement Fee becomes payable to BidCo under clause 13.2 and is actually paid to BidCo, BidCo cannot make any claim against Zenitas for payment of any subsequent Reimbursement Fee. The Reimbursement Fee is only payable once.

13.7 Other Claims

Where the Reimbursement Fee is paid to BidCo under this deed (or would be payable if a demand was made), BidCo cannot make any Claim against Zenitas or the Zenitas Indemnified Parties in relation to the event or occurrence referred to in clause 13.2.

13.8 No Reimbursement Fee if Scheme Effective

Despite anything to the contrary in this deed, the Reimbursement Fee will not be payable to BidCo if the Scheme becomes Effective, notwithstanding the occurrence of any event in clause 13.2.

14 BidCo Break Fee

- (a) BidCo agrees to pay to Zenitas the BidCo Break Fee if:
- (1) Zenitas terminates this deed in accordance with clause 15.2(b); or
 - (2) BidCo does not pay the Scheme Consideration in accordance with the terms and conditions of this deed and the Deed Poll.
- (b) BidCo must pay Zenitas the BidCo Break Fee within five Business Days of receipt by BidCo of a demand for payment from Zenitas made after the occurrence of the event referred to in clause 14(a).
- (c) The BidCo Break Fee is only payable once.



- (d) Where the BidCo Break Fee is paid to Zenitas under this deed (or would be payable if a demand was made), Zenitas cannot make any Claim against BidCo or the BidCo Indemnified Parties in relation to the event or occurrence referred to in clause 14(a).

15 Termination

15.1 Termination for material breach

- (a) Either party may terminate this deed by written notice to the other party:
- (1) other than in respect of a breach of either a BidCo Representation and Warranty or a Zenitas Representation and Warranty (which are dealt with in clause 15.2), at any time before 8.00am on the Second Court Date if the other party has materially breached this deed, the party entitled to terminate has given written notice to the party in breach of this deed setting out the relevant circumstances and stating an intention to terminate this deed, and the other party has failed to remedy the breach within 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given;
 - (2) at any time before 8.00am on the Second Court Date if the Court (or another court of competent jurisdiction in Australia) or another Government Agency has taken any action permanently restraining or otherwise prohibiting or preventing the Transaction, or has refused to do anything necessary to permit the Transaction from being implemented by the End Date, and the action or refusal has become final and cannot be appealed or reviewed or the party, acting reasonably, believes that there is no realistic prospect of an appeal or review succeeding by the End Date;
 - (3) in the circumstances set out in, and in accordance with, clause 3.4; or
 - (4) if the Effective Date for the Scheme has not occurred, or will not occur, on or before the End Date.
- (b) BidCo may terminate this deed by written notice to Zenitas until 8.00am on the Second Court Date if any member of the Zenitas Board:
- (1) fails to recommend the Scheme;
 - (2) withdraws, adversely revises or adversely modifies his or her recommendation that Zenitas Shareholders vote in favour of the Scheme; or
 - (3) makes a public statement indicating that he or she no longer recommends the Transaction or recommends, supports or endorses another transaction (including any Competing Proposal but excluding a statement that no action should be taken by Zenitas Shareholders pending the assessment of a Competing Proposal by the Zenitas Board).

Zenitas may terminate this deed by written notice to BidCo at any time before 8.00am on the Second Court Date if, a majority of the members of the Zenitas Board fail to recommend or withdraw, adversely revise or adversely qualify (except for customary qualifications) their recommendation that Zenitas



Shareholders vote in favour of the Scheme, or the Zenitas Board recommends any Competing Proposal, in each case as permitted by clause 5.4 and a resolution to approve the Scheme is put to the Scheme Meeting and the resolution is not passed.

15.2 Termination for breach of representations and warranties

- (a) BidCo may, at any time prior to 8.00am on the Second Court Date, terminate this deed for breach of a Zenitas Representation and Warranty only if:
 - (1) BidCo has given written notice to Zenitas setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse; and
 - (2) the relevant breach continues to exist 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 15.2(a)(1).
- (b) Zenitas may, at any time before 8.00am on the Second Court Date, terminate this deed for breach of a BidCo Representation and Warranty only if:
 - (1) Zenitas has given written notice to BidCo setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse; and
 - (2) the relevant breach continues to exist 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 15.2(b)(1).

15.3 Effect of termination

If this deed is terminated by either party under clauses 3.4, 15.1 or 15.2:

- (a) each party will be released from its obligations under this deed, except that this clause 15.3, and clauses 1, 8.6 - 8.8, 11, 13, 16, 17, 18 and 19, will survive termination and remain in force;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this deed; and
- (c) in all other respects, all future obligations of the parties under this deed will immediately terminate and be of no further force and effect including any further obligations in respect of the Scheme.

15.4 Termination

Where a party has a right to terminate this deed, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this deed and the provision under which it is terminating this deed.

15.5 No other termination

Neither party may terminate or rescind this deed, except as permitted under clauses 3.4, 15.1 or 15.2.



16 Duty, costs and expenses

16.1 Stamp duty

BidCo:

- (a) must pay all stamp duties and any fines and penalties with respect to stamp duty in respect of this deed or the Scheme or the steps to be taken under this deed or the Scheme; and
- (b) indemnifies Zenitas against any liability arising from its failure to comply with clause 16.1(a).

16.2 Costs and expenses

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

17 GST

- (a) Any consideration or amount payable under this deed, including any non-monetary consideration (as reduced in accordance with clause 17(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this deed, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under clause 17(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 17(b):
 - (1) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
 - (2) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
 - (3) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing



to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.

- (e) Despite any other provision in this deed if an amount payable under or in connection with this deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (g) Any term starting with a capital letter that is not defined in this deed has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

18 Notices

18.1 Form of Notice

A notice or other communication to a party under this deed (**Notice**) must be:

- (a) in writing and in English; and
- (b) addressed to that party as nominated below (or any alternative details nominated to the sending party by Notice):

Party	Address	Addressee	Email
Zenitas	Level 2, 391 St Kilda Road, Melbourne, Victoria, 3004	Justin Walter	Justin.Walter@zenitas.com.au
	Copy to: Level 2, 391 St Kilda Road, Melbourne, Victoria, 3004	Justine Raczkowski	Justine.Raczkowski@zenitas.com.au
BidCo	Suite 3, Level 36, 60 Margaret Street,	Jonathan Lim	jonathan.lim@liverpoolpartners.com

Sydney
NSW 2000

Copy to: Andrew Bullock andrew.bullock@adamantem.com.au
 'Chifley Tower',
 Level 27, 2
 Chifley Square,
 Sydney
 NSW 2000

18.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address.
By email to the nominated email address	When the party sending the email receives notification that the email was successfully transmitted and read by the receiving party, or if no such notification is received, 24 hours after the email was sent, unless the party sending the email receives notification that the email was not successfully transmitted.

19 General

19.1 Governing law and jurisdiction

- (a) This deed is governed by the law in force in Victoria.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.



19.2 Service of process

Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of Notices under clause 18.

19.3 No merger

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

19.4 Invalidity and enforceability

- (a) If any provision of this deed is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 19.4(a) does not apply where enforcement of the provision of this deed in accordance with clause 19.4(a) would materially affect the nature or effect of the parties' obligations under this deed.

19.5 Waiver

No party to this deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

The meanings of the terms used in this clause 19.5 are set out below.

Term	Meaning
conduct	includes delay in the exercise of a right.
right	any right arising under or in connection with this deed and includes the right to rely on this clause.
waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

19.6 Variation

A variation of any term of this deed must be in writing and signed by the parties.

19.7 Assignment of rights

- (a) A party may not assign, novate, declare a trust over or otherwise transfer or deal with any of its rights or obligations under this deed without the prior written consent of the other party or as expressly provided in this deed.



- (b) A breach of clause 19.7(a) by a party shall be deemed to be a material breach for the purposes of clause 15.1(a)(1).
- (c) Clause 19.7(b) does not affect the construction of any other part of this deed.

19.8 Acknowledgement

Each party acknowledges that the remedy of damages may be inadequate to protect the interests of the parties for a breach of clause 12 and that either party is entitled to seek and obtain without limitation injunctive relief if the other party breaches or threatens to breach clause 12.

19.9 Further action to be taken at each party's own expense

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this deed and the transactions contemplated by it.

19.10 Entire agreement

This deed, together with the Confidentiality Deed and all other documents referred to herein or initialled by or on behalf of the parties on or about the date hereof, states all the express terms agreed by the parties in respect of its subject matter. These supersede all prior discussions, negotiations, understandings and agreements in respect of its subject matter (other than the Confidentiality Deed (excluding any inconsistent provisions)).

19.11 Counterparts

This deed may be executed in any number of counterparts.

19.12 Relationship of the parties

- (a) Nothing in this deed gives a party authority to bind any other party in any way.
- (b) Nothing in this deed imposes any fiduciary duties on a party in relation to any other party.

19.13 Remedies cumulative

Except as provided in this deed and permitted by law, the rights, powers and remedies provided in this deed are cumulative with, and not exclusive of, the rights, powers and remedies provided by law independently of this deed.

19.14 Exercise of rights

- (a) Unless expressly required by the terms of this deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.



19.15 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed, the Equity Commitment Letters or the Debt Commitment Letter.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed, the Equity Commitment Letters or the Debt Commitment Letter.



Schedules

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Schedule 1

BidCo Representations and Warranties

BidCo represents and warrants to Zenitas (in its own right and separately as trustee or nominee for each of the other Zenitas Indemnified Parties) that:

- (a) **BidCo Information:** the BidCo Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is dispatched to Zenitas Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (b) **basis of BidCo Information:** the BidCo Information:
 - (1) will be provided to Zenitas in good faith and on the understanding that Zenitas and each other Zenitas Indemnified Party will rely on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme; and
 - (2) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules,and all information provided by BidCo to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (c) **new information:** it will, as a continuing obligation, provide to Zenitas all further or new information which arises after the Scheme Booklet has been dispatched to Zenitas Shareholders until the date of the Scheme Meeting which is necessary to ensure that the BidCo Information is not misleading or deceptive (including by way of omission);
- (d) **validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (e) **authority:** the execution and delivery of this deed has been properly authorised by all necessary corporate action of BidCo;
- (f) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (g) **no default:** this deed does not conflict with or result in the breach of or a default under:
 - (1) any provision of BidCo's constitution; or
 - (2) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other BidCo Group Member is bound,

and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;

- (h) **deed binding:** this deed is a valid and binding obligation of BidCo, enforceable in accordance with its terms;

- (i) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to it or HoldCo, nor has any regulatory action of any nature been taken that would prevent or restrict its ability to fulfil its obligations under this deed;
- (j) **Equity Commitment Letters:** the Equity Commitment Letters have each been duly executed by the parties thereto and constitute legally binding obligations of those parties that are enforceable in accordance with their respective terms and neither of the Equity Commitment Letters have been terminated;
- (k) **amendment of Equity Commitment Letters:** as a continuing obligation, without the prior written consent of Zenitas:
 - (1) BidCo will not, and will procure HoldCo not to, amend any of the Equity Commitment Letters in any respect which will, or is reasonably likely to, prejudice BidCo's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll; and
 - (2) BidCo will not, and will procure HoldCo not to, waive any of its rights under the Equity Commitment Letters in any respect which will, or is reasonably likely to, prejudice BidCo's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll;
- (l) **Debt Commitment Letter:** the Debt Commitment Letter has been duly executed by BidCo and constitutes a legally valid and binding obligation of BidCo that is enforceable against BidCo in accordance with its terms and the Debt Commitment Letter has not been terminated;
- (m) **amendment of Debt Commitment Letter:** as a continuing obligation, without the prior written consent of Zenitas:
 - (1) BidCo will not amend the Debt Commitment Letter in any respect which will, or is reasonably likely to, materially prejudice BidCo's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll; and
 - (2) BidCo will not waive any of its rights under the Debt Commitment Letter in any respect which will, or is reasonably likely to, materially prejudice BidCo's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll;
- (n) **BidCo Facility Agreement:** on each date from the date on which the BidCo Facility Agreement is entered into until the 8.00am on the Implementation Date:
 - (1) the BidCo Facility Agreement has been duly executed by BidCo and constitutes a legally valid and enforceable obligation on, and right of, BidCo that is enforceable in accordance with its terms; and
 - (2) without the prior written consent of Zenitas, BidCo will not amend or agree to amend the BidCo Facility Agreement in any respect which will, or is reasonably likely to, materially prejudice BidCo's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll;
- (o) **sufficient cash amounts – reasonable expectation at date of this deed:** as at the date of this deed BidCo has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts (whether from internal cash resources or external funding arrangements (including debt and equity financing) or a combination of both) to satisfy BidCo's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;



- (p) **sufficient cash amounts – unconditional at Second Court Date:** at 8.00am on the Second Court Date, BidCo will have available to it on an unconditional basis (other than conditions relating to the approval of the Court and other conditions within the control of BidCo) sufficient cash amounts (whether from internal cash resources or external funding arrangements (including debt and equity financing) or a combination of both) to satisfy BidCo's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll; and
- (q) **sufficient cash amounts – available on Implementation Date:** BidCo will have available to it on the Implementation Date sufficient cash amounts (whether from internal cash resources or external funding (including debt and equity financing) arrangements or a combination of both) to satisfy BidCo's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.

Schedule 2

Zenitas Representations and Warranties

Zenitas represents and warrants to BidCo (in its own right and separately as trustee or nominee for each of the other BidCo Indemnified Parties) that:

- (a) **Zenitas Information:** the Zenitas Information contained in the Scheme Booklet, as at the date the Scheme Booklet is dispatched to Zenitas Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (b) **basis of Zenitas Information:** the Zenitas Information:
 - (1) will be prepared and included in the Scheme Booklet in good faith and on the understanding that BidCo and each other BidCo Indemnified Party will rely on that information; and
 - (2) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules,

and all information provided by Zenitas to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;

- (c) **new information:** it will, as a continuing obligation (but in respect of the BidCo Information, only to the extent that BidCo provides Zenitas with updates to the BidCo Information), ensure that the Scheme Booklet is updated to include all further or new information which arises after the Scheme Booklet has been dispatched to Zenitas Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive (including by way of omission) in any material respect;
- (d) **validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (e) **authority:** the execution and delivery of this deed has been properly authorised by all necessary corporate action of Zenitas;
- (f) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (g) **no default:** this deed does not conflict with or result in the breach of or a default under:
 - (1) any provision of Zenitas' constitution;
 - (2) any Material Contract or any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other Zenitas Group Member is bound,

and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;

- (h) **deed binding:** this deed is a valid and binding obligation of Zenitas, enforceable in accordance with its terms;
- (i) **continuous disclosure:** Zenitas has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and, other than for this Transaction or any Proposed Acquisition, it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure;
- (j) **capital structure:** its capital structure, including all issued securities as at the date of this deed, is as set out in Schedule 3 and it has not issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into Zenitas Shares other than as set out in Schedule 3 and it is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any Zenitas Shares, options, warrants, performance rights or other securities or instruments in Zenitas;
- (k) **interest:** the Disclosure Materials set out the details of any company, partnership, trust, joint venture or other enterprise in which Zenitas or another Zenitas Group Member owns or otherwise holds any interest;
- (l) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to it or another Zenitas Group Member, nor, as far as Zenitas is aware, has any regulatory action of any nature been taken that would prevent or restrict its ability to fulfil its obligations under this deed;
- (m) **Financial Indebtedness:** no member of the Zenitas Group has incurred any Financial Indebtedness (other than any Permitted Financial Indebtedness);
- (n) **Security Interest:** there are no Security Interests (other than a Permitted Security Interest) over any asset or securities of a member of the Zenitas Group;
- (o) **compliance:** as far as Zenitas is aware, each member of the Zenitas Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Government Agencies having jurisdiction over them and have all material licenses, authorisations and permits necessary for them to conduct the business of the Zenitas Group as presently being conducted;
- (p) **financial statements:** Zenitas' financial statements as disclosed to ASX have been prepared in accordance with the accounting standards on a basis consistent with past practice financial statements and, as far as Zenitas is aware, there has not been any event, change, effect or development which would require Zenitas to restate its financial statements as disclosed to ASX;
- (q) **Zenitas assets:** the Zenitas Group owns, or has the right to use, all of the assets that are material for the conduct of the business of the Zenitas Group, and will continue to do so upon and immediately following the Implementation Date;
- (r) **no litigation:** no litigation, prosecution, arbitration, mediation, or other proceedings relating to the Zenitas Group is current or, as far as Zenitas is aware, pending or threatened or might reasonably be expected to arise as a result of current circumstances;
- (s) **no expected termination:** as far as Zenitas is aware, no agreement which is material to the business of the Zenitas Group is to be terminated as a result of the Transaction;

- (t) **incentives disclosed:** the Disclosure Materials adequately and completely describe all:
- (1) arrangements for the award of any payments, bonus, incentive or severance pay to senior management of the Zenitas Group;
 - (2) fees payable to all third party advisers in connection with the Transaction; and
 - (3) other agreements or arrangements entered into by any member of the Zenitas Group pursuant to which consideration becomes payable to any person in connection with the Transaction;
- (u) **Disclosure Materials:** it has collated and prepared all of the Disclosure Materials in good faith for the purposes of a due diligence process and in this context, as far as Zenitas is aware, the Disclosure Materials are materially true, complete and accurate and not misleading or deceptive in any material respect, including by omission;
- (v) **all information:** as far as Zenitas is aware, it has disclosed all material information relating to the Zenitas Group or its respective businesses or operations as at the date of this deed, that would be objectively necessary for BidCo to make an informed assessment of:
- (1) Zenitas' material agreements and their respective change of control or termination provisions which would be enlivened by implementation of the Transaction; and
 - (2) material disputes between Zenitas and a Third Party (including a Government Agency); and
- (w) **not misleading:** all information it has provided to the Independent Expert, pursuant to clause 5.2(q) or otherwise, or to BidCo, is accurate and not misleading and, as far as Zenitas is aware, it has not omitted any information which would be required to make the information provided to the Independent Expert or BidCo not misleading.



Schedule 3

Zenitas details

1.1 Zenitas Shares (as at the date of this deed)

Security	Number on issue
Zenitas Shares	74,361,161

1.2 Zenitas Options (as at the date of this deed)

Security	Number on issue	Consideration per option
Zenitas Options, exercisable at \$0.68 per option, expires on 8 September 2018	35,014	Scheme Consideration - \$0.68
Zenitas Options, exercisable at \$0.714 per option, expires on 22 December 2018	458,682	Scheme Consideration - \$0.714
Zenitas Options, exercisable at \$1.00 per option, expires on 28 December 2018	200,000	Scheme Consideration - \$1.00
Zenitas Options, exercisable at \$0.9996 per option, expires on 14 April 2019	42,016	Scheme Consideration - \$0.9996
Zenitas Options, exercisable at \$1.00 per option, expires on 28 December 2019	200,000	Scheme Consideration - \$1.00
TOTAL	935,712	



Schedule 4

Consortium details

Consortium Member	Address
1 Adamantem Capital Fund 1 GP, LP as general partner for Adamantem Capital Fund 1 L.P.;	Address: 'Chifley Tower' Level 27, 2 Chifley Square, Sydney NSW 2000 Attention: Andrew Bullock Email: andrew.bullock@adamantem.com.au
2 One Funds Management Limited as trustee for Adamantem Capital Fund 1 Trust 1B;	Address: 'Chifley Tower' Level 27, 2 Chifley Square, Sydney NSW 2000 Attention: Andrew Bullock Email: andrew.bullock@adamantem.com.au
3 One Funds Management Limited as trustee for Adamantem Capital Fund 1 Trust 1D;	Address: 'Chifley Tower' Level 27, 2 Chifley Square, Sydney NSW 2000 Attention: Andrew Bullock Email: andrew.bullock@adamantem.com.au
4 One Investment Management Pty Limited as trustee for Adamantem Capital Fund 1 Trust 1E; and	Address: 'Chifley Tower' Level 27, 2 Chifley Square, Sydney NSW 2000 Attention: Andrew Bullock



Consortium Member		Address
		Email: andrew.bullock@adamantem.com.au
5	Columbus Investment Services Ltd as trustee for Adamantem Capital Co-Investment Trust.	Address: 'Chifley Tower' Level 27, 2 Chifley Square, Sydney NSW 2000 Attention: Andrew Bullock Email: andrew.bullock@adamantem.com.au
6	Liverpool Partners Guardian GP Pty Ltd	Address: Suite 3, Level 36, 60 Margaret Street, Sydney NSW 2000 Attention: Jonathan Lim Email: jonathan.lim@liverpoolpartners.com
7	Unigestion Direct Opportunities 2015 SCS-SICAV-SIF	Address: c/- Suite 3, Level 36, 60 Margaret Street, Sydney NSW 2000 Attention: Jonathan Lim Email: jonathan.lim@liverpoolpartners.com



Signing page

Executed as a deed

Signed sealed and delivered by

Zenitas Limited

by

sign here ► 

~~Company Secretary~~/Director

print name JUSTIN WALTER

sign here ► 

Director

print name TODD CAMERON



BidCo

Signed sealed and delivered by
Guardian Alphabet Pty Ltd
by

sign here ▶

Company Secretary/Director

print name

Jonathan CIM

sign here ▶

Director

print name

Andrew Bullock



HERBERT
SMITH
FREEHILLS

Attachment 1

Scheme of arrangement

SCHEME OF ARRANGEMENT SHARE SCHEME

Zenitas Healthcare Limited

and

Scheme Shareholders

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Scheme of Arrangement - Share Scheme

This scheme of arrangement is made under section 411 of the *Corporations Act 2001* (Cth) between the parties

Parties	Zenitas Healthcare Limited ACN 009 074 588 of Level 2, 391 St Kilda Road, Melbourne VIC 3004 (Zenitas)
	<hr/>
	The Scheme Shareholders (Scheme shareholders)

The parties agree:

1. Definitions and interpretation

1.1 Definitions

In this agreement:

ASIC	means the Australian Securities and Investments Commission.
ASX	means ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market operated by it and known as the "Australian Securities Exchange".
BidCo	means Guardian Alphabet Pty Ltd ACN 628 465 663.
Business Day	means a weekday on which trading banks are generally open for trading in Melbourne and the ASX is open for trading.
CHESS	means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.
CHESS Holding	has the meaning given in the Settlement Rules.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Court	means the Supreme Court of Victoria, the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing by BidCo and Zenitas.
Deed Poll	means the deed poll under which BidCo covenants in favour of the Scheme Shareholders to perform the obligations attributed to BidCo under this Scheme.
Effective	means when used in relation to this Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the Court order 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	has the meaning given in the Implementation Deed.

Government Agency	means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government, whether foreign or Australian. It also includes any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions (including ASIC, ASX and the Takeovers Panel).
Implementation Date	means the third Business Day after the Scheme Record Date, or such other date after the Scheme Record Date as agreed in writing by Zenitas and BidCo.
Implementation Deed	means the scheme implementation deed dated 31 August 2018 between Zenitas and BidCo relating to the implementation of this Scheme.
Issuer Sponsored Holding	has the meaning given in the Settlement Rules.
Operating Rules	means the official operating rules of ASX.
Permitted Dividend	has the meaning given in the Implementation Deed.
Registered Address	means in relation to a Zenitas Shareholder, the address shown in the Share Register as at the Scheme Record Date.
Scheme	means this scheme of arrangement under Part 5.1 of the Corporations Act between Zenitas and the Scheme Shareholders subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by Zenitas and BidCo.
Scheme Consideration	means for each Zenitas Share held by a Scheme Shareholder as at the Scheme Record Date, an amount of \$1.46, less the amount per Zenitas Share of any Permitted Dividend paid in accordance with clause 4.4 of the Implementation Deed.
Scheme Meeting	means the meeting of the Zenitas Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on this Scheme and includes any meeting convened following any adjournment or postponement of that meeting.
Scheme Record Date	means 7.00pm on the second Business Day after the Effective Date or such other date agreed to in writing by Zenitas and BidCo.
Scheme Shares	means all Zenitas Shares held by the Scheme Shareholders as at the Scheme Record Date.
Scheme Shareholder	means a holder of Zenitas Shares recorded in the Share Register as at the Scheme Record Date.
Scheme Transfer	means one or more proper instruments of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, in favour of BidCo as transferee, which may be

a master transfer of all or part of the Scheme Shares.

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 this Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application or appeal is heard.
Settlement Rules	means the ASX Settlement Operating Rules, being the official operating rules of the settlement facility provided by ASX Settlement Pty Ltd.
Share Register	means the register of Zenitas Shareholders maintained by the Zenitas Registry in accordance with the Corporations Act.
Zenitas Option	means an option granted by Zenitas over an unissued ordinary share in Zenitas.
Zenitas Registry	means Automic Pty Ltd ABN 27 152 260 814.
Zenitas Share	means a fully paid ordinary share in the capital of Zenitas.
Zenitas Shareholder	means each person who is registered as the holder of a Zenitas Share in the Share Register.

1.2 Interpretation

In this Scheme:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Scheme;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Scheme have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this Scheme;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this Scheme) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', 'A\$' or 'dollar' is to Australian currency;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Sydney, Australia;
- (k) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this Scheme;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;

- (n) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (o) if an act prescribed under this Scheme to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day; and
- (p) a reference to the Operating Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

1.3 Interpretation of inclusive expressions

Specifying anything in this Scheme after the words 'include' or 'for example' or a similar expression does not limit what else is included.

1.4 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.

2. Preliminary matters

- (a) Zenitas is a public company limited by shares, is registered in Australia and has been admitted to the official list of the ASX. Zenitas Shares are quoted for trading on the ASX.
- (b) As at the date of the Implementation Deed there were:
 - (i) 74,361,161 Zenitas Shares; and
 - (ii) 935,712 Zenitas Options.
- (c) BidCo is a proprietary company limited by shares and registered in Australia.
- (d) If this Scheme becomes Effective:
 - (i) BidCo must pay or procure the payment of the Scheme Consideration to the Scheme Shareholders in accordance with the terms of this Scheme and the Deed Poll; and
 - (ii) subject to and in accordance with this Scheme, all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, must be transferred to BidCo and Zenitas will enter the name of BidCo in the Share Register in respect of the Scheme Shares.
- (e) Zenitas and BidCo have agreed, by executing the Implementation Deed, to implement this Scheme.
- (f) This Scheme attributes actions to BidCo but does not itself impose any obligations on it to perform those actions. BidCo has agreed, by executing the Deed Poll, to perform the actions attributed to it under this Scheme, including the payment of the Scheme Consideration to the Scheme Shareholders.

3. Conditions

3.1 Conditions precedent

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

- (a) all the conditions in clause 3 of the Implementation Deed (other than the condition in the Implementation Deed relating to Court approval of this Scheme)

having been satisfied or waived in accordance with the terms of the Implementation Deed by 8.00am on the Second Court Date;

- (b) neither the Implementation Deed nor the Deed Poll having been terminated in accordance with their terms before 8.00am on the Second Court Date;
- (c) approval of this Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act and agreed to by BidCo and Zenitas;
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and agreed to by BidCo and Zenitas having been satisfied or waived; and
- (e) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving this Scheme coming into effect, pursuant to section 411(10) of the Corporations Act on or before the End Date (or any later date Zenitas and BidCo agree in writing).

3.2 Certificate

- (a) Zenitas and BidCo must provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived.
- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent were satisfied, waived or taken to have been waived.

3.3 End Date

Without limiting any rights under the Implementation Deed, this Scheme will lapse and be of no further force or effect if:

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

unless Zenitas and BidCo otherwise agree in writing.

4. Implementation of this Scheme

4.1 Lodgement of Court orders with ASIC

Zenitas must lodge with ASIC, in accordance with clause 411(10) of the Corporations Act, an office copy of the Court orders approving this Scheme under section 411(4)(b) of the Corporations Act (**Court Orders**) as soon as possible after the Court approves this Scheme and in any event by 5.00pm on the first Business Day after the day on which the Court approves this Scheme.

4.2 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 5, the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, must be transferred to BidCo, without the need for any further act by any Scheme Shareholder (other than acts performed by Zenitas or its officers as attorney and agent for Scheme Shareholders under clause 8.5), by:

- (i) Zenitas delivering to BidCo a duly completed Scheme Transfer, executed on behalf of the Scheme Shareholders by Zenitas, for registration; and
 - (ii) BidCo duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to Zenitas for registration; and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.2(a)(ii), but subject to the stamping of the Scheme Transfer (if required), Zenitas must enter, or procure the entry of, the name of BidCo in the Share Register in respect of all the Scheme Shares transferred to BidCo in accordance with this Scheme.

5. Scheme Consideration

5.1 Provision of Scheme Consideration

- (a) BidCo must, by no later than the Business Day before the Implementation Date, deposit, or procure the deposit, in cleared funds an amount at least equal to the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders, into an Australian dollar denominated trust account operated by Zenitas as trustee for the Scheme Shareholders (provided that any interest on the amounts deposited (less bank fees and other charges) will accrue to BidCo).
- (b) On the Implementation Date, subject to funds having been deposited in accordance with clause 5.1(a), Zenitas must pay or procure the payment of the Scheme Consideration to each Scheme Shareholder in respect of that Scheme Shareholder's Scheme Shares from the trust account referred to in clause 5.1(a).
- (c) The obligations of Zenitas under clause 5.1(b) will be satisfied by Zenitas (in its absolute discretion, and despite any election referred to in clause 5.1(c)(i) or authority referred to in clause 5.1(c)(ii) made or given by the Scheme Shareholder):
 - (i) if a Scheme Shareholder has, before the Scheme Record Date, made a valid election in accordance with the requirements of the Zenitas Registry to receive dividend payments from Zenitas by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
 - (ii) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Shareholder by an appropriate authority from the Scheme Shareholder to Zenitas; or
 - (iii) dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Shareholder by prepaid post to their Registered Address (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with clause 5.2).
- (d) To the extent that, following satisfaction of Zenitas's obligations under clause 5.1(b), there is a surplus in the amount held by Zenitas as trustee of the Scheme Shareholders in the trust account referred to in that clause, that surplus may be paid (or procured to be paid) by Zenitas to BidCo.

5.2 Joint holders

In the case of Scheme Shares held in joint names:

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

5.3 Fractional entitlements and splitting

Where the calculation of the Scheme Consideration to be issued to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, the fractional entitlement will be rounded down to the nearest whole cent.

5.4 Unclaimed monies

- (a) Zenitas may cancel a cheque issued under this clause 5 if the cheque:
 - (i) is returned to Zenitas; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Zenitas (or the Zenitas Registry on Zenitas's behalf) (which request may not be made until the date which is 10 Business Days after the Implementation Date), Zenitas must reissue a cheque that was previously cancelled under this clause 5.4.
- (c) The *Unclaimed Money Act 2008* (Vic) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' for the purposes of the *Unclaimed Money Act 2008* (Vic).

5.5 Orders of a court or Government Agency

If written notice is given to Zenitas (or the Zenitas Registry on Zenitas's behalf) or BidCo of an order or direction made by a court of competent jurisdiction or by another Government Agency that:

- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder by Zenitas in accordance with this clause 5, then Zenitas shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
- (b) prevents Zenitas from providing consideration to any particular Scheme Shareholder in accordance with this clause 5, or the payment of such consideration is otherwise prohibited by applicable law, Zenitas shall be entitled to retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration until such time as provision of the Scheme Consideration in accordance with this clause 5 is permitted by that (or another) order or direction or otherwise by law.

The provision or the retention of the relevant Scheme Consideration by Zenitas (or the Zenitas Registry on Zenitas's behalf) in accordance clause 5.5(a) or clause 5.5(b) (as applicable) will constitute the full discharge of the Zenitas's obligations under this clause 5.5.

6. Dealings in Zenitas Shares

6.1 Determination of Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in Zenitas Shares or other alterations to the Share Register will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the Share Register as the holder of the relevant Zenitas Shares before the Scheme Record Date; and
- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received before the Scheme Record Date at the place where the Share Register is kept,

and Zenitas must not accept for registration, nor recognise for any purpose (except a transfer to BidCo pursuant to this Scheme and any subsequent transfer by BidCo or its successors in title), any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

6.2 Register

- (a) Zenitas must register registrable transmission applications or transfers of the Scheme Shares in accordance with clause 6.1(b) before the Scheme Record Date provided that, for the avoidance of doubt, nothing in this clause 6.1(a) requires Zenitas to register a transfer that would result in a Zenitas Shareholder holding a parcel of Zenitas Shares that is less than a 'marketable parcel' (for the purposes of this clause 6.1(a) 'marketable parcel' has the meaning given in the Operating Rules).
- (b) If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them on or after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and Zenitas shall be entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Zenitas must maintain the Share Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for Zenitas Shares (other than statements of holding in favour of BidCo) will cease to have effect after the Scheme Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Share Register (other than entries on the Share Register in respect of BidCo) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Zenitas Shares relating to that entry.
- (e) As soon as possible on or after the Scheme Record Date and in any event by 5.00pm on the first Business Day after the Scheme Record Date, Zenitas will ensure that details of the names, Registered Addresses and holdings of Zenitas Shares for each Scheme Shareholder as shown in the Share Register are available to BidCo in the form BidCo reasonably requires.

7. Quotation of Zenitas Shares

- (a) Zenitas must apply to ASX to suspend trading on the ASX in Zenitas Shares with effect from the close of trading on the Effective Date.

- (b) On a date after the Implementation Date to be determined by BidCo, Zenitas must apply:
 - (i) for termination of the official quotation of Zenitas Shares on the ASX; and
 - (ii) to have itself removed from the official list of the ASX.

8. General Scheme provisions

8.1 Consent to amendments to this Scheme

If the Court proposes to approve this Scheme subject to any alterations or conditions:

- (a) Zenitas may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which BidCo has consented; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which Zenitas has consented to.

8.2 Scheme Shareholders' agreements and warranties

- (a) Each Scheme Shareholder:
 - (i) agrees to the transfer of their Zenitas Shares together with all rights and entitlements attaching to those Zenitas Shares in accordance with this Scheme;
 - (ii) agrees to the variation, cancellation or modification of the rights attached to their Zenitas Shares constituted by or resulting from this Scheme;
 - (iii) agrees to, on the direction of BidCo, destroy any holding statements or share certificates relating to their Zenitas Shares;
 - (iv) who holds their Zenitas Shares in a CHESS Holding agrees to the conversion of those Zenitas Shares to an Issuer Sponsored Holding and irrevocably authorises Zenitas to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion; and
 - (v) acknowledges and agrees that this Scheme binds Zenitas and all Scheme Shareholders (including those who do not attend the Scheme Meeting and those who do not vote, or vote against this Scheme, at the Scheme Meeting).
- (b) Each Scheme Shareholder is taken to have warranted to Zenitas and BidCo on the Implementation Date, and appointed and authorised Zenitas as its attorney and agent to warrant to BidCo on the Implementation Date, that:
 - (i) all their Zenitas Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme will, at the date of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Zenitas Shares to BidCo together with any rights and entitlements attaching to those shares. Zenitas undertakes that it will provide such warranty to BidCo as agent and attorney of each Scheme Shareholder; and
 - (ii) they have no existing right to be issued any Zenitas Shares or Zenitas Options or any other Zenitas securities. Zenitas undertakes that it will provide such warranty to BidCo as agent and attorney of each Scheme Shareholder.

8.3 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to BidCo will, at the time of transfer of them to BidCo vest in BidCo free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise and free from any restrictions on transfer of any kind.
- (b) Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 5, BidCo will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending registration by Zenitas of BidCo in the Share Register as the holder of the Scheme Shares.

8.4 Appointment of sole proxy

Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 5 and until Zenitas registers BidCo as the holder of all Scheme Shares in the Share Register, each Scheme Shareholder:

- (a) is deemed to have appointed BidCo as attorney and agent (and directed BidCo in each such capacity) to appoint any director, officer, secretary or agent nominated by BidCo as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution or document;
- (b) must not attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.4(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as BidCo reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 8.4(a), BidCo and any director, officer, secretary or agent nominated by BidCo under clause 8.4(a) may act in the best interests of BidCo as the intended registered holder of the Scheme Shares.

8.5 Authority given to Zenitas

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

- (a) on the Effective Date, irrevocably appoints Zenitas and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of enforcing the Deed Poll against BidCo, and Zenitas undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against BidCo on behalf of and as agent and attorney for each Scheme Shareholder; and
- (b) on the Implementation Date, irrevocably appoints Zenitas and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it, including (without limitation) executing the Scheme Transfer,

and Zenitas accepts each such appointment. Zenitas as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.5 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

8.6 **Binding effect of Scheme**

This Scheme binds Zenitas and all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on this Scheme, did not vote at the Scheme Meeting, or voted against this Scheme at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Zenitas.

9. **General**

9.1 **Stamp duty**

BidCo must:

- (a) pay all stamp duty and any related fines and penalties with respect to stamp duty in respect of the Scheme or the transactions effected by or made under the Scheme; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 9.1(a).

9.2 **Consent**

Each of the Scheme Shareholders consents to Zenitas doing all things necessary or incidental to, or to give effect to, the implementation of this Scheme, whether on behalf of the Scheme Shareholders, Zenitas or otherwise.

9.3 **Notices**

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Zenitas, 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 Zenitas's registered office or at the office of the Zenitas Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a Zenitas Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

9.4 **Governing law**

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

9.5 **Further action**

Zenitas must do all things and execute all documents necessary to give full effect to this Scheme and the transactions contemplated by it.

9.6 **No liability when acting in good faith**

Each Scheme Shareholder agrees that neither Zenitas or BidCo nor any director, officer, secretary or employee of any of those companies shall be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.



HERBERT
SMITH
FREEHILLS

Attachment 2

Deed poll



HERBERT
SMITH
FREEHILLS

Deed

Deed poll

Guardian Alphabet Pty Ltd

Guardian Alphabet HoldCo Pty Ltd



Deed poll

Date ►

This deed poll is made

By Guardian Alphabet HoldCo Pty Ltd
ACN 628 455 103 of c/- Liverpool Partners, Suite 3, Level 36, 60
Margaret Street, Sydney NSW 2000
(HoldCo)
and
Guardian Alphabet Pty Ltd
ACN 628 465 663 of c/- Liverpool Partners, Suite 3, Level 36, 60
Margaret Street, Sydney NSW 2000
(BidCo)

in favour of each person registered as a holder of fully paid ordinary shares in
Zenitas in the Share Register as at the Scheme Record Date (other
than the Excluded Shareholders).

Recitals

- 1 Zenitas and BidCo entered into the Implementation Deed.
- 2 In the Implementation Deed, BidCo agreed to make this deed poll.
- 3 HoldCo and BidCo are making this deed poll for the purpose of covenanting in favour of the Scheme Shareholders that BidCo will perform its obligations under the Implementation Deed and the Scheme.

This deed poll provides as follows:



1 Definitions and interpretation

1.1 Definitions

- (a) The meanings of the terms used in this deed poll are set out below.

Term	Meaning
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
First Court Date	the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Scheme Meeting is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application or appeal is heard.
Implementation Deed	the scheme implementation deed entered into between BidCo and Zenitas dated 31 August 2018.
Scheme	the scheme of arrangement under Part 5.1 of the Corporations Act between Zenitas and the Scheme Shareholders, substantially in the form set out in Attachment 1, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by BidCo and Zenitas.
Zenitas	Zenitas Healthcare Limited ABN 78 009 074 588.

- (b) Unless the context otherwise requires, terms defined in the Scheme have the same meaning when used in this deed poll.

1.2 Interpretation

Sections 1.2, 1.3 and 1.4 of the Scheme apply to the interpretation of this deed poll, except that references to 'this Scheme' are to be read as references to 'this deed poll'.

1.3 Nature of deed poll

BidCo acknowledges that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints Zenitas and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this deed poll against BidCo and HoldCo.



2 Conditions to obligations

2.1 Conditions

This deed poll and the obligations of BidCo and HoldCo under this deed poll are subject to the Scheme becoming Effective.

2.2 Termination

The obligations of BidCo and HoldCo to the Scheme Shareholders under this deed poll will automatically terminate and the terms of this deed poll will be of no force or effect if:

- (a) the Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme is not Effective on or before the End Date or any later date as the Court, with the consent of BidCo, HoldCo and Zenitas, may order,

unless BidCo and Zenitas otherwise agree in writing.

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 it:

- (a) HoldCo and BidCo are released from their obligations to further perform this deed poll; and
- (b) each Scheme Shareholder retains the rights they have against HoldCo and BidCo in respect of any breach of this deed poll which occurred before it was terminated.

3 Scheme obligations

Subject to clause 2, BidCo undertakes, and HoldCo undertakes to procure BidCo, in favour of each Scheme Shareholder to:

- (a) deposit, or procure the deposit of, in cleared funds, by no later than the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders under the Scheme into an Australian dollar denominated trust account operated by Zenitas as trustee for the Scheme Shareholders, except that any interest on the amounts deposited (less bank fees and other charges) will be credited to BidCo's account; and
- (b) undertake all other actions, and give each acknowledgement, representation and warranty (if any), attributed to it under the Scheme,

subject to and in accordance with the terms of the Scheme.



4 Warranties

Each of HoldCo and BidCo represents and warrants in favour of each Scheme Shareholder that:

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

5 Continuing obligations

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

- (a) BidCo has fully performed its obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.

6 Notices

6.1 Form of Notice

A notice or other communication in respect of this deed poll (**Notice**) must be:

- (a) in writing and in English and signed by or on behalf of the sending party; and
- (b) addressed to:
 - (1) BidCo or Holdco (as applicable) in accordance with the details set out below (or any alternative details nominated by BidCo or HoldCo by Notice).

Attention Jonathan Lim & Andrew Bullock

Address c/- Liverpool Partners, Suite 3, Level 36, 60 Margaret Street, Sydney NSW 2000

Email address jonathan.lim@liverpoolpartners.com

6.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By email to the nominated email address	When the email (including any attachment) comes to the attention of the recipient party or a person acting on its behalf.

6.3 Notice must not be given by electronic communication

A Notice must not be given by electronic means of communication (other than email as permitted in clause 6.2).

7 General

7.1 Stamp duty

BidCo:

- (a) will pay all stamp duty and any related fines and penalties in respect of the Scheme and this deed poll, the performance of this deed poll and each transaction effected by or made under the Scheme and this deed poll; and
- (b) will indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 7.1(a).

7.2 Governing law and jurisdiction

- (a) This deed poll is governed by the law in force in Victoria, Australia.
- (b) Each of HoldCo and BidCo irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed poll.



7.3 Waiver

- (a) HoldCo and BidCo may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) No Scheme Shareholder may rely on words or conduct of HoldCo or BidCo as a waiver of any right unless the waiver is in writing and signed by HoldCo or BidCo, as appropriate.
- (c) The meanings of the terms used in this clause 7.3 are set out below.

Term	Meaning
conduct	includes delay in the exercise of a right.
right	any right arising under or in connection with this deed poll and includes the right to rely on this clause.
waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

7.4 Variation

A provision of this deed poll may not be varied unless:

- (a) if before the First Court Date, the variation is agreed to by Zenitas; or
- (b) if on or after the First Court Date, the variation is agreed to by Zenitas and the Court indicates that the variation would not of itself preclude approval of the Scheme,

in which event HoldCo and BidCo will enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.

7.5 Cumulative rights

The rights, powers and remedies of HoldCo, BidCo and the Scheme Shareholders under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

7.6 Assignment

- (a) The rights created by this deed poll are personal to HoldCo, BidCo and each Scheme Shareholder and must not be dealt with at law or in equity without the prior written consent of HoldCo and BidCo.
- (b) Any purported dealing in contravention of clause 7.6(a) is invalid.



7.7 Further action

HoldCo and BidCo must, at their own expense, do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.



Signing page

Executed as a deed poll

BidCo

Signed sealed and delivered by
Guardian Alphabet Pty Ltd
by

sign here ► _____
Company Secretary/Director

sign here ► _____
Director

print name _____

print name _____

HoldCo

Signed sealed and delivered by
Guardian Alphabet HoldCo Pty Ltd
by

sign here ► _____
Company Secretary/Director

sign here ► _____
Director

print name _____

print name _____



Attachment 1

Scheme
