

ASX Announcement

2 December 2021

Aussie Broadband proposes to acquire Over the Wire in a recommended transaction

Highlights

- ABB has entered into a Scheme Implementation Deed with OTW under which it is proposed that ABB will acquire 100% of the share capital in OTW by way of a recommended scheme of arrangement.
- Scheme Consideration with an implied value of \$5.75 per OTW share which comprises \$5.75 cash, or 1.1500 ABB shares¹ or a combination of cash and ABB shares.
- The implied offer value of \$5.75 per OTW share represents:
 - total equity value of \$344.0 million and an enterprise value of \$390.4 million².
 - an acquisition multiple of 11.8x EV / FY22E EBITDA² based on OTW's FY22 EBITDA guidance of \$33.0 million.
- The combination is anticipated to deliver annual cost synergies of between \$8-12 million within 3 years and ongoing replacement capital expenditure savings, in addition to significant strategic and other benefits.
- The transaction is expected to be EPS accretive on a pre and post synergy pro-forma statutory FY21 basis.
- OTW directors unanimously recommend that OTW shareholders vote in favour of the Scheme and will vote their interests in favour of the Scheme, subject to an independent expert concluding that the Scheme is in the best interests of OTW shareholders and in the absence of a superior proposal.

Aussie Broadband Limited (**ABB**) is pleased to announce that it has entered into a Scheme Implementation Deed with Over the Wire Limited (**OTW**) under which ABB has agreed to acquire all of the issued shares in OTW by way of a scheme of arrangement (**Scheme or Proposal**).

The Scheme is unanimously recommended by the Board of OTW and each OTW director intends to cause any OTW shares which they own or control to be voted in favour of the Scheme, subject to an independent expert concluding that the Scheme is in the best interests of OTW shareholders and in the absence of a superior proposal.

Founded in 2005, Over the Wire is a technology company and integrated platform provider, with offices across Australia, with a stated purpose to simplify technology to empower business.

ABB co-founder and Managing Director, Phillip Britt, said the company is thrilled to reach this milestone. "We believe Over the Wire is a great match to complement our current range of services. It's a high quality business in a large and growing segment of the Australian telecommunications market.

"After several weeks of getting to know the company's senior team, we very much look forward to welcoming OTW to the Aussie Broadband family".

¹ Assumes \$5.00 per ABB share.

² Enterprise value calculated on an implied fully diluted market capitalisation (Equity Value) of approximately \$344.0m (59,820,564 OTW fully diluted shares outstanding (inclusive of vested performance rights, unvested performance rights, 2021 employee share option plan grants and FY22 performance rights grants) multiplied by \$5.75 per OTW share) plus net debt of \$46.4m as at 31 June 21 (inclusive of lease liabilities and deferred consideration).

OTW Chair, Stephe Wilks said “We admire the Aussie Broadband business’ strong ambitions and proven execution, and we are excited about the compelling customer propositions that OTW and ABB can bring to market together”.

Having co-founded the business in 2005, Michael Omeros, Managing Director and Group CEO of OTW said “This is an exciting next step in the OTW journey, and I am very proud of what the OTW team has built over the years which is reflected in this compelling proposal for the company”.

Overview of the Scheme

Under the terms of the Scheme, OTW shareholders will have the option to receive consideration representing an implied value of \$5.75 per OTW share (**Scheme Consideration**) in one of four ways:

- 80% cash consideration and 20% scrip consideration (**Default Option**) equating to \$4.60 cash and 0.2300 ABB shares for each OTW share;
- 100% cash consideration equating to \$5.75 cash per OTW share (**Cash Consideration**);
- 100% scrip consideration equating to 1.1500 ABB shares for each OTW share (**Scrip Consideration**); or
- at least 1% but less than 100% scrip consideration with the balance payable as cash consideration (**Mix and Match Consideration**)

OTW shareholders who do not make an election or who make an invalid election, will receive the Default Option.

The value of ABB shares for the purposes of determining the number of ABB shares to be issued under the Default Option, Scrip Consideration and Mix and Match Consideration options above has been agreed at \$5.00 per ABB share.

The Scheme Consideration is subject to the maximum total cash consideration payable by ABB not exceeding approximately \$275.2 million (**Maximum Cash Consideration**) representing 80% of the total Scheme Consideration and the maximum total ABB scrip consideration not exceeding approximately 39.6 million ABB shares (**Maximum Scrip Consideration**) representing 57.5% of the total Scheme Consideration.

If OTW shareholders elect (or are deemed to have elected) to receive Scheme Consideration comprising aggregate total cash consideration that exceeds the Maximum Cash Consideration, then each OTW shareholder that has elected to receive cash (or is deemed to have elected to receive cash) will have their cash consideration scaled back and receive approximately 0.0020 ABB shares for each 1 cent of cash scaled back.³

Alternatively, if OTW shareholders elect (or are deemed to have elected) to receive Scheme Consideration comprising aggregate total scrip consideration that exceeds the Maximum Scrip Consideration, then each OTW shareholder who elects to receive scrip (or is deemed to have elected to receive scrip) will have their scrip consideration scaled back and receive approximately 1 cent of cash for each 0.0020 ABB shares scaled back.

Strategic rationale

The transaction provides the ability to integrate the OTW and ABB networks to achieve operational and financial scale, efficacy, improved margins and is EPS accretive on a pre and post synergy pro-forma statutory FY21 basis.

For ABB shareholders, the acquisition of OTW is expected to provide the following benefits:

- exposure to a significantly larger and diversified telecommunications company, with a strong combined growth profile and customer mix, including approximately 410,000 residential customers and 28,000 business customers of ABB with approximately 16,000 OTW business, enterprise and government customers;
- accelerates product and skills capability in the Aussie Broadband business segment with the addition of recurring and contracted revenue derived from the OTW customer base;

³ Excluding Foreign Scheme Shareholders as defined in the Scheme Implementation Deed.

- the ability to share in the value creation from synergies as a result of the combination of two highly complementary business, noting that the transaction is expected to deliver annual cost synergies of \$8 - \$12 million within 3 years and meaningful maintenance capital expenditure savings; and
- enhanced trading liquidity through a broadened shareholder base, and potential for enhanced analyst coverage and inclusion in the S&P/ASX200 index.

Governance

Michael Omeros, current Managing Director and Group CEO of OTW, will join the ABB Board upon completion of the transaction, replacing John Reisinger who will step down as a director at the completion of transaction, but will remain as a senior executive with ABB.

The combined group will benefit from a highly experienced Board and a senior executive team that draws on the breadth of both companies' skills and expertise.

Scheme Implementation Agreement

OTW and ABB have entered into the attached Scheme Implementation Deed which contains customary terms and conditions on which OTW and ABB will implement the transaction. The conditions to the Scheme include OTW shareholder approval, Court approval, the independent expert concluding the Scheme is in the best interests of OTW shareholders, no material adverse change affecting OTW, no prescribed occurrence in relation to either OTW or ABB, OTW maintaining certain key customers and management and other customary conditions.

The Scheme Implementation Deed may be terminated in certain circumstances, including by OTW if ABB's share price falls by 17.5%⁴ or more after the date of the Scheme Implementation Deed relative to movements in the S&P/ASX 200 index and subject to minimum volumes of ABB shares being traded.

The Scheme Implementation Deed also includes customary exclusivity arrangements in favour of ABB (including "no shop", "no talk" and "no due diligence" restrictions and notification provisions, with the "no talk" and "no due diligence" restrictions subject to a fiduciary out where required), and certain matching rights for ABB.

It is anticipated that the Scheme will be completed in the first quarter of calendar year 2022. Please refer to the attached Scheme implementation Deed for further information.

Scheme Consideration Funding

The acquisition will be funded partly with the issue of new ABB shares as described above, with the balance funded by existing cash, new debt facilities totalling \$175.0 million, inclusive of a new 3 year senior debt facility, bridging facility (if required and dependent on OTW aggregate scrip elections) and a new working capital facility.

Advisers

ABB is being advised by Findex Corporate Finance as financial adviser and Gadens as legal counsel.

OTW is being advised by Macquarie Capital (Australia) Limited as exclusive financial adviser and McCullough Robertson as legal counsel.

ENDS

Authorised for release by the Aussie Broadband Board.

⁴ Relative to an ABB share price of \$5.00.

Media enquiries contact Katrina Salhioui on 0448 110 962

Registry queries contact Link Market Services on 1300 554 474

For feedback and enquiries email investors@team.aussiebroadband.com.au

About Aussie Broadband Limited:

Aussie Broadband is an Australian owned and operated telecommunications company that was formed in 2008 and is based in Morwell Victoria, Australia.

The company's main focus is nbn™ (NBN) subscription plans and bundles to residential homes, small businesses, not-for-profits, corporate/enterprise and managed service providers.

As a licensed carrier, the company provides these services through a wholesale agreement with NBN Co, a mix of leased backhaul infrastructure from third parties and its own network equipment.

The company also offers a range of other telecommunications services including VOIP, mobile plans and handsets, entertainment bundles through its partnership with Fetch TV and connections through its own fibre, the Opticomm network and its white label platform.

For personal use only

For personal use only

Scheme Implementation Deed

Aussie Broadband Limited

Over The Wire Holdings Limited

gadens

Level 13, Collins Arch
447 Collins Street
Melbourne VIC 3000
Australia

T +61 3 9252 2555
F +61 3 9252 2500

Ref JDR:SOW:22105940

Contents

1. Definitions and interpretation	1
2. Agreement to propose Scheme	14
3. Conditions	14
4. Scheme	19
5. Treatment of Performance Rights	20
6. Steps for Implementation	21
7. Court proceedings	29
8. Target Board recommendation	29
9. Conduct before the Implementation Date	31
10. Actions on and following the Implementation Date	37
11. Exclusivity	38
12. Break Fee	42
13. Modifications required to Break Fee or exclusivity	44
14. Representations and warranties	45
15. Releases	53
16. Termination	54
17. Public announcements	56
18. Confidentiality	57
19. GST	57
20. Withholding tax	58
21. Costs	58
22. Enforcement of rights conferred on non-parties	59
23. Notices	59
24. General provisions	60
Schedule 1 Timetable	63
Annexure A Scheme of Arrangement	66
Annexure B Deed Poll	67

Scheme Implementation Deed

Parties

1. **Aussie Broadband Limited** ACN 132 090 192 of 3 Electra Avenue, Morwell, Victoria (**Bidder**)
2. **Over The Wire Holdings Limited** ACN 151 872 730 of Level 24, 100 Creek Street, Brisbane, Queensland (**Target**)

Background

- A. The Bidder and the Target have agreed that the Target will propose a members' scheme of arrangement under Part 5.1 of the Corporations Act pursuant to which the Bidder will acquire all of the Target Shares.
- B. The parties have agreed to implement the Scheme on the terms of this Deed.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Deed, unless the context requires otherwise:

Accounting Standards means:

- (a) the requirements of the Corporations Act about the preparation and contents of financial reports; and
- (b) the accounting standards approved under the Corporations Act, being the Australian Accounting Standards and any authoritative interpretations issued by the Australian Accounting Standards Board;

Announcement means an announcement by the Target in the form agreed between the parties prior to signing this Deed;

ASIC means the Australian Securities and Investment Commission;

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

Associate has the meaning given to that term in section 12 of the Corporations Act;

ASX means ASX Limited ACN 008 624 691 or the market operated by it, as the context requires;

ASX Listing Rules means the official listing rules of ASX, modified to the extent of any express written waiver of ASX;

ATO means the Australian Taxation Office;

Bidder Disclosure Materials means:

- (a) the written responses to the due diligence questionnaire provided by or on behalf of the Bidder to the Target and its Representatives prior to the date of this Deed; and
- (b) any other documents, information, responses or disclosures agreed in writing by the parties to comprise the Bidder Disclosure Materials;

Bidder Constitution means the constitution of the Bidder;

Bidder Group means the Bidder and each of its Related Bodies Corporate and a reference to a Bidder Group Member or a member of the Bidder Group is to the Bidder or any of its Related Bodies Corporate;

Bidder Indemnified Parties means the Bidder, its Related Bodies Corporate and their directors, officers and employees;

Bidder Information means all information (including any updates to such information) regarding the Bidder Group or the Scheme Consideration that is provided by or on behalf of the Bidder Group to the Target, its Representatives or the Independent Expert to enable the Scheme Booklet to be prepared and completed in accordance with this Deed and required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or ASIC Regulatory Guide 60, but excluding information about the Target Group (except to the extent it relates to any statement of intention relating to the Target Group following the Effective Date);

Bidder Options means options to acquire Bidder Shares;

Bidder Representations and Warranties means the representations and warranties of the Bidder as set out in clause 14.4;

Bidder Prescribed Occurrence means any of the following events:

- (a) the Bidder converting all or any of the Bidder Shares into a larger or smaller number of Bidder Shares;
- (b) the Bidder or another member of the Bidder Group resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares (including the Bidder Shares);
- (c) the Bidder or another member of the Bidder Group:
 - (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) a member of the Bidder Group disposing, or agreeing to dispose, of the whole, or a substantial or material part, of the Bidder Group's business, assets or property;
- (e) a member of the Bidder Group issuing or agreeing to issue shares or securities convertible into shares or other instruments or rights that are convertible or exercisable into shares, other than as part of employee incentive plan or the Bidder's Non-Executive Director's Fee Sacrifice Plan;
- (f) the Bidder Shares cease to be quoted on ASX;
- (g) an Insolvency Event occurring in relation to a member of the Bidder Group; or

(h) a member of the Bidder Group resolves to be wound up,

but excludes any matter:

- (i) required to be done, or permitted under this Deed or the Scheme;
- (j) Fairly Disclosed in the Bidder Disclosure Materials;
- (k) undertaken with the written consent of the Target; or
- (l) Fairly Disclosed in an announcement made by the Bidder to ASX or a document lodged with ASIC in the 3 years prior to the date of this Deed;

Bidder Share Rights means rights to acquire Bidder Shares granted under the Bidder's Non-Executive Director's Fee Sacrifice Plan;

Bidder Shares means fully paid ordinary in the capital of the Bidder;

Bidder's Relevant VWAP has the meaning given to that term in clause 16.2;

Bonus Pool means the cash allocation of \$500,000 from which the Target may pay retention bonuses to existing Target employees, as advised to the Bidder prior to the date of this Deed and contained in document 2.13.02 in the Data Room, and otherwise with the prior agreement of the Bidder;

Break Fee means \$3,439,682;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Brisbane, Australia or Melbourne, Australia;

Cash means cash (whether in hand or credited to any account of the Target or any member of the Target Group) with any financial institution or organisation or company deposits and cash equivalents of the Target or any member of the Target Group, on a consolidated basis including cheques received by, honoured and made payable to the Target or any member of the Target Group prior to the implementation of the Scheme, but excluding:

- (a) any cash and cash equivalents held by the Target or any member of the Target Group in escrow or trust for any other person; and
- (b) restricted cash, that is cash reserved for a specific purpose and therefore not readily available for immediate or general business (including, but not limited to, restricted cash for bank guarantees, funds deposited with vendors/suppliers, utility companies, and cash deposited under protest);

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise;

Competing Transaction means any offer or proposal which, if entered into or completed in accordance with its terms, would result in any person (other than the Bidder or its Associates or Related Bodies Corporate):

- (a) acquiring directly or indirectly an interest (including an economic interest by way of an equity swap, contract for difference or similar transaction or arrangement) or Relevant Interest in 20% or more of the shares in the capital of the Target (other than as custodian, nominee or bare trustee);

- (b) acquiring directly or indirectly (including by way of joint venture, alliance or dual listed company structure) any interest in all or a substantial part of the business conducted by, or assets of, the Target;
- (c) acquiring Control of, or merging or amalgamating with, the Target or any of its Subsidiaries, including by way of takeover bid, scheme of arrangement, dual listed company structure, or capital reduction; or
- (d) implementing any reorganisation of capital, dissolution or any proposal which affects, prejudices or jeopardises, or might reasonably be expected to affect, prejudice or jeopardise, the completion of the Transaction (except as previously announced prior to the date of this Deed);

Condition means each of the conditions precedent set out in clause 3.1;

Competitively Sensitive Information means information that could potentially influence or affect competitive decision-making by the Bidder Group, and be used by the Bidder Group to obtain a competitive advantage, in relation to current or potential areas of competitive overlap with the Target Group, which Competitively Sensitive Information includes:

- (a) in relation to products and services supplied by the parties in competition with each other:
- (i) pricing information, including current or future prices, pricing policies, strategies or formulae, detailed margins and current volumes;
 - (ii) information concerning the current or future strategies of the Target Group, including any strategic plans, financial arrangements, strategies regarding customers and new contracts that reflect the Target Group's competitive position;
 - (iii) information regarding underlying details and status of negotiations with present or potential customers; and
 - (iv) information regarding an intention to bid or not bid for specific customers; and
- (b) in relation to products and services acquired by the parties in competition with each other:
- (i) detailed current or forward-looking information concerning the price of services or products to be supplied to the Target Group, to the extent it is not publicly available;
 - (ii) information regarding upcoming negotiations with potential suppliers in relation to the supply of services or products concerning price or price related terms; and
 - (iii) detailed current and potential supplier details and terms;

Confidentiality Agreement means the confidentiality agreement between the Target and the Bidder dated on or around 22 May 2021;

Control has the meaning given to that term in section 50AA of the Corporations Act;

Controller means, in relation to a person:

- (a) a receiver, receiver and manager, administrator or liquidator (whether provisional or otherwise) of that person or that person's property); or

- (b) anyone else who (whether or not as agent for the person) is in possession, or has control, of that person's property to enforce an Encumbrance;

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

Corporations Regulations means the *Corporations Regulations 2001* (Cth);

Court means the Federal Court of Australia (Queensland registry), or such other court of competent jurisdiction under the Corporations Act agreed in writing by the Target and the Bidder;

Court Documents means the documents required for the purposes of a Court Hearing, including (as applicable) originating process, affidavits, submissions and draft minutes of Court orders;

Court Hearing means the First Court Hearing or the Second Court Hearing (as applicable), and Court Hearings means both of them;

Cut-Off Time means 8.00am on the Second Court Date;

Data Room means the electronic data room operated by or on behalf of the Target and hosted by Ansarada;

Deed means this scheme implementation deed including the recitals, any schedules and any annexures;

Deed Poll means the Deed Poll to be executed by the Bidder in favour of the Scheme Participants substantially in the form set out in Annexure B or such other form as may be agreed in writing between the parties;

Digital Sense means Digital Sense Hosting Pty Ltd;

Digital Sense Acquisition means the Target's acquisition of all of the issued share capital of Digital Sense;

Digital Sense Deferred Consideration Liability means:

- (a) any unpaid amounts including earn outs or conditional payments which relate to the Digital Sense Acquisition; and
- (b) any amount being held in escrow in connection with the Digital Sense Acquisition;

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

Effective when used in relation to the Scheme, means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the Scheme Order, but in any event at no time before an office copy of the Scheme Order is lodged with ASIC;

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

Election has the meaning given to that term in the Scheme;

Election Form has the meaning given to that term in the Scheme;

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 the date which is 6 months after the date of this Deed or another date as is agreed by the Target and the Bidder in writing;

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

- (a) the End Date; and
- (b) the date this Deed is terminated in accordance with its terms;

Exempt Plan Grant means equity grants which may be paid by the Target to eligible employees, consultants and contractors of the Target pursuant to the Employee Share Plan, as advised to the Bidder prior to the date of this Deed and contained in document 2.13.03 in the Data Room, and otherwise with the prior agreement of the Bidder;

Fairly Disclosed in relation to a matter, event or circumstance, that information about the matter, event or circumstance is disclosed to a sufficient extent and in sufficient detail to enable a reasonable person experienced in the industries in which the Target Group and the Bidder Group operate or transactions similar to the Transaction to identify the nature and scope of the relevant matter, event or circumstance;

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

- (a) bill, bond, debenture, note or similar instrument;
- (b) acceptance, endorsement or discounting arrangement;
- (c) guarantee or letter of credit or other instrument issued by a bank or financial institution in respect of financial liabilities;
- (d) bill of exchange, cheque or other negotiable instrument;
- (e) finance or capital lease or hire purchase contract;
- (f) swap, option, hedge, forward, futures or similar transaction;
- (g) redeemable share or security;
- (h) obligation to deliver assets or services paid for in advance by a financier, or any guarantee of the obligations of another person with respect to the foregoing;
- (i) all recourse and non-recourse liabilities and other liabilities (whether conditional or unconditional, present or future) arising from any transactions related to the assignment or securitisation of receivables for financing purposes to any third party, including all factoring agreements and similar agreements executed for the purpose of obtaining financing and including any amount raised pursuant to such agreements but which, in accordance with Accounting Standards, have not otherwise been recognised on the balance sheet as a liability;
- (j) all interest and non-interest bearing loans, advances or other financing liabilities or obligations, including overdrafts and any other liabilities in the nature of borrowed money (whether secured or unsecured); and
- (k) all costs and fees payable by the Target Group in relation to the repayment of the indebtedness referred to in paragraphs (a) to (j) above, including break funding or swap unwinding fees or costs;

First Court Date means the first day on which an application made to the Court for an order under section 411(1) of the Corporations Act convening the Scheme Meeting is heard (or if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard), with such hearing being the First Court Hearing;

Foreign Scheme Shareholders means a Scheme Participant whose address in the Target Share Register as at the Record Date is a place outside Australia or New Zealand unless the Target and the Bidder agree in writing that it is lawful and not unduly onerous or impracticable to issue Bidder Shares to the Scheme Participant if the Scheme Participant so elects under the Scheme;

Government Agency means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

GST has the meaning given in the GST Law;

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

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

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

Implementation Date means the date which is 5 Business Days after the Record Date or such other date after the Record Date agreed in writing between the Target and the Bidder;

Independent Expert means an independent expert in respect of the Scheme appointed by the Target;

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 interests of Target Shareholders;

Insolvency Event means, in relation to a party, any one or more of the following events or circumstances:

- (a) being in liquidation or provisional liquidation or under administration;
- (b) having a Controller or analogous person appointed to it or any of its property;
- (c) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) being unable to pay its debts as and when they become due and payable, being insolvent within the meaning of section 95A of the Corporations Act or being otherwise insolvent;
- (e) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
- (f) entering into, or resolving to enter into a scheme of arrangement, a deed of company arrangement or other compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (g) seeking or obtaining protection from its creditors under any statute or any other law;

- (h) any analogous event or circumstance under the laws of any jurisdiction or which has a substantially similar effect; or
- (i) taking any step or being the subject of any action that is reasonably likely to result in any of the above occurring,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other party;

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

Law means in respect of a party:

- (a) any law or any requirement under law, including at common law, in equity, under any statute, regulation, or by law, any condition of any Material Authorisation (including any fiduciary duty);
- (b) any binding decision or directive, or published policies, standards or guidelines, of any Regulatory Authority; and
- (c) any binding code of practice,

in any jurisdiction that is applicable to it;

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

LTI Grant means cash and equity grants which may be paid by the Target to eligible employees, consultants and contractors of the Target pursuant to its Long-term Incentive Plan, as advised to the Bidder prior to the date of this Deed and contained in document 2.13.04 in the Data Room, and otherwise with the prior agreement of the Bidder.

Material Authorisations means each licence, authorisation, approval or permit held or required to be held by a Target Group Member, the failure to hold, have the benefit, cessation or material alteration of which would be reasonably likely to have a material adverse effect on the operational or financial performance of the relevant Target Group Member;

Material Contract means the contracts relating to customers contained in folder 7.01 in the Data Room;

Net Debt means all Financial Indebtedness less Cash;

Performance Right means a right granted under the Performance Rights Plan to acquire by way of issue a Target Share subject to the terms of such plan;

Performance Rights Plan means the Target's Performance Rights Plan Rules;

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

PPS Register means the register established under section 147 of the PPSA;

Recommendation has the meaning given to that term in clause 8.1;

Record Date means 5.00pm on the date that is 2 Business Days after the Effective Date, or such other date as may be agreed in writing between the Bidder and the Target or as may be required by ASX;

Related Body Corporate has the meaning given to that term in the Corporations Act;

Relative Bidder Share Price Fall Event has the meaning given to that term in clause 16.2;

Relevant Interest has the meaning given to that term in sections 608 and 609 of the Corporations Act, as modified by any legislative instrument issued by ASIC;

Regulatory Approval means any waiver, consent, approval or ruling (binding or non-binding) of a Government Agency necessary to implement the Scheme or which the parties agree acting reasonably and in good faith should be obtained in connection with the Scheme;

Regulatory Authority means:

- (a) a government or governmental, semi-governmental or judicial entity or authority;
- (b) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (c) any regulatory organisation established under statute;

Representative means, in relation to a party:

- (a) a Related Bodies Corporate; and
- (b) any director, employee, officer, agent, professional adviser (including legal, financial or accounting advisers), potential debt or equity financing source, banker, auditor or other consultant of the party and representatives of any of the foregoing;

Scheme or Scheme of Arrangement means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Participants substantially in the form set out in Annexure A, subject to any alterations or conditions agreed or any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Bidder and the Target;

Scheme Booklet means, in relation to the Scheme, the information booklet to be approved by the Court and dispatched to Scheme Participants which includes the Scheme, the Deed Poll, an explanatory statement complying with the requirements of the Corporations Act, the Independent Expert's Report, a notice of meeting and proxy form and an Election Form;

Scheme Cash Consideration has the meaning given to that term in the Scheme;

Scheme Consideration has the meaning given to that term in the Scheme;

Scheme Meeting means the meeting of Target Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Scheme and includes any meeting convened following adjournment or postponement of that meeting;

Scheme Order means the order of the Court made for the purposes of section 411(4)(b) of the Corporations Act approving the Scheme;

Scheme Participant means each holder of a Scheme Share as at the Record Date;

Scheme Scrip Consideration has the meaning given to that term in the Scheme;

Scheme Shares means all the Target Shares on issue as at the Record Date;

Second Court Date means the first day of the Second Court Hearing or, if the Second Court Hearing is adjourned for any reason, the first day on which the adjourned application is heard;

Second Court Hearing means the hearing of the application made to the Court for the Scheme Order;

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

Superior Proposal means a bona fide Competing Transaction which the Target Board, acting in good faith in order to satisfy what the Target Board reasonably considers to be its fiduciary or statutory duties and after taking advice from the Target's legal and financial advisers, determines:

- (a) is reasonably likely to be completed in accordance with its terms, taking into account all aspects of the Competing Transaction, including its conditionality and the ability of the proposing party to fund, or obtain funding to, consummate the transactions contemplated by the Competing Transaction; and
- (b) would, if completed substantially in accordance with its terms, result in a transaction that is more favourable to Target Shareholders than the Transaction, taking into account all the terms and conditions of the Competing Transaction;

Takeovers Panel means the takeovers panel established under section 171 of the *Australian Securities and Investments Commission Act 2001* (Cth);

Target Board means the board of directors of the Target, and a reference to a Target Board Member means any director of the Target comprising part of the Target Board;

Target Director means any director of the Target;

Target Disclosure Materials means the information disclosed in writing by or on behalf of the Target to the Bidder and its Representatives in:

- (a) the documents and information contained in the Data Room made available by the Target to the Bidder and its Representatives prior to the date of this Deed; and
- (b) any written answers to requests for further information made by the Bidder and its Representatives as contained in the Data Room prior to the date of this Deed;

Target Group means the Target and each of its Related Bodies Corporate and a reference to a Target Group Member or a member of the Target Group is to the Target or any of its Related Bodies Corporate;

Target Indemnified Parties means the Target, its Related Bodies Corporate and their directors, officers and employees;

Target Information means all information contained in the Scheme Booklet other than the Bidder Information, the Independent Expert's Report and any information in respect of which a statement that a Third Party assumes responsibility for that information is included in the Scheme Booklet;

Target Material Adverse Change means a change, event, circumstance, occurrence or matter that occurs, is announced, is disclosed or otherwise becomes known to the Bidder or the Target Board in each case after the date of this Deed (whether it becomes public or not) which (whether individually or when aggregated with all such changes, events, circumstances, occurrences or matters) has had or is reasonably likely to have the effect of:

- (a) a diminution in the value of the consolidated net assets of the Target Group of at least \$12,500,000 compared to what the consolidated net assets of the Target Group was as at 30 June 2021; or

- (b) a diminution in the consolidated earnings before interest, tax, depreciation and amortisation of the Target Group for the financial year ending 30 June 2022 of at least \$3,000,000 compared to what it could reasonably be expected to have been but for that change, event, circumstance or matter after taking into account any changes, events, circumstances, occurrences or matters which may have an offsetting positive impact.

but does not include

- (c) any matter required to be done, or permitted under this Deed or the Scheme;
- (d) any matter Fairly Disclosed in the Target Disclosure Materials or in an announcement made by the Target to ASX or a document lodged with ASIC in the 3 years prior to the date of this Deed;
- (e) any matter undertaken with the prior written consent of the Bidder;
- (f) any matter, event or circumstance arising from:
- (i) any actual or proposed change in any applicable law, Accounting Standard, or policy of a Government Agency after the date of this Deed; or
 - (ii) general economic, business or political conditions or changes in such conditions (including disruptions to, or fluctuations in financial markets, changes in interest rates, foreign exchange rates or commodity prices and acts of terrorism, war (whether declared or not), natural disaster or the like),
- in each case, other than such changes, events, circumstances, occurrences, or matters, that have a disproportionate effect on the Target Group, taken as a whole, as compared to other participants in the industries in which the Target Group operates; or
- (g) any matter, event or circumstance arising from a payment under either the Bonus Pool, LTI Grant or Exempt Plan Grant;

Target Prescribed Occurrence means any of the following events:

- (a) the Target converting all or any of the Target Shares into a larger or smaller number of Target Shares;
- (b) the Target or another member of the Target Group resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares (including the Target Shares);
- (c) the Target or another member of the Target Group:
- (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) a member of the Target Group disposing, or agreeing to dispose, of the whole, or a substantial or material part, of the Target Group's business, assets or property;
- (e) a member of the Target Group adopts a new constitution or makes any change to or repeals its constitution;
- (f) a member of the Target Group creating, or agreeing to create, any mortgage, charge, lien or other Encumbrance over the whole, or a substantial part, of its

business or property or over a material asset of the Target Group other than in the ordinary course of business;

- (g) a member of the Target Group agreeing to pay, making or declaring, or announcing an intention to make or declare, or paying any distribution (whether by way of dividend, capital reduction or any other form of distribution of profits or return of capital and whether in cash or in specie) to its members other than a dividend where the recipient of that dividend is the Target or another member of the Target Group;
- (h) the Target Shares cease to be quoted on ASX;
- (i) an Insolvency Event occurring in relation to a member of the Target Group; or
- (j) a member of the Target Group resolves to be wound up,

but excludes any matter:

- (k) required to be done, or permitted under this Deed or the Scheme;
- (l) Fairly Disclosed in the Target Disclosure Materials or in an announcement made by the Target to ASX or a document lodged with ASIC in the 3 years prior to the date of this Deed; or
- (m) undertaken with the prior written consent of the Bidder;

Target Representations and Warranties means the representations and warranties of the Target as set out in clause 14.1(b);

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

Target Share Register means the register of members of the Target maintained by or on behalf of the Target in accordance with the Corporations Act;

Target Share Registry means Link Market Services Limited ABN 54 083 214 537;

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

Tax means any past, present or future tax, levy, charge, impost, fee, deduction, goods and services tax (including GST), compulsory loan or withholding, that is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above, but excludes Duty;

Timetable means the indicative timetable in relation to the Scheme set out in Schedule 1 or such other indicative timetable as agreed in writing between the parties or as may be required by ASX;

Third Party means a person other than the Bidder and its Associates;

Transaction means the acquisition of the Target by the Bidder through the implementation of the Scheme in accordance with the terms of this Deed;

Transaction Implementation Committee means a committee to be comprised of:

- (a) one or more representatives from each of the Target and the Bidder;
- (b) one or more representatives from one or more legal and financial advisers of the Target and the Bidder; and

- (c) anyone else the parties may agree from time to time;

Voting Intention has the meaning given to that term in clause 8.1(c); and

Voting Power has the meaning given to that term in section 610 of the Corporations Act; and

VWAP means in relation to particular securities for a particular period, the volume weighted average price of trading in those securities on the ASX market over that period, excluding block trades, large portfolio trades, permitted trades during the pre-trading hours period, permitted trades during the post-trading hours period, out of hours trades and exchange traded option exercises.

1.2 Interpretation

In this Deed, unless the context requires otherwise:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) a reference to a person includes any other entity recognised by law and vice versa;
- (e) a reference to any time is a reference to Brisbane, Australia time;
- (f) a reference to all or any part of a statute, rule, regulation or ordinance (including an ASX Listing Rule or operating rule of a financial market or a clearing and settlement facility) (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time and a regulation or statutory instrument issued under it;
- (g) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (h) a reference to a clause described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this Deed means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (i) any reference to a party to this Deed includes its successors and permitted assigns;
- (j) any reference to any agreement or document includes that agreement or document as amended at any time;
- (k) if something is to be or may be done on a day that is not a Business Day, then it must be done on the next Business Day;
- (l) the use of the word includes or including is not to be taken as limiting the meaning of the words preceding it;
- (m) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Deed;
- (n) the expression at any time includes reference to past, present and future time and performing any action from time to time; and
- (o) money amounts are stated in Australian currency unless otherwise specified.

2. Agreement to propose Scheme

- (a) The Target agrees to propose the Scheme to Target Shareholders on and subject to the terms of this Deed.
- (b) The Bidder agrees to assist the Target to propose the Scheme, on and subject to the terms of this Deed.

3. Conditions

3.1 Conditions precedent

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Scheme (including the obligations of the Bidder under clause 4.2) will not become binding, unless and until each of the following Conditions is satisfied or waived to the extent and in the manner set out in this clause 3:

Condition Precedent	Party entitled to benefit	Party responsible
(a) (Independent Expert) the Independent Expert issues an Independent Expert's Report which concludes that the Scheme is in the best interests of Target Shareholders before the time when the Scheme Booklet is registered with ASIC and the Independent Expert does not publicly withdraw, qualify or change that opinion at any time prior to 8.00am on the Second Court Date.	Target	Both
(b) (Shareholder approval) Target Shareholders approve the Scheme by the requisite majorities in accordance with section 411(4)(a)(ii) of the Corporations Act.	Cannot be waived	Target
(c) (Court approval) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.	Cannot be waived	Target
(d) (No regulatory intervention) no Court or Government Agency has: <ul style="list-style-type: none"> (i) issued or taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Scheme, the implementation of the Transaction or the rights of the Bidder in respect of the Target Shares to be acquired under the Scheme; or 	Both	Both

Condition Precedent	Party entitled to benefit	Party responsible
<p>(ii) announced, commenced or threatened to commence any action or investigation in consequence or, or in connection with, the Transaction which restrains, prohibits or prevents (or could reasonably be expected to restrain, prohibit or prevent) the Scheme, the implementation of the Transaction or the rights of the Bidder in respect of the Target Shares to be acquired under the Scheme,</p> <p>and none of those things are in effect as at 8.00am on the Second Court Date.</p>		
<p>(e) (No Target Prescribed Occurrence) no Target Prescribed Occurrence occurs between the date of this Deed and 8.00am on the Second Court Date.</p>	Bidder	Target
<p>(f) (No Bidder Prescribed Occurrence) no Bidder Prescribed Occurrence occurs between the date of this Deed and 8.00am on the Second Court Date.</p>	Target	Bidder
<p>(g) (Target Representations and Warranties) the Target Representations and Warranties are true and correct in all material respects at all times between the date of this Deed and as at 8.00am on the Second Court Date, except where expressed to be operative at another time.</p>	Bidder	Target
<p>(h) (Bidder Representations and Warranties) the Bidder Representations and Warranties are true and correct in all material respects at all times between the date of this Deed and as at 8.00am on the Second Court Date, except where expressed to be operative at another time.</p>	Target	Bidder
<p>(i) (Employee incentive arrangements) by 8.00am on the Second Court Date the Target has taken all necessary steps to ensure that all outstanding Performance Rights will either vest and be exercised and converted into Target Shares, or lapse and be cancelled by the Effective Date, as contemplated by clause 5, including obtaining any necessary waiver of, or approval under, the ASX Listing Rules in relation to the vesting and exercise or conversion, lapse or cancellation of the Performance Rights.</p>	Bidder	Target

Condition Precedent	Party entitled to benefit	Party responsible
<p>(j) (Material Contracts) between the date of this Deed and 8.00am on the Second Court Date, no counterparty to a Material Contract has given notice in writing to the relevant member of the Target Group of its intention to:</p> <p>(i) terminate all of the relevant Material Contracts the counterparty has in place with the Target Group in their entirety; or</p> <p>(ii) terminate one or more Material Contracts the counterparty has in place with the Target Group where such termination would have the impact of reducing the aggregate revenues associated with that counterparty by more than 50%.</p>	Bidder	Target
<p>(k) (Target Material Adverse Change) no Target Material Adverse Change occurs between the date of this Deed and 8.00am on the Second Court Date.</p>	Bidder	Target
<p>(l) (Employee Retention) between the date of this Deed and 8.00am on the Second Court Date no more than 2 of the top 11 employees of the Target Group determined by total remuneration as identified in document 2.03.01.21 in the Data Room ceases to be employed by the Target Group.</p>	Bidder	Target

3.2 Duties relating to Conditions

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

- (a) each of the Conditions for which it is the party responsible (as noted in clause 3.1):
 - (i) is satisfied as soon as practicable after the date of this Deed; 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) where a party is responsible for a Condition being satisfied, there is no occurrence that would prevent a Condition from being satisfied.

3.3 Regulatory matters

- (a) Without limiting clause 3.2:
 - (i) **(Regulatory Approvals process)** each party must take all steps it is responsible for as part of any Regulatory Approval process, including responding to requests for information at the earliest practicable time;

- (ii) **(consultation)** each party must consult with the other party in advance in relation to all material communications (whether written or oral, and whether direct or via a Representative) with any Government Agency relating to any Regulatory Approval;
- (iii) **(assistance)** each party must give the other party reasonable assistance in connection with obtaining any Regulatory Approval;
- (iv) **(communications with Government Agency)** each party must, if required in writing by the other party:
 - (A) provide the other party with drafts of any material written communications to be sent to a Government Agency; and
 - (B) provide copies of any material written communications sent to or received from a Government Agency to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so.

- (b) For the avoidance of doubt, neither party is required to disclose commercially sensitive information in relation to the application for a Regulatory Approval to the other party and the party applying for a Regulatory Approval may withhold or redact information or documents from the other party if and to the extent that they are either confidential to a third party or commercially sensitive and confidential to the applicant.

3.4 Conditional approvals

Any approvals required under the Conditions must be obtained either on an unconditional basis or subject to conditions that are acceptable to the party who is entitled to the benefit of the relevant Condition (acting reasonably).

3.5 Waiver of Conditions Precedent

- (a) A Condition may only be waived in writing by the party or parties entitled to the benefit of that Condition as noted in clause 3.1 and will be effective only to the extent specifically set out in that waiver.
- (b) A party entitled to waive the breach or non-fulfilment of a Condition under this clause 3.5 may do so in its absolute discretion.
- (c) If either the Target or the Bidder waives the breach or non-fulfilment of a Condition in accordance with this clause 3.5, then that waiver does not preclude that party from suing the other for any breach of this Deed arising as a result of the breach or non-fulfilment of that Condition or arising from the same event which gave rise to the breach or non-fulfilment of that Condition.
- (d) A waiver of a breach or non-fulfilment in respect of a Condition does not constitute:
 - (i) a waiver of a breach or non-fulfilment of any other Condition arising from the same event; or
 - (ii) a waiver of a breach or non-fulfilment of that Condition resulting from any other event.

3.6 Notices

Each party must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) promptly notify the other in writing if it becomes aware that any Condition has been satisfied and provide reasonable evidence of the same; and
- (c) promptly notify the other in writing if it becomes aware that any Condition is or has become incapable of being satisfied (having regard to the respective obligations of each party under clause 3.2(b)).

3.7 Scheme voted down because of Headcount Test

If the Condition in clause 3.1(b)) is not satisfied only because of a failure to obtain the majority required by section 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice to the other within 3 Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that section provided the party has in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable and if such a notice is provided by either party, the Target must:

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

3.8 Failure of Condition

If:

- (a) there is non-fulfilment of a Condition which is not waived in accordance with this Deed by the time or date specified in this Deed for the satisfaction of the Condition;
- (b) there is an act, failure to act or occurrence which will prevent a Condition from being satisfied by the time or date specified in this Deed for the satisfaction of the Condition (and the non-fulfilment which would otherwise occur has not already been waived in accordance with this Deed); or
- (c) it becomes more likely than not that the Scheme will not become Effective on or before the End Date,

the parties must consult in good faith with a view to determining whether:

- (d) the Scheme may proceed by way of alternative means or methods;
- (e) to extend the relevant time for satisfaction of the Condition or to adjourn or change the date of an application to the Court; or
- (f) to extend the End Date.

3.9 Failure to agree

If the parties are unable to reach agreement under clause 3.8 within 5 Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date):

- (a) subject to clause 3.9(b), either party may terminate this Deed (and that termination will be in accordance with clause 16.1(a)(ii)); or
- (b) 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 Deed (and that termination will be in accordance with clause 16.1(a)(ii),

in each case before 8.00am on the Second Court Date, and provided that, a party will not be entitled to terminate this Deed under this clause if the relevant Condition has not been satisfied as a result of a breach of this Deed by that party or a deliberate act or omission of that party.

4. Scheme

4.1 Proposal of Scheme

The Target must propose a scheme of arrangement under which:

- (a) all of the Scheme Shares held by a Scheme Participant will be transferred to the Bidder; and
- (b) each Scheme Participant who holds Scheme Shares to be transferred to the Bidder will be entitled to receive the Scheme Consideration in respect of those transferred Scheme Shares.

4.2 Scheme Consideration

Each Scheme Participant is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Participant at the Record Date subject to and in accordance with this Deed and the Scheme.

4.3 Payment of Scheme Consideration

Subject to this Deed and the Scheme, the Bidder undertakes to the Target (in its own right and separately as trustee or nominee of each Scheme Participant) that, in consideration of the transfer to the Bidder of each Scheme Share held by a Scheme Participant at the Record Date, the Bidder will, on the Implementation Date:

- (a) accept that transfer; and
- (b) provide to each Scheme Participant the relevant component of the Scheme Consideration,

in accordance with the Scheme.

4.4 Scheme Scrip Consideration

- (a) Subject to the Scheme becoming Effective, the Bidder must:
 - (i) issue (or procure the issue of) the Scheme Scrip Consideration to the relevant Scheme Participants in accordance with the Scheme on terms that each Bidder Share will rank equally in all respects with each other Bidder Share and will have the rights set out in the Bidder Constitution;
 - (ii) ensure that on issue each Bidder Share will be fully paid and free from any Encumbrance.

- (b) To facilitate the issue of the Scheme Scrip Consideration to the relevant Scheme Participants, the Target must provide to the Bidder, or procure the provision to the Bidder of, a complete copy of the Target Share Register as at the Record Date (which must include the name, address and registered holding of each Scheme Participant as at the Record Date), within 2 Business Days after the Record Date. The details and information to be provided under this clause must be provided in such form as the Bidder may reasonably require.
- (c) The Bidder will not issue (nor procure the issue of) Scheme Scrip Consideration to Foreign Scheme Shareholders.
- (d) Any fractional entitlement of a Scheme Participant to a part of a Bidder Share will be rounded down to the nearest whole number of Bidder Shares.

4.5 Election mechanism

- (a) The Target must ensure that an Election Form is made available to Target Shareholders with the Scheme Booklet sent to each of them.
- (b) The Election Form must include the relevant matters set out in the Scheme and must otherwise be in a form agreed between the parties in writing.
- (c) The Target must procure that, to the extent practicable, Target Shareholders who acquired Target Shares after the date of the despatch of the Scheme Booklet receive an Election Form upon request.

4.6 Deed Poll

The Bidder covenants in favour of the Target (in its own right and separately as trustee for each of the Scheme Participants) to execute and deliver the Deed Poll by no later than the First Court Date, and, if the Scheme becomes Effective, fully comply with the Deed Poll.

4.7 No amendment

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

5. Treatment of Performance Rights

- (a) The Target must ensure that, by no later than the Effective Date, there are no outstanding Performance Rights.
- (b) In order to comply with its obligation under clause 5(a), the Target must:
 - (i) cause some or all of the outstanding Performance Rights to vest in accordance with their terms and, following vesting, cause the relevant number of Target Shares to be issued to the relevant former holder in sufficient time to allow the relevant former holders of the relevant Performance Rights to participate in the Scheme; and
 - (ii) take any action as may be necessary to cancel any outstanding Performance Rights which it does not cause to vest in accordance with clause 5(b)(i) (if any).

6. Steps for Implementation

6.1 General obligations

The Target and the Bidder must each:

- (a) use all reasonable endeavours and commit reasonably 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 cooperative fashion with the other party (including by attending meetings and by providing information),

in order to:

- (c) comply with their respective obligations under this clause 6;
- (d) produce the Scheme Booklet; and
- (e) take all necessary steps and exercise all rights necessary to implement the Scheme as soon as reasonably practicable and in accordance with the Timetable.

6.2 Target's obligations

The Target must take all steps reasonably necessary to propose and (subject to all of the Conditions being satisfied or waived in accordance with their terms) implement the Scheme as soon as reasonably practicable after the date of this Deed and substantially in accordance with the Timetable, including taking each of the following steps:

- (a) **(Scheme Booklet)**: prepare the Scheme Booklet in accordance with clause 6.4;
- (b) **(Election Form and bank account details)**:
 - (i) not finalise the Election Form without the prior written consent of the Bidder (acting reasonably);
 - (ii) ensure that the Election Form contains:
 - (A) a section which requires a Target Shareholder to provide details of bank accounts into which any future dividends on and other payments relating to Bidder Shares are to be paid; and
 - (B) wording to the effect that a Target Shareholder, by signing and submitting an Election Form, consents to the Target providing to the Bidder such bank account details and tax file numbers or bank account details or tax file numbers previously notified by the Target Shareholder to the Target; and
 - (iii) not later than the Business Day before the Implementation Date, provide the Bidder with the bank account details and tax file numbers referred to in clause 6.2(b)(ii)(B));
- (c) **(Independent Expert)**: promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (d) **(approval of draft for ASIC)**: as soon as reasonably practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by

ASIC, procure that a meeting of the Target Board, or of a committee of the Target Board appointed for the purpose, is held to consider approving that draft as being in a form appropriate for provision to ASIC for its review for the purposes of section 411(2) of the Corporations Act;

- (e) **(liaison with ASIC):** as soon as reasonably practicable after the date of this Deed:
 - (i) provide an advanced draft of the Scheme Booklet, in a form approved in accordance with clause 6.2(d) or 6.3(f), to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act, and provide a copy of that draft to the Bidder immediately thereafter; and
 - (ii) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet;
- (f) **(consult with the Bidder):** consult with the Bidder as to the content and presentation of the Scheme Booklet, including:
 - (i) providing the Bidder with successive drafts of the Scheme Booklet for the purpose of enabling, and providing sufficient time for, the Bidder to review and comment on those draft documents, noting that any review by the Bidder of the Independent Expert's Report is to be limited to a factual accuracy review;
 - (ii) taking all comments made by the Bidder into account in good faith when producing a revised draft of the Scheme Booklet;
 - (iii) providing to the 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 review pursuant to section 411(2) of the Corporations Act is finalised; and
 - (iv) obtaining the Bidder's written 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);
- (g) **(ASIC review):** keep the Bidder reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet and use reasonable endeavours, in consultation with the Bidder, to resolve any such matters (provided that, where any matters relate to Bidder Information, the Target must not take any steps to address them without the prior written consent of the Bidder, such consent not to be unreasonably withheld or delayed);
- (h) **(approval of Scheme Booklet):** as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Target Board, or of a committee of the Target Board appointed for the purpose, is held to consider approving the Scheme Booklet for despatch to Target Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (i) **(section 411(17)(b) statements):** apply to ASIC for the production of statements in writing under section 411(17)(b) of the Corporations Act stating that ASIC does not intend to appear before the Court at the First Court Hearing and that ASIC has no objection to the Scheme;
- (j) **(Court Documents):** consult with the Bidder in relation to the form and content of the Court Documents required for the Court Hearings held for the purpose of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme and consider in good faith, for the purpose of amending drafts of those Court Documents, reasonable comments from the Bidder;

- (k) **(First Court Hearing)**: lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that, the approvals in clauses 6.2(h) and 6.3(g) have been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meeting;
- (l) **(registration of Scheme Booklet)** as soon as practicable after the Court orders the Target to convene the Scheme Meeting, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (m) **(convening of Scheme Meeting)**: take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to the Target Shareholders and convening and holding the Scheme Meeting;
- (n) **(supplementary disclosure)** if, after despatch of the Scheme Booklet, the Target becomes aware:
- (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
 - (ii) of information that is required to be disclosed to Target Shareholders under any applicable Law but was not included in the Scheme Booklet,
- promptly consult with the Bidder in good faith as to the need for, and the form of, any supplementary disclosure to Target Shareholders, and make any disclosure that the Target considers reasonably necessary in the circumstances to ensure that the information is no longer misleading or deceptive in any material respect or contains any material omission, having regard to applicable laws and regulations;
- (o) **(promotion)** unless and until such time a circumstance arises which may lead to one or more Target Directors changing, withdrawing or modifying his or her Recommendation as permitted under this Deed, participate in efforts reasonably requested by the Bidder to promote the merits of the Transaction, including meeting with key Target Shareholders at the reasonable request of the Bidder and consider in good faith the engagement of a proxy solicitation firm to assist in soliciting proxy votes if requested to do so by the Bidder (and the Target may independently decide to appoint a proxy solicitation firm after consulting in good faith with the Bidder);
- (p) **(information)**:
- (i) keep the Bidder reasonably informed on the status of proxy forms for the Scheme Meeting, including over the period commencing 10 Business Days before the Scheme Meeting and ending on the deadline for receipt of proxy forms;
 - (ii) keep the Bidder reasonably informed on the status of Elections by Target Shareholders;
 - (iii) provide to the Bidder all necessary information, and procure that the Target Share Registry provides all necessary information, in each case in a form reasonably requested by the Bidder, for the purpose of understanding legal and beneficial ownership of Target Shares and proxy appointments and directions received by the Target prior to the Scheme Meeting; and

- (iv) keep the Bidder reasonably informed of such other information as the Target Group may receive concerning the voting intentions of Target Shareholders;
- (q) **(Court approval application if parties agree that Conditions are capable of being satisfied)**: if the resolution submitted to the Scheme Meeting is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act and, if necessary, the parties agree on the Business Date immediately following the Scheme Meeting that it can be reasonably expected that all of the Conditions (other than the Condition in clause 3.1(c)) will be satisfied or waived prior to the proposed Second Court Date, apply to the Court for orders approving the Scheme;
- (r) **(Conditions certificate)** at the Second Court Hearing, provide to the Court (through its counsel):
- (i) a certificate signed by one of the Target Directors and made in accordance with a resolution of the Target Board or of a committee of the Target Board appointed for the purpose confirming (in respect of matters within the Target's knowledge) whether or not the Conditions for which it is responsible, as noted in clause 3.1 (other than paragraph 3.1(c)), have been satisfied or waived in accordance with clause 3.5, a draft of which must be provided to the Bidder by 5.00pm on the Business Day prior to the Second Court Date; and
- (ii) any certificate provided to it by the Bidder under clause 6.3(h);
- (s) **(implementation of Scheme)**: if the Scheme is approved by the Court:
- (i) subject to the ASX Listing Rules, lodge with ASIC an office copy of the Scheme Order in accordance with section 411(10) of the Corporations Act no later than 1 Business Day after the date on which it receives such office copy;
- (ii) determine entitlements to the Scheme Consideration as at the Record Date in accordance with the Scheme;
- (iii) execute proper instruments of transfer of and effect and register the transfer of the Scheme Shares to the Bidder on the Implementation Date; and
- (iv) do all other things contemplated by or necessary to give effect to the Scheme and the Scheme Order;
- (t) **(suspension of trading)**: apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date;
- (u) **(listing)** take all reasonable steps to maintain the 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, and take any action as reasonably requested by the Bidder to obtain the approval of ASX to the de-listing of the Target following implementation of the Scheme;
- (v) **(regulatory notifications)**: in relation to the Regulatory Approvals, lodge with any Government Agency within the relevant time periods all documentation and filings required by Law to be so lodged by the Target in relation to the Transaction;
- (w) **(compliance with Laws)**: do everything reasonably within its power to ensure that all transactions contemplated by this Deed are effected in accordance with all applicable Laws and regulations; and

- (x) **(other things necessary)** promptly do all other things contemplated by or reasonably necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

6.3 Bidder's obligations

The Bidder must take all steps reasonably necessary to assist the Target to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable, including taking each of the following steps:

- (a) **(Bidder Information)**: provide to the Target, in a form appropriate for inclusion in the Scheme Booklet, all Bidder Information that is required by all applicable Laws, the ASX Listing Rules and ASIC Regulatory Guide 60 for inclusion in the Scheme Booklet, which the Bidder Information must (without limiting the above):
 - (i) contain all information necessary to enable the Target to ensure that the Scheme Booklet complies with the requirements of the Corporations Act, the Corporations Regulations and ASIC Regulatory Guide 60;
 - (ii) not be misleading or deceptive in any material respect (whether by omission or otherwise) including in the form and context in which it appears in the Scheme Booklet; and
 - (iii) be updated by all such further or new material information which may arise after the Scheme Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that it is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (b) **(Regulatory notification)**: in relation to the Regulatory Approvals, lodge with any Government Agency within the relevant time periods all documentation and filings required by Law to be so lodged by the Bidder in relation to the Transaction;
- (c) **(Independent Expert)**: subject to the Independent Expert agreeing to reasonable confidentiality restrictions, promptly provide all assistance and information reasonably requested by the Target or by the Independent Expert to enable it to prepare the Independent Expert's Report;
- (d) **(review of Scheme Booklet)**: as soon as reasonably practicable after delivery, review the drafts of the Scheme Booklet prepared by the Target and provide comments on those drafts in good faith;
- (e) **(Court Documents)**: provide any assistance or information reasonably requested by the Target or its Representatives in connection with the preparation of the Court Documents, including reviewing the drafts of the Court Documents prepared by the Target and providing reasonable comments in a timely manner on those drafts;
- (f) **(approval of draft for ASIC)**: as soon as reasonably practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a meeting of the appropriate representatives of the Bidder is held to consider approving those sections of that draft that relate to the Bidder Information as being in a form appropriate for provision to ASIC for review;
- (g) **(approval of Scheme Booklet)**: as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the appropriate representatives of the Bidder is held to consider approving those sections of the Scheme Booklet that relate to the Bidder Information as being in a form appropriate for despatch to Target Shareholders, subject to Court approval;
- (h) **(Conditions certificate)** before 8.00am on the Second Court Date, provide to the Target for provision to the Court at the Second Court Hearing a certificate

confirming (in respect of matters within the Bidder's knowledge) whether or not the Conditions for which the Bidder is responsible, as noted in clause 3.1 (other than paragraph 3.1(c)), have been satisfied or waived in accordance with clause 3.5, a draft of which must be provided to the Target by 5.00pm on the Business Day prior to the Second Court Date;

- (i) **(Deed Poll)**: by no later than the Business Day prior to the First Court Hearing, execute and deliver to the Target the Deed Poll;
- (j) **(representation)**: procure that, if requested by the Target, the Bidder is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act; and
- (k) **(ATO tax ruling)**: provide any assistance and information as may be reasonably requested by the Target for the purposes of obtaining from the ATO rulings, in a form reasonably acceptable to both parties, confirming the availability of scrip rollover relief in respect of the Scheme Scrip Consideration, including considering in good faith any variation proposed to this Deed or the Scheme by the Target for the purpose of ensuring the availability of scrip rollover relief in respect of the Scheme Scrip Consideration and based on written advice from the Target's tax advisers;
- (l) **(compliance with Laws)**: do everything reasonably within its power to ensure that all transactions contemplated by this Deed are effected in accordance with all applicable Laws.

6.4 Scheme Booklet

- (a) **(Preparation)**: As soon as reasonably practicable after the date of this Deed and substantially in accordance with the Timetable, the Target must prepare the Scheme Booklet in compliance with:
 - (i) all applicable Laws, in particular the Corporations Act, the Corporations Regulations, ASIC Regulatory Guide 60 and the ASX Listing Rules; and
 - (ii) this clause 6.4.
- (b) **(Not misleading or deceptive)**: The parties agree that:
 - (i) the Target must take all reasonable steps to ensure that the Scheme Booklet (other than the Bidder Information) is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date it is despatched to Target Shareholders, including undertaking customary verification processes; and
 - (ii) the Bidder must take all reasonable steps to ensure that the Bidder Information is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Scheme Booklet is despatched to Target Shareholders, including undertaking customary verification processes.
- (c) **(Responsibility statements)**: The responsibility statement to appear in the Scheme Booklet, in a form to be agreed by the parties, will contain words to the effect that:
 - (i) the Bidder is responsible for the Bidder Information contained in the Scheme Booklet (and no other part of the Scheme Booklet) and, to the maximum extent permitted by law, the Target will not be responsible for any Bidder Information and will disclaim any liability for Bidder Information appearing in the Scheme Booklet; and

- (ii) the Target 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 the Target by a third party. The Bidder, to the maximum extent permitted by law, will not be responsible for the content of the Scheme Booklet (other than the Bidder Information) and will disclaim any liability for that content appearing in the Scheme Booklet.
- (d) **(Dispute):** If the Bidder and the Target disagree on the form or content of the Scheme Booklet, they must consult in good faith to try and settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:
 - (i) if the disagreement relates to the form or content of the Bidder Information contained in the Scheme Booklet, the Target will make any amendments as the Bidder, acting in good faith, reasonably requires; and
 - (ii) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the Target Board will, acting reasonably and in good faith, decide the final form or content of the disputed part of the Scheme Booklet.

6.5 Transaction Implementation Committee

- (a) The parties must establish a Transaction Implementation Committee as soon as reasonably practical after the date of this Deed. The role of the Transaction Implementation Committee will be to act as a forum for consultation and planning by the parties to:
 - (i) facilitate satisfaction of the Conditions;
 - (ii) discuss the parties' progress in relation to clauses 6.2 and 6.3;
 - (iii) implement the Scheme in accordance with this Deed; and
 - (iv) subject to clause 6.8, ensure the smooth transition of the management of the business and affairs of the Target Group to the Bidder following the implementation of the Scheme.
- (b) The Transaction Implementation Committee will meet on a fortnightly basis from the date of this Deed until the Scheme is fully implemented unless otherwise agreed by the parties.
- (c) The Transaction Implementation Committee will consider all matters relevant to ensuring that the Scheme becomes Effective, including the following:
 - (i) the structure and timing for accomplishing the Scheme in accordance with the Timetable; and
 - (ii) communication strategies, including with any Regulatory Authority, the Target's employees, Target Shareholders and the media.
- (d) Notwithstanding the above:
 - (i) each party may act in its own interests; and
 - (ii) each member of the Transaction Implementation Committee may act in the interests of the party they represent in participating in the Transaction Implementation Committee.

6.6 Existing financing and security

The Target must cooperate with, and undertake all steps reasonably required or requested in connection with any repayment of existing debt of the Target Group as may be required in connection with the Transaction, including:

- (a) liaising with the Bidder in good faith in relation to the using of the existing cash reserves of the Target for this purpose;
- (b) issuing prepayment, cancellation and other notices or consent requests in relation to existing Target Group debt facilities and closing out any hedging positions;
- (c) using all reasonable endeavours to procure:
 - (i) deeds of release, discharges of real property mortgages and registrations on the PPS Register (or any other relevant security register in other jurisdictions as applicable) from secured parties in relation to any Encumbrance granted by a member of the Target Group in favour of that party and procuring the return of any title documents held by a secured party; and
 - (ii) the termination or replacement of any letters of credit, bank guarantees, financial undertakings or similar instruments outstanding in connection with such repayment, discharge or termination,

subject always to the Target not being required to actually effect such repayment until the Implementation Date.

6.7 Bidder financing arrangements

- (a) Between the date of this Deed and the Implementation Date, the Target agrees to provide reasonable assistance requested by the Bidder in connection with the arrangement or syndication of any debt financing by the Bidder Group (**Transaction Financing**), including furnishing the Bidder and the financing sources of the Bidder Group within a reasonable timeframe with financial and other pertinent information regarding the Target Group, as may be reasonably requested by the Bidder, provided, in each case, that no member of the Target Group will be required to incur any liability in connection with any Transaction Financing prior to implementation of the Scheme that is not reimbursable by the Bidder.
- (b) Without limitation to clause 6.7, the Target agrees to provide reasonable assistance requested by the Bidder in connection with obtaining the consent from any landlord or counterparty to a Material Contract to the granting of security by the Target Group over its interest in the relevant lease or Material Contract where the terms of such lease or Material Contract otherwise restrict such action.
- (c) The Bidder agrees to reimburse the Target for all fees, costs and expenses reasonably incurred in complying with this clause 6.7 on provision of written evidence of the payment of such fees, costs and expenses provided written notice is provided to the Bidder of such fees, costs and expenses prior to the Target incurring them.

6.8 No partnership or joint venture

Subject to this Deed, nothing in this clause 6 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 Deed constitutes the relationship of a partnership or a joint venture between the parties.

7. Court proceedings

7.1 Conduct

- (a) The Target and the Bidder are entitled to separate representation at all Court proceedings relating to the Scheme.
- (b) Each party must give all undertakings to the Court in all proceedings which are reasonably required to obtain Court approval and confirmation of the Scheme as contemplated by this Deed.
- (c) Nothing in this Deed gives the Target or the Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that party's prior written consent.

7.2 Appeal and other proceedings

- (a) If the Court refuses to make an order convening the Scheme Meeting or approving the Scheme, the Target will appeal the Court's decision, except to the extent that:
 - (i) the parties agree otherwise; or
 - (ii) either party obtains the advice of an independent senior counsel who states that, in his or her view, an appeal would have no reasonable prospect of success,

in which case either party may terminate this Deed in accordance with clause 16.1(a)(ii).
- (b) The Bidder and the Target must defend, or cause to be defended, any lawsuit or other legal proceeding brought against it challenging this Deed or the completion of the Scheme, unless the Target has, in good faith, determined that such action is not in the best interest of Target Shareholders.

8. Target Board recommendation

8.1 Target Board recommendation and voting intention

- (a) The Target must ensure that the Announcement and the Scheme Booklet state that all Target Directors unanimously recommend that Target Shareholders vote in favour of the Scheme (**Recommendation**) which Recommendation must not be qualified in any way other than by words to the effect that the recommendation to vote in favour of the Scheme is made:
 - (i) "in the absence of a Superior Proposal"; and
 - (ii) "subject to the Independent Expert concluding and continuing to conclude that the Scheme is in the best interest of Target Shareholders".
- (b) The Bidder agrees that each Target Director, may, subject to the terms of this Deed, publicly (or otherwise) withdraw, change or in any way qualify their Recommendation if:
 - (i) the Target receives a Competing Transaction and the relevant Target Director determines, after all of the Bidder's rights under clause 11.6 have been exhausted, that the Competing Transaction constitutes a Superior Proposal;

- (ii) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or any updates of its report) that the Scheme is not in the best interests of Target Shareholders;
- (iii) the change, withdrawal or qualification occurs is because of a requirement or request of a court or Government Agency that the Target Director abstain or withdraw from recommending that Target Shareholders vote in favour of the Scheme; or
- (iv) the Target Directors determine, in good faith and acting reasonably, by virtue of their directors' duties, that a change, withdrawal or modification to their Recommendation is required.
- (c) For the avoidance of doubt, the Bidder acknowledges that a Relative Bidder Share Price Fall Event shall be an occurrence allowing the Target Directors to withdraw, change or in any way qualify their Recommendation pursuant to clause 8.1(b)(iv).
- (d) The Target must ensure that the Announcement and the Scheme Booklet state that each Target Director intends to cause any Target Shares in which they have a Relevant Interest to be voted in favour of the Scheme (**Voting Intention**), subject to:
- (i) there being no Superior Proposal; and
- (ii) the Independent Expert concluding and continuing to conclude that the Scheme is in the best interest of Target Shareholders.
- (e) The Bidder agrees that each Target Director may, subject to the terms of this Deed, publicly (or otherwise) withdraw, change or in any way qualify his or her Voting Intention if:
- (i) the Target receives a Competing Transaction and the relevant Target Director determines, after all of the Bidder's rights under clause 11.6 have been exhausted, that the Competing Transaction constitutes a Superior Proposal;
- (ii) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or any updates of its report) that the Scheme is not in the best interest of Target Shareholders;
- (iii) the change, withdrawal or qualification occurs because of a requirement or request of a court or Government Agency that the Target Director abstain or withdraw from voting in favour of the Scheme; or
- (iv) the Target Directors are entitled to change, modify or withdraw their Recommendation under this Deed.
- (f) The Target must procure that each of the Target Directors acts in accordance with his or her obligations under this clause 8.1.

8.2 Confirmation

The Target represents and warrants to the Bidder that each Target Director has confirmed their Recommendation and Voting Intention and their agreement not to do anything inconsistent with their Recommendation and Voting Intention (including withdrawing, changing or in any way qualifying their Recommendation or Voting Intention) other than in the circumstances referred to in clauses 8.1(b) or 8.1(e).

8.3 Withdrawal or change of recommendation

Without limiting clause 11, if circumstances arise which may lead to one or more Target Directors changing, withdrawing or modifying his or her Recommendation as permitted under this Deed or if the Target receives notice from a Target Director that he or she proposes to withdraw, change or modify his or her Recommendation to vote in favour of the Scheme the Target must promptly notify the Bidder in writing.

9. Conduct before the Implementation Date

9.1 Conduct

Subject to clause 9.2, from the date of this Deed up to and including the earlier of the termination of this Deed and the Implementation Date,

- (a) the Target must, and must cause each Target Group Member to:
 - (i) conduct the business of the Target Group in the ordinary course consistent with past practice and in substantially the same manner in which such business has been conducted in the 12 months prior to the date of this Deed;
 - (ii) use all reasonable endeavours to:
 - (A) maintain and preserve the Target Group's relationships with its joint venturers, customers, contractors, landlords, investors and suppliers and Government Agencies and others having material business dealings with any member of the Target Group;
 - (B) enforce any Material Contract to which a member of the Target Group is party, and not waive any breach by any counterparty to any such contract, where such a failure to enforce such contract or where a waiver of such breach would, or would be reasonably likely to, result in a material reduction to the earnings of the Target Group; and
 - (C) retain the services of key officers and employees;
 - (iii) use all reasonable endeavours to ensure that all material assets of the Target Group are maintained in the normal course consistent with past practice;
 - (iv) manage its working capital requirements in the ordinary course consistent with past practice, including ensuring that there is no material decrease in the amount of cash in the Target Group other than in the ordinary course of business and consistent with budgets and projections Fairly Disclosed to the Bidder prior to the date of this Deed;
 - (v) comply in all material respects with all Material Contracts to which a member of the Target Group is a party, and with all Laws, authorisations and licences applicable to each member of the Target Group;
 - (vi) maintain such policies of insurance as are maintained by the Target Group at the date of this Deed;
 - (vii) keep the Bidder informed of any material developments concerning the conduct of its business of which it becomes aware, provided that the

Target may, in good faith and acting reasonably, withhold or redact any Competitively Sensitive Information; and

- (viii) keep the Bidder informed of any current, pending or threatened Tax or Duty audits, reviews or investigations or tax demands relating to any Target Group Member (provided that the Target may, in good faith and acting reasonably, withhold or redact any Competitively Sensitive Information), and procure that no member of the Target Group settles, compromises or otherwise deals with such audits, reviews or investigations or tax demands without the prior written consent of the Bidder (which must not be unreasonably withheld or delayed); and

(b) the Target must not and must ensure that no member of the Target Group:

(i) either:

- (A) increases the remuneration of (including with regard to superannuation benefits) or benefits provided to or pays any bonus (other than in accordance with existing arrangements, including the Bonus Pool, LTI Grant and Exempt Plan Grant, and in the ordinary course) or issues any securities or options to, or otherwise materially varies the employment agreements with, any of its directors or employees
- (B) pays a director, executive or employee a termination or retention payment, but excluding any redundancy payment in connection with any redundancies of employees made in the ordinary course and consistent with historical practices of the Target Group over the 24 month period preceding the date of this Deed;
- (C) hire or terminate (other than for cause) any employee with a base salary of \$140,000 or higher; or
- (D) hire any additional employees or contractors (excluding suppliers in the ordinary course of business and offers made by the Target prior to the date of this Deed as advised to the Bidder prior to the date of this Deed and contained in document 2.13.01 in the Data Room) if doing so would mean that the aggregate base salary amount payable to the Target Group's employees and contractors (excluding suppliers in the ordinary course of business) increases by more than \$500,000 per annum from date of this Deed;

(ii) issues shares, or grants a performance right or an option over its shares, or agrees to make such an issue or grant such a performance right or an option, other than:

- (A) to another member of the Target Group; or
- (B) the issuing of Target Shares pursuant to the vesting of Performance Rights as permitted by clause 5;

(iii) issues or agrees to issue securities convertible into shares or other instruments or rights that are convertible or exercisable into shares (including Target Shares) (other than the type of securities described in clause 9.1(b)(ii) above) other than to another member of the Target Group;

(iv) either:

- (A) acquires or disposes of;

- (B) agrees to acquire or dispose of,
any business, entity, material undertaking or material assets;
- (v) offers, proposes, announces a bid or tenders for any business, assets, entity or undertaking the value of which exceeds \$5,000,000;
- (vi) either:
- (A) introduces any new points of presence;
- (B) enters into any contract or commitment for any carrier links that have a term of more than 12 months (excluding end customer links); or
- (C) renews or varies any existing carrier links (excluding end customer links);
- (vii) either:
- (A) (other than where the network provider under the relevant contract is the Bidder) enters into any contract or commitment involving expenditure of more than \$500,000 over the term of the contract or commitment and which cannot be terminated on less than 12 months' notice without penalty;
- (B) (without limiting the above and other than where the network provider under the relevant contract is the Bidder) enters into any contract or commitment relating to the same matter or project involving expenditure which exceeds \$500,000 in aggregate over the term of the contracts or commitments and which cannot be terminated on less than 12 months' notice without penalty;
- (C) terminates or amends in a material manner any contract material to the conduct of the Target Group's business or which involves expenditure of more than \$500,000 over the term of the contract;
- (D) waives any material third party default where the financial impact upon the Target Group's business is in excess of \$500,000; or
- (E) accepts as a settlement or compromise of a material matter (relating to an amount in excess of \$250,000) less than the full compensation due to it;
- (viii) makes any capital expenditure, or incurs any obligations or liabilities in connection therewith, except pursuant to existing contracts or that, in the aggregate, would not exceed more than 25% of the capital expenditure budget (as contained in document 3.02.05 in the Data Room) during any fiscal quarter;
- (ix) enters into any contract or commitment restraining any member of the Target Group (or following implementation, the Bidder Group) from competing with any person or conducting activities which would have a material adverse impact on Target Group (or following implementation, the Bidder Group);
- (x) enters into, amends, or terminates any lease of real property (whether as a lessor or lessee) or fails to exercise any right to renew any lease of real property, except:

- (A) in the ordinary course of business consistent with past practice; or
- (B) if a terminated lease is replaced with an appropriate lease;
- (xi) makes any loan, advance, or capital contribution to, or investment in, any other person, other than a member of the Target Group;
- (xii) enters into any agreement, arrangement or transaction with respect to derivative instruments (including swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments;
- (xiii) incurs or commits to any additional Net Debt in excess of \$25,249,308 (including borrowings, loans and advances and including making any draw downs under any of its existing facilities (or any other debt facility)) or liability (whether actual or contingent), but excluding any impact in connection with Digital Sense Deferred Consideration Liability;
- (xiv) enters into or resolves to enter into a transaction with any related party of Target as defined in section 228 of the Corporations Act which would require shareholder approval under Chapter 2E or under Chapter 10 of the ASX Listing Rules;
- (xv) makes any Tax election (including any change of residence) or settles or compromises any liability relating to Tax, unless that election, settlement or compromise is required by Tax law, is supported by an opinion of the Target Group's tax advisers, or is in the ordinary course of business and is consistent with past practices;
- (xvi) either:
- (A) settles any legal proceedings, claim, investigation, arbitration or other like proceedings where the amount claimed exceeds \$250,000;
- (B) waives, releases, grants, or transfers any right of material value other than in the ordinary course of business consistent with past practice; or
- (C) commences any legal proceeding, claim or arbitration where the amount claimed exceeds \$250,000;
- (xvii) enters into, or varies, any enterprise bargaining agreement or similar collective employment agreement;
- (xviii) waives or forgives any loans made to any officer or employee of any member of the Target Group;
- (xix) enters into or resolves to enter into a joint venture or partnership with any person;
- (xx) changes its accounting policies other than as required by applicable Accounting Standards; or
- (xxi) takes any action that constitutes a Target Prescribed Occurrence or that could reasonably be expected to result in a Target Prescribed Occurrence.

9.2 Permitted activities

- (a) The obligations of the Target under clause 9.1 do not apply in respect of any matter:

- (i) expressly required to be done or procured by the Target under this Deed or the terms of the Scheme or otherwise expressly permitted to be done by the Target under this Deed;
 - (ii) required by any Law or an order of any Court or Government Agency;
 - (iii) Fairly Disclosed in the Target Disclosure Materials or in an announcement to ASX or a document lodged with ASIC in the 3 years prior to the date of this Deed (in the case of the matters the subject of clauses 9.1(b)(i), 9.1(b)(ii) or 9.1(b)(iii), only as Fairly Disclosed in the documents contained in folder 2.13 in the Data Room); or
 - (iv) undertaken with the prior written consent of the Bidder (such consent not to be unreasonably withheld or delayed); or
 - (v) constituting a payment under the Bonus Pool, LTI Grant or Exempt Plan Grant.
- (b) For the avoidance of doubt, nothing in clause 9.1 restricts the ability of the Target to respond to a Competing Transaction to the extent expressly permitted in accordance with clause 11.

9.3 Access and information

Between the date of this Deed and the earlier of:

- (a) the termination of this Deed; and
- (b) Implementation Date,

the Target must:

- (c) procure that the Target provides the Bidder with reasonable access to the Target's senior management team for the purpose of:
 - (i) keeping the Bidder fully informed of the matters contemplated by clause 9.3(f) below; and
 - (ii) providing the Bidder with access to the materials and people it has requested under clause 9.3(f) below;
- (d) provide the Bidder with copies of the following materials, promptly following the relevant meeting at which the relevant materials are considered:
 - (i) the minutes of the Target Board held between the date of this Deed and the Implementation Date; and
 - (ii) any reports of the Chief Executive Officer and the Chief Financial Officer provided to the Target Board,

provided that the Target has no obligation under this clause 9.3(d) to provide the Bidder with, and may redact or withhold in its entirety, any information about, or otherwise in connection with the Target Board's consideration of the Transaction, any advice provided to the Target Board in connection with the Transaction and information in connection with any Competing Transaction;

- (e) provide the Bidder and its Representatives with complete copies of monthly accounts of the Target Group prepared by management of the Target Group as soon as reasonably practicable after they are provided to the Target Board; and

- (f) provide the Bidder and its Representatives with reasonable, non-disruptive access during normal business hours and on reasonable notice to the Target's officers and advisers and any documents, records and other information which the Bidder reasonably requires for the purposes of:
- (i) keeping the Bidder informed of material developments relating to the Target Group including the Target Group's financial position (including its cash flow and working capital position), trading and operational performance;
 - (ii) refinancing the existing financial indebtedness of the Target Group;
 - (iii) holding discussions with the Target Group's employees regarding retention arrangements;
 - (iv) implementing the Scheme;
 - (v) preparing for carrying on the business of the Target Group following implementation of the Scheme; and
 - (vi) any other purpose which is agreed in writing between the parties (acting reasonably),

provided in every case that such access, in the reasonable opinion of the Target, does not place an unreasonable burden on the ability of the Target to operate its business, and provided that nothing in this clause 9.3 requires the Target to provide the Bidder with any information:

- (g) in breach of confidentiality obligations owed to third parties or applicable privacy laws or regulations;
- (h) to the extent that it is Competitively Sensitive Information (in which case the Target may, in good faith and acting reasonably, withhold or redact any Competitively Sensitive Information);
- (i) where the Target reasonably considers that the provision of such documents, records or other information would result in the loss of legal professional privilege; or
- (j) concerning the consideration of the Scheme or of any actual or potential Competing Transaction by the Target Directors.

9.4 Confidentiality

The parties acknowledge that all information that is provided pursuant to clauses 9.1(a)(vii), 9.1(a)(viii) and 9.3 will be provided subject to the terms of the Confidentiality Agreement.

9.5 Change of control

- (a) As soon as practicable after the date of this Deed, the parties must seek to identify any change of control or similar provisions in leases and Material Contracts to which the Target or a member of the Target Group is a party which may be triggered by the implementation of the Scheme.
- (b) In respect of any lease or Material Contract identified under clause 9.5(a), the parties agree that:
 - (i) the Target and the Bidder will agree upon a proposed course of action and then jointly initiate contact with the relevant landlord or counterparty and request that they provide any consents required;

- (ii) neither the Bidder nor its Representatives may contact any landlord or counterparty without the Target's express written approval; and
- (iii) each party must cooperate with, and provide reasonable assistance to, the other party to obtain such consents as expeditiously as possible, including by:
 - (A) promptly providing any information reasonably required by landlords or counterparties; and
 - (B) making its Representatives available, where necessary, to meet with landlords or counterparties to deal with issues arising in relation to the change of control of the Target.
- (c) For the avoidance of doubt, a failure by a member of the Target Group to obtain any landlord or third party consent will not constitute a breach of this Deed by the Target and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this Deed.

10. Actions on and following the Implementation Date

10.1 Board composition of the Target Group

- (a) On the Implementation Date, after the Target or the Target Share Registry has commenced the despatch of the Scheme Consideration to Scheme Participants or the Scheme Shares have been registered in the name of the Bidder (whichever is earlier), subject to receipt by the Target of signed consents to act, the Target must take all actions necessary (and in accordance with the constitution of the relevant member of the Target Group, the Corporations Act and the ASX Listing Rules) to appoint the persons nominated by the Bidder as new Target Directors and new directors of each Target Subsidiary.
- (b) Without limiting clause 10.1(a) on the Implementation Date, but subject to receipt by the Target of written notices of resignation to the effect that the outgoing directors have no claim against any member of the Target Group, the Target must procure that:
 - (i) the incumbent Target Directors (other than those specified in writing by the Bidder to the Target) resign from the Target Board; and
 - (ii) to the extent specified in writing by the Bidder to the Target, the incumbent directors of each Subsidiary of the Target resign from their office.

10.2 Board composition of Bidder

On the Implementation Date, after the Target or the Target Share Registry has commenced the despatch of the Scheme Consideration to Scheme Participants or the Scheme Shares have been registered in the name of the Bidder (whichever is earlier), subject to receipt by the Bidder of a signed consent to act, the Bidder must take all actions

necessary (and in accordance with the Bidder Constitution, the Corporations Act and the ASX Listing Rules) to appoint Michael Omeros as new a new director of the Bidder.

11. Exclusivity

11.1 Termination of existing discussions

- (a) The Target represents and warrants that, as at the time of execution of this Deed, the Target Group is not (including through its Representatives) in any negotiations or discussions, and it has ceased any existing negotiations or discussions, in respect of any Competing Transaction with any Third Party.
- (b) Unless otherwise agreed by the Bidder, the Target must:
 - (i) promptly enforce the terms of any confidentiality agreement, deed or undertaking (or similar document) entered into with a person other than the Bidder in the 18 months prior to the date of this Deed in relation to any potential Competing Transaction; and
 - (ii) not waive, and must promptly enforce, any standstill obligations of any such person.

11.2 No shop

During the Exclusivity Period, the Target must not, and must procure that each member of the Target Group and each of their Representatives do not, directly or indirectly:

- (a) solicit, invite, encourage or initiate any Competing Transaction or any enquiries, negotiations, discussions or proposals with any person in relation to, or that may reasonably be expected to lead to, an actual or proposed Competing Transaction; or
- (b) solicit, invite, encourage or initiate approaches, enquiries, discussions or proposals with a view to obtaining any offer or proposal from any person in relation to, or which may be reasonably be expected to lead to, an actual or proposed Competing Transaction,

or communicate any intention to do any of those things.

11.3 No talk

Subject to clause 11.7, during the Exclusivity Period, the Target must not, and must procure that each member of the Target Group and each of their Representatives do not, directly or indirectly:

- (a) facilitate, enter into, continue or otherwise participate (including by way of responding) in any negotiations or discussions with any person:
 - (i) regarding an actual or proposed Competing Transaction; or
 - (ii) which may reasonably be expected to encourage or lead to, an actual or proposed Competing Transaction;

even if not directly or indirectly solicited, invited, encouraged or initiated by the Target or its Representatives, or that person has publicly announced the Competing Transaction;

- (b) enter into any agreement, arrangement or understanding with any person:

- (i) regarding a Competing Transaction; or
- (ii) which may reasonably be expected to lead to a Competing Transaction;

even if not directly or indirectly solicited, invited, encouraged or initiated by the Target or its Representatives, or that person has publicly announced the Competing Transaction;

- (c) communicate to any person an intention to do any of the things referred to in clause 11.3(a) or 11.3(b); or
- (d) approve or recommend a Competing Transaction, other than as permitted by this Deed.

11.4 No due diligence

- (a) Subject to clause 11.7, without limiting clause 11.3, during the Exclusivity Period, the Target must not, and must ensure that neither it, nor any member of the Target Group or any of their Representatives directly or indirectly, in relation to an actual, proposed or potential Competing Transaction, makes available, facilitates or permits any Third Party to access non-public information, or to undertake due diligence investigations (including without limitation access to premises used by the Target Group or officers or employees of the Target Group), in relation to the Target Group or its business.
- (b) If the Target proposes that any non-public information relating to the business or operations of the Target Group which has not been provided to the Bidder be provided to a Third Party while validly relying on the exception in clause 11.7 then the Target must promptly, and in any event within 2 Business Days after providing it to the Third Party, provide a copy of such information to the Bidder.

11.5 Notice of Competing Transaction

- (a) During the Exclusivity Period, the Target must promptly (and in any event no later than 48 hours) of becoming aware of such matter, notify the Bidder in writing of:
 - (i) any approach by any person to discuss or engage in any activity in relation to an actual, proposed or potential Competing Transaction;
 - (ii) receipt of a request for information relating to the Target Group, or its business or operations, in connection with formulation, development or finalisation of, or assisting in the formulation, development or finalisation of, an actual, proposed or potential Competing Transaction, or which the Target has reasonable grounds to suspect may relate to an actual, proposed or potential Competing Transaction.
- (b) If the Target proposes or determines to take any action of a kind that would breach its obligations under clause 11.3 or 11.4 were it not for clause 11.7, then the Target must notify the Bidder in writing no later than 1 Business Day after making that decision or determination.
- (c) Subject to clause 11.5(d), a notice given under clause 11.5(a) must be accompanied by all relevant details of the relevant approach, including the identity of the person that made the approach and the material terms and conditions of the Competing Transaction (including proposed price or implied value, conditions, timing and details of any break fee) to the extent known to the Target.
- (d) Clause 11.5(c) does not apply if the Target Board has determined, in good faith and acting reasonably, that complying with clause 11.5(c) would cause the Target Board to breach fiduciary or statutory obligations to which it or the Target is

subject. Nothing in this clause 11.5(d) limits or relieves the Target of its obligation to comply with clause 11.5(a).

- (e) The Bidder agrees that:
- (i) any information received under clause 11.5(a) is Confidential Information (as such term is defined in the Confidentiality Agreement) and subject to the terms of the Confidentiality Agreement; and
 - (ii) it must not, and must ensure that its Representatives do not, contact the Third Party that made the actual, proposed or potential Competing Transaction for any purpose relating to the Scheme, the Competing Transaction or any similar transaction.

11.6 Matching right

- (a) Without limiting clauses 11.2 and 11.3, during the Exclusivity Period, the Target:
- (i) must not enter, and must procure that no member of the Target Group enters, into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, the Target or both proposes or propose to undertake or give effect to an actual or proposed Competing Transaction; and
 - (ii) must use its reasonable endeavours to procure that no Target Director publicly recommends, supports or endorses an actual or proposed Competing Transaction or withdraws, changes or modifies his or her Recommendation as a result of the actual, anticipated, proposed or potential Competing Transaction,
- unless:
- (iii) the Target Board acting in good faith and in order to satisfy what the Target Board considers to be its statutory or fiduciary duties (after consultation with its external legal and financial advisers), determines that the Competing Transaction constitutes or would be likely to constitute an actual or proposed a Superior Proposal;
 - (iv) the Target has provided the Bidder with the material terms and conditions of the actual or proposed Competing Transaction, including price, conditions, details of any break fee and the identity of the Third Party making the actual or proposed Competing Transaction; and
 - (v) either:
 - (A) the Bidder has not announced or provided the Target a Counterproposal by the expiry of the Matching Period; or
 - (B) the Bidder has announced or provided to the Target a Counterproposal by the expiry of the Matching Period and the Target Board has determined, acting in good faith, that Counterproposal would not provide an equivalent or superior outcome to the Target Shareholders as a whole compared with the Competing Transaction and the Bidder has been given the right to amend the Counterproposal in accordance with clause 11.6(f).
- (b) The Target acknowledges and agrees that each successive modification or variation to the material terms and conditions of any actual or proposed Competing Transaction will constitute a new actual or proposed Competing Transaction for the purposes of the requirements under clause 11.5 and clause 11.6.

- (c) If the Target provides the Bidder a notice under clause 11.6(a)(iv), the Bidder will have the right (but not the obligation) at any time during the period of 5 Business Days after receipt of that notice (**Matching Period**) to amend the terms of the Transaction including increasing the amount of consideration offered under the Transaction or proposing a new proposal (**Counterproposal**), and if the Bidder does so, the Target must procure that the Target Board, acting in good faith, consider the Counterproposal and determines whether the Counterproposal would provide an equivalent or superior outcome for Target Shareholders as a whole compared with the applicable Competing Transaction, taking into account all of the terms and conditions of the Counterproposal.
- (d) The Target must procure that the Target Board notifies the Bidder within 5 Business Days of its determination in relation to the Counterproposal in writing, stating reasons for that determination.
- (e) If the Target Board, acting in good faith, determines that the Counterproposal would provide an equivalent or superior outcome for Target Shareholders as a whole compared with the applicable Competing Transaction, taking into account all of the terms and conditions of the Counterproposal, then:
- (i) the Target and the Bidder must use their best endeavours to agree the amendments to this Deed and, if applicable, the Scheme and Deed Poll that are reasonably necessary to reflect the Counterproposal and to implement the Counterproposal, in each case as soon as reasonably practicable; and
 - (ii) the Target must use its reasonable endeavours to procure that each of the Target Directors recommends the Counterproposal and not the applicable Competing Transaction
- (f) If the Target Board determines in good faith that the Counterproposal would not provide an equivalent or superior outcome to the Target Shareholders as a whole compared to the applicable Competing Transaction, then the Bidder may take steps to amend the Counterproposal to address the reasons given by the Target within a further period of 3 Business Days after the receipt of notice under clause 11.6(d). If the Bidder does so to the Target's reasonable satisfaction, then clause 11.6(e) applies to that Counterproposal.

11.7 Fiduciary exception

- (a) Clauses 11.3 and 11.4 do not apply to the extent that they restrict the Target or the Target Board from taking or refusing to take any action with respect to an actual, proposed or potential Competing Transaction (which was not solicited, invited, encouraged or initiated by the Target in contravention of clause 11.2) provided that the Target Board has determined, in good faith and acting reasonably that:
- (i) after receiving advice from its financial adviser, the relevant Competing Transaction is, or is reasonably likely to become, a Superior Proposal; and
 - (ii) after receiving written legal advice from its external legal advisers, that compliance with clauses 11.3 or 11.4 (as applicable) would constitute, or would be reasonably likely to constitute, a breach of any of the fiduciary or statutory duties of the Target Directors.
- (b) If the Target proposes that any non-public information be provided to a Third Party while relying on the exception in clause 11.7(a), then:
- (i) before the Target provides such information, the Third Party must enter into an agreement which contains obligations on the recipient that are no

less onerous in any respect than the obligations imposed on the Bidder and the Target in connection with this Transaction; and

- (ii) any non-public information provided to that Third Party must also be provided to the Bidder.

11.8 Exception

Nothing in this clause 11 prevents the Target from:

- (a) taking any action in good faith to comply with its continuous disclosure obligations; or
- (b) continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to its business generally.

12. Break Fee

12.1 Background

This clause 12 has been agreed in circumstances where:

- (a) the Target believes that the Scheme will provide significant benefits to, the Target and Target Shareholders, and the Bidder and the Target acknowledge that, if they enter into this Deed and the Scheme is subsequently not implemented, the Bidder will incur significant costs, including those set out in clause 12.5;
- (b) the Bidder requested that provision be made for the Break Fee, without which the Bidder would not have entered into this Deed;
- (c) the Target believes it is appropriate for it to agree to the payment referred to in this clause to secure the Bidder's entry into this Deed and participation in the Scheme; and
- (d) both parties have received legal advice on this Deed and the operation of this clause.

12.2 Payment by the Target to the Bidder

Subject to clauses 12.3, 12.4 and 13, the Target agrees to pay the Break Fee to the Bidder without withholding or set off if:

- (a) a Competing Transaction is announced during the Exclusivity Period and, within 12 months of such announcement, the proponent of that Competing Transaction (or any of its Associates):
 - (i) completes or otherwise implements a Competing Transaction of a kind referred to in paragraphs (b) or (c) of the definition of "Competing Transaction"; or
 - (ii) otherwise acquires a Relevant Interest in, an economic interest in or Voting Power of 50% or more of the Target Shares and that acquisition is unconditional or Control of the Target;
- (b) during the Exclusivity Period, any Target Director fails to recommend the Scheme or withdraws, adversely changes or adversely qualifies his or her Recommendation

or otherwise makes a public statement indicating that he or she no longer supports the Scheme, except where:

- (i) the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interest of Target Shareholders (other than where the reason for the Independent Expert's conclusion is due wholly or partly to the existence of a Competing Transaction); or
- (ii) the Target is entitled to terminate this Deed pursuant to clause 16.1(a)(i) or clause 16.2 and has given the appropriate termination notice to the Bidder; or
- (iii) a Relative Bidder Share Price Fall Event occurs; or
- (c) the Bidder validly terminates this Deed in accordance with clause 16.1(a)(i).

12.3 No amount payable if Scheme becomes Effective

- (a) Notwithstanding the occurrence of any event in clause 12.2, if the Scheme becomes Effective:
 - (i) no amount is payable by the Target under clause 12.2; and
 - (ii) if any amount has already been paid under clause 12.2 it must be refunded by the Bidder within 10 Business Days after the Scheme becomes Effective.
- (b) The Target can only ever be liable to pay the Break Fee once.
- (c) The Break Fee is not payable merely because the resolution submitted to the Scheme Meeting in respect of the Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act.

12.4 Timing of payment

- (a) A demand by the Bidder for payment of the Break Fee under clause 12.2 must:
 - (i) be in writing;
 - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account into which the Target must pay the Break Fee.
- (b) The Target must pay the Break Fee to the Bidder under clause 12.2 without withholding or set-off within 10 Business Days of receipt by the Target of a valid demand for payment from the Bidder under clause 12.4(a).

12.5 Nature of payment

- (a) The Break Fee is an amount intended to compensate the Bidder for:
 - (i) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);

- (ii) costs of management and directors' time in planning and implementing the Transaction;
 - (iii) out-of-pocket expenses incurred by the Bidder and its respective employees, advisers and agents in planning and implementing the Transaction;
 - (iv) damage to the Bidder's reputation associated with a failed transaction and the implications of that damage to the Bidder's business; and
 - (v) reasonable opportunity costs incurred by the Bidder in pursuing the Transaction or in not pursuing alternative acquisitions or strategic initiatives.
- (b) The parties agree that the costs incurred are and will be of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 12.2.

12.6 Limitation of liability

The parties acknowledge and agree that other than in respect of fraud or any wilful or deliberate material breach of this Deed by the Target:

- (a) the maximum liability of the Target to the Bidder under or in connection with this Deed including in respect of any breach of this Deed will be the Break Fee and in no event will the aggregate liability of the Target under or in connection with a breach of this Deed exceed an amount equal to the Break Fee; and
- (b) the payment by the Target of the Break Fee represents the sole and absolute amount of liability of the Target to the Bidder under or in connection with this Deed and no further damages, fees, expenses or reimbursements of any kind will be payable by the Target to the Bidder in connection with this Deed,

provided that nothing in this clause 12.6 impacts the Bidder's ability to seek and obtain the remedy of specific performance.

13. Modifications required to Break Fee or exclusivity

13.1 Modifications following regulatory intervention

If any of the following occurs:

- (a) a Government Agency finds that all or any part of the payment required to be made under clause 12 or an exclusivity arrangement under clause 11 is unacceptable or unenforceable; or
- (b) as a result of an application to the Takeovers Panel, the Takeovers Panel indicates that, in the absence of a written undertaking under section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) to modify the amount of the Break Fee or the circumstances in which it is to be paid or the circumstances in relation to an exclusivity arrangement under clause 11, it will make a declaration of unacceptable circumstances,

then, subject to clause 13.3:

- (c) the parties must amend clause 11 or clause 12 (or both) to the extent required to give effect to the requirements of the Government Agency or the Takeovers Panel

(as the case may be) and (in circumstances referred to in clause 13.1(b)) must give the required undertaking(s); and

- (d) neither the occurrence of any of the events referred to in clause 13.1(a) or clause 13.1(b) nor the amendment of clause 11 or clause 12 (or both) will be taken to be a breach of, or permit any party to terminate, this Deed.

13.2 Conduct during proceedings

The parties must not make or cause or permit to be made any application to a court of the Takeovers Panel for or in relation to a determination referred to in clause 13.1.

13.3 No requirement to act unless decision final

The parties are only required to take steps under clause 13.1(c) in relation to any requirement of a Government Agency or the Takeovers Panel if:

- (a) no appeal or review proceeding is available from the decision to impose that requirement or the period for lodging an appeal or commencing review proceedings has expired without an appeal having been lodged or review proceedings commenced; or
- (b) the Bidder and the Target agree in writing not to appeal or seek review of the decision to impose that requirement.

13.4 Appeals and review of regulatory decisions

Nothing in this Deed requires either party to appeal or seek review of any decision of a Government Agency or the Takeovers Panel referred to in clause 13.1(a) or clause 13.1(b).

13.5 Determination by Government Agency

If a Government Agency determines that payment of all or any part of the Break Fee is unacceptable, unlawful or involves a breach of the fiduciary or statutory duties of the members of the Target Board (**Impugned Amount**) and either no appeal from that determination is available or the period for lodging an appeal has expired without an appeal having been lodged then:

- (a) the obligation of the Target to pay the Break Fee does not apply to the extent of the Impugned Amount; and
- (b) if the Bidder has received any part of the Impugned Amount, it must refund it within 5 Business Days after that determination is made or the period for lodging has expired, whichever is later.

13.6 Obligations of parties

No party must undertake, or be involved in undertaking or supporting, any action that would trigger the operation of clause 13.1 or clause 13.5.

14. Representations and warranties

14.1 Target Representations and Warranties

- (a) The Target represents and warrants to the Bidder (on its own behalf and separately as trustee for each of the other Bidder Indemnified Parties) each of the matters set out in clause 14.1(b) as at the date of this Deed, the date the Scheme Booklet is dispatched to Target Shareholders and at the Cut-Off Time (except that where any

statement is expressed to be made only at a particular date it is given only at that date).

- (b) The Target represents and warrants that:
- (i) **(status)**: it is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) **(authorisation)**: the execution and delivery of this Deed by the Target has been properly authorised by all necessary corporate action and the Target has full corporate power and lawful authority to execute and deliver this Deed and to perform or cause to be performed its obligations under this Deed;
 - (iii) **(validity of obligations)**: this Deed constitutes legal, valid and binding obligations on the Target which are enforceable against it in accordance with its terms;
 - (iv) **(no contravention)**: the entry into, its compliance with its obligations and the exercise of its rights under, this Deed do not and will not conflict with:
 - (A) its constituent documents or cause a limitation on its powers or the powers of its directors to be exercised; or
 - (B) any applicable Law;
 - (v) **(continuous disclosure)**: the Target is not in breach of its continuous disclosure obligations under the ASX Listing Rules and is not relying on the carve-out in ASX Listing Rule 3.1A to withhold any information from disclosure (other than the transaction contemplated by this Deed);
 - (vi) **(compliance with law)**: each member of the Target Group has complied in all material respects with all Australian and foreign laws and regulations applicable to it and orders of Australian and foreign governmental agencies having jurisdiction over it and has all material licenses, permits and authorisations necessary for it to conduct its respective businesses as presently being conducted;
 - (vii) **(regulatory filings)**: so far as the Target is aware having made due enquiries, no document or announcement which the Target has lodged or filed with, or otherwise given to, any Government Agency (or which has been so lodged, filed or given on its behalf or on behalf of any member of the Target Group) since the date 3 years before the date of this Deed and which is currently publicly available or otherwise in the public domain, was misleading or deceptive in any material respect (whether by omission or otherwise) as at the date that document or announcement was lodged or filed with or given to the Government Agency;
 - (viii) **(provision of information to the Independent Expert)**: all information provided by or on behalf of the Target Group to the Independent Expert to enable the Independent Expert's Report to be prepared and completed 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;
 - (ix) **(reliance)**: the Target Information in the Scheme Booklet will be included in good faith on the understanding that the Bidder and its directors will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme;

- (x) **(Target Information)**: the Target Information provided under this Deed and included in the Scheme Booklet as at the date of the Scheme Booklet will not contain any material statement which is misleading or deceptive in any material respect (whether by omission or otherwise) nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, the ASX Listing Rules and all regulatory guidance and other requirements of ASIC;
- (xi) **(Scheme Booklet)**: as at the date the Scheme Booklet is despatched to Target Shareholders, the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the Bidder Information and the Independent's Expert Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise);
- (xii) **(new information)**: the Target will, as a continuing obligation (but in respect of Bidder Information only to the extent the Bidder provides the Target with updates to the Bidder Information), ensure that the Scheme Booklet is updated or supplemented to include all further or new information which arises and the Target becomes aware of after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive (including by way of omission);
- (xiii) **(disclosure)**: the Target Disclosure Materials were provided or made available to the Bidder in good faith and the Target is not aware of any material misleading or deceptive statement in any of the Target Disclosure Materials and has not knowingly withheld or omitted any material information from the Target Disclosure Materials which has been requested by the Bidder;
- (xiv) **(Net Debt)**: the Target has provided the Bidder complete and accurate information relating to the level of Net Debt as at the date of this Deed;
- (xv) **(securities)**: as at the date of this Deed:
- (A) the total issued capital of the Target is comprised of:
 - (I) 59,578,392 Target Shares; and
 - (II) 76,924 Performance Rights,
 and there are no other options, performance rights, shares, convertible notes or other securities (or obligations, offers or agreements to issue any of the foregoing) other than 47,656 Target Shares to be issued under the Exempt Plan Grant and 117,592 Performance Rights to be issued under the LTI Grant;
 - (B) all the issued securities of each Target Group Member (other than the Target) are held by either the Target or another Target Group Member that is directly or indirectly wholly-owned by the Target; and
 - (C) no Target Group Member has issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into shares and no Target Group Member is under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any shares, options, warrants, performance

rights or other securities or instruments in a Target Group Member other than as set out in clause 14.1(b)(xv)(A);

- (xvi) **(financial statements)**: As far as the Target is aware, as at the date of this Deed, there has not been any event, change, effect or development that would require the Target to restate the Target's financial statements as disclosed to ASX, and the Target's financial statements for the financial year ended 30 June 2021:
- (A) comply with applicable statutory requirements and were prepared in accordance with the Corporations Act, Accounting Standards and all other applicable Laws and regulations; and
 - (B) give a true and fair view of the financial position and the assets and liabilities of the Target Group;
- (xvii) **(no knowledge of Target Material Adverse Change)**: As at the date of this Deed, the Target is not aware of any information relating to the Target Group or its respective businesses or operations that has or could reasonably be expected to give rise to a Target Material Adverse Change;
- (xviii) **(no Insolvency Event)**: no member of the Target Group is subject to an Insolvency Event;
- (xix) **(litigation or regulatory investigation)**: there is no material litigation or regulatory investigation commenced or threatened against any member of the Target Group of any nature;
- (xx) **(Target assets)**: the Target Group owns, or has the right to use, all of the assets, real property, information technology and intellectual property that are material for the conduct of the business of the Target Group, and will continue to do so upon and immediately following Implementation;
- (xxi) **(Material Contracts)**: as at the date of this Deed, neither it nor any member of the Target Group is in material default under any Material Contract binding on it or its assets nor has anything occurred which is, or would with the giving of notice or lapse of time, constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under any Material Contract;
- (xxii) **(regulatory approvals)**: so far as the Target is aware having made due enquiries, no Regulatory Approval is required to be obtained by the Target in order for it to execute, deliver and perform this Deed, other than those approvals set out in clause 3.1, and so far as the Target is aware having made due enquiries, as at the date of this Deed, no regulatory action of any nature has been taken that would prevent or restrict its ability to perform its obligations under this Deed.

14.2 Qualifications on Target Representation and Warranties

The Target Representation and Warranties and the indemnity in clause 14.3 are subject to matters that:

- (a) are expressly permitted or required under this Deed or the Scheme;
- (b) have been Fairly Disclosed in the Target Disclosure Materials;
- (c) have been Fairly Disclosed in an announcement made by the Target to the ASX or a document lodged with ASIC in 3 years prior to entry into this Deed;

- (d) would have been Fairly Disclosed to the Bidder had the Bidder conducted a search of ASIC records or the PPS Register in relation to the Target, in each case, on the date that is 2 Business Days prior to the date of this Deed; or
- (e) as at the date of this Deed are within the actual knowledge of the Bidder, which for the purposes of this clause will be taken to be limited to the facts, matters and circumstances of which the following individuals are actually aware as at the date of this Deed:
 - (i) Phillip Britt;
 - (ii) Matthew Kusi-Appauh;
 - (iii) Brian Maher; and
 - (iv) John Reisinger.

14.3 Target's indemnity

Subject to clause 12.6 and clause 14.2, the Target agrees with the Bidder (on the Bidder's own behalf and separately as trustee for each of the Bidder Indemnified Parties) to indemnify and keep indemnified the Bidder Indemnified Parties from and against all Losses incurred by the Bidder Indemnified Parties as a result of any breach of any of the Target Representations and Warranties.

14.4 Bidder Representation and Warranties

- (a) The Bidder represents and warrants to the Target (on the Target's own behalf and separately as trustee or nominee for each of the other Target Indemnified Parties) each of the matters set out in clause 14.4(b) as at the date of this Deed, the date the Scheme Booklet is dispatched to Target Shareholders and at the Cut-Off Time (except that where any statement is expressed to be made only at a particular time it is given only at that date).
- (b) The Bidder represents and warrants that:
 - (i) **(status)**: the Bidder is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) **(authorisation)**: the execution and delivery of this Deed has been properly authorised by all necessary corporate action and the Bidder has full corporate power and lawful authority to execute and deliver this Deed and to perform or cause to be performed its obligations under this Deed;
 - (iii) **(validity of obligations)**: this Deed constitutes legal, valid and binding obligations on the Bidder which are enforceable against it in accordance with its terms;
 - (iv) **(no contravention)**: the entry into, its compliance with its obligations and the exercise of its rights under, this Deed do not and will not conflict with:
 - (A) its constituent documents or cause a limitation on its powers or the powers of its directors to be exercised; or
 - (B) any applicable Law;
 - (v) **(continuous disclosure)**: the Bidder is not in breach of its continuous disclosure obligations under the ASX Listing Rules and is not relying on the carve-out in ASX Listing Rule 3.1A to withhold any information from disclosure (other than the transaction contemplated by this Deed);

- (vi) **(compliance with law)**: each member of the Bidder Group has complied in all material respects with all Australian and foreign laws and regulations applicable to it and orders of Australian and foreign governmental agencies having jurisdiction over it;
- (vii) **(no dealing with Target Shareholders)**: neither it nor, so far as the Bidder is aware having made reasonable enquires, any of its Associates has any agreement, arrangement or understanding with any Target Shareholder under which that Target Shareholder (or an Associate of that Target Shareholder) would be entitled to receive consideration for their Target Shares different from the Scheme Consideration or under which the Target Shareholder agrees to vote in favour of the Scheme or against a Competing Transaction;
- (viii) **(provision of information to the Independent Expert)**: all information provided by or on behalf of the Bidder Group to the Independent Expert to enable the Independent Expert's Report to be prepared and completed 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;
- (ix) **(reliance)**: the Bidder Information provided to the Target in accordance with clause 6.3(a) for inclusion in the Scheme Booklet will be provided in good faith on the understanding that each of the Target Indemnified Parties will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the requirements of the Corporations Act;
- (x) **(Bidder Information)**: the Bidder Information provided under this Deed and included in the Scheme Booklet as at the date of the Scheme Booklet will not contain any material statement which is misleading or deceptive in any material respect (whether by omission or otherwise) nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, the ASX Listing Rules and all regulatory guidance and other requirements of ASIC;
- (xi) **(new information)**: it will, as a continuing obligation, provide to the Target all further or new information which arises after the Scheme Booklet has been dispatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information is not misleading or deceptive in any material respect (including by way of omission);
- (xii) **(disclosure)**: the Bidder Disclosure Materials were provided or made available to Target in good faith and the Bidder is not aware of any material misleading or deceptive statement in any of the Bidder Disclosure Materials and has not knowingly withheld or omitted any material information from the Bidder Disclosure Materials which has been requested by the Target;
- (xiii) **(Bidder Shares)**: the Bidder Shares constituting the Scheme Scrip Consideration to be issued in accordance with the terms of the Scheme will be duly authorised and validly issued without shareholder approval, fully paid and free of all Encumbrances and third party rights and will rank equally with all other Bidder Shares then on issue (including to receive any dividends or distribution of capital paid and any other entitlements accruing in respect of Bidder Shares after the Implementation Date);

(xiv) **(securities)**: as at the date of this Deed, the total issued capital of the Bidder is comprised of:

- (A) 223,831,951 Bidder Shares;
- (B) 3,050,616 Bidder Options; and
- (C) no Bidder Share Rights;

and there are no other options, performance rights, shares, convertible notes or other securities (or obligations, offers or agreements to issue any of the foregoing);

(xv) **(financial statements)**: As far as the Bidder is aware, as at the date of this Deed, there has not been any event, change, effect or development that would require the Bidder to restate the Bidder's financial statements as disclosed to ASX, and the Bidder's financial statements for the financial year ended 30 June 2021:

- (A) comply with applicable statutory requirements and were prepared in accordance with the Corporations Act, Accounting Standards and all other applicable Laws and regulations; and
- (B) give a true and fair view of the financial position and the assets and liabilities of the Bidder Group;

(xvi) **(no Insolvency Event)**: no member of the Bidder Group is subject to an Insolvency Event;

(xvii) **(litigation or regulatory investigation)**: there is no material litigation or regulatory investigation commenced or threatened against any member of the Bidder Group of any nature;

(xviii) **(Scheme Consideration)**: the Bidder has a reasonable basis to expect that it will, by the Implementation Date have available to it sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy the Bidder's obligation to provide or procure the provision of the Scheme Consideration in accordance with its obligations under this Deed, the Scheme and the Deed Poll; and

(xix) **(regulatory approvals)**: so far as the Bidder is aware having made due enquiries, no Regulatory Approval is required to be obtained by the Bidder in order for it to execute, deliver and perform this Deed, other than those approvals set out in clause 3.1, and so far as the Bidder is aware having made due enquiries, as at the date of this Deed, no regulatory action of any nature has been taken that would prevent or restrict its ability to perform its obligations under this Deed.

14.5 Qualifications on Bidder Representations and Warranties

The Bidder Representations and Warranties in clause 14.4 and the indemnity in clause 14.6 are subject to matters that:

- (a) are expressly permitted or required under this Deed or the Scheme;
- (b) have been Fairly Disclosed in the Bidder Disclosure Materials;
- (c) have been Fairly Disclosed in an announcement made by the Bidder to the ASX or a document lodged with ASIC in 3 years prior to entry into this Deed;

- (d) would have been Fairly Disclosed to the Target had the Target conducted a search of ASIC records or the PPS Register in relation to the Bidder, in each case, on the date that is 2 Business Days prior to the date of this Deed; and
- (e) as at the date of this Deed are within the actual knowledge of the Target, which for the purposes of this clause will be taken to be limited to the facts, matters and circumstances of which the following individuals are actually aware as at the date of this Deed:
 - (i) Michael Omeros;
 - (ii) Ben Melville;
 - (iii) Ben Cornish (to the extent of his area of responsibility and expertise in his role with the Target);
 - (iv) Jay Binks (to the extent of his area of responsibility and expertise in his role with the Target); and
 - (v) Mike Stabb.

14.6 Bidder indemnity

Subject to clause 14.5, the Bidder agrees with the Target (on the Target's own behalf and separately as trustee for each of the Target Indemnified Parties) to indemnify and keep indemnified the Target Indemnified Parties from and against all Losses incurred by the Target Indemnified Parties as a result of any breach of any of the representations and warranties in clause 14.4.

14.7 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstances which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 14.

14.8 Survival of warranties

Each Target Representation and Warranty and each Bidder Representation and Warranty:

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

14.9 Survival of indemnities

Each indemnity in this Deed (including those in clauses 14.3 and 14.6) will:

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

15. Releases

15.1 Release of Bidder Indemnified Parties

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

- (i) the Bidder's execution or delivery of this Deed or the Deed Poll;
- (ii) any breach of any representations and warranties, covenant or obligation of the Bidder or any other member of the Bidder Group in this Deed;
- (iii) the implementation of the Scheme; or
- (iv) any disclosure containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct, gross negligence or fraud. Nothing in this clause 15.1 limits the Target's rights to terminate this Deed under clause 16.1.

- (b) The 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.

15.2 Release of Target Indemnified Parties

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

- (i) the Target's execution or delivery of this Deed;
- (ii) any breach of any representations and warranties, covenant or obligation of the Target or any other member of the Target Group in this Deed;
- (iii) the implementation of the Scheme; or
- (iv) any disclosure containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct, gross negligence or fraud. Nothing in this clause 15.2 limits the Bidder's rights to terminate this Deed under clause 16.1 or to claim the Break Fee under clause 12.

- (b) The 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.

15.3 Directors' and officers' insurance

Subject to the Scheme becoming Effective and subject to the Corporations Act and clause 15.4, the Bidder undertakes in favour of the Target and each other person who is a Target Indemnified Party that it will:

- (a) for a period of 7 years from the Implementation Date, ensure that the constitutions of the Target and each other member of the Target Group continue to contain the rules that are contained in those constitutions at the date of this Deed that provide for each member of the Target Group 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 that company to any person other than a member of the Target Group; and
- (b) procure that the 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 15.4, for a period of 7 years from the retirement date of each director and officer.

15.4 Period of undertaking

The undertakings contained in clause 15.3 are given:

- (a) subject to any Corporations Act restriction or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly; and
- (b) 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.

15.5 Benefit of undertaking for Target Group

The Target acknowledges that it receives and holds the benefit of clause 15.3 to the extent it relates to each director and officer of a member of the Target Group on behalf of each of them.

15.6 Bidder acknowledgement regarding insurance

The Bidder acknowledges that, notwithstanding any other provision of this Deed, the Target may, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to a period of 7 years (**D&O Policy**) and that any actions to facilitate that insurance or in connection therewith will not be a Target Prescribed Occurrence or breach any provision of this Deed, provided that the Target has consulted in good faith with the Bidder regarding the cost and terms of the D&O Policy (including if the cost of the D&O Policy is materially higher than the cost of the D&O Policy currently in effect, consulting in good faith with the Bidder regarding possible alternative coverage solutions).

16. Termination**16.1 Termination**

- (a) Either party may terminate this Deed by written notice to the other party:
 - (i) at any time prior to the Cut-Off Time if the other party has materially breached this Deed (including a breach of a Target Representation and

Warranty or a Bidder Representation and Warranty) taken in the context of the Scheme as a whole, provided that the Bidder or the Target (as the case may be) has, if practicable, given notice to the other setting out the relevant circumstances and the breach:

- (A) is not capable of being remedied; or
- (B) is capable of being remedied, but has not been remedied to the satisfaction of the Bidder or the Target (as the case may be) within 10 Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date) after the time the notice is given;
- (ii) in accordance with and pursuant to clause 3.9 or clause 7.2(a);
- (iii) if the Scheme has not become Effective on or before the End Date; or
- (iv) if agreed to in writing by the Bidder and the Target.
- (b) The Bidder may terminate this Deed by written notice to the Target until the Cut-Off Time if any member of the Target Board fails to make the Recommendation, withdraws their Recommendation, adversely changes or qualifies their Recommendation, or otherwise makes a public statement indicating that he or she no longer supports the Scheme (excluding a statement that no action should be taken by the Target Shareholders pending the assessment of a Competing Transaction by the Target Board).
- (c) Without limiting the Target's obligations under clause 11, the Target may terminate this Deed by written notice to the Bidder until the Cut-Off Time if at any time before the Cut-Off Time a majority of the Target Board clause change, withdraw or modify their Recommendation as permitted under clause 8.1(b).
- (d) The Target may terminate this Deed by written notice to the Bidder in accordance with clause 16.2.

16.2 Relative Bidder Share Price Fall

- (a) Subject to clause 16.2(b), the Target may terminate this Deed by written notice to the Bidder if, during any time period after the date of this Deed until the Cut-Off Time, the decline in the Bidder's share price relative to movements in the S&P/ASX200 index (**Relative Bidder Share Price Fall**) is greater than or equal to 17.5% (**Relative Bidder Share Price Fall Event**), with the Relative Bidder Share Price Fall to be calculated in accordance with the following formula:

$$\text{Relative Bidder Share Price Fall} = A + B$$

Where:

A = the percentage change in the Bidder's share price, calculated as the Bidder's Relevant VWAP at the relevant time divided by \$5.00, being the value of the Bidder's shares stated in the Announcement, less 100% (where if A is a negative percentage, the absolute value must be taken, but if A is a positive number this clause will not apply); and

B = the percentage change in S&P/ASX200 index calculated as the S&P/ASX200 index at the relevant time divided by the S&P/ASX200 index at the date of this Deed, less 100% (where if B is a positive percentage, then B will be taken to equal nil and no longer apply to the formula above)

For the purposes of the calculations in "A", the Bidder's Relevant VWAP is to be based on:

- (i) 15 consecutive ASX trading days provided that the actual daily trading volume of the Bidder's shares over the 15 day period is a minimum of 1.3 million shares traded on average over the period; or
- (ii) in all other cases, the number of consecutive ASX trading days during which a total of 19.5 million shares have traded (exclusive of off-market block trades),

(Bidder's Relevant VWAP).

- (b) Without prejudice to clause 16.2(c), the Target may only terminate this Deed under clause 16.2(a) within 5 Business Days of the occurrence of a Relative Bidder Share Price Event.
- (c) This clause 16.2 will continue to apply until the Cut-Off Time. A decision by the Target to not terminate this Deed under clause 16.2(a) following a Relative Bidder Share Price Event will not preclude the Target from taking such action for any subsequent Relative Bidder Share Price Event up until the Cut-Off Time.

16.3 Notice of termination

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

16.4 Consequences of termination

If this Deed is terminated by either party, or if this Deed otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this Deed, other than the obligations set out in clauses 12 to 19 and clauses 21 to 24 (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 Deed.

16.5 Damages

Subject to the limitations in clause 12.6, and in addition to the right of termination under clause 16.1, where there is no appropriate remedy for the breach in this Deed (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 Deed.

17. Public announcements

17.1 Announcement of Transaction

Immediately after the execution of this Deed, the Target must issue a public announcement of the Transaction in a form previously agreed between the parties.

17.2 Required disclosure

Where a party is required by Law or the ASX Listing Rules to make any announcement or to make any disclosure in connection with the Scheme, it must use all reasonable endeavours, to the extent possible, to consult with the other party prior to making the relevant disclosure.

17.3 Subsequent announcements

- (a) Subject to clauses 17.1 and 17.2, no party may make any public announcement or disclosure in connection with the Scheme (including disclosure to a Government Authority) other than in a form approved by each party (acting reasonably).
- (b) Each party will use all reasonable endeavours to provide such approval as soon as practicable.
- (c) Nothing in this clause requires the giving of prior notice or the taking of any action if doing so would lead to a party breaching an applicable Law or the ASX Listing Rules.

18. Confidentiality

18.1 Confidentiality Agreement

Each party acknowledges and agrees that it continues to be bound by the Confidentiality Agreement in respect of all information received by it from the other party on, before or after the date of this Deed.

18.2 Survival of obligations

The rights and obligations of the parties to the Confidentiality Agreement survive termination (for whatever reason) of this Deed.

19. GST

19.1 Definitions

Unless the context requires otherwise, words and expressions used in this clause 19 have the same meaning as in the GST Act.

19.2 Consideration is GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Deed are exclusive of GST.

19.3 Payment of GST

- (a) If GST is imposed on any Supply made under or in accordance with this Deed, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (b) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Deed.

19.4 Reimbursement of expenses

If this Deed requires a party (the **First Party**) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (the **Other Party**), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:

- (a) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (**Net Amount**); and
- (b) if the Other Party's recovery for the First Party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

20. Withholding tax

- (a) If the Bidder is required by Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (Subdivision 14-D) to pay amounts to the ATO in respect of the acquisition of Target Shares from certain Target Shareholders, the Bidder is permitted to deduct the relevant amounts from the payment of the Scheme Consideration to those Target Shareholders, and remit such amounts to the ATO. The aggregate sum payable to Target Shareholders shall not be increased to reflect the deduction and the net aggregate sum payable to those Target Shareholders shall be taken to be in full and final satisfaction of the amounts owing to those Target Shareholders.
- (b) The Target agrees that the Bidder may approach the ATO to obtain clarification as to the application of Subdivision 14-D to the Transaction and will provide all information and assistance that the Bidder reasonably requires in making that approach.
- (c) The Bidder agrees:
 - (i) to provide the Target a reasonable opportunity to review the form and content of all materials to be provided to the ATO, to take into account the Target's comments on those documents and more generally in relation to the Bidder's engagement with the ATO and to participate in any discussions and correspondence between the Target and the ATO in connection with the application of Subdivision 14-D to the Transaction; and
 - (ii) not to contact any Target Shareholders in connection with the application of Subdivision 14-D to the Transaction without the Target's prior written consent.
- (d) The parties agree to consult in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the ATO following the process specified above in this clause 20. The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable following that consultation which may include, without limitation, making amendments to this Deed and the Scheme) to ensure that relevant representations are obtained from the Target Shareholders.

21. Costs

21.1 Costs

Subject to clauses 19 and 21.2 and except as otherwise provided in this Deed, each party must pay its own costs and expenses (including taxes) in connection with the negotiation, preparation, execution, delivery and performance of this Deed.

21.2 Stamp duty

The Bidder must:

- (a) pay all stamp duty and any related fines, penalties, interest, costs and brokerage in respect of or in connection with this Deed, the performance of this Deed, or any instruments entered into under this Deed and in respect of a transaction effected by or made under the Scheme and this Deed, including the transfer of Scheme Shares under the Scheme; and
- (b) indemnify each Scheme Participant on demand against any liability arising from its failure to comply with clause 21.2(a).

22. Enforcement of rights conferred on non-parties

Solely to the extent that this Deed purports to grant a right or benefit to a person (**Relevant Person**) who is not a party to this Deed:

- (a) if that right or benefit is also granted to the Target, the Target executes this Deed as agent for the Relevant Person (as well as in the Target's own capacity) and, despite the fact that the Relevant Person is not a party to this Deed, the Target may enforce the obligations corresponding to the Relevant Person's right or benefit as agent for, and for the benefit of, the Relevant Person;
- (b) if that right or benefit is also granted to the Bidder, the Bidder executes this Deed as agent for the Relevant Person (as well as in the Bidder's own capacity) and, despite the fact that the Relevant Person is not a party to this Deed, the Bidder may enforce the obligation corresponding to the Relevant Person's right or benefit as agent for, and for the benefit of, the Relevant Person; and
- (c) for the purposes of enforcement, the obligation corresponding to the Relevant Person's right or benefit is taken to be owed to the Relevant Person.

23. Notices

- (a) Any notice or communication in respect of this Deed (**Notice**) may be served by delivery in person, by post or by email to the address or email address of a party specified in this Deed or most recently notified by a party to the sender.
- (b) Any Notice to a party must be in writing and signed by either:
 - (i) the sender or, if a corporate party, an authorised officer of the sender; or
 - (ii) the party's solicitor.
- (c) A Notice:
 - (i) if delivered in person, will be deemed served upon delivery;
 - (ii) if posted, will be deemed served 2 Business Days after posting; and
 - (iii) if sent by email, will be deemed served that day unless the sender receives an automated message generated by the recipient's mail server (**Failure Message**) that the email has not been delivered within two hours. For the avoidance of doubt any response generated by or at the instigation of the

recipient (including an 'out of office' message) will not be a Failure Message,

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (addressee's time), it is deemed to have been served at 9.00am on the next Business Day.

- (d) The address for service for Notices for the parties are:

Target

Attention: Stephe Wilks

Address: Level 24, 100 Creek Street, Brisbane, Queensland 4350

Email: stephe.wilks@overthewire.com.au

Copy to:

Attention: Ben Wood

Address: Level 11, 66 Eagle Street, Brisbane, Queensland 4000

Email: bwood@mccullough.com.au

Bidder

Attention: Phillip Britt

Address: 3 Electra Avenue, Morwell, Victoria 3840

Email: phil@team.aussiebroadband.com.au

Copy to:

Attention: Jol Rogers

Address: Level 13, Collins Arch, 447 Collins Street, Melbourne, Victoria 3000

Email: jol.rogers@gadens.com

23.2 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Deed may be served by any method contemplated by this clause 23 or in accordance with any applicable Law.

24. General provisions

24.1 Assignment

A party must not transfer any right or liability under this Deed without the prior consent of each other party, except where this Deed provides otherwise.

24.2 Governing law and jurisdiction

- (a) This Deed is governed by and construed under Queensland law.
- (b) Any legal action in relation to this Deed against any party or its property may be brought in any court of competent jurisdiction of Queensland.
- (c) By execution of this Deed, each party irrevocably, generally and unconditionally submits to the non exclusive jurisdiction of any court specified in this clause in relation to both itself and its property.

24.3 Amendments

Any amendment to this Deed has no force or effect, unless effected by a deed executed by the parties.

24.4 Entire understanding

This Deed contains the entire understanding between the parties concerning the subject matter of the agreement and supersedes all prior communications between the parties other than the Confidentiality Agreement.

24.5 No representation or reliance

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

24.6 Further assurances

Each party must execute any document and perform any action necessary to give full effect to this Deed, whether before or after performance of this Deed.

24.7 Continuing performance

- (a) The provisions of this Deed do not merge with any action performed or document executed by any party for the purposes of performing this Deed.
- (b) Any representation in this Deed survives the execution of any document for the purposes of, and continues after, performance of this Deed.
- (c) Any indemnity agreed by any party under this Deed:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this Deed or any other agreement; and
 - (ii) survives and continues after performance of this Deed.

24.8 Rules of construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed or any part of it.

24.9 Waivers

Any failure by a party to exercise any right under this Deed does not operate as a waiver. The single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

24.10 Remedies

The rights of a party under this Deed are cumulative and not exclusive of any rights provided by law.

24.11 Severability

Any clause of this Deed which is invalid in any jurisdiction, is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining clauses of this Deed or the validity of that clause in any other jurisdiction.

24.12 Counterparts

This Deed may be executed in any number of counterparts, all of which taken together are deemed to constitute the same document.

Schedule 1 Timetable

Event	Date
Announcement date	Thursday, 2 December 2021
Lodge Scheme Booklet with ASIC	Friday, 24 December 2021
First Court Date	Friday, 21 January 2022
Despatch of Scheme Booklet	Monday, 24 January 2022
Scheme Meeting held	Thursday, 24 February 2022
Second Court Date	Thursday, 3 March 2022
Lodge Court order with ASIC (Effective Date)	Friday, 4 March 2022
Record Date	Tuesday, 8 March 2022
Implementation Date	Tuesday, 15 March 2022

Signing page

Executed as a deed.

Dated 2 December 2021

Executed by Aussie Broadband Limited ACN
132 090 192 under section 127 of the
Corporations Act by its duly authorised officers:

DocuSigned by:

Phillip Britt

Signature of Director

C79428EF5012478...

Phillip Britt

Name of Director
(Block Letters)

DocuSigned by:

Brian Maher

Signature of Secretary

674F5B0E75714AC...

Brian Maher

Name of Secretary
(Block Letters)

Executed by Over The Wire Holdings Limited
ACN 151 872 730 under section 127 of the
Corporations Act by its duly authorised officers:

DocuSigned by:
Stephe Wilks
4684550F85B0422...

Signature of Director

Stephe Wilks

Name of Director
(Block Letters)

DocuSigned by:
Michael Omeros
99D50359205F45E...

Signature of Director/Secretary

Michael Omeros

Name of Director/Secretary
(Block Letters)

Annexure A Scheme of Arrangement

For personal use only

For personal use only

Scheme of Arrangement

Over The Wire Holdings Limited

Scheme Participants

gadens

Level 13, Collins Arch
447 Collins Street
Melbourne VIC 3000
Australia

T +61 3 9252 2555
F +61 3 9252 2500

Ref: JDR:SOW:22105940

For personal use only

Contents

1.	Definitions and interpretation	1
2.	Preliminary	6
3.	Conditions	7
4.	Implementation	8
5.	Scheme Consideration	9
6.	Dealings in Scheme Shares	16
7.	Quotation of Shares	17
8.	General Scheme provisions	17
9.	General	20

Scheme of Arrangement

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

Parties

1. **Over The Wire Holdings Limited** ACN 151 872 730 of Level 24, 100 Creek Street, Brisbane, Queensland (**Target**)
2. Each holder of Scheme Shares as at the Record Date (**Scheme Participants**)

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Scheme, unless the context requires otherwise:

Accrued Interest has the meaning given to that term in clause 5.8(a);

Aggregate Elected Cash Consideration means:

- (a) the aggregate value of cash elected by Scheme Participants under all valid Elections; plus
- (b) the aggregate value of cash attributable to Scheme Participants who did not make a valid Election,

but does not include the aggregate of the Scheme Cash Consideration payable to Foreign Scheme Shareholders;

Aggregate Elected Scrip Consideration means:

- (a) the aggregate number of Bidder Shares elected by Scheme Participants under all valid Elections; plus
- (b) the aggregate number of Bidder Shares attributable to Scheme Participants who did not make a valid Election;

All Cash Consideration means the consideration for each Scheme Share held by a Scheme Participant that is intended to be satisfied solely by the Scheme Cash Consideration;

All Cash Consideration Election means an election by a Target Shareholder to receive All Cash Consideration;

All Scrip Consideration means the consideration for each Scheme Share held by a Scheme Participant that is intended to be satisfied solely by the Scheme Scrip Consideration;

All Scrip Consideration Election means an election by a Target Shareholder to receive All Scrip Consideration;

ASIC means the Australian Securities and Investment Commission;

ASX means ASX Limited ACN 008 624 691 or the market operated by it, as the context requires;

Available Cash Consideration means \$275,174,594;

Available Scrip Consideration means 39,556,348 Bidder Shares;

Bidder means Aussie Broadband Limited ACN 132 090 192;

Bidder Constitution means the constitution of the Bidder;

Bidder Options means options to acquire Bidder Shares;

Bidder Shares means fully paid ordinary shares in the capital of the Bidder;

Bidder Share Formula means:

$$BS = (\text{Adjusted Equity Value} / \text{ABB Share Price})$$

where:

BS means the number of Bidder Shares to be issued to a Scheme Participant for each Scheme Share held by the Scheme Participant;

Adjusted Equity Value means \$5.75 less the amount per Target Share of any Permitted Dividend that is declared and paid for each Target Share; and

ABB Share Price means \$5.00

Bidder Share Rights means rights to acquire Bidder Shares granted under the Bidder's Non-Executive Director's Fee Sacrifice Plan;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Brisbane, Australia or Melbourne, Australia;

Cash Scaleback Mechanism means the scaleback mechanism set out in clause 5.6;

CHESS means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Ltd;

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

Court means the Federal Court of Australia (Queensland registry), or such other court of competent jurisdiction under the Corporations Act agreed in writing by the Target and the Bidder;

Cut-Off Time means 8.00am on the Second Court Date;

Deed Poll means the Deed Poll dated [insert] executed by the Bidder under which the Bidder covenants in favour of the Scheme Participants to perform the actions attributable to it under this Scheme;

Default Consideration means the consideration for each Scheme Share held by a Scheme Participant that is satisfied by:

- (a) 80% of the consideration in the form of the Scheme Cash Consideration; plus

- (b) 20% of the consideration in the form of the Scheme Scrip Consideration;

Effective means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the Scheme Order, but in any event at no time before an office copy of the Scheme Order is lodged with ASIC;

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

Election means:

- (a) an All Cash Consideration Election;
- (b) an All Scrip Consideration Election; or
- (c) a Mix-and-Match Consideration Election;

Election Date means 5.00pm on the fifth Business Day before the date of the Scheme Meeting or such other date as the Target and the Bidder agree in writing;

Election Form means a form issued by the Target for the purposes of a Scheme Participant (other than a Foreign Scheme Shareholder) making an Election;

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 the date which is 6 months after the date of the Scheme Implementation Deed or another date as is agreed by the Target and the Bidder in writing;

Foreign Scheme Shareholders means a Scheme Participant whose address in the Target Share Register as at the Record Date is a place outside Australia or New Zealand unless the Target and the Bidder agree in writing that it is lawful and not unduly onerous or impractical to issue Bidder Shares to the Scheme Participant if that Scheme Participant so elects under this Scheme;

Government Agency means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

Implementation Date means the date which is 5 Business Days after the Record Date or such other date after the Record Date agreed in writing between the Target and the Bidder;

Mix-and-Match Consideration means the consideration for each Scheme Share held by a Scheme Participant that is satisfied by:

- (a) at least 1% but less than 100% of the consideration in the form of Scheme Scrip Consideration; plus
- (b) Scheme Cash Consideration in respect of the remainder of the consideration;

Mix-and-Match Consideration Election means an election by a Target Shareholder to receive the Mix-and-Match Consideration in the percentages specified in their Election Form;

Performance Right means a right granted under the Performance Rights Plan to acquire by way of issue a Target Share subject to the terms of such plan;

Performance Rights Plan means the Target's Performance Rights Plan Rules;

Permitted Dividend means a dividend declared or determined by the Target Board after the date of this Deed with the prior written consent of the Bidder;

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

Public Trustee Act means the *Public Trustee Act 1978* (Qld);

Record Date means 5.00pm on the date that is 2 Business Days after the Effective Date, or such other date as may be agreed in writing between the Bidder and the Target or as may be required by ASX;

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

Scaleback Arrangements means:

- (a) the Cash Scaleback Mechanism; and
- (b) the Scrip Scaleback Mechanism;

Scheme means this scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Participants, subject to any alterations or conditions agreed or any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Bidder and the Target;

Scheme Cash Consideration means \$5.75 cash for each Scheme Share held by a Scheme Participant less the amount of any Permitted Dividend that is declared and paid for each Scheme Share, subject to the Cash Scaleback Mechanism;

Scheme Consideration means, depending on the Election and subject to the Scaleback Arrangements and the terms of the Scheme, the consideration to be provided to each Scheme Participant for the transfer to the Bidder of each Scheme Share, being for each Target Share held by a Scheme Participant as at the Record Date, either:

- (a) All Cash Consideration;
- (b) All Scrip Consideration;
- (c) the Mix-and-Match Consideration; or
- (d) the Default Consideration;

Scheme Implementation Deed means the scheme implementation deed between the Bidder and the Target dated 2 December 2021 pursuant to which the Target agreed to propose the Scheme to Target Shareholders, and each of the Bidder and the Target agreed to take certain steps to give effect to the Scheme;

Scheme Meeting means the meeting of Target Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Scheme and includes any meeting convened following adjournment or postponement of that meeting;

Scheme Order means the order of the Court made for the purposes of section 411(4)(b) of the Corporations Act approving the Scheme;

Scheme Participant means each holder of a Scheme Share as at the Record Date;

Scheme Scrip Consideration means the number of Bidder Shares for each Scheme Share held by a Scheme Participant, calculated by reference to the Bidder Share Formula, subject to the Scrip Scaleback Mechanism and the other conditions in this Scheme;

Scheme Shares means all of the Target Shares on issue as at the Record Date;

Scheme Transfer means, for each Scheme Participant, a proper instrument of transfer of the Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all Scheme Shares;

Scrip Scaleback Mechanism means the scaleback mechanism set out in clause 5.7;

Second Court Date means the first day of the Second Court Hearing or, if the Second Court Hearing is adjourned for any reason, the first day on which the adjourned application is heard;

Second Court Hearing means the hearing of the application made to the court for the Scheme Order;

Separate Account has the meaning given to that term in clause 5.8(c);

Settlement Rules means the ASX Settlement Operating Rules, being the official operating rules of the settlement facility provided by ASX Settlement Pty Ltd;

Target Share Register means the register of members of the Target maintained by or on behalf of the Target in accordance with the Corporations Act;

Target Share Registry means Link Market Services Limited ABN 54 083 214 537;

Target Shares means a fully paid ordinary share in the capital of the Target;

Target Shareholders means each person who is registered in the Target Share Register as a holder of Target Shares; and

Trust Account means an Australian dollar denominated trust account operated by the Target as trustee for the benefit of the Scheme Participants.

1.2 Interpretation

In this Scheme, unless the context requires otherwise:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) a reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this document includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression **at any time** includes reference to past, present and future time and performing any action from time to time;

- (j) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (k) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day;
- (l) a reference to a time of day is a reference to Brisbane time;
- (m) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (n) 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; and
- (o) an agreement, representation or warranty by two or more persons binds them jointly and severally and is for the benefit of them jointly and severally.

2. Preliminary

2.1 Target

- (a) The Target is a public company limited by shares, incorporated in Australia and registered in Queensland.
- (b) The Target is admitted to the official list of ASX and Target Shares are quoted for trading on ASX.
- (c) As at the date of the Scheme Implementation Deed, the Target's issued securities are:
 - (i) 59,578,392 Target Shares; and
 - (ii) 76,924 Performance Rights.

2.2 Bidder

- (a) The Bidder is a public company limited by shares, incorporated in Australia and registered in Victoria.
- (b) The Bidder is admitted to the official list of ASX and Bidder Shares are quoted for trading on ASX.
- (c) As at the date of the Scheme Implementation Deed, the Bidder's issued securities are:
 - (i) 223,831,951 Bidder Shares;
 - (ii) 3,050,616 Bidder Options; and
 - (iii) no Bidder Share Rights.

2.3 General

- (a) The Target and the Bidder have agreed by executing the Scheme Implementation Deed to implement this Scheme.
- (b) This Scheme attributes actions to the Bidder but does not itself impose an obligation on it to perform those actions, as the Bidder is not a party to this Scheme. The Bidder has executed the Deed Poll for the purposes of covenanting

in favour of the Scheme Participants to perform its obligations as contemplated by this Scheme, including to provide the Scheme Consideration to the Scheme Participants.

2.4 Summary of the Scheme

If the Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share to the Bidder, the Bidder will provide the Scheme Consideration to the Scheme Participants in accordance with this Scheme;
- (b) all the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to the Bidder; and
- (c) the Target will enter the name of the Bidder in the Target Share Register in respect of all Scheme Shares transferred to the Bidder in accordance with this Scheme with the result that the Bidder will hold all Target Shares.

3. Conditions

3.1 Condition precedent

- (a) The Scheme is conditional on, and will not become Effective until, the satisfaction of each of the following conditions precedent:
 - (i) all of the conditions precedent in clause 3.1 of the Scheme Implementation Deed (other than the condition precedent in clause 3.1(c) of the Scheme Implementation Deed relating to Court approval of the Scheme) having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed by the Cut Off Time;
 - (ii) neither the Scheme Implementation Deed nor the Deed Poll having been terminated in accordance with their terms as at the Cut Off Time;
 - (iii) the Court having approved the Scheme pursuant to section 411(4)(b) of the Corporations Act, without modification or with modifications which are agreed to in writing between the Target and the Bidder;
 - (iv) such other conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing between the Bidder and the Target having been satisfied; and
 - (v) 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) approving this Scheme coming into effect pursuant to section 411(10) of the Corporations Act on or before the End Date.
- (b) The satisfaction of the conditions referred to in clause 3.1(a) is a condition precedent to the operation of clauses 4 and 5.

3.2 Certificate

- (a) The Target and the Bidder must each provide to the Court, on the Second Court Date, a certificate, or such other evidence as the Court may request, confirming (in respect of matters within their knowledge) whether or not the conditions precedent

in clauses 3.1(a)(i) and 3.1(a)(ii) above have been satisfied or waived as at the Cut Off Time.

- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that the conditions precedent in clauses 3.1(a)(i) and 3.1(a)(ii) were satisfied, waived or taken to be waived.

3.3 Effective Date

Subject to clause 3.4, this Scheme takes effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

3.4 Termination and End Date

Without limiting any rights under the Scheme Implementation Deed, if:

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

then, unless the Bidder and the Target otherwise agree in writing, the Scheme will lapse and each of the Bidder and the Target are released from any further obligation to take steps to implement the Scheme.

4. Implementation

4.1 Lodgement of Court order

Following the approval of the Scheme by the Court in accordance with section 411(4)(b) of the Corporations Act, the Target will, as soon as possible and in any event by no later than 5.00pm on the first Business Day after the Court approves the Scheme, lodge with ASIC an office copy of the Scheme Order in accordance with section 411(10) of the Corporations Act.

4.2 Transfer of Scheme Shares held by Scheme Participants

On the Implementation Date:

- (a) subject to:
 - (i) the payment by the Bidder of the Scheme Cash Consideration in the manner contemplated by clause 5.8(a); and
 - (ii) the Bidder having satisfied its obligation to provide the Scheme Scrip Consideration in the manner contemplated by clause 5.9(a),

the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to the Bidder, without the need for any further act by any Scheme Participant (other than acts performed by the Target or its officers as agent and attorney of the Scheme Participants under clause 8.6 or otherwise), by:

- (iii) the Target delivering to the Bidder a duly completed and executed Scheme Transfer to transfer all the Scheme Shares to the Bidder, executed on behalf of the Scheme Participants by the Target; and

- (iv) the Bidder duly executing such Scheme Transfer and delivering it to the Target for registration; and
- (b) immediately after receipt of the Scheme Transfer in accordance with clause 4.2(a)(iv), the Target must enter, or procure the entry of, the name of the Bidder in the Target Share Register in respect of the Scheme Shares transferred to the Bidder in accordance with this Scheme.

5. Scheme Consideration

5.1 Entitlement to Scheme Consideration

On the Implementation Date, in consideration for the transfer to the 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 clauses 5.8 and/or 5.9 of this Scheme (as applicable).

5.2 Election procedure

- (a) Each Target Shareholder (other than a Foreign Scheme Shareholder) will be entitled to make an Election.
- (b) All Elections will take effect in accordance with this Scheme to the extent that any Target Shareholder who makes an Election qualifies as a Scheme Participant.
- (c) The Target must ensure that the Scheme Booklet is accompanied with an Election Form.
- (d) Subject to clause 5.2(h), an Election may only be made in accordance with the terms and conditions stated on the Election Form for it to be valid and must be completed and returned in writing to the address specified on the Election Form before the Election Date.
- (e) A Target Shareholder which makes an Election may vary, withdraw or revoke that Election by lodging a replacement Election Form so that it is received on or before the Election Date.
- (f) An Election must be made in accordance with the terms and conditions of the Election Form and this clause 5.2, and an Election not so made will not be a valid election for the purpose of this Scheme and will not be recognised by the Bidder or the Target for any purpose (provided that the Bidder may, with the agreement of the Target, waive this requirement and may, with the agreement of the Target, settle as it thinks fit any difficulty, matter of interpretation or dispute which may arise in connection with determining the validity of any Election, and any such decision will be conclusive and binding on the Bidder, the Target and the relevant Scheme Participant).
- (g) Subject to clause 5.2(h), if a Target Shareholder makes an Election, that Election will be deemed to apply in respect of the Target Shareholder's entire registered holding of Target Shares at the Record Date, regardless of whether the Target Shareholder's holding of Target Shares at the Record Date is greater or less than the Target Shareholder's holding at the time it made its Election.
- (h) A Target Shareholder who is noted on the Target Share Register as holding one or more parcels of Target Shares as trustee or nominee for, or otherwise on account of, another person, may make separate Elections under this clause 5.2 in relation to each of those parcels of Target Shares (subject to providing to the Bidder and the Target any substantiating information they reasonably require), and if it does so

it will be treated as a separate Scheme Participant in respect of each such parcel in respect of which a separate Election is made (and in respect of any balance of its holding), provided that if, at the Record Date, it holds fewer Shares than it held at the time that it made the Election, then, unless it has at the time of any sale of Target Shares notified the Target whether the Target Shares sold relate to any such separate Election (and if so which separate Election the Target Shares sold relate to), it will be treated as not having made a valid Election in respect of any of its Target Shares (or will be treated in any other manner that the Bidder and the Target agree is fair to the Target Shareholder in all the circumstances acting reasonably).

- (i) The parties agree that the Election Form will include the following terms and conditions:
 - (i) Foreign Scheme Shareholders may not make an Election and that any purported Election by such persons will be of no effect and clause 5.5 will apply to such persons;
 - (ii) if a Target Shareholder (who is not a Foreign Scheme Shareholder) does not make a valid Election, clause 5.4 will apply to that person;
 - (iii) Target Shareholders who receive Scheme Scrip Consideration agree to become members of Bidder from the Implementation Date and become bound by the Bidder Constitution pursuant to the Scheme;
 - (iv) Target Shareholders who receive Scheme Scrip Consideration will have such Scheme Scrip Consideration issued having the same holding name and address and other details as the holding of the relevant Scheme Shares; and
 - (v) such other terms and conditions as Bidder reasonably requires to be stated on the Election Form.

5.3 Scheme Consideration if valid Election made

Subject to the Scaleback Arrangements, if a Target Shareholder makes a valid Election that Target Shareholder will be entitled to receive the Scheme Consideration as nominated by their Election.

5.4 Scheme Consideration if valid Election not made

Subject to the Scaleback Arrangements, if a Target Shareholder (not being a Foreign Scheme Shareholder) does not make a valid Election, the Scheme Consideration payable to that Target Shareholder will be the Default Consideration.

5.5 Scheme Consideration for Foreign Scheme Shareholders

- (a) If a Target Shareholder is a Foreign Scheme Shareholder, the Scheme Consideration payable to that Target Shareholder will be the Scheme Cash Consideration which will not be subject to the Cash Scaleback Mechanism.
- (b) The Bidder has no obligation to provide, and will not provide under the Scheme, any Scheme Scrip Consideration to Foreign Scheme Shareholders regardless of the Election made by the Foreign Scheme Shareholders.

5.6 Cash Scaleback Mechanism

If:

- (a) a Scheme Participant has made a valid Election on or before the Election Date (other than an All Scrip Consideration Election) or clause 5.4 applies in relation to a Scheme Participant; and
- (b) the Aggregate Elected Cash Consideration exceeds the Available Cash Consideration less the aggregate Scheme Cash Consideration payable to Foreign Scheme Shareholders,

then, the Scheme Participant will receive the following as Scheme Consideration:

- (c) such percentage of Scheme Cash Consideration for each of their Scheme Shares as is calculated in accordance with the following formula:

$$A = B \times \left(\frac{C}{D} \right)$$

where:

A = the percentage of Scheme Cash Consideration that will be received by the Scheme Shareholder for each of their Scheme Shares;

B = if:

- the Scheme Participant has made an All Cash Consideration Election, 100%;
- clause 5.4 applies in relation to the Scheme Participant, 80%; or
- the Scheme Participant has made a Mix-and-Match Election, the percentage of Scheme Cash Consideration that Scheme Participant Elected to receive in their Election Form;

C = the Available Cash Consideration less the aggregate of the Scheme Cash Consideration payable to Foreign Scheme Shareholders; and

D = the Aggregate Elected Cash Consideration; *plus*

- (d) such percentage of Scheme Scrip Consideration for each Scheme Share they hold equal to:

- (i) 100%; less
- (ii) the percentage calculated in accordance with clause 5.6(c).

5.7 Scrip Scaleback Mechanism

If:

- (a) a Scheme Participant has made a valid Election on or before the Election Date (other than an All Cash Consideration Election) or clause 5.4 applies in relation to a Scheme Participant; and
- (b) the Aggregate Elected Scrip Consideration exceeds the Available Scrip Consideration,

then, the Scheme Participant will receive the following as Scheme Consideration:

- (c) such percentage of Scheme Scrip Consideration for each of their Scheme Shares as is calculated in accordance with the following formula:

$$A = B \times \left(\frac{C}{D} \right)$$

where:

A = the percentage of Scheme Scrip Consideration that will be received by the Scheme Shareholder for each of their Scheme Shares;

B = if:

- the Scheme Participant has made an All Scrip Consideration Election, 100%;
- clause 5.4 applies in relation to the Scheme Participant, 20%; or
- the Scheme Participant has made a Mix-and-Match Election, the percentage of Scheme Scrip Consideration that Scheme Participant Elected to receive in their Election Form;

C = the Available Scrip Consideration; and

D = the Aggregate Elected Scrip Consideration; *plus*

(d) such percentage of Scheme Cash Consideration for each Scheme Share they hold equal to:

- (i) 100%; less
- (ii) the percentage calculated in accordance with clause 5.7(c).

5.8 Provision of Scheme Cash Consideration

- (a) The Bidder must, by no later than the Business Day before the Implementation Date, deposit (or procure the deposit) in cleared funds into the Trust Account an amount equal to the aggregate amount of the total Scheme Cash Consideration payable to Scheme Participants, such amount to be held by the Target on trust for Scheme Participants for the purposes of paying the aggregate Scheme Cash Consideration to the Scheme Participants in accordance with clause 5.8(b) (except that any interest on the amount deposited (less bank fees and other charges) (**Accrued Interest**) will be for the account of the Bidder).
- (b) On the Implementation Date and subject to funds having been deposited in accordance with clause 5.8(a), the Target must pay or procure the payment from the Trust Account to each Scheme Participant the applicable amount of the Scheme Cash Consideration due to that Scheme Participant in accordance with this Scheme by doing any of the following:
 - (i) where a Scheme Participant has, before the Record Date, made an election in accordance with the requirements of the Target Share Registry to receive dividend payments from the Target by electronic funds transfer to a bank account nominated by the Scheme Participant, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
 - (ii) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Participant by an appropriate authority from the Scheme Participant to the Target; or

- (iii) dispatching, or procuring the dispatch of, a cheque drawn on an Australian bank in Australian currency for the relevant amount to the Scheme Participant by pre-paid ordinary post (or, if the address of the Scheme Participant in the Target Share Register is outside Australia, by pre-paid airmail post) to their Registered Address as at the Record Date, such cheque being drawn in the name of the Scheme Participant (or in the case of joint holders, in accordance with clause 5.10).
- (c) In the event that:
- (i) either:
- (A) a Scheme Participant does not have a Registered Address; or
- (B) the Target as trustee for the Scheme Participants believes that a Scheme Participant is not known at the Scheme Participant's Registered Address,
- and no account has been notified in accordance with clause 5.8(b)(i) or clause 5.8(b)(ii) or a deposit into such account is rejected or refunded; or
- (ii) a cheque issued under this clause 5 has been cancelled in accordance with clause 5.12(a),
- the Target as the trustee for the Scheme Participants may credit the amount payable to the relevant Scheme Participant to a separate bank account of the Target (**Separate Account**) to be held until the Scheme Participant claims the amount or the amount is dealt with in accordance with the Public Trustee Act. To avoid doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Participant claims the amount or the amount is dealt with in accordance with the Public Trustee Act.
- (d) Until such time as the amount is dealt with in accordance with the Public Trustee Act, the Target must hold the amount on trust for the relevant Scheme Participant, but any interest or other benefit accruing from the amount will be to the benefit of the Bidder. An amount credited to the Separate Account or Trust Account (as applicable) is to be treated as having been paid to the Scheme Participant when credited to the Separate Account or Trust Account (as applicable). The Target must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.
- (e) To the extent that there is a surplus in the amount held by the Target as the trustee for the Scheme Participants in the Trust Account, that surplus may be paid by the Target as the trustee for the Scheme Participants to the Bidder following the satisfaction of the Target's obligations as the trustee for the Scheme Participants under this clause 5.8.
- (f) The Target must pay any Accrued Interest to any account nominated by the Bidder following satisfaction of the Target's obligations under this clause 5.8.

5.9 Provision of Scheme Scrip Consideration

- (a) The Bidder must, before 12.00pm (or such later time as the Bidder and the Target may agree in writing) on the Implementation Date, procure that:
- (i) the Bidder issues the Bidder Shares to each Scheme Participant who is entitled under this Scheme to be issued the Bidder Shares; and
- (ii) the name and address of each such Scheme Participant is entered in the Bidder's register of shareholders (as maintained by the Bidder or its agent)

as the holder of those Bidder Shares with the same holding name and address and other details as the holding of the relevant Target Shares.

- (b) On or before the date that is 5 Business Days after the Implementation Date, the Bidder must send or procure the sending of a holding statement (or equivalent document) to the Registered Address of each Scheme Participant to whom Bidder Shares are issued under this Scheme, reflecting the issue of such Bidder Shares.
- (c) The Bidder must ensure that the Bidder Shares issued, at the time they are issued:
 - (i) have the rights set out in the Bidder Constitution;
 - (ii) rank equally in all respects among themselves and with all other Bidder Shares on issue in the Bidder; and
 - (iii) are fully paid, duly and validly issued in accordance with all applicable laws and free from any Encumbrance.

5.10 Joint holders

In the case of Scheme Shares held in joint names:

- (a) to the extent that the Scheme Consideration comprises Scheme Scrip Consideration, any Bidder Shares to be issued under this Scheme will be registered in the names of the joint holders;
- (b) to the extent that the Scheme Consideration comprises Scheme Cash Consideration, any cheque required to be sent under this Scheme will be made payable to the joint holders and sent at the sole discretion of the Target, either to the holder whose name appears first in the Target Share Register as at the Record Date or to the joint holders; and
- (c) any other document required to be sent under this Scheme will be forwarded, at the sole discretion of the Target, either to the holder whose name first appears in the Target Share Register as at the Record Date or to the joint holders.

5.11 Fractional entitlements

Where the calculation of Scheme Consideration to be provided to a Scheme Participant would result in the Scheme Participant becoming entitled to:

- (a) a fraction of a cent, that fractional entitlement will be rounded down to the nearest whole cent; and/or
- (b) a fraction of a Bidder Share, that fractional entitlement will be rounded down to the nearest whole number of Bidder Shares.

5.12 Unclaimed monies

- (a) The Target may cancel a cheque sent under this clause 5 if the cheque:
 - (i) is returned to the Target; or
 - (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.
- (a) During the period of 12 months commencing on the Implementation Date, upon request in writing from a Scheme Participant to the Target (or the Target Share Registry) (which request may not be made until the date which is 20 Business

Days after the Implementation Date), the Target must reissue a cheque that was previously cancelled under clause 5.12(a).

- (b) The Public Trustee Act will apply in relation to any Scheme Consideration which becomes "unclaimed money" (as defined in section 98 of the Public Trustee Act).
- (c) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of the Bidder.

5.13 Order of a court or Government Agency

If written notice is given to the Target (or the Target Share Registry) of an order or direction made by a court of competent jurisdiction or by another Government Agency that:

- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Participant, which would otherwise be payable or required to be issued to that Scheme Participant by Target or Bidder in accordance with this clause 5, then the Target or the Bidder (as applicable) will be entitled to pay or issue that consideration (or procure that it is paid or issued), in accordance with that order or direction; or
- (b) prevents the Target from providing consideration to a particular Scheme Participant in accordance with this clause 5, or the payment or issuance of such consideration is otherwise prohibited by applicable law, the Target will be entitled to (as applicable):
 - (i) retain an amount, in Australian dollars, equal to the amount of the consideration that Scheme Participant would be entitled to in the form of Scheme Cash Consideration; and/or
 - (ii) direct the Bidder not to issue, or to issue to a trustee or nominee, such number of Bidder Shares as that Scheme Participant would otherwise be entitled to under this clause 5,

until such time as payment in accordance with this clause 5 is permitted by that order, direction or law.
- (c) To the extent that amounts are so deducted or withheld in accordance with this clause 5.13, such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the person in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted as required.

5.14 Withholding

- (a) If the Bidder determines, having regard to legal advice, that the Bidder is either:
 - (i) required by law to:
 - (A) withhold any amount from a payment to a Scheme Participant; or
 - (B) not issue a security (or any securities) to a Scheme Participant; or
 - (ii) liable to pay an amount to the Commissioner of Taxation under section 14-200 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) (amounts required to be paid for CGT non-resident withholding) in respect of the acquisition of Scheme Shares from a Scheme Participant,

then the Bidder is entitled to:

- (iii) withhold the relevant amount before making the payment to the Scheme Participant; or
- (iv) not issue the relevant security (or securities) to the Scheme Participant until permitted to do so,

(and payment of the reduced amount or issue of the reduced number of securities shall be taken to be full payment of the relevant amount or issue of the relevant securities for the purposes of this Scheme, including clause 5.8 and clause 5.9).

- (b) The Bidder must pay any amount so withheld to the relevant taxation authority within the time permitted by law, and, if requested in writing by the relevant Scheme Participant, provide a receipt or other appropriate evidence (or procure the provision of such receipt or other evidence) of such payment to the relevant Scheme Participant.

6. Dealings in Scheme Shares

6.1 Determination of Scheme Participants

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

- (a) in the case of dealings of the type to be effected using CHES, the transferee is registered in the Target Share Register as the holder of the relevant Target Shares at 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 at or before the Record Date at the place where the Target Share Register is kept,

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

6.2 Register

- (a) **(Register of transfers):** The Target must register registrable transmission applications or transfers of the kind referred to in clause 6.1(b) on or before the Record Date (provided that for the avoidance of doubt nothing in this clause 6.2 requires the Target to register a transfer that would result in a Target Shareholder holding a parcel of Target Shares that is less than a 'marketable parcel' (as that term is defined in the Settlement Rules).
- (b) **(No registration after Record Date):** The Target will not accept for registration or recognise for any purpose any transmission or transfer in respect of Target Shares received after the Record Date, other than to the Bidder in accordance with this Scheme and any subsequent transfer by the Bidder or its successors in title.
- (c) **(Maintenance of Target Share Register):** For the purposes of determining entitlements to the Scheme Consideration, the Target must maintain the Target Share Register in accordance with the provisions of this clause 6 until the Scheme Consideration has been delivered to the Scheme Participants and the Bidder has been entered in the Target Share Register as the holder of all the Scheme Shares. The Target Share Register in this form will solely determine entitlements to the Scheme Consideration.

- (d) **(No disposal after Record Date):** From the Record Date until registration of the Bidder in respect of all Scheme Shares under clause 4, no Scheme Participant may dispose or otherwise deal with Target Shares (or purport to do so) in any way except as set out in this Scheme and any attempt to do so will have no effect and the Target will be entitled to disregard any such disposal or dealing.
- (e) **(Statements of holding from Record Date):** All statements of holding for Target Shares will cease to have effect from the Record Date as documents of title in respect of those shares (other than statements of holding in favour of the Bidder and its successors in title). From the Record Date, each entry current at that date on the Target Share Register (other than entries in respect of the Bidder or its successors in title) will cease to have effect except as evidence of an entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.
- (f) **(Provision of Scheme Participant details):**
- (i) The Target must provide, or procure the provision, to the Bidder, details of any Election made by Target Shareholders, on the Business Day after the Election Date, including the name and address of each Target Shareholder who has made a valid Election and the number of Bidder Shares that the Bidder must issue to those Target Shareholders to meet its obligations under the Scheme in accordance with those Target Shareholders' Elections subject to the terms of this Scheme, including the Scaleback Arrangements.
 - (ii) As soon as practicable after the Record Date and in any event within 2 Business Days after the Record Date, the Target will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant as shown in the Target Share Register are available to the Bidder in the form the Bidder reasonably requires.

7. Quotation of Shares

- (a) The Target will apply to ASX to suspend trading on the ASX in Target Shares with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by the Bidder, and only after the transfer of the Scheme Shares has been registered in accordance with clause 4.2(b), the Target will apply:
 - (i) for termination of the official quotation of Target Shares on ASX; and
 - (ii) to have itself removed from the official list of ASX.

8. General Scheme provisions

8.1 Consent to amendments to this Scheme

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

- (a) the Target may, by its counsel or solicitors, consent on behalf of all persons concerned to those alterations or conditions to which the Bidder has consented in writing; and
- (b) each Scheme Participant agrees to any such alterations or conditions to which counsel for the Target has consented.

8.2 Binding effect of Scheme

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

8.3 Scheme Participants' agreements and acknowledgements

Each Scheme Participant:

- (a) agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those Scheme Shares in accordance with this Scheme;
- (b) agrees to any variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (c) agrees to, on the direction of the Bidder, destroy any share certificates relating to their Scheme Shares;
- (d) to the extent they are to receive Bidder Shares as a component of the Scheme Consideration to which they are entitled, agrees to become a shareholder of the Bidder and to be bound by the Bidder Constitution;
- (e) acknowledges and agrees that this Scheme binds the Target and all Scheme Participants (including those who did not attend the Scheme Meeting or did not vote at that meeting or voted against this Scheme at that Scheme Meeting); and
- (f) irrevocably consents to the Target and the Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it,

without the need for any further act by the Scheme Participant.

8.4 Warranties by Scheme Participants

- (a) Each Scheme Participant warrants to the Bidder and is deemed to have authorised the Target as agent and attorney for the Scheme Participant by virtue of this clause 8.4(a) to warrant to the Bidder, that as at the Implementation Date:
 - (i) all of its Scheme Shares which are transferred to the Bidder under this Scheme, including any rights and entitlements attaching to those Scheme Shares, will, at the time of transfer, be free from all mortgages, charges, liens, assignments, encumbrances, title retentions, preferential rights or trust arrangements, claims, covenants, profit a prendre, easements, pledges, or any other security interests or arrangements (including any "security interests" within the meaning of section 12 of the PPSA) and any other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind;
 - (ii) all of its Scheme Shares which are transferred to the Bidder under this Scheme will, on the date on which they are transferred to the Bidder, be fully paid;
 - (iii) it has full power and capacity to transfer its Scheme Shares to the Bidder together with any rights attaching to those Scheme Shares; and

- (iv) it has no existing right to be issued any Target Shares, options exercisable into Target Shares, convertible notes convertible into Target Shares or any other securities issued by the Target.
- (b) The Target undertakes that it will provide the warranties in clause 8.4(a) to the Bidder as agent and attorney of each Scheme Participant.

8.5 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attached to the Scheme Shares) transferred under this Scheme will, at the time of transfer of them to the Bidder, vest in the Bidder free from all mortgages, charges, liens, assignments, encumbrances, title retentions, preferential rights or trust arrangements, claims, covenants, profit a prendre, easements, pledges, or any other security interests (including any "security interests" within the meaning of section 12 of the PPSA) and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind.
- (b) On and from the Implementation Date, immediately after the Bidder satisfies its obligations in clauses 5.8(a) and 5.9(a), the Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by the Target of the Bidder in the Target Share Register as the holder of the Scheme Shares.

8.6 Authority given to Target

- (a) Each Scheme Participant, without the need for any further act, irrevocably appoints the Target and all of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purposes of:
 - (i) enforcing the Deed Poll against the Bidder and the Target undertakes in favour of each Scheme Participant that it will enforce the Deed Poll against the Bidder on behalf of and as agent and attorney for each Scheme Participant; and
 - (ii) executing any document or doing or taking any other act, necessary, desirable or expedient to give full effect to this Scheme and the transactions contemplated by it, including executing and delivering the Scheme Transfer,

and the Target accepts such appointment.
- (b) The Target, as attorney and agent of each Scheme Participant, may sub-delegate its functions, authorities or powers under this clause 8.6 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

8.7 Appointment of sole proxy

Immediately after the Bidder satisfies its obligations in clauses 5.8(a) and 5.9(a) and until the Target registers the Bidder as the holder of all Scheme Shares in the Target Share Register, each Scheme Participant:

- (a) is deemed to have irrevocably appointed the Bidder as its attorney and agent (and directed the Bidder in such capacity) to appoint an officer or agent nominated by the Bidder as its sole proxy and, where applicable, corporate representative to

attend shareholders' meetings of the Target, exercise the votes attaching to the Scheme Shares registered in its name and sign any shareholders' resolution;

- (b) undertakes not to otherwise attend shareholders' meetings, exercise the votes attaching to Scheme Shares registered in their names or sign or vote on any resolution (whether in person, by proxy or by corporate representative) other than pursuant to clause 8.7(a);
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as the Bidder reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 8.7(a), the Bidder and an officer or agent nominated by the Bidder under clause 8.7(a) may act in the best interests of the Bidder as the intended registered holder of Target Shares.

8.8 Instructions and elections

If not prohibited by law (and including where permitted or facilitated by relief granted by a Government Agency), all instructions, notifications or elections by a Scheme Participant to the Target which are binding or deemed binding between the Scheme Participant and the Target relating to the Target or the Target Shares, including instructions, notifications or election relating to:

- (a) whether dividends are to be paid by cheque or into a specific bank account;
- (b) payments of dividends on Target Shares; and
- (c) notices of meetings or other communications (including by email),

will be deemed from the Implementation Date (except to the extent determined otherwise by the Bidder in its sole discretion) by reason of this Scheme, to be made by the Scheme Participants to the Bidder and be a binding instruction, notification or election to the Bidder in respect of the Bidder Shares provided to that Scheme Participant until that instruction, notification or election is revoked or amended in writing addressed to the Bidder at its registry.

9. General

9.1 Further assurances

- (a) The Target must do (on its own behalf and on behalf of each Scheme Participant) anything necessary (including executing agreements and documents) or incidental to give full effect to this Scheme and the transactions contemplated by it.
- (b) Each Scheme Participant consents to the Target doing all things necessary or incidental to give full effect to this Scheme and the transactions contemplated by it.
- (c) Each Scheme Participant acknowledges and agrees that this Scheme binds the 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 the Target.

9.2 Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to the Target, it will not be taken to be

received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at the Target's registered office or at the office of the Target Share Registry.

- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a Scheme Participant will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

9.3 Governing law and jurisdiction

- (a) This Scheme is governed by and construed under Queensland law.
- (b) Each party irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this clause in relation to both itself and its property.

9.4 Variations, alterations and conditions

The Target may, with the consent of the Bidder, consent on behalf of all persons concerned to any variations, alterations or conditions to this Scheme which the Court thinks fit to impose.

9.5 No liability when acting in good faith

Neither the Target nor the 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.

9.6 Stamp duty

The Bidder must:

- (a) pay all stamp duty and any related fines, penalties, interest, costs and brokerage in respect of or in connection with this Scheme, the performance of this Scheme, or any instruments entered into under this Scheme and in respect of a transaction effected by or made under this Scheme, including the transfer of Scheme Shares under the Scheme; and
- (b) indemnify each Scheme Participant on demand against any liability arising from its failure to comply with clause 9.6(a).

Annexure B Deed Poll

For personal use only

Deed Poll

Aussie Broadband Limited

gadens

Level 13, Collins Arch
447 Collins Street
Melbourne VIC 3000
Australia

T +61 3 9252 2555
F +61 3 9252 2500

Ref JDR:SOW: 22105940

For personal use only

Contents

1.	Definitions and interpretation	1
2.	Conditions precedent and termination	2
3.	Scheme Obligations	2
4.	Representations and warranties	3
5.	Continuing obligations	3
6.	Stamp duty	3
7.	Notices	4
8.	General provisions	4

Deed Poll

Parties

1. **Aussie Broadband Limited** ACN 132 090 192 of 3 Electra Avenue, Morwell, Victoria
(**Bidder**)
- In favour of each person registered as a holder of Target Shares as at the Record Date
(**Scheme Participants**)

Background

- A. The Target and the Bidder entered into the Scheme Implementation Deed under which the Target agreed, subject to the satisfaction or waiver of certain conditions, to propose the Scheme to the Scheme Participants.
- B. The effect of the Scheme will be to transfer all Scheme Shares to the Bidder in exchange for the Scheme Consideration.
- C. The Bidder is making this Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform its obligations under the Scheme, including to provide the Scheme Consideration in accordance with the Scheme.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Deed Poll, unless the context requires otherwise:

Deed Poll means this deed poll including any recitals, any schedules and any annexures;

First Court Date means the first day on which an application made to the Court for an order under section 411(1) of the Corporations Act convening the Scheme Meeting is heard (or if the application as adjourned or subject to appeal for any reason, the day on which the adjourned application is heard);

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Participants substantially in the form set out in Annexure A of the Scheme Implementation Deed, subject to any alterations or conditions agreed or any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Bidder and the Target; and

other terms defined in the Scheme have the same meanings in this Deed Poll.

1.2 Interpretation

Clause 1.2 of the Scheme applies to the interpretation of this Deed Poll, except that references to "this Scheme" are to be read as references to "this Deed Poll".

1.3 Nature of Deed Poll

The Bidder acknowledges and agrees that:

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

2. Conditions precedent and termination

2.1 Conditions

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

2.2 Termination

If:

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

then this Deed Poll and the obligations of the Bidder under this Deed Poll will automatically terminate and the terms of this Deed Poll will be of no further force or effect unless the Bidder and the Target agree in writing.

2.3 Consequences of termination

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

- (a) the Bidder is released from its obligations to further perform this Deed Poll, except those obligations contained in clause 6; and
- (b) each Scheme Participant retains any rights, powers or remedies it has against the Bidder in respect of any breach of this Deed Poll by the Bidder which occurred before termination of this Deed Poll.

3. Scheme Obligations

Subject to clause 2, the Bidder undertakes in favour of each Scheme Participant to:

- (a) provide the Scheme Consideration to each Scheme Participant in accordance with the terms of the Scheme; and
- (b) undertake all other actions attributed to it under the Scheme, as if named as a party to the Scheme,

in each case, subject to and in accordance with the terms of the Scheme.

4. Representations and warranties

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

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (c) it has taken all necessary corporate action to authorise entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) it is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets (or any event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in this paragraph);
- (e) this Deed Poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (f) this Deed Poll does not conflict with or result in the breach of, or any default under:
 - (i) any provision of its constituent documents; or
 - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

5. Continuing obligations

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

- (a) the Bidder has fully performed its obligations under this Deed Poll; or
- (b) the earlier termination of this Deed Poll under clause 2.2.

6. Stamp duty

The Bidder must:

- (a) pay or procure the payment of all stamp duty and any related fines, penalties and interest in respect of or in connection with this Deed Poll, the performance of this Deed Poll, or any instruments entered into under this Deed Poll and in respect of a transaction effected by or made under the Scheme and this Deed Poll, including the transfer by the Scheme Participants of Scheme Shares to the Bidder under the Scheme; and
- (b) indemnify each Scheme Participant on demand against any liability arising from its failure to comply with clause 6(a).

7. Notices

- (a) Any notice or communication to the Bidder in respect of this Deed Poll (**Notice**) may be served by delivery in person, by post or by email to the address or email address of the Bidder specified in this Deed Poll or most recently notified by the Bidder to the sender.
- (b) Any Notice to the Bidder must be in writing and signed by either:
- (i) the sender or, if a corporate party, an authorised officer of the sender; or
 - (ii) the party's solicitor.
- (c) A Notice:
- (i) if delivered in person, will be deemed served upon delivery;
 - (ii) if posted, will be deemed served 2 Business Days after posting; and
 - (iii) if sent by email, will be deemed served that day unless the sender receives an automated message generated by the recipient's mail server (**Failure Message**) that the email has not been delivered within two hours. For the avoidance of doubt any response generated by or at the instigation of the recipient (including an 'out of office' message) will not be a Failure Message,

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (addressee's time), it is deemed to have been served at 9.00am on the next Business Day.

- (d) The address for service for Notices for the Bidder is:

Attention: Phillip Britt

Address: 3 Electra Avenue, Morwell, Victoria 3840

Email: phil@team.aussiebroadband.com.au

Copy to:

Attention: Jol Rogers

Address: Level 13, Collins Arch, 447 Collins Street, Melbourne, Victoria 3000

Email: jol.rogers@gadens.com

8. General provisions

8.1 Variation

This Deed Poll cannot be varied, altered or amended unless the variation is agreed to in writing by the Bidder and:

- (a) if before the First Court Date, the variation, alteration or amendment is agreed to in writing by the Target; and

- (b) if on or after the First Court Date, the variation, alteration or amendment is agreed to in writing by the Target and the Court indicates that the variation would not of itself preclude approval of the Scheme,

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

8.2 Assignment

- (a) The rights and obligations of each Scheme Participant and the Bidder under this Deed Poll are personal and must not be assigned, encumbered or otherwise dealt with at law or in equity and no person may attempt, or purport, to do so without the prior written consent of the Bidder and the Target.
- (b) Any purported dealing in contravention of clause 8.2(a) is invalid.

8.3 Further assurances

The Bidder must execute any document and perform any action necessary (on its own behalf and on behalf of each Scheme Participant) to give full effect to this Deed Poll and the transactions contemplated by it.

8.4 Governing law and jurisdiction

- (a) This Deed Poll is governed by and construed under Queensland law.
- (b) Any legal action in relation to this Deed Poll against the Bidder or its property may be brought in any court of competent jurisdiction of Queensland.
- (c) By execution of this Deed Poll, the Bidder irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this clause in relation to both itself and its property.

8.5 Waivers

- (a) A Scheme Participant waives a right under this Deed Poll only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) A failure, delay, relaxation or indulgence by a Scheme Participant in exercising any power or right conferred on that party by this Deed Poll does not operate as a waiver of the power or right.
- (c) No Scheme Participant may rely on words or conduct of the Bidder as a waiver of any right unless the waiver is in writing and signed by the Bidder.
- (d) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Deed Poll.
- (e) A waiver of a breach does not operate as a waiver of any other breach.

8.6 Remedies

The rights, powers and remedies of the Bidder and the Scheme Participants under this Deed Poll are cumulative and are in addition to, and do not exclude any other rights, powers and remedies provided by law.

8.7 Severability

Any clause of this Deed Poll which is invalid in any jurisdiction, is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining clauses of this Deed Poll or the validity of that clause in any other jurisdiction.

Signing page

Executed as a deed poll.

Dated 2021

Executed by **Aussie Broadband Limited** ACN
132 090 192 under section 127 of the
Corporations Act by its duly authorised officers:

Signature of Director

Signature of Director

Name of Director
(Block Letters)

Name of Director
(Block Letters)