For personal use only

ASX Announcement

Merger with Milton Corporation Limited (**Milton**) to create a larger, more diversified and unique ASX listed company

Key Highlights:

- WHSP to merge with Milton via a recommended Scheme of Arrangement
- Milton shareholders will be offered WHSP scrip as consideration with Milton shares to be valued at a 10% premium to Adjusted NTA[1]
- As part of the Scheme, Milton shareholders will be entitled to the benefit of three fully franked dividends totalling 52cps, including:
  - assumed 8cps Milton FY21 Final Dividend;
  - Milton FY21 Special Dividend of up to 37cps[2]; and
  - for shareholders on record at the time of the WHSP dividend, participation in the WHSP FY21 indicative Final Dividend (assumed to be equivalent to 7c per Milton share[3]) (expected in mid-December)
- In addition, if all of these dividends were paid, 22cps in franking credits will be distributed to Milton shareholders
- The implied offer value of $6.00 represents an attractive premium for Milton shareholders[4]:
  - 20% premium to $5.00 being the closing price of Milton shares on 21 June 2021
  - 20% premium to $4.99 being the 1-month VWAP of Milton shares on 21 June 2021[5]
  - 23% premium to $4.86 being the 3-month VWAP of Milton shares on 21 June 2021[6]
- Milton Independent Directors have unanimously recommended the Merger (subject to no superior proposal and the Independent Expert concluding that the Merger is in the best interests of Milton shareholders)
- The Merger will create a larger, more diversified investment company, focused on:
  - achieving long-term market outperformance;
  - continuing long-term growth in dividends; and
  - growing portfolio allocations to new and alternative asset classes
- Total number of WHSP shareholders following the merger of up to 60,000
- Index reweighting would result from market capitalisation increasing from $7.2b to $10.8b[7]

---

[1] NTA of Milton as at the Calculation Date less the aggregate amount in respect of all Milton Shares of the Proposed Dividends which have been declared or are the subject of a decision to pay

[2] Milton's payment of dividends is subject to the availability of sufficient franking credits and Milton satisfying the applicable Corporations Act requirements for payment of the dividend

[3] Based on exchange ratio at current prices and an assumed WHSP FY21 indicative Final Dividend of 36 cents per share. Any return is subject to no material events, Board discretion having regard to financial and market conditions and maintenance of financial strength and flexibility consistent with WHSP's capital management framework

[4] Implied offer value based on exchange ratio of 0.1812 WHSP shares for every Milton share and includes proposed dividends

[5] VWAP is calculated based on market value traded divided by the market volume. VWAP calculated from 22 May 2021 to 21 June 2021 (inclusive)

[6] VWAP is calculated based on market value traded divided by the market volume traded. VWAP calculated from 22 March 2021 to 21 June 2021 (inclusive)

[7] Market capitalisation as at close of 21 June 2021. Pro forma market capitalisation assumes 118m New WHSP shares are issued and trade at the closing price of $30.25 as at 21 June 2021

Washington H. Soul Pattinson and Company Limited
ABN: 49 000 002 728

Level 14, 151 Clarence Street, Sydney NSW 2000 | GPO Box 479, Sydney NSW 2001
T +61 2 9210 7070 F +61 2 9210 7077 www.whsp.com.au

For personal use only

22 June 2021 – Diversified investment house Washington H. Soul Pattinson and Company Limited (ASX:SOL) (**WHSP**) is pleased to announce that it has entered into a binding Scheme Implementation Agreement (**SIA**) with Milton Corporation Limited (ASX:MLT) (**Milton**) under which WHSP will acquire 100% of Milton's shares on issue which it does not already own by way of a recommended Scheme of Arrangement (the **Scheme** or the **Merger**).

The Scheme is unanimously recommended by the Independent Directors of Milton, subject to the Independent Expert concluding that the Merger is in the best interests of Milton shareholders and in the absence of a superior proposal.

The Independent Directors of Milton intend to vote the Milton shares that they own or control in favour of the Scheme and unanimously recommend that all Milton shareholders also vote in favour of the Scheme, subject to the Independent Expert concluding that the Merger is in the best interests of Milton shareholders and in the absence of a superior proposal.

The Merger is unanimously endorsed and supported by the Board of WHSP.

Overview of the Offer

If the Scheme is implemented, Milton shareholders will receive:

- A 10% premium to Milton's pre-tax net asset backing per share, adjusted for the proposed Dividends (**Adjusted NTA**);
- a fully franked Milton FY21 special dividend of up to 37 cents per share (**cps**) (**Special Dividend**);
- Milton's FY21 final fully franked ordinary dividend which is expected to be 8cps (**Final Dividend**)[8]; and
- for shareholders who remain on record at the time of the WHSP dividend, participation in the WHSP FY21 indicative Final Dividend (assumed to be equivalent to 7c per Milton share[9]) (expected in mid-December).

Compelling Offer

The Offer will create a larger and more diversified company with significant benefits to both Milton and WHSP shareholders.

For Milton shareholders, the Merger is expected to provide:

- A significant premium to both the share price and NTA for their shares;
- Up to 45cps in fully franked Milton Final and Special Dividends[10];

[8] Milton's payment of dividends is subject to the availability of sufficient franking credits and Milton satisfying the applicable Corporations Act requirements for payment of the dividend

[9] Based on exchange ratio at current prices and an assumed WHSP FY21 indicative Final Dividend of 36 cents per share. Any return is subject to no material events, Board discretion having regard to financial and market conditions and maintenance of financial strength and flexibility consistent with WHSP's capital management framework

[10] Milton's payment of dividends is subject to the availability of sufficient franking credits and Milton satisfying the applicable Corporations Act requirements for payment of the dividend

For personal use only

- For shareholders who remain on record at the time of the WHSP dividend, participation in the WHSP FY21 indicative Final Dividend (assumed to be equivalent to 7c per Milton share[11]) (expected in mid-December);
- Access to a diversified investment offering including Australian equities, private markets, credit opportunities, real assets and international equities; and
- Access to a consistent dividend stream with WHSP having historically paid a dividend every year for the past 118 years and having increased its dividends paid each year for the past 20 years.

Creating a larger and more diversified Company

For both WHSP and Milton shareholders, the Merger is expected to provide:

- Greater portfolio diversification;
- Additional cash available for future investment into WHSP's growth asset classes;
- Access to new investment classes including private markets, real assets, credit and international equities;
- Higher cash generation from increased portfolio dividends;
- Total number of WHSP shareholders following the merger of up to 60,000 is expected to provide greater liquidity;
- An increase in the market capitalisation of WHSP from $7.2b to over $10.8b, resulting in increased index participation[12]; and
- Milton's management team will complement WHSP's existing investment expertise.

Mr. Todd Barlow, Managing Director of WHSP, said:

"This is a transformative merger bringing together two of Australia's great investment companies to create a $10 billion group with enhanced liquidity, diversification and access to a broad range of asset classes."

"Milton shareholders are being offered scrip at a significant premium to both Milton's share price and NTA, the potential benefits of three fully franked dividends, and exposure to WHSP's diverse portfolio of assets which have historically delivered significant outperformance over the long term."

"We look forward to progressing this merger with Milton, with the view of welcoming Milton's management team and up to 30,000 new shareholders and the benefits this will bring to both companies."

Mr. Graeme Crampton, Chair of the Independent Board Committee of Milton said:

"We are pleased to present the opportunity to merge Milton and WHSP to our shareholders. The Independent Board Committee has considered the offer and determined that this merger creates compelling value for our shareholders."

---

[11] Based on exchange ratio at current prices and an assumed WHSP FY21 indicative Final Dividend of 36 cents per share. Any return is subject to no material events, Board discretion having regard to financial and market conditions and maintenance of financial strength and flexibility consistent with WHSP's capital management framework

[12] Market capitalisation as at close of 21 June 2021. Pro forma market capitalisation assumes 118m New WHSP shares are issued and trade at the closing price of $30.25 as at 21 June 2021

For personal use only

Mr. Brendan O'Dea, Managing Director and CEO of Milton, said:

"The transaction would create a unique investment company by bringing together Milton's demonstrated long-term capabilities in listed equities and WHSP's successful record of generating strong returns for shareholders across a range of actively managed public and private investments.

We would be excited to work with the WHSP team to create a unique diversified investment opportunity for the benefit of our collective shareholders."

New WHSP shares

The number of New WHSP Shares to be issued to each Milton shareholder will be calculated by reference to the pre-tax net tangible asset backing per share of Milton, determined in the same manner as per the company's monthly net asset backing per share announcement to ASX, and adjusted for the proposed Special and Final Dividends and subsequently, an additional 10% premium. This will be compared to the lower of WHSP's one-month VWAP and $31.00. The exchange ratio to determine the number of New WHSP Shares to be issued will be calculated and communicated to Milton shareholders seven Business Days before the date of the Scheme Meeting. The formula to determine the exchange ratio is outlined in Annexure A.

Dividends

As part of the Scheme, Milton shareholders are eligible to receive the benefit of three fully franked dividends totalling 52cps, including:

- assumed 8cps Milton FY21 Final Dividend;
- potential Milton FY21 Special Dividend up to 37cps[13]; and
- for shareholders at the time of WHSP dividend, participation in the WHSP FY21 indicative Final Dividend (assumed to be equivalent to 7c per Milton share[14]) (expected in mid-December).

In addition, if all of these dividends were paid, 22cps in franking credits will be distributed to Milton shareholders.

Conditions

The Merger is subject to customary conditions precedent, including (but not limited to)[15]:

- The Independent Expert concluding that the Merger is in the best interests of Milton shareholders;
- Milton shareholders voting to approve the Merger by the requisite majorities and court approval;
- No prescribed events or material adverse changes occurring in respect of WHSP or Milton; and

---

[13] Milton's payment of dividends is subject to the availability of sufficient franking credits and Milton satisfying the applicable Corporations Act requirements for payment of the dividend

[14] Based on exchange ratio at current prices and an assumed WHSP FY21 indicative Final Dividend of 36 cents per share. Any return is subject to no material events, Board discretion having regard to financial and market conditions and maintenance of financial strength and flexibility consistent with WHSP's capital management framework

[15] The transaction is subject to ASX confirming that WHSP is not required to obtain the approval of holders of Bidder Shares to proceed with the transaction (or if it does so require then that approval has been obtained)

For personal use only

- Other conditions customary for a transaction of this nature.

Full details of the Scheme are set out in the Scheme Implementation Agreement, a copy of which is set out in Annexure B.

Indicative Timetable

It is anticipated that Milton shareholders will consider the Scheme in September 2021 and if approved, the issue of New WHSP Shares and payment of Special Dividend will occur in October 2021.

Key Event	Date[16]
Execute SIA and Announcement to ASX	Tuesday, 22 June 2021
First Court Date	Early August 2021
Dispatch of Scheme Booklet to Milton Shareholders	Early August 2021
Exchange Ratio Calculation Date	Early September 2021
Scheme Meeting	Mid September 2021
Second Court Date	Late September 2021
Effective Date	Late September 2021
Record Date	Late September 2021
Scheme Implementation Date	Early October 2021
Payment of Special Dividend to Milton Shareholders[17]	Early October 2021
Expected Payment of WHSP FY21 indicative Final Dividend[18]	Mid December 2021

Advisers

WHSP has appointed Pitt Capital Partners as financial adviser and Ashurst as legal counsel in relation to the transaction.

Milton has appointed Greenhill as financial adviser and Hamilton Locke as legal counsel in relation to the transaction.

Conference Call

WHSP will host an investor call at 10:30am AEST today, 22 June 2021. The call can be accessed via the following link: *https://www.streamgate.co/whsp/*

This ASX announcement has been authorised for release by the Board of Washington H. Soul Pattinson.

- ENDS -

[16] Dates are indicative and subject to change

[17] Regardless of the Scheme being implemented, payment of Milton's Final Dividend for the full year ending 30 June 2021 will still occur in September

[18] Any return is subject to no material events, Board discretion having regard to financial and market conditions and maintenance of financial strength and flexibility consistent with WHSP's capital management framework

For personal use only

Contacts

Investor enquiries:

Todd Barlow, Managing Director – 02 9210 7070

Media enquiries:

Citadel MAGNUS
Peter Brookes +61 (0)407 911 389 or *pbrookes@citadelmagnus.com*

About Washington H. Soul Pattinson

Washington H. Soul Pattinson and Company Limited

WHSP is a leading Australian investment house with a long history of investing in a diverse range of industries including telecommunications, pharmaceuticals, property, construction, resources and financial services. WHSP is the second oldest publicly listed company on the ASX, with a current market capitalisation of $7.2 billion and is one of only a few listed companies that has been successfully managed by the same family from the outset.

WHSP holds a diversified portfolio of uncorrelated investments across listed equities, private markets, real assets and structured credit. Its flexible mandate is a key advantage to generating returns by allowing WHSP to make long-term investment decisions and adjust the portfolio by changing the mix of investment classes over time. WHSP's objective is to deliver superior returns to its shareholders by creating capital growth along with steadily increasing dividends. WHSP has a strong track record of delivering outperformance over the long-term, with WHSP increasing its ordinary dividends per share for the last twenty years at a compound annual growth rate of 9.2%.

www.whsp.com.au

About Milton Corporation

Milton Corporation Limited

Milton is a listed investment company that was incorporated in 1938 and listed in 1958. Milton invests for the long-term in well managed companies with a profitable history and the expectation of dividend growth, and its key objective is to pay increasing fully franked dividends per share.

www.milton.com.au

For personal use only

Important Notices

This announcement has been prepared by Washington H. Soul Pattinson and Company Limited ACN 000 002 728 (**WHSP**) in relation to a proposed acquisition of Milton Corporation Limited ACN 000 041 421 (**Milton**) by way of scheme of arrangement under Part 5.1 of the *Corporations Act 2001* (Cth) (**Corporations Act**) (**Scheme**). Under the Scheme, WHSP would acquire 100% of the fully paid ordinary shares in Milton that it does not already own in exchange for the issue of new fully paid ordinary shares in WHSP. The Scheme is subject to the terms and conditions described in the scheme implementation agreement entered into between WHSP and Milton on or about the date of this announcement (**Scheme Implementation Agreement**). A copy of the Scheme Implementation Agreement is available on the ASX website (at *www.asx.com.au*).

WHSP has prepared this announcement based on information available to WHSP as at the date of this announcement. No representation or warranty, express or implied, is made as to the fairness, accuracy, completeness or correctness of the information, opinions and conclusions contained in this announcement. To the maximum extent permitted by law, none of WHSP, its directors, employees, agents or advisers, or any other person, accepts any liability, including, without limitation, any liability arising from fault or negligence on the part of any of them or any other person, for any loss arising from use of this announcement or its contents or otherwise in connection with it.

Forward Looking Statements

This announcement contains certain forward looking statements and comments about future events, including WHSP's expectations about the performance of its businesses. Forward looking statements can generally be identified by the use of forward looking words such as, 'expect', 'anticipate', 'likely', 'intend', 'should', 'could', 'may', 'predict', 'plan', 'propose', 'will', 'believe', 'forecast', 'estimate', 'target' and other similar expressions within the meaning of securities laws of applicable jurisdictions. Indications of, and guidance on, future earnings or financial position or performance are also forward looking statements.

Forward looking statements involve inherent risks and uncertainties, both general and specific, and there is a risk that such predictions, forecasts, projections and other forward looking statements will not be achieved. Forward looking statements are provided as a general guide only, and should not be relied on as an indication or guarantee of future performance. Forward looking statements involve known and unknown risks, uncertainty and other factors which can cause WHSP's actual results to differ materially from the plans, objectives, expectations, estimates and intentions expressed in such forward looking statements and many of these factors are outside the control of WHSP. As such, undue reliance should not be placed on any forward looking statement. Past performance is not necessarily a guide to future performance and no representation or warranty is made by any person as to the likelihood of achievement or reasonableness of any forward looking statements, forecast financial information or other forecast. Nothing contained in this announcement nor any information made available to you is, or shall be relied upon as, a promise, representation, warranty or guarantee as to the past, present or the future performance of WHSP.

Except as required by law or the ASX Listing Rules, WHSP assumes no obligation to provide any additional or updated information or to update any forward looking statements, whether as a result of new information, future events or results, or otherwise.

Not For Release or Distribution in the United States

This announcement may not be released to US wire services or distributed in the United States. This announcement does not constitute an offer to sell, or a solicitation of an offer to buy, securities in the Unites States or any other jurisdiction, and neither this announcement or anything attached to this announcement shall form the basis of any contract or commitment. Any securities described in this announcement have not been, and will not be, registered under the U.S. Securities Act of 1933 and may not be offered or sold in the United States except in transactions registered under the U.S. Securities Act of 1933 or exempt from, or not subject to, the registration of the U.S. Securities Act of 1933 and applicable US state securities laws.

For personal use only

For personal use only

Annexure A – Formula for the issue of WHSP shares to Milton shareholders

$$NWS = NMS \times \left(\frac{\text{Milton Adjusted NTA} \times 1.10}{\text{Milton Shares on issue as at the Calculation Date}} \times \frac{1}{\text{WHSP Reference price as at the Calculation Date}} \right)$$

Where:

a) **NWS** means the number of New WHSP Shares to be issued to the Scheme Participant;

b) **NMS** means the number of Milton Shares held by the Scheme Participant as at the Record Date;

c) **NTA** means the aggregate net tangible asset backing before providing for tax on unrealised capital gains of Milton calculated in the same manner used for the purpose of Milton's market announcements to ASX at the end of each calendar month of its net tangible asset backing per share. For the avoidance of doubt, deferred tax assets and deferred tax liabilities will be excluded from the calculation of NTA;

d) **Milton Adjusted NTA** means the NTA of Milton as at the Calculation Date less the aggregate amount in respect of all Milton Shares of the Proposed Dividends which have been declared or are the subject of a decision to pay (whether or not all or part of the Proposed Dividends have been actually paid as at the Calculation Date);

e) **WHSP Reference Price as at the Calculation Date** means the lower of:
   i. The VWAP Price of WHSP Shares for the one month ending on, and including, the Calculation Date; and
   ii. $31.00

f) **Calculation Date** means 7.00 pm on the Business Day that is seven Business Days before the date of the Scheme Meeting or such other date as WHSP and Milton agree in writing.

Annexure B – Copy of Scheme Implementation Agreement

For personal use only

ashurst

Scheme Implementation Agreement

Milton Corporation Limited
ABN 18 000 041 421

Washington H. Soul Pattinson and Company Limited
ABN 49 000 002 728

2021

For personal use only

For personal use only

CONTENTS

CLAUSE **PAGE**

1. INTERPRETATION 4

1.1 Definitions 4
1.2 Rules for interpreting this document....13
1.3 Non-Business Days 14

2. TARGET SCHEME 14

2.1 Agreement to propose and implement the Scheme 14
2.2 Nomination of acquirer Subsidiary....14
2.3 Outline of Scheme 15
2.4 No amendments to Scheme without consent 15
2.5 Scheme Consideration 15
2.6 Ineligible Overseas Shareholders 15
2.7 Shares to rank equally....16

3. CONDITIONS....16

3.1 Obligations not binding until Conditions satisfied....16
3.2 Conditions 16
3.3 Reasonable endeavours 17
3.4 Benefit of Conditions 18
3.5 Breaching Conditions....18
3.6 Waiver of Conditions 18
3.7 Fulfilment of Conditions 18
3.8 Parties to provide certificate to Court 18
3.9 If a Condition is not fulfilled or waived....19
3.10 Failure to agree 19

4. IMPLEMENTATION....19

4.1 Obligations of the parties....19
4.2 Target's obligations....20
4.3 Bidder obligations 24
4.4 Scheme Booklet responsibility statement 25
4.5 Disagreement on content of Scheme Booklet....25
4.6 Verification 25
4.7 Conduct of Court proceeding 25
4.8 Appeal process 26
4.9 No partnership or joint venture....26

5. BOARD RECOMMENDATION....26

5.1 Recommendation 26

6. DIRECTORS AND EMPLOYEES....26

6.1 Release of Target and Target directors and officers 26
6.2 Benefit for Target Indemnified Parties 27
6.3 Release of Bidder and Bidder directors and officers 27
6.4 Benefit for Bidder Indemnified Parties 27
6.5 Appointment/retirement of directors 27
6.6 Directors' and officers' insurance 27
6.7 Run-off....28
6.8 Period of undertaking 28
6.9 Benefit of undertaking for Target Group....28

7. PRE-IMPLEMENTATION OBLIGATIONS 28

7.1 Conduct of the business....28

7.2 Exception....29
7.3 Access to information....29
7.4 Information on representations and warranties....29
7.5 Information provided subject to confidentiality obligation....30
8. ANNOUNCEMENT....30
8.1 No Announcement....30
8.2 Notice of Announcement....30
9. EXCLUSIVITY....30
9.1 No ongoing discussions....30
9.2 No-shop, no-talk, no-due diligence....30
9.3 Response to unsolicited approach....31
9.4 Notify of approaches....31
10. TERMINATION....31
10.1 Termination events....31
10.2 Termination....32
10.3 Effect of Termination....32
10.4 Damages....33
11. REPRESENTATIONS AND WARRANTIES....33
11.1 Mutual representations and warranties....33
11.2 Target representations and warranties....34
11.3 Bidder representations and warranties....35
11.4 No representations made on economic or future matters....36
11.5 Reliance on representations and warranties....37
11.6 When warranties are given....37
12. INDEMNITIES....37
12.1 Indemnities by Target....37
12.2 Indemnities by Bidder....37
13. RELEASE....37
14. GST....38
14.1 GST pass on....38
14.2 Tax Invoice....38
14.3 Consideration exclusive of GST....38
14.4 Adjustments....38
14.5 Reimbursements....38
15. NOTICES....39
15.1 How to give a notice....39
15.2 When a notice is given....39
15.3 Address for notices....39
16. AMENDMENT AND ASSIGNMENT....40
16.1 Amendment....40
16.2 Assignment....40
17. GENERAL....40
17.1 Governing law....40
17.2 Liability for expenses....40
17.3 Giving effect to this document....40
17.4 Variation of rights....40
17.5 No partnership or agency....40
17.6 Operation of this document....40

For personal use only

17.7 Operation of indemnities....41
17.8 Consents....41
17.9 No merger....41
17.10 Inconsistency with other documents....41
17.11 Counterparts....41

Schedule

1 Timetable....42
2 Capital....43
3 Consideration Share Formula....44

Annexure

A Scheme of Arrangement
B Deed Poll

For personal use only

For personal use only

THIS AGREEMENT is made on 22 June 2021

BETWEEN:

(1) **Milton Corporation Limited** ABN 18 000 041 421 whose registered office is at Level 5, 261 George Street, Sydney NSW 2000 (**Target**); and

(2) **Washington H. Soul Pattinson and Company Limited** ABN 49 000 002 728 whose registered office is at Level 14, 151 Clarence Street, Sydney NSW 2000 (**Bidder**).

RECITALS:

(A) Bidder and Target have agreed to merge by means of a members' scheme of arrangement under Part 5.1 of the Corporations Act.

(B) At the request of Bidder, Target intends to propose the Scheme and issue the Scheme Booklet.

(C) Target and Bidder have agreed to implement the Scheme on the terms and conditions of this document.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

Agreed Dividends means a final dividend and a special dividend, not exceeding in aggregate a total amount of $0.45 for each Target Share on issue, declared or which the Board has decided to pay, which declaration or decision must occur after the date of this document and no later than the date that is two Business Days prior to the Calculation Date.

Announcement means a press release, announcement or other public statement (other than a draft explanatory statement, an explanatory statement or supplementary explanatory statement as required under Part 5.1 of the Corporations Act).

ASIC means the Australian Securities and Investments Commission.

ASIC Review Draft means the draft of the Scheme Booklet, which is provided to ASIC for approval under section 411(2) of the Corporations Act.

Associate has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this document.

ASX means the Australian Securities Exchange or ASX Limited (ABN 98 008 624 691), as the context requires.

ASX Listing Rules means the listing rules of ASX.

Authorisation means:

(a) an approval, authorisation, consent, declaration, exemption, licence, notarisation, permit or waiver, however it is described, including any renewal or amendment and any condition attaching to it from or by a Government Agency; and

(b) in relation to anything that could be prohibited or restricted by law, if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken.

Bidder Board means the board of directors of Bidder.

Bidder Disclosure Material means:

(a) the Bidder Due Diligence Information; and

(b) information available on the Public Registers prior to the date of this document.

Bidder Due Diligence Information means all written information relating to the business, assets, liabilities, operations, profits and losses, financial position and performance and prospects of Bidder and its subsidiaries made available by or on behalf of any member of the Bidder Group to Target on or before the DD Cut-off Date.

Bidder Excluded Transaction means a transaction:

(a) fairly disclosed in the Bidder Disclosure Material;

(b) consistent with a policy relating to employment which was fairly disclosed in the Bidder Disclosure Material;

(c) required to be done or procured by Bidder under this document or the Scheme; or

(d) in relation to which Target has expressly consented in writing or has unreasonably withheld or delayed its consent.

Bidder Group means Bidder and its subsidiaries.

Bidder Indemnified Parties means Bidder, its officers, employees and advisers, its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

Bidder Information means the information regarding Bidder as is required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or ASIC Regulatory Guide 60.

Bidder Material means the information provided by Bidder to Target in accordance with clause 4.3(b) for inclusion in the Scheme Booklet.

Bidder Material Adverse Effect occurs if the VWAP Price for Bidder Shares for the one month period ending on, and including, the Business Day immediately preceding the date of the Scheme Meeting is less than the amount that is 85% of the Closing Market Price for Bidder Shares on the Business Day prior to the date of this document.

Bidder Performance Rights means for the performance rights referable to a Bidder Share, listed in Schedule 2.

Bidder Prescribed Event means the occurrence of any of the following:

(a) (**conversion**) Bidder converts all or any of its shares into a larger or smaller number of shares;

(b) (**reduction of share capital**) Bidder or another member of the Bidder Group resolves to reduce its share capital in any way or resolves to reclassify, combine, split or redeem or repurchase directly or indirectly any of its shares;

For personal use only

(c) (**buy-back**) Bidder or another member of the Bidder Group:

(i) enters into a buy-back agreement; or

(ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;

(d) (**distribution**) Bidder makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie) except a distribution for which the record date for participation is after the Implementation Date;

(e) (**issuing or granting shares or options**) any member of the Bidder Group:

(i) issues shares;

(ii) grants an option over its shares; or

(iii) agrees to make such an issue or grant such an option,

in each case to a person outside the Bidder Group but in each case excluding:

(iv) any issue, grant or agreement that does not require the approval of shareholders of Bidder; and

(v) any issue, grant or agreement made in connection with executive or board remuneration or any employee or officer incentive plan or award.

(f) (**constitution**) any member of the Bidder Group adopts a new constitution or modifies or repeals its constitution or a provision of it; and

(g) (**Insolvency Event**) an Insolvency Event occurring in relation to a member of the Bidder Group,

excluding any Bidder Excluded Transaction.

Bidder Share means a fully paid ordinary share in Bidder.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, New South Wales.

Calculation Date has the meaning given in Schedule 3.

Claim, in relation to a person, means any claim, allegation, cause of action, proceeding, liability, suit or demand made against the person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Closing Market Price means what it means in the ASX Listing Rules.

Competing Transaction means a proposal, transaction or arrangement (whether by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale or issue of securities, joint venture or otherwise) which, if completed, would mean a person (other than Bidder or its Related Bodies Corporate) whether alone or together with its Associates would:

(a) directly or indirectly, acquire an interest or Relevant Interest in or become the holder of 20% or more of Target Shares (other than as custodian, nominee or bare trustee);

For personal use only

(b) acquire control of Target, within the meaning of section 50AA of the Corporations Act;

(c) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in all or a substantial part or a material part of the assets of or business conducted by the Target Group; or

(d) otherwise acquire or merge (including by a reverse takeover bid, scheme of arrangement or dual listed company structure) with Target.

Condition means a condition precedent set out in clause 3.2.

Confidentiality Deed means the Confidentiality Deed between Target and Bidder in respect of the proposed Scheme dated 26 May 2021.

Consideration Share Formula means the formula set out in Schedule 3.

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

Corporations Regulations means the Corporations Regulations 2001 (Cth).

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

DD Cut-off Date means 5.00 pm on the Business Day immediately preceding the date of this document.

Deed Poll means a deed poll substantially in the form of Annexure B to this document.

Effective means the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or 12(2) of the PPSA or any agreement to create any of them or allow them to exist.

End Date means 17 December 2021, subject to any extension to that date made under clause 3.9.

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

(a) termination of this document in accordance with its terms;

(b) the expiration of the period of good faith negotiation pursuant to clause 3.10 if the Target Shareholders fail to approve the Scheme at the Scheme Meeting and the parties fail to reach agreement under clause 3.9; and

(c) the End Date.

First Court Date means the first day of the hearing of the Court of an application for an order under section 411(1) of the Corporations Act convening of the Scheme Meeting.

For personal use only

For personal use only

Government Agency means a government, government department or a governmental, semi-governmental, administrative, statutory or judicial entity, agency, authority, commission, department, tribunal, or person charged with the administration of a law or agency, whether in Australia or elsewhere, including the Australian Competition and Consumer Commission, ASIC, ASX, the Takeovers Panel, and any self-regulatory organisation established under statute or by ASX.

GST Law means the same as "GST Law" in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Implementation means the implementation of the Scheme, on it becoming Effective.

Implementation Date means the fifth Business Day following the Record Date or such other date as the parties agree in writing.

Independent Expert means an Independent Expert engaged by Target to express an opinion on whether the Scheme is fair and reasonable to and in the best interests of Target Shareholders.

Independent Expert's Report means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating whether or not in the Independent Expert's opinion the Scheme is in the best interest of Target Shareholders.

Ineligible Overseas Shareholder means a Target Shareholder:

(a) who is (or is acting on behalf of) a resident of a jurisdiction other than Australia or New Zealand and their respective external territories; or

(b) whose address shown in the Register is a place outside Australia or New Zealand and their respective external territories,

unless Bidder and Target jointly determine that it is lawful and not unduly onerous and not unduly impracticable to issue that Target Shareholder with Bidder Shares when the Scheme becomes Effective and it is lawful for that Target Shareholder to participate in the Scheme by the law of the relevant place outside Australia and New Zealand.

Insolvency Event means, in respect of a person:

(a) an administrator being appointed to the person;

(b) a controller or analogous person being appointed to the person or any of the person's property;

(c) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property;

(d) an appointment of the kind referred to in subparagraph (ii) being made (whether or not following a resolution or application);

(e) the holder of a Security Interest or any agent on its behalf, appointing a controller or taking possession of any of the person's property (including seizing the person's property within the meaning of section 123 of the PPSA) or otherwise enforcing or exercising any rights under the Security Interest or Chapter 4 of the PPSA, where such action relates to the whole, or a substantial part, of Target's business or property;

(f) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;

(g) an application being made to a court for an order for its winding up;

(h) an order being made, or the person passing a resolution, for its winding up;

(i) the person:

(i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or

(ii) being unable to pay its debts or otherwise insolvent;

(j) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;

(k) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or

(l) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party.

Loss includes any loss, damage, liability, obligation, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense) however it arises and whether it is present or future, fixed or unascertained, actual or contingent but excluding any consequential or indirect loss, economic loss or loss of profits.

New Bidder Share means Bidder Shares to be issued under the Scheme as Scheme Consideration.

NTA has the meaning set out in Schedule 3.

PPS Security Interest means a security interest that is subject to the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Public Registers means the records made available for public inspection by ASIC or ASX and any other relevant public registers.

Record Date means 7.00 pm on the second Business Day following the Effective Date, or any other date (after the Effective Date) agreed by the parties to be the record date to determine entitlements to receive Scheme Consideration under the Scheme.

Register means the register of members of Target.

Regulatory Approvals means the consents, approvals, clearances, decisions and determinations referred to in clause 3.2(e).

Related Body Corporate has the meaning it has in the Corporations Act.

Relevant Date means, in relation to a Condition, the date or time specified in this document for its fulfilment or, if no date or time is specified, 8.00 am on the Second Court Date, subject, in either case, to extension to that date made under clause 3.9.

For personal use only

For personal use only

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

Representatives means, in relation to a party:

(a) a Related Body Corporate;

(b) a director, officer or employee of the party or any of the party's Related Bodies Corporate; or

(c) an adviser to the party or any of the party's Related Bodies Corporate, where an "adviser" means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity and who has been engaged by that entity.

Scheme means a scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Target Shareholders in the form as is agreed in writing between Target and Bidder, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved by each party.

Scheme Booklet means the information booklet to be approved by the Court and despatched to Target Shareholders which includes the Scheme, a copy of the Deed Poll executed by Bidder, an explanatory statement complying with the requirements of the Corporations Act and notices of meeting and proxy forms.

Scheme Consideration in relation to a Scheme Participant means the number of New Bidder Shares to be issued to the Scheme Participant, calculated by reference to the Consideration Share Formula.

Scheme Meeting means the meeting of Target Shareholders to be convened as ordered by the Court under section 411(1) of the Corporations Act, to consider the Scheme.

Scheme Participant means each Target Shareholder as at the Record Date (taking into account registration of all registrable transfers and transmission applications received at Target's share registry by the Record Date) other than Bidder or a member of the Bidder Group.

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

Security Interest means any security interest, including:

(a) a PPS Security Interest;

(b) any other mortgage, charge, pledge or lien; or

(c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Subsidiary of an entity means another entity which:

(a) is a subsidiary of the first entity within the meaning of the Corporations Act; and

(b) is part of a consolidated entity constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares, or would be if the first entity was required to prepare consolidated financial statements.

For personal use only

Superior Proposal means a bona fide Competing Transaction which the Target Board, acting in good faith, and after taking advice from its legal and financial advisers, determines is:

(a) reasonably capable of being completed taking into account all aspects of the Competing Transaction, including its conditions; and

(b) of a higher financial value and is more favourable to Target Shareholders than the Scheme, taking into account all aspects of the Competing Transaction, including the identity, reputation and financial condition of the person making such proposal, legal, regulatory and financial matters.

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

Target Adjusted NTA has the meaning set out in Schedule 3.

Target Board means the board of directors of the Target, other than Mr Robert Millner.

Target Disclosure Material means the Target Due Diligence Information and information available on the Public Registers prior to the date of this document.

Target Due Diligence Information means all written information relating to the business, assets, liabilities, operations, profits and losses, financial position and performance and prospects of Target and its subsidiaries provided or made available by or on behalf of any member of the Target Group to Bidder on or before the DD Cut-off Date.

Target Excluded Transaction means a transaction:

(a) fairly disclosed in the Target Disclosure Material;

(b) consistent with a policy relating to employment which was fairly disclosed in the Target Disclosure Material;

(c) required to be done or procured by Target under this document or the Scheme; or

(d) in relation to which Bidder has expressly consented in writing or has unreasonably withheld or delayed its consent.

Target Group means Target and its subsidiaries (each of Target and each such subsidiary being a member of the Target Group).

Target Incoming Directors means at least three directors nominated by Bidder at least two Business Days before the ASIC Review Draft is provided to ASIC.

Target Indemnified Parties means Target, its officers, employees, and advisers and its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

Target Information means all information contained in the Scheme Booklet other than the Bidder Information and the Independent Expert's Report.

Target Material Adverse Effect means:

(a) the NTA of Target as at 5.00 pm on the Business Day immediately preceding the date of the Scheme Meeting is less than $4.488 per Target Share (for the avoidance of the doubt the NTA of Target for the purposes of this defined term is determined: (i) before the deduction of any amount of Agreed Dividend at that time unpaid; (ii)

on the basis that any amount of Agreed Dividend at that time paid should be added to NTA as it would be otherwise determined); and (iii) without the addition of the premium contemplated in Schedule 3; or

(b) any regulatory action is taken, commenced or threatened by a Government Agency or litigation arises or is threatened in respect of the Target Group, in each case that would materially adversely affect the prospects of the Target Group.

Target Outgoing Directors means all directors of Target.

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

(a) (**conversion**) Target converts all or any of its shares into a larger or smaller number of shares;

(b) (**reduction of share capital**) Target or another member of the Target Group resolves to reduce its share capital in any way or resolves to reclassify, combine, split or redeem or repurchase directly or indirectly any of its shares;

(c) (**buy-back**) Target or another member of the Target Group:

(i) enters into a buy-back agreement; or

(ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;

(d) (**distribution**) Target makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie) other than the Agreed Dividends;

(e) (**issuing or granting shares or options**) any member of the Target Group:

(i) issues shares;

(ii) grants an option over its shares; or

(iii) agrees to make such an issue or grant such an option,

in each case to a person outside the Target Group;

(f) (**securities or other instruments**) any member of the Target Group issues or agrees to issue securities or other instruments convertible into shares or debt securities in each case to a person outside the Target Group;

(g) (**constitution**) any member of the Target Group adopts a new constitution or modifies or repeals its constitution or a provision of it;

(h) (**Encumbrances**) other than in the ordinary course of business and consistent with past practice any member of the Target Group creates, or agrees to create, any new Encumbrance over or declares itself the trustee of the whole or a substantial part of its business or property;

(i) (**employment arrangements**) other than in the ordinary course of business and consistent with past practice any member of the Target Group increases the remuneration of, or otherwise varies the employment arrangements with, any of its directors or employees;

For personal use only

(j) (**related party transactions**) any member of the Target Group entering into or resolving to enter into a transaction with a related party (as defined in section 228 of the Corporations Act) that requires shareholder approval;

(k) (**commitments and settlements**) other than in the ordinary course of business and consistent with past practice any member of the Target Group:

(i) enters into any contract or commitment;

(ii) terminates or amends in a material manner any contract material to the conduct of the Target Group's business;

(iii) waiving any material third party default; or

(iv) accepting as a settlement or compromise of a material matter less than the full compensation due to Target or a Subsidiary of Target; and

(l) (**Insolvency Event**) an Insolvency Event occurring in relation to a member of the Target Group,

excluding any Target Excluded Transaction.

Target Share means each fully paid ordinary share in Target.

Target Shareholder means each person entered in the Register as a holder of Target Shares.

Target Shareholder Approval means a resolution in favour of the Scheme passed by the required majorities of Target Shareholders under section 411(4)(a)(ii) of the Corporations Act.

Timetable means the timetable for the Implementation of the Scheme as set out in Schedule 1, subject to any modifications as the parties may agree in writing.

VWAP Price has the meaning given to "volume weighted average market price" in the ASX Listing Rules.

1.2 **Rules for interpreting this document**

Headings and catchwords are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

(a) A reference to:

(i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

(ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

(iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;

(iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and

For personal use only

(v) anything (including a right, obligation or concept) includes each part of it.

(b) A singular word includes the plural, and vice versa.

(c) A word which suggests one gender includes the other genders.

(d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.

(e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

(f) The words **associate**, **controller**, **entity**, **officer**, **security interest** and **subsidiary** have the same meanings as given by the Corporations Act.

(g) A reference to **$** or **dollar** is to Australian currency.

(h) The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document.

(i) A matter is **to the knowledge** of a person at a relevant time if it would have been discovered by the enquiries that would have been made by a reasonable person in that person's position, even if, at that time, the matter is not actually known by that person.

(j) Terms defined in the GST Law have the same meaning in this document unless the context otherwise requires.

(k) A reference to time in this document is a reference to time in Sydney, New South Wales.

1.3 **Non-Business Days**

If the day on or by which a person must do something under this document is not a Business Day the person must do it on or by the previous Business Day.

2. **TARGET SCHEME**

2.1 **Agreement to propose and implement the Scheme**

(a) Target agrees to propose the Scheme on and subject to the terms and conditions of this document and must use all reasonable endeavours to do so within the Timetable.

(b) The parties agree to implement the Scheme on the terms and conditions of this document, subject to compliance with their respective obligations, powers and duties under their constituent documents and all applicable laws and the proper performance by the directors of each of the parties respectively of their fiduciary duties.

2.2 **Nomination of acquirer Subsidiary**

At any time prior to the Business Day before the First Court Date, Bidder may nominate any wholly-owned Subsidiary of Bidder (**Bidder Nominee**) to acquire Target Shares under the Scheme by providing a written notice which sets out the details of Bidder Nominee to Target. If Bidder decides to nominate Bidder Nominee to acquire Target Shares:

(a) the parties must procure that the Target Shares transferred under the Scheme are transferred to Bidder Nominee rather than Bidder; and

For personal use only

(b) Bidder must procure that Bidder Nominee complies with all of the relevant obligations of Bidder under this document and the Scheme.

2.3 **Outline of Scheme**

Subject to the terms of this document and the Scheme becoming Effective, on the Implementation Date:

(a) all of the Target Shares held by Scheme Participants will be transferred to Bidder in accordance with the terms of the Scheme; and

(b) in consideration for the transfer to Bidder of all of the Target Shares held by Scheme Participants, the Scheme Participants will be entitled to receive the Scheme Consideration.

2.4 **No amendments to Scheme without consent**

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 Bidder.

2.5 **Scheme Consideration**

(a) Subject to the Scheme becoming Effective and clauses 2.6(a) and 2.6(b), Bidder agrees in favour of Target that in consideration for the transfer to Bidder of each Target Share held by a Scheme Participant under the terms of the Scheme, Bidder will, subject to the terms of this document, the Deed Poll and the Scheme, accept such transfer and issue the number of New Bidder Shares calculated by reference to the Consideration Share Formula to each Scheme Participant for each Target Share held by that Scheme Participant at the Record Date.

(b) If the number of Target Shares held by a Scheme Participant is such that the Scheme Participant is entitled to a fraction of a Bidder Share, such fractional entitlement will be rounded up or down to the nearest whole number of Bidder Shares in accordance with the Scheme (and if the fractional entitlement would include one-half of a Bidder Share, the entitlement will be rounded up to the nearest whole number of Bidder Shares in accordance with the Scheme). For the avoidance of doubt, fractional entitlements of 0.5 of a New Bidder Share will be rounded up.

2.6 **Ineligible Overseas Shareholders**

(a) Unless Bidder is satisfied that it may lawfully issue New Bidder Shares to an Ineligible Overseas Shareholder either unconditionally or after compliance with terms which Bidder reasonably regards as acceptable and practical, Bidder has no obligation to issue New Bidder Shares to the Ineligible Overseas Shareholder.

(b) If Bidder elects not to issue New Bidder Shares to an Ineligible Overseas Shareholder under clause 2.6(a), it must issue the New Bidder Shares to which the Ineligible Overseas Shareholder would have been entitled but for the operation of clause 2.6(a), to a nominee appointed by Bidder. The terms of issue to the nominee will be that the nominee must sell those New Bidder Shares at the time, in the manner and on the terms the nominee thinks fit (and at the risk of the Ineligible Overseas Shareholder) and the nominee must then pay to that Ineligible Overseas Shareholder the proceeds received after deducting any applicable fees, brokerage, taxes and charges.

For personal use only

2.7 **Shares to rank equally**

Bidder covenants in favour of Target (in its own right and on behalf of the Scheme Participants) that:

(a) the New Bidder Shares will rank equally in all respects with all existing Bidder Shares;

(b) it will do everything reasonably necessary to ensure that trading in the New Bidder Shares commences by the first Business Day after the Implementation Date; and

(c) on issue, each New Bidder Share will be fully paid and free from any Encumbrance.

3. **CONDITIONS**

3.1 **Obligations not binding until Conditions satisfied**

Subject to this clause 3, the obligations of the parties with respect to Implementation (including the obligations of Bidder under clauses 2.5 and 4.3(m) and the Deed Poll) do not become binding unless and until each Condition is satisfied or waived under clause 3.6.

3.2 **Conditions**

The Conditions are as follows:

Conditions for the benefit of both parties

(a) (**Independent Expert's Report**) the Independent Expert issues a report which concludes that the Scheme is in the best interest of Scheme Participants before the date on which the Scheme Booklet is lodged with ASIC and the Independent Expert does not change its opinion or otherwise withdraw the report before 8:00 am on the Second Court Date;

(b) (**ASIC**) before 8.00 am on the Second Court Date, ASIC issues or provides any consents or approvals, or has done any other acts, which the parties agree are reasonably necessary or desirable to implement the Scheme, and those consents, approvals or other acts have not been withdrawn or revoked at that time;

(c) (**Target Shareholder Approval**) Target Shareholder Approval is obtained at the Scheme Meeting by the requisite majorities in accordance with the Corporations Act;

(d) (**Court approval of Scheme**) the Court makes orders under section 411(4)(b) of the Corporations Act approving the Scheme;

(e) (**Regulatory Approvals**) before 8.00 am on the Second Court Date, ASX has confirmed that Bidder is not required to obtain the approval of holders of Bidder Shares to issue the Scheme Consideration or re-comply with ASX's admission and quotation requirement (or if it does so require then that approval has been obtained or those requirements satisfied);

(f) (**no restraint adversely affecting Implementation**) no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the acquisition of all the Target Shares held by Scheme Participants by Bidder or otherwise preventing Implementation is in effect at 8.00 am on the Second Court Date;

For personal use only

Conditions for the benefit of Bidder

(g) (**no Target Material Adverse Effect**) during the period commencing on the date of this document and ending at the end of the Business Day immediately preceding the date of the Scheme Meeting, no one or more events, occurrences or matters individually or in aggregate that have or could reasonably be expected to have a Target Material Adverse Effect, occurs or becomes known to Bidder;

(h) (**no Target Prescribed Event**) during the period commencing on the date of this document and ending at 8.00 am on the Second Court Date, no Target Prescribed Event occurs;

(i) (**Target representations and warranties**) each of the representations and warranties given or made by Target under clause 11 is true and correct as at the time it is given or made;

(j) (**no Bidder Material Adverse Effect**) no Bidder Material Adverse Effect having occurred;

(k) (**portfolio**) before 8.00 am on the Second Court Date, the Target has complied with its obligation under clause 4.2(dd); and

Conditions for the benefit of Target

(l) (**no Bidder Prescribed Event**) during the period commencing on the date of this document and ending at 8.00 am on the Second Court Date, no Bidder Prescribed Event occurs;

(m) (**NTA fall**) the NTA of the Target as at 5.00 pm on the Business Day immediately preceding the date of the Scheme Meeting is not less than $4.488 per Target Share (for the avoidance of the doubt the NTA of the Target for the purposes of this clause is determined: (i) before the deduction of any amount of Agreed Dividend at that time unpaid; (ii) on the basis that any amount of Agreed Dividend at that time paid should be added to NTA as it would be otherwise determined); and (iii) without the addition of the premium contemplated in Schedule 3;

(n) (**New Bidder Shares**) the New Bidder Shares to be issued pursuant to the Scheme are approved for official quotation by ASX, subject to customary conditions by, and such approval has not been withdrawn, suspended or revoked before, 8.00 am on the Second Court Date; and

(o) (**Bidder representations and warranties**) each of the representations and warranties given or made by Bidder under clause 11 is true and correct as at the time it is given or made.

3.3 **Reasonable endeavours**

Each of Target and Bidder agree to use reasonable endeavours to procure that:

(a) each of the Conditions:

(i) is satisfied as soon as practicable after the date of this document and in any event by the Relevant Date; and

(ii) continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and

(b) there is no occurrence that would prevent the Condition for which it is a party responsible being satisfied.

For personal use only

3.4 **Benefit of Conditions**

The Conditions in:

(a) clauses 3.2(a) to 3.2(f) are for the benefit of each party;

(b) clauses 3.2(g) to 3.2(k) are for the benefit of Bidder; and

(c) clauses 3.2(l) to 3.2(o) are for the benefit of Target.

3.5 **Breaching Conditions**

A reference in this document to a Condition being breached includes a reference to the Condition becoming incapable of being satisfied.

3.6 **Waiver of Conditions**

(a) If a Condition has been included for the benefit of:

(i) one party only, only that party may, in its sole and absolute discretion, waive the breach or non-fulfilment of the Condition;

(ii) more than one party, the breach or non-fulfilment of the Condition may be waived only by the consent of all those parties.

However, a party for whom a Condition has been included must not waive the Condition if it would result in a breach of law.

(b) The breach or non-fulfilment of a Condition may only be waived in writing.

(c) If a party waives the breach or non-fulfilment of a Condition, that waiver precludes the party from suing another party for any breach of this document that resulted in the breach or non-fulfilment of the Condition.

3.7 **Fulfilment of Conditions**

Each party must:

(a) use its reasonable endeavours (other than waiver) to ensure and procure that each Condition is satisfied as soon as practicable after the date of this document;

(b) not take any action or refrain from taking any action (except as required by law) designed to prevent the Conditions being satisfied, without the prior consent of the other party;

(c) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;

(d) promptly inform the other party of any circumstances of which it becomes aware which may result in any of the Conditions not being satisfied in accordance with its terms; and

(e) promptly advise the other party of the satisfaction of a Condition.

3.8 **Parties to provide certificate to Court**

(a) Each of Target and Bidder must provide to the other and to the Court before or at the Second Court Date, a certificate or such other evidence as the Court requests, confirming, in each case with respect to matters within the party's knowledge,

For personal use only

whether or not the conditions set out in clause 3.2 included for its benefit, have been satisfied (or waived by it) in accordance with the terms of this document.

(b) Target and Bidder must provide to each other a draft of the relevant certificates to be provided by Target any Bidder (as applicable) pursuant to this clause 3.8 by 5.00 pm on the day that is two Business Days prior to the Second Court Date, and must provide to Target or Bidder (as applicable) on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

3.9 **If a Condition is not fulfilled or waived**

If:

(a) any Condition is not satisfied or (where capable of waiver) waived by the time or date specified in this document for its satisfaction;

(b) for any reason, a Condition is not capable of being satisfied, or a circumstance occurs which is reasonably likely to result in a Condition not being capable of being satisfied, and the Condition has not for the time being been waived in accordance with clause 3.6 or cannot be waived; or

(c) the Scheme has not become Effective on or prior to the End Date,

then the parties:

(d) must consult in good faith to determine whether the Scheme may proceed by way of alternative means or method so as to achieve a commercial outcome which reflects the Scheme; and

(e) may agree to extend the Relevant Date or the End Date, or both.

3.10 **Failure to agree**

(a) If the parties are unable to reach agreement under clause 3.9 within five Business Days (or any shorter period ending at 5.00 pm on the day before the Second Court Date):

(i) subject to clause 3.10(a)(ii), either party may terminate this document (and that termination will be in accordance with clause 10.1(f)(i)); or

(ii) if a Condition may be waived and exists for the benefit of one party only, that party only may waive that Condition or terminate this document (and that termination will be in accordance with clause 10.1(f)(ii)),

in each case before 8.00 am on the Second Court Date.

(b) A party will not be entitled to terminate this document under this clause if the relevant Condition has not been satisfied or agreement cannot be reached as a result of a breach of this document by that party or a deliberate act or omission of that party.

4. **IMPLEMENTATION**

4.1 **Obligations of the parties**

Target and Bidder must each:

For personal use only

(a) use all reasonable endeavours and commit necessary resources (including management and corporate relations resources and the resources of external advisers); and

(b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending meetings and by providing information),

to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable and in accordance with the Timetable.

4.2 **Target's obligations**

Target must take all necessary steps to propose and implement the Scheme on a basis consistent with this document and as expeditiously as reasonably practicable including within the Timetable, and in particular must:

(a) (**announce directors' recommendation**) following execution of this document, announce, in the form agreed between the parties (on the basis of statements made to Target by each member of the Target Board) that:

(i) the Target Board considers the Scheme to be in the best interest of the Scheme Participants and intends to unanimously recommend to Scheme Participants that the Scheme be approved; and

(ii) each Target Board member who holds Target Shares, intends to vote his or her Target Shares in favour of the Scheme,

subject to:

(iii) the Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interest of Target Shareholders; and

(iv) there being no Superior Proposal;

(b) (**preparation of Scheme Booklet**) subject to clause 4.2(e)(i), as soon as practicable after the date of this document, prepare and despatch the Scheme Booklet:

(i) in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60, Takeovers Panel policy and guidance notes and the ASX Listing Rules; and

which includes a statement by the Target Board:

(ii) unanimously recommending that the Scheme is in the best interest of the Target Shareholders and that the Target Shareholders vote in favour of the Scheme; and

(iii) that each Target Board member who holds Target Shares intends to vote his or her Target Shares in favour of the Scheme,

subject to the Independent Expert continuing to conclude that the Scheme is in the best interest of Target Shareholders and there being no Superior Proposal;

(c) (**Independent Expert**) promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare its report for the Scheme Booklet as soon as practicable;

For personal use only

(d) (**section 411(17)(b) statement**) apply to ASIC for the production of a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;

(e) (**consultation with Bidder**) consult with Bidder as to the content and presentation of:

(i) the Scheme Booklet, which includes:

(A) allowing Bidder a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet (accepting that any review of the Independent Expert's Report is limited to review for factual accuracy of those parts that include information relating to Bidder);

(B) taking any reasonable comments made by Bidder into account in good faith when producing a revised draft of the Scheme Booklet;

(C) providing to Bidder a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act is finalised; and

(D) obtaining Bidder's consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet); and

(ii) documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any comments on, or suggested amendments to, those documents from Bidder prior to filing those documents with the Court;

(f) (**lodgement of ASIC Review Draft**)

(i) as soon as practical, but no later than 14 days before the First Court Date, provide an advanced draft of the Scheme Booklet to ASIC for its review for the purposes of section 411(2) of the Corporations Act, and provide a copy of the ASIC Review Draft to Bidder immediately thereafter; and

(ii) keep Bidder reasonably informed of any material issues raised by ASIC in relation to the ASIC Review Draft and, where practical to do so, consult with Bidder in good faith prior to taking any steps or actions to address those material issues (provided that, where those issues relate to Bidder Information, Target must not take any steps to address them without Bidder's prior written consent, not to be unreasonably withheld);

(g) (**Board approval**) procure that a meeting of the Target Board is convened to approve the Scheme Booklet for dispatch and provide Bidder with a copy of the relevant board minutes as soon as reasonably practicable;

(h) (**send Scheme Booklet**) send the Scheme Booklet to Target Shareholders as soon as practicable after the Court orders Target to convene the Scheme Meeting;

(i) (**supplementary disclosure**) if, after despatch of the Scheme Booklet, Target becomes aware:

For personal use only

(i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or

(ii) of information that is required to be disclosed to Target Shareholders under any applicable law but was not included in the Scheme Booklet,

promptly consult with Bidder in good faith as to the need for, and the form of, any supplementary disclosure to Target Shareholders, and make any disclosure that Target considers reasonably necessary in the circumstances, having regard to applicable laws and to ensure that there would be no breach of clause 11.2(b) if it applied as at the date that information arose;

(j) (**Court documents**) prepare all documents necessary for the Court proceedings relating to the Scheme in accordance with all applicable laws;

(k) (**Court application**) apply to the Court for an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;

(l) (**Scheme Meeting**) convene the Scheme Meeting to agree to the Scheme in accordance with any orders made by the Court pursuant to section 411(1) of the Corporations Act;

(m) (**explanatory statement**) take all reasonable measures necessary to cause ASIC to register the Scheme Booklet under section 412 of the Corporations Act;

(n) (**proxy information**) upon request of Bidder made before the commencement of the Scheme Meeting, inform Bidder of the total number of proxy votes in respect of which the appointment for the Scheme Meeting specified that:

(i) the proxy is to vote in favour of the Scheme;

(ii) the proxy is to vote against the Scheme;

(iii) the proxy is to abstain from voting on the Scheme; and

(iv) the proxy may vote at the proxy's discretion;

(o) (**director's voting**) use its reasonable endeavours to procure that each member of the Target Board votes any Target Shares in which they have a Relevant Interest in favour of the Scheme;

(p) (**section 411(17)(b) statement**) if the approval of the Target Shareholders is obtained, apply to ASIC for the production of a statement under section 411(17)(b) of the Corporations Act in relation to the Scheme;

(q) (**No Target Prescribed Event**) take all reasonable steps to ensure that no Target Prescribed Event occurs during the period commencing on the date of this document and ending at 8.00 am on the Second Court Date and, if a Target Prescribed Event occurs, immediately inform Bidder;

(r) (**Court approval**) subject to all Conditions, other than paragraph (d) in clause 3.2 being satisfied or waived in accordance with this document, apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;

(s) (**Conditions certificate**) at the hearing on the Second Court Date, provide to the Court (through its counsel):

For personal use only

(i) a certificate confirming (in respect of matters within Target's knowledge) whether or not the Conditions included for its benefit, as noted in clause 3.2 (other than paragraph (d)), have been satisfied or waived in accordance with clause 3.6, a draft of which must be provided to Bidder by 5.00 pm two Business Days prior to the Second Court Date; and

(ii) any certificate provided to it by Bidder under clause 4.3(h);

(t) (**not act inconsistently**) subject to clause 9.3, not act in a manner inconsistent with obtaining Court approval for the Scheme;

(u) (**lodge copy of Court order**) lodge with ASIC an office copy of the Court order approving the Scheme as approved by the Target Shareholders at the Scheme Meeting in accordance with section 411(10) of the Corporations Act by no later than 4.00 pm on the day after that office copy is received (or any later date agreed in writing by Bidder);

(v) (**Scheme Participants**) give to the share registry of Bidder details of the names, registered addresses and holdings of Target Shares of every Target Shareholder as shown in the Register on the Record Date, in such form as Bidder may reasonably require, and determine Target Shareholders' respective entitlements to the Scheme Consideration in accordance with the Scheme;

(w) (**Register**) close the Register as at the Record Date to determine the identity of Scheme Participants and their entitlements to Scheme Consideration;

(x) (**instruments of transfer**) subject to Bidder satisfying its obligations under clause 4.3 on the Implementation Date:

(i) execute proper instruments of transfer and effect the transfer of Target Shares held by Scheme Participants to Bidder in accordance with the Scheme; and

(ii) register all transfers of Target Shares held by Scheme Participants to Bidder;

(y) (**Suspension of trading**) apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date;

(z) (**listing**) take all reasonable steps to maintain Target's listing on ASX, notwithstanding any suspension of the quotation of Target Shares, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC;

(aa) (**other steps**) do all other things necessary to lawfully give effect to the Scheme and the orders of the Court approving the Scheme;

(bb) (**appeal process**) if the Court refuses to make any orders or confirmations for the purposes of convening the Scheme Meeting or approving the Scheme, appeal the Court's decision to the fullest extent possible (except to the extent that the parties agree otherwise, or an independent barrister with at least 15 years' experience advises that, in their view, an appeal would have no reasonable prospects of success before the End Date);

(cc) (**Basis of reporting**) not make any change to the manner in which it calculates its aggregate net tangible asset backing before providing for tax on unrealised capital gains and realised capital losses for the purpose of its market announcements to ASX of its net tangible asset backing per share as at each calendar month end;

For personal use only

(dd) (**portfolio**) ensure that as at 8.00 am on the Second Court Date Target does not have a relevant interest in any ordinary shares issued by Brickworks Limited; and

(ee) (**Bidder Shares**) not acquire any Bidder Shares between the date of entry into this document and the earlier of the End Date and the date on which this document is terminated in accordance with clause 10.

4.3 **Bidder obligations**

Bidder must take all necessary steps to assist Target to implement the Scheme on a basis consistent with this document and as soon as reasonably practicable, and in particular must:

(a) (**announcement**) on the date of this document, make an announcement in the form agreed between the parties;

(b) (**Bidder Information**) prepare and promptly provide to Target for inclusion in the Scheme Booklet the Bidder Information (in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60, Takeovers Panel policy and guidance notes and the ASX Listing Rules) and consent to the inclusion of that information in the Scheme Booklet;

(c) (**further Bidder Information**) promptly provide to Target any further or new Bidder Information as may arise after the Scheme Booklet has been sent to Target Shareholders and until the date of the Scheme Meeting as may be necessary to ensure that the Bidder Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission) and to ensure that there would be no breach of clause 11.3(b) if it applied as at the date on which such further or new Bidder Information arose;

(d) (**Independent Expert information**) provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;

(e) (**representation**) procure that it is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel, Bidder must undertake (if requested by the court) to do all things and take all steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this document and the Scheme;

(f) (**Deed Poll**) prior to the Scheme Booklet being sent, sign and deliver the Deed Poll;

(g) (**no Bidder Prescribed Event**) take all reasonable steps to ensure that no Bidder Prescribed Event occurs during the period commencing on the date of this document and ending at 8.00 am on the Second Court Date and if a Bidder Prescribed Event occurs, immediately inform Target;

(h) (**certificates**) before commencement of the hearing by the Court of the application for the order under section 411(4)(b) of the Corporations Act, give to Target a certificate signed by Bidder stating whether or not each representation or warranty given by Bidder is true and correct as at the time it is given or made under clause 11;

(i) (**not act inconsistently**) not act in a manner inconsistent with obtaining Court approval for the Scheme (provided that nothing in this paragraph prevents any action by or on behalf of Bidder or its directors if failure to take the action would, in the reasonable opinion of the board of directors of Bidder, be likely to involve a breach of duties of the directors of Bidder. The reasonable opinion of the Bidder Board must be based on specific legal and other appropriate advice);

For personal use only

(j) (**Conditions certificate**) before 8.00 am on the Second Court Date, provide to Target for provision to the Court at the hearing on that date a certificate confirming (in respect of matters within Bidder's knowledge) whether or not the Conditions for which Bidder is responsible, as noted in clause 3.2 (other than paragraph (d)), have been satisfied of waived in accordance with clause 3.6, a draft of which must be provided to Target by 5.00 pm on the Business Day prior to the Second Court Date;

(k) (**Share transfer**) if the Scheme becomes Effective, accept a transfer of the Target Shares as contemplated by clause 2.5;

(l) (**Listing**) procure that the New Bidder Shares to be issued as Scheme Consideration pursuant to the Scheme are approved for official quotation by ASX, subject to any conditions which ASX may reasonably require and which are acceptable to both Bidder and Target, acting reasonably and promptly;

(m) (**Scheme Consideration**) if the Scheme becomes Effective register or cause to be registered the Scheme Participants (or the nominee of Ineligible Overseas Shareholders appointed pursuant to clause 2.6) as the holders of New Bidder Shares to which the Scheme Participants are entitled under the Scheme; and

(n) (**Scheme**) do all things within its power that are reasonably necessary to lawfully give effect to the Scheme and the orders of the Court approving the Scheme.

4.4 **Scheme Booklet responsibility statement**

The responsibility statement to appear in the Scheme Booklet, in a form to be agreed by the parties, will contain words to the effect of:

(a) Target has prepared, and is responsible for, the content of the Scheme Booklet other than, to the maximum extent permitted by law, the Bidder Information, the Independent Expert's Report or any other report or letter issued to Target by a third party; and

(b) Bidder has prepared, and is responsible for, the Bidder Information in the Scheme Booklet (and no other part of the Scheme Booklet).

4.5 **Disagreement on content of Scheme Booklet**

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

(a) if the disagreement relates to the form or content of the Bidder Information contained in the Scheme Booklet, Target will make any amendments as Bidder, acting in good faith requires; and

(b) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the Target Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet.

4.6 **Verification**

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

4.7 **Conduct of Court proceeding**

Target and Bidder are entitled to separate representation at all Court proceedings relating to the Scheme. This document does not give Target or Bidder any right or power to give

For personal use only

undertakings to the Court for or on behalf of the other party without that party's written consent. Target and Bidder must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Scheme as contemplated by this document.

4.8 **Appeal process**

If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, Bidder and Target must appeal the Court's decision to the fullest extent possible except to the extent that:

(a) the parties agree otherwise; or

(b) an independent counsel of the New South Wales bar with at least 15 years' experience advises that, in their opinion, an appeal would have no reasonable prospect of success before the End Date,

in which case either party may terminate this document in accordance with clause 10.1(f)(iii). If the parties cannot agree on the appointment of an independent counsel for the purposes of 4.8(b) within three Business Days of the Court's refusal to make orders, the independent senior counsel will be appointed by the chairperson or other senior office bearer for the time being of the New South Wales Chapter of the Resolution Institute or a delegate of such person, on the application of any party.

4.9 **No partnership or joint venture**

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

5. BOARD RECOMMENDATION

5.1 **Recommendation**

Target must use its best endeavours to procure that none of the members of the Target Board withdraws, or changes their recommendation in favour of the Scheme, unless:

(a) there is a Superior Proposal; or

(b) the Independent Expert concludes that the Scheme is not in the best interest of Target Shareholders, or adversely changes its previously given opinion that the Scheme is in the best interest of Target Shareholders; and

(c) the Target Board determines in good faith and acting reasonably, having received expert advice in writing from its legal advisors, (who must be reputable advisers experienced in transactions of this nature) that they must do so because of their fiduciary or statutory duties to Target Shareholders.

6. DIRECTORS AND EMPLOYEES

6.1 **Release of Target and Target directors and officers**

Subject to the Corporations Act, Bidder releases its rights, and agrees with Target that it will not make a claim, against any Target Indemnified Party (other than Target and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:

For personal use only

(a) any breach of any representations and warranties of Target or any other member of Target Group in this document; or

(b) any disclosures containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 6.1 limits Bidder's rights to terminate this document under clause 10.1.

6.2 **Benefit for Target Indemnified Parties**

Target receives and holds the benefit of this clause to the extent it relates to each Target Indemnified Party on behalf of each of them.

6.3 **Release of Bidder and Bidder directors and officers**

Subject to the Corporations Act, Target releases its rights, and agrees with Bidder that it will not make a claim, against any Bidder Indemnified Party (other than Bidder and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:

(a) any breach of any representations and warranties of Bidder or any other member of Bidder Group in this document; or

(b) any disclosures containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 6.3 limits Target's rights to terminate this document under clause 10.1.

6.4 **Benefit for Bidder Indemnified Parties**

Bidder receives and holds the benefit of this clause to the extent it relates to each Bidder Indemnified Party on behalf of each of them.

6.5 **Appointment/retirement of directors**

On the Implementation Date, but subject to the Scheme Consideration having been issued to the Scheme Participants and receipt by Target of signed consents to act, Target must:

(a) cause the appointment of each Target Incoming Director to the Target Board; and

(b) procure that the Target Outgoing Directors retire from the Target Board, unless Bidder gives notice of its desire for one or more of the directors not to retire (such notice to be given prior to 8.00 am on the Second Court Date),

in each case, in accordance with Target's constitution, the Corporations Act and the ASX Listing Rules.

6.6 **Directors' and officers' insurance**

Subject to the Scheme becoming Effective and subject to the Corporations Act, Bidder undertakes in favour of Target and each other person who is a Target Indemnified Party that it will:

For personal use only

(a) for a period of seven years from the Implementation Date, ensure that the constitutions of Target and each other member of the Target Group continue to contain such rules as are contained in those constitutions at the date of this document that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the Bidder Group; and

(b) procure that Target and each other member of the Target Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that the directors' and officers' run-off insurance cover for those directors and officers is maintained, subject to clause 6.7, for a period of seven years from the retirement date of each director and officer.

6.7 **Run-off**

Each party acknowledges that, notwithstanding any other provision of this document, Target and its Subsidiaries may, prior to the Implementation Date, enter into a run-off insurance policy in respect of any directors or officers of a Target Group for a seven year period (or longer if Bidder agrees acting reasonably) provided that:

(a) the scope of cover of the policy will be on the same or substantially the same terms as the existing insurance policies in place for directors or officers of the Target Group at the date of this document; and

(b) Target will use reasonable endeavours to obtain the most attractive commercial terms for the policy from a reputable insurer and in no circumstances shall the aggregate cost of such insurance to the Target Group exceed the amount agreed between the parties in writing for the purposes of this clause without the prior written consent of Bidder.

6.8 **Period of undertaking**

The undertakings contained in clause 6.6 are given until the earlier of the end of the relevant period specified in that clause or the relevant member of the Target Group ceasing to be part of the Bidder Group.

6.9 **Benefit of undertaking for Target Group**

Target acknowledges that it receives and holds the benefit of clause 6.6 to the extent it relates to each director and officer of a member of the Target Group on behalf of each of them.

7. PRE-IMPLEMENTATION OBLIGATIONS

7.1 **Conduct of the business**

During the period commencing on the date of this document and ending on the Implementation Date, each party must conduct (and must procure that each of its subsidiaries conducts) its business in the ordinary course, in substantially the same manner and at the same locations as conducted in the 12 months prior to the date of this document, and to the extent consistent, use reasonable efforts to:

(a) preserve intact its business organisation;

(b) keep available the services of its officers and employees;

For personal use only

(c) preserve its relationship with customers, suppliers, licensors, licensees and others having business dealings with it;

(d) identify any change of control or similar provisions in any significant contracts or any joint venture documentation and obtain the consents of relevant persons who have rights in respect of such contracts to the transactions contemplated by the Scheme; and

(e) maintain its business and assets, including maintaining at least its current level of insurance,

as in place on the date of this document.

7.2 **Exception**

Clause 7.1 does not apply to anything:

(a) which the party is required to do, permitted to do or is permitted not to do, under or in accordance with this document or the Scheme; or

(b) in respect of which the other party consents (such consent not to be unreasonably withheld or delayed).

7.3 **Access to information**

(a) From the date of this document and up to and including the Implementation Date, subject to applicable laws each party must give (and must procure each of its subsidiaries gives) the other party reasonable access to its records (subject to any existing confidentiality obligations owed to third parties), premises and personnel and reasonably co-operate for the purpose of:

(i) understanding the financial position of it and its subsidiaries including the cashflow and working capital position of each of them;

(ii) integrating the business of Target with the business of Bidder;

(iii) understanding the operations of the business of it and its subsidiaries;

(iv) Implementation; and

(v) any other purpose which is agreed in writing between the parties.

(b) Nothing in clause 7.3(a) requires a party or any of its subsidiaries to provide information to the other party that:

(i) concerns the consideration of the Scheme by directors and management of it or any of its subsidiaries; or

(ii) would contravene competition laws.

7.4 **Information on representations and warranties**

From the date of this document and up to and including the Implementation Date each party must promptly give, and must procure that each of its subsidiaries promptly gives, to the other party details of any matter or occurrence which might reasonably make any representation or warranty given under this document by the first-mentioned party inaccurate in a material respect.

For personal use only

7.5 **Information provided subject to confidentiality obligation**

All information provided under or in connection with this document is subject to the terms of the Confidentiality Deed which continues to have full force and effect subject to this document.

8. **ANNOUNCEMENT**

8.1 **No Announcement**

Neither party may make an Announcement relating to the subject matter of this document or its termination or make public this document (or any of its terms) unless the Announcement or publication:

(a) is required by this document;

(b) has the prior approval of the other party; or

(c) is required to be made by any applicable law or the ASX Listing Rules.

8.2 **Notice of Announcement**

If a party is required to make an Announcement under clause 8.1(c), it must, to the extent practicable without that party breaching any applicable law, give to the other party:

(a) such notice as is reasonable in the circumstances of its intention to make the Announcement; and

(b) a draft of the Announcement and an opportunity, to the extent practicable in the circumstances, to comment on the contents of the draft Announcement.

9. **EXCLUSIVITY**

9.1 **No ongoing discussions**

Target represents and warrants to Bidder that, as at the date of this document, neither Target nor any of its Representatives are in discussions or negotiations with any third party regarding any actual, proposed or potential Competing Transaction, and no confidential information has been provided to any third party as at the date of this agreement regarding any actual, proposed or potential Competing Transaction.

9.2 **No-shop, no-talk, no-due diligence**

Subject to clause 9.3 and except as otherwise agreed in writing by the other party, during the Exclusivity Period, Target must not (and must ensure that its Representatives, advisers or agents do not):

(a) directly or indirectly solicit, initiate, invite or encourage any inquiries, proposals or discussions with a view to obtaining, or that may reasonably be expected to encourage or lead to, any Competing Transaction or any other transaction that may reduce the likelihood of success of the Scheme (whether from a party with whom Target has previously been in discussions or not);

(b) directly or indirectly participate in any discussions or negotiations regarding a Competing Transaction, or that may reasonably be expected to encourage or lead to a Competing Transaction, or any other transaction that may reduce the likelihood of success of the Scheme;

For personal use only

(c) accept or enter into, or offer to accept or enter into, any agreement, arrangement or understanding regarding a Competing Transaction or any other transaction that may reduce the likelihood of success of the Scheme or could reasonably be expected to encourage or lead to a Competing Transaction or reduce the likelihood of success of the Scheme;

(d) approve, recommend or implement a Competing Transaction or any other transaction that may reduce the likelihood of success of the Scheme or announce an intention to do so;

(e) directly or indirectly solicit, initiate, invite or encourage any third party to undertake due diligence investigations in respect of Target, any of its related bodies corporate or any of their businesses and operations, in connection with or with a view to obtaining, or that may reasonably be expected to encourage or lead to, any Competing Transaction or any other transaction that may reduce the likelihood of success of the Scheme; or

(f) disclose any non-public information about the businesses or affairs of Target to a third party (other than a Representative, Government Agency or auditors) other than in the ordinary course of business or as required under Target's existing contractual obligations to the extent those obligations have been disclosed to Bidder and cannot be terminated.

9.3 **Response to unsolicited approach**

If clause 9.2(a) is complied with, nothing in clauses 9.2(b), (c), (d), (e) or 9.2(f) or clause 4.3(h) or clause 7.1 prevents any action by or on behalf of Target or its directors to respond to any bona fide approach by a third party where the board of directors of Target, acting in good faith and after taking advice from Target's external advisors, determine that such approach would lead to a superior Competing Transaction and if failure to do so would, in the reasonable opinion of the board of directors of Target, be likely to involve a breach of the duties of the directors of Target. The reasonable opinion of Target's board of directors must be based on specific legal and any other appropriate advice.

9.4 **Notify of approaches**

If Target proposes to respond to any approach by a third party (as contemplated by clause 9.3), then:

(a) Target must immediately notify Bidder in writing that Target proposes to respond to an approach by a third party; and

(b) Target must promptly provide Bidder with any confidential information concerning Target that it intends to provide to the third party in connection with the Competing Transaction.

10. **TERMINATION**

10.1 **Termination events**

This document may be terminated:

(a) (**End Date**) by either party, if the Scheme has not become Effective on or before the End Date;

(b) (**lack of support**) by Bidder at any time prior to 8.00 am on the Second Court Date if any of the directors of the Target board:

For personal use only

(i) changes or withdraws his or her recommendation to the Scheme Participants that they vote in favour of the resolution to approve the Scheme, including any adverse modification to the recommendation (including by attaching any qualifications to), or otherwise makes a public statement indicating that it no longer supports the Scheme; or

(ii) recommend a Competing Transaction;

(c) (**Target material breach**) by Bidder at any time prior to 8.00 am on the Second Court Date, if:

(i) Target is in material breach of clauses 3.3, 4 or 4.2; or

(ii) the representations and warranties in clauses 11.1 or 11.2 are not true and correct,

provided that Target has, if practicable, given notice to Bidder setting out the relevant circumstances and the relevant circumstances continue to exist ten Business Days (or any shorter period ending at 8.00 am on the Second Court Date) after the time such notice is given;

(d) (**Bidder material breach**) by Target at any time prior to 8.00 am on the Second Court Date, if:

(i) Bidder is in material breach of clauses 3.3, 4 or 4.3; or

(ii) the representations and warranties in clauses 11.1 or 11.3 are not true and correct,

(iii) provided that Bidder has, if practicable, given notice to Target setting out the relevant circumstances and the relevant circumstances continue to exist ten Business Days (or any shorter period ending at 8.00 am on the Second Court Date) after the time such notice is given;

(e) (**Competing Transaction**) by Target if the Target Board determines that a Competing Transaction that was not solicited, invited, encouraged or initiated in breach of clause 9.2(a) is a Superior Proposal;

(f) (**consultation or appeal failure**) in accordance with and pursuant to:

(i) clause 3.10(a)(i);

(ii) clause 3.10(a)(ii); or

(iii) clause 4.8; or

(g) (**agreement**) if agreed to in writing by Bidder and Target.

10.2 **Termination**

Where a party has a right to terminate this document, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this document.

10.3 **Effect of Termination**

If this document is terminated by either party, or if this document otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this document, other than the obligations set out in this clause and in clauses 4.8, 6.1 to

For personal use only

6.4(inclusive), 11 and 15 to 17 (inclusive) will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause releases any party from liability for any pre-termination breach of this document.

10.4 **Damages**

(a) In addition to the right of termination under clause 10.1 where there is no appropriate remedy for the breach in this document (other than termination), the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this document.

(b) The parties acknowledge that damages may not be a sufficient remedy for breach of this document. Specific performance, injunctive relief or any other remedies that would otherwise be available in equity or at law are available as a remedy for a breach or threatened breach of this document by any party, notwithstanding the ability of any party to terminate this document or seek damages for such a breach or threatened breach.

11. **REPRESENTATIONS AND WARRANTIES**

11.1 **Mutual representations and warranties**

Each party represents and warrants to the other party that:

(a) (**status**) it is a company limited by shares under the Corporations Act;

(b) (**power**) it has full legal capacity and power to:

(i) own its property and to carry on its business; and

(ii) enter into this document and carry out the transactions that this document contemplates in accordance with its terms;

(c) (**corporate authority**) it has taken all corporate action that is necessary or desirable to authorise it entering into this document and carrying out the transactions that this document contemplates in accordance with its terms;

(d) (**Authorisations**) it holds each Authorisation that is necessary or desirable to:

(i) enable it to properly execute this document and to carry out the transactions that this document contemplates in accordance with its terms;

(ii) ensure that this document is legal, valid, binding and admissible in evidence; and

(iii) enable it to properly carry on its business,

and it is complying with any conditions to which any such Authorisation is subject;

(e) (**document effective**) this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms;

(f) (**no contravention**) neither its execution of this document nor the carrying out by it of the transactions that it contemplates in accordance with its terms, does or will contravene:

(i) any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;

For personal use only

(ii) any Authorisation held by it;

(iii) any undertaking or instrument binding on it or any of its property; or

(iv) its constitution;

(g) (**no Insolvency Event**) neither it nor any of its subsidiaries is affected by an Insolvency Event;

(h) (**not representative capacity**) it is not entering into this document as trustee of any trust or settlement or otherwise in a representative capacity; and

(i) (**information provided to the Independent Expert**) all information provided by it to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report for inclusion in the Scheme Booklet.

11.2 **Target representations and warranties**

Target represents and warrants to Bidder that:

(a) (**Target Due Diligence Information and Target Information not false or misleading**) Target has not knowingly, negligently or recklessly:

(i) omitted to disclose information to Bidder, the disclosure of which might reasonably be expected to have resulted in Bidder not entering into this document, or entering into it on materially different terms;

(ii) omitted anything from the Target Due Diligence Information or Target Information that would make any part of that information materially false or misleading;

(iii) included anything materially false or misleading in the Target Due Diligence Information or the Target Information; or

(iv) denied access to requested information with the intention of misleading Bidder;

(b) (**Scheme Booklet not false or misleading**) as at the date of dispatch of the Scheme Booklet, the Scheme Booklet (other than the Bidder Material) will not contain any material statement which is false or misleading (including because of any material omission);

(c) (**continuous disclosure**) Target is not in breach of its continuous disclosure obligation under ASX Listing Rule 3.1 and, except for information contained in the Announcement to be made in accordance with clause 4.2(a), there is no information to which ASX Listing Rule 3.1 does not apply because of ASX Listing Rule 3.1A;

(d) (**complied with applicable laws**) Target and its wholly owned subsidiaries have complied in all material respects with all applicable laws and the ASX Listing Rules (disregarding any instances of non-compliance that individually and in aggregate, could not reasonably be expected to have a Material Adverse Effect on Target);

(e) (**no default**):

(i) neither Target nor any of its wholly owned subsidiaries is in default under any document or agreement binding on it or its assets; and

For personal use only

(ii) nothing has occurred which is or would, with the giving of notice or lapse of time or both, constitute an event of default, prepayment event or similar event under any such document or agreement;

(f) (**no litigation**) no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending or to its knowledge, threatened which, if adversely decided, could reasonably be expected to have a Material Adverse Effect on Target;

(g) (**schedule accurately details Target capital**) Part A of Schedule 2 accurately records the total number and details of Target Shares, securities convertible into Target Shares, notes or other securities issued by Target at the date of this document and Target is not under any actual or contingent obligation to issue, convert or cancel any securities other than as listed in Schedule 2;

(h) (**no dividends**) the Target has not declared (apart from a dividend that has been paid), and will not declare, any dividend other than the Agreed Dividends between the date of this document and the Effective Date and no dividends will be payable by the Target in respect of declared but unpaid dividends between execution of this document and the Effective Date other than the Agreed Dividends;

(i) (**no material acquisitions or disposals**) other than as disclosed in writing to Bidder on or before the DD Cut-off Date, Target is not party or, or in the process of negotiating entry into or any proposals in respect of, any agreement to dispose of assets of Target or acquire any assets or businesses with a value in excess of $50 million, excluding the disposal of any assets that are securities in an entity that is admitted to the Official List of ASX;

(j) (**no Encumbrances**) there are no material Encumbrances over all or any of its assets or revenues; and

(k) (**no other approvals necessary**) to Target's knowledge, no consents, approvals or other acts by a Government Agency are necessary to effect Implementation other than the Regulatory Approvals.

11.3 **Bidder representations and warranties**

Bidder represents and warrants to Target that:

(a) (**Bidder Due Diligence Information not false or misleading**) Bidder has not knowingly, negligently or recklessly:

(i) omitted to disclose information to Target, the disclosure of which might reasonably be expected to have resulted in Target not entering into this document, or entering into it on materially different terms;

(ii) omitted anything from the Bidder Due Diligence Information that would make any part of that information materially false or misleading;

(iii) included anything materially false or misleading in the Bidder Due Diligence Information; or

(iv) denied access to requested information with the intention of misleading Target;

(b) (**no false or misleading statement**) as at the date of dispatch of the Scheme Booklet, the Bidder Material will not contain any material statement which is false or misleading (including because of any material omission);

For personal use only

(c) (**complied with applicable laws**) Bidder and its wholly owned subsidiaries have complied with all applicable laws to the extent that any instance of non-compliance:

(i) individually and in aggregate, could not reasonably be expected to have a Material Adverse Effect on Bidder; or

(ii) does not involve a breach of Bidder's continuous disclosure obligations under the ASX Listing Rules;

(d) (**no default**):

(i) neither Bidder nor any of its wholly owned subsidiaries is in default under any document or agreement binding on it or its assets; and

(ii) nothing has occurred which is or would, with the giving of notice or lapse of time or both, constitute an event of default, prepayment event or similar event under any such document or agreement,

which individually or in aggregate could reasonably be expected to have a Material Adverse Effect on Bidder;

(e) (**no litigation**) no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending or to its knowledge, threatened which, if adversely decided, could reasonably be expected to have a Material Adverse Effect on Bidder;

(f) (**schedule accurately details Bidder capital**) Part B of Schedule 2 accurately records the total number and details of Bidder Shares, securities convertible into Bidder Shares, Bidder Performance Rights, notes or other securities issued by Bidder at the date of this document and Bidder is not under any actual or contingent obligation to issue, convert or cancel any securities other than as listed in Schedule 2;

(g) (**New Bidder Shares**) the New Bidder Shares will, upon issue:

(i) be duly issued and fully paid;

(ii) be free from any Security Interest or other encumbrance, other than as provided for in the constitution of Bidder; and

(iii) rank equally in all respects, including for future dividends, with all existing Bidder Shares; and

(h) (**no other approvals necessary**) to Bidder's knowledge, no consents, approvals or other acts by a Government Agency are necessary to effect Implementation other than those identified in the definition of Regulatory Approvals in clause 1.1.

11.4 **No representations made on economic or future matters**

Each party acknowledges and agrees that the other party makes no representation or warranty other than as set out in this clause 11 and, in particular, at no time has the other party made or given any representation or warranty in relation to the achievability of:

(a) any economic, fiscal or other interpretations or evaluations by it; or

(b) future matters, including future or forecast costs, prices, revenues or profits.

For personal use only

11.5 **Reliance on representations and warranties**

Each party acknowledges that the other party has executed this document and agreed to take part in the transactions that this document contemplates in reliance on the representations and warranties that are made in clauses 11.1, 11.2 and 11.3.

11.6 **When warranties are given**

Each representation and warranty given or made under clauses 11.1, 11.2 and 11.3 is given:

(a) as at the date of this document;

(b) as at 8.00 am on the Second Court Date; and

(c) at any other date at which the representation or warranty is expressed to be given under this document.

12. **INDEMNITIES**

12.1 **Indemnities by Target**

Target indemnifies Bidder and members of the Bidder Group and their respective directors, officers and employees against, and must pay on demand, any Loss, Claim or damages (including any right to common law damage) arising from or incurred in connection with a breach of the representations and warranties in clauses 11.1 and 11.2 to the fullest extent permitted by law.

12.2 **Indemnities by Bidder**

Bidder indemnifies Target and members of the Target Group and their respective directors, officers and employees against, and must pay on demand, any Loss, Claim or damages (including any right to common law damage) arising from or incurred in connection with a breach of the representations and warranties in clauses 11.1 and 11.3 to the fullest extent permitted by law.

13. **RELEASE**

Each party agrees with each other, and declares and covenants in favour of each party's officers and employees, as follows:

(a) Subject to applicable law (including section 199A of the Corporations Act) and clause 13(b), no officer or employee of a party, is liable for anything done or purported to be done in connection with Implementation.

(b) Paragraph (a) does not exclude an officer or employee from any liability which may arise from wilful misconduct or a grossly negligent act or omission on the part of the person.

(c) This clause operates as a deed poll in favour of and for the benefit of each officer and each employee of each party and may be relied on and enforced by each such officer and employee in accordance with its terms even though the officer or employee is not named as a party to this document.

For personal use only

14. **GST**

14.1 **GST pass on**

If GST is or will be payable on a supply made under or in connection with this document, to the extent that the consideration otherwise provided for that supply under this document is not stated to include an amount for GST on the supply:

(a) the consideration otherwise provided for that supply under this document is increased by the amount of that GST; and

(b) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided, within seven days of receiving a written demand from the supplier.

14.2 **Tax Invoice**

The right of the supplier to recover any amount in respect of GST under this document on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient except where the recipient is required to issue the tax invoice of adjustment note.

14.3 **Consideration exclusive of GST**

Any consideration otherwise provided for a supply or payment obligation in connection with this document is exclusive of GST unless stated otherwise.

14.4 **Adjustments**

If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the supplier, as appropriate, the supplier within 14 days of becoming aware of the adjustment event:

(a) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving seven days written notice; or

(b) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply to the extent that the supplier is entitled to a refund or credit from the Commissioner of Taxation; and

(c) must issue an adjustment note or tax invoice reflecting the adjustment event in relation to the supply to the recipient within 28 days of the adjustment event except where the recipient is required to issue an adjustment note or tax invoice in relation to the supply.

14.5 **Reimbursements**

Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party, or used as the basis for calculation of consideration for a supply, under this document must exclude the amount of GST referrable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referrable to the revenue.

For personal use only

For personal use only

15. NOTICES

15.1 How to give a notice

A notice, consent or other communication under this document is only effective if it is:

(a) in writing, legible and in English, signed by or on behalf of the person giving it;

(b) addressed to the person to whom it is to be given; and

(c) either:

(i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or

(ii) sent by email to the person's email address.

15.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

(a) if it is sent by mail:

(i) within Australia – three Business Days after posting; or

(ii) to or from a place outside Australia – seven Business Days after posting; and

(b) if it is sent by email, 10 minutes after the email is released from the sender's outbox, provided that the sender does not receive a notification notifying it that the email has not been delivered.

15.3 Address for notices

A person's address and email address are those set out below, or as the person notifies the sender:

Target

Address:	Level 5, 261 George Street, Sydney NSW 2000
Email:	brendan@milton.com.au
Attention:	Brendan O'Dea
Copy to:	Brent Delaney, Hamilton Locke
Address:	Level 42, Australia Square, 264 George Street, Sydney NSW 2000
Email:	brent.delaney@hamiltonlocke.com.au

Bidder

Address:	Level 14, 151 Clarence Street, Sydney NSW 2000
Email:	ilawrance@whsp.com.au
Attention:	Ida Lawrance – Company Secretary
Copy to:	Bruce Macdonald, Ashurst
Address:	Level 11, 5 Martin Place, Sydney NSW 2000
Email:	bruce.macdonald@ashurst.com

16. AMENDMENT AND ASSIGNMENT

16.1 Amendment

This document can only be amended or replaced by another document executed by the parties.

16.2 Assignment

A party may only assign, encumber, declare a trust over or otherwise deal with its rights under this document with the prior written consent of the other party.

17. GENERAL

17.1 Governing law

(a) This document and any dispute arising out of or in connection with the subject matter of this document is governed by the laws of New South Wales.

(b) Each party submits to the non-exclusive jurisdiction of the courts of that State, and courts of appeal from them, in respect of any proceedings arising out of or in connection with the subject matter of this document.

17.2 Liability for expenses

(a) Bidder must pay for all stamp duty payable on this document or any instrument or transaction contemplated in or necessary to give effect to this document.

(b) Subject to clause 17.2(a), each party must pay its own expenses incurred in negotiating, preparing, executing and registering this document.

17.3 Giving effect to this document

Each party must do anything within its power (including execute any document) that the other party may reasonably require to give full effect to this document.

17.4 Variation of rights

The exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this document. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this document.

17.5 No partnership or agency

Nothing in this document is to be treated as creating a partnership and, except as specifically provided in this document, no party may act as agent of or in any way bind another party to any obligation.

17.6 Operation of this document

(a) This document and the Confidentiality Deed contain the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and the Confidentiality Deed and has no further effect.

(b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.

For personal use only

(c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

(d) Other than as set out in clause 4.2(dd), nothing in this document gives a party a power (either directly or indirectly):

(i) to exercise, or control the exercise of, a right to vote attached to securities in an entity which is admitted to the Official List of ASX; or

(ii) to dispose of, or control the exercise of a power to dispose of, securities in an entity which is admitted to the Official List of ASX.

17.7 **Operation of indemnities**

(a) Each indemnity in this document is severable and constitutes a separate obligation of the party giving the indemnity.

(b) Each indemnity in this document survives the expiry or termination of this document.

(c) A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

(d) The indemnities and releases given under this document are given by each party to the other party for itself and as trustee for each of the indemnified persons covered by the relevant provision.

17.8 **Consents**

Where this document contemplates that a party may agree or consent to something (however it is described), unless this document expressly contemplates otherwise, the party may:

(a) agree or consent, or not agree or consent, in its sole and absolute discretion; and

(b) agree or consent subject to conditions.

17.9 **No merger**

No provisions of this document merge on Implementation.

17.10 **Inconsistency with other documents**

If this document is inconsistent with any other document or agreement between the parties, this document prevails to the extent of the inconsistency.

17.11 **Counterparts**

This document may be executed in counterparts.

For personal use only

For personal use only

SCHEDULE 1

Timetable

Step	Date	Action
1.	Tuesday, 22 June 2021	Sign Scheme Implementation Agreement and announce transaction
2.	Tuesday, 20 July 2021	Provide ASIC and Court with draft Scheme Booklet
3.	Tuesday, 27 July 2021	Provide ASX with draft Scheme Booklet
4.	Thursday, 5 August 2021	**First Court Date**
5.	Wednesday, 11 August 2021	Scheme Booklet registered by ASIC and lodged with ASX
6.	Wednesday, 11 August 2021	Dispatch Scheme Booklet
7.	Thursday, 2 September 2021	**Calculation Date** (assuming a Scheme Meeting date of Monday, 13 September 2021)
8.	Monday, 13 September 2021	Hold **Scheme Meeting** and announce results to ASX
9.	Monday, 20 September 2021	**Second Court Date** and announce to ASX
10.	Tuesday, 21 September 2021	**Effective Date** File Court order with ASIC and announce to ASX Target securities cease trading at close of trading on ASX
11.	Monday, 27 September 2021	**Record Date** for entitlements to Scheme Consideration
12.	Tuesday, 5 October 2021	**Implementation Date** Bidder issues Scheme Consideration
13.	Tuesday, 5 October 2021	Dispatch holding statements for New Bidder Shares
14.	Wednesday, 6 October 2021	Normal settlement trading of New Bidder Shares

For personal use only

SCHEDULE 2

Capital

Part A - Target's Capital

1. **TARGET SHARES**

Target has 674,230,364 fully paid ordinary shares on issue.

Part B - Bidder's Capital

2. **BIDDER SHARES**

Bidder has 239,395,320 fully paid ordinary shares on issue.

3. **BIDDER PERFORMANCE RIGHTS**

As at the date of this document, Bidder has on issue the following performance rights to subscribe for fully paid shares:

Class and description	Number of Bidder Performance Rights	Number of Bidder Shares to be issued on vesting and exercise
SOLAA 2016 unlisted performance rights	5,807	5,807
SOLAA 2018 unlisted performance rights	98,362	98,362
SOLAA 2019 unlisted performance rights	122,623	122,623
SOLAA 2020 unlisted performance rights	115,834	115,834
		342,626

4. **BIDDER CONVERTIBLE NOTES**

Bidder has 1,125 unsecured senior convertible notes due 29 January 2026.

SCHEDULE 3

Consideration Share Formula

$$NBS = NTS \times \left(\frac{\text{Target Adjusted NTA} \times 1.10}{\text{Target Shares on issue as at the Calculation Date}} \times \frac{1}{\text{Bidder Share price as at the Calculation Date}} \right)$$

Where:

a) **NBS** means the number of New Bidder Shares to be issued to the Scheme Participant (subject to the application of clause 2.5(b));

b) **NTS** means the number of Target Shares held by the Scheme Participant as at the Record Date;

c) **NTA** means the aggregate net tangible asset backing before providing for tax on unrealised capital gains of Target calculated in the same manner used for the purpose of Target's market announcements to ASX at the end of each calendar month of its net tangible asset backing per share. For the avoidance of doubt, deferred tax assets and deferred tax liabilities will be excluded from the calculation of NTA;

d) **Target Adjusted NTA** means the NTA of Target as at the Calculation Date less the aggregate amount in respect of all Target Shares of the Agreed Dividends which have been declared or are the subject of a decision to pay (whether or not all or part of the Agreed Dividends have been actually paid as at the Calculation Date);

e) **Bidder Share price as at the Calculation Date** means the lower of:
   i. the VWAP Price of Bidder Shares for the one month period ending on, and including, the Calculation Date; and
   ii. $31.00; and

f) **Calculation Date** means 7.00 pm on the Business Day that is seven Business Days before the date of the Scheme Meeting or such other date as Bidder and Target agree in writing.

For personal use only

EXECUTED as an agreement.

EXECUTED by **MILTON CORPORATION LIMITED** ABN 18 000 041 421 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

GRAEME CRAMPTON

Name

Signature of director/~~secretary~~

BRENDAN O'DEA

Name

EXECUTED by **WASHINGTON H. SOUL PATTINSON AND COMPANY LIMITED** ABN 49 000 002 728 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Name

Signature of director/secretary

Name

For personal use only

EXECUTED as an agreement.

EXECUTED by **MILTON CORPORATION LIMITED** ABN 18 000 041 421 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director	Signature of director/secretary
Name	Name

EXECUTED by **WASHINGTON H. SOUL PATTINSON AND COMPANY LIMITED** ABN 49 000 002 728 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director	Signature of director/secretary
TODD BARLOW	ROBERT WESTPHAL
Name	Name

For personal use only

ANNEXURE A

Scheme of Arrangement

For personal use only

ashurst

Scheme of Arrangement

Milton Corporation Limited
ABN 18 000 041 421

and

Scheme Participants

2021

For personal use only

CONTENTS

CLAUSE **PAGE**

1. DEFINITIONS AND INTERPRETATION 3

1.1 Definitions 3
1.2 General interpretation 5

2. PRELIMINARY 6

2.1 Target 6
2.2 Bidder 6
2.3 If Scheme becomes Effective 6
2.4 Scheme Implementation Agreement 6
2.5 Deed Poll 6

3. CONDITIONS PRECEDENT 6

3.1 Conditions precedent to Scheme 6
3.2 Conditions precedent and operation of clause 5 7
3.3 Certificate in relation to conditions precedent 7

4. SCHEME 7

4.1 Effective Date 7
4.2 End Date 7

5. IMPLEMENTATION OF SCHEME 7

5.1 Lodgement of Court orders with ASIC 7
5.2 Transfer and registration of Target Shares 8
5.3 Entitlement to Scheme Consideration 8
5.4 Title and rights in Target Shares 8
5.5 Scheme Participants' agreements 8
5.6 Warranty by Scheme Participants 8
5.7 Transfer free of Encumbrances 8
5.8 Nomination of acquirer Subsidiary 9

6. SCHEME CONSIDERATION 9

6.1 Consideration under the Scheme 9
6.2 Scheme Participants' agreements 9
6.3 Ineligible Overseas Shareholder Sale Facility 9
6.4 Shares to rank equally 10
6.5 Joint holders 10

7. DEALINGS IN SCHEME SHARES 10

7.1 Determination of Scheme Participants 10
7.2 Register 10
7.3 No disposals after Effective Date 11
7.4 Maintenance of Target Register 11
7.5 Effect of certificates and holding statements 11
7.6 Details of Scheme Participants 11
7.7 Quotation of Target Shares 11
7.8 Termination of quotation of Target Shares 11

8. POWER OF ATTORNEY 11

9. NOTICES 12

9.1 No deemed receipt 12
9.2 Accidental omission 12

10. GENERAL 12

For personal use only

10.1 Variations, alterations and conditions 12
10.2 Further action by Target 12
10.3 Authority and acknowledgement 12
10.4 No liability when acting in good faith 12
10.5 Enforcement of Deed Poll 12
10.6 Stamp duty 13
11. GOVERNING LAW 13
11.1 Governing law and jurisdiction 13
11.2 Serving documents 13

For personal use only

For personal use only

SCHEME OF ARRANGEMENT

Under section 411 of the Corporations Act

BETWEEN:

(1) **Milton Corporation Limited** ABN 18 000 041 421 formed in Australia whose registered office is at Level 5, 261 George Street, Sydney NSW (**Target**); and

(2) Each person registered as a holder of fully paid ordinary shares in Target as at the Record Date, other than Bidder or a member of Bidder Group (**Scheme Participants**).

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

ASIC means the Australian Securities & Investments Commission.

ASX means the Australian Securities Exchange or ASX Limited (ABN 98 008 624 691), as the context requires.

Bidder means Washington H. Soul Pattinson and Company Limited (ABN 49 000 002 728).

Bidder Group means Bidder and its subsidiaries.

Bidder Share means a fully paid ordinary share in Bidder.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, New South Wales.

Consideration Share Formula means the formula set out in Schedule 3 of the Scheme Implementation Agreement.

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

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

Deed Poll means the deed poll dated [***insert date***] executed by Bidder substantially in th e form of Annexure B of the Scheme Implementation Agreement or as otherwise agreed by Bidder and Target under which Bidder covenants in favour of each Scheme Participant to p erform its obligations under this Scheme.

Effective means the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or 12(2) of the PPSA or any agreement to create any of them or allow them to exist.

For personal use only

End Date means 17 December 2021, subject to any extension to that date made under clause 3.9 of the Scheme Implementation Agreement.

Implementation Date means the fifth Business Day following the Record Date or such other date as the parties agree in writing.

Ineligible Overseas Shareholder means a Target Shareholder:

(a) who is (or is acting on behalf of) a resident of a jurisdiction other than Australia or New Zealand and their respective external territories; or

(b) whose address shown in the Register is a place outside Australia or New Zealand and their respective external territories,

unless Bidder and Target jointly determine that it is lawful and not unduly onerous and not unduly impracticable to issue that Target Shareholder with Bidder Shares when the Scheme becomes Effective and it is lawful for that Target Shareholder to participate in the Scheme by the law of the relevant place outside Australia and New Zealand.

Ineligible Overseas Shareholder Sale Facility means the facility to be conducted in accordance with clause 6.3.

New Bidder Share means Bidder Shares to be issued under the Scheme as Scheme Consideration.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Record Date means 7.00 pm on the second Business Day following the Effective Date, or any other date (after the Effective Date) agreed by the parties to be the record date to determine entitlements to receive Scheme Consideration under the Scheme.

Register means the register of members of Target.

Registered Address means, in relation to a Target Shareholder, the address shown in the Register.

Scheme means this scheme of arrangement between Target and Scheme Participants under which all of the Scheme Shares will be transferred to Bidder under Part 5.1 of the Corporations Act as described in clause 6 of this Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Target and Bidder in accordance with clause 10 of this Scheme.

Scheme Consideration in relation to a Scheme Participant means the number of New Bidder Shares to be issued to the Scheme Participant, calculated by reference to the Consideration Share Formula.

Scheme Implementation Agreement means the scheme implementation agreement dated [***insert date***] between Target and Bidder under which, amongst other things, Target has agreed to propose this Scheme to Target Shareholders, and each of Bidder and Target has agreed to take certain steps to give effect to this Scheme.

Scheme Meeting means the meeting of Target Shareholders to be convened as ordered by the Court under section 411(1) of the Corporations Act, to consider the Scheme.

Scheme Participant means each Target Shareholder as at the Record Date (taking into account registration of all registrable transfers and transmission applications received at Target's share registry by the Record Date) other than Bidder or a member of the Bidder Group.

Scheme Share means a Target Share held by a Scheme Participant as at the Record Date and, for the avoidance of doubt, includes any Target Shares issued on or before the Record Date.

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

Share Scheme Transfer means, for each Scheme Participant, a duly completed and executed proper instrument of transfer of the Scheme Shares held by that Scheme Participant for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all Scheme Shares.

Target Share means each fully paid ordinary share in Target.

Target Shareholder means each person entered in the Register as a holder of Target Shares.

1.2 **General interpretation**

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

(a) the singular includes the plural and vice versa;

(b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);

(c) a reference to a document also includes any variation, replacement or novation of it;

(d) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;

(e) a reference to "person" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;

(f) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

(g) a reference to a time of day is a reference to Australian Eastern Standard Time;

(h) a reference to dollars, $ or A$ is a reference to the currency of Australia;

(i) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;

(j) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;

(k) a reference to any thing (including an amount) is a reference to the whole and each part of it;

(l) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;

For personal use only

(m) if a party must do something under this document on or by a given day and it is done after 5.00 pm on that day, it is taken to be done on the next day; and

(n) if the day on which a party must do something under this document is not a Business Day, the party must do it on the next Business Day.

2. PRELIMINARY

2.1 Target

Target is:

(a) a public company limited by shares;

(b) incorporated in Australia and registered in New South Wales; and

(c) admitted to the official list of the ASX and Target Shares are officially quoted on the stock market conducted by ASX.

As at [***insert date***], Target's issued securities comprise 674,230,364 Target Shares.

2.2 Bidder

Bidder is:

(a) a public company limited by shares; and

(b) incorporated in Australia and registered in New South Wales.

2.3 If Scheme becomes Effective

If this Scheme becomes Effective:

(a) in consideration of the transfer of each Scheme Share to Bidder, Target will procure Bidder to provide the Scheme Consideration to Target on behalf of each Scheme Participant in accordance with the terms of this Scheme;

(b) all Scheme Shares will be transferred to Bidder on the Implementation Date; and

(c) Target will enter the name of Bidder in the Register in respect of all Scheme Shares transferred to Bidder in accordance with the terms of this Scheme.

2.4 Scheme Implementation Agreement

Target and Bidder have agreed by executing the Scheme Implementation Agreement to implement the terms of this Scheme.

2.5 Deed Poll

Bidder has executed the Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform (or procure the performance of) its obligations as contemplated by this Scheme, including to provide the Scheme Consideration.

3. CONDITIONS PRECEDENT

3.1 Conditions precedent to Scheme

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

For personal use only

(a) as at 8.00 am on the Second Court Date, the Deed Poll not having been terminated;

(b) all of the conditions precedent in clause 3.2 of the Scheme Implementation Agreement having been satisfied or waived (other than the conditions precedent in item 3.2(c) and 3.2(d)) in accordance with the terms of the Scheme Implementation Agreement;

(c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Target and Bidder having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act; and

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

3.2 **Conditions precedent and operation of clause 5**

The satisfaction of each condition of clause 3.1 of this Scheme is a condition precedent to the operation of clause 5 of this Scheme.

3.3 **Certificate in relation to conditions precedent**

(a) Target and Bidder must provide to the Court on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent set out in clause 3.1 of this Scheme (other than the condition precedent in clause 3.1(c) of this Scheme) have been satisfied or waived as at 8.00 am on the Second Court Date.

(b) The certificate referred to in this clause 3.3 will constitute conclusive evidence of whether the conditions precedent referred to in clause 3.1 of this Scheme (other than the condition precedent in clause 3.1(c) of this Scheme) have been satisfied or waived as at 8.00 am on the Second Court Date.

4. **SCHEME**

4.1 **Effective Date**

Subject to clause 4.2, this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

4.2 **End Date**

This Scheme will lapse and be of no further force or effect if the Effective Date does not occur on or before the End Date.

5. **IMPLEMENTATION OF SCHEME**

5.1 **Lodgement of Court orders with ASIC**

If the conditions precedent set out in clause 3.1 of this Scheme (other than the condition precedent in clause 3.1(d) of this Scheme) are satisfied, Target must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 4.00 pm on the first Business Day after the day on which the Court approves this Scheme or such later time as Bidder and Target agree in writing.

For personal use only

5.2 **Transfer and registration of Target Shares**

On the Implementation Date, but subject to the provision of the Scheme Consideration for the Scheme Shares in accordance with clause 6 of this Scheme and Bidder having provided Target with written confirmation of the provision of the Scheme Consideration:

(a) 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 Participant (other than acts performed by Target as attorney and agent for Scheme Participants under clause 8 of this Scheme) by:

(i) Target delivering to Bidder a duly completed and executed Share Scheme Transfer executed on behalf of the Scheme Participants; and

(ii) Bidder duly executing the Share Scheme Transfer and delivering it to Target for registration; and

(b) as soon as practicable after receipt of the duly executed Share Scheme Transfer, Target must enter the name of Bidder in the Register in respect of all Scheme Shares transferred to Bidder in accordance with the terms of this Scheme.

5.3 **Entitlement to Scheme Consideration**

On the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clause 6 of this Scheme.

5.4 **Title and rights in Target Shares**

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 6 of this Scheme, on and from the Implementation Date, Bidder will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by Target of Bidder in the Register as the holder of the Scheme Shares.

5.5 **Scheme Participants' agreements**

Under this Scheme, each Scheme Participant agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, in accordance with the terms of this Scheme.

5.6 **Warranty by Scheme Participants**

Each Scheme Participant warrants to Bidder and is deemed to have authorised Target to warrant to Bidder as agent and attorney for the Scheme Participant by virtue of this clause 5.6, that:

(a) all their Scheme Shares (including any rights and entitlements attaching to those shares) transferred to Bidder under the Scheme will, as at the date of the transfer, be fully paid and free from all Encumbrances; and

(b) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those shares) to Bidder under the Scheme.

5.7 **Transfer free of Encumbrances**

To the extent permitted by law, all Target Shares (including any rights and entitlements attaching to those shares) which are transferred to Bidder under this Scheme will, at the

For personal use only

date of the transfer of them to Bidder, vest in Bidder free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind not referred to in this Scheme.

5.8 **Nomination of acquirer Subsidiary**

If Bidder nominates a Bidder Nominee (as defined in clause 2.2 of the Scheme Implementation Agreement) to acquire Target Shares under the Scheme references to the transfer of Scheme Shares to Bidder and the entering of Bidder into the Register, will be read as references to Bidder Nominee.

6. SCHEME CONSIDERATION

6.1 **Consideration under the Scheme**

On the Implementation Date, Target must procure that, in consideration for the transfer to Bidder of the Target Shares, Bidder issues to the Scheme Participants (or to the nominee in the case of Ineligible Overseas Shareholders, in accordance with clause 6.3) the Scheme Consideration in accordance with this clause 6.

6.2 **Scheme Participants' agreements**

Under this Scheme, each Scheme Participant (and the nominee on behalf of the Ineligible Overseas Shareholders) irrevocably:

(a) agrees to become a member of Bidder, to have their name entered in the Bidder register, accepts the Bidder Shares issued to them and agrees to be bound by the Bidder constitution;

(b) agrees and acknowledges that the issue of Bidder Shares in accordance with clause 6.1 constitutes satisfaction of all that person's entitlements under this Scheme;

(c) acknowledges that the Scheme binds Target and all of the Scheme Participants from time to time (including those who do not attend the Scheme Meeting and those who do not vote, or vote against this Scheme, at the Scheme Meeting); and

(d) consents to Target and Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to this Scheme and the transactions contemplated by it.

6.3 **Ineligible Overseas Shareholder Sale Facility**

Where a Scheme Participant is an Ineligible Overseas Shareholder, each Ineligible Overseas Shareholder authorises Bidder to:

(a) issue to a nominee appointed by Bidder any Bidder Shares to which an Ineligible Overseas Shareholder would otherwise be entitled to (**Relevant Bidder Shares**);

(b) procure, as soon as reasonably practicable after the Implementation Date, and in no event no more than 30 days after the Implementation Date, that the nominee:

(i) sells or procures the sale of all of the Relevant Bidder Shares issued to the nominee pursuant to clause 6.3(a), in the ordinary course of trading on the ASX at such price as the nominee determines in good faith; and

(ii) remits to Bidder the proceeds of sale (free of any applicable brokerage, stamp duty and other selling costs, taxes and charges, which are to be paid by Bidder); and

For personal use only

(c) promptly after the last sale of the Relevant Bidder Shares in accordance with clause 6.3(b)(i), pay to each Ineligible Overseas Shareholder an amount equal to the proportion of the net proceeds of sale received by Bidder under clause 6.3(b)(ii) to which that Ineligible Overseas Shareholder is entitled, in full satisfaction of their entitlement to the Relevant Bidder Shares.

Neither Target nor Bidder make any representation as to the amount of proceeds of sale to be received by Ineligible Overseas Shareholders under the Ineligible Overseas Shareholder Sale Facility. Both Target and Bidder expressly disclaim any fiduciary duty to the Ineligible Overseas Shareholders which may arise in connection with the Ineligible Overseas Shareholder Sale Facility.

6.4 **Shares to rank equally**

Bidder covenants in favour of Target (in its own right and on behalf of the Scheme Participants) that:

(a) the New Bidder Shares will rank equally in all respects with all existing Bidder Shares;

(b) it will do everything reasonably necessary to ensure that trading in the New Bidder Shares commences by the first Business Day after the Implementation Date; and

(c) on issue, each New Bidder Share will be fully paid and free from any Encumbrance.

6.5 **Joint holders**

In the case of Target Shares held in joint names:

(a) any Bidder Shares to be issued under this Scheme must be issued and registered in the names of the joint holders and entry in the Bidder register of members must take place in the same order as the holders' names appear in the Register; and

(b) any document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of Target, the holder whose name appears first in the Register as at the Record Date or to the joint holders.

7. DEALINGS IN SCHEME SHARES

7.1 **Determination of Scheme Participants**

To establish the identity of the Scheme Participants, dealings in Scheme Shares will only be recognised by Target if:

(a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Register as the holder of the relevant Scheme Shares on or before the Record Date; and

(b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received on or before the Record Date at the place where the Register is kept.

7.2 **Register**

Target must register any registrable transmission applications or transfers of the Scheme Shares received in accordance with clause 7.1(b) of this Scheme on or before the Record Date.

For personal use only

7.3 **No disposals after Effective Date**

(a) If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Effective Date in any way except as set out in this Scheme and any such disposal will be void and of no legal effect whatsoever.

(b) Target will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Shares received after the Record Date (except a transfer to Bidder pursuant to this Scheme and any subsequent transfer by Bidder or its successors in title).

7.4 **Maintenance of Target Register**

For the purpose of determining entitlements to the Scheme Consideration, Target will maintain the Register in accordance with the provisions of this clause 7.4 until the Scheme Consideration has been issued to the Scheme Participants and Bidder has been entered in the Register as the holder of all the Scheme Shares. The Register in this form will solely determine entitlements to the Scheme Consideration.

7.5 **Effect of certificates and holding statements**

Subject to provision of the Scheme Consideration and registration of the transfer to Bidder contemplated in clauses 5.2 and 7.4 of this Scheme, any statements of holding in respect of Scheme Shares will cease to have effect after the Record Date as documents of title in respect of those shares (other than statements of holding in favour of Bidder and its successors in title). After the Record Date, each entry current on the Register as at the Record Date (other than entries in respect of Bidder or its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration.

7.6 **Details of Scheme Participants**

Within three Business Days after the Record Date, Target will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant, as shown in the Register at the Record Date are available to Bidder in such form as Bidder reasonably requires.

7.7 **Quotation of Target Shares**

Suspension of trading on ASX in Target Shares will occur from the close of trading on ASX on the Effective Date.

7.8 **Termination of quotation of Target Shares**

After the Scheme has been fully implemented, Target will apply:

(a) for termination of the official quotation of Target Shares on ASX; and

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

8. **POWER OF ATTORNEY**

Each Scheme Participant, without the need for any further act by any Scheme Participant, irrevocably appoints Target and each of its directors and secretaries (jointly and each of them individually) as its attorney and agent for the purpose of:

(a) executing any document necessary or expedient to give effect to this Scheme including the Share Scheme Transfer;

For personal use only

(b) enforcing the Deed Poll against Bidder,

and Target accepts such appointment.

9. NOTICES

9.1 No deemed receipt

If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to 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 Target's registered office or at the office of the registrar of Target Shares.

9.2 Accidental omission

The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Target Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

10. GENERAL

10.1 Variations, alterations and conditions

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

10.2 Further action by Target

Target will execute all documents and do all things (on its own behalf and on behalf of each Scheme Participant) necessary or expedient to implement, and perform its obligations under, this Scheme.

10.3 Authority and acknowledgement

Each of the Scheme Participants:

(a) irrevocably consents to Target and Bidder doing all things necessary or expedient for or incidental to the implementation of this Scheme; and

(b) acknowledges that this Scheme binds Target and all Scheme Participants (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against the Scheme at that meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of Target.

10.4 No liability when acting in good faith

Without prejudice to the parties' rights under the Scheme Implementation Agreement, neither Target nor Bidder, nor any of their respective officers, will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

10.5 Enforcement of Deed Poll

Target undertakes in favour of each Scheme Participant to enforce the Deed Poll against Bidder on behalf of and as agent and attorney for the Scheme Participants.

For personal use only

10.6 **Stamp duty**

Bidder will pay all stamp duty (including any fines, penalties and interest) payable in connection with this Scheme.

11. **GOVERNING LAW**

11.1 **Governing law and jurisdiction**

(a) This document and any dispute arising out of or in connection with the subject matter of this document is governed by the laws of New South Wales.

(b) Each party submits to the non-exclusive jurisdiction of the courts of that state, and courts of appeal from them, in respect of any proceedings arising out of or in connection with the subject matter of this document.

11.2 **Serving documents**

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address set out below:

Target

Address:	Level 5, 261 George Street, Sydney NSW 2000
Email:	brendan@milton.com.au
Attention:	Brendan O'Dea
Copy to:	Brent Delaney, Hamilton Locke
Address:	Level 42, Australia Square, 264 George Street, Sydney NSW 2000
Email:	brent.delaney@hamiltonlocke.com.au

Bidder

Address:	Level 14, 151 Clarence Street, Sydney NSW 2000
Email:	ilawrance@whsp.com.au
Attention:	Ida Lawrance – Company Secretary
Copy to:	Bruce Macdonald, Ashurst
Address:	Level 11, 5 Martin Place, Sydney NSW 2000
Email:	bruce.macdonald@ashurst.com

For personal use only

ANNEXURE B

Deed Poll

For personal use only

ashurst

Deed Poll

Washington H. Soul Pattinson and Company Limited
ABN 49 000 002 728

in favour of

Scheme Participants

2021

For personal use only

CONTENTS

CLAUSE **PAGE**

1. DEFINITIONS AND INTERPRETATION 2

1.1 Definitions 2
1.2 General interpretation 2
1.3 Nature of deed poll 3

2. CONDITIONS PRECEDENT AND TERMINATION 3

2.1 Conditions precedent 3
2.2 Termination 3
2.3 Consequences of termination 3

3. PERFORMANCE OF OBLIGATIONS GENERALLY 3

4. SCHEME CONSIDERATION 3

4.1 Compliance with Scheme obligations generally 3
4.2 Provision of Scheme Consideration 3

5. REPRESENTATIONS AND WARRANTIES 4

6. CONTINUING OBLIGATIONS 4

7. COSTS 4

7.1 Costs 4
7.2 Stamp duty and registration fees 4

8. NOTICES 5

9. GENERAL 5

9.1 Variation 5
9.2 Partial exercising of rights 5
9.3 Remedies cumulative 5
9.4 Assignment or other dealings 5
9.5 Further steps 5

10. GOVERNING LAW AND JURISDICTION 5

10.1 Governing law and jurisdiction 5
10.2 Serving documents 5

Annexure

A Scheme

For personal use only

For personal use only

THIS DEED POLL is made on 2021

BY:

(1) **Washington H. Soul Pattinson and Company Limited** ABN 49 000 002 728 formed in Australia whose registered office is at Level 14, 151 Clarence Street, Sydney NSW 2000 (**Bidder**); in favour of

(2) Each person registered as a holder of fully paid ordinary shares in Milton Corporation Limited (ABN 18 000 041 421) (**Target**) as at the Record Date, other than Bidder or a member of Bidder Group (the **Scheme Participants**).

RECITALS:

(A) The directors of Target have resolved that Target should propose the Scheme.

(B) The effect of the Scheme will be that all Scheme Shares will be transferred to Bidder.

(C) Target and Bidder have entered into the Scheme Implementation Agreement.

(D) In the Scheme Implementation Agreement, Bidder agreed (amongst other things) to provide the Scheme Consideration to Target on behalf of the Scheme Participants, subject to the satisfaction of certain conditions.

(E) Bidder is entering into this deed poll for the purpose of covenanting in favour of Scheme Participants to perform its obligations in relation to the Scheme.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

Authorised Officer means a director or secretary of a party or any other person nominated by a party to act as an Authorised Officer for the purposes of this document.

Scheme Implementation Agreement means the scheme implementation agreement dated [***insert date***] between Target and Bidder under which, amongst other things, Target has agreed to propose the Scheme to Target Shareholders, and each of Bidder and Target has agreed to take certain steps to give effect to the Scheme.

Scheme means the proposed scheme of arrangement between Target and Scheme Participants under which all the Scheme Shares will be transferred to Bidder under Part 5.1 of the Corporations Act, substantially in the form of Annexure A to this deed poll, or as otherwise agreed by Bidder and Target, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act, to the extent they are approved in writing by Target and Bidder in accordance with clause 10 of the Scheme.

All other words and phrases used in this document have the same meaning as given to them in the Scheme or the Scheme Implementation Agreement, as applicable.

1.2 General interpretation

Clause 1.2 of the Scheme applies to this document.

1.3 **Nature of deed poll**

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

2. CONDITIONS PRECEDENT AND TERMINATION

2.1 **Conditions precedent**

Bidder's obligations under clause 4 are subject to the Scheme becoming Effective.

2.2 **Termination**

Bidder's obligations under this document will automatically terminate and the terms of this document will be of no further force or effect if:

(a) the Scheme has not become Effective on or before the End Date; or

(b) the Scheme Implementation Agreement is terminated in accordance with its terms.

2.3 **Consequences of termination**

If this document is terminated under clause 2.2, then, in addition and without prejudice to any other rights, powers or remedies available to Scheme Participants:

(a) Bidder is released from its obligations to further perform this document except those obligations contained in clause 7.2 and any other obligations which by their nature survive termination; and

(b) each Scheme Participant retains the rights, powers or remedies they have against Bidder in respect of any breach of this document which occurs before it is terminated.

3. PERFORMANCE OF OBLIGATIONS GENERALLY

Bidder will comply with its obligations under the Scheme Implementation Agreement and do all acts and things necessary or desirable on its part to give full effect to the Scheme.

4. SCHEME CONSIDERATION

4.1 **Compliance with Scheme obligations generally**

Subject to clause 2, Bidder covenants in favour of Scheme Participants to observe and perform the steps attributed to it under, and otherwise to comply with, the Scheme as if it were named as a party to the Scheme and do all acts and things necessary to give effect to the Scheme.

4.2 **Provision of Scheme Consideration**

(a) Subject to clause 2, Bidder will on the Implementation Date, issue to each Scheme Participant (or to a nominee appointed by Bidder in respect of Ineligible Overseas Shareholders) the Scheme Consideration in accordance with clause 6 of the Scheme.

(b) The Bidder Shares to be issued under the Scheme will be validly issued and fully paid up and will rank equally in all respect with all other Bidder Shares on issue as at the Implementation Date.

For personal use only

For personal use only

5. REPRESENTATIONS AND WARRANTIES

Bidder represents and warrants that:

(a) (**status**) it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;

(b) (**power**) it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;

(c) (**no contravention**) the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:

(i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;

(ii) any law binding on or applicable to it or its assets; or

(iii) any Encumbrance or document binding on or applicable to it;

(d) (**authorisations**) it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;

(e) (**validity of obligations**) its obligations under this document are valid and binding and are enforceable against it in accordance with its terms; and

(f) (**solvency**) is not insolvent (within the meaning given in section 95A(2) of the Corporations Act).

6. CONTINUING OBLIGATIONS

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

(a) Bidder has fully performed its obligations under this document; or

(b) the earlier termination of this document under clause 2.2.

7. COSTS

7.1 Costs

If the Scheme becomes Effective, Bidder agrees to pay all costs in respect of the Scheme (including, in connection with the transfer of Target Shares to Bidder in accordance with the terms of the Scheme) except for amounts covered by clause 7.2.

7.2 Stamp duty and registration fees

Bidder:

(a) agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document or any other transaction contemplated by this document (including any fees, fines, penalties and interest in connection with any of these amounts); and

(b) indemnifies each Scheme Participant against, and agrees to reimburse and compensate it, for any liability in respect of stamp duty under clause 7.2(a).

For personal use only

8. NOTICES

Notices and other communications in connection with this document must be in writing. They must be sent to the address or email address and marked for the attention of the person to whom the notice is given. If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

9. GENERAL

9.1 Variation

A provision of this document or any right created under it may not be varied, altered or otherwise amended unless:

(a) the variation is agreed to by Target and Bidder in writing; and

(b) the Court indicates that the variation, alteration or amendment would not itself preclude approval of the Scheme,

in which event Bidder must enter into a further deed poll in favour of the Scheme Participants giving effect to the variation, alteration or amendment.

9.2 Partial exercising of rights

Unless this document expressly states otherwise, if Bidder does not exercise a right, power or remedy in connection with this document fully or at a given time, it may still exercise it later.

9.3 Remedies cumulative

The rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

9.4 Assignment or other dealings

The Bidder and each Scheme Participant may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of Bidder and Target.

9.5 Further steps

Bidder agrees to do anything including executing all documents and do all things (on its own behalf or on behalf of each Scheme Participant) necessary or expedient to give full effect to this document and the transactions contemplated by it.

10. GOVERNING LAW AND JURISDICTION

10.1 Governing law and jurisdiction

This document and any dispute arising out of or in connection with the subject matter of this document is governed by the laws of New South Wales. Bidder submits to the non-exclusive jurisdiction of the courts of that State, and courts of appeal from them, in respect of any proceedings arising out of or in connection with the subject matter of this document.

10.2 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on Bidder by being delivered or left at Bidder's address set out in below:

Target

Address:	Level 5, 261 George Street, Sydney NSW 2000
Email:	brendan@milton.com.au
Attention:	Brendan O'Dea
Copy to:	Brent Delaney, Hamilton Locke
Address:	Level 42, Australia Square, 264 George Street, Sydney NSW 2000
Email:	brent.delaney@hamiltonlocke.com.au

Bidder

Address:	Level 14, 151 Clarence Street, Sydney NSW 2000
Email:	ilawrance@whsp.com.au
Attention:	Ida Lawrance – Company Secretary
Copy to:	Bruce Macdonald, Ashurst
Address:	Level 11, 5 Martin Place, Sydney NSW 2000
Email:	bruce.macdonald@ashurst.com

For personal use only

EXECUTED as a deed poll.

EXECUTED by **WASHINGTON H. SOUL PATTINSON AND COMPANY LIMITED** ABN 49 000 002 728 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director	Signature of director/secretary
Name	Name

For personal use only

ANNEXURE A

Scheme

For personal use only