



3 July 2023

United Malt enters into scheme implementation deed with Malteries Soufflet

- United Malt has entered into a scheme implementation deed with Malteries Soufflet under which Malteries Soufflet has agreed to acquire 100% of the shares in United Malt by way of a scheme of arrangement.
- Under the Scheme, United Malt Shareholders will receive A\$5.00 per United Malt Share in cash, which represents a 45.3% premium to United Malt's closing share price on 24 March 2023.
- The United Malt Directors unanimously recommend that United Malt Shareholders vote in favour of the Scheme at the Scheme Meeting, in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of United Malt Shareholders.
- The Scheme is subject to various conditions, including approval by United Malt Shareholders at the Scheme Meeting, with a Scheme Booklet and an Independent Expert's Report to be provided to United Malt Shareholders.

United Malt Group Limited (ASX:UMG) (**United Malt**) has entered into a scheme implementation deed (**SID**) with Malteries Soufflet SAS (**Malteries Soufflet**), under which Malteries Soufflet has agreed to acquire 100% of the ordinary shares on issue in United Malt (**United Malt Shares**) for A\$5.00 in cash per United Malt Share (**Scheme Consideration**) by way of a scheme of arrangement (**Scheme**).

Overview of the Scheme Consideration

If the Scheme is implemented, each holder of United Malt Shares (**United Malt Shareholder**) on the record date in respect of the Scheme will receive a cash amount of A\$5.00 per United Malt Share (**Scheme Consideration**), which represents:

- a 45.3% premium to the closing price of United Malt Shares on the ASX of \$3.44 as at 24 March 2023 (**Last Undisturbed Trading Date**), being the last day on which United Malt Shares traded on the ASX before United Malt announced that it had received the Indicative Proposal (defined below) from Malteries Soufflet; and
- a 48.6% premium to the 1-month volume weighted average price (VWAP) of United Malt Shares (to and including the Last Undisturbed Trading Date) of \$3.37.

The Scheme Consideration will be reduced by the cash amount per United Malt Share of any cash dividend(s) or other cash distribution(s) paid by United Malt (as permitted under the SID) before implementation of the Scheme.

The entry by United Malt and Malteries Soufflet into the SID follows United Malt's announcement to the ASX on Tuesday, 28 March 2023, in which it advised that it had entered into a process and exclusivity deed with Malteries Soufflet following Malteries Soufflet submitting a conditional, non-binding and indicative proposal to acquire all of the United Malt Shares (**Indicative Proposal**).

United Malt Directors unanimously recommend the Scheme

The directors of United Malt (**United Malt Directors**) unanimously recommend that United Malt Shareholders vote in favour of the Scheme at the Scheme Meeting, in the absence of a Superior Proposal¹ and subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of United Malt Shareholders.

¹ As that term is defined in the SID.

Subject to those same qualifications, each United Malt Director who holds or controls United Malt Shares intends to vote, or cause to be voted, all United Malt Shares held or controlled by him or her in favour of the Scheme at the Scheme Meeting.²

United Malt Chairman, Graham Bradley, said:

“The Scheme provides United Malt Shareholders with an opportunity to realise certain value for their United Malt Shares at an attractive premium. The Scheme Consideration represents a 45.3% premium to the undisturbed United Malt Share price at the time of the announcement of Malteries Soufflet’s Indicative Proposal.”

“The United Malt Board believes that the Scheme Consideration appropriately reflects the value of our asset portfolio and the anticipated improvement in our near term earnings outlook.”

“The SID was entered into after extensive due diligence provided to Malteries Soufflet and detailed negotiation of its terms.”

“The United Malt team will work closely with all of our stakeholders, including our employees, customers and suppliers to ensure their interests are appropriately taken into account during the Scheme process.”

United Malt Managing Director and CEO, Mark Palmquist, said:

“The strategic rationale for establishing United Malt as a stand-alone malt company included enabling the company to pursue a separate growth agenda and potentially participate in industry consolidation opportunities.”

“The Scheme, if implemented, will provide an attractive value outcome for United Malt Shareholders.”

“Malteries Soufflet is one of the world’s leading malt producers, operating 28 malt houses across Europe, Latin America, Asia and Africa and is a strong complement to our business.”

“If the Scheme is implemented, United Malt will have the opportunity to build on its strategic progress since the demerger and leverage the combined strengths and larger platform of both businesses to further capitalise on key growth opportunities.”

Details of the SID

The SID contains customary terms and conditions in relation to the implementation of the Scheme.

The SID provides that implementation of the Scheme is subject to a number of conditions (which must be satisfied or, if applicable, waived before the Scheme can become effective) (**Conditions**). These Conditions are set out in full in the SID and include:

- the Independent Expert concluding in the Independent Expert’s Report (and continuing to conclude) that the Scheme is in the best interests of United Malt Shareholders;
- approval of the Scheme by the requisite majorities of United Malt Shareholders at the meeting of United Malt Shareholders ordered by the Court to be convened to consider the Scheme (**Scheme Meeting**);
- merger control and anti-trust / competition-related regulatory approvals in relevant jurisdictions;
- foreign investment approval in relevant jurisdictions;
- Foreign Investment Review Board (**FIRB**) approval;
- no material adverse change occurring in respect of United Malt;
- Federal Court of Australia (**Court**) approval in respect of the Scheme; and
- certain other customary conditions, including that no “Target Regulated Event” (as defined in the SID) occurs.

The SID contains limited termination rights including that either party may terminate in the event of an unremedied material breach by the other party.

The SID also contains customary exclusivity obligations on United Malt, including “no shop”, “no talk” and “no due diligence” obligations (the latter two subject to a customary fiduciary exception), “notification” obligations and a matching right regime that applies in respect of any Superior Proposal³ made or received by United Malt. The SID also sets out certain, customary circumstances in which United Malt may be required to pay a break fee to Malteries Soufflet and

² As at the date of this announcement: Mr Graham Bradley holds or controls 241,395 United Malt Shares (representing 0.08% of the United Malt Shares on issue), Mr Mark Palmquist holds or controls 622,511 United Malt Shares (representing 0.21% of the United Malt Shares on issue), Mr Gary W Mize holds or controls 48,200 United Malt Shares (representing 0.02% of the United Malt Shares on issue); Mr Terry Williamson holds or controls 56,586 United Malt Shares (representing 0.02% of the United Malt Shares on issue); and Mr Patrick E. Bowe, Ms Christine Feldmanis and Ms Mary Clarke do not hold or control any United Malt Shares.

³ As that term is defined in the SID.

circumstances in which Malteries Soufflet may be required to pay a reverse break fee to United Malt. The amount of each of the break fee and the reverse break fee, should either become payable under the SID, is A\$15.0 million.

A complete copy of the SID (which sets out all of the Conditions and other terms relating to the Scheme and its implementation) is attached to this announcement.

Indicative timetable and next steps

United Malt Shareholders do not need to take any action at this time.

As outlined above, implementation of the Scheme is subject to (among other Conditions) approval by United Malt Shareholders at the Scheme Meeting. For this Condition to be satisfied and the Scheme to proceed, the resolution to approve the Scheme to be considered and voted on by United Malt Shareholders at the Scheme Meeting must be approved by at least 75% of the total number of votes cast by United Malt Shareholders on that resolution and a majority in number (more than 50%) of all eligible United Malt Shareholders present and voting at the Scheme Meeting (in person or by proxy, attorney or corporate representative).

A Scheme Booklet containing important information in relation to the Scheme and the Scheme Meeting, including:

- the detailed reasons for the United Malt Directors' unanimous recommendation in respect of the Scheme;
- notice of, and information about, the Scheme Meeting (including information about how to vote on the Scheme); and
- a copy of the report by the independent expert appointed by United Malt in respect of the Scheme (**Independent Expert**), which will include the Independent Expert's opinion on whether the Scheme is in the best interests of United Malt Shareholders (**Independent Expert's Report**),

will be prepared by United Malt and sent to United Malt Shareholders.

The timetable for implementation of the Scheme (including the date of the Scheme Meeting) will depend on the process for obtaining the required regulatory approvals (which, as noted above, are the subject of Conditions) and has not yet been determined. The SID contains obligations on Malteries Soufflet and United Malt in relation to the regulatory approval processes and the satisfaction of the relevant Conditions.

United Malt will continue to keep United Malt Shareholders informed about the Scheme in accordance with its continuous disclosure obligations.

Amendment of debt facilities

United Malt has also agreed with its lenders to amend United Malt's existing debt facilities (comprising term loan facilities, working capital facilities, and inventory financing facilities). The key changes include:

- Term loan facilities (aggregate facility limit: ~A\$370 million⁴): maturity extended to 1 December 2025;
- Working capital facilities (aggregate facility limit: A\$160million⁴): maturity extended to 11 November 2024;
- Inventory financing facilities (aggregate facility limit: ~A\$332 million⁴): maturity extended to 30 June 2024.

These amendments provide United Malt with additional financing certainty and flexibility, including through the upcoming Scheme implementation process.

Additional information

United Malt has appointed Macquarie Capital as its financial adviser, and Gilbert + Tobin as its legal adviser, in relation to the Scheme.

This announcement was authorised by the United Malt Board.

For further information regarding this announcement, please contact:

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⁴ Aggregate facility limit calculated at exchange rates on 29 June 2023.

Annexure A: Copy of SID

Malteries Soufflet SAS
United Malt Group Limited

Scheme Implementation Deed

Allens
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Corner Hunter and Phillip Streets
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This deed is made on 1 July 2023

Parties

- 1 **Malteries Soufflet SAS** (562 880 195 RCS Troyes) of Quai du Général Sarrail, 10400 Nogent-sur-Seine, France (**Bidder**).
- 2 **United Malt Group Limited** (ABN 61 140 174 189) of Citigroup Centre, L18, Suite C, 2 Park Street, Sydney, NSW 2000 (**Target**).

Recitals

- A The Bidder and the Target have agreed that the Bidder will acquire all of the Scheme Shares pursuant to a scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders.
- B The Target has agreed to propose the Scheme and issue the Scheme Booklet, and the Target and the Bidder have agreed to implement the Transaction on and subject to the terms and conditions of this deed.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

ACCC means the Australian Competition and Consumer Commission.

Accounting Standards means the accounting standards required under the Corporations Act (including the Approved Accounting Standards issued by the Australian Accounting Standards Board).

Accounts means the consolidated financial statements (including the notes thereto) contained in an audited financial report in respect of the Target Group.

Adviser means, in relation to an entity, a professional adviser engaged (directly or indirectly) by the entity in connection with the Transaction or the subject matter in which the reference arises (as the case may be).

Aggregate Scheme Consideration means the aggregate of the Scheme Consideration payable to all Scheme Shareholders under the Scheme (and in accordance with the terms of the Scheme).

Agreed Public Announcement means an announcement to be made to the ASX by Target in accordance with clause 7.3, in the form agreed between the parties before the execution of this deed (evidenced by an exchange of emails between their respective legal or financial advisers).

Applicable Bidder Group Members has the meaning given to that term in the Disclosure Letter.

Applicable Competition Law means the *Australian Competition and Consumer Act 2010* (Cth), the Canadian Competition Act 1986, the UK Competition Act 1998 and the United States' Sherman Antitrust Act, Clayton Act, the Federal Trade Commission Act and the Hart-Scott-Rodino Act.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in section 12(2) of the Corporations Act.

ASX means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market

known as 'ASX' operated by ASX Limited.

ASX Listing Rules means the official listing rules of ASX.

ATO means the Australian Taxation Office.

Beneficiary means a present or former director or officer of a Target Group Member in respect of whom the D&O Policy applies.

Bidder Booklet Information means information regarding the Bidder Group that is provided by Bidder to Target in writing for inclusion in the Scheme Booklet (and that is specifically identified as such by Bidder or any of its Representatives), and any updates to that information provided by Bidder to Target in accordance with clause 5.2(g).

Bidder Counterproposal has the meaning given in clause 9.7(b).

Bidder Group means, collectively, Bidder and its Related Entities.

Bidder Group Member means a member of the Bidder Group.

Bidder Indemnified Parties means each Bidder Group Member and its respective directors, officers and employees.

Bidder Warranty means a representation and warranty of Bidder set out in Schedule 2.

Break Fee means the amount of \$15,000,000.00 (exclusive of GST).

Business means the business of the Target Group.

Business Day means a day which is a Trading Day and is not a Saturday, a Sunday, or a public or bank holiday in Sydney, Australia or in Paris, France.

Claim means any claim, demand, legal proceedings or cause of action (including any claim, demand, legal proceedings or cause of action):

- (a) based in contract, including breach of warranty;
- (b) based in tort, including misrepresentation or negligence;
- (c) at common law or in equity; or
- (d) under statute, including the Australian Consumer Law (being Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) (**CCA**) or Part VI of the CCA, or like provision in any state or territory legislation,

and includes a claim, demand, legal proceedings or cause of action relating to this deed or the Transaction and/or arising under an indemnity in this deed.

Clean Team Protocol means the "Clean Team Protocol" in relation to the Transaction executed on 8 February 2022, as amended from time to time.

Competing Proposal means any proposal, agreement, arrangement, offer (including, but not limited to, a non-binding, indicative offer or proposal) or transaction (other than any Transaction that may be made and implemented in accordance with this deed) which, if entered into or completed substantially in accordance with its terms, would result in a Third Party (either alone or with any Associate(s)):

- (a) directly or indirectly acquiring, or having a right to acquire, a Relevant Interest in more than 20% of the Target Shares on issue (on a fully diluted basis);
- (b) acquiring Control of the Target;
- (c) directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or Control of, more than 20% of:

- (i) the Target's business or assets; or
- (ii) the Target Group's business or assets; or
- (d) requiring the Target to abandon, or to otherwise not proceed with, the Transaction or requiring any Target Director to not recommend the Transaction,

whether by way of takeover bid, members' or creditors' scheme of arrangement, reverse takeover, shareholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual listed company (or other synthetic merger), deed of arrangement, any debt for equity arrangement, recapitalisation, refinancing or other transaction or arrangement (and, for the avoidance of doubt, each successive material modification or variation of any proposal, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal).

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

Confidentiality Agreement means the agreement between Bidder and Target dated 23 December 2021, as amended by agreement dated 27 March 2023, and otherwise as amended from time to time.

Control has the meaning given in section 50AA of the Corporations Act and **Controlled** has the corresponding meaning.

Controlled Bidder Group Member means, in relation to the Bidder:

- (a) a Related Body Corporate of that entity;
 - (b) a Subsidiary of the first entity;
 - (c) an entity of which the first entity is a Subsidiary;
 - (d) a Subsidiary of another entity of which the first entity is also a Subsidiary,
- and:
- (e) an entity will also be taken to be a Subsidiary of an entity if it is Controlled by that entity;
 - (f) a trust may be a Subsidiary, for the purpose of which a unit or other beneficial interest will be regarded as a share;
 - (g) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a body corporate; and
 - (h) in relation to the Bidder, a Related Entity includes:
 - (i) any shareholder of Bidder;
 - (ii) any entity of which Bidder is a Subsidiary; and
 - (iii) any person or entity that exercises Control within the meaning of section 50AA of the Corporations Act (but read as though sections 50AA(3) and 50AA(4) were omitted) over the Bidder.

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

Court means the Federal Court of Australia or such other court of competent jurisdiction as Bidder and Target may agree in writing.

D&O Policy means the Target Group directors' and officers' insurance policy in effect at the date of this deed.

Data Room means the documents and information (including, for the avoidance of doubt, information and responses to questions or requests for information from the Bidder and its

Representatives provided by the Target or its Representatives via the “Q&A” function) contained in the online electronic data room hosted by Ansarada, established and maintained by or on behalf of Target, to which Bidder and its Representatives were given access as at the Data Room Cut-Off Time, an electronic copy of the index of which is the Data Room Index.

Data Room Index means, together, the electronic copies of:

- (a) the index of the documents included in the Data Room as at the Data Room Cut-Off Time; and
- (b) the index of the questions or requests for information from the Bidder and/or its Representatives, and the responses to those questions or requests for information provided by the Target and/or its Representatives, submitted via the “Q&A” function in the Data Room as at the Data Room Cut-Off Time,

which were provided to the Bidder or its Representatives by Target or its Representatives on or before the date of this deed and which the Bidder has confirmed (before the execution of this deed) via email confirmation from its Representatives to Target's Representatives to the effect that they are in an agreed form.

Data Room Cut-Off Time means 2:00am (Sydney time) on 30 June 2023.

Data Room Excluded Information means the documents that were made available and subsequently removed from folder 1.08.07 of the Data Room (which, for clarity, are highlighted in yellow in the Data Room Index and, for the avoidance of doubt, includes any duplicates of those documents that were made available and subsequently removed from folder 2.10 of the Data Room), except to the extent that any information in any such document:

- (a) was disclosed or included in another folder of the Data Room before the time at which any such documents were first made available to the Bidder and its Representatives in folders 1.08.07 and 2.10 of the Data Room; or
- (b) is expressly included in the Disclosure Letter.

Deed Poll means a deed poll to be executed by Bidder in the form of Schedule 6 (or in such other form as Bidder and Target may agree in writing) under which the Bidder covenants and undertakes in favour of the Scheme Shareholders to, among other things, perform the obligations and actions attributed to the Bidder under the Scheme.

Disclosure Letter means a letter identified as such provided by Target to Bidder prior to the execution of this deed and countersigned by Bidder.

Due Diligence Material or **Due Diligence Materials** means:

- (a) the Data Room; and
- (b) the information contained in the Disclosure Letter,

and, for the avoidance of doubt, excludes the Data Room Excluded Information.

Duty means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them, but excludes any Tax.

EBITDA means earnings before interest, taxes, depreciation and amortisation (on a post-AASB 16 basis).

Effective means, when used in relation to the Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to the Scheme.

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

Employee means an employee of a Target Group Member as at the date of this deed and any person who becomes an employee of a Target Group Member between the date of this deed and the Implementation Date (both dates inclusive).

Encumbrance means an interest or power:

- (a) reserved in or over an interest in any asset; or
- (b) created or otherwise arising in or over any interest in any asset under a security agreement, a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes, but is not limited to:

- (c) any agreement to grant or create any of the above; and
- (d) a security interest within the meaning of section 12(1) of the PPSA,
- (e) but does not include a Permitted Encumbrance.

End Date means 5:00pm (Sydney time) on the date which is 12 months after the date of this deed, or such later date as Bidder and Target may agree in writing.

Equity Commitment Letter means:

- (a) the executed binding equity commitment letters addressed to the Bidder and the Target and dated on or before the date of this deed; and
- (b) includes any executed, binding commitment letters as amended, modified or replaced to the extent permitted by clause 10 of Schedule 2, in each case from and after such amendment, modification or replacement.

Equity Financing means the financing commitments set out in the Equity Commitment Letters.

Equity Financing Approvals means the following Regulatory Approvals required to give effect to, or as a result of the implementation of, the Equity Financing by the Applicable Bidder Group Member(s):

- (a) either:
 - (i) a declaration in writing from the French Minister in charge of Economy that the applicable Equity Financing is not subject to the prior authorization pursuant to article L. 151-3 of the French Code monétaire et financier; or
 - (ii) an authorization in writing from the French Minister in charge of Economy of the applicable Equity Financing pursuant to articles L. 151-3 et seq. and R. 151-1 et seq. of the French Code monétaire et financier (as such articles may be amended from time to time),

including, as the case may be, with conditions or undertakings (as interpreted and applied by the relevant French governmental entities);

- (b) one of the following occurs:
 - (i) the statutory review period pursuant to sec 11(1) or 11(1a) of the Austrian Cartel Act (Kartellgesetz 2005 - "**KartG**") expires without either of the statutory parties (that is, the Federal Competition Authority or the Federal Cartel Attorney) having requested an examination of the notified transaction before the Cartel Court;
 - (ii) the statutory parties waive their right to request an examination of the notified transaction before the Cartel Court pursuant to sec 11(4) KartG or withdraw their respective requests for an examination of the notified transaction before the Cartel Court;

- (iii) the Cartel Court issues a legally binding clearance decision pursuant to sec 12 KartG, a legally binding decision that no notifiable event arises in respect of the notified transaction, or a legally binding decision to terminate the proceedings pursuant to sec 14(1) KartG; or
 - (iv) the Austrian Supreme Cartel Court issues a decision that the applicable Equity Financing has not been prohibited;
- (c) approval by the German Federal Cartel Office – such approval will be deemed to have been granted where:
 - (i) the applicable Equity Financing has been cleared by the German Federal Cartel Office;
 - (ii) a statutory notional (that is, a simulated) clearance is given due to the expiration of an applicable deadline; or
 - (iii) the German Federal Cartel Office can no longer issue a prohibition order due to the expiration of an applicable deadline;
- (d) approval or a clearance certificate, or expiration of the waiting period, under the German Foreign Trade and Payments Act by the German Federal Ministry for Economic Affairs and Climate Action in respect of the applicable Equity Financing;
- (e) either:
 - (i) approval or clearance from the Anti-Monopoly Committee of Ukraine (**AMCU**); or
 - (ii) all of the following occur:
 - (A) the AMCU suspends its merger clearance processes such that it is not possible to obtain the approval or clearance contemplated in subparagraph (i) for a period of at least sixty days;
 - (B) the AMCU introduces a special procedure on the same, or materially or substantially the same, terms as it introduced in its Guidelines dated 30 March 2022, which allows the relevant parties to submit a simplified notification (**Simplified Notification**) and close a transaction without obtaining formal approval or clearance from the AMCU, subject to the payment of a fine of an amount not exceeding US\$50,000 (**Applicable Fine**); and
 - (C) the Bidder or one or more of the Applicable Bidder Group Member(s) makes the Simplified Notification and either (i) pays the Applicable Fine, or (ii) agrees to pay any Applicable Fine subsequently issued by the AMCU; and
- (f) any other Regulatory Approvals identified by the Bidder (or notified to the Bidder) after the date of this agreement on the basis of written legal advice from the external legal adviser of the Bidder Group Member who requires that Regulatory Approval, that is required to give effect to, or as a result of the implementation of, the Equity Financing (and notified to the Target in writing, which notice must set out reasonable details of the applicable Regulatory Approval and the reason(s) that it is required to give effect to, or as a result of the implementation of, the Equity Financing).

Excepted Matter means a circumstance, occurrence, event, act, action, fact, matter or change in condition which:

- (a) has been agreed by the parties in writing;

- (b) has been agreed or consented to by Bidder in writing (and where such agreement or consent has been requested by the Target in relation to a Target Regulated Event, it must not be unreasonably withheld or delayed);
- (c) is within the actual knowledge of the Bidder as at the date of this deed (and for these purposes the knowledge that there is a risk of a matter happening does not constitute knowledge that a matter will in fact occur, except to the extent that it could reasonably be foreseeable or expected that the matter would occur, having regard to facts, matters, circumstances, occurrences or events:
 - (i) Fairly Disclosed in the Due Diligence Material;
 - (ii) Fairly Disclosed in an announcement made by Target or a Target Group Member to the ASX in the two years prior to the date of this deed; or
 - (iii) that the Bidder was otherwise aware (as at the date of this deed) had actually occurred),but excluding, for the avoidance of doubt, the Data Room Excluded Information (but only to the extent that the information in the Data Room Excluded Information would not have been within the actual knowledge of the Bidder as at the date of this deed had the Data Room Excluded Information not been made available in the Data Room);
- (d) is required by a contract, or required in order to discharge a contractual obligation under a contract, to which a Target Group Member is a party that was (i) Fairly Disclosed in the Due Diligence Materials or (ii) entered into by a Target Group Member after the date of this deed without breaching this deed;
- (e) is expressly contemplated, permitted or required by, or to be undertaken or procured (or expressly permitted or required not to be undertaken or procured) by, one or more Transaction Documents;
- (f) has been Fairly Disclosed in:
 - (i) the Due Diligence Material;
 - (ii) an announcement made by Target or a Target Group Member to the ASX in the two years prior to the date of this deed; or
 - (iii) a publicly available document lodged with ASIC by or on behalf of Target or another Target Group Member (which would be disclosed in a search of ASIC's records that are open to public inspection) in the two years prior to the date of this deed;
- (g) is required by any applicable law, order of a court, regulation, or Government Agency (including, but not limited to, a direction of or made by a Government Agency);
- (h) is required to avoid a breach, or a reasonably likely breach (as determined by external legal counsel in written advice provided to the Target), in each case of an applicable competition and/or antitrust law or regulation (including, but not limited to, an Applicable Competition Law or any other law or regulation relating to "gun jumping") or the Clean Team Protocol; or
- (i) is undertaken to reasonably and prudently respond to an emergency or disaster occurring (including a situation giving rise to a risk of personal injury or damage to property, or a disease epidemic or pandemic, including the outbreak, escalation or any impact of, or recovery from, the Coronavirus or Covid-19 pandemic (or any mutation, variation or derivative of the Covid-19 pandemic)) after the date of this deed, provided that, to the extent reasonably practicable, the parties have consulted in good faith in respect of the

proposal to take such action or not take such action (as applicable) and considered any reasonable comments or requests of the other party in relation to such proposal in good faith.

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

- (a) the valid termination of this deed in accordance with its terms;
- (b) the Implementation Date; and
- (c) the End Date.

Existing Debt Financing means the Term Loan Facilities, the Working Capital Facilities and the Inventory Financing Facilities, and any other financing agreement or arrangement for the provision of Financial Indebtedness of an amount in excess of \$1,500,000 by a Third Party to a member of the Target Group (including swap and derivative agreements or arrangements) in existence at the date of this deed.

Fairly Disclosed means any fact, matter, circumstance or information disclosed in sufficient detail to enable a reasonable potential acquirer of Target who is properly advised and experienced in transactions similar to the Transaction to identify the nature and significance of the relevant fact, matter, circumstance or information.

FATA has the meaning given to it in clause 3.1(a)(i)(A).

Financial Indebtedness means any debt or other monetary liability (whether actual or contingent), together with all interest, fees and penalties accrued thereon, in respect of moneys borrowed or raised or any financial accommodation, including under or in respect of any:

- (a) bill, bond, debenture, note or similar instrument;
- (b) acceptance, endorsement or discounting arrangement;
- (c) guarantee or letter of credit;
- (d) finance or capital lease;
- (e) swap, option, hedge, forward, futures or similar transaction;
- (f) redeemable share or security;
- (g) deferral of a purchase price or other payment in relation to the acquisition of any asset or service;
- (h) obligation to deliver assets or services paid for in advance by a financier, or any guarantee of the obligations of another person with respect to the foregoing;
- (i) all recourse and non-recourse liabilities and other liabilities (whether conditional or unconditional, present or future) arising from any transactions related to the securitisation of receivables for financing purposes to any third party, including all factoring agreements and similar agreements executed for the purpose of obtaining financing and including any amount raised pursuant to such agreements but which, in accordance with Accounting Standards, have not otherwise been recognised on the balance sheet as a liability; or
- (j) all interest and non-interest bearing loans or other financing liabilities or obligations, including overdrafts and any other liabilities in the nature of borrowed money (whether secured or unsecured),

but, for the avoidance of doubt, excludes all recourse and non-recourse liabilities and other liabilities (whether conditional or unconditional, present or future) arising from any transactions

related to the assignment of receivables in the ordinary course of business to any third party, including all factoring agreements.

FIRB means the Foreign Investment Review Board.

First Court Date means the first day of hearing of an application made to the Court by Target for orders, pursuant to section 411(1) of the Corporations Act, convening the Scheme Meeting or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing (with such hearing being the **First Court Hearing**).

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 (or equivalent officeholder) (including, for the avoidance of doubt, the Commonwealth Treasurer), ASIC, the Takeovers Panel, the ACCC, the ATO, ASX and any regulatory organisation established under statute or any stock exchange or equivalent agency, in each case in any relevant jurisdiction.

GST means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Law has the same meaning as in the GST Act.

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

HSR Act means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

Implementation means the implementation of the Scheme in accordance with its terms.

Implementation Date means the date on which Implementation occurs, being the date that is 18 Business Days after the Record Date, provided that, if the Implementation Date would otherwise fall during the last 15 days of any calendar quarter or on the first Business Day of any calendar quarter (**Blackout Period**), the Implementation Date will be three Business Days after the expiration of that Blackout Period or such other date as Target and Bidder may agree in writing or ordered by the Court.

Independent Expert means an independent expert to be engaged by Target to express an opinion on whether the Scheme is in the best interests of Target Shareholders.

Independent Expert's Report means the report (including the initial report and any update, revision, amendment, addendum or supplementary report) from the Independent Expert in respect of whether or not the Scheme is in the best interests of Target Shareholders.

Insolvency Event means, in the case of any entity:

- (a) it ceases, suspends, or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of all or a substantial part of its assets;
- (b) it stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
- (c) it is, or under legislation is presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or Claim the subject of a good faith dispute);

- (d) it has an administrator, controller or similar officer appointed, or any step preliminary to the appointment of such an officer is taken;
- (e) an application or an order is made, proceedings are commenced, or a resolution is passed (and in the case of an application or proceedings, it is not stayed, withdrawn or dismissed within 30 days) for:
 - (i) its winding up, dissolution or administration; or
 - (ii) it entering into an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (f) a:
 - (i) receiver, receiver and manager, administrative receiver or similar officer is appointed to;
 - (ii) security interest becomes enforceable or is enforced over; or
 - (iii) distress, attachment or other execution is levied or enforced or applied for over, all or a substantial part of its assets; or
- (g) anything analogous to anything referred to in the above clauses, or which has substantially similar effect, occurs with respect to it, including under any foreign law (including, for the avoidance of doubt, any matters taken under chapter 11 of the United States Bankruptcy Code, any receivership, and any special provisions taken under applicable law which adversely impact a substantial part or all of the entity's creditors by way of operation of law, irrespective of whether the entity continues to trade in the ordinary course or is ultimately wound up).

Integration Committee has the meaning given to it in clause 6.7.

Inventory Financing Facilities means the unsecured bilateral inventories disclosed in Data Room references 04.04.04.05.01.07, 04.04.04.05.08.10, 04.04.04.05.01.09, 04.04.04.05.01.10, 04.04.04.05.01.11, 04.04.04.05.01.12, 04.04.04.05.01.13, 04.04.04.05.01.14 and 04.04.04.05.01.15.

ITAA 1997 means the *Income Tax Assessment Act 1997* (Cth).

Key Customer means a customer of the Target Group as at the date of this deed identified in the Disclosure Letter as a Key Customer for the purpose of this deed.

Key Customer Contract means a contract between a Target Group Member and a Key Customer.

Material Adverse Change means any matter, event, change in condition, circumstance, or occurrence occurring (i) before the date of this deed but which is only discovered, announced, publicly disclosed or otherwise becomes known to the Bidder after the date of this deed (but before 8:00 am on the Second Court Date), or (ii) on or between the date of this deed and 8:00 am on the Second Court Date (**Relevant Matter**) that individually or when aggregated with all other Relevant Matters:

- (a) diminishes, or could be reasonably expected to diminish, consolidated annual underlying EBITDA of the Target Group on a recurring basis by an amount of at least \$15 million (calculated in accordance with the accounting policies and practices applied by Target in preparing its financial statements for the half-year ended 31 March 2023), as compared to what the consolidated annual underlying EBITDA of the Target Group (on a recurring basis and calculated in accordance with the accounting policies and practices as described above) could reasonably be expected to have been (at the time the Relevant

Matter occurred or was discovered, announced, publicly disclosed or otherwise becomes known to the Bidder (as applicable)) but for the Relevant Matter, excluding the impact of any Relevant Matter to the extent that any loss incurred by the Target Group in connection with that Relevant Matter is recovered, or is reasonably expected to be recoverable, under a Target Group Member's (or a Target Group) insurance policy;

- (b) diminishes, or could be reasonably expected to diminish, (whether now or in the future) the consolidated net assets of the Target Group by 10% or more, as compared to the consolidated net assets of the Target Group as at 31 March 2023 reported in Target's financial statements for the financial half-year ended 31 March 2023, determined after excluding the impact of any Relevant Matter to the extent that any loss incurred by the Target Group in connection with that Relevant Matter is recovered, or is reasonably expected to be recoverable, under a Target Group Member's (or a Target Group) insurance policy; or
- (c) has, or could reasonably be expected to have, a material adverse effect on (i) the assets and liabilities of the Target Group (taken as a whole); (ii) the financial condition of the Target Group (taken as a whole); or (iii) the reputation of the Target Group that materially adversely affects, or could reasonably be expected to materially adversely affect, the future long term prospects of the Target Group, regardless of whether the actual direct financial impact of the Relevant Matter on the Target Group exceeds (or is reasonably likely to exceed) the thresholds set out in paragraphs (a) or (b) above,

other than, in each case, a Relevant Matter:

- (d) which is an Excepted Matter;
- (e) arising from any actual or proposed change to, or required by, any law, regulation, rule, Government Agency (including, but not limited to, a request or direction of or made by a Government Agency), generally accepted accounting standards or principles or the interpretation of any such standards or principles or other change in accounting standards;
- (f) arising from any act of terrorism, outbreak or escalation of war (whether or not declared) or major hostilities (including, but not limited to the conflict and hostilities in Ukraine that persist on the date of this deed) occurring after the date of this deed;
- (g) which arises as a result of a change, deterioration, or disruption to:
 - (i) or condition of, financial or commodity (including barley) markets or economic, industry, political, market or business conditions;
 - (ii) rates or prices (including, but not limited to, interest rates, exchange rates and/or commodity (including barley) prices); or

other than such a change, deterioration or disruption that disproportionately impacts the Target compared to other participants in the market in respect of which the change, deterioration or disruption occurs;

- (h) arising as a result of any loss of, or adverse change in, the relationship of Target or another Target Group Member with its respective contractual counterparties (including the loss of any contract) which occurs directly as a result of the identity of the Bidder as the purchaser of the Target Shares under the Scheme;
- (i) arising from a pandemic, including Coronavirus or Covid-19 (or any mutation, variation or derivative), including in connection with lockdowns, travel restrictions, quarantining, closures, social distancing and restrictions of and on activities, venues and gatherings or

from any law, order, rule, recommendation, guidance or direction of any Government Agency in relation thereto; or

- (j) arising from an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, drought, other natural disaster, or adverse weather event, in each case except to the extent such act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, drought, other natural disaster, or adverse weather event directly affects the Material Properties or the Target Group's physical assets and only to such extent.

Material Authorisation has the meaning given in clause 7(b) of Schedule 3.

Material Contract means a written contract:

- (a) **Barley Purchase Contract:** between a Target Group Member and a person other than the Target or any of its Related Entities (a **Contract Counterparty**) for the purchase of barley (**Barley Purchase Contract**), where the amount of barley committed to be purchased under that Barley Purchase Contract in any calendar year ending after the date of this deed, when aggregated with the amounts of barley committed to be purchased under all Barley Purchase Contracts with the same Contract Counterparty (and other counterparties that are Related Bodies Corporate of (or are otherwise part of the same corporate group as) the Contract Counterparty) in that calendar year, exceeds 20,000 tonnes;
- (b) **Malt Sale Contract:** between a Target Group Member and a Contract Counterparty for the sale of malt (**Malt Sale Contract**), where the amount of malt committed to be purchased by that Contract Counterparty under that Malt Sale Contract in any calendar year ending after the date of this deed, when aggregated with the amounts of malt committed to be purchased under all Malt Sale Contracts with the same Contract Counterparty (and other counterparties that are Related Bodies Corporate of (or are otherwise part of the same corporate group as) the Contract Counterparty) in that calendar year, exceeds 20,000 tonnes;
- (c) **Transportation Contract:** for the purchase of transportation services under which a Target Group Member has committed (or is otherwise bound) to purchase a minimum quantity of transportation services over a period of 12 months or more ending after the date of this deed (**Transportation Contract**);
- (d) **Utilities Contract:** any heat production contract (including but not limited to electricity or gas or fuel or coal) under which a Target Group Member has committed (or is otherwise bound) to purchase a minimum quantity of electricity or gas or coal or fuel (as applicable) over a period of 12 months or more ending after the date of this deed (**Utilities Contract**);
- (e) **services contract:** for the provision of services by a third party service provider to the Target Group (other than a Transportation Contract, a Utilities Contract, a SaaS Contract (as defined below), or a contract between a Target Group Member and an Adviser) under which a Target Group Member has committed to pay more than US\$1,000,000 (exclusive of GST or equivalent) to the third party service provider after the date of this deed;
- (f) **equipment purchase contract:** for the sale of equipment by a Contract Counterparty to the Target Group (other than in connection with any actual, estimated or proposed capital expenditure identified or referred to in, or contemplated by, or forecast to be incurred, in Data Room document 02.04.01.05.23) under which a Target Group Member has committed to acquire equipment for a total cost of more than US\$1,000,000 (exclusive of GST or equivalent) after the date of this deed (including, for the purposes of the Target

Scheme Warranty in clause 11 of Schedule 3 only, a draft of such a contract that is not yet signed or executed as at the date of this deed, even if such draft contract relates to the sale of equipment by a Contract Counterparty to the Target Group in connection with any actual, estimated or proposed capital expenditure identified or referred to in, or contemplated by, or forecast to be incurred, in Data Room document 02.04.01.05.23); or

- (g) **SaaS Contract:** to which a Target Group Member is a party that relates to the design and implementation of enterprise resource planning (ERP) software or transport management system (TMS) software by a third party service provider (after the date of this deed) which is entered into other than on a “time and materials” basis (**SaaS Contract**).

Material Property means each of:

- (a) the freehold properties owned by a Target Group Member; and
- (b) the leasehold properties leased by a Target Group Member,

identified as a “Material Property” in Data Room documents 01.08.07.03.06.01 and 01.08.07.03.06.02.

Notice of Meeting means the notice convening the Scheme Meeting, together with the proxy form for the Scheme Meeting.

Permitted Dividend has the meaning given to it in clause 4.6.

Permitted Encumbrance means:

- (a) every lien or retention of title arrangement securing the unpaid balance of purchase money for property acquired in the ordinary course of business on the supplier's standard terms where such unpaid balance is not yet due;
- (b) any mechanic's, workmen's or other like lien arising in the ordinary course of the business of the Target Group;
- (c) any Encumbrance in relation to personal property (as defined in the PPSA and to which the PPSA applies) that is created or provided for by:
 - (i) a transfer of an Account or Chattel Paper;
 - (ii) a PPS Lease; or
 - (iii) a Commercial Consignment,in each case, that is not a security interest within the meaning of section 12(1) of the PPSA (or its equivalent in the US, the UK or Canada); and/or
- (d) the interest of the lessor or owner in respect of assets subject to a finance or capital lease, a hire-purchase agreement or a conditional sale agreement.

In this definition, **Account**, **Chattel Paper**, **PPS Lease** and **Commercial Consignment** have the meanings given in the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth) (or its equivalent in the US, the UK or Canada).

Recommendation has the meaning given to it in clause 7.1(a).

Record Date means 7.00pm on the date that is two Business Days after the Effective Date, or such other date as may be agreed in writing between Bidder and Target or as may be required by ASX.

Regulator's Draft has the meaning given to it in clause 5.1(e).

Regulatory Approval means any approval, consent, authorisation, no-objection, registration,

filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Government Agency.

Regulatory Guides means all regulatory guides published by ASIC and in force at the date of this deed.

Related Body Corporate has the meaning given to that term in section 50 of the Corporations Act.

Related Entity means, in relation to an entity (the **first entity**):

- (a) a Related Body Corporate of that entity;
 - (b) a Subsidiary of the first entity;
 - (c) an entity of which the first entity is a Subsidiary;
 - (d) a Subsidiary of another entity of which the first entity is also a Subsidiary,
- and:
- (e) an entity will also be taken to be a Subsidiary of an entity if it is Controlled by that entity;
 - (f) a trust may be a Subsidiary, for the purpose of which a unit or other beneficial interest will be regarded as a share;
 - (g) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a body corporate;
 - (h) in relation to the Bidder, a Related Entity includes:
 - (i) any shareholder of Bidder;
 - (ii) any entity of which Bidder is a Subsidiary;
 - (iii) any person or entity that exercises Control within the meaning of section 50AA of the Corporations Act (but read as though sections 50AA(3) and 50AA(4) were omitted) over the Bidder; and
 - (iv) any entity which has provided an Equity Commitment Letter which has not been validly withdrawn or terminated.

Relevant Government Agency has the meaning given to it in clause 3.7(a)(i).

Relevant Interest has the meaning given to that term by section 9 of the Corporations Act.

Representative of a party means any director, officer or employee, or Adviser of the party or any of its Related Entities.

Reverse Break Fee means the amount of \$15,000,000.00 (exclusive of GST).

Run Off Cover has the meaning given to it in clause 12.2.

Scheme means a scheme of arrangement under Part 5.1 of the Corporations Act between Target and Scheme Shareholders in the form of Schedule 5, together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by Target and Bidder in accordance with clause 4.3, or in such other form as Bidder and Target may agree in writing.

Scheme Booklet means the explanatory memorandum to be prepared in respect of the Scheme in accordance with the terms of this deed and to be despatched by Target to Target Shareholders, which will contain (among other things) the Independent Expert's Report, the Scheme, the Deed Poll, the Notice of Meeting.

Scheme Consideration means the consideration to be provided to Scheme Shareholders under the terms of the Scheme for the transfer to Bidder of their Scheme Shares, as described in clause 4.

Scheme Meeting means the meeting of Target Shareholders to be ordered by the Court to be convened under section 411(1) of the Corporations Act in relation to the Scheme, and includes any adjournment of that meeting.

Scheme Resolution means the resolution to be put to Target Shareholders to vote on the Scheme (such resolution to be put to Target Shareholders at the Scheme Meeting and that, to be passed, must be approved by the requisite majorities of Target Shareholders under section 411(4)(a)(ii) of the Corporations Act).

Scheme Shareholder means each person who is registered in the Target Register as a holder of a Scheme Share as at the Record Date.

Scheme Shares means the Target Shares on issue as at the Record Date.

Second Court Date means the first day of hearing of an application made to the Court by Target for orders pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing (with such hearing being the **Second Court Hearing**).

Specified Person has the meaning given in the Disclosure Letter.

Subsidiary has the meaning given in the Corporations Act.

Superior Proposal means a bona fide, written Competing Proposal that the Target Board determines, acting in good faith and in order to satisfy what the Target Board considers to be its fiduciary or statutory duties (after having obtained written advice from Target's legal adviser and, if determined to be appropriate by the Target Board, financial adviser):

- (a) is reasonably capable of being valued and completed in accordance with its terms, having regard to conditionality and taking into account all relevant legal, financial, timing, regulatory and other aspects of such Competing Proposal, including the capacity of the proposing party to consummate the transactions contemplated by the Competing Proposal (including having regard to funding sources), in each case, to the extent known by the Target Board; and
- (b) would, or would be reasonably likely to, if completed substantially in accordance with its terms, result in a transaction that is more favourable to the Target Shareholders (as a whole) than the Transaction, taking into account all the relevant terms and conditions and other aspects of the Competing Proposal, including (but not limited to) in respect of each of the Competing Proposal and the Transaction,
 - (i) the capacity of the proposing party to consummate the transactions contemplated by the Competing Proposal (including having regard to funding sources);
 - (ii) consideration (including value and type), conditionality, funding, certainty and timing;
 - (iii) the probability of the Competing Proposal being completed compared to the Transaction; and
 - (iv) any other relevant legal, financial, regulatory and other matters.

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

Takeovers Panel means the Takeovers Panel constituted under the *Australian Securities and Investments Commission Act 2001* (Cth).

Target Board means the board of directors of Target (as constituted from time to time).

Target Booklet Information means all information included in the Scheme Booklet, and any updates to that information prepared by or on behalf of Target in accordance with clause 5.1(n), other than:

- (a) the Bidder Booklet Information and any information solely derived from, or prepared solely in reliance on, the Bidder Booklet Information (to the extent of such derivation or reliance (as applicable)); and
- (b) the Independent Expert's Report.

Target Director means a director of Target.

Target Group means, collectively, Target and its Subsidiaries.

Target Group Member means a member of the Target Group.

Target Indemnified Parties means each Target Group Member and their respective directors, officers and Employees.

Target Performance Rights means a performance right granted by Target under a Target long-term incentive plan, which entitles the holder to receive a Target Share in certain circumstances.

Target 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 Registry means Link Market Services Limited (ABN 54 083 214 537), or such other registry provider engaged by the Target from time to time.

Target Regulated Contract means any contract that, if entered into or renewed without Bidder's prior written consent or agreement, would result in the occurrence of a Target Regulated Event of the kind described in clause 9, 10, 17 and 18 of Schedule 4.

Target Regulated Event means the occurrence of any of the circumstances, events, actions or matters set out in Schedule 4 other than any Excepted Matters.

Target Scheme Warranty means a representation and warranty of Target set out in Schedule 3.

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

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

Tax means any tax, tax-related liability (within the meaning of Part 4-15 of Schedule 1 of the TAA), levy, charge, impost, fee, deduction, goods and services tax (including GST), compulsory loan or withholding, that is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above, but excludes Duty.

Term Loan Facilities means the unsecured bilateral working capital facilities disclosed in Data Room references 04.04.04.05.01.16, 04.04.04.05.01.18, 04.04.04.05.01.20 and 04.04.04.05.01.23.

Third Party means any person other than Bidder or any of its Related Entities or Representatives.

Timetable means the indicative timetable for the implementation of the Transaction agreed between the parties (acting reasonably and in good faith) once they have greater clarity about the likely timing for satisfaction of the Conditions Precedent in clauses 3.1(a) and 3.1(j), or as may be required by ASX.

Trading Day has the meaning given in the ASX Listing Rules.

Transaction means the proposed transaction pursuant to which Bidder will acquire the Scheme Shares under the Scheme, in consideration for the provision of the Scheme Consideration.

Transaction Costs means the amount (GST inclusive) of all Third Party costs, fees and expenses paid (including before the date of this deed) or payable by a Target Group Member to an Adviser (or other service provider) in relation to the Transaction.

Transaction Documents means:

- (a) this deed;
- (b) the Scheme; and
- (c) the Deed Poll.

Trust Account has the meaning given to that term in the Scheme.

US or **U.S.** means the United States of America.

UK means the United Kingdom.

Voting Intention has the meaning given to it in clause 7.1(a)(ii).

Working Capital Facilities means the unsecured bilateral working capital facilities disclosed in Data Room references 04.04.04.05.01.17, 04.04.04.05.01.19, 04.04.04.05.01.21, 04.04.04.05.01.24 and 04.04.04.05.01.27.

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after the words 'includes', 'including', 'for example', or similar expressions, does not limit what else might be included.
- (c) Nothing in this deed is to be interpreted against a party solely on the ground that the party put forward this deed or a relevant part of it.
- (d) The following rules apply unless the context requires otherwise.
 - (i) The singular includes the plural, and the converse also applies.
 - (ii) A gender includes all genders.
 - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
 - (v) A reference to a clause or Schedule is a reference to a clause of, or Schedule to, this deed.
 - (vi) A reference to an agreement or document (including a reference to this deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this deed or that other agreement or document and includes the recitals, schedules and annexures to that agreement or document.
 - (vii) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form (and includes a communication by electronic mail).
 - (viii) A reference to a party to this deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).

- (ix) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (x) A reference to *conduct* includes an omission, statement or undertaking, whether or not in writing.
- (xi) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (xii) A reference to *dollars* or \$ is to Australian dollars, the lawful currency of Australia.
- (xiii) Where an amount in this deed is expressed in Australian dollars, and it is necessary to convert assets or liabilities which are denominated in a currency other than Australian dollars with reference to the amount in this deed expressed in Australian dollars, the foreign currency exchange conversion practices adopted by the Target in preparing its most recent Accounts shall be applied.
- (xiv) Words and phrases not specifically defined in this deed have the same meanings (if any) given to them in the Corporations Act.
- (xv) A reference to time is to time in Sydney, Australia, unless otherwise specified.
- (xvi) A reference to a **liability** incurred by any person includes any liability of that person arising from or in connection with any obligation (including indemnities and all other obligations owed as principal or guarantor) whether liquidated or not, whether present, prospective or contingent and whether owed, incurred or imposed by or to or on account of or for the account of that person alone, severally or jointly or jointly and severally with any other person.
- (xvii) A reference to a **loss** incurred by any person includes any loss, liability, damage, cost, charge or expense that the person pays, incurs or is liable for and any other diminution of value of any description that the person suffers, including all liabilities on account of taxes or duties, all interest, penalties, fines and other amounts payable to third parties and all reasonable legal expenses and other expenses in connection with investigating or defending any claim, action, demand or proceeding, whether or not resulting in any liability, and all amounts paid in settlement of any such claims.

1.3 Business Day

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

1.4 Best and reasonable endeavours

A reference to a party using or an obligation on a party to use its best endeavours or reasonable endeavours does not oblige that party to:

- (a) pay money or provide other valuable consideration:
 - (i) in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing); or
 - (ii) in circumstances that are commercially onerous or unreasonable in the context of this deed or the Transaction; or

- (b) agree to commercially onerous or unreasonable conditions, except where the provision expressly specifies otherwise.

1.5 Consents and approvals

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

1.6 Breach of Conditions Precedent

For the avoidance of doubt, a reference in this deed to a Condition Precedent being breached includes a reference to the Condition Precedent becoming incapable of being satisfied.

1.7 Target knowledge, belief or awareness

- (a) In this deed, unless otherwise specified, a reference to the knowledge, belief or awareness of Target or a Target Group Member is limited to the actual knowledge, belief or awareness of the persons agreed between the parties in writing in the Disclosure Letter, in each case as at the date of this deed having made reasonable enquiries of each other and of their direct reports. The knowledge, belief or awareness of any other person will not be imputed to Target nor any other Target Group Member (except to the extent referred to in this clause 1.7(a)).
- (b) Without limiting clause 12, none of the persons referred to in clause 1.7(a) as being agreed between the parties in writing will bear any personal liability in respect of the Target Scheme Warranties or otherwise under this deed, except where such person has engaged in wilful misconduct, wilful concealment, or fraud.

1.8 Bidder knowledge, belief or awareness

- (a) In this deed, unless otherwise specified, a reference to the knowledge, belief or awareness of Bidder is limited to the actual knowledge, belief or awareness of the persons agreed between the parties in writing in the Disclosure Letter, in each case as at the date of this deed having made reasonable enquiries of each other and of their direct reports (except that any knowledge, belief or awareness of the Data Room Excluded Information will not be imputed to Bidder, even if the Bidder is actually aware of the Data Room Excluded Information, but only to the extent that the information in the Data Room Excluded Information would not have been within such actual knowledge of the Bidder as at the date of this deed had the Data Room Excluded Information not been made available in the Data Room). The knowledge, belief or awareness of any other person will not be imputed to Bidder (except to the extent referred to in clause 1.8(a)).
- (b) Without limiting clause 12, none of the persons referred to in clause 1.8(a) as being agreed between the parties in writing will bear any personal liability in respect of the Bidder Warranties or otherwise under this deed, except where such person has engaged in wilful misconduct, wilful concealment, or fraud.

1.9 Listing requirements included as law

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

2 Agreement to Proceed with Scheme

2.1 Target to propose Scheme

The Target agrees to propose and implement the Scheme on and subject to the terms and conditions of this deed, and to use all reasonable endeavours to do so as soon as is reasonably practicable (subject to clause 5) and otherwise in accordance with this deed.

2.2 Bidder to assist Target

The Bidder agrees to assist the Target to propose and implement the Scheme, in each case, on and subject to the terms and conditions of this deed and the Deed Poll, and to use all reasonable endeavours to do so as soon as reasonably practicable (subject to clause 5) and otherwise in accordance with this deed and the Deed Poll.

3 Conditions Precedent and Pre-Implementation Steps

3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective and the respective obligations of the parties to implement the Scheme under clause 4.5 (and any other obligations of the parties that can only be performed, or are only required to be performed, after the Court approves the Scheme for the purpose of section 411(4)(b) of the Corporations Act) are not binding until each of the following Conditions Precedent is satisfied or waived in accordance with this clause 3:

Conditions Precedent for the benefit of Bidder and Target

(a) (Regulatory Approvals)

- (i) **(FIRB)** before 5.00pm on the Business Day before the Second Court Date, either of the following occurs:
 - (A) the Treasurer of the Commonwealth of Australia (or their delegate) provides written notice under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**) stating that, or to the effect that, the Commonwealth Government has no objection to the transactions expressly contemplated by this deed either on an unconditional basis or subject only to:
 - (1) 'standard' tax conditions which are in the form, or substantially in the form, of those set out in items 1 to 6 of Part D of FIRB's Guidance Note 12 'Tax Conditions' (in the form last updated on 9 July 2021); and
 - (2) such other conditions or undertakings required or requested by FIRB which are acceptable to the Bidder, acting reasonably and in good faith;
 - (B) following the Bidder giving notice under the FATA of the Transaction, the Treasurer of the Commonwealth of Australia becomes precluded by passage of time from making any order or decision under Division 2 of Part 3 of the FATA in respect of the acquisition contemplated by this deed, and the 10 day period referred to in section 82(2)(a) of the FATA has ended or the period referred to in section 82(2)(b) of the FATA has ended (whichever is applicable); or
 - (C) where an interim order is made under section 68 of the FATA in respect of the Transaction, the subsequent period for making an order or decision

under Part 3 of the FATA elapses without the Treasurer of the Commonwealth of Australia making such an order or decision;

- (ii) **(Antitrust/competition-related Regulatory Approvals)** before 5.00pm on the Business Day before the Second Court Date:
- (A) **(Australian competition approval)** the Bidder has received notice in writing from the ACCC stating, or stating to the effect, that:
- (1) the ACCC does not intend to conduct a public review of the acquisition by the Bidder of the Business under the Scheme; or
 - (2) the ACCC does not propose to intervene in or seek to prevent the acquisition by the Bidder of the Business under the Scheme, either on an unconditional basis or subject only to conditions acceptable to the Bidder acting reasonably,
- and that notice has not been withdrawn, revoked or adversely amended before the Implementation Date;
- (B) **(Canada Competition Act Approval)** with respect to the transactions contemplated by this deed:
- (1) the Commissioner of Competition appointed under subsection 7(1) of the Competition Act (Canada) or any person duly authorized to perform duties on behalf of the Commissioner of Competition (the **Commissioner**) shall have issued (and not rescinded or amended) to the Bidder an advance ruling certificate under subsection 102(1) of the Competition Act (Canada), or
 - (2) (x) the waiting period under Section 123 of the Competition Act (Canada) shall have expired or been terminated by the Commissioner or the notification requirement shall have been waived by the Commissioner pursuant to paragraph 113(c) of the Competition Act (Canada), and, (y) unless waived in writing by the Bidder, the Commissioner shall have issued (and not rescinded or amended) to the Bidder written confirmation that the Commissioner does not, at that time, intend to make an application under section 92 of the Competition Act (Canada) in respect of the transactions contemplated by the deed;
- (C) **(CMA Approval)** following the Bidder having submitted a briefing paper to the UK Competition and Markets Authority (**CMA**) in relation to the Transaction (**Briefing Paper**), either:
- (1) the CMA's position as most recently communicated to the Bidder in response to the briefing paper being that it has no further questions in respect of the Transaction, and the CMA not having:
 - (a) requested submission of a merger notice pursuant to section 96 of the Enterprise Act 2002, (b) given notice to either party that it is commencing a Phase I investigation, (c) indicated that the statutory review period in which the CMA has to decide whether to make a reference under section 34ZA of the Enterprise Act 2002 has begun, or (d) requested documents or attendance by witnesses under section 109 of the Enterprise Act 2002 having indicated that it is intending to commence the aforementioned review period in respect of the Transaction; or

- (2) where the CMA has commenced an investigation in respect of the Transaction, the CMA having: (a) issued a decision that it has decided not to refer the Transaction to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (a **Phase 2 Referral**), (b) in accordance with section 73(2) of the Enterprise Act 2002, formally accepted undertakings in lieu of a Phase 2 Referral on terms satisfactory to the Bidder (acting reasonably), (c) in the event of a Phase 2 Referral, issued a report concluding that the Transaction or any part of it may not be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom, or (d) in the event of a Phase 2 Referral, accepted undertakings to remedy, mitigate or prevent any substantial lessening of competition within a market or markets in the UK that may be expected to arise from the Transaction or any part of it on terms satisfactory to the Bidder (acting reasonably); and
 - (D) (**HSR approval**) the applicable waiting period under the HSR Act relating to the transactions contemplated by this deed shall have expired or been terminated.
- (b) (**Independent Expert's Report**) the Independent Expert:
 - (i) provides the Independent Expert's Report to Target, stating that, in its opinion, the Scheme is in the best interests of Target Shareholders before the time when the Scheme Booklet is registered by ASIC; and
 - (ii) does not adversely change or qualify its conclusion or withdraw the Independent Expert's Report in writing prior to 8.00am on the Second Court Date;
- (c) (**Target Shareholder approval**) the Target Shareholders vote in favour of the Scheme by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act (except to the extent the Court orders otherwise under section 411(4)(a)(ii)(A) of the Corporations Act) at the Scheme Meeting;
- (d) (**Court approval of Scheme**) the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act (either unconditionally and without modification or with modifications or conditions consented to by Target and Bidder in accordance with clause 4.3);
- (e) (**Orders lodged with ASIC**) an office copy of the Court order approving the Scheme under section 411(4)(b) of the Corporations Act is lodged with ASIC;
- (f) (**no restraints**):
 - (i) no judgment, order, decree, ordinance, rule, or other permanent or temporary restraining order, preliminary or permanent injunction, restraint or prohibition, entered, enacted, promulgated, enforced or issued by any court or other Government Agency of competent jurisdiction; and
 - (ii) no statute, law or regulation,
 prohibits, materially restricts, makes illegal or restrains the completion of the Transaction or any Transaction Document remains in effect as at 8.00am on the Second Court Date;

Conditions Precedent for the benefit of Bidder only

- (g) **(no Target Regulated Event)** subject to clause 3.3(c), no Target Regulated Event occurs between the date of this deed and 8.00am on the Second Court Date;
- (h) **(no Material Adverse Change)** no Material Adverse Change occurs or is identified between the date of this deed and 8.00am on the Second Court Date;
- (i) **(Target Performance Rights)** by 8:00am on the Second Court Date, Target has taken all steps required to ensure that, before the Record Date, all Target Performance Rights, options, warrants or any other securities convertible into, or rights to receive, Target Shares, vest, lapse or are cancelled, as contemplated in clause 4.7, other than any step or action required or contemplated by clause 4.7(b) which is only conditional on the Scheme becoming effective; and
- (j) **(Equity Financing Approvals)** each Equity Financing Approval has been received or occurred (or is otherwise satisfied) before 5.00pm on the Business Day before the Second Court Date.

3.2 Benefit and waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a)(i), 3.1(c), 3.1(d) and 3.1(e) cannot be waived.
- (b) The Conditions Precedent in clauses 3.1(a)(ii) and 3.1(f) are for the benefit of each party, and any breach or non-fulfilment of that Condition Precedent may only be waived with the written consent of both parties.
- (c) The Conditions Precedent in clauses 3.1(g), 3.1(h), 3.1(i) and 3.1(j) are for the sole benefit of the Bidder, and any breach or non-fulfilment of any of those Conditions Precedent may only be waived by the Bidder giving its written consent.
- (d) The Condition Precedent in clause 3.1(b) is for the sole benefit of Target and any breach or non-fulfilment of that Condition Precedent may only be waived with the written consent of Target (in its absolute discretion).
- (e) A party entitled to waive the breach or non-fulfilment of a Condition Precedent pursuant to this clause 3.2 may do so in its absolute discretion. Any waiver of a Condition Precedent by a party that has the benefit of the Condition Precedent must occur before 8.00am on the Second Court Date.
- (f) If a waiver by a party of a Condition Precedent is itself expressed to be conditional and the other party accepts the conditions, the terms of the conditions apply accordingly. If the other party does not accept the conditions, the relevant Condition Precedent has not been waived.
- (g) If a party waives the breach or non-fulfilment of a Condition Precedent, that waiver will not preclude it from suing the other party for any breach of this deed constituted by the same event that gave rise to the breach or non-fulfilment of the Condition Precedent, provided that the relevant party is permitted to do so under this deed.
- (h) Waiver of a breach or non-fulfilment in respect of one Condition Precedent does not constitute:
 - (i) a waiver of breach or non-fulfilment of any other Condition Precedent resulting from the same events or circumstances; or
 - (ii) a waiver of breach or non-fulfilment of that Condition Precedent resulting from any other event or circumstance.

3.3 All reasonable endeavours and co-operation and satisfaction of Conditions Precedent

- (a) Without prejudice to any other obligations of the parties under this deed:
- (i) the Bidder must (to the extent that it is within its power to do so) use all reasonable endeavours to:
 - (A) satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(a) and 3.1(j), as soon as practicable after the date of this deed and continues to be satisfied at all times until the last time that the relevant clause provides that the Condition Precedent is to be satisfied; and
 - (B) without limiting clause 3.3(a)(ii), ensure that the Bidder Group Members that have applied or must apply to the applicable Government Agency or Government Agencies for, or otherwise require, the Equity Financing Approvals (including, for the avoidance of doubt, the Applicable Bidder Group Members) take all steps and actions required (whether by law or otherwise) to: (i) obtain the Equity Financing Approvals as soon as reasonably practicable after the date of this deed, (ii) ensure that any Equity Financing Approvals received or obtained are not withdrawn, cancelled or revoked, and (iii) otherwise ensure that the Condition Precedent in clause 3.1(j) is satisfied as soon as reasonably practicable after the date of this deed and continues to be satisfied at all times until the last time that clause 3.1(j) provides that the Condition Precedent in clause 3.1(j) is to be satisfied, including, but not limited to:
 - (1) as soon as practicable after the date of this deed, using all reasonable endeavours to provide all notices and lodging all applications (and paying all applicable filing fees relating to thereto) that are required to obtain the Equity Financing Approvals; and
 - (2) using all reasonable endeavours to provide any Relevant Government Agency with all information reasonably required by the Relevant Government Agency for the purposes of obtaining any Equity Financing Approval;
- provided that
- (3) subject to clause 3.7(d), the Target provides the Bidder with all assistance and information reasonably requested by the Bidder within a reasonable timeframe to enable it to satisfy the obligations to file such Equity Financing Approvals as soon as practicable after the date of this deed and provide any information reasonably required by the Relevant Government Agency for the purposes of obtaining any Equity Financing Approval;
 - (4) for the avoidance of doubt, the Bidder will not be in breach of this clause 3.3(a)(i)(B) for failing to satisfy its obligations to file such Required Regulatory Approvals as soon as practicable after the date of this deed to the extent that such failure is caused by the Target's inability, or failure, to provide information or assistance reasonably requested by the Bidder, as contemplated in clause 3.3(a)(i)(B)(3) above; and

- (ii) without limiting clause 3.3(a)(i)(B), the Bidder must ensure that each relevant Applicable Bidder Group Member:
 - (A) provides all notices and lodges all applications (and pays all applicable filing fees relating thereto) that are required to obtain the Equity Financing Approval at paragraph (e) of the definition of 'Equity Financing Approvals' within 15 Business Days after the date of this deed provided that:
 - (1) subject to clause 3.7(d), the Target provides the Bidder with all assistance and information reasonably requested by the Bidder within a reasonable timeframe to enable it to satisfy those obligations within the 15 Business Days; and
 - (2) for the avoidance of doubt, the Bidder will not be in breach of this clause 3.3(a)(ii)(A) for failing to satisfy its obligations within the 15 Business Days to the extent that such failure is caused by the Target's inability, or failure, to provide information or assistance reasonably requested by the Bidder, as contemplated in clause 3.3(a)(ii)(A)(1) above; and
 - (B) if the AMCU suspends its merger clearance processes such that it is not possible to obtain the approval or clearance contemplated in paragraph (e)(i) of the definition of 'Equity Financing Approvals' for a period of at least sixty days, promptly makes a Simplified Notification and promptly:
 - (1) pays (or procures payment of) any Applicable Fine; or
 - (2) agrees to pay any Applicable Fine subsequently issued by the AMCU.
 - (iii) the Bidder and the Target must each (to the extent that it is within its power to do so) use all reasonable endeavours (other than waiving a Condition Precedent) to:
 - (A) satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(c), 3.1(d), and 3.1(f) as soon as practicable after the date of this deed and, in any event, before the End Date and continue to be satisfied at all times until the last time that the relevant clause provides that each such Condition Precedent is to be satisfied; and
 - (B) not take any action, and use its reasonable endeavours to ensure that, there is no occurrence or non-occurrence within its reasonable control (or control of, in the case of Bidder, another Bidder Group Member, or, in the case of Target, another Target Group Member) (other than waiving a Condition Precedent) that prevents, or would be reasonably likely to prevent, the satisfaction of any Condition Precedent;
 - (iv) the Target must (to the extent that it is within its power to do so) use all reasonable endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(e), 3.1(g), 3.1(h) and 3.1(i) as soon as practicable after the date of this deed; and
 - (v) the Target must provide information reasonably requested by the Bidder to enable it to make the applications for approval and to respond to queries from Government Agencies for the purposes of satisfying the Conditions Precedent.
- (b) Excepted Matters:
- (i) Target will not be in breach of its obligations under clause 3.3(a) to the extent that it takes an action or omits to take an action which is an Excepted Matter; and

- (ii) Bidder will not be in breach of its obligations under clause 3.3(a) to the extent that it takes an action or omits to take an action which is an Excepted Matter (other than an act or omission described in paragraph (b), (c), (d), or (f) of the definition of 'Excepted Matter').
- (c) In respect of the Condition Precedent in clause 3.1(g), if a Target Regulated Event occurs during the period commencing on the date of this deed and ending at 8.00am on the Second Court Date, the Condition Precedent in clause 3.1(g) will not be taken to have been breached or not satisfied (or incapable of satisfaction) unless:
 - (i) Bidder has given written notice to Target and such notice also sets out the relevant circumstances of the breach or non-fulfilment of the Condition Precedent in clause 3.1(g); and
 - (ii) Target has failed to remedy the breach or the effects of the breach within 10 Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the date on which such notice is given.

3.4 Notifications

Each party must:

- (a) keep the other party promptly and reasonably informed of all material steps it has taken and of its material progress updates towards satisfaction of the Conditions Precedent;
- (b) promptly notify the other party in writing if it becomes aware that any Condition Precedent has been satisfied, in which case the notifying party must also provide reasonable evidence that the Condition Precedent has been satisfied (unless the other party confirms in writing that such evidence is not required); and
- (c) promptly notify the other party in writing of a failure to satisfy a Condition Precedent or of any fact or circumstance that results in that Condition Precedent becoming incapable of being satisfied or that will result or is reasonably likely to result in that Condition Precedent not being satisfied in accordance with its terms (having regard to the obligations of the parties under clause 3.3 and the terms of clause 3.7).

3.5 If Scheme is voted down on Headcount Test

- (a) 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 the Target or the Bidder considers, acting reasonably, that 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) or some abusive or improper conduct may have caused or materially contributed to the Headcount Test not having been satisfied, then the Target must:
 - (i) 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
 - (ii) make such submissions to the Court and file such evidence as counsel engaged by the Target to represent it in Court proceedings related to the Scheme, in consultation with the Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.

- (b) If the Court's approval of the Scheme under section 411(4)(b) of the Corporations Act is given, notwithstanding that the Headcount Test has not been satisfied, the Condition Precedent in clause 3.1(c) is deemed to be satisfied for all purposes.

3.6 Failure of Conditions Precedent

- (a) If:
 - (i) there is a breach or non-satisfaction of a Condition Precedent which is not waived in accordance with this deed (or cannot be waived because of clause 3.2(a)) by the time or date specified in this deed for the satisfaction of the Condition Precedent;
 - (ii) a Condition Precedent becomes incapable of satisfaction (for the purpose of this clause, a Condition Precedent will be incapable of satisfaction or incapable of being fulfilled if there is an act, failure to act or occurrence that prevents the Condition Precedent being satisfied by the End Date (and the breach or non-fulfilment that would otherwise have occurred has not already been waived in accordance with this deed)); or
 - (iii) the Scheme has not become Effective by the End Date,and (in the case of paragraphs (i) and (ii) of this clause 3.6(a) applying) the breach or non-satisfaction which would otherwise occur has not already been waived in accordance with this deed (to the extent permitted), then either party may, within 10 Business Days after the relevant event, serve a written notice on the other party (which, in the case of paragraphs (i) and (ii) of this clause 3.6(a) applying, must identify the relevant Condition Precedent), and the parties must promptly consult in good faith with a view to determining whether:
 - (iv) the Scheme or the Transaction may proceed by way of alternative means or methods or whether, in the case of a breach of the Condition Precedent in clause 3.1(g), the breach or non-fulfilment or the effects of the breach or non-fulfilment are still able to be remedied;
 - (v) to extend the relevant time or date for satisfaction of the Condition Precedent;
 - (vi) to change the Second Court Date or to adjourn the application for orders pursuant to section 411(4)(b) of the Corporations Act approving the Scheme to another date agreed by the parties; or
 - (vii) to extend the End Date.
- (b) If Bidder and Target are unable to reach agreement under clauses 3.6(a)(iv), 3.6(a)(v), 3.6(a)(vi) or 3.6(a)(vii) within 10 Business Days after the delivery of the notice under that clause or any shorter period ending at 5.00pm on the day which is one Business Day prior to the Second Court Date, either party may terminate this deed by notice in writing to the other party, provided that:
 - (i) if the basis upon which the party is seeking to terminate this deed is the occurrence of an event described in clause 3.6(a)(i) or clause 3.6(a)(ii), the Condition Precedent to which the notice relates is for the benefit of that party (whether or not the Condition Precedent is also for the benefit of the other party); and
 - (ii) there has been no failure by that party to comply with its obligations under this deed, where that failure directly and materially contributed to the Condition

Precedent to which the notice relates becoming incapable of satisfaction, or being breached or not fulfilled before the End Date,

in which case clause 13.4 will have effect.

3.7 Obligations regarding Regulatory Approvals

- (a) Subject to clauses 3.7(b), 3.7(c) and 3.7(d), to the extent permitted by law, and without limiting clause 3.3:
 - (i) the parties must cooperate in good faith to develop, as soon as practicable after the date of this deed, a plan for communications with any Government Agency that is required to be approached (or with which an application or notification must be filed) for the purpose of procuring the satisfaction of the regulatory approval or clearance the subject of the Conditions Precedent in clause 3.1(a) (with each such application being a **Regulatory Approval Application**, each such approval being a **Required Regulatory Approval**, and each such Government Agency a **Relevant Government Agency**);
 - (ii) the Bidder must:
 - (A) as soon as practicable after the date of this deed, provide all notices and lodge all applications (and pay all applicable filing fees relating to thereto) that are required to obtain the Required Regulatory Approvals and provide the Target with copies of such notices, applications, and related receipts; provided that
 - (1) subject to clause 3.7(d), the Target provides the Bidder with all assistance and information reasonably requested by the Bidder within a reasonable timeframe to enable it to satisfy the obligation to file such Required Regulatory Approvals as soon as practicable after the date of this deed;
 - (2) for the avoidance of doubt, the Bidder will not be in breach of this clause 3.7(a)(ii)(B) for failing to satisfy its obligations to file such Required Regulatory Approvals as soon as practicable after the date of this deed to the extent that such failure is caused by the Target's inability, or failure, to provide information or assistance reasonably requested by the Bidder, as contemplated in clause 3.7(a)(ii)(A)(2) above;
 - (B) without limiting clause 3.7(a)(ii)(A), submit a Briefing Paper to the CMA within 15 Business Days after the date of this deed, provided that
 - (1) subject to clause 3.7(d), the Target provides the Bidder with all assistance and information reasonably requested by the Bidder within a reasonable timeframe to enable it to satisfy those obligations within the five Business Days;
 - (2) for the avoidance of doubt, the Bidder will not be in breach of this clause 3.7(a)(ii)(B) for failing to satisfy its obligations within the 15 Business Days to the extent that such failure is caused by, the Target's inability, or failure, to provide information or assistance reasonably requested by the Bidder, as contemplated in clause 3.7(a)(ii)(B)(2) above; and
 - (C) consult with, promptly notify, and provide information to, Target about the content of, and promptly (in advance of submission) provide Target with a

copy of final drafts of, any Regulatory Approval Application and related material correspondence so that Target has a reasonable opportunity to comment on such document and its contents before submission, and, prior to submitting each such document, Bidder must: (1) correct any factual inaccuracy in information about the Target that is identified by Target and notified to Bidder; and (2) consider in good faith any other comments notified to it by Target provided to Bidder within 3 Business Days of Bidder providing the relevant draft to the Target;

- (iii) each party must provide any Relevant Government Agency with all information reasonably required by the Relevant Government Agency in connection with the Scheme and for the purposes of obtaining any Required Regulatory Approval; and
 - (iv) without limiting the Bidder's obligations under clause 3.7(a)(ii), each party must promptly provide copies to the other party of any material written communication sent to or received from a Relevant Government Agency in connection with the Scheme or in connection with obtaining any Required Regulatory Approval.
- (b) Notwithstanding any other provision of this deed, for the purposes of obtaining any approval of a Relevant Government Agency, Bidder is not required to agree to any conditions or to provide or to agree to provide any written undertakings to a Relevant Government Agency which are not reasonably acceptable to the Bidder. This clause does not apply to Equity Financing Approvals. Notwithstanding any other provision of this deed, nothing shall require a Bidder Group Member of the type described in subparagraphs (i) to (iv) (inclusive) of paragraph (h) of the definition of 'Related Entity' who requires Required Regulatory Approval to offer, take, or agree to offer or take, any action with respect to itself, its Related Entities and its or their portfolio companies to ensure satisfaction of the Conditions Precedent in clause 3.1(a), and the Bidder is not required to procure that Bidder Group Member to offer or take any such action.
- (c) Without limiting the Bidder's obligations under clause 3.3(a)(i)(B), the parties' respective obligations under clause 3.7(a) do not apply to Equity Financing Approvals. The Bidder must, however, to the extent permitted by law or regulation, keep the Target reasonably informed of all material developments in respect of all Equity Financing Approvals.
- (d) Nothing in clauses 3.7(a), 3.3(a)(i)(B)(3) or 3.3(a)(ii)(A)(1) requires a party to disclose any information, application, notice, document, submission or other material to the extent:
 - (i) such disclosure would constitute a breach, or would be reasonably likely to result in a breach (as determined by external legal counsel in written advice provided to the Target), in each case of an applicable competition and/or antitrust law or regulation (including, but not limited to, an Applicable Competition Law or any other law or regulation relating to "gun jumping"), or the Clean Team Protocol;
 - (ii) such disclosure would constitute a breach of any confidentiality obligations owed to any Third Party (including any Government Agency);
 - (iii) such disclosure would, or would be reasonably likely to result in a waiver of privilege (and such disclosure cannot occur pursuant to common interest privilege, or on an external counsel to counsel basis without waiving such privilege); or
 - (iv) such disclosure contains commercially sensitive information in relation to a party or any other person.

3.8 Certificates in relation to Conditions Precedent

- (a) On the Second Court Date, each party must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8.00am on the Second Court Date the Conditions Precedent (other than the Conditions Precedent in clauses 3.1(d) and 3.1(e)) have been satisfied or waived in accordance with this deed.
- (b) Each party must provide to the other party a draft of the certificate to be provided by it pursuant to clause 3.8(a) by 5.00pm on the day that is two Business Days prior to the Second Court Date.

4 Transaction Steps

4.1 Scheme

The Target must propose the Scheme on and subject to the terms of this deed.

4.2 Bidder may nominate a Bidder Sub

- (a) Bidder may nominate a wholly-owned Subsidiary of Bidder (**Bidder Sub**) to acquire all of the Scheme Shares under the Scheme by giving written notice to the Target on or before the date that is five Business Days before an advanced draft of the Scheme Booklet is submitted to ASIC for review (**Sub Notification**).
- (b) If Bidder nominates a Bidder Sub to acquire all of the Scheme Shares under the Scheme, then:
 - (i) unless the context requires otherwise, 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 and the Bidder Sub will both enter into the Deed Poll;
 - (iii) Bidder must procure that Bidder Sub complies with its obligations under, and completes the Transaction in accordance with the terms of, this deed, the Scheme and the Deed Poll; and
 - (iv) despite clauses 4.2(b)(i) to 4.2(b)(iii), Bidder will continue to be bound by all of the obligations of Bidder under this deed and the Deed Poll (including, but not limited to, the obligation to pay (or, if applicable, procure the payment by the Bidder Sub of) the Scheme Consideration in accordance with clause 4.5 and the terms of the Scheme) and will not be released from any obligations or liabilities under this deed or the Deed Poll following the Sub Notification.

4.3 No amendment to the Scheme without consent

The Target must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of the Bidder (such consent not to be unreasonably withheld or delayed).

4.4 Scheme Consideration

The **Scheme Consideration**, means in respect of each Scheme Share:

- (a) a cash amount of A\$5.00; less
- (b) the cash amount (per Scheme Share) of any Permitted Dividend which Scheme Shareholders become entitled to receive on or before the Implementation Date (in accordance with clause 4.6(b)).

4.5 Provision of Scheme Consideration

The Bidder undertakes to the Target (in its own right and as trustee on behalf of the Scheme Shareholders) that, in consideration of the transfer to the Bidder of the Scheme Shares under the terms of the Scheme, on the Implementation Date it will:

- (a) accept that transfer and execute any instruments of transfer required to give such transfer effect; and
- (b) pay, or procure the payment of, an amount in cleared funds equal to the Aggregate Scheme Consideration into the Trust Account by no later than one Business Day before the Implementation Date,

in each case, in accordance with the terms of the Scheme.

4.6 Permitted Dividends

- (a) The Target may (in its absolute discretion) determine to pay, declare, and pay to Target Shareholders:
 - (i) a final dividend in respect of Target's financial year ending on 30 September 2023 that is consistent with Target's stated dividend or distribution policy as at the date of this deed;
 - (ii) a dividend in respect of any financial half year or year commencing after 30 September 2023 that is consistent with Target's stated dividend or distribution policy as at the date of this deed; and/or
 - (iii) a special dividend,(each, a **Permitted Dividend** and together the **Permitted Dividends**), any of which may, at Target's election, be partially or fully franked, provided that:
 - (iv) the aggregate of all Permitted Dividends must not exceed \$7,000,000;
 - (v) no Permitted Dividends may be paid after the date of the Scheme Meeting;
 - (vi) the Permitted Dividend is paid in cash and not funded by drawing any debt;
 - (vii) the Permitted Dividend is determined to be paid, or declared, and paid no later than the Implementation Date;
 - (viii) the Target Group's franking account must not be in deficit at any time after the payment of the Permitted Dividend up to and including the Implementation Date;
 - (ix) the Permitted Dividend does not breach the "benchmark rule" (as defined in the ITAA 1997);
 - (x) the record date of the Permitted Dividend must be a date on or before the Record Date; and
 - (xi) the Permitted Dividend must be paid in accordance with the requirements of the Corporations Act.
- (b) In the event that the Target Shareholders become entitled to receive any Permitted Dividend(s) or other distributions in relation to each Target Share on or before the Implementation Date, the Scheme Consideration will be reduced by an amount equal to the cash amount per Target Share of that Permitted Dividend (or other distribution) (but, for the avoidance of doubt, the Scheme Consideration will not be reduced by the value attributed to any franking credits attached to any Permitted Dividend).
- (c) Bidder acknowledges and agrees that Target may choose to seek a ruling or rulings from the ATO (or other Government Agencies) confirming the taxation implications of payment

of one or more Permitted Dividends to Target Shareholders, provided that the seeking and/or receipt of such a ruling or rulings does not delay the implementation of the Scheme, unless Bidder has given its prior written consent to such delay. Bidder must provide all reasonable assistance to the Target reasonably requested by the Target for the purpose of obtaining such a ruling or rulings.

4.7 Target Performance Rights

- (a) The Target must ensure that no outstanding Target Performance Rights, options, warrants or any other securities convertible into, or rights to receive, Target Shares, are in existence as at the Record Date.
- (b) In order to comply with its obligation under clause 4.7(a), Target must, subject to the Scheme becoming Effective:
 - (i) cause (including, but not limited to, by the Target Board taking any action and/or exercising any discretion (including under the terms of the applicable incentive plan rules and terms of the offers or grants to the holders of Target Performance Rights)) some, none or all of the outstanding Target Performance Rights on issue at any time before the Record Date to vest and, following such vesting, cause the relevant number of Target Shares to be transferred or issued (as applicable or, if applicable, as determined by the Target Board) to allow the relevant former holders of the relevant Target Performance Rights to participate in the Scheme in respect of those Target Shares transferred or issued to them; and
 - (ii) take such action (including, but not limited to, by the Target Board taking any action or exercising any discretion (including under the terms of the applicable incentive plan rules and terms of the offers to holders of Target Performance Rights)) as may be necessary to cancel, expire and/or lapse for no consideration any outstanding Target Performance Rights which it does not cause to vest in accordance with clause 4.6(b)(i) (if any),in each case as disclosed in the Disclosure Letter.
- (c) Target must notify Bidder of the number of Target Shares that have or will be issued in accordance with clause 4.7(b) (if any), by no later than two Business Days before the Effective Date.

5 Implementation

5.1 Target's obligations

Subject to clause 5.6, the Target must take all steps reasonably necessary to propose and implement the Scheme in accordance with the Timetable, and must use all reasonable endeavours to ensure that each action specified in the Timetable is (to the extent within the control of the Target) met by the date specified in the Timetable, including by doing any acts it is authorised and able to do on behalf of Target Shareholders (provided that nothing requires Target to take any steps to seek or obtain the approval of Target Shareholders, unless such approval is required or contemplated by this deed or the Scheme). Without limiting the foregoing, Target must:

- (a) **(Appointment of Independent Expert)** as soon as reasonably practicable after the date of this deed, appoint the Independent Expert (if the Independent Expert has not been appointed prior to the date of this deed), and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;

- (b) **(Preparation of Scheme Booklet)** as soon as reasonably practicable after the date of this deed, prepare the Scheme Booklet (excluding the Bidder Booklet Information and the Independent Expert's Report) in accordance with all applicable laws, Regulatory Guide 60, applicable Takeovers Panel guidance notes and the applicable ASX Listing Rules;
- (c) **(Consult with the Bidder in relation to the Scheme Booklet)** consult with the Bidder as to the content and presentation of the Scheme Booklet including:
 - (i) allowing the Bidder and its Representatives a reasonable opportunity to review and make comments on material drafts of the Scheme Booklet;
 - (ii) taking any reasonable comments made by the Bidder into account in good faith when producing revised drafts of the Scheme Booklet; and
 - (iii) obtaining the Bidder's written consent to the inclusion of the Bidder Booklet Information (including in respect of the form and context in which the Bidder Booklet Information appears in the Scheme Booklet);
- (d) **(Provide draft Independent Expert's Report to the Bidder)** to the extent consented to by the Independent Expert:
 - (i) provide a copy of a near-final draft of the Independent Expert's Report to the Bidder at least 5 Business Days prior to provision of the Regulator's Draft to ASIC (or such shorter period consented to by the Bidder in writing); and
 - (ii) provide to the Independent Expert any reasonable comments and suggested amendments from the Bidder on matters in the Independent Expert's Report relating to factual accuracy;
- (e) **(ASIC Review)** in accordance with the Timetable, but no later than 14 days before the First Court Date, and subject to the Bidder giving confirmation contemplated by clause 5.2(f), provide an advanced draft of the Scheme Booklet (**Regulator's Draft**) to ASIC for its review for the purposes of section 411(2) of the Corporations Act, and to Bidder, and (to the extent reasonably practicable) keep Bidder reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet (and of any resolution of those matters), and use all reasonable endeavours, including providing reasonable co-operation to Bidder, to resolve any such matters (which may include allowing Bidder to participate in Target's meetings and discussions with ASIC (to the extent not objected to by ASIC));
- (f) **(Indication of intent)** apply to ASIC for a letter indicating whether ASIC proposes to make submissions to the Court, or intervene to oppose the Scheme, on the First Court Date;
- (g) **(Court documents)** prepare all documents necessary for the Court proceedings (including any appeals) relating to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) in accordance with all applicable laws, and provide Bidder with drafts of those documents for review and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any reasonable comments from Bidder and its Representatives on those drafts;
- (h) **(Representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of the Scheme, at which, through its counsel and, if requested by the Court, Target will undertake to do all such things and take all such steps within its power as are reasonably necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme and/or to ensure that the Court makes an order under section 411(4)(b) of the Corporations Act approving the Scheme;

- (i) **(First Court Date)** lodge all documents with the Court, and take all other reasonable steps required to ensure that an application is heard by the Court for orders under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meeting;
- (j) **(Approval of Scheme Booklet)** as soon as practicable after ASIC has provided its indication of intent in accordance with clause 5.1(f), procure that a meeting of the Target Board (or of a committee of the Target Board appointed for the purpose of considering and approving the Scheme Booklet for despatch to Target Shareholders) is convened for the purpose of approving the Scheme Booklet for despatch to Target Shareholders;
- (k) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Target Booklet Information;
- (l) **(Registration of Scheme Booklet)** if the Court directs Target to convene the Scheme Meeting, 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) **(Compliance with Court orders)** take all reasonable steps necessary to comply with the orders of the Court made at the First Court Hearing, including, as required, despatching the Scheme Booklet to the Target Shareholders and convening and holding the Scheme Meeting, provided that, before dispatch, the Target must obtain the written consent of the Bidder to the inclusion of the Bidder Booklet Information in the Scheme Booklet, in the form and the context in which it appears (such consent not to be unreasonably withheld or delayed);
- (n) **(Update Scheme Booklet)** if it becomes aware after the date of despatch of the Scheme Booklet that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise) or of information that is required to be disclosed to the Target Shareholders under any applicable law, promptly:
 - (i) notify the Bidder of this fact;
 - (ii) inform Target Shareholders of the information in an appropriate and timely manner, and in accordance with applicable law and after consultation with Bidder as to the manner of provision of that information to Target Shareholders; and
 - (iii) provide Bidder with drafts of any documents that it proposes to issue to Target Shareholders under this clause 5.1(n)(ii) and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any reasonable comments received in a timely manner from Bidder or its Representatives on those drafts (however in relation to any update of, or revision, amendment or supplement to, the Independent Expert's Report in connection with the proposed supplementary disclosure, Target makes no representation as to the extent to which the Independent Expert will receive or consider those comments from Bidder);
- (o) **(No objection statement)** apply to ASIC for the production of statements in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (p) **(Court approval)** if the Scheme Resolution is passed by the requisite majorities of Target Shareholders under section 411(4)(a)(ii) of the Corporations Act, and subject to all other Conditions Precedent (other than the Condition in clause 3.1(d)) being satisfied or waived

in accordance with this deed, as soon as practicable after such time apply to the Court for orders approving the Scheme;

- (q) **(Suspension)** if the Scheme becomes Effective, apply to ASX to have trading in Target Shares suspended from the close of trading on the Effective Date;
- (r) **(Implementation of the Scheme)** if the Court approves the Scheme for the purpose of section 411(4)(b) of the Corporations Act:
 - (i) lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act, as soon as practicable, and in any event by no later than 5.00pm, on the first Business Day after the date on which the Target receives an office copy of those orders or such other Business Day as Target and Bidder may agree in writing;
 - (ii) if the Scheme becomes Effective, use all reasonable endeavours to ensure that ASX suspends trading in Target Shares with effect from the close of trading on the Effective Date;
 - (iii) if the Scheme becomes Effective, close the Target Register as at the Record Date to determine the identity of Scheme Shareholders and to determine their entitlements to the Scheme Consideration in accordance with the Scheme;
 - (iv) subject to Bidder complying with its obligations to pay the Aggregate Scheme Consideration under clause 4.5 and the Scheme, promptly execute proper instruments of transfer of, and register (or procure the registration of) all transfers of, the Scheme Shares to Bidder on the Implementation Date and in accordance with the Scheme; and
 - (v) if the Scheme becomes Effective, promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme and to effect the transfer of the Scheme Shares to Bidder in accordance with the terms of the Scheme;
- (s) **(ASX listing)** subject to clause 5.1(q), maintain the Target's admission to the official list of ASX and the quotation of Target Shares on ASX up to and including the Implementation Date, and not do anything to cause the Scheme Shares to cease being quoted on ASX or to become permanently suspended from quotation prior to implementation of the Scheme, unless Bidder has agreed in writing;
- (t) **(Target Register information)** give to the Bidder:
 - (i) a copy of the Target Register as at the date of this deed, as soon as reasonably practicable after the date of this deed; and
 - (ii) as at the Record Date, as soon as reasonably practicable after the Record Date, and in any event at least two Business Days after the Record Date, details of the names, Registered Addresses and holdings of Target Shares for each Scheme Shareholder as shown in the Target Register as at the Record Date;
- (u) **(Promote Transaction)** subject to a majority of the Target Directors not having publicly withdrawn, adversely changed, adversely modified or adversely qualified their Recommendation (in each case, as permitted under clause 7.1(b)), to the extent permitted by law:
 - (i) implement a program to promote to Target Shareholders the merits of the Scheme, comprising of reasonable proxy solicitation actions to encourage Target Shareholders to vote on the Scheme Resolution in accordance with the Recommendation and consult with and consider in good faith feedback received

from Bidder in relation to that program, and provide Bidder with regular updates regarding that program, including a summary of feedback received from Target Shareholders through that program; and

- (ii) where reasonably requested by the Bidder, meet with key Target Shareholders to promote the merits of the Transaction and permit the Bidder to do the same;
- (v) **(Information regarding proxies and voting)** except to the extent prohibited by law or regulation, provide all information, and procure that the Target Registry provides all information, in the possession of the Target that is reasonably requested by Bidder from time to time for the purpose of understanding the legal ownership of Target Shares and proxy appointments and directions received by the Target prior to the Scheme Meeting;
- (w) **(Bidder Booklet Information)** during the period until the Bidder Booklet Information (or any information solely derived from, or prepared solely in reliance on, the Bidder Booklet Information) becomes publicly available, only use that information as expressly permitted by this deed or with the prior written consent of Bidder;
- (x) **(Compliance with laws)** do everything reasonably within its power to ensure that the Transaction and all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations in all material respects; and
- (y) **(All things necessary)** if the Scheme becomes Effective, do all other things contemplated by or necessary to lawfully give effect to the Scheme and the orders of the Court approving the Scheme.

5.2 Bidder's obligations in respect of the Scheme

The Bidder must take all steps reasonably necessary to assist the Target to propose and implement the Scheme in accordance with the Timetable, and must use all reasonable endeavours to ensure that each action specified in the Timetable is (to the extent within the control of the Bidder) met by the date specified in the Timetable. Without limiting the foregoing, the Bidder must:

- (a) **(Bidder Booklet Information)**
 - (i) as soon as reasonably practicable after an initial draft of the Scheme Booklet has been provided by the Target to the Bidder, prepare and provide to Target the Bidder Booklet Information for inclusion in the Scheme Booklet in accordance with all applicable laws, including the Corporations Act, applicable Takeovers Panel guidance notes, ASIC Regulatory Guide 60 and the ASX Listing Rules relevant to the Bidder Booklet Information; and
 - (ii) consult with Target as to the content and presentation of the Bidder Booklet Information in the Scheme Booklet, such consultation to include allowing Target and its Representatives a reasonable opportunity to review and make comments on material drafts of the Bidder Booklet Information before lodgement of the Scheme Booklet with ASIC and take into account any reasonable comments made by the Target in good faith when producing revised drafts of the Bidder Booklet Information;
- (b) **(Review Scheme Booklet)** review material drafts of the Scheme Booklet provided by the Target and provide comments on those drafts in good faith as soon as reasonably practicable after delivery;
- (c) **(Independent Expert information)** provide all assistance and information reasonably requested by Target or Target's Representatives or by the Independent Expert in

- connection with the preparation of the Independent Expert's Report (and any update of, or revision, amendment or supplement to, the Independent Expert's Report);
- (d) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Bidder Booklet Information;
 - (e) **(Reasonable assistance)** provide all assistance and information reasonably requested by the Target or its Representatives 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;
 - (f) **(Approval of the Bidder Booklet Information)** as soon as reasonably practicable after Target requests that it does so for the purpose of clauses 5.1(c)(iii) and 5.1(m), confirm in writing to Target that:
 - (i) the Bidder consents to the inclusion of the Bidder Booklet Information in the Scheme Booklet (including in respect of the form and context in which the Bidder Booklet Information appears in the Scheme Booklet), such consent not to be unreasonably withheld or delayed; and
 - (ii) the Bidder Booklet Information in the form and context in which it appears in the Scheme Booklet:
 - (A) is not misleading or deceptive in any material respect (whether by omission or otherwise); and
 - (B) does not contain any statement which is misleading or deceptive in any material respect (including by way of omission from that statement);
 - (g) **(Liaison with ASIC)** provide reasonable assistance requested by Target to assist Target to resolve any matter raised by ASIC regarding the Scheme Booklet or the Scheme;
 - (h) **(Keep Target informed)** promptly inform the Target if it becomes aware after the despatch of the Scheme Booklet that the Bidder Booklet Information in the form and context in which it appears in the Scheme Booklet is or has become misleading or deceptive in any material respect or contains any material omission (including any information required to be disclosed under any applicable law), and provide such further or new information as is required to ensure that such information is no longer misleading or deceptive in any material respect or contains any material omission;
 - (i) **(Court representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of the Scheme, at which, through its counsel and, if requested by the Court, the Bidder will undertake to do all such things and take all such steps within its power as are reasonably necessary in order to ensure the fulfilment of its obligations under this deed, the Scheme and the Deed Poll and/or to ensure that the Court makes an order under section 411(4)(b) of the Corporations Act approving the Scheme;
 - (j) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent (other than the Condition Precedent in clause 3.1(d)) have been satisfied or waived in accordance with this deed and provide a draft of that certificate to Target by 5.00 pm on the day that is two Business Days prior to the Second Court Date;
 - (k) **(Deed Poll)**:
 - (i) by no later than 5.00pm on the Business Day prior to the First Court Date, enter into the Deed Poll and deliver the executed Deed Poll to the Target; and

- (ii) if the Scheme becomes Effective, fully comply with its obligations under the Deed Poll;
- (l) **(Scheme Consideration)** if the Scheme becomes Effective, provide, or procure the provision of, the Scheme Consideration in accordance with clause 4.5 and the terms of the Scheme and the Deed Poll;
- (m) **(Scheme Share transfer)** if the Scheme becomes Effective:
 - (i) accept a transfer of the Scheme Shares in accordance with the Scheme; and
 - (ii) execute instruments of transfer in respect of the Scheme Shares;
- (n) **(Compliance with laws)** do everything reasonably within its power to ensure that the Transaction and all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations in all material respects; and
- (o) **(All things necessary)** if the Scheme becomes Effective, do all other things contemplated by or necessary to lawfully give effect to the Scheme and the orders of the Court approving the Scheme.

5.3 Dispute as to Scheme Booklet

If, after a reasonable period of consultation, the Target and the Bidder, each acting reasonably and in good faith, are unable to agree on the form or content of the Scheme Booklet, then:

- (a) if the disagreement relates to the form or content of the Bidder Booklet Information (or any information solely derived from, or prepared solely in reliance on, the Bidder Booklet Information), the Target will, acting reasonably and in good faith, make such amendments to that information in the Scheme Booklet as the Bidder may require (acting reasonably and in good faith); and
- (b) otherwise, the Target will, acting reasonably and in good faith, decide the final form of that aspect of the Scheme Booklet, provided that, if Bidder disagrees with such final form and content, Target must include a statement to that effect in the Scheme Booklet.

5.4 Responsibility statement

The Scheme Booklet will contain a responsibility statement to the effect that:

- (a) the Bidder is responsible for the Bidder Booklet Information contained in the Scheme Booklet and, to the maximum extent permitted by law, Target will not be responsible for any Bidder Booklet Information and will disclaim any liability for the Bidder Booklet Information;
- (b) subject to paragraph (d) below, the Target is responsible for the Target Booklet Information contained in the Scheme Booklet and, to the maximum extent permitted by law, the Bidder will not be responsible for any Target Booklet Information and will disclaim any liability for the Target Booklet Information;
- (c) the Independent Expert is responsible for the Independent Expert's Report, and none of Target, Bidder or their respective directors or officers assumes any responsibility for the accuracy or completeness of the Independent Expert's Report; and
- (d) if the Scheme Booklet contains a tax opinion by the Target's tax adviser, that tax adviser is responsible for such tax opinion.

5.5 Adherence to Timetable

- (a) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.

- (b) To the extent that either party reasonably believes that it will not be practicable to meet the timeframes set out in the Timetable due to matters outside of a party's control, the parties will consult in good faith to agree to any necessary extensions to ensure such matters are completed within the shortest possible timeframe.
- (c) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 5.1 (in respect of the Target) or clause 5.2 (in respect of the Bidder) to the extent that such failure is due to circumstances and matters outside the party's control (including, for the avoidance of doubt, any delays caused by a Government Agency or the Court).

5.6 Appeal process

If the Court refuses to make any orders convening the Scheme Meeting or approving the Scheme:

- (a) Target and Bidder must consult with each other in good faith as to whether to appeal the Court's decision; and
- (b) the Target must appeal the Court's decision (unless the parties agree otherwise or an independent senior counsel opines that, in his or her view, such an appeal would have no reasonable prospect of success).

5.7 Court proceedings

- (a) Without limiting clause 5.2(i):
 - (i) the Bidder shall be entitled to its own separate representation at all Court proceedings relating to the Scheme; and
 - (ii) the Target must support any application by the Bidder for leave of the Court to be represented, or the separate representation of the Bidder, at any hearing held by the Court in relation to the Scheme whether following a request by the Target or otherwise.
- (b) This deed does not give either party any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent.
- (c) The parties must give all procedural undertakings to the Court that are requested or required by the Court:
 - (i) at the First Court Hearing and which are reasonably required to ensure that the Court makes orders under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meeting; and
 - (ii) at the Second Court Hearing and which are reasonably required to ensure that the Court makes an order under section 411(4)(b) of the Corporations Act approving the Scheme.

5.8 Reconstitution of the Target Board

On the Implementation Date, and subject to the Bidder having provided the Scheme Consideration in accordance with clause 4.5, the Target must in each case in accordance with applicable law:

- (a) cause the appointment to the board of directors of each Target Group Member of the persons as nominated by the Bidder in writing to Target, subject to those persons having provided to Target before the Implementation Date a duly signed consent to act as a director of the applicable Target Group Member; and

- (b) procure that all the directors of each Target Group Member which the Bidder nominates resign as directors of the relevant Target Group Members with immediate effect without any payment of any kind being made or agreed to be made to such directors in connection with their resignations (other than a payment which is expressly contemplated or permitted by this deed (including of Scheme Consideration payable to that director in their capacity as a Scheme Shareholder) or which is Fairly Disclosed in the Due Diligence Materials or, in the case of a Target Director, a payment of director's fees in accordance with a contract (including an appointment letter) between a Target Group Member and that director that was Fairly Disclosed in the Due Diligence Materials prior to the date of this deed), and ensure that such directors release the relevant Target Group Member from any future claims from the date of resignation, other than (and nothing in this clause 5.8(b) requires any such director to forego) any rights or remedies they may have under:
 - (i) a contract (including an appointment letter or deed of indemnity (or similar)) between a Target Group Member and that director that was Fairly Disclosed in the Due Diligence Materials prior to the date of this deed;
 - (ii) an indemnity given to the director under the constitution of a Target Group Member (including, but not limited to, under the Target constitution);
 - (iii) a policy of directors' and officers' insurance relating to his or her position as director of a Target Group Member; or
 - (iv) this deed, the Scheme or the Deed Poll.

5.9 Removal of the Target from the official list of ASX

Subject to the Scheme becoming Effective, on a date after the Implementation Date to be determined by the Bidder and notified to the Target in writing, the Target will apply:

- (a) for termination of the official quotation of the Target Shares on the ASX; and
- (b) to have itself removed from the official list of the ASX,

and Target and Bidder (to the extent necessary) must satisfy any conditions reasonably required by ASX for it to act on that request.

6 Conduct of Business and Requests for Access

6.1 Conduct of business

- (a) Subject to clause 6.3, during the period from the date of this deed up to and including the Implementation Date, the Target must, and must procure that each other Target Group Member:
 - (i) conduct the business and operations of the Target Group (including its management of the working capital of the Target Group) in the ordinary course and substantially consistent (subject to any applicable laws, regulations and Regulatory Approvals) with the manner in which the Business was operated in the 12 month period prior to the date of this deed, and in compliance with all applicable laws, regulations and Material Authorisations in all material respects;
 - (ii) continue to deal with all Employees in accordance with the practices and procedures adopted in the 12 months prior to the date of this deed and maintain their terms of employment in all material respects on the same terms as those in existence as at the date of this deed (provided that, for the avoidance of doubt, nothing in this subclause 6.1(a)(ii) prevents or restricts the Target from changing the terms (including to give effect to salary, benefit and/or entitlement increases)

- or terminating the employment of an Employee, or otherwise deal with Employees, in the ordinary course of business);
- (iii) use reasonable endeavours to preserve the Target Group's relationships with Government Agencies, ratings agencies, customers, suppliers, licensors, licensees and others having material business dealings with it (provided that, for the avoidance of doubt, nothing in this subclause 6.1(a)(iii) prevents or restricts the Target from changing, amending, terminating, renewing or replacing its relationships or contractual arrangements with any such party or parties in the ordinary course of business);
 - (iv) use reasonable endeavours to conduct the Target Group's relationships with material customers and suppliers in a manner which is consistent with the manner in those relationships were conducted in 12 months prior to the date of this deed (provided that, for the avoidance of doubt, nothing in this subclause 6.1(a)(iv) prevents or restricts the Target from changing, amending, terminating, renewing or replacing its relationships or contractual arrangements with any such party or parties in the ordinary course of business);
 - (v) provide the Bidder the Target Group's monthly unaudited management accounts (which include its cash flow, working capital position and capital expenditure and associated commentary), in a timely manner after completion of their preparation (provided that nothing in this subclause 6.1(a)(v) requires a Target Group Member to prepare any information or materials that the Target Group does not prepare on a monthly basis for its internal management or Target Board reporting purposes in the ordinary course of business);
 - (vi) provide, in a timely manner in connection with the Target Group's monthly management accounts reporting process, details prepared using the same policies and procedures as have been applied in historical periods which shows the components of working capital for the relevant month-end (provided that nothing in this subclause 6.1(a)(vi) requires a Target Group Member to prepare any information or materials that the Target Group does not prepare on a monthly basis for its internal management or Target Board reporting purposes in the ordinary course of business);
 - (vii) maintain (or, where necessary, renew, as applicable) all insurance policies (provided such insurance policies continue to be generally available on commercially reasonable terms and other than in relation to the premium, provided that, where an applicable insurance policy is renewed, or the premium for an applicable insurance policy changes, after the date of this deed, the premium paid for the applicable insurance policy is, in the opinion of Target, a competitive premium in the context of the relevant insurance market at the relevant time) which are material in the context of the Target Group (taken as a whole);
 - (viii) keep the Bidder reasonably and promptly informed of material developments in the Business;
 - (ix) promptly notify Bidder in writing of any of the following matters of which Target becomes aware, and such written notification must include a reasonable summary of the relevant matter:
 - (A) events, facts, matters or circumstances which could be reasonably be expected to (x) constitute a Material Adverse Change, or (y) have a

material adverse effect on the financial or operational performance, or the reputation, of the Target Group or the Target Group's relationships with Government Agencies; and

- (B) any breach of, or default under, any law, contract, arrangement, permit, licence or authorisation that is binding on any Target Group Member and which is reasonably likely to result in a material liability (in the context of the Target Group (taken as a whole)) for any Target Group Member (save that Target is not obliged to provide any information to the extent that doing so would breach any existing obligations of confidence to which a Target Group Member is subject or result in the loss of legal privilege).

6.2 Specific conduct of business restrictions

Without limiting clause 6.1, during the period from the date of this deed up to and including the Implementation Date, the Target must not (and must procure that each other Target Group Member does not):

- (a) enter into, renew, materially amend (in a manner adverse to the Target Group), terminate, or agree to renew or materially amend (in a manner adverse to the Target Group) or terminate, any agreement with a person (or announce any of those things) which would, or would reasonably be likely to, involve a material change in:
 - (i) the manner in which the Target Group conducts its business;
 - (ii) the nature (including balance sheet classification), extent or value of the assets of the Target Group; or
 - (iii) the nature (including balance sheet classification), extent or value of the liabilities of the Target Group;
- (b) pay any of its officers, directors, other executives or Employees a termination or retention payment, other than (i) in accordance with contractual arrangements in effect on the date of this deed and which are Fairly Disclosed in the Due Diligence Materials or (ii) otherwise in the ordinary course of business and not connected with the implementation of the Transaction;
- (c) enter into or resolve to enter into a transaction with any related party of Target (other than a related party which is a Target Group Member) as defined in section 228 of the Corporations Act, other than in respect of any reimbursement by Target of expenses incurred by a Target Director or a director of any other Target Group Member in accordance with applicable board policies and procedures existing as at the date of this deed; or
- (d) agree, procure or commit to do any of the matters set out above.

6.3 Exceptions to specific conduct of business restrictions

Nothing in clauses 6.1 or 6.2 restricts the ability of Target (or any other Target Group Member) to take, or compels the Target (or any other Target Group Member) to refrain from taking, any action which:

- (a) is an Excepted Matter;
- (b) has been agreed or consented to by Bidder in writing (such agreement or consent not to be unreasonably withheld or delayed) or requested by Bidder in writing; or

- (c) which is expressly excluded from, or expressly does not apply to, one or more Target Regulated Events, as set out in this deed or the Disclosure Letter.

6.4 No Target Regulated Events

The Target must ensure that no Target Regulated Event occurs between the date of this deed and 8.00am on the Second Court Date.

6.5 Access and information and cooperation

Between the date of this deed and the Implementation Date (both dates inclusive), the Target must:

- (a) use reasonable endeavours to procure that Bidder and its Representatives (and their respective employees and Advisers) are provided with reasonable access to information, documents, records, premises, senior executives, and, to the extent within the control of the Target and consented to by the applicable Third Parties, counterparties to Material Contracts that are customers of the Target Group or Key Customer Contracts, agents, partners and third party service providers (including by providing consent to discussions with that third party service provider), of any Target Group Member, reasonably requested by Bidder for purposes of:
 - (i) the implementation of the Transaction;
 - (ii) obtaining an understanding, or furthering its understanding, of the Target Group or its business, financial position, prospects or assets in order to allow Bidder to develop, finalise and implement its plans for the transition of the Business and the Target Group to the Bidder's ownership following implementation of the Transaction; and
 - (iii) any other purpose that is agreed between the parties;
- (b) provide the Bidder with drafts of any proposed new Target Regulated Contract, or Target Regulated Contract proposed to be renewed, at least 5 Business Days before such contract is entered into or renewed (as the case may be);
- (c) if the Target requests that the Bidder consents to enter into, or renew, a Target Regulated Contract, and the Bidder reasonably requires a Specified Person to be provided with information in relation to the Contract to consider the request for consent, the Target and Bidder will negotiate in good faith, acting reasonably, to agree any steps or actions that the Target may take (including a limited waiver under the Clean Team Protocol) to ensure that to the maximum extent possible such information may be provided to the Specified Person (however, for the avoidance of doubt, nothing in this clause 6.5(c) requires the Target (or another Target Group Member) to take any action that would constitute a breach, or would be reasonably likely to result in a breach (as determined by external legal counsel in written advice provided to the Target), in each case of an applicable competition and/or antitrust law or regulation (including, but not limited to, an Applicable Competition Law or any other law or regulation relating to "gun jumping");
- (d) provide the Bidder with a complete copy of any new Key Customer Contract, Material Contract or Target Regulated Contract, or Key Customer Contract, Material Contract or Target Regulated Contract renewal, within 5 Business Days following the date on which a complete copy of the fully executed Key Customer Contract, Material Contract or Target Regulated Contract (as the case may be) is available to Target;

- (e) provide the Bidder with copies of any reports of the Chief Executive Officer and the Chief Financial Officer provided to the Target Board promptly following the relevant Target Board meeting at which the relevant reports are considered;
- (f) provide the Bidder with copies of all material correspondence received from, or provided or proposed to be provided to a Government Agency,

provided that:

- (g) nothing in this clause 6.5 will require Target to provide, or procure the provision of, information concerning:
 - (i) any Target Director's, the Target Board's (or any sub-committee of the Target Board's) and management's (a **Relevant Person**) consideration of the Scheme or Transaction (or any proposal by Bidder at any time in relation to the acquisition of an interest in Target Shares); or
 - (ii) any actual, proposed or potential Competing Proposal (including a Relevant Person's consideration of any actual, proposed or potential Competing Proposal) before, on or after the date of this deed;
- (h) the provision of information pursuant to this clause 6.5 must not result in material disruption to, or material interference with, the Target Group's business;
- (i) the Bidder must, and must procure that each of its Representatives and each other Controlled Bidder Group Member and their respective Representatives:
 - (i) keep all information obtained by it or them as a result of the operation of this clause 6.5 confidential in accordance with the terms of the Confidentiality Agreement and comply with the Clean Team Protocol in respect of all such information;
 - (ii) provide Target with reasonable notice of any request for information or access; and
 - (iii) comply with the reasonable requirements of Target in relation to any access granted; and
- (j) nothing in this clause 6.5 will require Target to provide, or procure the provision of, information if to do so would constitute a breach, or would be reasonably likely to result in a breach (as determined by external legal counsel in written advice provided to the Target), in each case of an applicable competition and/or antitrust law or regulation (including, but not limited to, an Applicable Competition Law or any other law or regulation relating to "gun jumping"), or the Clean Team Protocol (and, for the avoidance of doubt, the request for, or provision of, a waiver under the Clean Team Protocol pursuant to clause 6.5(c) would not constitute a breach of the Clean Team Protocol).

6.6 Confidentiality

The parties acknowledge that all information that is provided pursuant to clauses 6.5 is provided subject to the terms of the Confidentiality Agreement and the Clean Team Protocol. Without limiting the foregoing, Bidder must, and must procure that its Representatives, each other Controlled Bidder Group Member and their respective directors, officers or employees and professional advisers (including industry, technical or commercial consultants, financial advisers, legal advisers or accountants):

- (a) provide the Target with reasonable notice of any request for information or access; and
- (b) comply with the reasonable requirements of the Target in relation to any access granted (if granted).

6.7 Integration planning

- (a) As soon as reasonably practicable following the date of this deed, and in any event within eight Business Days following the date of this deed, the parties agree to establish a committee comprising an equal number of members from each party (**Integration Committee**).
- (b) The role of the Integration Committee will be to act as a forum for discussion and planning in respect of the following:
 - (i) implementation of the Scheme;
 - (ii) matters related to integration of the Bidder's and the Target Group's respective businesses after Implementation, including Employee retention and incentivisation, stakeholder engagement and communications, consolidation of operations and functions or processes; and
 - (iii) the process referred to in clause 6.8.
- (c) Each party must ensure that its representatives on the Integration Committee act in good faith in their capacity as members of the Integration Committee with a view to fulfilling the role and objectives of such committee (to the extent within their power).
- (d) The Integration Committee will meet at such times and places as agreed between the members of the Integration Committee from time to time, taking into account the existing roles and duties of Target's representatives on the Integration Committee. Meetings may be held via telephone, video or any other technology that permits each member to communicate with every other member (or any combination of these technologies).
- (e) The members of the Integration Committee may agree to invite other persons to attend meetings of the Integration Committee from time to time.
- (f) From time to time, certain members of the Integration Committee or other representatives of the parties (as agreed between the parties) will meet separately to meetings of the Integration Committee to discuss and progress matters considered or plans developed by the Integration Committee.
- (g) The parties acknowledge and agree that:
 - (i) the Integration Committee is a discussion and planning forum only, and the members of the Integration Committee do not have power to bind the other party or to give any consent, approval or waiver on behalf of such other party;
 - (ii) nothing in this clause 6.7 or elsewhere in this deed requires a party to act at the direction of the other party or is intended to create a relationship of partnership, joint venture or similar between the parties;
 - (iii) nothing in this clause 6.7 or elsewhere in this deed requires a party to take any action that would reasonably be expected to conflict with or violate the entity's constituent documents or any law;
 - (iv) nothing in this clause 6.7 will require Target to take any action (or omit to take any action) (including providing, or procuring the provision of, information to or at a meeting of the Integration Committee) if to do so would:
 - (A) breach any material confidentiality or other obligation owed to a Third Party or any applicable law, regulatory requirement, Regulatory Approval or court order; or
 - (B) result in a waiver of legal professional privilege;

- (v) the respective businesses of the Bidder Group and the Target Group are to continue to operate independently until (and subject to) implementation of the Scheme;
- (vi) no matters may be discussed at the Integration Committee which could give rise to potential breaches of applicable laws by any member of the Bidder Group or the Target Group, including antitrust and competition law, and any representative present at a meeting of the Integration Committee may decline to discuss matters on the basis of such concerns and/or may seek legal advice regarding such concerns;
- (vii) without limiting the subclauses (i) to (vi) above, nothing in this clause 6.7 will require Target to provide, or procure the provision of, information which would constitute a breach, or would be reasonably likely to result in a breach (as determined by external legal counsel in written advice provided to the Target), in each case of an applicable competition and/or antitrust law or regulation (including, but not limited to, an Applicable Competition Law or any other law or regulation relating to "gun jumping"), or the Clean Team Protocol;
- (viii) nothing in this clause 6.7 requires any of Target's representatives on the Integration Committee to do anything which would unduly interfere with their responsibilities to Target and the ongoing conduct of Target's business; and
- (ix) each party must, and must procure that its Representatives, keep all information obtained by it or them as a result of the operation of this clause 6.7 confidential in accordance with the terms of the Confidentiality Agreement and comply with the Clean Team Protocol in respect of all such information.

6.8 Third party consents

- (a) As soon as practicable after the date of this deed, Target and Bidder must seek to identify any change of control provisions, termination rights, and similar clauses in any Key Customer Contract, Material Contract or lease in respect of a Material Property (**Material Property Lease**) which will or are reasonably likely to be triggered by, or exercised in response to, the Scheme or the implementation of the Transaction (**Relevant Provisions**). In respect of those Key Customer Contracts, Material Contracts or Material Property Leases:
 - (i) the Target and the Bidder must each act reasonably and negotiate in good faith for the purpose of seeking to agree a proposed course of action (which, among other things, will have due regard to applicable legal restrictions) to obtain any Third Party consents or confirmations required in accordance with the terms of the Relevant Provisions (**Required Consents**) and, unless otherwise agreed between Target and Bidder, the Target will initiate contact, but allow the Bidder to participate in joint discussions with the relevant counterparties if requested by the Bidder (acting reasonably) and request that the relevant counterparties provide the Required Consents, Target must do so as soon as reasonably practicable after such course of action has been agreed between Bidder and Target. No Controlled Bidder Group Member will contact any counterparties other than in the presence of a Representative of the Target or otherwise with Target's prior written consent (which is not to be unreasonably withheld, conditioned or delayed);
 - (ii) the Target must cooperate with, and provide reasonable assistance to, the Bidder to obtain the Required Consents as expeditiously as possible, including by

- promptly providing any information reasonably required by counterparties (to the extent that it is in the possession of the Target); and
- (iii) the Bidder must:
- (A) cooperate with, and provide reasonable assistance to, Target to obtain the Required Consents as expeditiously as possible, and take all action reasonably necessary to comply with any requirements of the relevant counterparties that are necessary to obtain a Required Consent; and
 - (B) take all reasonable action to comply with any requirements of the counterparties that are required under the relevant contracts, agreements, arrangements, or commitments to be complied with by an assignee, transferee or new controller of the Target or the other relevant Target Group Member.
- (b) A failure by a Target Group Member to obtain any Third Party consent or waiver referred to in, or contemplated by, clause 6.8 will not constitute a breach of this deed by Target and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.
- (c) Nothing in this clause 6.8 requires Target to provide, or procure the provision of, information which would constitute a breach, or would be reasonably likely to result in a breach (as determined by external legal counsel in written advice provided to the Target), in each case of an applicable competition and/or antitrust law or regulation (including, but not limited to, an Applicable Competition Law or any other law or regulation relating to “gun jumping”), or the Clean Team Protocol.

6.9 Target cooperation with Debt Financing

- (a) The Target agrees to provide timely cooperation in connection with the arrangement of or syndication of debt financings to be undertaken for the purposes of the Transaction (**Debt Financing**) by any Bidder Group Member as may be reasonably requested by any of them (the **Requesting Party**) from time to time, including:
- (i) furnishing the Requesting Party and its financing sources within a reasonable timeframe (including providing any consent required under the Confidentiality Agreement to such disclosure) with financial or other pertinent information regarding the Target Group as may be reasonably requested by the Requesting Party, in each case to the extent that the requested information is reasonably available to the Target Group and the provision of that information by the Target to the Requesting Party is required for the purpose of Debt Financing;
 - (ii) providing reasonable assistance upon request to the Requesting Party and its financing sources in the preparation of any offering document to be used in obtaining or syndicating any Debt Financing;
 - (iii) providing reasonable assistance with any marketing efforts undertaken by the Requesting Party and its financing sources directly related to Debt Financing (including by making available such senior executives of Target as reasonably requested by the Requesting Party at mutually convenient times for a reasonable number of conference calls, management presentation sessions and similar meetings or presentations);
 - (iv) if required as a condition or obligation of any Debt Financing, obtaining a solvency certificate of the chief financial officer or other officer with equivalent duties of the Target in the form reasonably required by the financing sources,

provided that the Bidder has requested that such a certificate be provided within a reasonable period of time; and

- (v) providing reasonable assistance upon request to the Requesting Party for the purpose of satisfying any conditions and obligations of a Bidder Group Member that are required to be satisfied for any Debt Financing to be provided, in each case, to the extent same is within its control,

provided, in each case, that nothing in this clause will require cooperation to the extent that it would:

- (A) unreasonably interfere with the ongoing business or operations of the Target Group in any material manner (having regard to, among other things, the reasonableness of the notice given to Target of any requested assistance or cooperation);
 - (B) cause any Condition Precedent to not be satisfied or otherwise cause a breach of this deed;
 - (C) require a Target Group Member to take any action that would reasonably be expected to conflict with or violate that Target Group Member's constituent documents or any law, regulation, order of a court, or requirement of a Government Agency (including, but not limited to, a request or direction of or made by a Government Agency), or that would breach an obligation to any person or entity (including any confidentiality or contractual obligations);
 - (D) provide any confidential, competitively sensitive or privileged information where the provision of such information is reasonably likely to cause prejudice to the commercial or legal interests of the Target Group taken as a whole, or would be reasonably likely to jeopardise any attorney-client, work product or other legal privilege, except for privileged information that may be provided to the Bidder's legal advisers without jeopardising any privilege associated with such information;
 - (E) require the approval of shareholders of Target under section 260B of the Corporations Act or equivalent or analogous restriction in any jurisdiction;
 - (F) require a Target Group Member to incur any liability in connection with any Debt Financing prior to the Scheme becoming Effective;
 - (G) require any Target Group Member to effect any repayment of Financial Indebtedness prior to the Implementation Date; or
 - (H) require any Target Indemnified Party to execute prior to the Scheme becoming Effective any agreements, including any credit or other agreements, pledge or security documents or other certificates, legal opinions or documents in connection with the Debt Financing which are not conditional on the Scheme becoming Effective (unless any such document does not become effective until the time that the Scheme becomes Effective).
- (b) At the request of the Bidder, the Target must use reasonable endeavours to facilitate liaison between the Bidder and the Target Group's existing financiers for the purposes of the Bidder notifying and discussing:
 - (i) change of control procedures and post-acquisition financing related matters with those financiers; and/or

- (ii) managing the repayment and, in the case of transactional banking and ordinary course derivative transactions, at the request of the Bidder, continuation of those counterparties on or after the Implementation Date, and the efficient termination (or continuation as the case may be) of their existing financing arrangements with Target with effect from that time (including as to the release of any existing security held by those counterparties over Target and/or its Subsidiaries).
- (c) Bidder must release, indemnify and hold harmless Target (in its own right and separately as trustee or nominee for each other Target Indemnified Party) and each Target Indemnified Party from and against any and all Claims, actions, damages, losses, liabilities, costs, expenses or payments suffered or incurred by any of them in connection with the Equity Financing and any information utilised in connection with the Equity Financing, in each case other than to the extent any of the foregoing arises from the bad faith or wilful misconduct, or breach of this deed, by Target or that other Target Indemnified Party.
- (d) Nothing in this clause 6.9 requires the Target to provide, or procure the provision of, information which would, or would be reasonably likely to result in a breach (as determined by external legal counsel in written advice provided to the Target), in each case of an applicable competition and/or antitrust law or regulation (including, but not limited to, an Applicable Competition Law or any other law or regulation relating to “gun jumping”) or the Clean Team Protocol.

6.10 Existing Debt Financing

- (a) Target and Bidder acknowledge and agree that, notwithstanding anything to the contrary in this deed, any one or more Target Group Members may negotiate and implement the renewal, or a variation of the terms, of any Existing Debt Financing (including, but not limited to, entering into or amending any contract, deed or other commitment required to implement such renewal or variation) after the date of this deed, subject to the commercial terms of such renewal or variation being consistent (in all material respects) with the terms and conditions disclosed in the Disclosure Letter.
- (b) The renewal or variation of any Existing Debt Financing (including the entry into any contract, deed or other commitment required to implement such renewal or variation or the performance of obligations under such contract, deed or other commitment) in accordance with subclause (a) above will not:
 - (i) be a Target Regulated Event and, in particular, will not be subject to, or restricted by (or contribute towards the aggregate monetary threshold(s) in) the Target Regulated Event in:
 - (A) clause 16 (**Existing Debt Financing**) of Schedule 4; or
 - (B) clause 17 (**Financial Indebtedness**) of Schedule 4; and
 - (ii) will not be a breach by Target of clauses 6.1, 6.2 or 6.4 or a breach or failure of the Condition Precedent in clause 3.1(g) (or a breach by Target of its obligations under clause 3.3(a)(iv) in respect of that Condition Precedent).

7 Target Board Recommendation and Voting Intention

7.1 Target Board Recommendation and Voting Intention

- (a) Subject to clauses 7.1(b), 7.1(c) and 7.1(d), the Target must ensure that, in the Agreed Public Announcement and the Scheme Booklet:

- (i) the Target Directors unanimously recommend that Target Shareholders vote in favour of the Scheme Resolution (**Recommendation**); and
 - (ii) each of the Target Directors who holds Target Shares at the relevant time states that he or she intends to vote, or cause to be voted, any Target Shares which he or she holds or Controls in favour of the Scheme Resolution (**Voting Intention**),

in each case, in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (or any update of, or revision, amendment or supplement to, the Independent Expert's Report), and continuing to conclude, that the Scheme is in the best interests of Target Shareholders.
- (b) Target's obligations under clause 7.1(a) will immediately cease to apply in respect of a Target Director's Recommendation and a Target Director's Voting Intention if that Target Director withdraws, adversely changes, adversely modifies or adversely qualifies his or her Recommendation or Voting Intention following the occurrence of one of the following events:
 - (i) the Independent Expert concludes in the Independent Expert's Report (or any update of, or revision, amendment or supplement to, the Independent Expert's Report) that the Scheme is not in the best interests of Target Shareholders (or the Independent Expert otherwise changes or publicly withdraws a conclusion given by it that the Scheme is in the best interests of Target Shareholders);
 - (ii) the Target has received a Competing Proposal and the Target Board has determined, after the procedure in clause 9.7 has been complied with, that the Competing Proposal is a Superior Proposal;
 - (iii) this deed is validly terminated in accordance with its terms; or
 - (iv) the Target Director is required to do so by or in order to comply with an order or other requirement of a court of competent jurisdiction, ASIC, or the Takeovers Panel.
- (c) For the purposes of clause 7.1(a), customary qualifications and explanations contained in the Scheme Booklet, the Agreed Public Announcement and any public announcements in relation to a Recommendation or Voting Intention to the effect that the Recommendation or Voting Intention is made:
 - (i) in the absence of a Superior Proposal;
 - (ii) in respect of any public announcement issued before the issue of the Scheme Booklet, 'subject to 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'; and/or
 - (iii) in respect of the Scheme Booklet and any public announcements issued at the time of or after the issue of the Scheme Booklet, 'subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Target Shareholders',

in each case, will not be regarded as a failure to make, or an adverse change, withdrawal, adverse modification or adverse qualification of, a Recommendation or Voting Intention.
- (d) Despite anything to the contrary in this clause 7.1, a statement made by Target, the Target Board or any Target Director:

- (i) to the effect that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board; or
 - (ii) permitted by clause 9.7,
- shall not, by that statement alone, contravene clause 7.1(a).

7.2 Confirmation

On the date of this deed, the Target represents and warrants to Bidder that, on or before 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 at the Scheme Meeting; and
- (b) if he or she held or Controlled any Target Shares at the time of giving the confirmation in this clause 7.2, he or she intends to vote, or cause to be voted, all such Target Shares in favour of the Scheme at the Scheme Meeting,

in each case:

- (c) in the absence of a Superior Proposal; and
- (d) subject to the Independent Expert concluding in the Independent Expert's Report (or any update of, or revision, amendment or supplement to, the Independent Expert's Report), and continuing to conclude, that the Scheme is in the best interests of Target Shareholders,

and, since giving such confirmation, each such Target Director has not withdrawn, adversely changed, adversely modified or adversely qualified such confirmation or advised the Target Board that he or she intends to do so.

7.3 Agreed Public Announcement

The Target must issue the Agreed Public Announcement (which Bidder acknowledges and agrees will attach a copy of this deed, which has been duly executed by Target and Bidder) to the ASX as soon as practicable on the date on which this deed is executed, or if this deed is executed on a day that is not a Trading Day (or on a day that is a Trading Day but after trading on the ASX has ceased for that Trading Day), the first Trading Day immediately following such date of execution.

8 Representations, warranties and indemnities

8.1 Bidder representations, warranties, and indemnity

- (a) Subject to clause 8.6, Bidder represents and warrants to Target (in its own right and separately as trustee or nominee for each of the other Target Indemnified Parties) that each of the Bidder Warranties is true and correct.
- (b) Subject to clause 8.1(c), the Bidder agrees with the Target (in its own right and separately as trustee or nominee for each of the Target Indemnified Parties) to indemnify Target and each of the Target Indemnified Parties against any Claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Target or any of the Target Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Bidder Warranties.
- (c) The Bidder Warranties and the indemnity under clause 8.1(b) are subject to facts, matters, circumstances and acts which:
 - (i) have been agreed by the parties in writing;

- (ii) are within the actual knowledge of the Target as at the date of this deed (and for these purposes the knowledge that there is a risk of a matter happening does not constitute knowledge that a matter will in fact occur); and
- (iii) are expressly contemplated, permitted or required by, or to be undertaken or procured (or expressly permitted or required not to be undertaken or procured) by, one or more Transaction Documents.

8.2 Target representations, warranties, and indemnity

- (a) Subject to clauses 8.2(c) and 8.6, the Target represents and warrants to the Bidder (on its own behalf and separately as trustee or nominee for each of the Bidder Indemnified Parties) that each of the Target Scheme Warranties is true and correct.
- (b) Subject to clauses 8.2(c) and 8.6, the Target agrees with the Bidder (in its own right and separately as trustee or nominee for each of the other Bidder Indemnified Parties) to indemnify the Bidder and each of the Bidder Indemnified Parties against any Claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that the Bidder or any of the Bidder Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Target Scheme Warranties.
- (c) The Target Scheme Warranties (other than the Target Scheme Warranties in clause 4 of Schedule 3 and the indemnity under clause 8.2(b)) are each made or given subject to any facts, matters, circumstances, events and acts which:
 - (i) are Excepted Matters within paragraphs (a) to (f) of that definition;
 - (ii) were Fairly Disclosed in a publicly available document which would be disclosed in a search of:
 - (A) the records of the Australian Securities & Investments Commission as at 19 April 2023;
 - (B) the Personal Property Securities Register of Australia searched on 20 April 2023;
 - (C) the registries of the High, Federal and Federal Circuit Court of Australia, and the registries of the Supreme Courts and Courts of Appeal, at the State and Territory level with respect to the Target Group Members between 20 April 2023 and 17 May 2023;
 - (D) the Land Titles Office of Queensland (searched between 5 May 2023 and 9 June 2023) of the records of title to freehold property and leasehold property where available;
 - (E) in Queensland, the following other searches between 5 and 12 May 2023:
 - (1) Native Title Vision;
 - (2) National Native Title Tribunal Register;
 - (3) Aboriginal and Torres Strait Islander Cultural Heritage Database;
 - (4) Aboriginal and Torres Strait Island Cultural Heritage Register;
 - (5) Queensland State Heritage Register; and
 - (6) Brisbane City Local Heritage Register;

- (F) the Land Titles Office of New South Wales (searched on 5 May 2023 and 9 June 2023) of the records of title to freehold property and leasehold property where available;
- (G) in New South Wales, the following other searches between 5 and 26 May 2023:
 - (1) Heritage NSW AHIMS Web Services (Aboriginal Heritage Information Management System);
 - (2) New South Wales State Heritage Inventory; and
 - (3) NSW Spatial Viewer;
- (H) in Victoria, the following searches between 9 and 12 May 2023:
 - (1) Planning certificates;
 - (2) Yarra City Council Planning Permit Application;
 - (3) Brimbank City Council Permit Application;
 - (4) Ministerial Permit search (Victorian Department of Transport and Planning);
 - (5) Native Title Vision;
 - (6) National Native title Tribunal Register;
 - (7) Aboriginal Heritage Register Certificate of Advice; and
 - (8) Heritage Certificate;
- (I) in Western Australia, a search of Planning PlanWA on 8 May 2023;
- (J) the database of Australian trade marks maintained by IP Australia searched on 2 May 2023;
- (K) the database of Brazilian trade marks maintained by the National Institute of Industrial Property searched on 4 May 2023;
- (L) the database of Canadian trade marks maintained by the Canadian Intellectual Property Office searched on 2 May 2023;
- (M) the database of Chinese trade marks maintained by the China National Intellectual Property Administration searched on 4 May 2023;
- (N) the database of European trade marks maintained by the European Union Intellectual Property Office searched on 2 May 2023;
- (O) the database of Japanese trade marks maintained by the Japan Patent Office searched on 4 May 2023;
- (P) the database of Mexican trade marks maintained by the Mexican Institute of Industrial Property searched on 5 May 2023;
- (Q) the database of Belizean trade marks maintained by the Belize Intellectual Property Office searched on 23 May 2023;
- (R) the database of Nicaraguan trade marks maintained by SAEGIS searched on 5 May 2023;
- (S) the database of United Kingdom trade marks maintained by the UK Intellectual Property Office searched on 2 May 2023;

- (T) the database of international trade marks maintained by the World Intellectual Property Organization (WIPO) searched on 2 May 2023;
- (U) the database of US trade marks maintained by the US Patent and Trademark Office searched on 4 May 2023;
- (V) for Great Western Malting Co., the registries of Alameda County, Unlimited Superior & Limited Superior Courts (central index), California; San Diego County Unlimited Superior & Limited Superior Courts (central index), California; US Bankruptcy Court – Northern and Southern District of California; US District Court, Northern and Southern District of California; Adams County, 17th District Court Colorado; Adams County, County Court, Colorado; US Bankruptcy Court and US District Court – District of Colorado, Colorado; Chancery Court, Statewide, Delaware; New Castle County, Court of Common Pleas, Delaware; New Castle County, Superior Court, Delaware; US Bankruptcy Court, District of Delaware, Delaware; Hillsborough County, Circuit & County Courts, Florida; US Bankruptcy Court and US District Court – Middle District of Florida, Florida; Bannock County, District & Magistrate Courts, Idaho; US Bankruptcy Court and US District Court – District of Idaho, Idaho; US Bankruptcy Court and US District Court – Northern District of Illinois, Illinois; Will County, Circuit Court, Illinois, Henderson County, Superior District Court, North Carolina, US Bankruptcy Court and US District Court – Western District of North Carolina, North Carolina; Clinton County, Supreme and County Court, New York, US Bankruptcy Court and US District Court – Northern District of New York, New York; Dallas County, County Court Civil (central index), Texas; Dallas County, District Court – Civil, Texas; US Bankruptcy Court and US District Court – Northern District of Texas, Texas; Clark County, District court, Washington; Superior Court, Clark County, Washington; and US Bankruptcy Court and US District Court – Western District of Washington, Washington searched between the 26 April 2023 and 4 May 2023;
- (W) for Malt US Holdco, Inc, United Malt Holdings USA and United Malt USA, Inc, the registries of Chancery Court, Statewide, Delaware; New Castle County, Court of Common Pleas, Delaware; New Castle County, Superior Court, Delaware; and US Bankruptcy Court and US District Court – District of Delaware, Delaware searched between 28 April 2023 and 3 May 2023;
- (X) for Metropolitan Insurance Group, Inc. the registries of Superior Court, Caledonia County, Vermont; and US Bankruptcy Court and US District Court – District of Vermont, Vermont searched on 28 April 2023;
- (Y) the registries of Alberta Court King's, Federal court of Canada, Federal Court of Appeal of Canada, Supreme Court of Canada, Court of Quebec, Superior Court of Quebec, Court of Appeal of Quebec, Supreme Court of Ontario Supreme Court of British Columbia, Manitoba Court of King's Bench and Saskatchewan Court of King's Bench searched between 17 April 2023 and 21 April 2023;
- (Z) the CourtChex winding up search in respect of each UK Group entity (searched 31 May 2023) with respect to any administration or winding up petitions made against any UK Group Entity;

- (AA) Companies House searches in respect of each UK Group Entity (searched 31 May 2023);
- (BB) the HM Courts & Tribunals public register search on 24 May 2023;
- (CC) the New Zealand Companies Office register (searched on 23 April 2023) with respect to publicly available company information;
- (DD) the New Zealand Personal Securities Register (searched on 21 April 2023);
- (EE) the registries of the New Zealand High Court, Court of Appeal, Supreme Court, Environmental Court with respect to current civil litigation (searched between 21 and 24 April 2023);
- (FF) the IPONZ register of trade marks for New Zealand trade mark registrations and applications (searched on 27 April 2023);
- (GG) the IPONZ design database (searched on 27 April 2023);
- (HH) the domain name register maintained by the New Zealand Domain Name Commission (searched on 27 April 2023); and
- (II) the New Zealand Insolvency Register (searched on 23 April 2023).

8.3 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or is reasonably likely to constitute a breach of any of the representations or warranties given by it under this clause 8.

8.4 Severability and survival of representations and warranties

Subject to clause 8.2(c), each representation and warranty given or made under clause 8:

- (a) is severable;
- (b) will survive the termination of this deed; and
- (c) subject to this deed, 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.

8.5 Severability and survival of indemnities

Subject to clause 8.2, each indemnity in this deed:

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

8.6 Timing of representations and warranties

Each representation and warranty made or given under clauses 8.1 or 8.2 is given at the date of this deed, at the date of the Scheme Booklet, at the date of the Scheme Meeting, and at 8.00am on the Second Court Date, except that:

- (a) if a representation or warranty is expressed to be given at a particular time, it is given at that time; and

- (b) for the avoidance of doubt, a representation and warranty that is expressed to be given “as at the date of this deed” is only given as at the date of this deed.

8.7 Exclusion of Consequential Loss

- (a) The Bidder will not be liable for Consequential Loss to the extent incurred by the Target Indemnified Parties in respect of a breach of a Bidder Warranty.
- (b) The Target will not be liable for Consequential Loss to the extent incurred by the Bidder Indemnified Parties in respect of a breach of a Target Scheme Warranty.
- (c) For the purpose of this clause 8.7, **Consequential Loss** means any indirect claim, action, damage, loss, liability, cost, expense or payment (**Loss**) which is loss of goodwill, loss of business reputation, loss of future reputation or adverse publicity or damage to credit rating but excludes any Loss which:
 - (i) is direct loss of profits, direct loss of revenue or direct loss of production;
 - (ii) arises naturally and in the usual course of things from the relevant facts or circumstances giving rise to the Loss which, at the date of this deed, would have been reasonably foreseeable; or
 - (iii) from any diminution in the value of the Target Shares.

9 Exclusivity

9.1 No current discussions regarding a Competing Proposal

The Target represents and warrants that, as at the date of this deed:

- (a) the Target is not in negotiations or discussions in respect of any Competing Proposal with any Third Party (other than, for the avoidance of doubt, the discussions with the Bidder and its Representatives in respect of the Transaction);
- (b) any due diligence access granted to any Third Party for the purposes of such Third Party making, formulating, developing or finalising, or assisting in the making, formulation, development or finalisation of, a Competing Proposal has been terminated; and
- (c) any Third Party to which material non-public information in relation to the Target or any of its Related Entities has been provided or made available for the purposes of such person making, formulating, developing or finalising, or assisting in the making, formulation, development or finalisation of, a Competing Proposal has been requested to return or destroy that non-public information in accordance with any agreed terms of confidentiality currently in place with such Third Party.

9.2 No shop restriction

During the Exclusivity Period, the Target must not, and must ensure that each of its Representatives do not, except with the prior written consent of the Bidder, directly or indirectly solicit, invite, or initiate any Competing Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of those things.

9.3 No talk restriction

Subject to clause 9.6, during the Exclusivity Period, the Target must not, and must ensure that each of its Representatives do not, except with the prior written consent of Bidder, enter into, continue or participate in negotiations or discussions with, or enter into any agreement, arrangement or understanding with, any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, even if:

- (a) the Competing Proposal was not directly or indirectly solicited, invited or initiated by Target or any of its Representatives; or
- (b) the Competing Proposal has been publicly announced.

9.4 No due diligence

Subject to clause 9.6, without limiting the general nature of clause 9.3, during the Exclusivity Period, the Target must not, and must ensure that each of its Representatives do not, except with the prior written consent of Bidder directly or indirectly make available to any Third Party or otherwise disclose to any such Third Party any material non-public information relating to Target or any of its Related Entities, or consent to any person making available to any Third Party any information relating to Target or its Related Entities, with a view to obtaining from such Third Party, or for the purpose of such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

9.5 Notification by Target

- (a) During the Exclusivity Period, Target must notify Bidder in writing within 48 hours if it is approached by any Third Party requesting or proposing that Target take any action of a kind that would breach Target's obligations under clause 9.3 or clause 9.4 (or that would breach Target's obligations under clause 9.3 or clause 9.4 if it were not for the operation of clause 9.6), where the Target Board reasonably believes (at the time that the approach is made) that such request or proposal is in connection with such Third Party formulating, developing or finalising a Competing Proposal.
- (b) During the Exclusivity Period, within 2 Business Days after Target receives any Competing Proposal, Target must give Bidder notice in writing of:
 - (i) the existence of the Competing Proposal; and
 - (ii) the identity of the Third Party who has made the applicable Competing Proposal and all material terms of the applicable Competing Proposal (including the proposed price or, to the extent stated in the Competing Proposal, implied value (including details of the consideration if not cash alone), conditions, timing and break fee (if any) (in each case, to the extent known by Target)).

9.6 Fiduciary exception

- (a) Subject to Target having complied with its obligations under clause 9.7 (to the extent that they apply at the applicable time), each of clauses 9.3 and 9.4 does not apply to the extent that they restrict Target (or a Representative of Target) from taking or failing or refusing to take any action in relation to a Competing Proposal (which was not brought about by a breach by Target of clause 9 arising out of the wilful misconduct, wilful concealment, or fraud of the Target or any of its Representatives) if the Target Board, acting in good faith, determines:
 - (i) having consulted with its financial advisers that such Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal; and
 - (ii) having received written legal advice from its external legal advisers, that failing or refusing to take the action, or taking the action (as applicable) in relation to the Competing Proposal would, or would be reasonably likely to, constitute a breach of the fiduciary or statutory duties of the Target Directors.

9.7 Matching right

- (a) Without limiting clauses 9.1, 9.2 or 9.3, during the Exclusivity Period, Target:

- (i) must not, and must procure that each of its Related Entities do not, enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which any one or more of a Third Party, Target or any Related Entity of Target proposes or propose to undertake or give effect to a Competing Proposal (which, for the avoidance of doubt, excludes a confidentiality agreement entered into between a Target Group Member and a Third Party for the purpose of facilitating a Competing Proposal, to the extent permitted by this clause 9.7); and
- (ii) subject to any change, withdrawal, modification or qualification of a Recommendation by one or more Target Directors that is permitted by clause 7.1(b), must use all reasonable endeavours to ensure that none of the Target Directors publicly recommend a Competing Proposal (or recommend against the Transaction) or make any public statement to the effect that they may do so at a future point,

unless:

- (iii) the Competing Proposal is a Superior Proposal;
- (iv) Target has provided Bidder with:
 - (A) the material terms and conditions of the Competing Proposal, including price and the identity of the Third Party making the Competing Proposal (in each case, to the extent known by Target); and
 - (B) if the Competing Proposal is a Competing Proposal of a kind described in paragraph (c) of the definition of 'Competing Proposal' but not also a Competing Proposal of a kind described in paragraph (a) or (b) of the definition of 'Competing Proposal', reasonable details of the material reasons for the Target Board's determination that the Competing Proposal is a Superior Proposal (including the Target Board's assessment of the value of the Target Group following completion of the Competing Proposal and the basis for that assessment);
- (v) Target has given Bidder at least three Business Days after the date of the provision of the information referred to in paragraph (iv) above to provide a matching or superior proposal to the terms of the Competing Proposal; and
- (vi) either:
 - (A) Bidder has not announced or otherwise formally proposed to Target (in writing) a Bidder Counterproposal to the Competing Proposal by the expiry of the three Business Day period in paragraph (v) above; or
 - (B) If Bidder has not announced or otherwise formally proposed to Target (in writing) a Bidder Counterproposal before the expiry of the three Business Day period in paragraph (v) above, either:
 - (1) Bidder has not amended the Bidder Counterproposal to address the reasons given by the Target Board within the two Business Day period required by clause 9.7(b)(iii); or
 - (2) Target has notified Bidder of the Target Board's determination that the applicable amended Bidder Counterproposal would not provide an equivalent or superior outcome for the Target Shareholders as a whole compared with the Competing Proposal.

- (b) If Bidder formally proposes to Target (in writing) or announces a counterproposal to the Competing Proposal (which, for the avoidance of doubt, may involve a counterproposal for the same or different assets or interests that are the subject of a Competing Proposal) (**Bidder Counterproposal**) by the expiry of the three Business Day period in clause 9.7(a)(v):
- (i) Target must procure that the Target Board considers the Bidder Counterproposal and determines, acting in good faith, whether the Bidder Counterproposal would provide an equivalent or superior outcome for the Target Shareholders as a whole compared with the Competing Proposal, taking into account all of the terms and conditions of the Bidder Counterproposal (and the Competing Proposal) and then promptly give Bidder notice of the determination of the Target Board (stating reasons for the determination);
 - (ii) if the determination of the Target Board is that the Bidder Counterproposal would provide an equivalent or superior outcome for the Target Shareholders as a whole compared with the Competing Proposal, then, for a period of three Business Days after Target gives Bidder notice of the Target Board determination under paragraph (i) above, Target and Bidder must use all reasonable endeavours to agree the transaction documents necessary to reflect the Bidder Counterproposal and to implement the Bidder Counterproposal, in each case as soon as reasonably practicable; and
 - (iii) if the determination of the Target Board is that the Bidder Counterproposal would not provide an equivalent or superior outcome for the Target Shareholders as a whole compared with the Competing Proposal, then Target must allow Bidder a further two Business Days after Target gives Bidder notice of the Target Board's determination under paragraph (i) above to amend the Bidder Counterproposal to address the reasons identified by Target in the notice given under paragraph (i) above and if Bidder does so then the process in paragraphs (i) and (ii) above will apply to the amended Bidder Counterproposal as if it was a 'Bidder Counterproposal' for the purposes of those clauses.

9.8 Compliance with law or determination of the Takeovers Panel

If it is finally determined by a court, or the Takeovers Panel, that the agreement by the parties under this clause 9 or any part of it:

- (a) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the Target Board;
- (b) constituted, or constitutes, or would constitute, "unacceptable circumstances", as defined in the Corporations Act; or
- (c) was, or is, or would be, a breach of applicable law for any other reason,

then, to that extent (and only to that extent) Target will not be obliged to comply with that provision of this clause 9.

9.9 Normal provision of information

Nothing in this clause 9 prevents Target or a Representative from (directly or indirectly):

- (a) providing information to its Representatives;
- (b) providing information to any Government Agency;
- (c) providing information to its auditors, customers, financiers, contractual counterparties and suppliers acting in that capacity in the ordinary course of business;

- (d) providing information required to be provided by law (including to satisfy its obligations under the ASX Listing Rules);
- (e) making presentations or providing information to, or responding to enquiries from, or engaging with, Target Shareholders, brokers, portfolio investors, analysts and other third parties (including financiers and potential financiers) in the ordinary course of business (provided that such action does not result in a breach of clause 9.2); or
- (f) responding to queries or discussion points raised by a Target Shareholder to Target in respect of that Target Shareholder's shareholding (including in relation to that shareholder's futures intentions regarding its shareholding), provided that these queries or discussion points were not initiated by Target and that Target's responses to these queries or discussion points do not result in a breach of clause 9.2.

10 Break Fee

10.1 Background

This clause 10 has been agreed to in circumstances where:

- (a) Target acknowledges that, if Bidder enters into this deed and the Scheme is subsequently not implemented, Bidder will have incurred significant costs, including those set out in clause 10.5;
- (b) Bidder requested provision be made for the relevant payment outlined in this clause 10, without which it would not have entered into this deed;
- (c) the Target Board believes that it is appropriate to agree to the payment referred to in this clause 10 to secure Bidder's entry into this deed; and
- (d) Target has received separate legal advice in relation to this deed and the operation of this clause 10.

The parties acknowledge and agree that the costs actually incurred by Bidder as referred to in clause 10.1(a) will be of such nature that they cannot be accurately ascertained, but that the Break Fee is a genuine and reasonable pre-estimate of the minimum cost and loss that would actually be suffered by Bidder.

10.2 Payment of Break Fee

Subject to clauses 10.3, 10.4, 10.6 and 10.7, the Target must pay Bidder the Break Fee in accordance with clause 10.4 if any of the following events occur:

- (a) this deed is validly terminated by Bidder under clause 13.1(b);
- (b) during the Exclusivity Period, any Target Director publicly fails to make the Recommendation or Voting Intention or makes a public statement:
 - (i) withdrawing or adversely changing, adversely qualifying or adversely modifying their Recommendation or Voting Intention; or
 - (ii) supporting or endorsing a Competing Proposal,in each case, provided that Bidder has terminated this deed in accordance with clause 13.2, except:
 - (iii) where the Independent Expert concludes in the Independent Expert's Report (or any update of, or revision, amendment or supplement to, the Independent Expert's Report) that the Scheme is not in the best interests of Target Shareholders (except in circumstances where the Independent Expert reaches

that conclusion wholly or substantially as a result of the existence or announcement of a Competing Proposal); or

- (iv) where the failure to make a Recommendation or Voting Intention, or the adverse change, withdrawal, adverse modification or adverse qualification of a Recommendation or Voting Intention, is permitted by clause 7.1(b)(iv),

provided that, for the avoidance of doubt, a statement made by Target, the Target Board or any Target Director to the effect that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board will not, by that statement alone, require Target to pay the Break Fee to Bidder; or

- (c) during the Exclusivity Period, a Competing Proposal is announced by a Third Party and, within 12 months after that occurring, the Third Party or another Third Party:
 - (i) completes a transaction of the kind referred to in paragraphs (b) or (c) of the definition of 'Competing Proposal'; or
 - (ii) otherwise acquires a Relevant Interest in, or becomes the holder of, or otherwise acquires, directly or indirectly, more than 50% of Target Shares and that acquisition is (or becomes) unconditional.

10.3 Payment conditions

- (a) Notwithstanding the occurrence of any event under clause 10.2, no amount is payable under that clause:
 - (i) if the Scheme becomes Effective; or
 - (ii) if, at the time that an amount became payable under clause 10.2, Target was entitled to terminate this deed under clause 13.1(b), and has given the appropriate termination notice to Bidder,

and, if this clause 10.3(a) applies, any amount or part of the Break Fee that has already been paid to Bidder must be refunded by Bidder:

- (A) where clause 10.3(a)(i) applies, within 10 Business Days after the Scheme becomes Effective; or
- (B) where clause 10.3(a)(ii) applies, within 10 Business Days after the date Target notifies Bidder that, at the time that the Break Fee became payable under this clause 10, Target was entitled to terminate this deed under clause 13.1(b).

- (b) Without limiting clause 10.7:
 - (i) Target can only ever be liable to pay the Break Fee once; and
 - (ii) where the Break Fee becomes payable to Bidder under this clause 10 and is actually paid to Bidder, Bidder cannot make any claim against Target for payment of the Break Fee.

10.4 Timing of payment

If the Break Fee is payable under this clause 10, Target must pay the Break Fee without set-off or withholding (unless required by law) within 10 Business Days of receipt of a demand for payment from Bidder, which must:

- (a) be in writing (for which purposes email shall suffice);
- (b) be made after the occurrence of the event in that clause giving rise to the right to the payment of the Break Fee;

- (c) state the circumstances which give rise to the demand; and
- (d) nominate the account into which Target is to pay the Break Fee.

10.5 Nature of payment

The amount payable by Target to Bidder under clause 10.2 is an amount to compensate Bidder for:

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

incurred by Bidder.

10.6 Compliance with law

- (a) This clause 10 imposes obligations on Target only to the extent that the performance of all or part of those obligations:
 - (i) does not constitute unacceptable circumstances as declared by the Australian Takeovers Panel; and
 - (ii) is not determined to be unenforceable or unlawful (including as a result of all or part of those obligations being a breach of any of the fiduciary or statutory duties of any Target Director) by a court of competent jurisdiction.
- (b) If:
 - (i) clause 10.6(a)(i) or clause 10.6(a)(ii) applies; and
 - (ii) the Takeovers Panel or a court of competent jurisdiction (as applicable) determines that an amount lower than the Break Fee does not constitute unacceptable circumstances or is not unenforceable or a breach of applicable law (as applicable) (**Permitted Break Fee Amount**),then:
 - (iii) Target shall be required to pay the Permitted Break Fee Amount in accordance with clause 10.2; and
 - (iv) if the Break Fee has already been paid to Bidder, Bidder must refund an amount equal to the difference between the Break Fee and the Permitted Break Fee Amount to Target within 10 Business Days after receipt of a written demand from Target.
- (c) The parties must not make, or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination of a kind referred to in clause 10.6(a).

10.7 Limitation of liability

- (a) Despite anything to the contrary in this deed, the maximum aggregate amount that Target (and the Target Group) is required to pay to Bidder in relation to or under this deed (including as a result of any breach of this deed by Target) is the amount of the Break Fee and in no event will the aggregate liability of Target (and the Target Group) under

this deed or in connection with the Transaction or the Scheme (including, but not limited to, for any and all Claims, actions, damages, losses, liabilities, costs, expenses or payments of whatever nature and however arising in connection with this deed) exceed the amount of the Break Fee.

- (b) Where the Break Fee is paid by Target to Bidder in accordance with this deed (or the Break Fee would be payable if Bidder made a written demand under clause 10.4):
 - (i) Bidder cannot make any Claim against Target, its Related Entities or their Representatives, under or in connection with this deed; and
 - (ii) Target has no further liability to Bidder (or any Bidder Group Member) under or in connection with this deed, the Transaction or the Scheme (including, but not limited to, for any Claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising in connection with this deed, the Transaction or the Scheme).
- (c) Clauses 10.7(a) and 10.7(b) do not apply in respect of a wilful or intentional breach of this deed by Target.

11 Reverse Break Fee

11.1 Background

This clause 11 has been agreed to in circumstances where:

- (a) Bidder acknowledges that, if Target enters into this deed and the Scheme is subsequently not implemented, Target will have incurred significant costs, including those set out in clause 11.5;
- (b) Target requested provision be made for the relevant payment outlined in this clause 11, without which it would not have entered into this deed;
- (c) Bidder believes that it is appropriate to agree to the payment referred to in this clause 11 to secure Target's entry into this deed; and
- (d) Bidder has received separate legal advice in relation to this deed and the operation of this clause 11.

The parties acknowledge and agree that the costs actually incurred by Target as referred to in clause 11.1(a) will be of such nature that they cannot be accurately ascertained, but that the Reverse Break Fee is a genuine and reasonable pre-estimate of the minimum cost and loss that would actually be suffered by Target.

11.2 Payment of Reverse Break Fee

Subject to clauses 11.3, 11.4, 11.6 and 11.7, the Bidder must pay Target the Reverse Break Fee in accordance with clause 11.4 if any of the following events occur:

- (a) this deed is validly terminated by Target under clause 13.1(b); or
- (b) the Scheme becomes Effective but Bidder does not pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.

11.3 Payment conditions

Without limiting clause 11.7:

- (a) Bidder can only ever be liable to pay the Reverse Break Fee once; and

- (b) where the Reverse Break Fee becomes payable to Target under this clause 11 and is actually paid to Target, Target cannot make any claim against Target for payment of the Reverse Break Fee.

11.4 Timing of payment

If the Reverse Break Fee is payable under this clause 11, Bidder must pay the Reverse Break Fee without set-off or withholding (unless required by law) within 10 Business Days of receipt of a demand for payment from Target, which must:

- (a) be in writing (for which purposes email shall suffice);
- (b) be made after the occurrence of the event in that clause giving rise to the right to the payment of the Reverse Break Fee;
- (c) state the circumstances which give rise to the demand; and
- (d) nominate the account into which Bidder is to pay the Reverse Break Fee.

11.5 Nature of payment

The amount payable by Bidder to Target under clause 11.2 is an amount to compensate Target for:

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

incurred by Target.

11.6 Compliance with law

- (a) This clause 11 imposes obligations on Bidder only to the extent that the performance of all or part of those obligations:
 - (i) does not constitute unacceptable circumstances as declared by the Australian Takeovers Panel; and
 - (ii) is not determined to be unenforceable or unlawful (including as a result of all or part of those obligations being a breach of any of the fiduciary or statutory duties of any director of Bidder) by a court of competent jurisdiction.
- (b) If:
 - (i) clause 11.6(a)(i) or clause 11.6(a)(ii) applies; and
 - (ii) the Takeovers Panel or a court of competent jurisdiction (as applicable) determines that an amount lower than the Reverse Break Fee does not constitute unacceptable circumstances or is not unenforceable or a breach of applicable law (as applicable) (**Permitted Reverse Break Fee Amount**),then:
 - (iii) Bidder shall be required to pay the Permitted Reverse Break Fee Amount in accordance with clause 11.2; and
 - (iv) if the Reverse Break Fee has already been paid to Target, Target must refund an amount equal to the difference between the Reverse Break Fee and the

Permitted Reverse Break Fee Amount to Target within 10 Business Days after receipt of a written demand from Bidder.

- (c) The parties must not make, or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination of a kind referred to in clause 11.6(a).

11.7 Limitation of liability

- (a) Despite anything to the contrary in this deed, the maximum aggregate amount that Bidder (and the Bidder Group) is required to pay to Target in relation to or under this deed (including as a result of any breach of this deed by Bidder) is the amount of the Reverse Break Fee and in no event will the aggregate liability of Bidder (and the Bidder Group) under this deed or in connection with the Transaction or the Scheme (including, but not limited to, for any and all Claims, actions, damages, losses, liabilities, costs, expenses or payments of whatever nature and however arising in connection with this deed) exceed the amount of the Reverse Break Fee.
- (b) Where the Reverse Break Fee is paid by Bidder to Target in accordance with this deed (or the Reverse Break Fee would be payable if Target made a written demand under clause 11.4):
 - (i) Target cannot make any Claim against Bidder, its Related Entities or their Representatives, under or in connection with this deed; and
 - (ii) Bidder has no further liability to Target (or any Target Group Member) under or in connection with this deed, the Transaction or the Scheme (including, but not limited to, for any Claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising in connection with this deed, the Transaction or the Scheme).
- (c) Clauses 11.7(a) and 11.7(b) do not apply in respect of a wilful or intentional breach of this deed by Bidder.
- (d) Nothing in this clause 11 or otherwise under this deed will limit Bidder's liability under the Deed Poll.

12 Liability of directors, officers and employees

12.1 Liability of directors, officers and employees

To the maximum extent permitted by law and subject to clause 12.4, the Bidder and (as from the Implementation Date) the Target Group (for whom the Target acts as agent) releases any and all rights that it may have as at the date of this deed and from time to time against, and agrees that it will not make any claim against any Target Indemnified Parties (other than the Target) in connection with:

- (a) Target's execution and delivery of this deed;
- (b) any breach of any Target Scheme Warranty (or other covenant, representation or warranty given by Target under this deed) or obligation of Target under this deed or the Scheme;
- (c) the implementation of the Scheme;
- (d) any disclosure containing any statement which is false or misleading (whether by omission or otherwise); or
- (e) any failure to provide information,

whether current, future, known or unknown, arising at common law, in equity, under statute or otherwise, except to the extent arising from the wilful misconduct, wilful concealment, or fraud of the relevant Target Indemnified Party.

12.2 Directors' and officers' insurance

The Bidder and Target acknowledge and agree that prior to the Implementation Date, the Target will arrange and pay all premiums required for run off directors' and officers' liability insurance cover (**Run Off Cover**) to be put in place for the benefit of each Beneficiary, provided that:

- (a) Target must use all reasonable endeavours to ensure that the Run Off Cover is on the most attractive commercial terms reasonably available from a reputable insurer, provided that Target will be deemed to have satisfied its obligation to use all reasonable endeavours under this clause 12.2(a) if it engages a reputable insurance broker to obtain quotes and/or proposals from reputable insurers in respect of the Run Off Cover and enters into arrangements to secure the Run Off Cover with one or more of those insurers selected by Target (acting reasonably, having regard to the insurer's or insurers' proposed terms in respect of the Run Off Cover (including in respect of the premium));
- (b) the Run Off Cover must be on the same or substantially the same terms (including as to limits of liability and deductibles, but except in respect of the premium) as the D&O Policy;
- (c) the Run Off Cover must cover claims made up to 7 years after the Implementation Date in respect of conduct or matters occurring on or before the Implementation Date; and
- (d) the Run Off Cover must not have an aggregate premium in excess of an amount agreed between the parties in writing on or before the date of this deed in the Disclosure Letter (unless Bidder otherwise agrees in writing).

12.3 Directors' and officers' indemnities

Without limiting any other term of this deed, the Bidder undertakes in favour of Target and each Target Indemnified Party that it will, from the Implementation Date:

- (a) 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 (and keep indemnified) each of its directors and officers (including, but not limited to, any directors and officers in office on the date of this deed and/or on the Implementation Date) against any liability incurred by that person in her or his capacity as a director or officer of the company to any person other than a Target Group Member; and
- (b) in respect of each deed of indemnity, access and insurance (**Relevant Deed**) made by a Target Group Member (**Relevant Entity**) in favour of a director, officer or employee of any Target Group Member (including, but not limited to, a Target Indemnified Party), whether past or present, from time to time, procure that the Relevant Entity complies with the Relevant Deed.

12.4 Compliance with law and benefit

- (a) Clause 12.1 and clause 12.3 are subject to any restriction under the Corporations Act and will (if and to the extent required) be read down accordingly.
- (b) The Bidder acknowledges and agrees that the Target holds the benefit of this clause 12 to the extent it relates to each Target Indemnified Party as trustee for them, and that each

such Target Indemnified Party may enforce this clause 12 against the Bidder or (as from the Implementation Date) the Target or any Target Group Member.

13 Termination

13.1 Termination by either party

Without prejudice to any other rights of termination under this deed, either party may terminate this deed by written notice to the other:

- (a) in the circumstances set out in, and in accordance with clause 3.6; or
- (b) at any time before 8.00am on the Second Court Date if the other party is in breach of any provision of this deed (including any breach of any Target Scheme Warranty or Bidder Warranty, in respect of which Bidder has no right to terminate this deed) and that breach is material when taken in the context of the Scheme as a whole, provided that:
 - (i) the party wishing to terminate has given written notice to the other party setting out the relevant circumstances and stating an intention to terminate this deed; and
 - (ii) the relevant breach has not been remedied within 10 Business Days from the time the notice of intention to terminate is given under subclause (i) above (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date).

Termination under this clause 13.1(a) will take effect at the expiry of the period referred to in clause 13.1(b)(ii).

13.2 Termination by Bidder

In addition to its termination rights under clause 13.1, the Bidder may terminate this deed at any time before 8.00am on the Second Court Date by notice in writing to Target if any Target Director has withdrawn, adversely changed, adversely modified or adversely qualified their Recommendation or Voting Intention or has recommended or made a public statement supporting or endorsing a Competing Proposal, for any reason, whether or not permitted to do so under this deed, other than:

- (a) a statement made by Target, the Target Board or any Target Director:
 - (i) to the effect that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board; or
 - (ii) permitted by clause 9.7; or
- (b) in respect of any Target Director, because of, and only to the extent of, a requirement or order of a court of competent jurisdiction, ASIC or the Takeovers Panel that the relevant Target Director abstains from making a recommendation that, or as to whether, Target Shareholders vote in favour of the Scheme after the date of this deed.

13.3 Termination by Target

In addition to its termination rights under clause 13.1, the Target may terminate this deed at any time before 8.00am on the Second Court Date by notice in writing to Bidder if the Target Board or such number of Target Directors as constitutes a majority of the Target Board withdraw, adversely change or adversely modify or adversely qualify their Recommendation or Voting Intention, or publicly support, endorse, or recommend a Competing Proposal, in each case provided they are entitled to do so in accordance with (and, for the avoidance of doubt, following one or more of the events referred to in) clause 7.1(b) and, if required to so do under clause 10

after a written demand for payment of the Break Fee has been made by Bidder under clause 10.4, Target has paid the Break Fee in accordance with clause 10.

13.4 Effect of termination

In the event of termination of this deed by either Bidder or Target pursuant to clauses 3.6, 13.1, 13.2, 13.3 or 13.5, this deed will have no further force or effect and the parties will have no further obligations under this deed, provided that:

- (a) this clause 13 and clauses 1, 8.2(c), 8.4, 8.5, 8.6, 8.7, 10, 12, 12, 14, 15 and 16 (except clause 16.9) will survive termination; and
- (b) each party will retain any rights and remedies that it has or may have against the other party that accrued before termination of this deed, including any rights and remedies it has or may have against the other party in respect of any past breach of this deed (including in respect of any breach giving rise to the termination of this deed).

13.5 Termination by written agreement

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

13.6 No other termination

Neither party may terminate or rescind this deed except as permitted under clause 3.6 or this clause 13.

14 Confidentiality and public announcements

14.1 Confidentiality Agreement and Clean Team Protocol

The Target and the Bidder acknowledge and agree that they continue to be bound by each of the Confidentiality Agreement and the Clean Team Protocol after the date of this deed (for so long as the Confidentiality Agreement or the Clean Team Protocol (as applicable) binds that party in accordance with its terms) in respect of all information received by it from the other party on, before or after the date of this deed, provided that:

- (a) this deed prevails to the extent of any inconsistency between this deed and the Confidentiality Agreement; and
- (b) the Clean Team Protocol prevails to the extent of any inconsistency between this deed and the Clean Team Protocol.

14.2 Survival of obligations

The rights and obligations of the Target and the Bidder in relation to confidential information under the Confidentiality Agreement and the Clean Team Protocol survive termination of this deed (for so long as the Confidentiality Agreement or the Clean Team Protocol (as applicable) binds that party in accordance with its terms).

14.3 Public announcements

- (a) The Target must issue the Agreed Public Announcement in accordance with clause 7.3.
- (b) Where a party proposes or is required to make any public announcement or disclosure in connection with the Transaction other than the Agreed Public Announcement, except in relation to the termination of this deed or a Competing Proposal, that party must, before making such announcement, to the extent lawful and practicable to do so, consult with the other party prior to making the relevant announcement or disclosure and unless immediate disclosure is required must give the other party a reasonable opportunity to comment on the form and content of the public announcement or disclosure and consider

in good faith any such comments from the other party (that are provided in a timely manner).

15 GST

15.1 Recovery of GST

If GST is or becomes payable, or notionally payable, on a supply made under or in connection with this deed, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**) as calculated by the party making the supply in accordance with the GST Law. Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same and in the same manner time that the other consideration for the supply is provided. This clause 15 does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

15.2 Liability net of GST

Notwithstanding any other provision in this deed, where any indemnity, reimbursement or similar payment under this deed is based on any cost, expense or other liability incurred by a party, it may be reduced by any input tax credit entitlement, or notional input tax credit entitlement, of that party (or its representative member) in relation to the relevant cost, expense or other liability.

15.3 Adjustment events

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

15.4 Cost exclusive of GST

Any reference in this deed to a cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

15.5 Survival

This clause 15 will not merge upon completion and will continue to apply after expiration or termination of this deed.

15.6 Definitions

Unless the context requires otherwise, words and phrases used in this clause 15 that have a specific meaning in the GST Law will have the same meaning in this clause.

16 Miscellaneous

16.1 Notices

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

- (a) must be in writing and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender or person duly authorised by the sender);
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or email to the address below, or the email address or address last notified by the intended recipient to the sender:

- (i) to the Bidder: C/- InVivo Group
83, Avenue de la Grande Armee
75016 Paris
France

Attention: Thierry Blandinières and Maha Fournier
Email: tblandinieres@invivo-group.com and mfournier@invivo-group.com

copy to:

pharbula@invivo-group.com
alecomte@invivo-group.com
Andrew.Pascoe@Allens.com.au; Charles.Ashton@Allens.com.au;
Judith.Fargeot@va-fr.com
 - (ii) to Target: Suite C
2 Park Street
Sydney NSW 2000

Attention: Graham Bradley and Mark Palmquist
Email: graham@gjbradley.com and mpalmquist@unitedmalt.com

copy to:

ljones@unitedmalt.com
JWilliamson-Noble@gtlaw.com.au
CMorse@gtlaw.com.au
- (c) will be conclusively taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country);
 - (iii) in the case of delivery by email, the earlier of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and
 - (C) two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that two hour period, an automated message that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place specified by the intended recipient as its postal address under clause 16.1(b) or:

 - (A) in the case of delivery by hand or by post, at a time that is later than 5.00pm; or
 - (B) in the case of delivery by email, at a time that is later than 7.00pm,

in the place specified by the intended recipient as its postal address under clause 16.1(b), it will be conclusively taken to have been duly given or made at the start of business on the next Business Day in that place.

16.2 No waiver

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

16.3 Remedies cumulative

The rights, powers and remedies provided to each party in this deed are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

16.4 Entire agreement

This deed, the Confidentiality Agreement and the Clean Team Protocol contain the entire agreement between the parties with respect to their subject matter. They set out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersede all earlier Conduct by or between the parties in connection with their subject matter. Neither party has relied on or is relying on any other Conduct in entering into this deed and completing the transactions contemplated by it. If there is any inconsistency between the provisions of this deed and the provisions of the Confidentiality Agreement, the provisions of this deed will prevail to the extent of any inconsistency and the provisions of the Confidentiality Agreement will be construed accordingly.

16.5 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 person, except for any representation or inducement expressly set out in this deed.

16.6 Amendment

This deed may be amended only by another deed executed by both parties.

16.7 Assignments

Neither party can assign, charge, create an Encumbrance over, or otherwise deal with any of its rights or obligations under this deed, or attempt or purport to do so, without the prior written consent of the other party.

16.8 No merger

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

16.9 No restriction on portfolio businesses

Notwithstanding anything to the contrary provided elsewhere herein, none of the provisions of this deed shall in any way limit the activities of affiliates of Kohlberg Kravis Roberts & Co. L.P. (other than, for the avoidance of doubt, Bidder) in their businesses which are distinct from the private equity business of Kohlberg Kravis Roberts & Co. L.P., provided that the Confidential Information (as that term is defined in the Confidentiality Agreement) is not made available to employees (other than compliance personnel for compliance purposes or non-compliance personnel who are directors or officers of such affiliates for supervisory purposes) of such affiliates of Kohlberg Kravis Roberts & Co. L.P..

16.10 Further assurances

Each party must do anything necessary (including executing agreements and documents) to give full effect to this deed.

16.11 Costs and Duty

- (a) Bidder:
 - (i) must pay all Duty (and any fines and penalties with respect to Duty) in respect of this deed and/or the Scheme and:
 - (A) any transaction effected under this deed, the Scheme or the Deed Poll; and
 - (B) steps to be taken under this deed, the Scheme or the Deed Poll; and
 - (ii) indemnifies Target against any liability arising from or in connection with any failure by it to comply with clause 16.11(a)(i).
- (b) Except as otherwise provided in this deed, each party must bear its own costs arising out of the negotiation, preparation, execution and performance of this deed.

16.12 Withholding Tax

- (a) If the Bidder is required to make any withholding, deduction or payment for or on account of Tax (including under Subdivision 14-D of Schedule 1 of the TAA (**Subdivision 14-D**)) or by any Government Agency in respect of the acquisition of Scheme Shares from certain Scheme Shareholders (**Withholding Amount**), the Bidder is permitted to deduct the Withholding Amount(s) from the payment of the Scheme Consideration (or other payment) to those Scheme Shareholders, and remit such Withholding Amount(s) to the appropriate Government Agency under applicable Law. The aggregate sum payable to Scheme Shareholders shall not be increased to reflect the deduction and the net aggregate sum payable to those Scheme Shareholders shall be taken to be in full and final satisfaction of the amounts owing to those Scheme Shareholders.
- (b) The Bidder acknowledges and agrees that the Bidder shall not pay any amounts to the Commissioner of Taxation under Subdivision 14-D with respect to a Scheme Shareholder where it receives an entity declaration from the Scheme Shareholder prior to the Implementation Date where:
 - (i) the entity declaration is made in accordance with the requirements in section 14-225 of Subdivision 14-D and covers, at least, the period between (and including) the date of this deed and the Implementation Date (**Entity Declaration**); and
 - (ii) the Bidder does not know the Entity Declaration to be false.
- (c) Target acknowledges and agrees that Bidder may approach the ATO to obtain clarification as to the application of Subdivision 14-D to the Transaction and will provide

all information and assistance that Bidder reasonably requires in making that approach. Bidder agrees:

- (i) to provide Target a reasonable opportunity to review the form and content of all materials to be provided to the ATO, and must incorporate Target's reasonable comments on those materials and more generally take into account Target's comments in relation to Bidder's engagement with the ATO, and provide Target a reasonable opportunity to participate in any discussions and correspondence between Bidder and the ATO in connection with the application of Subdivision 14-D to the Transaction; and
 - (ii) not to contact any Scheme Shareholders in connection with the application of Subdivision 14-D or any other withholding obligation to the Transaction without Target's prior written consent.
- (d) The parties agree to consult in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the ATO following the process referred to in clause 16.12(c). The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable following that consultation which may include, without limitation, making amendments to this deed, the Scheme and the Deed Poll to ensure that relevant representations are obtained from Scheme Shareholders.
- (e) Subject to clauses 16.12(c) and 16.12(d) applying, if Bidder must pay any Withholding Amount under law to the appropriate Government Agency in the time required by law and, it must provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the Target and/or the relevant Scheme Shareholder.
- (f) In addition to clause 16.12(e), to the extent that Bidder is required to pay an amount to the Commissioner of Taxation under Subdivision 14-D:
- (i) Bidder must give Target, at least 10 Business Days prior to the Implementation Date, information which identifies (in reasonable detail) the reasons as to why a liability arises under Subdivision 14-D in respect of the relevant Scheme Shareholder and the basis of the calculation of the Withholding Amount;
 - (ii) Target may, at least 5 Business Days prior to the Implementation Date, give information to Bidder which, in Target's reasonable opinion, demonstrates that there should not be a liability under Subdivision 14-D in respect of the relevant Scheme Shareholder; and
 - (iii) Bidder must have reasonable regard to, and consider in good faith, the information provided by Target under paragraph (ii) above before making its final decision on whether an amount is required to be paid to the Commissioner of Taxation under Subdivision 14-D in respect of the relevant Scheme Shareholder.

16.13 Severability of provisions

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

16.14 Governing law and jurisdiction

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

16.15 Process agent

The Bidder appoints Allens Corporate Services Pty Ltd of Level 4 Deutsche Bank Place, 126 Philip Street, Sydney NSW 2000, Australia as its agent to accept service of process and other documents in any action or proceedings relating to any matter arising out of this deed, and:

- (a) must ensure that at all times, the agent or a remains present and authorised to accept service of process and other documents on its behalf and, if there is a replacement, it must promptly notify the Target; and
- (b) agrees that service of any process or documents on the agent (or any replacement), at the address and marked to the attention of the individuals specified in clause 16.1 (or any alternative details nominated by the Bidder by Notice) will be sufficient to constitute service on it.

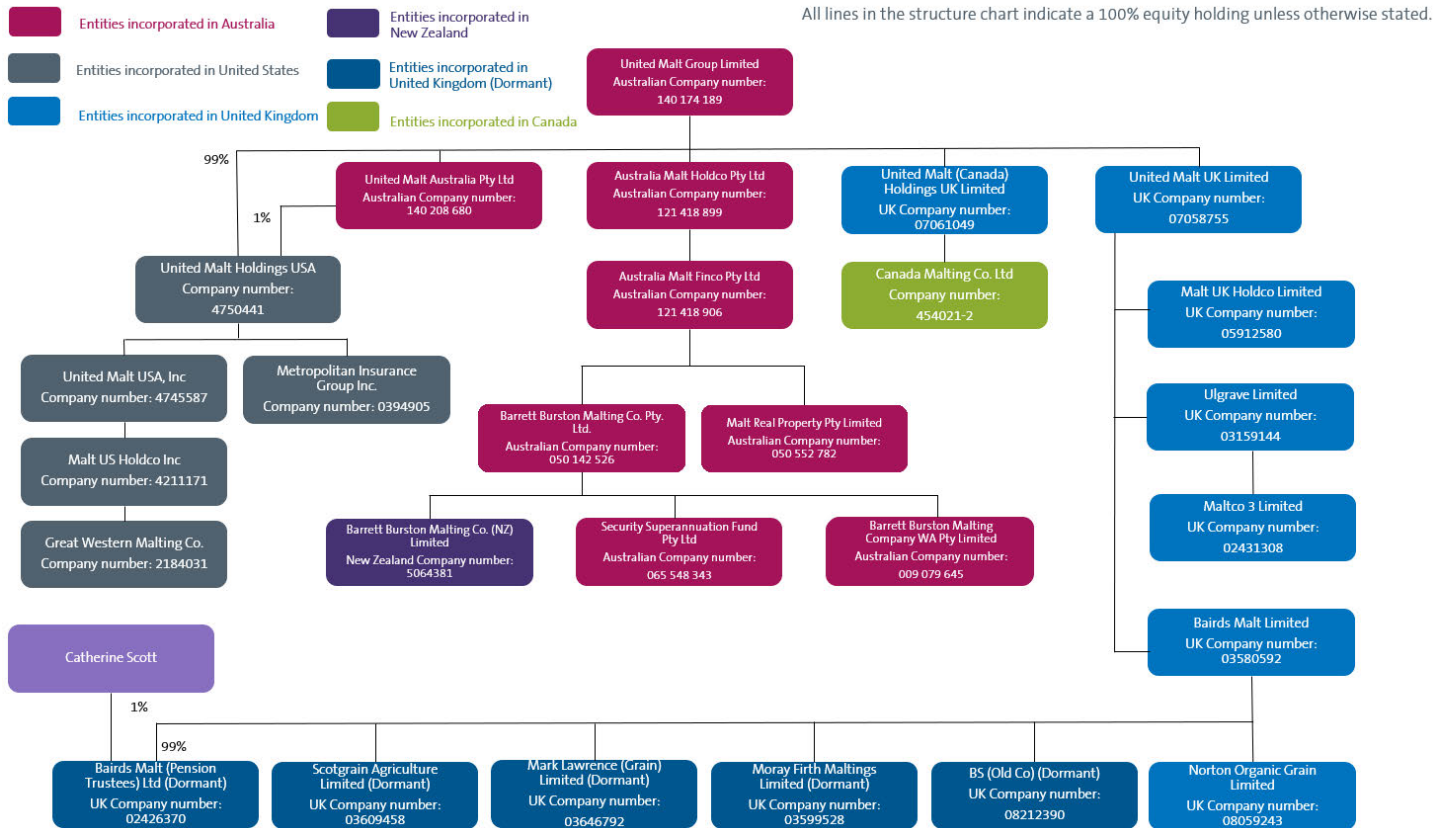
For the avoidance of doubt, nothing in this deed will affect the rights of any party to serve process in any other manner permitted by law.

16.16 Execution and counterparts

This deed may be executed electronically and may be executed in counterparts. Where a person signs this deed electronically, the electronic signature is an effective binding signature, and the electronic document containing it can be an effective electronic counterpart of this deed. In addition, the person intends that any print-out of the signature will also constitute an effective original signature, so that the print-out will also be an executed original counterpart of this deed.

Schedule 1

Target Group Structure Chart



Schedule 2**Bidder Warranties****1 Incorporation**

- (a) It is a company properly incorporated and validly existing and registered under the laws of its place of incorporation.
- (b) The Bidder is not the subject of an Insolvency Event and no resolutions have been passed nor has any other step been taken or legal proceedings commenced against any the Bidder for an Insolvency Event (and, in the case of proceedings commenced after the date of this deed, such proceedings are not stayed, withdrawn or dismissed within 30 days or any shorter period ending at 8.00am on the Second Court Date).

2 Authority

- (a) The execution and delivery by the Bidder of the Transaction Documents to which the Bidder is party has been properly authorised by all necessary corporate action and the Bidder has full corporate power, capacity and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents.
- (b) The Transaction Documents to which the Bidder is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms.
- (c) The Transaction Documents to which the Bidder is party (and the Bidder's entry into and compliance with those Transaction Documents) do not conflict with or result in a breach of or default under:
 - (i) the constituent documents of the Bidder; or
 - (ii) any writ, order or injunction, judgment, law, rule, or regulation to which the Bidder is party, or by which the Bidder is bound (or to which Bidder is subject).

3 Approvals

Other than Equity Financing Approvals and any other approvals expressly contemplated by the Transaction Documents, no shareholder approval, or approval, consent, clearance, waiver, ruling, relief, confirmation, exemption, declaration or notice from a Government Agency, is required to be obtained by the Bidder after the date of this deed in order for it to execute and perform the Transaction Documents to which it is party (including any such approval, consent, clearance, waiver, ruling, relief, confirmation, exemption, declaration or notice required under any applicable law).

4 Regulatory action

So far as Bidder is aware, as at the date of this deed no regulatory action of any nature has been taken that would prevent or restrict Bidder's ability to fulfil its obligations under a Transaction Document.

5 Bidder Booklet Information

- (a) As at the First Court Date, the date of despatch of the Scheme Booklet to Target Shareholders, the date of the Scheme Meeting and the Second Court Date, the Bidder Booklet Information is not misleading or deceptive (whether by omission or otherwise) in any material respect and complies with applicable laws and the terms of this deed as they apply to the Bidder Booklet Information.

- (b) Any statement of opinion or belief contained in the Bidder Booklet Information is honestly held and so far as the Bidder is aware there are reasonable grounds for holding the opinion or belief.

6 Basis of Bidder Booklet Information

The Bidder Booklet Information will be provided to Target in good faith and on the understanding that Target and each other Target Indemnified Party will rely on that information for purposes of preparing the Scheme Booklet and proposing the Scheme, and all information provided by Bidder to the Independent Expert will, as at the date that information is provided, be provided in good faith and on the understanding that, to the extent accepted by the Independent Expert, the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report.

7 New information

The 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 Booklet Information is not misleading or deceptive (including by the omission of information).

8 No dealing with Target Shareholders

No Controlled Bidder Group Member:

- (a) has any agreement, arrangement or understanding with any Target Shareholder under which that Target Shareholder (or a Related Entity of that Target Shareholder) would be entitled to receive consideration for their Target Shares different from the Scheme Consideration or under which the Target Shareholder agrees to vote in favour of the Scheme or against any Competing Proposal;
- (b) has a Relevant Interest in any Target Shares or has a right to acquire any Target Shares; or
- (c) has entered into any agreement, arrangement or understanding that confers rights the economic effect of which is equivalent or substantially equivalent to holding, acquiring, or disposing of assets of or securities in Target (including, but not limited to, Target Shares) or another Target Group Member (including, but not limited to, cash-settled derivative contracts, contracts for difference or other derivative contracts).

9 No dealings with Target directors or employees

No Controlled Bidder Group Member has any agreement, arrangement or understanding with any director, officer or employee of any Target Group Member relating in any way to the Transaction or the operation of the Target's business after implementation of the Scheme.

10 Equity Commitment Letters

- (a) Bidder has disclosed true and complete copies of the Equity Commitment Letters to Target before the execution of this deed.
- (b) Each Equity Commitment Letter has been duly executed by the parties thereto and constitutes legally binding obligations on, and rights of, those parties that are enforceable in accordance with their respective terms.
- (c) Other than as expressly permitted under this deed or the terms of the relevant Equity Commitment Letter, or with the prior written consent of Target:

- (i) each Equity Commitment Letter has not been amended and Bidder has not agreed to amend, any Equity Commitment Letter;
- (ii) the Bidder has not waived, or agreed to waive, any of its rights under the Equity Commitment Letters;
- (iii) the Bidder has not agreed to terminate, replace or rescind an Equity Commitment Letter, no Equity Commitment Letter has been terminated, replaced or rescinded, and no right to terminate, replace or rescind an Equity Commitment Letter has been triggered; and
- (iv) the Bidder has not agreed or consented to any novation, assignment or transfer of any counterparty's obligations under an Equity Commitment Letter, and no counterparty's obligations under an Equity Commitment Letter have been novated, assigned or transferred, except as expressly permitted under the relevant Equity Commitment Letter,

in each case, where such action or occurrence prejudices the Bidder's ability to pay (or procure the payment of) the Aggregate Scheme Consideration in accordance with his deed, the Scheme and the Deed Poll.

- (d) The Bidder will enforce its rights under each Equity Commitment Letter.
- (e) Bidder is not in default under any Equity Commitment Letter and no event has occurred which, with notice, lapse of time or both, would result in a default under an Equity Commitment Letter.

11 Sufficient cash amounts – reasonable expectation

Bidder has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts to satisfy Bidder's obligations to pay (or procure the payment of) the Aggregate Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.

12 Sufficient cash amounts – unconditional at Second Court Date

As at 8.00 am on the Second Court Date, the Bidder will have available to it on an unconditional basis (other than conditions relating to the approval of the Court, the Scheme becoming Effective, and other conditions that can only be satisfied or performed after the Second Court Date and are within the control of Bidder) sufficient cash amounts (whether from internal cash resources or external funding arrangements (including Equity Financing) or a combination of both) to satisfy Bidder's obligation to pay (or procure the payment of) the Aggregate Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.

13 Sufficient cash amounts – available on Implementation Date

On the Business Day prior to the Implementation Date, the Bidder will have available to it sufficient cash amounts (whether from internal cash resources or external funding (including Equity Financing) arrangements or a combination of both) to satisfy Bidder's obligation to pay (or procure the payment of) the Aggregate Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.

Schedule 3**Target Scheme Warranties****1 Incorporation**

- (a) The Target and each other Target Group Member is a company properly incorporated and validly existing under the laws of its place of incorporation.
- (b) Neither the Target nor any other Target Group Member is the subject of an Insolvency Event and no resolutions have been passed nor has any other step been taken or legal proceedings commenced against any Target Group Member for an Insolvency Event (and, in the case of proceedings commenced after the date of this deed, such proceedings are not stayed, withdrawn or dismissed within 30 days or any shorter period ending at 8.00am on the Second Court Date).

2 Authority

- (a) The execution and delivery by the Target of the Transaction Documents to which the Target is party has been properly authorised by all necessary corporate action and the Target has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents.
- (b) The Transaction Documents to which the Target is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms.
- (c) The Transaction Documents to which the Target is party (and the Target's entry into and compliance with those Transaction Documents) do not conflict with or result in a breach of or default under:
 - (i) the constitution of the Target; or
 - (ii) any writ, order, injunction, judgment, law, rule, or regulation to which the Target or any Target Group Member is party, or by which Target or any Target Group Member is bound.

3 Approvals

Other than as expressly contemplated by a Transaction Document, no shareholder or Government Agency approvals are required to be obtained by any Target Group Member after the date of this deed in order for it to execute and perform the Transaction Documents to which it is party (including any such approvals required under any applicable laws) and, so far as the Target is aware, as at the date of this deed, no regulatory action of any nature has been taken that would prevent or restrict the Target's ability to perform its obligations under this deed.

4 Capital Structure

- (a) The total issued equity capital of the Target as at the date of this deed is comprised of:
 - (i) 299,179,135 Target Shares; and
 - (ii) 1,100,271 Target Performance Rights,
- (b) The Target:
 - (i) has not issued or granted (or agreed to issue or grant) any other securities, shares, warrants, options, performance rights, convertible notes, instruments or

rights (or obligations, offers or agreements to issue any of the foregoing) which may convert into Target Shares which are still outstanding and may convert into shares; and

- (ii) is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any other such securities, shares, options, warrants, performance rights, convertible notices, instruments or rights in the Target.
- (c) All the issued securities of each Target Group Member (other than the Target) are held by either the Target or another Target Group Member that is directly or indirectly wholly owned by the Target.
- (d) The particulars of the structure chart containing details of the Target Group set out in Schedule 1 are accurate and represent the complete corporate ownership structure of the Target Group.
- (e) No Target Group Member has issued or granted (or agreed to issue or grant) any other securities, shares, options, warrants, performance rights, convertible notes, instruments or rights which are still outstanding and may convert into shares and no Target Group Member (other than Target, but only in respect of Target Shares to be issued on the vesting and conversion of Target Performance Rights) is under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any other securities, shares, options, warrants, performance rights, convertible notices, instruments or rights in a Target Group Member (other than Target, but only in respect of Target Shares to be issued on the vesting and conversion of Target Performance Rights) to a Third Party.

5 Continuous Disclosure

- (a) Target has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1.
- (b) As at the date of this deed, following the release of the Agreed Public Announcement, Target is not relying on the carve-out in ASX Listing Rule 3.1 to withhold any material information from disclosure to the ASX (other than information relating to the Transaction).

6 Accounts

The financial statements of the Target Group included in its half year report for the half year ended 31 March 2023 and full year report for the full year ended 30 September 2022:

- (a) have been prepared in accordance with the requirements of the Corporations Act and any other applicable laws and in accordance with the Accounting Standards; and
- (b) give a true and fair view in all material respects of the consolidated financial position of the Target Group as of each of those respective dates and of the performance of the Target Group for the periods to which those financial statements relate.

7 Compliance with laws and Material Authorisations

- (a) Each Target Group Member has complied with applicable laws and regulations in all material respects.
- (b) The Target Group holds all material licences, authorisations and permits granted (or required to be granted) by a Government Agency that are necessary for the Target Group to conduct the Target Group's business in the manner in which it has been conducted for the six months prior to the date of this deed (each, a **Material Authorisation**).

- (c) All Target Group Members are compliant with the Material Authorisations that apply to them in all material respects.

8 Disputes

- (a) Other than the matters Fairly Disclosed in the Due Diligence Material:
 - (i) no litigation, prosecution, arbitration, mediation, or other like proceedings (other than an investigation by a Government Agency); and
 - (ii) so far as the Target is aware, no investigation by a Government Agency, relating to the Target Group has been commenced in the three years prior to the date of this deed that is still outstanding as at the date of this deed and will or is reasonably likely to have a material adverse impact on the operational or financial performance, or the reputation, of the Target Group (**Material Proceedings**).
- (b) As at the date of this deed:
 - (i) no Target Group Member has received written notice from a Third Party under which that Third Party commences or threatens to commence any Material Proceedings against a Target Group Member; and
 - (ii) the Target is not aware of any facts, matters or circumstances that will or are reasonably likely to result in a Material Proceeding.
- (c) As at the date of this deed, no Target Group Member has received written notice of any outstanding or unsatisfied settlement, judgment, decree, award, order or other decisions of any court, quasi-judicial body or Government Agency (including any competition authority) in respect of a Material Proceeding.
- (d) As at the date of this deed, no Target Group Member has given any undertaking or assurance (whether legally binding or otherwise) to any court or Government Agency (including any competition authority) under any antitrust or competition law.
- (e) Other than as Fairly Disclosed in the Due Diligence Material, so far as Target is aware, as at the date of this deed, there are no unsatisfied or outstanding judgments, awards, orders, decrees, Claims or written demands against any Target Group Member.

9 Information

- (a) As at the date of despatch of the Scheme Booklet to Target Shareholders, as far as the Target is aware, the Target Booklet Information contained in 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).
- (b) As at the First Court Date, the date of despatch of the Scheme Booklet to Target Shareholders, the date of the Scheme Meeting and the Second Court Date:
 - (i) the Target Booklet Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that the Bidder and the Bidder Indemnified Parties will rely on that information for the purposes of considering and approving the Bidder Booklet Information in the Scheme Booklet and implementing the Scheme;
 - (ii) the Target Booklet Information complies in all material respects with relevant laws and the terms of this deed as they apply to the Target Booklet Information; and
 - (iii) the Target Booklet Information included in the Scheme Booklet despatched to Target Shareholders, and any supplementary disclosure made to the Target

Shareholders (excluding information provided by or on behalf of the Bidder for any purposes, or by or on behalf of the Independent Expert), in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive (whether by omission or otherwise) in any material respect.

- (c) Any statement of opinion or belief contained in the Target Booklet Information is honestly held and so far as the Target is aware there are reasonable grounds for holding the opinion or belief.
- (d) All information provided by or on behalf of the Target to the Independent Expert has been prepared and provided in good faith and on the understanding that, to the extent accepted by the Independent Expert, the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report.

10 Due Diligence Material

- (a) The Due Diligence Material:
 - (i) has been collated and prepared in good faith in response to the Bidder's requests for due diligence information in respect of the Target Group before the date of this deed with reasonable diligence, care and skill (having regard to the purpose for which it was collated); and
 - (ii) is not misleading or deceptive, or likely to mislead or deceive (including by omission), in any material respect as at the date of this deed,provided that Target does not make or give any representation or warranty as to the accuracy, completeness or reasonableness of any projection, forecast, budget or other forward-looking information or statement (including, but not limited to, in respect of the future financial position, performance or prospects of the Target Group) or of any assumptions on which they are based or that any such projection, forecast, budget information or statement will, or is likely to be, achieved.
- (b) The Target has not intentionally omitted or withheld from the Due Diligence Material any information which would reasonably be expected to be material to a reasonable and sophisticated potential buyer's evaluation of the Target Group and the material liabilities of the Target Group.
- (c) No Target Group Member has:
 - (i) altered or varied in any material respect any agreement under which Target's financial adviser in respect of the Transaction, Macquarie Capital (Australia) Limited (**Financial Adviser**), was appointed as Target's financial adviser in respect of the Transaction or the Target Group Member has agreed to pay fees for services provided by the Financial Adviser directly in connection with the Transaction to the Financial Adviser; or
 - (ii) entered into an agreement with any Third Party (other than the Financial Adviser) under which that Third Party is appointed as Target's financial adviser in connection with the Transaction.

11 Material Contracts

All Material Contracts as at the date of this deed have been disclosed in the Due Diligence Materials and the copies of all Material Contracts included in the Due Diligence Materials are in all material respects current, accurate and complete (when considered with any and all amendments, variations, supplements, addendums, annexures, appendices, extensions and/or

renewals in respect of such Material Contracts that are also included in the Due Diligence Materials).

12 Material Property

As at the date of this deed, no member of the Target Group has any material deficiency in, and no member of the Target Group has received written notice of termination of title to, their real property interests in any Material Property, in each case that would prevent the Target Group from conducting the Business in substantially the same manner as conducted as at the date of this deed.

13 Transaction Costs

- (a) As at the date of this deed the aggregate quantum of all Transaction Costs:
 - (i) incurred or agreed to be incurred as at the date of this deed; and
 - (ii) otherwise reasonably expected to be incurred by the Target Group on or before the Implementation Date,have been Fairly Disclosed in the Disclosure Letter.
- (b) Except as otherwise agreed between the Bidder and the Target, the aggregate Transaction Costs (other than any Transaction Cost which Target (or any other Target Group Member) pays, or agrees to pay, in connection with, or as a result of, a Competing Proposal or any approvals, consents, clearances, waivers, rulings, reliefs, confirmations, exemptions, declarations or notices from a Government Agency required in connection with the Transaction, and in each case that was not reasonably expected to be incurred as a Transaction Cost on or before the Implementation Date pursuant to paragraph (a)(ii) above) incurred or agreed to be incurred do not exceed the amount agreed between the parties in the Disclosure Letter.

Schedule 4**Target Regulated Events**

- 1 **(Conversion)** Target or any other Target Group Member converting all or any of its shares into a larger or smaller number of shares.
- 2 **(Capital reductions)** Target reducing, altering, or resolving to reduce or alter its share capital in any way, or entering into a buy-back agreement or resolving to approve the terms of a buy-back agreement, in respect of Target Shares.
- 3 **(Amendments to constitution)** Target making an amendment to its constitution that relates to or affects the Transaction.
- 4 **(Issue of securities)** Target or any other Target Group Member issues (or agrees to issue) shares or options or other securities convertible into shares, other than an issue on vesting and/or exercise of, or in respect of, a Target Performance Right conducted in accordance with this deed or the Disclosure Letter.
- 5 **(Distributions)** The Target announcing, making, declaring, paying or distributing any dividend, distribution or other share of its profits or assets (whether in cash or in specie) to Target Shareholders, other than a Permitted Dividend.
- 6 **(Cessation of listing)** The Target Shares cease to be quoted, or are suspended from quotation for a period of more than 5 Business Days in aggregate, on the ASX.
- 7 **(Compliance with law)** Target or any other Target Group Member failing to comply in any material respect with any applicable laws and regulations (including the ASX Listing Rules) or Material Authorisations.
- 8 **(Insolvency)** An Insolvency Event occurring in relation to the Target or any other Target Group Member.
- 9 **(Contracts)** Target or any other Target Group Member entering into, renewing or extending, agreeing to waive a material right under, or materially varying, or terminating or materially breaching any contract (other than a contract with another Target Group Member):
 - (a) under which the Target Group will receive, or is expected to receive, \$24,000,000 or more in total revenue in any calendar year (when aggregated with all other such contracts relating to that calendar year with the same counterparty (**Counterparty**) and other counterparties that are Related Bodies Corporate of (or are otherwise part of the same corporate group as) the Counterparty);
 - (b) under which the Target Group incurs, or is expected to incur, \$3,000,000 or more in external, Third Party costs or expenditure, in any financial year (individually), other than:
 - (i) entering into, renewing, varying, terminating or extending any such contract(s), or incurring any such costs or expenditure, in the ordinary course of business; or
 - (ii) in respect of advisory services as dealt with in paragraph (c) below;
 - (c) under which the Target Group incurs, or is expected to incur, external, Third Party costs or expenditure for advisory services other than:
 - (i) contracts in the ordinary course of business;
 - (ii) contracts with a Third Party other than an Adviser, where the total fees payable do not exceed \$1,000,000 in any financial year; or

- (iii) contracts with an Adviser in connection with the Transaction (provided that, for the avoidance of doubt, this provision does not permit any action or inaction that would otherwise constitute a breach of any Target Scheme Warranty under clause 13 of Schedule 3);
 - (d) where the relevant new contract (or amended or existing contract) has a term (or expected term) of over three years except in the case of a contract under which a Target Group Member will:
 - (i) receive, or expects to receive, revenue of less than \$100,000 per annum; or
 - (ii) incur, or expects to incur, costs or expenditure of more than \$100,000 per annum; or
 - (e) where the relevant action would have the effect of expanding the scope of an existing material restrictive covenant, or otherwise has the effect of imposing a material additional restriction on the future business activities of the Target Group or would otherwise apply to the Bidder Group (excluding, for the avoidance of doubt, the Target Group) following Implementation,
- other than a contract:
- (f) in respect of a matter or action described in clause 10 (**Acquisitions and disposals**), which is dealt with in clause 10;
 - (g) in respect of Financial Indebtedness, which is dealt with in clause 17 below; or
 - (h) in respect of capital expenditure, which is dealt with in clause 18 below;
- 10 (**Acquisitions and disposals**) Target or any other Target Group Member acquiring, leasing or disposing of, or entering into, any agreement for the acquisition, lease or disposal of, any entity, asset or business which individually has a value of, or the consideration payable for which is, more than \$1,000,000 in any financial year (individually) or \$2,000,000 (in aggregate with all such transactions which are subject to this clause 10 relating to that financial year), other than:
- (a) in connection with the incurrence of capital expenditure, which is dealt with in clause 18 below; or
 - (b) in the ordinary course of business;
- 11 (**Employment terms**) Target or any other Target Group Member entering into or materially varying any employment, consultant, severance or similar agreement or arrangement with any Employee, executive or officer of the Target Group (or consultant or independent contractor that performs an employee-like function for the Target Group), in each case whose total annual fixed remuneration exceeds (or would exceed in the case of an agreement or arrangement not on foot on the date of this deed) US\$280,000 (*each a **Key Person***), or accelerating or otherwise increasing compensation, benefits or entitlements for any Key Person, in each case other than:
- (a) in the case of the entry into a new employment contract, to replace an employee who ceased to be an employee of a Target Group Member (on terms that are substantially similar to the terms of employment of the person who ceased to be an employee of the Target Group Member);
 - (b) in the ordinary course of business and substantially consistent with past practice; or
 - (c) in accordance with:
 - (i) the applicable employee incentive plans in place as at the date of this deed, to the extent Fairly Disclosed in the Due Diligence Materials; or
 - (ii) terms agreed with Bidder on or before the date of this deed.

- 12 **(Employee share plans)** Target Board exercising any discretion to accelerate the vesting of any shares, options or other securities given to the Target Board under any existing share plan, performance plan or any other short term or long term incentive schemes (excluding, for the avoidance of doubt, any vesting: (i) in the ordinary course, consistent with past practice and in accordance with the terms of such plans or schemes as at the date of this deed; (ii) otherwise in accordance with the terms of issue of the relevant shares, options or securities; or (iii) otherwise in accordance with this deed).
- 13 **(Enterprise Bargaining Agreements)** Target or any other Target Group Member entering into any enterprise bargaining agreement or similar arrangement other than in the ordinary course of business or pursuant to contractual arrangements in effect on the date of this deed which have been Fairly Disclosed in the Due Diligence Material.
- 14 **(Restrictive Covenants)** Target or any other Target Group Member entering into a contract or commitment restraining a member of the Target Group from competing with any Third Party, or conducting activities in any market, in each case that is material in the context of the Target Group's business in North America, the United Kingdom, or the Asia Pacific region.
- 15 **(Encumbrances)** Target or any other Target Group Member granting, or agreeing to grant, an Encumbrance in or over all or a substantial part of the business or property of the Target Group, other than a Permitted Encumbrance.
- 16 **(Existing Debt Financing)** The Target or any other Target Group Member granting or agreeing to any amendment or waiver or consent in respect of a material provision of any Existing Debt Financing where that amendment or waiver or consent could reasonably be expected (at the time the waiver or consent was granted or agreed to) to be prejudicial to the ability of the relevant Target Group Member to effect any refinancing or replacement of any Existing Debt Financing after the completion of the Transaction, other than Target or any other Target Group Member agreeing to or requesting a waiver of any financial or other covenant by a lender to the Target Group in respect of any Existing Debt Financing.
- 17 **(Financial Indebtedness)** Target or any other Target Group Member:
- (a) entering into any contract or arrangement under which one or more Target Group Members (taken together) incurs additional or new Financial Indebtedness of an amount in excess of \$1,500,000 (except for drawdowns on existing banking facilities (including in respect of Existing Debt Financing) or utilisation of existing securitisation programs);
 - (b) materially varying or agreeing to materially vary a contract in existence as at the date of this deed under which the Target Group incurs Financial Indebtedness of an aggregate amount in excess of \$1,500,000 (except for drawdowns on existing banking facilities (including in respect of Existing Debt Financing) or utilisation of existing securitisation programs);
 - (c) guaranteeing or indemnifying the obligations of any person other than a Target Group Member, other than in the ordinary course of Business or in connection with the Transaction,
- in each case, other than:
- (d) in the ordinary course of business; or
 - (e) a contract or arrangement in respect of, or for the purpose of, financing capital expenditure, which is dealt with in clause 18 below.
- 18 **(Capital expenditure)** The Target Group incurring, or committing to incur, any capital expenditure item for an amount in excess of \$3,000,000 (in aggregate with all other such capital expenditure items in the same financial year), other than any actual, estimated or proposed

capital expenditure identified or referred to in, or contemplated by, or forecast to be incurred in Data Room document 02.04.01.05.23.

- 19 **(Third Party defaults)** Any Target Group Member waiving any Third Party default, or accepting as a compromise of a matter less than the full compensation due to a Target Group Member in respect of such a default, where the net loss incurred by the Target Group resulting from such waiver or acceptance will be in excess of \$500,000 (individually) or \$1,500,000 in aggregate with any other such waivers or third party defaults in any one financial year, other than in respect of the commencement or settlement of any legal proceeding, claim, investigation or arbitration described in clause 20 (**Legal proceedings**), which is dealt with in clause 20 below.
- 20 **(Legal proceedings)** A Target Group Member commencing or settling any legal proceeding, claim, investigation or arbitration where the claimed or settlement amount is in excess of \$500,000 (individually) or \$1,500,000 (in aggregate with any other legal proceedings in any one financial year), other than:
- (a) as claimant in respect of the collection of debts arising in the ordinary course of the Target Group's business;
 - (b) in respect of an actual or potential legal proceeding, claim, or arbitration under which a Target Group Member is the plaintiff, claimant or applicant (or similar) and for which an expected, estimated or provisioned settlement, claimed or judgment (or similar) amount (or range of such amounts) has been Fairly Disclosed in the Due Diligence Materials, provided that the relevant Target Group Member does not settle that actual or potential legal proceeding, claim, or arbitration for a settlement amount that is 20% (or more) less than the expected, estimated or provisioned settlement, claimed or judgment (or similar) amount Fairly Disclosed in the Due Diligence Materials (or, if a range has been Fairly Disclosed in the Due Diligence Materials, of the lowest amount in that range);
 - (c) in respect of an actual or potential legal proceeding, claim, or arbitration under which a Target Group Member is or is expected to be the defendant or respondent (or similar), or which have been commenced or made against a Target Group Member, and for which an expected, estimated or provisioned settlement, claimed or judgment (or similar) amount (or range of such amounts) has been Fairly Disclosed in the Due Diligence Materials, provided that the relevant Target Group Member does not settle that actual or potential legal proceeding, claim, or arbitration for a settlement amount that is more than 20% in excess of the expected, estimated or provisioned settlement, claimed or judgment (or similar) amount Fairly Disclosed in the Due Diligence Materials (or, if a range has been Fairly Disclosed in the Due Diligence Materials, of the highest amount in that range); or
 - (d) other than in respect of the settlement or compromise of any Tax Dispute, which is dealt with in clause 23 below.
- 21 **(Accounting policy)** The Target Group changing in any material respect any accounting policy applied by it to report its financial position, other than any change in policy required by a change in accounting standards, or the interpretation of them, or law.
- 22 **(Tax Elections)** Target or any other Target Group Member making any material Tax elections or changing any material Tax methodologies applied by it in the 12 months period to the date of this deed.
- 23 **(Tax Disputes)** Target or any other Target Group Member settling or compromising any dispute, audit or inquiry in relation to Tax or Duty, where the settlement amount (or, in the case of a series of related disputes, audits or inquiries, aggregate settlement amount) is in excess of \$1,500,000, other than:

- (a) a dispute, audit or inquiry in relation to Tax or Duty (**Tax Dispute**) under which a Target Group Member is the plaintiff, claimant or applicant (or similar) and for which an expected, estimated or provisioned settlement, claimed or judgment (or similar) amount (or range of such amounts) has been Fairly Disclosed in the Due Diligence Materials, provided that the relevant Target Group Member does not settle that Tax Dispute for a settlement amount that is 20% (or more) less than the expected, estimated or provisioned settlement, claimed or judgment (or similar) amount Fairly Disclosed in the Due Diligence Materials (or, if a range has been Fairly Disclosed in the Due Diligence Materials, of the lowest amount in that range); or
 - (b) in respect of Tax Dispute under which a Target Group Member is or is expected to be the defendant or respondent (or similar), or in respect of which the Target Group Member is the subject of the audit or inquiry, and for which an expected, estimated or provisioned settlement, claimed or judgment (or similar) amount (or range of such amounts) has been Fairly Disclosed in the Due Diligence Materials, provided that the relevant Target Group Member does not settle that Tax Dispute for a settlement amount that is more than 20% in excess of the expected, estimated or provisioned settlement, claimed or judgment (or similar) amount Fairly Disclosed in the Due Diligence Materials (or, if a range has been Fairly Disclosed in the Due Diligence Materials, of the highest amount in that range).
- 24 **(Change to the tax consolidated group)** Target or Target Group Member must not do anything that would result in a change to the composition of the tax consolidated group of which the Target is the head company.
- 25 **(Agreement to matters)** The applicable Target Group Member(s) agreeing, procuring or committing to do any of the matters set out in this Schedule.

Schedule 5

Scheme

Scheme of arrangement pursuant to section 411 of the *Corporations Act 2001* (Cth)

Between

- 1 **United Malt Group Limited** (ABN 61 140 174 189) of Citigroup Centre, L18, Suite C, 2 Park Street, Sydney, NSW 2000 (**Target**).
- 2 **Each Target Shareholder as at the Record Date** (each a **Scheme Shareholder** and together, the **Scheme Shareholders**).

Recitals

- A The Target is an Australian public company limited by shares, registered under the Corporations Act, and has been admitted to the official list of the ASX. Target Shares are quoted for trading on the ASX.
- B As at the date of the Implementation Deed, the Target had on issue or had granted:
 - (a) 299,179,135 Target Shares; and
 - (b) 1,100,271 Target Performance Rights.
- C The Bidder is a company incorporated in France.
- D The Target and the Bidder have entered into the Implementation Deed pursuant to which:
 - (a) the Target has agreed to propose this Scheme to Target Shareholders; and
 - (b) the Target and the Bidder have agreed to take certain steps to implement the Scheme, on and subject to the terms of the Implementation Deed.
- E If this Scheme becomes Effective, then:
 - (a) all of the Scheme Shares and the rights and entitlements attaching to them on the Implementation Date will be transferred to the Bidder;
 - (b) the Scheme Consideration will be provided to the Scheme Shareholders in accordance with the terms of this Scheme and the Deed Poll; and
 - (c) the Target will enter the name and address of the Bidder in the Target Register as the holder of all of the Scheme Shares.
- F The Bidder, by entering into the Deed Poll, covenants and undertakes in favour of the Scheme Shareholders that the Bidder will observe and perform the obligations contemplated of it under this Scheme.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context required otherwise.

Aggregate Scheme Consideration means the aggregate of the Scheme Consideration payable to all Scheme Shareholders under this Scheme (and in accordance with the terms of this Scheme).

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ABN 98 008 624 691) and, as the context requires, the financial market known as 'ASX' operated by ASX Limited.

ASX Listing Rules means the official listing rules of the ASX.

ASX Operating Rules means the market operating rules of ASX Settlement Pty Limited (ACN 49 008 504 532), as amended, varied or waived from time to time.

Bidder means Malteries Soufflet SAS (562 880 195 RCS Troyes).

Business Day means a day which is a Trading Day and is not a Saturday, a Sunday, or a public or bank holiday in Sydney, Australia or in Paris, France.

CHESS means the Clearing House Electronic Subregister System for the electronic transfer of securities operated by ASX Settlement Pty Limited (ABN 49 008 504 532).

CHESS Holding means a holding of Target Shares that are registered on the Target Register, which is administered by ASX Settlement Pty Limited (ACN 49 008 504 532) and which records uncertificated holdings of Target Shares.

Constitution means the constitution of the Target, as amended from time to time.

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

Court means the Federal Court of Australia or such other court of competent jurisdiction as Bidder and Target may agree in writing.

Deed Poll means the deed poll executed on [] by the Bidder in favour of the Scheme Shareholders in relation to this Scheme.

Effective means when used in relation to this Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to this Scheme.

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

End Date means 5:00pm (Sydney time) on the date which is 12 months after the date of the Implementation Deed (subject to any extension under clause 3.6(a)(vii) of the Implementation Deed), or such later date as Bidder and Target may agree in writing.

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 (including, for the avoidance of doubt, the Commonwealth Treasurer), ASIC, the Takeovers Panel constituted under the *Australian Securities and Investments Commission Act 2001* (Cth), the Australian Competition and Consumer Commission, the Australian Taxation Office, ASX and any regulatory organisation established under statute or any stock exchange.

Implementation Date means the date that is 18 Business Days after the Record Date, provided that, if the Implementation Date would otherwise fall during the last 15 days of any calendar quarter or on the first Business Day of any calendar quarter (**Blackout Period**), the Implementation Date will be three Business Days after the expiration of that Blackout Period or such other date as Target and Bidder may agree in writing or ordered by the Court.

Implementation Deed means the scheme implementation deed dated on or about [] 2023 between the Bidder and the Target relating to (among other things) implementation of this Scheme.

Issuer Sponsored Holding has the meaning given to that term in the ASX Operating Rules.

Marketable Parcel has the meaning given to that term in the ASX Operating Rules.

Permitted Dividend has the meaning given to that term in the Implementation Deed.

Record Date means 7.00pm on the date that is two Business Days after the Effective Date, or such other date as may be agreed in writing between Bidder and Target or as may be required by ASX.

Registered Address means, in relation to a Target Shareholder, the address of the Target Shareholder shown in the Target Register as at the Record Date.

Related Body Corporate has the meaning given to that term in section 50 of the Corporations Act.

Representative means, in respect of a party, an employee, agent, officer, director or adviser of that party (or of a Related Body Corporate of that party), and, in the case of advisers, includes partners, employees, officers and agents of the adviser (as applicable).

Scheme means this scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders as set out in this document, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by the Bidder and the Target (including in accordance with clause 4.2 of the Implementation Deed).

Scheme Consideration has the meaning given to that term in clause 4.1.

Scheme Meeting means the meeting of Target Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act in relation to the Scheme, and includes any adjournment of that meeting.

Scheme Shares means the Target Shares on issue as at the Record Date.

Scheme Transfer means one or more proper instruments of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, in favour of the Bidder as transferee, which may be or include a master transfer of all or part of the Scheme Shares.

Second Court Date means the first day of hearing of an application made to the Court by the Target for orders under section 411(4)(b) of the Corporations Act approving this Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

Target Performance Rights means a performance right granted by Target under a Target long-term incentive plan, which entitles the holder to receive a Target Share in certain circumstances.

Target 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 Registry means Link Market Services Limited (ABN 54 083 214 537) in its capacity as provider of registry services in respect of the Target Register, or such other registry provider engaged by the Target from time to time.

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

Target Shareholder means a person or entity who is registered in the Target Register as a holder of Target Shares from time to time.

Trading Day has the meaning given in the ASX Listing Rules.

Trust Account means an Australian dollar denominated trust account held with an Australian bank operated by the Target (or by the Target Registry on behalf of the Target) as trustee for the Scheme Shareholders.

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.

- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) Nothing in this Scheme is to be interpreted against a party solely on the ground that the party put forward this Scheme or a relevant part of it.
- (d) The following rules apply unless the context requires otherwise.
 - (i) The singular includes the plural, and the converse also applies.
 - (ii) A gender includes all genders.
 - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity, as well as an individual.
 - (v) A reference to a clause is a reference to a clause of this Scheme.
 - (vi) A reference to an agreement or document (including a reference to this Scheme) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Scheme or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
 - (vii) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
 - (viii) A reference to a person includes the person's successors, permitted substitutes and permitted assigns (and, where applicable, the person's legal personal representatives).
 - (ix) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
 - (x) A reference to *conduct* includes an omission, statement or undertaking, whether or not in writing.
 - (xi) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
 - (xii) If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
 - (xiii) A reference to *dollars* or \$ is to Australian dollars, the lawful currency of Australia.
 - (xiv) A reference to time is to Sydney, Australia time.
 - (xv) A reference to a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Scheme.

1.3 Business Day

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

2 Conditions

2.1 Conditions precedent to this Scheme

This Scheme is conditional upon, and will have no force or effect (and will not become Effective) unless and until, the satisfaction of each of the following conditions precedent:

- (a) as at 8am on the Second Court Date, each of the conditions precedent set out in clause 3.1 of the Implementation Deed (other than the condition precedent relating to Court approval of this Scheme set out in clause 3.1(d) of the Implementation Deed, and the condition precedent requiring an office copy of the Court order approving the Scheme under section 411(4)(b) of the Corporations Act to be lodged with ASIC set out in clause 3.1(e) of the Implementation Deed) has been satisfied or, if applicable, waived in accordance with the terms of the Implementation Deed;
- (b) as at 8am on the Second Court Date, neither the Implementation Deed nor the Deed Poll has been terminated in accordance with its terms;
- (c) the Court makes orders approving this Scheme under section 411(4)(b) of the Corporations Act (either unconditionally and without alteration or with such alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and that are agreed to by the Target and the Bidder); and
- (d) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving this Scheme come into effect, pursuant to section 411(10) of the Corporations Act, on or before the End Date.

2.2 Certificates

- (a) Each of the Target and the Bidder will provide to the Court on the Second Court Date a certificate (or such other evidence as the Court may require) confirming (in respect of matters within its knowledge), as at 8:00am on the Second Court Date, whether or not the conditions precedent in clauses 2.1(a) and 2.1(b) have been satisfied (but in the case of the condition precedent in clause 2.1(a), only in respect of those conditions precedent in clause 3.1 of the Implementation Deed (other than the conditions precedent in clause 3.1(d) and clause 3.1(e) of the Implementation Deed) included for that party's benefit).
- (b) The giving of the certificates referred to in clause 2.2(a) to the Court constitutes conclusive evidence that the conditions precedent in clauses 2.1(a) and 2.1(b) are satisfied, waived or taken to be waived as at 8:00am on the Second Court Date.

2.3 Lapsing

Without limiting any rights of the Bidder and/or the Target under the Implementation Deed, this Scheme will lapse and be of no further force or effect (and, if it has not already become Effective at the applicable time, will not become Effective) if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Implementation Deed or the Deed Poll is terminated in accordance with its terms, unless the Target and the Bidder otherwise agree in writing.

2.4 Scheme becoming Effective

Subject to this clause 2, this Scheme will take effect (and become Effective) on and from the Effective Date.

3 Implementation of this Scheme

3.1 Lodgement of Court orders

If the conditions precedent in clause 2.1 (other than the condition precedent in clause 2.1(d)) are satisfied, the Target must lodge with ASIC, under section 411(10) of the Corporations Act, an office copy of the Court orders approving this Scheme as soon as practicable, and in any event before 5.00pm, on the Business Day immediately following the day on which such office copy is received by the Target, or such other date as agreed in writing by the Bidder and the Target.

3.2 Transfer of Scheme Shares

On the Implementation Date, subject to, and after, the Bidder having satisfied its obligations in clause 4.3, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by the Target or any of its directors and officers as attorney and agent for Scheme Shareholders under this Scheme, or otherwise), by:

- (a) the Target delivering to the Bidder for execution duly completed (and, if necessary, stamped) Scheme Transfers to transfer all of the Scheme Shares to the Bidder, duly executed by the Target (or any of its directors and officers) as the attorney and agent of each Scheme Shareholder as transferor under clause 7.6(b);
- (b) the Bidder executing the Scheme Transfers as transferee, attending to the stamping of the Scheme Transfer (if required), and delivering them to the Target for registration; and
- (c) the Target, immediately after receipt of the Scheme Transfers under clause 3.2(b), but subject to the stamping of the Scheme Transfer (if required), entering, or procuring the entry of, the name and address of Bidder in the Target Register as the holder of all of the Scheme Shares.

4 Scheme Consideration

4.1 Scheme Consideration

In this Scheme, the ***Scheme Consideration*** means, in respect of each Scheme Share:

- (a) a cash amount of A\$5.00; *less*
- (b) the cash amount (per Scheme Share) of any Permitted Dividend which Scheme Shareholders become entitled to receive on or before the Implementation Date in accordance with clause 4.6(b) of the Implementation Deed (but, for the avoidance of doubt, the Scheme Consideration will not be reduced by the value attributed to any franking credits attached to any Permitted Dividend).

4.2 Entitlement to Scheme Consideration

Subject to the terms of this Scheme, each Scheme Shareholder will be entitled to the Scheme Consideration for each Scheme Share held by that Scheme Shareholder.

4.3 Deposit of Scheme Consideration

- (a) The Bidder must on the date that is one Business Day before the Implementation Date, deposit (or procure the deposit) in cleared funds into the Trust Account an amount at least equal to the Aggregate Scheme Consideration (such amount to be held by Target on trust for Scheme Shareholders) provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to the Bidder's account.

- (b) The Bidder must notify the Target in writing as soon as practicable after it has complied with its obligations under clause 4.3(a).

4.4 Payment to Scheme Shareholders

- (a) On the Implementation Date, subject to clause 4.4(b) and the Bidder having satisfied its obligations in clause 4.3, the Target must pay or procure the payment, from the Trust Account, to each Scheme Shareholder the Scheme Consideration to which that Scheme Shareholder is entitled under this clause 4 in accordance with the terms of this clause 4.
- (b) The obligations of the Target under clause 4.4(a) will be satisfied by the Target (in its absolute discretion, and despite any election referred to in clause 4.4(b)(i) or authority referred to in clause 4.4(b)(ii) made or given by the Scheme Shareholder):
 - (i) where a Scheme Shareholder has, before the Record Date, made a valid election in accordance with the requirements of the Target Registry to receive dividend payments from the Target by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
 - (ii) if a Scheme Shareholder has otherwise nominated a bank account for the purpose of receiving the Scheme Consideration by an appropriate authority from the Scheme Shareholder to the Target, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to that bank account; or
 - (iii) otherwise, whether or not the Scheme Shareholder has made an election referred to in clause 4.4(b)(i) or valid nomination referred to in clause 4.4(b)(ii), dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Shareholder by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 4.5).

4.5 Joint holders

In the case of Scheme Shares held in joint names:

- (a) subject to clause 4.4(b), any Scheme Consideration payable in respect of those Scheme Shares is payable to the joint holders of those Scheme Shares;
- (b) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, the holder whose name appears first in the Target Register as at the Record Date or to the joint holders (in the Target's absolute discretion); and
- (c) any other document required to be sent under this Scheme, will be forwarded to either the holder whose name appears first in the Target Register as at the Record Date or to the joint holders (at the Target's absolute discretion).

4.6 Cancellation and re-issue of cheques

- (a) The Target may cancel a cheque issued under this clause 4 if the cheque:
 - (i) is returned to the Target or the Target Registry; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.

- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to the Target or the Target Registry (which request may not be made until the date which is 20 Business Days after the Implementation Date), the Target must reissue a cheque that was previously cancelled under clause 4.6(a).

4.7 Fractional entitlements

Where the calculation of the Scheme Consideration to be paid to a Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent (after applying the Scheme Shareholder's entitlement (prior to rounding) to its entire holding of Scheme Shares), that fractional entitlement will be rounded down to the nearest whole cent.

4.8 Unclaimed monies

- (a) In the event that:
 - (i) either:
 - (A) a Scheme Shareholder does not have a Registered Address; or
 - (B) the Target, as trustee for the Scheme Shareholders, believes that a Scheme Shareholder is not known at the Scheme Shareholder's Registered Address,
 and no account has been notified in accordance with clause 4.4(b)(i) or clause 4.4(b)(ii) or a deposit into such an account is rejected or refunded; or
 - (ii) a cheque issued under this clause 4 has been cancelled in accordance with clause 4.6(a),

the Target, as the trustee for the Scheme Shareholders, may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of Target (**Separate Account**) to be held until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 1995* (NSW) (however, to avoid doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 1995* (NSW)).

- (b) Without limiting clause 4.8(d), if the Target credits an amount payable to a Scheme Shareholder to a Separate Account under clause 4.8(a), until such time as the amount is dealt with in accordance with the *Unclaimed Money Act 1995* (NSW), the Target must hold the amount on trust for the relevant Scheme Shareholder.
- (c) An amount credited to a Separate Account or Trust Account (as applicable) is to be treated as having been paid to the Scheme Shareholder when credited to the Separate Account or Trust Account (as applicable). The Target must maintain records of the amounts paid to or from the Separate Account, the Scheme Shareholders who are entitled to those amounts and any transfers of those amounts.
- (d) Subject to clause 4.8(b), the *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).

4.9 Remaining monies (if any) in Trust Account

To the extent that, following satisfaction of the Target's obligations under the other provisions of this clause 4 and provided the Bidder has by that time acquired the Scheme Shares in accordance with this Scheme, there is a surplus in the Trust Account (which, for the avoidance of

doubt, excludes any amount payable to a Scheme Shareholder (whether Scheme Consideration or otherwise)) under this Scheme (including, but not limited to, any amount payable to a Scheme Shareholder that the Target may credit to a Separate Account under clause 4.8(a)), then, subject to compliance with applicable laws, the other terms of this Scheme, the Deed Poll and the Implementation Deed, that surplus (less any bank fees and related charges) shall be paid by the Target (or the Target Registry on the Target's behalf) to the Bidder.

4.10 Orders or directions of a court or Government Agency

- (a) If written notice is given to the Target (or the Target Registry) of an order or direction made by a court or a Government Agency that:
 - (i) requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder by the Target in accordance with this clause 4, then the Target shall be entitled to make that payment (or procure that it is made) in accordance with that order or direction; or
 - (ii) prevents the Target from making a payment to any particular Scheme Shareholder in accordance with this clause 4, or such payment is otherwise prohibited by applicable law, the Target shall be entitled to retain an amount equal to the amount of the relevant payment until such time as payment in accordance with this clause 4 is permitted by that (or another) court or Government Agency or direction, or otherwise by law.
- (b) To the extent that amounts are so deducted or withheld in accordance with clause 4.10(a), such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the Scheme Shareholder in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted to that Scheme Shareholder as required (including where the amount so deducted or withheld is subsequently permitted by the relevant (or another) court or Government Agency or direction, or otherwise by law).

4.11 Repayment of funds

If, following satisfaction of the Bidder's obligations under clause 4.3(a) but prior to the occurrence of all of the events described in clause 3.2, this Scheme lapses under clause 2.3(b):

- (a) the Target must immediately repay (or cause to be repaid) to or at the direction of the Bidder the funds that were deposited in the Trust Account plus any interest on the amounts deposited (less bank fees and other charges);
- (b) the obligation to transfer Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, to the Bidder under clause 3.2 will immediately cease; and
- (c) the Bidder must return the Scheme Transfer to Target if Target has provided it to the Bidder under clause 3.2(a).

5 Dealings in Target Shares

5.1 Dealings in Target Shares by Scheme Shareholders

- (a) To establish the identity of the Scheme Shareholders, dealings in Target Shares will only be recognised by the Target if:

- (i) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Target Register as the holder of the relevant Target Shares by the Record Date; and
- (ii) in all other cases, registrable transmission applications or transfers in respect of those dealings are received by the Record Date at the place where the Target Register is kept,

and the Target must not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Shareholders, nor for any other purpose (other than to transfer to the Bidder pursuant to this Scheme and any subsequent transfers by the Bidder and its successors in title), any transfer or transmission application in respect of Target Shares received after the Record Date, or received prior to the Record Date but not in actionable or registrable form (as appropriate).

- (b) The Target must register (or procure the registration of) valid registrable transmission applications or transfers of the kind referred to in clause 5.1(a)(ii) by no later than the Record Date (provided that, for the avoidance of doubt, nothing in this clause 5.1(b) requires the Target to register a transfer that would result in a Target Shareholder holding a parcel of the Target Shares that is less than a Marketable Parcel).

5.2 Target Register

- (a) The Target will, until the Scheme Consideration has been provided and the name and address of the Bidder have been entered in the Target Register as the holder of all of the Scheme Shares in accordance with this Scheme, maintain, or procure the maintenance of, the Target Register in accordance with this clause 5, and:
 - (i) the Target Register in this form and the terms of this Scheme will solely determine entitlements to the Scheme Consideration; and
 - (ii) each entry on the Target Register as at the Record Date is the sole evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.
- (b) As from the Record Date (and other than for the Bidder following the Implementation Date), each entry in the Target Register as at the Record Date relating to Scheme Shares will cease to have any effect other than as evidence of the entitlements of Scheme Shareholders to the Scheme Consideration in respect of those Scheme Shares.
- (c) As soon as reasonably practicable after the Record Date, and in any event within two Business Days after the Record Date, the Target will ensure that details of the names, Registered Addresses and holdings of Target Shares for each Scheme Shareholder as shown in the Target Register as at the Record Date are available to the Bidder.

5.3 Effect of share certificates and holding statements

As from the time that the Scheme Consideration is provided to the Scheme Shareholders in accordance with this Scheme, (and other than for the Bidder following the Implementation Date), all share certificates and holding statements for Scheme Shares (other than statements of holding in favour of the Bidder) will cease to have effect as documents of title in respect of those Scheme Shares.

5.4 No disposals after Record Date

If this Scheme becomes Effective, each Scheme Shareholder must not dispose of or purport or agree to dispose of any Scheme Shares after the Record Date (other than to the Bidder in accordance with this Scheme and any subsequent transfers by the Bidder and its successors in

title), and any attempt to do so will have no effect and the Bidder shall be entitled to disregard any such disposal, purported disposal or agreement.

6 Quotation of Target Shares

- (a) The Target will apply to ASX to suspend trading on the ASX in Target Shares from the close of trading on the ASX on the Effective Date.
- (b) On a date after the Implementation Date to be determined by the Bidder and notified to the Target in writing, the Target will apply:
 - (i) for termination of the official quotation of the Target Shares on the ASX; and
 - (ii) to have itself removed from the official list of the ASX,
 and any one or more of the Target and the Bidder must satisfy any conditions reasonably required by ASX for it to act on that application.

7 General Provisions

7.1 Further assurances

- (a) The Target will do all things and execute all deeds, instruments, transfers or other documents (whether on its own behalf or on behalf of each Scheme Shareholder) as may be required by law, the Court or are otherwise necessary or desirable to give full effect to the terms of this Scheme and the transactions contemplated by it.
- (b) Without limiting the Target's other powers under this Scheme, the Target has power to do all things that it considers necessary or desirable to give effect to this Scheme and the transactions contemplated by it.

7.2 Consent to amendments to this Scheme

If the Court proposes to approve this Scheme subject to any alterations or conditions, the Target may, by its counsel or solicitors, and with the prior consent of the Bidder (whether in writing or by its counsel):

- (a) consent on behalf of all persons concerned, including each Target Shareholder, to those alterations or conditions; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which the Target has consented to under clause 7.2(a).

7.3 Scheme Shareholders' agreements and warranties

- (a) By operation of this Scheme, each Scheme Shareholder:
 - (i) irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Bidder in accordance with the terms of this Scheme;
 - (ii) acknowledges and agrees that this Scheme binds the Target and all Scheme Shareholders (including those that did not attend the Scheme Meeting or did not vote at that meeting or voted against this Scheme at that Scheme Meeting) and, to the extent of any inconsistency, overrides the Constitution;
 - (iii) agrees to the variation, cancellation or modification of the rights attached to their Target Shares constituted by or resulting from this Scheme;

- (iv) agrees that, after the transfer of their Scheme Shares to the Bidder in accordance with this Scheme, any share certificate or holding statement relating to the Scheme Shares will not constitute evidence of title to those Scheme Shares;
- (v) who holds their Target Shares in a CHESS Holding agrees to the conversion of those Target Shares to an Issuer Sponsored Holding and irrevocably authorises the Target to do anything necessary or expedient (whether required by the ASX Operating Rules or otherwise) to effect or facilitate such conversion; and
- (vi) irrevocably consents to the Target doing all things and executing all deeds, instruments, transfers or other documents (whether on its own behalf or on behalf of each Scheme Shareholder) as may be required by law, the Court or are otherwise necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it,

without the need for any further act by that Scheme Shareholder.

- (b) Each Scheme Shareholder is taken (by operation of this Scheme and without the need for any further act by that Scheme Shareholder) to have warranted to the Target and the Bidder on the Implementation Date, and appointed and authorised the Target as its attorney and agent to warrant to the Bidder, that:
 - (i) all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) which are transferred to the Bidder under this Scheme will, at the time of that transfer, be fully paid and free from all:
 - (A) mortgages, charges, liens, encumbrances, pledges, security interests (including 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise; and
 - (B) restrictions on transfer of any kind;
 - (ii) they have full power and capacity to transfer their Scheme Shares to the Bidder together with any rights and entitlements attaching to those Scheme Shares; and
 - (iii) except as otherwise provided for or contemplated in the Implementation Deed, it has no existing right to be issued any other Scheme Shares, Target Performance Rights, or any other equity securities in Target.

The Target undertakes in favour of each Scheme Shareholder that it will provide each warranty in clause 7.3(b) to the Bidder on the Implementation Date on behalf of that Scheme Shareholder.

7.4 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to the Bidder will, at the time of transfer of them to the Bidder, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.
- (b) Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 4, the Bidder will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending

registration by the Target of the name and address of the Bidder in the Target Register as the holder of the Scheme Shares.

7.5 Appointment of sole proxy

- (a) Upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 4 and until Bidder is registered in the Target Register as the holder of all Scheme Shares, each Scheme Shareholder:
 - (i) without the need for any further act by that Scheme Shareholder, irrevocably appoints the Bidder as its proxy to (and irrevocably appoints the Bidder as its agent and attorney for the purpose of appointing any director or officer of the Bidder as that Scheme Shareholder's proxy and, where appropriate, its corporate representative to):
 - (A) attend shareholders' meetings of the Target;
 - (B) exercise the votes attaching to the Target Shares registered in the name of the Scheme Shareholder; and
 - (C) sign any Scheme Shareholders' resolution;
 - (ii) must take all other action in the capacity of a Target Shareholder as the Bidder reasonably directs; and
 - (iii) acknowledges and agrees that in exercising the powers referred to in clause 7.5(a), the Bidder and any person nominated by the Bidder under clause 7.5(a) may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.
- (b) Upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 4 and until the Bidder is registered in the Target Register as the holder of all Scheme Shares, no Target Shareholder may attend or vote at any meetings of Target Shareholders or sign any Target Shareholders' resolution (whether in person, by proxy or by corporate representative) other than under this clause 7.5.

7.6 Authority given to the Target

- (a) Each Scheme Shareholder, by operation of this Scheme and without the need for any further act, will be deemed to have authorised the Target, and each of its directors, officers and secretaries, to do and execute all acts, matters, things and documents on the part of each Scheme Shareholder required by law or otherwise necessary, desirable or expedient to implement this Scheme, including (without limitation) executing, as agent and attorney of each Scheme Shareholder, the Scheme Transfer.
- (b) Each Scheme Shareholder, by operation of this Scheme and without the need for any further act, irrevocably appoints the Target and each of its directors, officers and secretaries (jointly and severally) as its attorney and agent for the purpose of:
 - (i) executing any document, and taking any other action, required by law or otherwise necessary, desirable or expedient to give effect to this Scheme, including without limitation, executing and delivering to the Bidder the Scheme Transfer; and
 - (ii) enforcing the Deed Poll against the Bidder.
- (c) The Target:
 - (i) accepts the appointment under clause 7.6(a) and 7.6(b); and

- (ii) as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 7.6 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

8 General

8.1 Duty

- (a) The Bidder:
 - (i) must pay all Duty (including any related fines, penalties and interest) payable on or in connection with this Scheme or the Deed Poll and:
 - (A) any transaction effected under this Scheme or the Deed Poll; and
 - (B) steps to be taken under this Scheme or the Deed Poll; and
 - (ii) indemnifies the Target (in its own right and separately as trustee or nominee for each Scheme Shareholder) and each Scheme Shareholder against any liability arising from or in connection with any failure by it to comply with clause 8.1(a)(i).
- (b) The Target holds the Bidder's obligations under clause 8.1(a)(ii) as trustee or nominee for each Scheme Shareholder.

8.2 Consent

Each of the Scheme Shareholders (by operation of this Scheme and without the need for any further act by the Scheme Shareholders) consents to the Target doing all things necessary or incidental to the implementation of this Scheme, whether on behalf of the Scheme Shareholders, the Target or otherwise.

8.3 Notices

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

8.4 Governing law

This Scheme is governed by laws of New South Wales. In relation to it and related non contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there and waives any right to object to the venue on any ground (including any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum).

8.5 No liability when acting in good faith

Each Scheme Shareholder agrees (by operation of this Scheme and without the need for any further act by the Scheme Shareholder) that neither the Target nor the Bidder, nor any of their respective Representatives, will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

Schedule 6

Deed Poll

Malteries Soufflet SAS

Deed Poll

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This Deed Poll is made on _____ 2023

Parties

- 1 Malteries Soufflet SAS (562 880 195 RCS Troyes) of Quai du Général Sarrail, 10400 Nogent-sur-Seine, France (**Bidder**).

In favour of

Each Scheme Shareholder

Recitals

- A The Bidder and United Malt Group Limited (ABN 61 140 174 189) (**Target**) have entered into the Implementation Deed.
- B The Target has agreed in the Implementation Deed to propose the Scheme, pursuant to which (among other things), subject to the satisfaction or waiver of certain conditions precedent, the Bidder will acquire all of the Scheme Shares from Scheme Shareholders for the Scheme Consideration.
- C Under the Implementation Deed, Bidder agreed to enter into this Deed Poll.
- D The Bidder is entering into this Deed Poll for the purpose of covenanting and undertaking in favour of the Scheme Shareholders that it will observe and perform the obligations contemplated of, and the actions attributed to, it under the Scheme.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

In this Deed Poll:

- (a) **First Court Date** means the first day of hearing of an application made to the Court by Target for orders, pursuant to section 411(1) of the Corporations Act, convening the Scheme Meeting or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing;
- (b) **Implementation Deed** means the scheme implementation deed entered into between the Bidder and the Target dated [] 2023 relating to (among other things) implementation of the Scheme;
- (c) **Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by the Bidder and the Target (including in accordance with clause 4.2 of the Implementation Deed);
- (d) **Target** has the meaning given in Recital A; and
- (e) unless the context requires otherwise, terms defined in the Scheme have the same meaning when used in this Deed Poll.

1.2 Interpretation

The provisions of clauses 1.2 and 1.3 of the Scheme form part of this Deed Poll as if set out in full in this Deed Poll, and on the basis that references to 'this Scheme' in those clauses are references to 'this Deed Poll'.

2 Nature of Deed Poll

The Bidder acknowledges and agrees that:

- (a) this Deed Poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms, even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints the Target and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this Deed Poll against the Bidder on behalf of that Scheme Shareholder (and Target accepts such appointment).

3 Condition Precedent and Termination

3.1 Condition precedent

The obligations of the Bidder under this Deed Poll are subject to the Scheme becoming Effective.

3.2 Termination

Subject to clause 3.3, the obligations of the Bidder under this Deed Poll will automatically terminate and the terms of this Deed Poll will be of no further force or effect, if:

- (a) the Implementation Deed is terminated in accordance with its terms before the Scheme becomes Effective;
- (b) the Scheme does not become Effective on or before the End Date; or
- (c) the Scheme terminates and ceases to be of any further force or effect in accordance with its terms,

unless the Bidder and the Target otherwise agree in writing (and, if required, as approved by the Court).

3.3 Consequences of termination

If this Deed Poll is terminated under clause 3.2, then, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) the Bidder is released from its obligations under this Deed Poll (except those obligations under clause 7.6); and
- (b) each Scheme Shareholder retains any rights, powers or remedies that Scheme Shareholder has against the Bidder in respect of any breach of its obligations under this Deed Poll that occurred before termination of this Deed Poll.

4 Scheme Obligations

Subject to clause 3, Bidder covenants and undertakes in favour of each Scheme Shareholder that it will:

- (a) provide or procure the provision of the Scheme Consideration to each Scheme Shareholder in accordance with the terms of the Scheme; and

- (b) perform all other actions and obligations attributed to and/or contemplated or required of, and give each acknowledgement, representation and warranty (if any) given by (or otherwise attributed to or required of), the Bidder under the Scheme,
- in each case, subject to and in accordance with the terms of the Scheme.

5 Representations and Warranties

The Bidder represents and warrants in favour of each Scheme Shareholder that:

- (a) **(Status)** It is a corporation validly existing under the laws of the place of its incorporation.
- (b) **(Power)** It has full capacity, power and lawful authority to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll.
- (c) **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance by it of this Deed Poll and to carry out the transactions contemplated by this Deed Poll.
- (d) **(Document binding)** This Deed Poll constitutes valid and binding obligations on the Bidder and is enforceable in accordance with its terms.
- (e) **(Transactions permitted)** The execution and performance by it of this Deed Poll and each transaction contemplated by this Deed Poll did not and will not violate in any respect a provision of:
 - (i) a law, judgment, ruling, order or decree binding on it; or
 - (ii) its constituent documents.

6 Continuing Obligations

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

- (a) the Bidder having fully performed its obligations under this Deed Poll; and
- (b) termination of this Deed Poll under clause 3.

7 General

7.1 Notices

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

- (a) must be in writing and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender or person duly authorised by the sender);
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or email to the address below, or the email address or address last notified by the intended recipient to the sender:
 - (i) to the Bidder: C/- InVivo Group
83, Avenue de la Grande Armeé
75016 Paris
France

Attention: Thierry Blandinières and Maha Fournier

Email: tblandinieres@invivo-group.com and
mfournier@invivo-group.com

copy to:

pharbula@invivo-group.com
alecomte@invivo-group.com
Andrew.Pascoe@Allens.com.au;
Charles.Ashton@Allens.com.au;
Judith.Fargeot@va-fr.com

- (c) will be conclusively taken to be duly given or made:
- (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country);
 - (iii) in the case of delivery by email, the earlier of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and
 - (C) two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that two hour period, an automated message that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place specified by the intended recipient as its postal address under clause 7.1(b) or:

- (A) in the case of delivery by hand or by post, at a time that is later than 5.00pm; or
- (B) in the case of delivery by email, at a time that is later than 7.00pm,

in the place specified by the intended recipient as its postal address under clause 7.1(b), it will be conclusively taken to have been duly given or made at the start of business on the next Business Day in that place.

7.2 No waiver

No failure to exercise nor any delay in exercising any right, power or remedy by the Bidder or any Scheme Shareholder under or in connection with this Deed Poll operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver of any right, power or remedy on one or more occasions does not operate as a waiver of that right, power or remedy on any other occasion, or of any other right, power or remedy. A waiver is not valid or binding on the person granting that waiver unless made in writing. Bidder may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right under or in connection with this Deed Poll unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.

7.3 Remedies cumulative

The rights, powers and remedies of the Bidder and each Scheme Shareholder under this Deed Poll are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

7.4 Amendment

No amendment or variation of this Deed Poll is valid or binding unless:

- (a) either:
 - (i) before the First Court Date, the amendment or variation is agreed to in writing by the Target and the Bidder (which such agreement may be given or withheld without reference to or approval by any Scheme Shareholder); or
 - (ii) on or after the First Court Date, the amendment or variation is agreed to in writing by the Target and the Bidder (which such agreement may be given or withheld without reference to or approval by any Scheme Shareholder), and is approved by the Court (or the Court has otherwise indicated that the variation or amendment would not of itself preclude approval by the Court of the Scheme); and
- (b) the Bidder enters into a further deed poll in favour of the Scheme Shareholders giving effect to that amendment or variation.

7.5 Assignment

The rights and obligations of the Bidder and each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, encumbered or otherwise dealt with and no person may attempt, or purport, to do so without the prior written consent of the Bidder and the Target. Any purported contravention of this clause is invalid.

7.6 Costs and Duty

The Bidder:

- (a) must pay all Duty (including any related fines, penalties and interest) payable on or in connection with the Scheme or this Deed Poll and:
 - (i) any transaction effected under the Scheme or this Deed Poll; and
 - (ii) steps to be taken under the Scheme or this Deed Poll; and
- (b) indemnifies each Scheme Shareholder against any liability arising from or in connection with any failure by it to comply with clause 7.6(a).

7.7 Governing law and jurisdiction

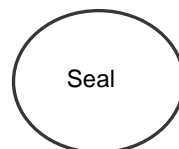
This Deed Poll is governed by the laws of New South Wales. In relation to it and related non contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there and waives any right to object to the venue on any ground (including any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum).

7.8 Further assurances

The Bidder must, at its own expense, do all things and execute all deeds, instruments, transfers or other documents as may be required by law, the Court or are otherwise necessary or desirable to give full effect to the terms of this Deed Poll and the transactions contemplated by it.

Executed and delivered as a Deed Poll.

Signed Sealed and Delivered by **Malteries Soufflet SAS** in the presence of:



Signature of Witness

Signature of Authorised Signatory

Name of Witness

Name of Authorised Signatory

Scheme Implementation Deed

Allens < Linklaters

[Signature page of Malteries Soufflet SAS]

Executed and Delivered as a Deed.

**Signed Sealed and Delivered by Malteries
Soufflet SAS in the presence of:**

[Redacted]

Signature of Witness

[Redacted]

Name of Witness

[Redacted]

Signature of Authorised Signatory

[Redacted]

Name of Authorised Signatory

[Signature page of United Malt Group Limited]

Executed and Delivered as a Deed.

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



Director



Print Name



Print Name