

Annexure B
Scheme Implementation Deed



Scheme implementation deed

Advanced Share Registry Limited ACN 127 175 946
Automic Enterprise Pty Ltd ACN 658 427 671

SYDNEY | MELBOURNE | PERTH

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Date: 7 September 2023

Parties

- 1 **Advanced Share Registry Limited** ACN 127 175 946 of 110 Stirling Hwy, Nedlands WA 6009 (**Target**); and
- 2 **Automic Enterprise Pty Ltd** ACN 658 427 671 of Level 5, Deutsche Bank Tower, 126 Phillip Street, Sydney NSW 2000 (**Bidder**).

The parties agree

Background

- A The parties have agreed that Bidder will acquire or will procure that Bidder Sub acquires (as the case may be) all of the Scheme Shares by way of a scheme of arrangement pursuant to Part 5.1 of the Corporations Act between Target and the Target Shareholders.
 - B The parties have agreed to implement the Scheme on the terms of this deed.
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1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary;
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and
- (c) which is defined in the GST Law, but is not defined in the Dictionary or the Corporations Act, has the meaning given to it in the GST Law.

1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this deed.

2 Agreement to propose Scheme

2.1 Proposal of Scheme

- (a) Target will propose and implement the Scheme on and subject to the terms and conditions of this deed.
- (b) Bidder agrees to assist Target to propose the Scheme on and subject to the terms and conditions of this deed.
- (c) The parties agree to implement the Scheme on and subject to the terms of the deed.

- (d) Bidder may nominate any wholly owned Subsidiary of Bidder (**Bidder Sub**) to acquire the Scheme Shares under the Scheme by giving written notice to Target on before the date that is 5 Business Days before the First Court Date (**Sub Notification**).
- (e) If Bidder nominates a Bidder Sub to acquire the Scheme Shares under the Scheme, then:
 - (i) references in this deed to Bidder acquiring the Scheme Shares under the Scheme, or taking any other action under or in respect of the Scheme, are to be read as references to the Bidder Sub doing so;
 - (ii) Bidder must procure that Bidder Sub complies with its obligations under this deed and the Scheme; and
 - (iii) despite paragraphs 2.1(e)(i) and 2.1(e)(ii), Bidder will continue to be bound by all of the obligations of Bidder under this deed and will not be released from any obligations or liabilities under this deed following the Sub Notification. However, Target agrees that Bidder will not be in breach of, and will have no liability under, this deed for failing to discharge an obligation of Bidder under this deed if the Bidder Sub fully discharges that obligation.

2.2 Timetable

The parties acknowledge the Timetable is an indicative timetable and will consult with each other in good faith regularly in relation to:

- (a) performing their respective obligations within the framework established by the Timetable; and
- (b) any need to modify the Timetable.

3 Conditions precedent and pre-implementation steps

3.1 Conditions to Scheme

Subject to this clause 3, the Scheme will not become Effective, and the obligations of Bidder in relation to the implementation of the Scheme (including 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) **No restraints:** as at 8.00am on the Second Court Date, there is:
 - (i) no temporary or final order, decision or decree issued, or other preliminary or final decision by any court of competent jurisdiction or Government Agency, nor is there in effect any other legal restraint or prohibition; and
 - (ii) no action or investigation announced or commenced by any Government Agency,

which restrains, prohibits, or otherwise materially adversely impacts upon (or could be reasonably expected to restrain, prohibit or otherwise materially adversely impact upon) the completion of the Scheme;

- (b) **Target Shareholder approval:** the Scheme is approved by Target Shareholders at the Scheme Meeting by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act;
- (c) **Independent Expert:** the Independent Expert issues an Independent Expert's Report which concludes that the Scheme is in the best interests of Target Shareholders before the time when the Scheme Booklet is registered with ASIC and the Independent Expert does not publicly withdraw, qualify or change that opinion at any time prior to 8.00am on the Second Court Date;
- (d) **Court approval:** the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act;
- (e) **No Target Prescribed Occurrence:** no Target Prescribed Occurrence occurs between (and including) the date of this deed and 8.00am on the Second Court Date;
- (f) **No Target Regulated Event:** no Target Regulated Event occurs between (and including) the date of this deed and 8.00am on the Second Court Date;
- (g) **No Material Adverse Change:** no Material Adverse Change occurs between the date of this deed and 8.00am on the Second Court Date;
- (h) **Target Warranties:** the Target Warranties being true and correct in all material respects on the date of this deed and 8.00am on the Second Court Date; and
- (i) **No change of Target Board recommendation:** between and including the date of this deed and the date of the Scheme Meeting, none of the Target directors change, qualify or withdraw their Voting Intention or their Recommendation as provided by clause 6.

3.2 Benefit and waiver of conditions precedent

- (a) The Condition in clause 3.1(c) is for the benefit of Target and any breach or non-satisfaction of it may only be waived by Target in writing.
- (b) The Conditions in clauses 3.1(e), 3.1(f), 3.1(g), 3.1(h) and 3.1(i) are for the sole benefit of Bidder and any breach or non-satisfaction of any of them may only be waived by Bidder in writing.
- (c) A party entitled to waive the breach or non-satisfaction of a Condition pursuant to this clause 3.2 (either individually or jointly) may do so in its absolute discretion.
- (d) Any waiver of the breach or non-satisfaction of a Condition by a party who is entitled to do so pursuant to this clause 3.2 is only effective if such waiver is given on or prior to 8.00am on the Second Court Date.
- (e) The Condition in clause 3.1(a) is for the benefit of both Target and Bidder and may only be waived by written agreement between them.
- (f) The Conditions in clauses 3.1(b) and 3.1(d) cannot be waived.
- (g) If a party waives the breach or non-satisfaction of any Condition:
 - (i) subject to clause 3.2(g)(ii), that waiver precludes that party from suing the other for any breach of this deed arising as a result of the breach or non-

fulfillment of that Condition or arising from the same event which gave rise to the breach or non-fulfilment of that Condition; but

- (ii) if the waiver of the Condition is itself conditional and the other party:
 - (A) accepts the condition on the waiver, the terms of that condition on waiver apply notwithstanding any inconsistency with clause 3.2(g)(i); or
 - (B) does not accept the condition on the waiver, the Condition has not been waived.
- (h) Waiver of a breach or non-fulfilment in respect of one Condition does not constitute:
 - (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or
 - (ii) a waiver of breach or non-fulfilment of that Condition arising from any other event.

3.3 Reasonable endeavours

- (a) Target must use its reasonable endeavours to satisfy or procure that the Conditions in clauses 3.1(b), 3.1(c), 3.1(d), 3.1(e), 3.1(f), 3.1(h) and 3.1(i) are satisfied as soon as possible after the date of this deed.
- (b) Bidder must use reasonable endeavours to procure that the Condition in clause 3.1(d) is satisfied as soon as possible after the date of this deed.
- (c) The parties will use their respective reasonable endeavours to ensure that there is no occurrence within their control (as the context requires) that would prevent the Conditions being satisfied.
- (d) Before providing any document or other information to the other Scheme Party (in this clause 3.3(d), the **Recipient**) pursuant to clauses 7.3, a Scheme Party (in this clause 3.3(d), the **Discloser**) may redact any part of that document, or not disclose any part of that information, which contains or is confidential, Non-public Information (**Sensitive Commercial Information**) if the Discloser reasonably believes that:
 - (i) the Sensitive Commercial Information is of a commercially sensitive nature; or
 - (ii) the disclosure of the Sensitive Commercial Information to the Recipient would be damaging to the commercial or legal interests of the Discloser or any of its related bodies corporate,

and may provide the document or disclose the information to the Recipient with any Sensitive Commercial Information redacted or excluded, provided that, where Sensitive Commercial Information is so redacted or excluded, the Discloser must provide the Recipient with as much detail about the relevant communication, submission or correspondence (and any other relevant circumstances) as is reasonably possible without disclosing the Sensitive Commercial Information, and provide to the Recipient's external legal counsel a complete and unredacted version of the document or information, on the basis that the Recipient's external

legal counsel will not share any information that is marked as Sensitive Commercial Information.

3.4 Notifications

Each of the Scheme Parties must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) promptly notify the other in writing if it becomes aware that any Condition has been satisfied; and
- (c) promptly notify the other in writing if it becomes aware that any Condition is or has become incapable of being satisfied (having regard to the respective obligations of each party under clause 3.3).

3.5 Certificate

On the Second Court Date, Target and Bidder will provide a joint certificate to the Court confirming whether or not the Conditions (other than the Condition set out in clause 3.1(d)) have been satisfied or waived in accordance with the terms of this deed.

3.6 Scheme voted down because of Headcount Test

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

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

3.7 Conditions not capable of being satisfied

- (a) If:
 - (i) there is a breach or non-fulfilment of a condition precedent that has not been waived in accordance with clause 3.2;
 - (ii) a condition precedent becomes incapable of satisfaction and the breach or non-fulfilment of that condition precedent that has occurred, or would otherwise occur, has not been waived in accordance with clause 3.2; or
 - (iii) the Scheme has not become Effective by the End Date,

then either party may give the other written notice (**Consultation Notice**) within 5 Business Days after the relevant event (**Termination Event**). Bidder and Target

must then consult in good faith to determine whether they can reach agreement with respect to:

- (iv) extending the time for satisfaction of the relevant condition precedent or the End Date (as the case may be), or both;
 - (v) changing the date on which an application is made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application to a date agreed between Bidder and Target (as applicable); or
 - (vi) the Transaction proceeding by way of alternative means or methods.
- (b) If Bidder and Target are unable to reach such agreement within 10 Business Days after a Consultation Notice is given, or if a Consultation Notice is not given within 10 Business Days after a Termination Event, either Bidder or Target (in this clause 3.7, the **Terminating Party**) may terminate this deed by giving written notice (**Termination Notice**) to the other, provided that:
- (i) if the basis upon which the Terminating Party is seeking to terminate this deed is the occurrence of an event described in clause 3.7(a)(i) or 3.7(a)(ii), the Terminating Party has the benefit of the relevant condition precedent or the condition precedent is referred to in clause 3.2(e); and
 - (ii) there has been no failure by the Terminating Party to comply with its obligations under this deed, where that failure directly relates and materially contributed to the occurrence of the Termination Event.
- (c) Where a Termination Notice is given under this clause 3.7, this deed will terminate with immediate effect and clause 13.4 will apply.

3.8 Interpretation

For the purposes of this clause 3, a Condition will be incapable of satisfaction, or incapable of being satisfied if there is an act, failure to act or occurrence that will prevent the Condition being satisfied by the End Date (and the breach or non-satisfaction that would otherwise have occurred has not already been waived in accordance with this deed).

4 Scheme and Scheme Consideration

4.1 Scheme

- (a) Target must propose the Scheme to the Target Shareholders on and subject to the terms of this deed and use all reasonable endeavours to do so substantially in accordance with the Timetable.
- (b) Target must not consent to any modification of, or amendment to, the Scheme, or to the making or imposition by a court of any condition in respect of the Scheme without the prior written consent of Bidder (which is not to be unreasonably withheld or delayed) or the consent of Bidder's legal counsel if such a request is made at a Court hearing.
- (c) The parties acknowledge and agree that, subject to the Scheme becoming Effective, on the Implementation Date the general effect of the Scheme will be that all of the Scheme Shares will be transferred to Bidder and the Scheme

Shareholders will be entitled to receive, for each Scheme Share held at the Scheme Record Date, the Scheme Consideration.

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) Bidder undertakes and warrants to Target that, if the Scheme becomes Effective, in consideration for the transfer to Bidder of the Scheme Shares held by each Scheme Shareholder under the terms of the Scheme, Bidder will accept that transfer and will provide to each Scheme Shareholder the Scheme Consideration for each Scheme Share held by them in accordance with the terms of the Scheme.

4.3 Fractional entitlements

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 up to the nearest whole cent.

4.4 Deed Poll

Bidder covenants in favour of Target and each of the Scheme Shareholders to execute and deliver the Deed Poll prior to the First Court Date.

5 Implementation of the Scheme

5.1 Target's obligations

Target must, acting at all times in good faith, take all steps reasonably necessary to propose and implement the Scheme as soon as reasonably practicable and, without limiting the foregoing, use reasonable endeavours to ensure that each step in the Timetable is met by the relevant date set out beside that step, including taking each of the following steps:

- (a) **director's voting:** procure that each Target Director votes any Target Shares in which that Target Director has a Relevant Interest in favour of the Scheme (subject to no Superior Proposal emerging and the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of Target Shareholders and not changing that conclusion);
- (b) **promote the Transaction:** participate in efforts reasonably requested by Bidder to promote the merits of the Transaction, including meeting with key Target Shareholders at the reasonable request of Bidder and providing Bidder with such information and assistance that Bidder reasonably requests to enable it to promote the merits of the Transaction;
- (c) **Scheme Booklet:** prepare and despatch the Scheme Booklet in compliance with all applicable laws (in particular with the Corporations Act, RG 60 and the Listing Rules);
- (d) **drafts of Scheme Booklet:** make available to Bidder drafts of the Scheme Booklet including:

- (i) providing to Bidder drafts of the Scheme Booklet and the Independent Expert's Report, in a timely manner, for the purpose of enabling Bidder to review and comment on those draft documents. In relation to the Independent Expert's Report, Bidder's review is to be limited to a factual accuracy review and Target makes no representation as to the extent to which the Independent Expert will receive or consider those comments;
 - (ii) taking into account in good faith all comments made by Bidder when producing a revised draft of the Scheme Booklet;
 - (iii) providing Bidder with a revised draft of the Scheme Booklet within a reasonable time before the Scheme Booklet is finalised, to enable Bidder to review that draft before the date of its submission to ASIC for approval pursuant to section 411(2) of the Corporations Act; and
 - (iv) obtaining written consent from Bidder for the form and content in which the Bidder Information appears in the Scheme Booklet;
- (e) **Independent Expert's Report:** as soon as reasonably practicable after the date of this deed (if the Independent Expert has not been appointed prior to the date of this deed) appoint an Independent Expert to provide the Independent Expert's Report (and request that the Independent Expert opines on whether or not the Transaction is in the best interests of Target Shareholders), and provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report (including any updates to such report);
- (f) **liaison with ASIC:** as soon as reasonably practicable after the date of this deed:
- (i) provide an advanced draft of the Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
 - (ii) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet and keep Bidder reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet and use reasonable endeavours, in consultation with Bidder, to resolve any such matters;
- (g) **approval of Scheme Booklet:** as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Target Board, or of a committee of the Target Board appointed for the purpose, is held to consider approving the Scheme Booklet for despatch to the Target Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (h) **section 411(17)(b) statements:** apply to ASIC for the production of:
- (i) an indication of intent letter stating that ASIC does not intend to appear before the Court on the First Court Date; and
 - (ii) a statement under paragraph 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (i) **Court documents:** prepare the Court documents, provide a draft of those documents to Bidder in a timely manner and, acting reasonably and in good faith, take into account all reasonable comments from Bidder and its representatives on those drafts, provided that such comments are provided in a timely manner;

- (j) **Bidder representation at Court Hearings:** allow, and not oppose, any application by Bidder for leave of the Court to be represented by counsel at a Court Hearing;
- (k) **first Court hearing:** lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that, the approval in clause 5.1(g) has been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting, and consult with Bidder as to the content of all relevant originating process, affidavits, submissions and draft minutes of Court orders. Such consultation must include providing Bidder with a reasonable opportunity to review and comment on the relevant Court documents before they are lodged, and Target must consider in good faith any comments provided by or on behalf of Bidder provided the comments are given in a timely manner;
- (l) **registration of Scheme Booklet:** if the Court directs Target to convene the Scheme Meeting, as soon as possible after such orders are made, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (m) **despatch Scheme Booklet:** as soon as reasonably practicable following registration of the Scheme Booklet by ASIC, despatch the Scheme Booklet to Target Shareholders following Bidder's written consent to the inclusion of the Bidder Information in the form and context in which the Bidder Information appears in such version of the Scheme Booklet;
- (n) **update Scheme Booklet:** until the date of the Scheme Meeting, promptly update the Scheme Booklet with any information that arises after the Scheme Booklet has been despatched 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);
- (o) **supplementary disclosure:** if, after despatch of the Scheme Booklet, Target becomes aware:
 - (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
 - (ii) of information that is required to be disclosed to Target Shareholders under any applicable law or RG 60 but was not included in the Scheme Booklet,

promptly consult with Bidder in good faith as to the need for, and form of, any supplementary disclosure to Target Shareholders, and make any such disclosure that it considers reasonably necessary in the circumstances, having regard to applicable laws and RG 60. Such consultation with Bidder includes, to the extent reasonably practicable, providing Bidder with a reasonable opportunity to review and comment on such disclosure before it is made and must consider in good faith any comments provided by or on behalf of Bidder, provided the comments are given in a timely manner. To the extent that the supplementary disclosure relates to (or constitutes) Bidder Information, it may only be made with Bidder's prior written consent (not to be unreasonably withheld or delayed);

- (p) **convening Scheme Meeting:** convene the Scheme Meeting to seek Target Shareholders' agreement to the scheme in accordance with the orders made by the Court pursuant to section 411(1) of the Corporations Act;

- (q) **Court approval application if parties agree that conditions are capable of being satisfied:** if the resolution submitted to the Scheme Meeting is passed by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act (or, where clause 3.6 applies, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act) and, if necessary, the parties agree on the Business Day immediately following the Scheme Meeting that it can be reasonably expected that all of the Conditions will be satisfied or waived prior to 8.00am on the proposed Second Court Date, apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme;
- (r) **Second Court Hearing:** subject to the Conditions Precedent (other than the Condition Precedent in clause 3.1(d)) being satisfied or waived in accordance with clause 3, apply to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme and consult with Bidder as to the content of all relevant affidavits, submissions and draft minutes of Court orders. Such consultation must include providing Bidder with a reasonable opportunity to review and comment on the relevant Court documents before they are lodged, and Target must consider in good faith any comments provided by or on behalf of Bidder, provided the comments are given in a timely manner;
- (s) **lodge copy of Court order:** lodge with ASIC an office copy of the Court order in accordance with section 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 Bidder);
- (t) **appeal process:** if the Court refuses to make any orders directing Target to convene the Scheme Meeting or approving the Scheme, Target and Bidder must:
- (i) consult with each other in good faith as to whether to appeal the Court's decision; and
 - (ii) appeal the court decision unless the parties agree otherwise or an independent senior counsel opined that, in his or her view an appeal would have no reasonable prospect of success;
- (u) **implementation:** if the Scheme becomes Effective:
- (i) apply to the ASX to suspend trading in Target Shares from the close of trading on the Effective Date;
 - (ii) finalise and close the Target Share Register as at the Scheme Record Date to determine the identity of the Scheme Shareholders and their entitlements to the Scheme Consideration in accordance with the Scheme and the Deed Poll;
 - (iii) subject to Bidder having paid the Scheme Consideration, execute, on behalf of Scheme Shareholders, proper instruments of transfer of and effect and register the transfer of the Scheme Shares to Bidder on the Implementation Date; and
 - (iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (v) **Bidder Information:** without the prior written consent of Bidder, not use the Bidder Information for any purpose other than those expressly contemplated by this deed or the Scheme;

- (w) **information:** provide Bidder all necessary information, and procure that the Share Registry provides all information reasonably requested, in each case in a form reasonably requested by Bidder, about the Scheme, the Scheme Shareholders and Target Shareholders to Bidder, and its Authorised Persons, which Bidder reasonably requires in order to:
 - (i) understand the legal and beneficial ownership of Target Shares (including the results of directions by Target to Target Shareholders under Part 6C.2 of the Corporations Act), proxy appointments, directions received by Target prior to the Scheme Meeting and soliciting votes in favour of the Scheme; and
 - (ii) facilitate the payment by, or on behalf of, Bidder of the Scheme Consideration;
- (x) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of section 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (y) **listing:** subject to clause 5.1(aa), not do anything to cause the Target Shares to cease being quoted on ASX or to become permanently suspended from quotation prior to implementation of the Transaction unless Bidder has agreed in writing;
- (z) **compliance with laws:** do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws, regulations and policy; and
- (aa) **suspension of trading:** apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date.
- (bb) **financing:** subject to confidentiality arrangements acceptable to Target (acting reasonably), provide, and must procure that each member of the Target Group provides, prompt assistance and cooperation in connection with any finance agreements and arrangements to which Bidder is party relating to the availability of funds for the purposes of paying the Scheme Consideration (the **Financing**) as may be reasonably requested by Bidder, including using best endeavours to:
 - (i) provide any information and access to information to the extent available to the Target Group;
 - (ii) provide any documentation and other information with respect to the Target Group required by financiers including under applicable "know your customer" or "client vetting" procedures and anti-money laundering rules, regulations, sanctions, regulations and requirements, as required or is otherwise necessary to satisfy the conditions of the Financing;
 - (iii) make appropriate officers and employees available at mutually convenient times for participation in a reasonable number of meetings, due diligence sessions, presentations and sessions with prospective financing sources;
 - (iv) provide Bidder and/or its financiers with such financial and operating data and other information with respect to the Target Group as is reasonably requested by Bidder and/or the financiers in respect of the Financing; and/or
 - (v) satisfying any conditions and/or obligations of any financing and/or any debt documents entered into or to be entered into by Bidder in connection with the Transaction, to the extent it is within its reasonable control,

provided that no member of the Target Group will be required to incur any liability in connection with the Financing (other than remuneration of its employees) prior to implementation of the Scheme that is not indemnified or otherwise reimbursed by Bidder.

5.2 Bidder's obligations

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

- (a) **Bidder Information:** as soon as reasonably practicable after the date of this deed, prepare and promptly provide to Target all information regarding Bidder, the Scheme Consideration, and Bidder's intentions with respect to the assets, business and employees of Target if the Scheme is approved and implemented that is required by all applicable laws (in particular with the Corporations Act, RG 60 and the Listing Rules) for inclusion in the Scheme Booklet;
- (b) **drafts of Scheme Booklet:** review the drafts of the Scheme Booklet prepared by Target and provide comments promptly on those drafts in good faith;
- (c) **confirmation of Bidder Information:** subject to clause 5.5, promptly after Target requests that it does so, confirm in writing to Target that it consents to the inclusion of the Bidder Information in the Scheme Booklet (and Target must not lodge the Scheme Booklet with ASIC until such approval is obtained from Bidder), in the form and context in which the Bidder Information appears;
- (d) **Independent Expert:** subject to the Independent Expert agreeing to reasonable confidentiality restrictions, promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report (including any updates to such report);
- (e) **due diligence and verification:** undertake appropriate due diligence and verification processes in relation to Bidder Information;
- (f) **assistance with Scheme Booklet and Court documents:** promptly provide any assistance or information reasonably requested by Target or its Advisers in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to Target Shareholders) and any documents required to be filed with the Court in respect of the Scheme;
- (g) **representation:** procure that, if requested by Target, Bidder is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act;
- (h) **Deed Poll:** by no later than the Business Day prior to the First Court Date, execute and deliver to Target the Deed Poll and, if the Scheme becomes Effective, fully comply with the Deed Poll;
- (i) **accuracy of the Bidder Information:** confirm in writing to Target the accuracy of the Bidder Information in the Scheme Booklet, including that it does not contain any material statement that is false or misleading in a material respect, whether because of any material omission from that statement or otherwise;
- (j) **share transfer:** if the Scheme becomes Effective:

- (i) accept a transfer of the Scheme Shares as contemplated by clause 4.2(b); and
- (ii) execute instruments of transfer in respect of the Scheme Shares;
- (k) **Scheme Consideration:** if the Scheme becomes Effective, procure the payment of the Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Scheme and the Deed Poll;
- (l) **update Bidder Information:** until the date of the Scheme Meeting, promptly provide to Target any information that arises after the Scheme Booklet has been despatched that is necessary to ensure the Bidder 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;
- (m) **promote merits of Transaction:** participate in efforts reasonably requested by Target to promote the merits of the Transaction and the Scheme Consideration, including meeting with key Target Shareholders at the reasonable request of Target;
- (n) **compliance with laws:** do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations; and
- (o) **other things necessary:** promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme in accordance with all applicable laws and regulations.

5.3 Court process

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

5.4 Responsibility statements

The Scheme Booklet will include a responsibility statement, in a form to be agreed by the Scheme Parties, which will contain words to the following effect:

- (a) Bidder will be responsible for the Bidder Information contained in the Scheme Booklet and, to the maximum extent possible at law, Target will not be responsible for any Bidder Information and will disclaim any liability for Bidder Information appearing in the Scheme Booklet; and
- (b) Target will be responsible for the Target Information contained in the Scheme Booklet and, to the maximum extent possible at law, Bidder will not be responsible for the Target Information appearing in the Scheme Booklet and will disclaim any liability for the Target Information appearing in the Scheme Booklet.

5.5 Disagreement on content

If Bidder and Target disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If after 2 (two) Business Days complete agreement is not reached after reasonable consultation, then:

- (a) where the determination relates to Bidder Information, Bidder will make the final determination, acting reasonably, as to the form and content of the Bidder Information; and
- (b) in any other case, Target, acting reasonably, will make the final determination as to the form and content of the Scheme Booklet.

6 Board recommendation

6.1 Recommendation

Target must procure that subject to clause 6.2, each Target Director will recommend that Target Shareholders vote in favour of the Scheme at the Scheme Meeting, qualified only by the words to the effect of *"in the absence of a superior proposal and subject to the independent expert concluding that the Scheme is in the best interests of Target shareholders"*.

6.2 Confirmation

Target represents and warrants to Bidder that, as at the date of this deed, each Target Director has confirmed that:

- (a) his or her recommendation in respect of the Scheme is that Target Shareholders vote in favour of the Scheme (**Recommendation**); and
- (b) he or she intends to vote, or cause to be voted, all Target Shares that he or she holds or controls in favour of the Scheme (**Voting Intention**),

in each case subject to:

- (c) no Superior Proposal emerging; and
- (d) the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of Target Shareholders.

6.3 Withdrawal or modification of Recommendation and Voting Intention

Target must procure that the Target Board collectively, and the members of the Target Board individually do not change, withdraw, modify its, his or her Recommendation or Voting Intention unless:

- (a) Target receives a Competing Proposal and the relevant director of Target determines that the Competing Proposal constitutes a Superior Proposal; or
- (b) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of Target Shareholders, or the Independent Expert concludes in the Independent Expert's Report that the Scheme is in the best interests of Target Shareholders but then adversely changes or publicly withdraws this conclusion prior to 8.00am on the Second Court Date.

6.4 Exclusion from Recommendation

The obligation of Target under this clause 6 to ensure that each Target Director provides and maintains the Recommendation is qualified to the extent that:

- (a) any Target Director considers, after first obtaining written advice from independent senior counsel of the Western Australia bar, that he or she should not provide or continue to maintain any recommendation (positive or adverse) because that Target Director has an interest in the Scheme that is so materially different from other Target Shareholders which would properly preclude or render it inappropriate for him or her to provide any such recommendation; or
- (b) if a Court, ASIC or the Takeovers Panel requires that Target Director to change, withdraw, qualify or modify, or abstain from making, his or her Recommendation.

6.5 Notification

Subject to the Listing Rules and all applicable laws and regulations, if any fact, matter or circumstance arises (including receipt or the expected receipt of an unfavourable report) from the Independent Expert, (including any supplementary or replacement report) which may lead to a Target Director changing, withdrawing or modifying his or her Recommendation or Voting Intentions, Target must immediately notify Bidder of this fact.

6.6 Further assurances

Target must ensure that each Director Recommendation and Voting Intention is included in each ASX announcement referencing the Scheme made by Target from the date of this deed until the date of the Scheme Meeting.

7 Conduct of business

7.1 Conduct of Target business

Subject to clause 7.2, from the date of this deed up to and including the Implementation Date, Target must conduct its business, and must cause each of its Subsidiaries to conduct their businesses, in the ordinary and usual course of business and:

- (a) operate those businesses in the ordinary and usual course and consistent with past practice, in the same manner as conducted in the 12 months prior to the date of this deed;
- (b) not enter into any line of business or other activity, in each case which is material, in which the Target Group is not engaged as of the date of this deed or materially, to the extent within Target Group's control, alter the scale of the business or other activity of the Target Group;
- (c) in accordance with all applicable Authorisations, laws and regulations (including the Listing Rules);
- (d) use best endeavours to preserve their relationships with customers, suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all key employees;
- (e) use best endeavours to ensure that all assets are maintained in the normal course consistent with past practice;

- (f) keep Bidder reasonably informed of any material developments concerning the Target Group;
- (g) use best endeavours to comply in all material respects with all material contracts to which a member of the Target Group is a party, and with laws, authorisations and licenses applicable to each member of the Target Group;
- (h) not take or fail to take any action that would, or would be likely to result in the variation, termination, suspension, revocation or non-renewal of any Authorisation which is material to the operation of the Target Group;
- (i) ensure no Target Regulated Event or Target Prescribed Occurrence occurs;
- (j) not take or fail to take any action that would, or would be likely to, prevent a Condition being satisfied or result in a Condition not being satisfied;
- (k) maintain (and where necessary, use commercially reasonable efforts to renew) each of its material authorisations, accreditations and licenses applicable to each member of the Target Group and promptly notify the Bidder if any renewal proposal is not accepted by the relevant Government Agency;
- (l) maintain (and where necessary, use commercially reasonable efforts to renew on substantially the same or similar terms to the extent reasonably available) existing policies of insurance as disclosed in the Target Due Diligence Materials; and
- (m) ensure that no member of the Target Group settles, compromises or otherwise deals with any Tax or Duty audits, reviews or investigations or Tax Demands without the prior written consent of Bidder (not to be unreasonably withheld or delayed).

7.2 Target permitted activities

The obligations of Target under clause 7.1 do not apply in respect of any matter:

- (a) Fairly Disclosed in an announcement by Target to ASX within 2 years prior to the date of this deed, or Fairly Disclosed in a document lodged with ASIC by or on behalf of Target within 2 years prior to the date of this deed;
- (b) required to be done or procured by Target pursuant to this deed or the Scheme;
- (c) to the extent it is Fairly Disclosed in the Target Disclosure Materials;
- (d) required by law or by an order of a court or Government Agency; or
- (e) the undertaking of which Bidder has previously approved in writing.

7.3 Access

- (a) Between (and including) the date of this deed and the Implementation Date, Target must, subject to the Protocols and competition law and the Target being provided with at least 2 Business Days' Notice:
 - (i) procure that Bidder is provided with reasonable access to information, documents, records, premises and senior executives of any member of the Target Group, reasonably requested by Bidder for the purposes of:
 - (A) implementation of the Transaction;

- (B) obtaining an understanding, or furthering its understanding, of the Target Group or its business, financial position (including trading performance, cash flow and working capital position of the Target Group), in each case consistent with the existing level of detail provided in Target's monthly management reports, in order to allow Bidder to develop, finalise and implement its plans for the Target Group following implementation of the Transaction;
- (C) finalisation of Bidder's structuring arrangements for the Transaction;
- (D) keeping Bidder informed of material developments relating to the Target Group (including any material correspondence received from or provided to a Government Agency); or
- (E) any other purpose agreed between Bidder and Target (each acting reasonably),

provided that compliance with any such request would not, in the reasonable opinion of Target (acting in good faith), result in undue disruption to the Target Group's business; and

- (ii) procure that Bidder is provided with regular reports on the financial affairs of the Target Group in the form which is ordinarily used by Target, including the Target Group's monthly management accounts and an update at the end of each calendar month until the Implementation Date on the number of new customers acquired during that month and existing customers who have given notice of termination of their contract with the Target Group or whom have indicated that they do not intend to renew such contract when the current term expires, in each case during that month in a timely manner.
- (b) During the period from the date of this deed up to and including the Implementation Date, Target must promptly notify Bidder in writing of any of the following matter of which Target becomes aware, and such written notification must include a reasonable summary of the relevant matter to the extent the details are known to Target:
- (i) events, facts, matters or circumstances which:
 - (A) would or would be likely to constitute a Material Adverse Change; or
 - (B) would or would be likely to have a material adverse effect on: (x) the financial or operational performance, or the reputation, of the Target Group; or (y) the Target Group's relationships with Government Agencies or key customers, suppliers, licensors, licensees, or other persons with whom the Target Group has material business dealings;
 - (ii) changes to the composition of Target's senior management team;
 - (iii) any breach of, or default under, any law, contract, arrangement, permit, licence or authorisation that is binding upon any member of the Target Group and which is reasonably likely to result in a material liability on the part of any member of the Target Group; and
 - (iv) any breach of this deed by Target (including any Target Warranty being or becoming untrue or incorrect).

- (c) Target agrees to consult with Bidder in respect of any lease renegotiations or renewals including promptly providing Bidder with copies of all material correspondence reasonably requested by Bidder and take into consideration Bidder's reasonable comments on the proposed lease terms.
- (d) Target will not be required to provide any access or take any action contemplated by this clause 7.3 to the extent that to do so would breach any applicable law or regulation or any obligations of confidentiality owed to third parties, or result in the loss of legal privilege.
- (e) Where Target, acting reasonably, considers that the provision of certain information pursuant to this clause 7.3 will result in the disclosure of competitively sensitive information, Target will notify Bidder and act in accordance with the Protocols. Target and Bidder acknowledge that acting in accordance with the Protocols may include presenting any information required to be provided under this clause 7.3 on an anonymised or aggregated basis or sharing such information through clean team personnel or on an external 'counsel-to counsel' basis only.
- (f) Target must promptly provide Bidder with details of any facts, matters or circumstances that are provided to the Target Board which are reasonably likely to have a material adverse impact on the Target Group following implementation of the Transaction.

7.4 Implementation Planning Committee

- (a) As soon as reasonably practicable after the date of this deed, the Scheme Parties must establish an Implementation Planning Committee as set out in this clause 7.4.
- (b) Without limiting clause 7.3, between (and including) the date of this deed and the Implementation Date, and subject to the Protocols and competition law, the Implementation Planning Committee will act as a forum for consultation and planning by the Scheme Parties to implement the Scheme. For the avoidance of doubt, the Implementation Planning Committee will be a consultative body only that will make recommendations to the Scheme Parties and to the extent any document or other information is to be provided to the Implementation Planning Committee, the arrangements set out in clause 3.3(d) with respect to Sensitive Commercial Information shall apply.
- (c) The Scheme Parties will use reasonable endeavours to procure that the Implementation Planning Committee meets fortnightly, commencing on the one-month anniversary of the date of this deed.
- (d) Subject to this deed, nothing in this clause 7.4:
 - (i) in any way, or to any extent, limits Bidder's conduct of the business of the Target Group following the Implementation Date;
 - (ii) requires either Scheme Party to act at the direction of the other or imposes any obligation on a Scheme Party to conduct its business in accordance with any direction or representation made by the other party, noting that the business of each party will continue to operate independently from the other until the Implementation Date; or
 - (iii) requires any party to act or participate in any forum to the extent that doing so is contrary to law or the requirements of any Government Agency.

- (e) The Scheme Parties agree that nothing in this deed constitutes the relationship of a partnership or joint venture between the Scheme Parties.

7.5 Change of control

- (a) As soon as practicable after the date of this deed, Target must:
 - (i) seek to identify any change of control or unilateral termination rights in any contract to which a member of the Target Group is party (including any insurance policy and leases) which may be triggered by the implementation of the Transaction (**Change of Control Requirements**);
 - (ii) use all reasonable endeavours to agree a proposed strategy to obtain any consents required in accordance with the terms of any identified Change of Control Requirements, and to then expeditiously seek those consents in accordance with the agreed strategy; and
 - (iii) obtain such consent or waivers as expeditiously as possible and ensure once obtained, the consents or waivers are not withdrawn, cancelled or revoked, including by:
 - (A) cooperating with and doing all things reasonably requested by Bidder or the counterparty to the relevant contract;
 - (B) promptly providing any information reasonably required by the counterparty to the relevant contract; and
 - (C) making representatives of Target available, where necessary, to meeting with counterparties of the relevant contract to deal with issues in relation to the change of control of Target.
- (b) Bidder must cooperate with, and provide all reasonable assistance to, Target to obtain such consents or confirmations in relation any identified Change of Control Requirements, including by promptly providing any information reasonably required by counterparties.

7.6 Permitted Dividend

- (a) Subject to the Scheme becoming Effective, clause 7.6(c) and to applicable law, Target may, in its sole discretion, declare and pay to Target Shareholders who are recorded on the Target Share Register as at the Special Dividend Record Date the Permitted Dividend (which shall, to the extent practicable, be fully franked) on the Special Dividend Payment Date.
- (b) The parties agree to consult and cooperate with each other in respect of the timing and mechanics associated with the Permitted Dividend with a view to ensuring that the Permitted Dividend can, to the extent lawfully possible, be fully franked utilising the franking account balance of Target, provided that Target must not under any circumstances allow a franking deficit to subsist at the Implementation Date such that the liability of Target under any tax laws, including as to franking deficit tax, could be incurred.
- (c) If Target announces, declares and pays the Permitted Dividend in accordance with clause 7.6(a):
 - (i) the payment of the Permitted Dividend will be determined by Target in consultation with Bidder provided that the Permitted Dividend is paid no later

than the Implementation Date and that the Special Dividend does not breach the Benchmarking Franking Rule of section 203-25 of the Income Tax Assessment Act, 1997;

- (ii) the Permitted Dividend must be in compliance with Part 2H.5 of the Corporations Act;
- (iii) the Permitted Dividend may be franked to the maximum extent possible, subject to the franking account of Target not being in deficit after the payment of the Permitted Dividend (and prior to the declaration of or resolution to pay the Permitted Dividend), and Target must provide Bidder with supporting documents evidencing (to Bidder's reasonable satisfaction) that the franking account of Target shall not be in deficit after the payment of such and that the Permitted Special Dividend does not breach the Benchmark Franking Rule of section 203-25 of the Income Tax Assessment Act, 1997;
- (iv) the Permitted Dividend is paid from profits, retained earnings or distributable reserves (or a combination of all or some of them) of the Target Group existing prior to the declaration or authorisation of such dividend and otherwise in accordance with the Corporations Act, and may not be debited against Target's share capital account; and
- (v) the Scheme Consideration per Target Share will be reduced by the cash amount of the Permitted Dividend.

8 Reconstitution of the Target Group boards

Subject to the Scheme Consideration having been paid to Target Shareholders, Target must as soon as practicable take all reasonable steps to:

- (a) cause the appointment of the nominees of Bidder to the board of each member of the Target Group (each a **Target Group Board**); and
- (b) procure that each director of each Target Group Board resigns from their office as a director of that entity by providing to the relevant Target Group Board their resignation in writing (such resignation, to the extent reasonable, to include a statement to the effect that the outgoing director has no claim outstanding against any member of the Target Group) unless Bidder requests that the relevant director not resign.

9 Representations and warranties

9.1 Bidder representations and warranties

Bidder represents and warrants that:

- (a) **validly existing:** Bidder is a validly existing corporation registered under the laws of its place of incorporation;
- (b) **authority and power:** the execution and delivery of this deed has been properly authorised by all necessary corporate action and Bidder has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed;

- (c) **no default:** this deed constitutes legal, valid and binding obligations on it and this deed does not result in a breach of or default under any provision of Bidder's constitution or any deed or any writ, order or injunction, rule or regulation to which Bidder is a party or is bound and Bidder is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;
- (d) **deed binding:** this deed is a valid and binding obligation of Bidder, enforceable in accordance with its terms;
- (e) **Bidder Information:** the Bidder Information provided to Target in accordance with clause 5.2(a) for inclusion in the Scheme Booklet will:
 - (i) be provided in good faith;
 - (ii) comply in all material respects with the requirements of the Corporations Act, Corporations Regulations, the Listing Rules and RG 60; and
 - (iii) be provided on the understanding that Target will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the requirements of the Corporations Act;
- (f) **not misleading or deceptive:** as at the date the Scheme Booklet is despatched to Target Shareholders, the Bidder Information, in the form and context in which that information appears in the version of the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act will not be misleading or deceptive in any material respect (whether by omission or otherwise and with any statement of belief or opinion having been formed on a reasonable basis);
- (g) **new information:** Bidder will, as a continuing obligation, provide to Target all further or new information which arises after the Scheme Booklet has been dispatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information is not misleading or deceptive in any material respect (including by way of omission);
- (h) **Independent Expert:** all information provided by or on behalf of Bidder to the Independent Expert to enable the Independent Expert's Report to be included in the Scheme Booklet to be prepared and completed will not be misleading or deceptive in any material respect (whether by omission or otherwise) and will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report for inclusion in the Scheme Booklet;
- (i) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to Bidder or any other member of the Bidder Group, 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) **No other regulatory approvals:** as far as Bidder is aware, no approval, consent, waiver, clearance, concession, allowance, notification or authorisation is required to be obtained from, or made to, any Government Agency in order for Bidder to execute and perform this deed other than as set out in this deed;
- (k) **No dealings with Target Directors or employees:** neither Bidder nor any of its Associates has any agreement, arrangement or understanding with any director, officer or employee of Target or any other member of the Target Group relating in

any way to the Transaction or operations of the Target Group after the Effective Date other than as set out in this deed;

- (l) **Reasonable basis:** as at the date of this deed, Bidder has a reasonable basis to expect that it will have available to it sufficient cash amounts (whether from internal cash resources or external funding arrangements) to satisfy its obligations to pay the Scheme Consideration in accordance with this deed and the Deed Poll;
- (m) **Availability of funding on Second Court Date:** by 8.00am on the Second Court Date, Bidder will have available to it on an unconditional basis sufficient cash amounts (whether from internal cash resources or external funding arrangements or combination of both) to ensure that the Scheme Consideration is paid in accordance with this deed and the Deed Poll; and
- (n) **Availability of funding on Implementation Date:** Bidder will have available to it by the Implementation Date on an unconditional basis sufficient cash amounts (whether from internal cash resources or external funding arrangements or combination of both) to satisfy the Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll,

(the **Bidder Warranties**).

9.2 Bidder's indemnity

Bidder agrees with Target to indemnify and keep indemnified Target and Target Indemnified Parties against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which Target may suffer or incur by reason of any breach of any of the representations and warranties in clause 9.1.

9.3 Target representations and warranties

Target represents and warrants that:

- (a) **validly existing:** Target is a validly existing corporation registered under the laws of its place of incorporation;
- (b) **authority and power:** the execution and delivery of this deed by Target has been properly authorised by all necessary corporate action and Target has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed;
- (c) **no default:** this deed constitutes legal, valid and binding obligations on it and this deed does not result in a breach of or default under any provision of Target's constitution or any deed or any writ, order or injunction, rule or regulation to which Target is a party or is bound and Target is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;
- (d) **deed binding:** this deed is a valid and binding obligation of Target, enforceable in accordance with its terms;
- (e) **Target Prescribed Occurrence:** no Target Prescribed Occurrence has occurred;
- (f) **Target Information:** the Target Information contained in the Scheme Booklet:
 - (i) will be prepared and included in the Scheme Booklet in good faith; and

- (ii) will comply in all material respects with the requirements of the Corporations Act, Corporations Regulations, Listing Rules and RG 60;
- (g) **not misleading or deceptive:** as at the date the Scheme Booklet is despatched to Target Shareholders, the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the Bidder Information and the Independent Expert's Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise);
- (h) **continuous disclosure:** as at the date of this deed, Target is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Transaction or as disclosed in writing to Bidder on or before the date of this deed).
- (i) **issued capital:** the issued capital of Target as of the date of this deed is set out in Schedule 5 and there are no Target options, performance rights, shares, warrants, convertible notes, instruments or other securities (or offers or agreements to issue any of the foregoing) that may convert into Target Shares;
- (j) **financial statements:** Target's financial statements as disclosed to the ASX have been prepared in accordance with the Accounting Standards on a basis consistent with past practice financial statements and, so far as Target is aware, there has not been any event, change, effect or development which would require Target to restate its financial statements as disclosed to the ASX;
- (k) **issue of securities:** no member of the Target Group has issued, or agreed to issue, any other securities or instruments which may convert into Target Shares or any other securities in Target;
- (l) **due diligence information:** the Target Disclosure Materials were provided or made available to Bidder in good faith and as at the date of this deed, Target is not actually aware of any material misleading or deceptive statement in, or material omission from, any of the Target Disclosure Materials;
- (m) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to Target or any other member of the Target Group, nor has any regulatory action of any nature been taken that would prevent or restrict its ability to fulfil its obligations under this deed; and
- (n) **Target assets:** the Target Group owns, or has the right to use, all of the assets, real property, information technology and intellectual property that are material for the conduct of the business of the Target Group, and will continue to do so upon and immediately following Implementation,

(the Target Warranties).

9.4 Target's indemnity

Subject to clause 12.7(b), Target agrees with Bidder to indemnify and keep indemnified Bidder and Bidder Indemnified Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which Bidder may suffer or incur by reason of any breach of any of the representations and warranties in clause 9.3.

9.5 Qualifications on the Target Warranties

Each of the Target Warranties in clause 9.3 and the indemnity in 9.4 are each subject to matters:

- (a) Fairly Disclosed:
 - (i) in the Target Disclosure Materials prior to the date of this deed; and
 - (ii) Fairly Disclosed in any announcement by Target to ASX prior to the date of this deed or Fairly Disclosed in a document lodged with ASIC, by or on behalf of Target prior to the date of this deed; or
- (b) which would be disclosed in a search of ASIC records in relation to Target prior to the date of this deed.

9.6 Survival of representations

Each representation and warranty in clauses 9.1 and 9.3:

- (a) is severable;
- (b) will survive the termination of this deed; and
- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this deed.

9.7 Survival of indemnities

Each indemnity in this deed (including those in clauses 9.2 and 9.4) will:

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

9.8 Timing of representations and warranties

Each representation and warranty made or given under clauses 9.1 or 9.3 is given at the date of this deed, at the date the Scheme Booklet is despatched to Target Shareholders and as at 8.00am on the Second Court Date unless that representation or warranty is expressed to be given only at a particular time, in which case it is given only at that time.

9.9 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 representations or inducement expressly set out in this deed.

10 Public Announcements

10.1 Public Announcements on execution

Immediately after the date of this deed, the Scheme Parties must issue public announcements in a form previously agreed to in writing between them.

10.2 Public announcements

Subject to clause 10.3, no public announcement or public disclosure of the Transaction or any other transaction the subject of this deed or the Scheme may be made other than in a form approved by each party in writing (acting reasonably), but each party must use all reasonable endeavours to provide such approval as soon as practicable, provided that neither party will be required to consult with the other in relation to any public announcement relating to termination of this deed or any Competing Proposal.

10.3 Required disclosure

Where a party is required by applicable law or the Listing Rules to make any announcement or to make any disclosure in connection with the Transaction or any other transaction the subject of this deed or the Scheme, it must use all reasonable endeavours, to the extent practicable in the circumstances, to 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 Exclusivity

11.1 Termination of existing discussions

- (a) Target represents and warrants to Bidder that, as at the date of this deed, Target Group and any of its representatives:
- (i) is not a party to any agreement or arrangement with a third party entered into for the purpose of facilitating a Competing Proposal;
 - (ii) is not, directly or indirectly, participating in any discussions or negotiations with a third party that concern, or that could reasonably be expected to lead to, a Competing Proposal;
 - (iii) has ceased any existing discussions or negotiations with any third party in relation to a potential Competing Proposal; and
 - (iv) has ceased the provision of any non-public information in relation to the Target Group (**Non-public Information**) to any third party, where the provision of Non-public Information was for the purposes of, a potential Competing Proposal.

11.2 No-shop

During the Exclusivity Period, Target Group must not, and must procure that its representatives do not:

- (a) directly or indirectly solicit, initiate, encourage or invite any Competing Proposal;
- (b) solicit, initiate, encourage or invite enquiries, discussions, negotiations or proposals in relation to, or which may reasonably be expected to lead to, a Competing Proposal; and
- (c) communicate to any person any intention to do any of the things referred to in clause clauses 11.2(a) and 11.2(b).

11.3 No-talk

Subject to clause 11.6, during the Exclusivity Period, Target Group must not, and must procure that its representatives do 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 Target 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 Target Group); or
- (d) communicate to any person an intention to do anything referred to in the preceding paragraphs of this clause 11.3,

but nothing in this clause 11.3 prevents Target from making normal presentations to brokers, portfolio investors and analysts in the ordinary course of business or promoting the merits of the Transaction.

11.4 No due diligence restriction

- (a) During the Exclusivity Period, Target must not directly or indirectly:
 - (i) solicit, initiate, facilitate, encourage or invite any person (other than Bidder, its affiliates or its representatives) to undertake due diligence investigations in respect of the Target or any member of the Target Group, or any of their respective businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or
 - (ii) make available to any person (other than Bidder, its affiliates or its representatives) or permit any such person to receive, other than in the

ordinary course of business or as required by law or the rules of any prescribed financial market, any Non-public Information relating to Target or any member of the Target Group, or any of their respective businesses and operations with a view to obtaining or which may reasonably be expected to lead to a Competing Proposal.

- (b) During the Exclusivity Period, Target must promptly provide the Bidder with any material Non-public Information relating to the Target Group, or its businesses and operations made available any person, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal and the substance of which has not previously been provided to Bidder.

11.5 Notification of approaches

- (a) During the Exclusivity Period, Target must notify Bidder in writing as soon as practicable but in any event within 48 hours:
 - (i) if Target Group or any of Target's representatives is approached by any person in relation to an actual or potential Competing Proposal, such notice must set out reasonable details of the approach; or
 - (ii) of any request made by a third party for any information in relation to Target Group or any of their businesses or operations, that the Target Board has reasonable grounds to suspect may be in connection with such third party formulating, developing or finalising, or assisting in the formulation of a Competing Proposal,

(each, a **Notifiable Proposal**).

- (b) The notice must set out the material terms of the Notifiable Proposal, including (as the case may be):
 - (i) the identity of the third party that made the Notifiable Proposal; and
 - (ii) full terms and conditions (including price, conditions precedent, timetable, source and status of funding and any break fee) of any Competing Proposal or any proposed Competing Proposal.

11.6 Fiduciary out

Clauses 11.3 and 11.4(a)(ii) do not apply to the extent that they restrict Target or any Target Director from taking or refusing to take any action with respect to a Competing Proposal (in relation to which there has been no contravention of this clause 11) provided that:

- (a) the Competing Proposal, approach, inquiry or proposal or request for information (as the case may be) is bona fide and is made by or on behalf of a person that the Target Board considers is of sufficient commercial standing; and
- (b) the Target Board has determined in good faith after:
 - (i) consultation with Target's financial adviser (if any are engaged) and legal advisers, that the Competing Proposal, approach, inquiry or proposal or request for information (as the case may be) is or may be reasonably expected to lead to a Superior Proposal; or

- (ii) receiving advice from Target's external legal advisers practising in the area of corporate law, that failing to take the action or refusing to take the action (as the case may be) with respect to the Competing Proposal would be reasonably likely to constitute, a breach of any of the fiduciary or statutory duties of the directors of Target.

11.7 Matching Right

- (a) Target must:
 - (i) not, and must procure that its representatives do not, enter into any legally binding agreement in relation to a Competing Proposal; and
 - (ii) direct each director of Target not to withdraw, change or modify his or her Recommendation or Voting Intention (as set out in clause 6) in response to a Competing Proposal or publicly recommend, support or endorse a Competing Proposal,

unless:

- (iii) the Competing Proposal is a Superior Proposal;
- (iv) Target has provided Bidder with the material terms and conditions of the Competing Proposal, including the identity of any person making the Competing Proposal, the price, conditions precedent, source and status of funding, any break fee and proposed timing of the proposal;
- (v) Target has given Bidder at least 3 Business Days after provision of all of the information referred to in clause 11.7(a)(iv) to provide a proposal that is no less favourable to Target Shareholders or is superior to the Competing Proposal (**Bidder Proposal**); and
- (vi) Bidder has not provided a Bidder Proposal which the Target Board, acting in good faith, after consulting with its financial adviser (if any are engaged) and legal advisers, determines would be reasonably likely to provide an outcome that is no less favourable to or more favourable to Target Shareholders as a whole than the relevant Competing Proposal (having regard to matters including, but not limited to, consideration, conditionality, funding, certainty and timing) by the expiry of the period referred to in clause 11.7(a)(v).

Target's obligations under this paragraph clause 11.7 apply in respect of each new Competing Proposal and any material variation or amendment to a Competing Proposal.

- (b) The Target Board must consider the Bidder Proposal and if it determines, acting in good faith, that the Bidder Proposal would provide an outcome that is no less favourable to or more favourable to Target Shareholders as a whole than the relevant Competing Proposal (having regard to matters including, but not limited to, consideration, conditionality, funding, certainty and timing), then Target and Bidder must use their best endeavours to agree any amendments to this deed and the contents of the Scheme Booklet which are reasonably necessary to reflect the Bidder Proposal, and once agreed:
 - (i) the parties must enter into an appropriate amending deed to give effect to those amendments;

- (ii) Target must use reasonable endeavours to procure that each Target Director continues to recommend the Bidder Proposal to Target Shareholders; and
- (iii) Target must implement the Bidder Proposal in accordance with the terms of the amended scheme implementation deed,

in each case as soon as reasonably practicable.

12 Target Reimbursement Fee

12.1 Background to Target Reimbursement Fee

- (a) The Scheme Parties each acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, Bidder will incur significant costs, including those set out in clause 12.4.
- (b) In these circumstances, Target has agreed that provision be made for the payment outlined in clause 12.2, without which Bidder would not have entered into this deed or otherwise agreed to implement the Scheme.
- (c) Target and the Target Board believe, having taken advice from their Advisors, that the implementation of the Scheme will provide benefits to Target Shareholders and that it is appropriate for Target to agree to the payment referred to in clause 12.2 in order to secure Bidder's participation in the Transaction.

12.2 Target Reimbursement Fee

Target must pay the Target Reimbursement Fee to Bidder if:

- (a) during the Exclusivity Period, any Target Director changes, qualifies or withdraws their Recommendation:
 - (i) except to the extent permitted under clause 6;
 - (ii) unless the Independent Expert concludes in the Independent Expert's Report (or any update of, revision or amendment or addendum to, that report) that the Scheme is not in the best interests of Target Shareholders (except where that conclusion is due (in whole or in part) to the existence, announcement or publication of a Competing Proposal); or
 - (iii) unless Target is entitled to terminate this deed pursuant to clause 13.1(a) and 13.2(b) and has given the appropriate termination notice to Bidder;
- (b) a Competing Proposal is announced prior to the date of the Scheme Meeting (whether or not such proposal is stated to be subject to any pre-conditions) and, within 12 months of the date of such announcement, the third party making the Competing Proposal:
 - (i) completes the Competing Proposal; or
 - (ii) acquires a Relevant Interest in more than 50% of the Target Shares under a transaction that is or has become wholly unconditional or otherwise comes to Control Target or acquires substantially all of the assets of Target;
- (c) Bidder has terminated this deed under clauses 13.1(a) or 13.3 (other than, in respect of termination under clause 13.3, in circumstances where the Independent Expert does not conclude that the Transaction is in the best interests of Target

Shareholders, except where that conclusion is due (in whole or in part) to the existence, announcement or publication of a Competing Proposal), and the Transaction does not complete.

12.3 Timing

- (a) A demand by Bidder for payment of the Target Reimbursement Fee under clause 12.2 must:
 - (i) be in writing;
 - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account into which the party is to pay the Reimbursement Fee.
- (b) Target must pay the Target Reimbursement Fee into the account nominated by Bidder, without set-off or withholding, within 5 Business Days after receiving a demand for payment where Bidder is entitled under clause 12.2 to the Target Reimbursement Fee.

12.4 Basis of Target Reimbursement Fee

The Target Reimbursement Fee has been calculated to reimburse Bidder 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; and
- (d) out of pocket expenses incurred by Bidder and Bidder's employees, advisors 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 Bidder's reputation associated with a failed transaction,

and the Scheme Parties agree that:

- (g) the costs actually incurred by Bidder will be of such a nature that they cannot all be accurately ascertained;
- (h) the Target Reimbursement Fee is a genuine and reasonable pre-estimate of those costs; and
- (i) both Scheme Parties have received advice from their respective legal advisors on the operation of this clause 12.

12.5 No payment if Scheme becomes Effective

No Target Reimbursement Fee is payable if the Scheme becomes Effective. To the extent that any amount has already been paid under this clause 12 and the Scheme becomes Effective, such amount must be immediately refunded to Target.

12.6 Target Reimbursement Fee payable once

Where the Target Reimbursement Fee becomes payable to Bidder under clause 12.2 and is actually paid to Bidder, Bidder cannot make any claim against Target for payment of any subsequent Target Reimbursement Fee.

12.7 Other Claims

- (a) Where an amount becomes payable to Bidder under clause 12.2 and is actually paid to Bidder (or is payable, but no demand is made under clause 12.3), the Bidder may not make any Claim (other than a Claim under this clause 12) against Target which relates to the event that gave rise to the right to make a demand under clause 12.3, unless the Claim arises from a wilful breach by Target of this deed.
- (b) The maximum aggregate amount which Target is required to pay in relation to a breach or breaches of this deed by Target or failure to perform its obligations under this deed, is the Target Reimbursement Fee and in no event will the aggregate liability of Target under or in connection with a breach of this deed exceed the Target Reimbursement Fee which will be the sole remedy in respect of any damages claim against Target, provided that the Target Reimbursement Fee shall not be in lieu of damages or any other payment or remedy available (and shall not operate to limit Target's liability) in the event of any wilful or intentional breach by Target of a material term of this deed.

12.8 Compliance with law

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court that all or any part of the Target Reimbursement Fee required to be paid under clause 12.2 (**Impugned Amount**):

- (a) is unlawful;
 - (b) involves a breach of directors' duties; or
 - (c) constitutes unacceptable circumstances or breaches an order of the Takeovers Panel,
- then,
- (d) the requirement to pay the Target Reimbursement Fee does not apply to the extent of the Impugned Amount; and
 - (e) if Bidder has received the Impugned Amount, it must refund it within five Business Days of the final determination being made.

12.9 Regulatory Intervention

If any regulatory body (including ASIC or the Takeovers Panel) or a court requires any modification (including requiring such a modification as a condition of consenting to or approving the Scheme or as a condition of not opposing the Scheme) to the Target

Reimbursement Fee, including as to the amount or circumstances in which it is to be paid, then:

- (a) the Scheme Parties will accept this determination and amend this deed to that extent; and
- (b) it will not result in a breach of this deed or termination of the transactions contemplated by it.

13 Termination

13.1 Termination by notice

A Scheme Party may terminate this deed by written notice to the other parties:

- (a) other than in respect of a breach of either a Target Warranty or a Bidder Warranty, (which are dealt with in clauses 13.2(b) and 13.3(c)), at any time before 8.00am on the Second Court Date if a Scheme 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 party in breach 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;
- (b) at any time before 8.00am on the Second Court Date if the Court or another Government Agency (including any other court) has taken any action permanently restraining or otherwise prohibiting or preventing the Transaction, or has refused to do anything necessary to permit the Transaction, 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 a successful appeal or review succeeding by the End Date;
- (c) in the circumstances set out in, and in accordance with, clause 3.7; or
- (d) if the Effective Date for the Scheme has not occurred, or will not occur, on or before the End Date.

13.2 Termination by Target

Without limiting Target's obligations under clause 6.1 and clause 11.7, Target may, by notice in writing to Bidder, terminate this deed at any time prior to 8.00am on the Second Court Date if at any time before then:

- (a) a majority of the Target Directors change, withdraw or modify their Recommendation after:
 - (i) making a determination contemplated by clause 11.6 in respect of a Superior Proposal after Bidder's rights under clause 11.7 having been exhausted and after evaluation of the Bidder Proposal (if any) provided Target has paid the Target Reimbursement Fee to Bidder (if required to do so under clause 12); or
 - (ii) the Independent Expert has concluded in the Independent Expert's Report that the Scheme is not in the best interests of Target Shareholders and the parties have exhausted their rights under clause 3.7 in respect of the Condition in clause 3.1(c); or

- (b) Bidder materially breaches a Bidder Warranty set out in clause 9.1, and:
 - (i) Target has given written notice to Bidder setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
 - (ii) the relevant breach continues to exist, or the effects of which are not otherwise mitigated, 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 13.2(b)(i); and
 - (iii) the breach is material in the context of the Scheme taken as a whole.

13.3 Termination by Bidder

Bidder may, by notice in writing to Target, terminate this deed at any time prior to 8.00am on the Second Court Date if, at any time before then:

- (a) a Target Director:
 - (i) withdraws or adversely revises his or her Recommendation or Voting Intention;
 - (ii) makes any public statement that is inconsistent with the Recommendation or Voting Intention; or
 - (iii) recommends, endorses or supports any Competing Proposal, other than as permitted under clause 6;
- (b) a Competing Proposal in respect of Target is announced or made and is publicly recommended, supported or endorsed by a majority of the Target Board;
- (c) Target materially breaches a Target Warranty set out in clause 9.3, and:
 - (i) Bidder has given written notice to Target setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
 - (ii) the relevant breach continues to exist, or the effects of which are not otherwise mitigated, 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 13.3(c)(i); and
 - (iii) the breach is material in the context of the Scheme taken as a whole; or
- (d) a Target Regulated Event or Target Prescribed Occurrence occurs.

13.4 Effect of termination

In the event of termination of this deed in accordance with clauses 3.7 or 13.1, this deed will cease to have force and effect without any liability or obligation on the part of any party, except that:

- (a) this deed will become void and have no effect, except that the provisions of this clause 13.4 and clauses 9.6, 9.7, 9.8, 12, 15, 16 and 17 survive termination; and

- (b) each party will retain the rights it has or may have against the other parties in respect of any part 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.

14 Releases

14.1 Target and Target directors and officers

- (a) Bidder releases its rights, and agrees with Target that neither it nor any of its Subsidiaries as at the date of this deed and from time to time will make a claim, against any Target Indemnified Party other than Target and its Related Bodies Corporate as at the date of this deed and from time to time in connection with:
 - (i) any breach of any covenant, representation or warranty given by Target or any other member of the Target Group in this deed; or
 - (ii) any disclosures containing any statement which is false or misleading, whether in content or by omission; or
 - (iii) any failure to provide information,whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Target Indemnified Party has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 14.1 limits Bidder's rights to terminate this deed under clause 13.3(c).
- (b) Target receives and holds the benefit of this clause 14 to the extent it relates to each Target Indemnified Party for each of them.

14.2 Bidder and Bidder directors and officers

- (a) Target releases its rights, and agrees with Bidder that it will not make a claim, against any Bidder Indemnified Party other than Bidder and its related bodies corporate as at the date of this deed and from time to time in connection with:
 - (i) any breach of any representations and warranties of Bidder or any other member of the Bidder Group in this deed; or
 - (ii) 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 Bidder Indemnified Party has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 14.2 limits Target's rights to terminate this deed under clause 13.2(b).
- (b) Bidder receives and holds the benefit of this clause to the extent it relates to each Bidder Indemnified Party for each of them.

14.3 Deeds of indemnity and insurance

- (a) Subject to the Scheme becoming Effective and the Transaction completing, Bidder undertakes in favour of Target and each other person who is a Target Indemnified Party that it will:
- (i) for a period of 7 years from the Implementation Date, ensure that the constitutions of Target and each other Target Group Member continue to contain such rules as are contained in those constitutions at the date of this deed 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 Target Group Member; and
 - (ii) procure that Target and each Target 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.
- (b) At or prior to the Implementation Date, Target must purchase:
- (i) a 7-year prepaid "run-off" directors' and officers' liability insurance policy (**D&O Run-Off Policy**); and
 - (ii) a "run-off" policy in relation to its professional indemnity insurance policy (**PII Run-Off Policy**),

in each case on terms and conditions providing coverage retentions, limits and other material terms (including in relation to deductibles) substantially equivalent to the current policies maintained by members of the Target Group with respect to matters arising at or prior to the Implementation Date. In connection with obtaining such D&O Run-Off Policy and PII Run-Off Policy, Target must consult in good faith with the Bidder regarding the proposed terms of the D&O Run-Off Policy and the PII Run-Off Policy and permit the Bidder to participate in all negotiations over such terms.

- (c) The undertakings contained in this clause 14.3 are subject to any Corporations Act restriction and will be read down accordingly.
- (d) Target receives and holds the benefit of this clause 14.3, to the extent it relates to the other Target Indemnified Parties for them.

15 Confidentiality

- (a) Each party acknowledges and agrees that:
- (i) information provided by either party to the other, or obtained by either party from the other, in the course of proposing, negotiating or implementing the Transaction (including information provided before or after the date of this deed); and
 - (ii) all copies of information, agreements and those parts of the notes and other records referred to above,

is strictly confidential (**Confidential Information**) and may not be disclosed to any third party (except as permitted by this deed).

- (b) For the avoidance of doubt, information that is known by a party before the date of this deed and that was not obtained on a confidential basis from another party in the course of proposing, negotiating or implementing the Transaction is not Confidential Information.
- (c) Confidential Information may only be used for the purposes of implementing the Transaction or disclosed by a party:
 - (i) to a Related Body Corporate or any Authorised Person of that party (or of any Related Body Corporate) for the purpose of implementing the Transaction, provided that the disclosing party ensures that the recipient only uses it for the purposes of implementing the Transaction and otherwise complies with these terms of confidentiality; and
 - (ii) if disclosure is required by law, the rules of a stock exchange, or any requirement of a court or Governmental Agency.

16 Notices

16.1 Service of notices

- (a) A notice, consent or other communication under this deed (**Notice**) is only effective if:
 - (i) it is in writing, signed by or on behalf of the party giving it; and
 - (ii) it is directed to the recipient's address for notices as follows:

Target

Address: 110 Stirling Hwy, Nedlands WA 6009

E-mail: scwork89@gmail.com

Attn: Simon Cato

with a copy to Thomson Geer:

Address: Level 29, Central Park Tower, 152-158 St Georges Terrace,
Perth WA 6000 Australia

E-mail: mwilshaw@tglaw.com.au

Attn: Marc Wilshaw

Bidder

Address: Level 5, Deutsche Bank Tower, 126 Phillip Street, Sydney
NSW 2000

E-mail: andrew.wilson@automicgroup.com.au

Attn: Andrew Wilson

with a copy to Gilbert + Tobin:

Address: Level 35, Tower 2, International Towers Sydney, 200
Barangaroo Avenue, Barangaroo NSW 2000

E-mail: ecameron@gtlaw.com.au
Attn: Elizabeth Cameron, Partner

- (b) If a party changes address and fails to notify the other parties of this change and the new address, delivery of Notices to a new address, or otherwise brought to the attention of the addressee, are deemed compliance with the notice obligations under this clause 16.1.

16.2 Effective on receipt

A Notice given in accordance with clause 16.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, the second Business Day after the date of posting;
- (c) if sent by email, when the email (including the attachment) comes to the attention of the recipient party or a person acting on its behalf,

but if the delivery or transmission under clause 16.2(a) or 16.2(b) is not on a Business Day or after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the Business Day after that delivery, receipt or transmission.

17 General

17.1 Further acts

Each party will promptly do all things necessary to give full effect to this deed and the matters contemplated by it.

17.2 Payments

Unless otherwise expressly provided in this deed, where an amount is required to be paid to a party (the **Receiving Party**) by another party under this deed, that amount shall be paid:

- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties may agree; and
- (b) without deduction, withholding or set-off.

17.3 CGT Withholding Amount

Notwithstanding any other provision of this deed, if Bidder determines (acting reasonably) that an amount is required to be withheld under Subdivision 14-D of Schedule 1 of the TAA from the Scheme Consideration payable to a Scheme Shareholder, Bidder:

- (a) may withhold and remit to the Australian Taxation Office a sum equal to 12.5% (or some lesser rate expressly approved by the Commissioner of Taxation in writing)

of the Scheme Consideration payable to that Scheme Shareholder (**CGT Withholding Amount**); and

- (b) is taken to have paid the CGT Withholding Amount to the Scheme Shareholder for the purposes of this deed and the Scheme,

provided that:

- (c) Bidder has given Target, at least 20 Business Days prior to the Implementation Date, information which is to Target's satisfaction (acting reasonably), which identifies the reasons as to why a liability arises under Subdivision 14-D of Schedule 1 of the TAA, and the basis of the calculation of the CGT Withholding Amount; and
- (d) Target has not, at least 5 Business Days prior to the Implementation Date, given information to Bidder which demonstrates (to Target's satisfaction, acting reasonably) that the CGT Withholding Amount should be nil.

17.4 Consents or approvals

- (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.

17.5 GST

- (a) Any reference in this clause 17.5 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST.
- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this deed is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this deed but for the application of this clause 17.5(c) for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 17.5(c) does not apply to any taxable supply under or in connection with this deed that is expressly stated to include GST.
- (d) No payment of any amount pursuant to clause 17.5(c) is required until the Supplier has provided a valid tax invoice, including by specifying the GST Exclusive Consideration and specifying the amount of GST payable in relation to a taxable supply to which the tax invoice relates, to the Recipient.
- (e) The amount on account of GST payable in accordance with this clause 17.5 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.

- (f) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.
- (g) Unless expressly included, any monetary thresholds specified in this deed are exclusive of GST.

17.6 Stamp duty

Bidder must pay all stamp duties (if any) 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 (including the acquisition or transfer of Scheme Shares pursuant to the Scheme).

17.7 Expenses

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

17.8 Amendments

No variation of this deed is effective unless made in writing and signed by each party.

17.9 Assignment

- (a) Subject to clause 17.9(b), a party must not assign or novate this deed or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of the other parties, which consent may be withheld at the absolute discretion of the party or parties from whom consent is sought.
- (b) Bidder may assign, grant a Security Interest over, novate or otherwise transfer by way of security, any of its rights under this deed to a financier or financiers (or a security agent or security trustee thereof) without the prior consent of Target solely for the purpose of obtaining finance or providing security in connection with the Transaction provided that no assignment to any such financier or financiers shall affect Bidder's obligations under this deed or increase Target's obligations under this deed.

17.10 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by any party under this deed will only be effective and binding on that party if it is given or confirmed in writing by that party.

- (c) No waiver of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) Nothing in this deed obliges a party to exercise a right to waive any conditional term of this deed that may be in its power.

17.11 Entire agreement

- (a) This deed is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.
- (b) Each party represents and warrants that it has not relied on any representations or warranties about the subject matter of this deed except as expressly provided in this deed.

17.12 Relationship of the parties

Except as expressly provided in this deed:

- (a) nothing in this deed is intended to constitute a fiduciary relationship, employment relationship or an agency, partnership or trust; and
- (b) no party has authority to bind any other party.

17.13 No merger

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

17.14 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 17.14(a) does not apply where enforcement of the provision of this deed in accordance with clause 17.14(a) would materially affect the nature or effect of the parties' obligations under this deed.

17.15 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.

17.16 Severability

Any term of this deed which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this deed is not affected.

17.17 Governing law

- (a) This deed is governed by and will be construed according to the laws of New South Wales.

- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and of the courts competent to determine appeals from those courts.

17.18 Counterparts

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original, but the counterparts together are one and the same agreement.
- (b) This deed is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an original executed counterpart sent by email to the email address of the other parties specified in clause 16, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

Schedule 1 Dictionary

1 Dictionary

1.1 Defined terms

In this deed, unless the context otherwise requires, the following words and expressions have meanings as follows:

Accounting Standards means:

- (a) the accounting standards made by the Australian Accounting Standards Board in accordance with the Corporations Act, and the requirements of that Act relating to the preparation and content of accounts; and
- (b) generally accepted accounting principles that are consistently applied in Australia, except those inconsistent with the standards or requirements referred to in paragraph (a).

Adviser means any person who is engaged to provide professional advice of any type (including legal, accounting, consulting or financial advice) to Target or Bidder.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act.

ASX means ASX Limited (ABN 98 008 624 691) or, if the context requires, the financial market operated by it.

Authorisation means any authorisation, consent, approval, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, permit, authority or exemption from, by or with a Government Agency.

Authorised Person means, in respect of a person:

- (a) a director, officer, contractor, agent or employee of the person;
- (b) an Adviser of the person; and
- (c) a director, officer or employee of an Adviser of the person,

and, in respect of the Bidder only, its shareholders.

Bidder Group means Bidder and its Subsidiaries.

Bidder Indemnified Parties means Bidder, its Subsidiaries and their respective directors, officers, employees and advisors.

Bidder Information means such information regarding Bidder that is provided by or on behalf of Bidder to Target or the Independent Expert:

- (a) to enable the Scheme Booklet to be prepared and completed in compliance with all applicable laws;
- (b) to enable applications for Regulatory Approvals to be made; and
- (c) otherwise in compliance with Bidder's obligations under clause 5.2(a).

Bidder Sub has the meaning given to that term in clause 2.1(d).

Bidder Warranties means the representations and warranties of Bidder set out in clause 9.1.

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales or Perth, Western Australia.

CGT Withholding Amount has the meaning given to that term in clause 17.3(a).

Change of Control Requirements has the meaning given to that term in clause 7.5.

Claim means a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute.

Competing Proposal means any inquiry, proposal, offer or transaction (including by way of takeover bid or scheme of arrangement) by a third party (other than Bidder or its Related Bodies Corporate) that, if completed, would mean:

- (a) a person would acquire the assets or business of the Target Group or otherwise acquire, become the holder of or have a right to acquire or an economic interest in all or a substantial part of the business, or any of the material assets, of the Target Group;
- (b) a person would acquire a Relevant Interest or voting power in 20% or more of the Target Shares or of the securities of any of member of the Target Group;
- (c) a person would enter into, buy, dispose of, terminate or otherwise deal with any cash settled equity swap or other synthetic, economic or derivative transaction connected with or relating to 20% or more of the Target Shares or of the securities of any member of the Target Group;
- (d) a person would directly or indirectly acquire or obtain an interest (including an economic interest) in all or a substantial part or material part of the business conducted by, or assets or property of, Target or any member of the Target Group;
- (e) a person would acquire Control of Target or any member of the Target Group;
- (f) a person may otherwise acquire, or merge with, Target or any member of the Target Group (including by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale of securities, strategic alliance, dual listed company structure, joint venture or partnership); or
- (g) Target will issue, on a fully diluted basis, 20% or more of its capital as consideration for the assets or share capital or another person,

or any proposal by Target to implement any reorganisation of capital. Each successive material modification or variation of any proposal, offer or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

Conditions means the conditions set out in clause 3.1 and **Condition** means any one of them.

Control has the meaning given under section 50AA of the Corporations Act and **Controlled** has the equivalent meaning.

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

Corporations Regulations mean the *Corporations Regulations 2001* (Cth).

Court means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

Deed Poll means the deed poll to be executed by Bidder prior to the First Court Date, substantially in the form set out in Schedule 4 or in such other form as is acceptable to Target acting reasonably, provided that where Bidder nominates a Bidder Sub in accordance with clause 2.1(d), the Deed Poll must provide for the Bidder Sub to have the primary obligations under the Deed Poll.

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

Effective Date, with respect to the Scheme, means the date on which the Scheme becomes Effective.

Encumbrance means a mortgage charge, pledge, lien, encumbrance, assignment, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or combination of any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

End Date means the later of:

- (a) 31 January 2024; and
- (b) such other date and time agreed in writing between Bidder and Target.

Exclusivity Period means the period commencing on the date of this deed and ending on the earliest of:

- (a) the End Date;
- (b) the Effective Date; and
- (c) the date this deed is terminated in accordance with its terms.

Fairly Disclosed a reference to Fairly Disclosed to a party means disclosed to any of that party or any of its Authorised Persons in good faith and in sufficient detail so as to enable a reasonable and sophisticated buyer (or one of its Authorised Persons) experienced in transactions similar to the Transaction and experienced in a business similar to any business conducted by the Target Group (if disclosed to Bidder) or the Bidder Group (if disclosed to Target), to identify the nature and scope of the relevant matter, event or circumstance.

Financial Advisor means any financial advisor retained by Target in connection with Scheme or Competing Proposal;

First Court Date means the date the Court first hears the application to order the convening of the Scheme Meeting under section 411(1) of the Corporations Act.

Government Agency means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX and any regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions (including ASIC and the Takeovers Panel).

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Headcount Test means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of Target Shareholders present and voting, either in person or by proxy.

Implementation Date means, with respect to the Scheme, the fifth Business Day, or such other Business Day as the parties agree, following the Scheme Record Date for the Scheme.

Implementation Planning Committee has the meaning given to that term in clause 7.4 of this deed.

Independent Expert means an expert, independent of the parties, engaged by Target in good faith to opine on whether the Scheme is in the best interests of Target Shareholders.

Independent Expert's Report means the report from the Independent Expert commissioned by Target for inclusion in the Scheme Booklet, which includes a statement by the Independent Expert on whether, in its opinion, the Scheme is in the best interests of Target Shareholders and includes any update of that report by the Independent Expert.

Insolvency Event means in relation to a person:

- (a) **insolvency official:** the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 14 days;
- (b) **arrangements:** the entry by the person into a compromise or arrangement with its creditors generally;
- (c) **winding up:** the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;
- (d) **suspends payments:** the person suspends or threatens to suspend payment of its debts as and when they become due;

- (e) **ceasing business:** the person ceases or threatens to cease to carry on business;
- (f) **insolvency:** the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (g) **deregistration:** the person being deregistered as a company or otherwise dissolved;
- (h) **deed of company arrangement:** the person executing a deed of company arrangement;
- (i) **person as trustee or partner:** the person incurs a liability while acting or purporting to act as trustee (or co-trustee) or general partner of a trust or partnership (including a limited partnership) and the person is not entitled to be fully indemnified against the liability out of trust or partnership assets because of one or more of the following:
 - (i) a breach of trust or obligation as partner by the person;
 - (ii) the person acting outside the scope of its powers as trustee or partner;
 - (iii) a term of the trust or partnership denying, or limiting, the person's right to be indemnified against the liability;
 - (iv) the assets of the trust or partnership being insufficient to discharge the liability; or
- (j) **analogous events:** anything analogous to those set out in any of paragraphs (a) to (g) inclusive occurs in relation to the person under the laws of a foreign jurisdiction,

and a person shall be **Insolvent** if any event specified in paragraphs (a) to (j) inclusive occurs in respect of that person.

Listing Rules means the official listing rules of ASX as amended from time to time.

Material Adverse Change means a change to the business of the Target Group, the financial or trading position of the Target Group or the operations or assets of the Target Group after the date of this deed that has, or is reasonably likely to have, an adverse effect on the financial condition, operations or prospects of the business of the Target Group which is material. A matter will be regarded as 'material' if alone or together with a series of similar or related matters, it will, or would be reasonably likely to:

- (a) involve a claim by or against the Target Group exceeding \$250,000;
- (b) have an adverse financial impact on revenues or expenses of the business of the Target Group exceeding \$400,000; or
- (c) have an adverse financial impact on the value of the assets or liabilities of the business of the Target Group exceeding \$779,512,

in each case other than changes, events, occurrences or matters:

- (d) expressly required or permitted by this deed or the Scheme;
- (e) Fairly Disclosed to Bidder in the Target Disclosure Materials;

- (f) Fairly Disclosed in any documents lodged with ASX or ASIC by, or on behalf of, Target within 24 months prior to the date of this deed;
- (g) relating to any change, development or condition in or relating to global, national or regional political conditions (including strikes, lockouts, riots or facility takeover for emergency purposes) but excluding any changes in general economic, business, banking, regulatory, interest rate, rates of inflation or market conditions or in Australia or global financial or capital markets;
- (h) any change or proposed change in any laws or the interpretation, application or non-application of any laws by any regulatory authority;
- (i) any change, development or condition adversely affecting the industry in which Target operates;
- (j) any outbreak or escalation of hostilities or war or acts of terrorism or any natural disaster or general outbreaks of illness (including COVID-19);
- (k) relating to any generally applicable change in applicable Accounting Standards;
- (k) relating to any Transaction costs and expenses incurred by Target not exceeding \$500,000, including all fees payable to any external advisers of Target;
- (l) is within the actual knowledge of Bidder as at the date of this deed; or
- (m) consented to in writing by Bidder.

Permitted Dividend means one or more dividends in an amount not exceeding \$0.0025 per Target Share in aggregate paid prior to the Implementation Date (excluding any dividends announced or declared prior to the date of this deed).

Protocols means the Information Exchange Protocol dated 6 June 2023 governing the exchange of information between Bidder and Target for the purposes of, and in connection with, the Scheme.

Recommendation has the meaning given to that term in clause 6.2.

Regulatory Approval means:

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

Related Body Corporate of a person, means 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 was omitted.

Relevant Interest has the meaning given to that term in sections 608 and 609 of the Corporations Act.

RG 60 means Regulatory Guide 60 issued by ASIC.

Security Interest has the meaning given in section 12 of the *Personal Property Securities Act 2009* (Cth).

Scheme means the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between Target and Scheme Shareholders in respect of all Scheme Shares, substantially in the form set out in Schedule 3 or in such other form as the Scheme Parties agree in writing, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by each party.

Scheme Booklet means the explanatory booklet to be prepared by Target in respect of the Transaction in accordance with the terms of this deed and to be despatched to Target Shareholders.

Scheme Consideration means A\$0.165 per Scheme Share less the amount of any Permitted Dividend.

Scheme Meeting means the meeting of Target Shareholders ordered by the Court to be convened under section 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 Parties means Bidder and Target and **Scheme Party** means either the Bidder or Target (as applicable).

Scheme Record Date means, in respect of the Scheme, 5.00pm on the third Business Day (or such other Business Day as the parties agree in writing) following the Effective Date.

Scheme Share means a Target Share on issue as at the Scheme Record Date.

Scheme Shareholder means a person who holds one or more 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 the Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

Share Registry means Advanced Share Registry Limited ACN 127 175 946.

Share Splitting means the splitting by a holder of Target Shares into two or more parcels of Target Shares whether or not it results in any change in beneficial ownership of the Target Shares.

Special Dividend Payment Date means the date of payment of the Permitted Dividend, to be determined by Target in its sole discretion but in any event no earlier than the Effective Date and no later than the Scheme Record Date.

Special Dividend Record Date means the record date in respect of the Permitted Dividend, to be determined by Target in its sole discretion but in any event no earlier than the Effective Date and no later than the Scheme Record Date.

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

Superior Proposal means a bona fide, written Competing Proposal received after the date of this deed, which the Target Board determines, acting in good faith and in order to satisfy what the Target Board reasonably considers to be its fiduciary or statutory duties

(after having obtained written advice from their legal and financial advisors), would, if completed substantially in accordance with its terms, be likely to result in a transaction more favourable to Target Shareholders as a whole than the Transaction having regard to matters including, but not limited to, type of consideration offered, the actual or implied premium of the purchase price, conditionality, funding, certainty and timing.

TAA means the *Taxation Administration Act 1953* (Cth).

Target Board means the board of directors of Target as constituted from time to time (or any committee of the board of directors of Target constituted from time to time to consider the Transaction on behalf of Target).

Target Director means any director of Target comprising part of the Target Board.

Target Disclosure Letter means the letter so entitled from Target provided to Bidder on or prior to the date of this deed and countersigned by Bidder.

Target Disclosure Materials means the Target Due Diligence Materials and the Target Disclosure Letter.

Target Due Diligence Materials means the information disclosed in the virtual data room hosted at DropBox as at the date of the Target Disclosure Letter, or on behalf of the Target Group in written responses to requests for information to Bidder or any of its Authorised Persons prior to the date of this deed.

Target Group means Target and its Subsidiaries.

Target Incentive Plan means Target's long term incentive plan dated 9 February 2011.

Target Indemnified Parties means Target, its Subsidiaries and their respective directors, officers, employees and advisers.

Target Information means:

- (a) Information regarding the Target Group prepared by Target for inclusion in the Scheme Booklet that explains the effect of the Scheme and sets out the information prescribed by the Corporations Act and the Corporations Regulations; and
- (b) any other information that is material to the making of a decision by Target Shareholders whether or not to vote in favour of the Scheme, being information that is within the knowledge of each of the Target Directors,

other than the Bidder Information, the Independent Expert's Report or any description of the taxation effect of the Transaction on Scheme Shareholders prepared by an external adviser to Target.

Target Prescribed Occurrence means the occurrence of any of the following on or after the date of this deed and before 8.00am on the Second Court Date:

- (a) Target converts all or any of its shares into a larger or smaller number of shares;
- (b) any member of the Target Group resolves to reduce its share capital in any way;
- (c) any member of the Target Group:
 - (i) enters into a buy-back agreement; or

- (ii) resolves to approve the terms of a buy-back agreement under subsections 257C(1) or 257D(1) of the Corporations Act;
- (d) any member of the Target Group issues shares, or grants a performance right or an option over its shares, or agrees to make such an issue or grant such a performance right or an option (other than to a directly or indirectly wholly owned Subsidiary of Target) except for proposed issuances Fairly Disclosed in filings of Target with the ASX;
- (e) any member of the Target Group issues, or agrees to issue, securities convertible into shares or debt securities;
- (f) any member of the Target Group becomes unable to pay its debts when they fall due and payable within the meaning of the Corporations Act or is otherwise presumed to insolvent under the Corporations Act unless that company has, or has access to, committed financial support from its parent entity such that it is able to pay its debts;

provided that a Target Prescribed Occurrence will not include any matter:

- (g) required to be done or procured by Target pursuant to this deed or the Scheme;
- (h) to the extent it is Fairly Disclosed in filings of Target with the ASX prior to the date of this deed;
- (i) to the extent it is Fairly Disclosed in the Target Disclosure Letter or the Target Due Diligence Materials;
- (j) required by law or by an order of a court or Government Agency;
- (k) expressly permitted pursuant to this deed; or
- (l) the undertaking of which has been approved by Bidder in writing (which approval must not be unreasonably withheld or delayed).

Target Regulated Event means the occurrence of any of the following:

- (c) a member of the Target Group reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (d) any member of the Target Group declaring, paying or distributing, or incurring any liability to make or pay any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members (other than the Permitted Dividend and the FY23 dividend announced on 8 August 2023);
- (e) any member of the Target Group creating any new share based incentive plan or scheme, modifying the terms of the Target Incentive Plan, or issuing any offers to participate in the Target Incentive Plan;
- (f) a member of the Target Group making any change to its constitution;
- (g) any member of the Target Group ceasing or threatening to cease, the whole or a material part of its business;
- (h) any member of the Target Group:
 - (i) acquiring or disposing, or agreeing to acquire or dispose;

- (ii) agreeing to acquire or dispose of; or
- (iii) offers, proposes, announces a bid or tenders for the acquisition or disposal of,

any business or property (excluding in respect of any lease) of any business, assets or entity (or any part of any business, property, assets or entity) (whether by way of a single transaction or series of related transactions howsoever structured) the value of which exceeds A\$50,000 (individually or where related transactions are entered into contemporaneously, then in aggregate);

- (i) any member of the Target Group creating, granting or agreeing to create or grant any Encumbrance over any of the assets of any member of the Target Group, other than a lien which arises by operation of law or legislation or arises in the ordinary course of the Target Group's business;
- (j) any member of the Target Group resolving that it be wound up or the making of an application or order for the insolvent winding up or dissolution of a member of the Target Group other than where the application or order (as the case may be) is set aside within 14 days;
- (k) a liquidator or provisional liquidator of a member of the Target Group being appointed;
- (l) a court making an order for the winding up of a member of the Target Group;
- (m) an administrator of a member of the Target Group being appointed under the Corporations Act;
- (n) any member of the Target Group executing a deed of company arrangement;
- (o) a receiver, or a receiver and manager, being appointed in relation to the whole, or a substantial part, of the property of a member of the Target Group;
- (p) any member of the Target Group being deregistered as a company or otherwise dissolved other than on a solvent basis;
- (q) a member of the Target Group entering into any contract or commitment (including in respect of any new or increased financial indebtedness) requiring net payments by the Target Group in excess of A\$50,000 (individually) per annum other than any payment required by law, for matters Fairly Disclosed in the Target Disclosure Materials or in respect of contracts or commitments which can be terminated for convenience by the Target Group on the giving of notice of three months or less or which have a nil minimum spend requirement;
- (r) a member of the Target Group providing financial accommodation or giving a guarantee or indemnity on behalf of any person, other than to members of the Target Group (irrespective of what form that accommodation, guarantee or indemnity takes) in excess of A\$50,000 (individually or in aggregate) excluding financial accommodation provided to trade debtors in the ordinary course of the Target Group's business;
- (s) a member of the Target Group entering into any agreement, arrangement or transaction with respect to derivative instruments (including, but not limited to, swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments;

- (t) a member of the Target Group entering into, or resolving to enter into, a transaction with any related party of Target (other than a related party which is a member of the Target Group), as defined in section 228 of the Corporations Act;
 - (u) a member of the Target Group entering into or materially altering, varying or amending any employment, consulting, severance or similar agreement or arrangement with one or more of its members, officers, directors, other executives or employees, or accelerating or otherwise materially increasing compensation or benefits for any of the above, in each case other than:
 - (i) pursuant to contractual arrangements in effect on the date of this deed and which are Fairly Disclosed in the Target Disclosure Materials; or
 - (ii) pursuant to Target's policies and guidelines in effect on the date of this deed and which are Fairly Disclosed in the Target Disclosure Materials,
 other than in connection with the promotion of existing employees in the ordinary course;
 - (v) a member of the Target Group entering into an employment agreement with a new employee with a base salary of greater than A\$50,000, excluding where the agreement includes a probation period of at least six months during which there is a notice period of eight weeks or less;
 - (w) a member of the Target Group paying any of its directors or employees a termination or retention payment in excess of A\$50,000, other than in accordance with contractual arrangements in effect on the date of this deed and which are Fairly Disclosed in the Target Disclosure Materials or as otherwise disclosed in the Target Disclosure Materials;
 - (x) a member of the Target Group amending in respect of any agreement with a Financial Advisor, or entering into an agreement or arrangement with a new Financial Advisor, or entering into an agreement or arrangement with a new Financial Advisor, in respect of the Scheme or Competing Proposal;
 - (y) a member of the Target Group entering 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 Target Disclosure Materials;
 - (z) a member of the Target Group changing any accounting policy applied by them to report their financial position other than any change in policy required by a change in accounting standards;
 - (aa) a member of the Target Group settling any legal proceedings, disputed claim, investigation, arbitration or other like proceeding where the settlement amount payable by any member of the Target Group exceeds A\$50,000;
 - (bb) Target shares cease to be quoted on ASX; or
 - (cc) any member of the Target Group authorises, agrees, offers, commits or resolves to do any of the matters set out in the above definition, whether conditionally or otherwise,
- other than events, occurrences or matters:
- (dd) required to be done or procured by Target pursuant to this deed or the Scheme;

- (ee) to the extent that it was Fairly Disclosed in the Target Due Diligence Materials or the Target Disclosure Letter;
- (m) relating any Transaction costs and expenses incurred by Target not exceeding \$500,000, including all fees payable to any external advisers of Target;
- (ff) to the extent it was Fairly Disclosed to the ASX within five years prior to the date of this deed or which may arise from an event, occurrence or matter which was so disclosed; or
- (gg) which Bidder has previously approved in writing (which approval must not be unreasonably delayed).

Target Reimbursement Fee means A\$319,123.

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

Target Share Register means the register of members of Target maintained by or on behalf of Target in accordance with section 168(1) of the Corporations Act.

Target Shareholder means each person who is registered in the Target Share Register as a holder of Target Shares.

Target Warranties means the representations and warranties of Target set out in clause 9.3.

Timetable means the indicative timetable in relation to the Transaction set out in Schedule 2 with such modifications as may be agreed in writing by the parties.

Transaction means the proposed acquisition by Bidder, in accordance with the terms and conditions of this deed, of all of the Target Shares through the implementation of the Scheme.

Voting Intention has the meaning given to that term in clause 6.2.

1.2 Interpretation

In this deed the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, Government Agency, association, corporation, trust or other body corporate;

- (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its agents, successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this deed;
 - (vi) this deed includes all schedules and attachments to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
 - (viii) a statute includes any regulation, ordinance, by-law or other subordinate legislation made under it;
 - (ix) an agreement other than this deed includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
 - (x) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and each of them severally;
 - (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
 - (i) a reference to time is to Perth, Western Australia time; and
 - (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it.

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 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.

1.5 Deed components

This deed includes any schedule.

1.6 Awareness

Where a representation or warranty is given so far as a party is "aware" or with a similar qualification as to awareness or knowledge, the awareness or knowledge of a party is limited to and deemed only to comprise those facts, matters or circumstances of which:

(a) in the case of Target, the chairman, managing director or any other direct report to the managing director (who has been made aware of the Transaction prior to the date of this deed); and

(b) in the case of Bidder, Andrew Wilson and Peter Sherar,

is aware or ought reasonably to be aware, as at the date of this deed.

Schedule 2 Indicative Timetable

Event	Date
Enter into Scheme Implementation Deed	September 2023
Lodge the Scheme Booklet with ASIC for review and comment	Early October 2023
First Court Date	Mid October 2023
Scheme Booklet registered with ASIC	Mid to late October 2023
Despatch Scheme Booklet to Target Shareholders	Mid to late October 2023
Scheme Meeting	Mid to late November 2023
Second Court Date	Late November / early December 2023
Effective Date – lodge office copy of Court order approving the Scheme with ASIC	Late November / early December 2023
Scheme Record Date	Early to mid December 2023
Implementation Date	Mid December 2023

Schedule 3 Scheme of arrangement

Gilbert + Tobin

Legal/83861336_8

Schedule 4 Deed Poll

Gilbert + Tobin

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Schedule 5 Target Issued Capital

Target Ordinary Shares

193,407,776 Ordinary Shares

Gilbert + Tobin

Legal/83861336_8

Execution page

Executed as a deed.

Signed, sealed and delivered by **Advanced Share Registry Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:



Signature of director

SIMON CATO

Name of director (print)



Signature of director/secretary

AQUIN TAN

Name of director/secretary (print)

Signed, sealed and delivered by **Automic Enterprise Pty Ltd** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director

Name of director (print)

Signature of director/secretary

Name of director/secretary (print)

Execution page

Executed as a deed.

Signed, sealed and delivered by **Advanced Share Registry Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Signed, sealed and delivered by **Automic Enterprise Pty Ltd** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director

Signature of director/secretary

Paul Williams

James McMurdo

Name of director (print)

Name of director/secretary (print)