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# Scheme Implementation Agreement

**Smartpay Holdings Limited**

Target

**and**

**Shift4 Payments, LLC**

Bidder

**Date** **23 June 2025**

Bell Gully

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This **Scheme Implementation Agreement** is made on 23 June 2025

**between** (1) **Smartpay Holdings Limited (Target)**

**and** (2) **Shift4 Payments, LLC (Bidder)**

# Introduction

A. Target is listed on the NZX Main Board under the ticker code 'SPY' and the ASX (with a ASX Foreign Exempt Listing) under the ticker code 'SMP'.

B. Target and Bidder have agreed that Bidder or Bidder Nominee (if applicable) will acquire all of the Scheme Shares by means of the Scheme.

C. The parties have agreed to implement the Scheme on the terms and subject to the conditions set out in this Agreement.

D. Following the culmination of negotiations between the parties, Bidder states that the Consideration under the Scheme of NZ$1.20 per Share represents Bidder's best and final price, in the absence of a Competing Proposal. Bidder acknowledges that this is a "last and final statement" within the meaning of section 5 of the guidance note on Misleading or Deceptive Conduct published by the Takeovers Panel on 1 November 2023.

# It is agreed

## 1. Defined terms and interpretation

### 1.1 Defined terms

Capitalised terms have the meanings set out in clause 1 of Schedule 4, unless the context otherwise requires.

### 1.2 Interpretation

This Agreement will be interpreted in accordance with the interpretation provisions set out in clause 2 of Schedule 4.

## 2. The Scheme

### 2.1 Proposing and implementing the Scheme

(a) **Target to propose and implement**

Target agrees to propose and implement the Scheme on the terms, and subject to the conditions, set out in this Agreement.

(b) **Bidder to assist**

Bidder agrees to co-operate with Target and to assist it to propose and implement the Scheme on the terms, and subject to the conditions, set out in this Agreement.

## 2.2 General implementation obligations

Each party must do everything reasonably necessary, including by procuring that its Representatives work in good faith and in a timely and co-operative manner with the other party and its Representatives, to implement the Scheme in accordance with this Agreement and all laws applicable to the Scheme.

## 2.3 Timetable

(a) Subject to clauses 2.3(b) and 2.3(d), the parties must use their respective reasonable endeavours to implement the Transaction in accordance with the Timetable.

(b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 2.3(a) to the extent that such failure is due to circumstances outside of that party's control.

(c) Each party must keep the other informed about their progress towards implementation of the Transaction in accordance with the Timetable and promptly notify each other if it believes that any of the dates in the Timetable are not achievable.

(d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control, the parties will consult in good faith to agree to any necessary extension to ensure such matters are completed within the shortest possible timeframe.

(e) For clarity, clause 2.3(a) does not limit Target's ability to:

(i) deal with a Competing Proposal to the extent permitted by clause 13; or

(ii) adjourn or reschedule the Scheme Meeting or otherwise delay any element of the Timetable in accordance with the express provisions of this Agreement.

## 2.4 Bidder may elect a Subsidiary to complete acquisition

(a) Bidder may elect, under this clause 2.4, a directly or indirectly wholly-owned Subsidiary of Bidder (**Bidder Nominee**) to acquire all of the Scheme Shares under the Scheme by giving written notice to Target of the relevant Subsidiary at least five Business Days before the First Court Date.

(b) If Bidder elects to nominate a Bidder Nominee to acquire all of the Scheme Shares pursuant to clause 2.4(a):

(i) Bidder and the wholly-owned Subsidiary will both enter into the Deed Poll and, within five Business Days of giving written notice to Target of the Bidder Nominee under clause 2.4(a), Bidder must deliver to Target a replacement version of the Deed Poll that was delivered to Target under clause 5.2(a) in a form approved by Target acting reasonably (with the intention being to replicate the form of the deed poll set out in Annexure 2 but with the Bidder Nominee replacing the references to Bidder in that document and to add a guarantee from Bidder of the Bidder Nominee's obligations under that document);

(ii) Bidder will continue to be bound by this Agreement; and

(iii) Bidder will ensure that Bidder Nominee completes the acquisition of all of the Scheme Shares in accordance with the terms of this Agreement and the Deed Poll and, notwithstanding the provisions of this clause 2.4 and any nomination of the Bidder Nominee, Bidder shall remain liable (as primary obliger and not merely as surety) for the performance of all of the obligations of the Bidder

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Nominee under this Agreement (including the obligation to pay the Consideration in accordance with the terms of this Agreement and the Deed Poll).

### 2.5 Competing Proposal

Nothing in this Agreement limits in any way Target's ability to deal with a Competing Proposal to the extent permitted by clause 13.

## 3. Conditions

### 3.1 Conditions precedent

The Scheme will not become Effective, and the obligations of Bidder under clause 4.2 do not become binding, unless and until each of the conditions set out in the "Condition" column of the following table has been satisfied or waived in accordance with this clause 3:

| | Condition | Responsibility | Waiver |
|---|---|---|---|
| (a) | **OIO approval**<br>Bidder has obtained all consents required under the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005 for the implementation of the Scheme on terms or conditions acceptable to Bidder (acting reasonably); | Bidder | None |
| (b) | **Independent Adviser's Report**<br>an Independent Adviser's Report is provided to Shareholders which concludes that the Consideration is within or above the Independent Adviser's valuation range for the Shares and, pursuant to clause 2.5 of Schedule 4, if the Independent Adviser issues an updated, replacement or supplementary report prior to the date of the Scheme Meeting which contains a revised valuation range for the Shares, the Consideration continues to be within or above that revised valuation range for the Shares; | Target | Target |
| (c) | **Shareholder approval**<br>Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act; | Target | None |
| (d) | **Court approval**<br>subject to clause 3.2, the Court approves the Scheme in accordance with section 236(1) of the Companies Act; | Target | None |
| (e) | **No restraint**<br>no judgment, order, restraint or prohibition enforced or issued by any Government Agency is in effect at 8.00am on the Implementation | Bidder and Target | Bidder and Target |

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| | Condition | Responsibility | Waiver |
|---|---|---|---|
| | Date, that prohibits, prevents or materially restricts the implementation of the Scheme; | | |
| (f) | **No Prescribed Occurrence**<br><br>no Prescribed Occurrence occurs during the period commencing on the Agreement Date and ending at 8.00am on the Implementation Date; and | Target | Bidder |
| (g) | **No Material Adverse Change**<br><br>no Material Adverse Change occurs during the period commencing on the Agreement Date and ending at 8.00am on the Implementation Date. | None | Bidder |

## 3.2 Court approval

If the Court's approval of the Scheme in accordance with section 236(1) of the Companies Act would impose any terms or conditions other than those set out in the Scheme Plan in the form attached as Annexure 1, then each such term or condition must be approved in writing by Target and Bidder (both acting reasonably) prior to the Court granting the Final Orders.

## 3.3 Satisfaction of Conditions

Subject to clauses 3.4 and 3.6, in respect of each Condition:

(a) **Responsibility**

each party specified in the "Responsibility" column of the table set out in clause 3.1 opposite that Condition must use its reasonable endeavours to procure that Condition is satisfied:

(i) in the case of the Conditions set out in clauses 3.1(a) to 3.1(d), as soon as practicable after the Agreement Date and in any event before 5.00pm on the End Date; and

(ii) in the case of the Conditions set out in clauses 3.1(e) to 3.1(f), at all times before 8.00am on the Implementation Date;

(b) **Information and assistance**

the other party must promptly provide all information and other assistance reasonably requested by the party referred to in clause 3.3(a) for the purpose of procuring the satisfaction of the Condition; and

(c) **Events within its control**

each party must not, directly or indirectly, take any action for the purpose of deliberately hindering, subverting, undermining or preventing the satisfaction of the Condition, except to the extent that such action is required by law.

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## 3.4 Exceptions to clause 3.3

(a) No party will be in breach of its obligations under clause 3.3 to the extent that it takes an action, or omits to take an action, as is expressly required or expressly permitted to be done, or expressly permitted not to be done, under or in accordance with this Agreement.

(b) Without limiting clause 3.4(a), Target will not be in breach of its obligations under clause 3.3 to the extent that it takes, or omits to take, an action in response to a Competing Proposal as permitted by clause 13.

## 3.5 Specific obligations in relation to OIO Condition

Without limiting clause 3.3:

(a) Bidder must make all applications necessary to satisfy the OIO Condition by the dates specified in the Timetable;

(b) Target will file its "vendor information form" by the date specified in the Timetable;

(c) neither party may take any action that would, or would be reasonably likely to, prevent or hinder the satisfaction of the OIO Condition;

(d) 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 the OIO relating to the consent required to satisfy the OIO Condition, or any action taken or proposed by, or any enquiries made by, the OIO in relation to the OIO Condition, and must:

(i) provide the other party with drafts of any material written communications to be sent to the OIO (including any applications necessary to satisfy the OIO Condition and the "vendor information form") and take any reasonable comments made by the other party into account in good faith when making any amendments;

(ii) provide copies of any material written communications sent to or received from the OIO to the other party promptly upon despatch or receipt (as the case may be);

(iii) in the case of a material meeting or phone call with the OIO relating to the consent required to satisfy the OIO Condition, provide the other party with the opportunity to participate in the meeting or phone call, except:

(A) where the OIO requests a separate meeting, and only after the parties have consulted together in good faith about that requirement and provided that, where a separate meeting is requested, the other party is kept reasonably apprised of any material developments arising out of the separate meeting; or

(B) in the case of an unscheduled in-bound call received by a party from the OIO;

(e) each party must promptly notify the other party on becoming aware that the OIO Condition is, or is likely to be, satisfied or has become incapable of being satisfied, or of any fact or circumstances which will, or is reasonably likely to, prevent the OIO Condition from being satisfied by 5.00pm on the End Date;

(f) Bidder must promptly and diligently progress the application for satisfaction of the OIO Condition (including by responding to queries in a fulsome and timely manner and in compliance with relevant timeframes) so as to expedite satisfaction of the OIO Condition; and

(g) notwithstanding any other provision of this clause 3.5:

(i) Bidder may redact any information that it reasonably considers to be commercially sensitive or personal information from any information it is required to provide to Target under this clause 3.5; and

(ii) this clause 3.5 does not require Target to provide Bidder with any correspondence, documentation or other information, or otherwise consult with Bidder, in connection with a Competing Proposal.

## 3.6 Limitation on parties' obligations

The obligations under this clause 3 do not require any party to:

(a) pay money, other than customary fees and charges (including application fees and charges of professional advisers);

(b) provide any other consideration or incur any liability, actual or contingent, in order to satisfy any of the Conditions; or

(c) offer, agree to or accept any undertakings, commitments or conditions (other than to the extent expressly required under this Agreement).

## 3.7 Information in relation to status of Conditions

Each party specified in the "Responsibility" column of the table set out in clause 3.1 opposite a Condition must:

(a) in the case of the Conditions set out in clauses 3.1(c) and 3.1(d), keep the other party fully informed as to the progress made towards satisfaction of the Condition;

(b) in the case of the Conditions set out in clauses 3.1(c) and 3.1(d), promptly after becoming aware that the Condition is satisfied, give notice to the other party that the Condition is satisfied (including reasonable evidence of how it was satisfied); and

(c) if, before the time specified for satisfaction of a Condition, it becomes aware of an event or occurrence that will prevent, or is likely to prevent, the Condition being satisfied, it must promptly give the other party written notice of that event or occurrence.

## 3.8 Waiver of Conditions

(a) **Right to waive**

(i) Where the "Waiver" column of the table set out in clause 3.1 opposite a Condition states "None", that Condition may not be waived.

(ii) Each other Condition is only for the benefit of, and may only be waived by:

(A) if one party is specified in the "Waiver" column of the table set out in clause 3.1 opposite the Condition, that party; and

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(B) if both Bidder and Target are specified in the "Waiver" column of the table set out in clause 3.1 opposite the Condition, those parties jointly.

(b) **Method of waiver**

(i) Where a Condition may be waived by one party, that party may only waive the Condition by giving notice in writing to the other party.

(ii) Where a Condition may only be waived by both Target and Bidder jointly, those parties may only waive the Condition by agreeing in writing to do so.

(c) **Rights preserved**

If a party waives the breach or non-satisfaction of any of the Conditions, that waiver does not prevent that party from taking action against the other party for any breach of this Agreement that resulted in the breach or non-satisfaction of the relevant Condition.

(d) **Waiver limited**

For the avoidance of doubt, any waiver of a breach or non-satisfaction in respect of one Condition does not constitute:

(i) a waiver of breach or non-satisfaction of any other Condition resulting from the same event; or

(ii) a waiver of breach or non-satisfaction of that Condition resulting from any other event.

### 3.9 OIO Condition – terms and conditions

For the purposes of clause 3.1(a), it will not be reasonable for Bidder to withhold its approval to any term or condition of any consent if the term or condition imposed:

(a) is one of the OIO Standard Terms and Conditions, or is consistent in all material respects with any such term or condition; or

(b) is consistent with any positive undertakings, plans or intentions specified in writing in Bidder's application for the consents required under the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005.

### 3.10 Termination

Notwithstanding anything in this clause 3 or any rights of termination implied by law, this Agreement may only be terminated in accordance with clause 15.

## 4. The Consideration

### 4.1 Consideration

The consideration for each Scheme Share transferred to Bidder or Bidder Nominee (if applicable) on implementation of the Scheme is the payment of the Consideration under clause 4.2 and the Deed Poll.

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### 4.2 Payment of Consideration

Bidder undertakes to Target (in its own right and separately as trustee or nominee for each of the Scheme Shareholders) that, in consideration of the transfer to Bidder or Bidder Nominee (if applicable) of each Share held by a Scheme Shareholder under the terms of the Scheme, Bidder will on the Implementation Date:

(a) accept, or procure the acceptance of, that transfer; and

(b) pay, or procure the payment of, the Consideration in accordance with the Scheme.

### 4.3 Manner of payment

Unless otherwise expressly stated (or as otherwise agreed in the case of a given payment), each payment to be made under this Agreement must be made in New Zealand dollars by transfer of the relevant amount into the relevant account on or before the date on which the payment is due and in immediately available funds, without set-off or withholding (except as required by law). The relevant account for a given payment is the account that the party due to receive the payment specifies, not less than 10 Business Days before the date on which payment is due, by giving notice to the party due to make the payment.

### 4.4 Default interest

If a party defaults in making any payment when due of any sum payable under this Agreement or the Deed Poll, it must pay interest on that sum from (and including) the date on which payment is due until (but excluding) the date of actual payment (after as well as before judgment) at an annual rate of 10% above the Reference Rate on that sum, which interest accrues from day to day and must be compounded monthly.

### 4.5 Lowest price

For the purposes of the financial arrangements rules in the Income Tax Act 2007:

(a) the Consideration is the lowest price (within the meaning of section EW 32 of the Income Tax Act 2007) that would have been agreed for the transfer of each Scheme Share, on the date this Agreement was entered into, if payment had been required in full at the time the first right in the contracted property (being each of the Scheme Shares) was transferred;

(b) the Consideration is the value of each Scheme Share; and

(c) Bidder or Bidder Nominee (if applicable) agrees that it will compute its taxable income for the relevant period on the basis that the Consideration for each Scheme Share includes no capitalised interest, and will file its tax returns accordingly.

## 5. Implementation

### 5.1 Target's obligations

Target must:

(a) **Announce recommendation of Scheme**

following execution of this Agreement, announce, in a form agreed between Target and Bidder, that each Director:

(i) recommends to Shareholders that they vote in favour of the Scheme; and

(ii) who holds or controls Shares intends to vote all of the Shares he or she holds or controls in favour of the Scheme,

subject to:

(iii) the Independent Adviser's Report concluding, and continuing to conclude, that the Consideration is within or above the Independent Adviser's valuation range for the Shares; and

(iv) there being no Superior Proposal,

and provided that in the case of Carlos Gil, the Shares he holds or controls will not include any Shares held or controlled by Microequities Asset Management Group Limited (ACN: 110 777 056), any associated entities of Microequities Asset Management Group Limited (ACN: 110 777 056) or funds of, or managed by, Microequities Asset Management Group Limited (ACN: 110 777 056) or its associated entities (such recommendation in (i) above (for clarity, subject to the caveats in (iii) and (iv) above) being the **Director Recommendation** and such statement of the Directors' intentions in (ii) above (for clarity, subject to the caveats in (iii) and (iv), and the proviso, above) being the **Director Intentions Statement**);

(b) **Independent Adviser's Report**

promptly appoint the Independent Adviser (if not already appointed prior to the Agreement Date) and provide any assistance and information reasonably requested by the Independent Adviser and on the understanding that, to the extent accepted by the Independent Adviser, the Independent Adviser will rely on that information to enable it to prepare the Independent Adviser's Report for the Scheme Booklet (and any update of that report) as soon as practicable;

(c) **Preparation of Scheme Booklet**

subject to clause 5.1(d), as soon as practicable after the Agreement Date:

(i) prepare the Scheme Booklet in accordance with the requirements of all applicable laws and in particular with the Companies Act, taking into account the Schemes Guidance Note; and

(ii) unless there has been a change of recommendation, and subject to the Independent Adviser in the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares, include in the Scheme Booklet:

(A) a unanimous Directors Recommendation; and

(B) the Directors Intentions Statement in respect of each Director;

(d) **Consultation with Bidder**

consult with Bidder as to the content and presentation of the Scheme Booklet, including:

(i) providing to Bidder:

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(A) successive drafts of the Scheme Booklet (excluding the Independent Adviser's Report) for the purpose of enabling Bidder to provide comments on those drafts to Target; and

(B) an extract of the Independent Adviser's Report which refers to any factual information about Bidder, Bidder Nominee (if applicable) or the Bidder Group, in each case solely for the purpose of enabling Bidder to provide comments on the factual information about Bidder, Bidder Nominee (if applicable) or the Bidder Group;

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

(iii) providing to Bidder a revised draft of the Scheme Booklet (excluding the Independent Adviser's Report) within a reasonable time before the draft of the Scheme Booklet is provided to the Takeovers Panel for review; and

(iv) providing Bidder a full copy of the Scheme Booklet (excluding the Independent Adviser's Report) in the form to be provided to the Court immediately after those forms have been finalised by Target;

(e) **Provide draft Scheme Booklet and Independent Adviser's Report to the Takeovers Panel**

as soon as practicable after receipt of the first confirmation from Bidder referred to in clause 5.2(e), provide an advanced draft of the Scheme Booklet and Independent Adviser's Report to the Takeovers Panel for its review and keep Bidder reasonably informed of any comments provided by the Takeovers Panel in relation to the draft (other than matters that relate to an Excluded Matter or to the Independent Adviser's Report) and consult with Bidder in good faith prior to taking any steps or actions to address any such comments (provided that, where such comments relate to Bidder Information, Target will not take any steps to address them without Bidder's written consent, not to be unreasonably withheld);

(f) **Letter of Intention and No-objection Statement**

apply to the Takeovers Panel (with a copy to Bidder) for the production of:

(i) a Letter of Intention; and

(ii) if the Scheme Resolution is passed by the requisite majorities of Shareholders, a No-objection Statement;

(g) **Court documents**

consult with Bidder in relation to the content of the documents required for the purposes of the Court hearings held for the purposes of sections 236(1) and 236(2) of the Companies Act in relation to the Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), provide drafts of those documents (other than the Independent Adviser's Report or any document or part of a document that relates to an Excluded Matter) to Bidder a reasonable time before they are due to be submitted to the Court (and, in any event, not less than 72 hours before submission unless it is impractical in the circumstances) for the purpose of enabling Bidder to review and comment on those documents, and consider in good faith any comments on or suggested amendments to those documents from Bidder or its Representatives prior to filing those documents with the Court;

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(h) **Court direction**

after the Takeovers Panel has granted the Letter of Intention, promptly apply to the Court for the Initial Orders directing Target to convene the Scheme Meeting;

(i) **Despatch Scheme Booklet**

as soon as reasonably practicable after the Court has granted the Initial Orders (and Bidder has provided the second confirmation referred to in clause 5.2(e)), despatch the Scheme Booklet and convene the Scheme Meeting, in each case in accordance with the Initial Orders;

(j) **Provide Scheme Booklet to NZX and ASX**

on sending the Scheme Booklet to Shareholders, provide a copy of the Scheme Booklet to NZX and ASX for release through the NZX and ASX market announcement platforms;

(k) **Update Target information**

until the date of the Scheme Meeting, promptly update or supplement the Scheme Booklet with, or if the parties agree otherwise inform Shareholders by way of announcement to NZX and ASX of, any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect (including because of any material omission from that statement) and seek the Court's approval (if such approval is required) for the sending to Shareholders of any updated or supplementary Scheme Booklet. Except for information relating to an Excluded Matter, Target must consult with Bidder in good faith as to the need for, and the content and presentation of, any updated or supplementary Scheme Booklet in the manner contemplated by clause 5.1(d);

(l) **Proxies**

(i) after the Scheme Booklet has been sent to the Shareholders, provide Bidder with a daily report detailing proxies received in respect of the Scheme Meeting;

(ii) provide to Bidder copies of all call scripts proposed to be used by Target for Shareholder canvassing activities and take into account any reasonable comments made by Bidder; and

(iii) if Bidder wishes, use its own reasonable endeavours and/or (at Bidder's election) permit Bidder (at its own expense), directly or indirectly to actively solicit proxies in favour of the Scheme;

(m) **Hold the vote**

unless otherwise agreed between the parties, after the Court has granted the Initial Orders, take all reasonable steps necessary to:

(i) hold the Scheme Meeting in accordance with the Initial Orders; and

(ii) put the Scheme Resolution to Shareholders for a vote at the Scheme Meeting;

(n) **Announcement of results of Scheme Meeting**

as soon as practicable after holding the Scheme Meeting:

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(i) notify Bidder of the results of the Scheme Meeting; and

(ii) provide the results of the Scheme Meeting to NZX and ASX for release through the NZX and ASX market announcement platforms;

(o) **Escrow Agreement**

if the Scheme Resolution is passed by the requisite majorities of Shareholders under sections 236A(2)(a) and 236A(4) of the Companies Act, enter into, and use reasonable endeavours to procure that the Registrar enters into, the Escrow Agreement before making the application contemplated by clause 5.1(q);

(p) **Apply for No-objection Statement**

if the Scheme Resolution is passed by the requisite majorities of Shareholders under sections 236A(2)(a) and 236A(4) of the Companies Act, request that the Takeovers Panel provide the No-objection Statement;

(q) **Court approval**

if the Scheme Resolution is passed by the requisite majorities of Shareholders under sections 236A(2)(a) and 236A(4) of the Companies Act, promptly apply to the Court for Final Orders approving the Scheme;

(r) **Court orders declined due to conditionality**

if the Court declines to make the orders sought by Target under clause 5.1(q) due in whole or in part to the lack of satisfaction of, or the potential timing for satisfaction of or, if capable of waiver, waiver of any Condition:

(i) Target must promptly make a further application for new Initial Orders or Final Orders (as applicable), or an application to supplement any existing Initial Orders or Final Orders, as soon as practicable after the satisfaction of any steps or matters specified by the Court, or apparent to the parties, each acting reasonably, from any directions or reasons of the Court, as being required, or desirable, in order for the Court to grant or vary the Initial Orders or Final Orders (as the case may be) (**Court Guidance**);

(ii) Target will use its reasonable endeavours to follow the Court Guidance and any guidance or requirements of the Takeovers Panel including, if indicated, providing supplementary information to Shareholders and/or convening a second Scheme Meeting; and

(iii) the parties must consult in good faith about agreeing any changes to the Timetable that are necessary or desirable in the circumstances;

(s) **Appeal process**

if the Court refuses to make the Initial Orders or the Final Orders and clause 5.1(r) does not apply:

(i) the parties must consult with each other in good faith as to whether to appeal the Court's decision; and

(ii) if, within 10 Business Days after the decision, Target and Bidder agree to appeal the decision or either of those parties obtains an opinion from an independent King's Counsel, practising in the field of corporate and securities

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law litigation, to the effect that there are reasonable prospects of successfully appealing the decision, then:

(A) Target must appeal the Court's decision within the timeframe set out in rule 29 of the Court of Appeal (Civil) Rules 2005;

(B) the cost of any such appeal is to be borne:

(aa) if Target and Bidder agreed to appeal the decision, equally between the parties; or

(bb) if Target and Bidder did not agree to appeal the decision, by the party who obtained the opinion from the independent King's Counsel;

(C) if the End Date would otherwise occur before the appeal is finally determined, the End Date is automatically extended (without the need for any action by any party) to the date that is 20 Business Days after the appeal from the decision is finally determined; and

(D) if the appeal is successful and the relevant order is made, then the End Date will be further automatically extended (without the need for action by any party, excluding any deferral under clause 5.1(s)(ii)(C)) by the number of Business Days contemplated by the Timetable between the Final Orders Date and the Implementation Date (inclusive),

provided that in no circumstances may the End Date be extended under sub-clauses (C) or (D) to a date which is later than 22 September 2026 without the prior written consent of Bidder;

(t) **Lodge copy of Court order**

if the Court grants the Final Orders, lodge with the Companies Office for registration under section 236(4) of the Companies Act a copy of the Final Orders approving the Scheme as soon as practicable after receiving a sealed copy of the Final Orders;

(u) **Suspension of trading and delisting**

(i) if the Court grants the Final Orders, apply to NZX and ASX to:

(A) suspend trading in Shares with effect from the close of trading on the date two Business Days after the later of:

(aa) the Final Orders Date; or

(bb) the date on which the OIO Condition is satisfied,

or such other date agreed between the parties in writing; and

(B) delist Target with effect from close of trading on the Implementation Date;

(ii) prior to sending any material correspondence to NZX or ASX in respect of the suspension of quotation of Shares or delisting of Target in connection with the Transaction, provide Bidder with a draft of that correspondence (except to the extent such correspondence relates to an Excluded Matter) and consider in good faith all of the reasonable comments of Bidder on that correspondence; and

(iii) promptly provide Bidder with a copy of all material correspondence to and from the NZX and the ASX in respect of the suspension of quotation of Shares or delisting of Target in accordance with clause 5.1(u)(i) and keep Bidder reasonably informed of any matters raised by the ASX or the NZX in respect of the suspension of quotation of Shares or delisting of Target and consult with Bidder to resolve any such issues expeditiously, provided that in each case Target is not required to provide Bidder with any document or information to the extent it relates to an Excluded Matter;

(v) **Close Share Register and determine entitlements to Consideration**

if the Court grants the Final Orders and once the OIO Condition has been satisfied, close the Share Register as at the Record Date and determine entitlements to the Consideration in accordance with the Scheme and the Deed Poll;

(w) **Transfer and registration**

if the Scheme becomes Effective, register all transfers of Shares held by Scheme Shareholders to Bidder on the Implementation Date in accordance with the Scheme and the Escrow Agreement; and

(x) **Implementation of Scheme**

if the Court grants the Final Orders and once the OIO Condition has been satisfied, do all things contemplated of it under the Scheme and all other things necessary for Target to do lawfully give effect to the Scheme.

## 5.2 Bidder's obligations

Bidder must:

(a) **Deed Poll**

on the Agreement Date, deliver to Target the Deed Poll signed by Bidder;

(b) **Bidder Information**

(i) prepare and promptly provide to Target the Bidder Information for inclusion in the Scheme Booklet as required under the Schemes Guidance Note, the Companies Act and any other applicable laws or as requested or required by the Takeovers Panel in order for Target to obtain from the Takeovers Panel a Letter of Intention and a No-objection Statement; and

(ii) provide Target with successive drafts of the information referred to in clause 5.2(b)(i) in a timely manner, to provide a reasonable opportunity for Target to review those drafts and consider in good faith the reasonable comments of Target and its Representatives when preparing revised drafts of that information (with the parties' intention being that, so far as is practicable, the Scheme Booklet is finalised within 15 Business Days after the date on which the initial draft of the Scheme Booklet is provided by Target to Bidder);

(c) **Review of Scheme Booklet**

as soon as practicable after receiving any draft of the Scheme Booklet from Target, review and promptly provide comments on that draft in good faith;

(d) **Independent Adviser's Report**

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provide any assistance or information reasonably requested by the Independent Adviser in connection with the preparation of the Independent Adviser's Report. Bidder acknowledges and agrees that notwithstanding any other provision of this Agreement, Target is not required to take any action in respect of the Independent Adviser's Report that may be inconsistent with the Schemes Guidance Note or that may compromise the Takeovers Panel's approval of the Independent Adviser or result of the Takeovers Panel withdrawing that approval;

(e) **Accuracy of Bidder Information**

before a draft of the Scheme Booklet is provided to the Takeovers Panel under clause 5.1(e), and again before the Scheme Booklet is sent to the Shareholders under clause 5.1(i), provide to Target a written statement, signed by a director of Bidder, which states that Bidder:

(i) consents to the inclusion in the Scheme Booklet of the Bidder Information, in the form and context in which it appears; and

(ii) confirms that the Bidder Information included in the Scheme Booklet is accurate and complete, in all material respects, and does not contain any material statement that is false, misleading or deceptive in any material respect (including because of any material omission);

(f) **Update Bidder Information**

if, after the Scheme Booklet has been sent to Shareholders but prior to the commencement time of the Scheme Meeting, it becomes aware:

(i) that any Bidder Information included in the Scheme Booklet is not, or is no longer, accurate and complete, in all material respects, or contains any material statement that is false, misleading or deceptive in any material respect (including because of any material omission); or

(ii) of information with respect to the Bidder Group that is required to be disclosed to Shareholders in the Scheme Booklet under:

(A) any applicable law;

(B) the Schemes Guidance Note; or

(C) any Takeovers Panel requirement in connection with the Letter of Intention or No-objection Statement,

but was not included in the Scheme Booklet,

promptly provide that information to Target;

(g) **Proxy solicitation**

if Bidder or any of its Representatives solicit proxies for the Scheme Meeting, communicate with Shareholders in connection with the Scheme, or otherwise engage in Shareholder canvassing activities in respect of the Scheme, Bidder must:

(i) undertake such proxy solicitation, Shareholder communications or canvassing activities in compliance with all applicable laws, including the FMCA and the Fair Trading Act 1986;

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(ii) provide to Target copies of all written communications or correspondence to be provided to Shareholders, prior to being sent to Shareholders and allow a reasonable time for comment from Target;

(iii) provide to Target copies of all call scripts being used for Shareholder canvassing activities promptly after the form of those scripts is approved for use and allow a reasonable time for comment from Target,

and Bidder must consider and take into account in good faith all reasonable comments on such communications, correspondence and call scripts provided by Target;

(h) **Escrow Agreement**

no later than 10 Business Days before the Second Court Date, deliver to Target the Escrow Agreement signed by Bidder and Bidder Nominee (if applicable);

(i) **Representation**

procure that it is represented by counsel at the Court hearings convened for the purposes of sections 236(1) and 236(2) of the Companies Act, at which through its counsel Bidder or Bidder Nominee (if applicable) will undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this Agreement and the Scheme (it being understood, for the avoidance of doubt, that Target will prepare the Court documentation for the Initial Orders and Final Orders);

(j) **Unconditional Notice**

provide an "Unconditional Notice" (as defined in the Escrow Agreement) to the Registrar (as escrow agent) under clause 4.1 of the Escrow Agreement, promptly after 8.00am, and in any event before 9.00am, on the Implementation Date;

(k) **Share transfer**

if the Scheme becomes Effective, accept a transfer of the Shares as contemplated by clause 4.2(a);

(l) **Consideration**

if the Scheme becomes Effective, procure the provision of the Consideration in the amount contemplated by clause 4.1 and in the manner contemplated by the terms of the Scheme; and

(m) **Other actions**

do all other things contemplated of it under the Scheme for the implementation of the Scheme in accordance with this Agreement, the Scheme Plan and the Final Orders.

## 5.3 Content of Scheme Booklet

(a) **Responsibility statements**

The parties agree that the Scheme Booklet will contain statements to the effect that:

(i) Target is responsible for the Target Information;

(ii) Bidder is responsible for the Bidder Information (and no other part of the Scheme Booklet); and

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(iii) the Independent Adviser is responsible for the Independent Adviser's Report (and no other part of the Scheme Booklet).

(b) **Disagreement**

(i) If Target and Bidder disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to agree the form and content of the Scheme Booklet.

(ii) If after a reasonable period of consultation and having acted reasonably and in good faith, Target and Bidder are unable to agree on the form or content of the Scheme Booklet:

(A) where the determination relates to the Bidder Information, Bidder will (acting reasonably) make the final determination as to the form and content of the Bidder Information; and

(B) in any other case, Target will (acting reasonably) make the final determination as to the form and content of the Scheme Booklet.

## 5.4 Conduct of Court proceedings

(a) **Separate representation**

Target and Bidder are entitled to separate representation at all Court proceedings affecting the Transaction.

(b) **No undertakings on other's behalf**

This Agreement does not give Target or Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent.

(c) **Required undertakings**

Each of Target and Bidder must:

(i) give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Transaction as contemplated by this Agreement; and

(ii) agree to any non-material change to the Scheme which is requested by the Court,

where such undertaking or non-material change is consistent with the Transaction as contemplated by this Agreement.

(d) **Court orders**

Target must not provide the Court with any Court orders (whether in draft or not) or applications for Court orders, or consent to any changes to any Court orders, relating to the approval or implementation of the Transaction (or procedural matters relating to the Transaction) without Bidder having approved (acting reasonably) such documents being submitted to the Court or such changes being consented to.

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(e) **Bidder submissions**

Except for a notice of appearance (and any related memorandum of counsel) or in relation to any claim under, or disagreement or dispute between the parties in respect of, this Agreement or the Transaction, Bidder's counsel will only prepare and make submissions to the Court if required by the Court or requested by Target. Any Bidder submissions to the Court must support Target's application for orders, including the Initial Orders and the Final Orders. Bidder must provide Target with drafts of all documents to be provided by Bidder to the Court a reasonable time before they are due to be submitted to the Court (and, in any event, not less than 72 hours before submission, unless it is impractical in the circumstances) and must consider in good faith the reasonable comments of Target on those documents. Notwithstanding the previous sentence, unless required by law, Bidder is not required to provide to Target any document, or any part of a document, that relates to any claim under, or disagreement or dispute between the parties in respect of, this Agreement or the Transaction.

(f) **Opposition**

Bidder must not, in any event or at any time, oppose the granting of Initial Orders or Final Orders without Target's prior written consent (such consent not to be unreasonably withheld).

(g) **Supporting affidavit**

If requested by Target, Bidder will promptly provide an affidavit in support of any originating or interlocutory application made by Target in connection with Target's application:

(i) for Initial Orders or Final Orders (as applicable); or

(ii) to supplement to any existing Initial Orders or Final Orders,

that:

(iii) is sworn or affirmed by a director or senior executive of Bidder; and

(iv) confirms relevant information related to Bidder, including:

(A) Bidder's shareholding structure;

(B) the accuracy and completeness of the Bidder Information in the Scheme Booklet;

(C) Bidder's ability to fund the payment of the Consideration; and

(D) agreement to be bound by the Final Orders.

## 5.5 Obligation on becoming a Shareholder

If, between the Agreement Date and the date of the Scheme Meeting, Bidder, Bidder Nominee (if applicable) or any Associate of Bidder acquires beneficial ownership of, or effective control over, any Shares, Bidder must as soon as reasonably practicable enter into a deed poll in the form set out in the Schemes Guidance Note under which Bidder agrees to vote, or procure that Bidder Nominee (if applicable) or its Associate votes (as the case may be), the relevant Shares in favour of the Scheme Resolution at the Scheme Meeting.

# 6. Conduct of business and access

## 6.1 Conduct of business

From the Agreement Date up to and including the Implementation Date, Target must ensure that it and each other member of the Target Group:

(a) carries on its business as a going concern in the ordinary course and does not make any significant change to the nature or scale of its business or enter any business or undertake any activities in which it was not engaged as at the Agreement Date;

(b) maintains insurance in respect of the Target Group's business and assets covering such risks and for such amounts as would be maintained in accordance with the Target Group's ordinary practice and, in any event, to a level no less than that in place immediately prior to the Agreement Date;

(c) uses its reasonable endeavours to:

(i) keep available the services of its current senior management team; and

(ii) preserve its relationships with its regulators, customers, suppliers and others having material business dealings with it;

(d) promptly notifies Bidder of, and keeps Bidder reasonably and promptly informed of any material change in the status of:

(i) any claim that is made or legal proceedings instituted against any member of the Target Group, or any director or employee of any member of the Target Group (of which it becomes aware), other than any claim or legal proceeding that Target considers in good faith has potential liability which is less than $200,000; and

(ii) any actual or threatened material enquiries or investigations by any Government Agency in relation to the business of the Target Group and any material correspondence with any Government Agency in relation to the business of the Target Group;

(e) does not:

(i) create or permit to arise any Encumbrance (other than a Permitted Encumbrance) in respect of any of the Target Group's assets;

(ii) make any significant change to the nature or scale of its business or the manner in which it carries on its business in the ordinary course;

(iii) enter into any new significant business activities;

(iv) acquire or dispose of assets (including shares or other securities in any body corporate or any units in any trust, or other similar interests), other than current assets acquired or disposed of in the ordinary course of business (which, for the purposes of this exclusion, includes terminals and other devices and equipment leased to customers), or an asset or assets (either singularly or in the aggregate) with a book value not exceeding $750,000;

(v) incur capital expenditure that exceeds $500,000 for a single item or related items that should reasonably be assessed together, unless budgeted for in

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Target's budget for the financial year ending 31 March 2026 (as set out at item 02.02.06.16 of the Data Room);

(vi) increase the facility limit on any of the Target Group's bank facilities or exceed borrowing or cash reserve limitations as established by any financier of the Target Group, except for increases in the ordinary course of business (provided that, for the avoidance of doubt, the Target Group is not restricted from increasing the aggregate level of its borrowings under any existing debt facility, where increasing the level of its borrowings does not require an increase in the facility limits of any of its existing bank facility, in each case as fairly disclosed in the Due Diligence Materials);

(vii) enter into, extend, renew, waive any material rights under, vary or terminate any contract, commitment or arrangement (or series of related contracts, commitments or arrangements) which (individually or in the aggregate):

(A) may require annual expenditure by the relevant member of the Target Group in excess of $500,000; or

(B) restrains any member of the Target Group from engaging in or competing with any business in any place,

other than any contract entered into, rights waived, or variation or termination agreed to, in the ordinary course of business and on arm's length terms;

(viii) give any guarantee of, or security for, or indemnity in connection with the obligations of any person other than a member of the Target Group, other than in the ordinary course of business and consistent with the past practice of Target Group in the 12 months prior to the Agreement Date and as fairly disclosed in the Due Diligence Materials;

(ix) commence, compromise or settle any litigation or similar proceedings for an amount exceeding $500,000;

(x) accelerate the rights of any director or employee of any member of the Target Group to receive any benefit under any Target incentive plan (other than under the LTI Scheme as contemplated by clause 8.5);

(xi) change its method of accounting for financial reporting purposes, unless required to do so in order to comply with any applicable accounting standards;

(xii) enter into, amend or close out any material foreign exchange, interest rate swap, derivative or hedge other than in the ordinary course of business and consistent with past practice;

(xiii) employ any new employee whose salary would exceed $250,000 per annum other than new employees employed in the ordinary course of business to fill a vacant position within the Business and provided that the terms and remuneration of those new hires are consistent with Target's past practices;

(xiv) increase or accelerate the remuneration of, make any bonus payment, retention payment or termination payment to, or otherwise change the terms and conditions of employment of any director of any member of the Target Group or any employee of any member of the Target Group whose salary exceeds $250,000, except in accordance with any contractual entitlement existing as at the date of this agreement and fairly disclosed in the Due Diligence Materials or as permitted under clause 8.5 or clause 8.6;

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(xv) accelerate the rights of any director or any employee of any member of the Target Group to receive any benefit under any Target Group incentive plan (other than as permitted under clause 8.5);

(xvi) change its constitution or, in the case of Target only, pass any resolution of Shareholders or any class of Shareholders (other than the Scheme Resolution or any resolution relating to the election of Directors or fixing the remuneration of auditors);

(xvii) acquire any interest in "sensitive land" for the purposes of the Overseas Investment Act 2005;

(xviii) agree, conditionally or otherwise, to do any of the things referred to in the preceding paragraphs of this clause 6.1(e), or announce or represent to any person that any of those things will be done; and

(xix) incur any liability for Tax outside of the ordinary course of business, make any material Tax election, or material change in the conduct of its Tax affairs (including, for the avoidance of doubt, agreeing to extend or otherwise delay the application of a time bar in respect of Tax), settle or compromise any material Tax liability or settle any material Tax dispute.

## 6.2 Exceptions to conduct of business provisions

Clause 6.1 does not prevent Target or any other member of the Target Group, from doing or omitting to do (as the case may be) anything to the extent that:

(a) it has been consented to in writing by Bidder (such consent not to be unreasonably withheld, delayed or conditioned);

(b) it is expressly required to do, permitted to do or is permitted not to do, the relevant act or omission under or in accordance with this Agreement;

(c) it is undertaken in response to a Competing Proposal as permitted by clause 13;

(d) it has been fairly disclosed to Bidder in the Due Diligence Materials or to NZX or ASX prior to the Agreement Date;

(e) it is reasonably necessary to respond to any emergency, pandemic or disaster; or

(f) it is required to comply with law, regulation, the requirements of a Government Agency or generally accepted accounting principles.

## 6.3 Consents

If Target seeks Bidder's written consent or approval under clause 6.2(a), then unless Target receives a written response within 5 Business Days, Bidder is deemed to have granted the written consent or written approval sought by Target. Where Bidder does grant an express consent or approval, it will apply in accordance with its terms.

## 6.4 Integration planning

From the Agreement Date until and including the Implementation Date, Target must:

(a) procure that Bidder and its Representatives are given reasonable access to:

(i) the properties, books and records and senior management of the Target Group, during normal business hours at mutually convenient times and on reasonable notice to Target; and

(ii) information about the Business reasonably requested by Bidder or its Representatives,

for the purposes of:

(iii) implementing the Scheme or enabling Bidder to prepare for the transition of ownership of the Target Group to Bidder; or

(iv) any other purpose agreed between Target and Bidder in writing.

## 6.5 Conditions of access

Target's obligations to provide access or information to Bidder under clause 6.4 are subject to the following:

(a) such access and provision of information will occur in such manner as Target reasonably determines to be appropriate to comply with applicable law;

(b) Bidder will focus on issues that it considers to be material, having regard to management commitments;

(c) to the extent practicable, information will be made available via a data room;

(d) the Target Group is not required to provide information or access to the extent that doing so would breach any applicable law or any confidentiality obligations owed by any member of the Target Group to Third Parties;

(e) all requests for such access must be directed to Target's Chief Executive Officer or such other persons as Target may designate in writing from time to time (collectively, the **Designated Contacts**);

(f) other than the Designated Contacts, Bidder is not authorised to and must not (and must ensure that none of its Representatives or Related Companies) contact any director, officer, employee, customer, supplier, distributor, landlord, lender, or other material business relation of the Business in connection with the Transaction prior to the Scheme becoming Effective without the prior written consent of Target; and

(g) Bidder must not (and must ensure that none of its Representatives or Related Companies) meet with, correspond with, or otherwise engage with, senior executives of the Target Group regarding their continued employment or the terms of their continued employment after the Implementation Date without Target's prior written consent (which consent must be provided by a Director);

(h) providing such access or information does not:

(i) in the opinion of Target (acting reasonably) result in unreasonable disruptions to the Business; or

(ii) require Target to make further disclosure to any other entity or Government Agency; or

(iii) require the disclosure of any document that would compromise the Target Group's legal professional privilege or non-disclosure rights for tax advice documents; and

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(i) nothing in clause 6.4 will require Target to provide information or access concerning its director's and management's consideration of the Scheme, any Competing Proposal (but this proviso does not limit Target's obligations under clause 13) or any other Excluded Matter.

## 6.6 Change of control provisions

(a) The parties acknowledge that the Target Group's material contracts (including any joint venture agreement, partnership agreement or similar) may contain provisions requiring:

(i) the consent of the counterparty to that contract to a change of control, deemed assignment or similar that arises under the terms of that contract as a result of the Transaction;

(ii) notification of a change of control (to a Government Agency or otherwise); or

(iii) a waiver from the counterparty to that contract of any pre-emptive rights, breach or termination or cancellation right which will arise or otherwise be enforceable under the terms of that contract as a result of the Transaction,

(each a **Change of Control Consent or Notification**).

(b) Bidder and Target will, as soon as practicable after the Agreement Date, work in good faith to develop both:

(i) a list of Change of Control Consent or Notification requirements; and

(ii) a proposed course of action to initiate contact with such parties and request that they provide any consents, confirmations or waivers required or appropriate in response to such Change of Control Consent or Notification.

(c) Subject to this clause 6.6(c) and clause 6.6(d) during the Exclusivity Period:

(i) Target will, and will procure that each member of the Target Group will, use reasonable endeavours to obtain or make each Change of Control Consent or Notification that Bidder and Target have identified pursuant to clause 6.6(b)(i) and which Bidder requests that it obtain or make;

(ii) Bidder must cooperate with and use its reasonable endeavours to assist Target to obtain or make each required Change of Control Consent or Notification (but without contacting any contractual counterparties or Government Agencies without Target's consent);

(iii) each party must promptly provide to the relevant counterparty all information reasonably required for the purposes of obtaining or making each required Change of Control Consent or Notification, including responding to any reasonable requests for additional information from the relevant counterparty; and

(iv) Target will use reasonable endeavours to assist with obtaining the agreed Change of Control Consents and Notifications and will collaborate with Bidder to introduce it to relevant counterparties to jointly discuss the implications of the Transaction, including Change of Control Consents or Notifications.

(d) Nothing in this clause 6.6 will require either party to pay any money or provide any other valuable consideration to, or for the benefit of, any person or otherwise be contrary to the interests of either party, as the case may be.

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(e) The parties agree that:

(i) the Scheme is not conditional on Target making or obtaining any required Change of Control Consents or Notifications;

(ii) the implementation of the Scheme will not be delayed if all or any required Change of Control Consents or Notifications have not been obtained or issued on or before the Implementation Date; and

(iii) failure by a member of the Target Group to obtain any Change of Control Consent or Notification or any other consent or confirmation from any person (other than as required by the OIO Condition or the Court in connection with the condition in clause 3.1(d)) in connection with the Scheme, or the exercise by a contractual counterparty of a termination right or any other contractual rights in connection with the Scheme:

(A) will not affect the parties' obligations to implement the Scheme;

(B) will not constitute a breach of this Agreement by Target; and

(C) together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this Agreement (including, for the avoidance of doubt, whether any Material Adverse Change has occurred).

## 6.7 Transition Committee

(a) As soon as practicable, and in any event within one week after the Agreement Date, Target and Bidder must form a transition committee (**Transition Committee**) in accordance with this clause 6.7. The Transition Committee will, subject to this Agreement, establish its terms of reference, meeting schedules, information sharing protocols and escalation methodologies.

(b) The Transition Committee will comprise two representatives of each of Target and Bidder. A party may appoint, replace or nominate a representative by giving written notice to the other party.

(c) The Transition Committee will:

(i) co-ordinate implementation of the Scheme between the parties;

(ii) co-ordinate preparation for the transition of ownership of Target to Bidder;

(iii) discuss and resolve matters arising in relation to this Agreement or the Transaction within its terms of reference; and

(iv) undertake any other matters reasonably requested by a party that are material in connection with the Transaction.

(d) The representatives of Bidder on the Transition Committee will have authority to provide consent in writing on behalf of Bidder for the purposes of clause 6.7(a).

(e) The representatives of Target on the Transition Committee will have authority to provide consent in writing on behalf of Target to any actions of Bidder that would otherwise be restricted under this Agreement.

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# 7. Directors' recommendation

## 7.1 Recommendation and voting

Target must ensure that each Director agrees to the release of the Initial Announcement under clause 12.1 which, for the avoidance of doubt, must include the Director Recommendation and Director Intentions Statement.

## 7.2 No change

Subject to clause 7.3, Target must use its best endeavours to procure that, after the Initial Announcement has been made, each Director does not change, withdraw, qualify or adversely modify the Director Recommendation or the Director Intentions Statement, unless:

(a) the Independent Adviser's Report does not conclude, or does not continue to conclude, that the Consideration is within or above the Independent Adviser's valuation range for the Shares; or

(b) Target has received, other than as a result of a breach of clause 13, a Superior Proposal.

## 7.3 Permitted actions

The:

(a) public disclosure of the Independent Adviser's Report (or any update of, or any revision, amendment or supplement to, that report);

(b) taking by Target of any action permitted by clause 13.7(c)(i); and

(c) making of an announcement to NZX and ASX under clause 13.6(c) or 13.7(c)(i)(ii) provided such announcement is, as applicable, limited to any or all of:

(i) advising of the receipt and details of a Competing Proposal and the fact that Bidder is assessing the Competing Proposal;

(ii) the fact that Bidder has an opportunity to provide a Counter Proposal to the Competing Proposal during the Matching Period;

(iii) advising of the fact that Target will inform Shareholders if the Target Board determines that the Competing Proposal is a Superior Proposal; and

(iv) if applicable, advising of any associated delay in the Timetable,

provided that in that announcement Target confirms the Directors have not changed or withdrawn their recommendation,

will not constitute a change of, qualification to, withdrawal of, or statement inconsistent with, the Director Recommendation or the Director Intentions Statement.

# 8. Other interim period obligations

## 8.1 Information about Shareholders

Target must:



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(a) procure that the Registrar provides to Bidder, to the extent the Registrar is legally permitted to do so, in the form reasonably requested by Bidder, details of the Share Register and all other information about the Shareholders which Bidder reasonably requires in order to:

(i) canvas approval of the Scheme by Shareholders; or

(ii) facilitate the provision by Bidder of the Consideration in accordance with this Agreement, the Scheme and the Deed Poll; and

(b) comply with any reasonable request by Bidder to require disclosure of information in accordance with sections 290 and 291 of the FMCA, subject to its statutory and contractual obligations, and give Bidder the information obtained as a result of requiring such disclosure.

## 8.2 Promotion of Transaction

(a) During the Exclusivity Period and subject to the Directors continuing to unanimously recommend that Shareholders vote in favour of the Scheme, Target will provide reasonable cooperation to Bidder in promoting the merits of the Transaction to Shareholders, including:

(i) encouraging Shareholders to exercise their rights to vote on the Scheme Resolution; and

(ii) procuring that senior executives of the Target Group, as may be reasonably available, meet with key Shareholders if reasonably requested to do so by Bidder.

(b) Target is not required to comply with any request under clause 8.1 or clause 8.2(a) if the relevant action will result in Bidder incurring any out-of-pocket costs and Bidder has not approved the relevant costs under clause 8.2(c) after being requested to do so by Target.

(c) If this Agreement is terminated in accordance with its terms, then Bidder will promptly reimburse Target for any out-of-pocket costs that it has incurred under clauses 8.1 and 8.2(a) and which were approved in writing by Bidder (such consent not to be unreasonably withheld or delayed).

## 8.3 Communication principles for Bidder engagement with Shareholders

Target and Bidder will use reasonable endeavours to agree, as soon as practicable after the Agreement Date, key messaging and principles to govern all communications between Bidder (or any Representative of Bidder) and Shareholders (**Communication Principles**), which will apply throughout the period that the Directors continue to unanimously recommend that Shareholders vote in favour of the Scheme.

## 8.4 Bidder contact with stakeholders

(a) During the period the Directors continue to unanimously recommend that Shareholders vote in favour of the Scheme, Bidder must not, directly or indirectly:

(i) send information or correspondence to Shareholders;

(ii) call Shareholders as part of an outbound call programme or other similar communication; or

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(iii) otherwise engage in proxy solicitation or other programme of canvassing of Shareholders,

in connection with the Scheme (together, the **Bidder Shareholder Communications**), without first providing Target with a draft of the Bidder Shareholder Communication in a timely manner and so that Target has a reasonable opportunity to review and comment on that draft, and consider in good faith the reasonable comments of Target and its Representatives when preparing a revised draft of the relevant Bidder Shareholder Communication. Nothing in this clause 8.4(a) will apply in the case of an unscheduled in-bound call received by Bidder or its Representatives from any Shareholder or any out-bound call made by Bidder or its Representatives to one or a small number of Shareholders (rather than Shareholders generally) on a discrete or ad hoc basis, provided that Bidder will act, and will ensure that its Representatives act, consistently with the Communications Principles (once agreed pursuant to clause 8.3) in conducting any such calls.

(b) Without limiting clause 8.4(a), Bidder must ensure that any information and correspondence provided to, and call scripts used to call, Shareholders (and the calls themselves):

(i) comply with all applicable laws, including the FMCA and the Fair Trading Act 1986;

(ii) are not misleading or deceptive, including by omission; and

(iii) during the period that the Directors continue to unanimously recommend that Shareholders vote in favour of the Scheme, comply with the Communication Principles (once agreed pursuant to clause 8.3).

## 8.5 Acceleration of LTI entitlements

Bidder acknowledges and agrees that:

(a) as at the Agreement Date, 5,024,541 Share Performance Rights have been issued by Target for participants in the LTI Scheme (for the 2025, 2026 and 2027 financial years);

(b) the Target Board intends to exercise its discretion under clause 11.1(b) of the LTI Scheme Rules to amend the LTI Scheme Rules to provide for equivalent treatment for a scheme of arrangement under Part 15 of the Companies Act as is provided for a takeover offer under the Takeovers Code;

(c) prior to the Record Date, in accordance with the LTI Scheme Rules (including any discretion conferred on the Target Board):

(i) some or all of the Share Performance Rights will become eligible to be exercised or will automatically vest, and the relevant Shares will be issued, on or after the later of:

(A) the Final Orders Date; and

(B) the date on which Target announces to NZX that the OIO Condition has been satisfied,

but prior to the Record Date, provided that:

(C) no more than 5,024,541 Shares are issued in connection with the Share Performance Rights; and

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(D) the Share Performance Rights will not become eligible to be exercised, and the relevant Shares will not be issued, unless the relevant participant in the LTI Scheme remains employed by the Target Group on or after the later of:

(I) the Final Orders Date; and

(II) the date on which Target announces to NZX that the OIO Condition has been satisfied; and

(ii) any remaining Share Performance Rights that do not become eligible to be exercised, and the relevant Shares issued, prior to the Record Date will lapse and be cancelled;

(d) Target must ensure:

(i) no more Share Performance Rights are granted prior to the Implementation Date; and

(ii) all Share Performance Rights that become eligible to be exercised in accordance with clause 8.5(c) are exercised and the relevant Shares issued prior to the Record Date and that any Share Performance Rights that do not become eligible to be exercised in accordance with clause 8.5(c) lapse or are cancelled or forfeited prior to the Record Date such that, on the Implementation Date, there are no Share Performance Rights on issue;

(e) no action is taken by Target or any directors of Target in respect of the LTI Scheme, which would, or would be reasonably likely to, create a separate interest class (as referred to in section 236A(4) of the Companies Act) of votes in respect of the Scheme; and

(f) the LTI Scheme is terminated with effect on and from the Implementation Date.

## 8.6 2026 short term incentives

Prior to the Implementation Date, Target may put in place short term incentives for the financial year ending 31 March 2026 with any employees of the Target Group provided that (unless otherwise agreed in writing between Target and Bidder):

(a) the terms of such arrangements are substantially similar to the terms of the 2025 STI Scheme; and

(b) the total amount potentially payable under such incentives does not exceed, in aggregate, the amount which is 105% of the total amount which was potentially payable under the 2025 STI Scheme.

## 8.7 Appointment of directors

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

(a) take all actions necessary to appoint the persons nominated by Bidder in writing to Target at least two Business Days prior to the Implementation Date as new directors of Target and new directors of each member of the Target Group, subject to receipt of any applicable consent to act from such incoming directors; and

(b) procure that all directors of Target (other than the new directors appointed pursuant to paragraph 8.7(a) or existing directors which Bidder has agreed in writing will remain

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on the board) resign from the board of the relevant member of the Target Group by notice in writing which acknowledges that such director has no outstanding claims (other than any outstanding fees or expenses that accrued prior to the resignation or, in respect of any executive directors, any accrued employee remuneration) against any Target Group Member as at the date of the resignation (but without prejudice to the director's ability to claim under any applicable indemnity or insurance after the date of resignation),

in each case in accordance with the relevant constitution, the Companies Act and the Listing Rules.

# 9. Financing

## 9.1 Target assistance

Target agrees, during the Exclusivity Period, to provide, and ensure that the Target Group and its Representatives provide, any co-operation or assistance reasonably requested by Bidder in connection with:

(a) the termination or continuation (at the election of Bidder) of the Target Group's existing financing arrangements on and from the Implementation Date, including by (if directed by Bidder), seeking the consent of some or all of the Target Group's existing bank financiers to accept a conditional prepayment notice and/or reduced prepayment periods and/or waivers of break costs;

(b) in respect of any bank guarantees, letters of credit, performance bonds or similar instruments issued on behalf of the Target Group, seeking to obtain any necessary consents (or agreeing any necessary amendments) required from any applicable issuing banks required for such instruments to remain outstanding following the Implementation Date;

and including in each case (to the extent applicable):

(c) facilitating liaison between Bidder and Target's existing financiers, as may be reasonably requested by Bidder;

(d) providing Bidder with financial and other relevant information regarding the Target Group;

(e) as may be reasonably requested by Bidder (including providing any consent required under the Confidentiality Agreement to such disclosure, subject to such financiers entering into confidentiality arrangements which are reasonably required by Target);

(f) if the Scheme Resolution has been approved by Shareholders at the Scheme Meeting and the OIO Condition has been satisfied, executing and delivering any customary prepayment/cancellation notices and any other similar customary notices reasonably requested by Bidder, in each case that are expressed to be subject to (and only effective on) the Scheme being implemented, relating to the repayment of Target's existing indebtedness identified by Bidder and/or the release on the Implementation Date of all related Encumbrances; and

(g) providing as promptly as reasonably practicable such customary "know your customer" information as is reasonably requested in writing by Bidder (or any of its financiers) at least 20 Business Days prior to the Implementation Date.

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### 9.2 Requirements for Target financing assistance

Target's obligations under clause 9.1 are subject to the following:

(a) no Target Group member or any of its Representatives will be required to:

(i) enter into or sign any agreements or arrangements in respect of any debt financing and any related Encumbrances (including the release of existing Encumbrances) or any other matter contemplated by clause 9.1 (except as contemplated by clause 9.1(f) and 9.1(g)); or

(ii) assume any obligation or liability of any nature in respect of any debt financing and any related Encumbrances (including the release of existing Encumbrances) or any other matter contemplated by clause 9.1;

(b) Bidder must promptly reimburse Target for all reasonable out-of-pocket costs incurred by Target in connection with providing co-operation under clause 9.1; and

(c) clauses 6.5(a) to 6.5(h) will apply to clause 9.1 with all necessary modifications.

## 10. Warranties

### 10.1 Target warranties

Target warrants to Bidder, that, subject to the limitations in this Agreement, each of the Target Warranties is true, accurate and not misleading as at:

(a) the Agreement Date;

(b) the date that the Scheme Booklet is sent to Shareholders;

(c) the Second Court Date; and

(d) 8.00am on the Implementation Date,

except that a Target Warranty that refers to only one of those dates is given solely as at that date and the Target Warranty 19 of Schedule 2 is not given on the Agreement Date.

### 10.2 Qualifications on Target Warranties

(a) The Target Warranties are given subject to and are qualified by any matter:

(i) expressly provided for under the terms of this Agreement;

(ii) fairly disclosed in the Due Diligence Materials or by Target through the NZX or ASX market announcement platforms before the Agreement Date;

(iii) recorded, as at the date two Business Days prior to the Agreement Date, in the name of a Target Group Member in the records of a Public Register, in each case which is capable of being searched by the public; or

(iv) relating to anything done or omitted to be done at the written request, or with the written approval, of Bidder.

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(b) No warranty or representation is given by or on behalf of Target, and Bidder may not bring any claim of any nature under this Agreement or in connection with the Transaction, with respect to any Forward Looking Information, in each case whether contained in the Due Diligence Materials, the Scheme Booklet or otherwise. Without limiting the foregoing, none of the Target Warranties address, or are given in respect of, any Forward Looking Information.

## 10.3 Bidder's warranties

Bidder warrants to Target each of the Bidder Warranties is true, accurate and not misleading as at:

(a) the Agreement Date;

(b) the date that the Scheme Booklet is sent to Shareholders;

(c) the Second Court Date; and

(d) 8.00am on the Implementation Date,

except that Bidder Warranty 9 of Schedule 3 is not given on the Agreement Date.

## 10.4 Survival of warranties

Each warranty referred to in clauses 10.1 and 10.3:

(a) is severable; and

(b) survives the termination of this Agreement.

## 10.5 Scheme becoming Effective

After 8.00am on the Implementation Date, any breach of the warranties given under this clause 10 may only give rise to a claim for damages and does not entitle a party to terminate this Agreement.

## 10.6 No other representation or warranties

(a) **No reliance**

Each party acknowledges that in agreeing to enter into this Agreement it has not relied on any express or implied representation, warranty, collateral contract or other assurance made by or on behalf of the other party before the entering into of this Agreement other than:

(i) in the case of Target, the Bidder Warranties and the warranties in the Deed Poll; and

(ii) in the case of Bidder, the Target Warranties.

(b) **Waiver**

The parties agree that sections 35 to 49 of the Contract and Commercial Law Act 2017 do not apply to this Agreement. To the maximum extent permitted by law, other than a party's right to bring a claim for:

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(i) breach of an express provision of this Agreement; or

(ii) fraud or wilful misconduct by another party,

each party agrees that it is not entitled to, must not bring, encourage or facilitate, and irrevocably waives any right to bring, any other or separate claim, complaint, proceeding or cause of action for damages or other relief of any nature (including under the Takeovers Code, the Takeovers Act 1993, the FMCA or the Fair Trading Act 1986 or any corresponding or equivalent legislation in any relevant jurisdiction) arising from any alleged misrepresentation or breach of warranty made or given in connection with this Agreement or the Transaction.

(c) **Confirmations**

(i) The parties agree that, for the purposes of section 5D of the Fair Trading Act 1986 and section 43 of the Consumer Guarantees Act 1993:

(A) the Scheme Shares are being acquired in trade;

(B) the parties are all in trade;

(C) sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 and the provisions of the Consumer Guarantees Act 1993 do not apply to this Agreement or to any matters, information, representations or circumstances covered by this Agreement;

(D) it is fair and reasonable that the parties are bound by this clause 10.6; and

(E) the parties have each been able to fully negotiate the terms of this Agreement and have each been represented by and received advice from a lawyer during the negotiations leading to this Agreement.

(ii) Bidder acknowledges and agrees that:

(A) except for the Target Warranties 8 and 9, no person gives or makes any warranty or representation as to the accuracy, content, completeness, value or otherwise of, nor has or accepts any liability in respect of, any information (written, oral or otherwise) directly or indirectly provided or made available to or used by any other party in connection with the Transaction;

(B) Target Warranties 8 and 9 are each subject to the terms of any express disclaimer which is contained in any particular document or information in the Due Diligence Materials (each, a **Target Disclaimer**). Bidder will not have any claim in respect of Target Warranty 8 or 9 to the extent such claim is precluded or disclaimed by the relevant Target Disclaimer; and

(C) it will have no claim against the Target Group (including a claim for breach of Target Warranty or for breach of any other provision of this Agreement) or right to terminate this Agreement, and the Target Group will have no liability under or in connection with this Agreement, in respect of any loss incurred or suffered by any person as a result of the disclosure of any confidential document or confidential information in the Due Diligence Materials.

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# 11. Releases and continuation of indemnity arrangements

## 11.1 Release of Target Indemnified Parties

(a) **Release**

Without limiting clause 10.6, Bidder:

(i) waives and releases (and must procure that each member of the Bidder Group waives and releases) all of its rights; and

(ii) agrees with Target that it will not make a claim, and that it will procure that no member of the Bidder Group makes a claim,

against any Target Indemnified Party (other than Target) in connection with:

(iii) any breach of any obligation or warranties of Target in this Agreement; or

(iv) any disclosure containing any statement which is false or misleading, whether in content or by omission, in connection with the Scheme; or

(v) any other act or omission in connection with this Agreement or the Transaction,

except to the extent that Target Indemnified Party has engaged in wilful misconduct or fraud.

(b) **Acknowledgements**

The parties acknowledge and agree that:

(i) Target has sought and obtained the waiver and release in this clause 11.1 as agent for and on behalf of each Target Indemnified Party and may enforce the provisions of this clause 11.1 on behalf of any Target Indemnified Party;

(ii) any Target Indemnified Party may plead this clause 11.1 in response to any claim made by any member of the Bidder Group against them; and

(iii) the undertakings contained in this clause 11.1 are given for the benefit of each Target Indemnified Party and are intended to be enforceable against Bidder by each Target Indemnified Party in accordance with the provisions of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

## 11.2 Release of Bidder Indemnified Parties

(a) **Release**

Target:

(i) waives and releases (and must procure that each other member of the Target Group waives and releases) all of its rights; and

(ii) agrees with Bidder that it will not make a claim, and that it will procure that no member of the Target Group makes a claim,

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against any Bidder Indemnified Party (other than Bidder) in connection with:

(iii) any breach of any obligation or warranties of Bidder in this Agreement; or

(iv) any disclosure containing any statement which is false or misleading, whether in content or by omission, in connection with the Scheme; or

(v) any other act or omission in connection with this Agreement or the Transaction,

except to the extent that Bidder Indemnified Party has engaged in wilful misconduct or fraud.

(b) **Acknowledgements**

The parties acknowledge and agree that:

(i) Bidder has sought and obtained the waiver and release in this clause 11.2 as agent for and on behalf of each Bidder Indemnified Party and may enforce the provisions of this clause 11.2 on behalf of any Bidder Indemnified Party;

(ii) any Bidder Indemnified Party may plead this clause 11.2 in response to any claim made by any member of the Target Group against them; and

(iii) the undertakings contained in this clause 11.2 are given for the benefit of each Bidder Indemnified Party and are intended to be enforceable against Target by each Bidder Indemnified Party in accordance with the provisions of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

## 11.3 D&O indemnification and insurance arrangements

(a) **Indemnification**

Subject to the Scheme becoming Effective, Bidder undertakes in favour of Target and each director, officer or employee of a member of the Target Group that Bidder and its Related Companies will:

(i) for a period of seven years from the Implementation Date, ensure that the constitutional documents of Target and each other Target Group Member continue to contain such rules as are contained in those constitutions at the Agreement Date that provide for each company to indemnify each of its current and former directors, officers and employees against any liability incurred by that person in his or her capacity as a director, officer or employee of the company (the **Constitutional Protections**);

(ii) procure that Target and each other Target Group Member complies with:

(A) the Constitutional Protections; and

(B) any provisions in any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and fairly disclosed in the Due Diligence Materials (the **Existing Indemnity Deeds**);

(iii) procure that neither Target nor any other Target Group Member varies or terminates any Constitutional Protection or Existing Indemnity Deed (except with the consent of the relevant director or officer); and

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(iv) ensure that, if the Target Group Member which has provided a Constitutional Protection referred to in sub-clause (i) or an indemnity referred to in sub-clause (ii) is wound-up, liquidated, has a receiver or other insolvency official appointed to it or over its assets, or de-registered or is otherwise unable to meet its obligations under the relevant Constitutional Protection or indemnity due to a restructuring of the assets of the relevant company, the Bidder Group meets the relevant obligations.

(b) **Insurance**

(i) Bidder acknowledges that Target may prior to the Implementation Date enter into a run-off directors and officers liability insurance policy in respect of the directors and officers of Target and each other Target Group Member for a seven year period and pay all premiums required (the **D&O Run-off Policy**).

(ii) Provided that the D&O Run-off Policy is, to the extent practicable, obtained on normal commercial rates and the cover is no more favourable than those of Target's directors and officers liability insurance at the Agreement Date, Bidder agrees that notwithstanding any other provision of this Agreement:

(A) Target entering into and paying the premium for the D&O Run-off Policy will not be a Prescribed Occurrence or breach any provision of this Agreement; and

(B) after the Implementation Date, it will not, and will procure that no Target Group Member does not, vary or cancel the D&O Run-off Policy or take any action (or omit to take any action within its control) that results in the D&O Run-off Policy being terminated or voidable.

(c) **Benefit of clauses 11.3(a) and 11.3(b)**

(i) In clauses 11.3(a) and 11.3(b), a reference to a director, officer or employee of the Target Group includes a current or former director, officer or employee of the Target Group.

(ii) Clauses 11.3(a) and 11.3(b) are for the benefit of each person who is a current or former director, officer or employee of any member of the Target Group and are intended to be enforceable by each of them in accordance with Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

# 12. Announcements

## 12.1 Initial announcement

As soon as practicable after execution of this Agreement, Target must issue a public announcement in a form agreed between the parties (the **Initial Announcement**).

## 12.2 Other announcements

Neither party may make, and each party must procure that its Representatives and Related Companies do not make, any public announcement concerning the Scheme or the subject matter of this Agreement other than:

(a) the announcement referred to in clause 12.1;

(b) in accordance with clause 13.6(c) or 13.7(c)(ii);

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(c) an announcement which provides an update on progress with implementing the Scheme or, in the case of Target, any administrative information in relation to the Shareholders approving the Scheme at the Scheme Meeting by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act;

(d) with the written consent of the other party, which must not be unreasonably withheld or delayed; or

(e) if required by law, any court of competent jurisdiction, any Government Agency or the Listing Rules,

provided that the obligations in this clause will not prevent Target from responding to media and other stakeholders where not inconsistent with announcements that are permitted to be made in accordance with the terms of this Agreement, including this clause 12.2.

### 12.3 Permitted announcements

Clause 12.2 will not prevent the announcing party from:

(a) merely referring to the other party by name;

(b) repeating any material or information from an announcement which has previously been released or approved by, or agreed with the other party (in which case, where practicable, the announcing party will give the other party advance notice);

(c) responding to media and other stakeholders where not inconsistent with announcements that are permitted to be made in accordance with the terms of this Agreement, including clause 12.2 and this clause 12.3; or

(d) making disclosures regarding:

(i) the actual or purported termination of this Agreement; or

(ii) any claim, disagreement or dispute under or in connection with this Agreement or the Transaction.

## 13. Exclusivity

### 13.1 No shop

Subject to clause 13.5, during the Exclusivity Period, Target must not, and must procure that each of its Representatives and Related Companies does not, directly or indirectly:

(a) solicit, invite, encourage, initiate or otherwise seek to procure any Competing Proposal or any offer, proposal, expression of interest, enquiry, negotiation or discussion with any Third Party in relation to, or for the purpose of, or that may reasonably be expected to encourage or lead to, a Competing Proposal; or

(b) assist, encourage, procure or induce any person to do any of the things referred to in clause 13.1(a) on its behalf.

### 13.2 No talk

Subject to clauses 13.4 and 13.5, during the Exclusivity Period, Target must not, and must procure that each of its Representatives and Related Companies does not, directly or indirectly:



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(a) enter into, permit, continue or participate in, negotiations or discussions with any Third Party in relation to a Competing Proposal, or for the purpose of or that may reasonably be expected to encourage or lead to a Competing Proposal; or

(b) assist, encourage, procure or induce any person to do any of the things referred to in clause 13.2(a) on its behalf,

even if the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Target or any of its Representatives or Related Companies, or the Third Party has publicly announced the Competing Proposal.

## 13.3 No due diligence

Subject to clauses 13.4 and 13.5, during the Exclusivity Period, Target must not, and must procure that each of its Representatives and Related Companies does not, directly or indirectly:

(a) make available to any Third Party, or cause or permit any Third Party to receive, any non-public information relating to Target or any of its Related Companies that may reasonably be expected to assist such Third Party in formulating, developing or finalising a Competing Proposal; or

(b) assist, encourage, procure or induce any person to do any of the things referred to in clause 13.3(a) on its behalf.

## 13.4 Fiduciary exceptions to no talk and no due diligence obligations

Clauses 13.2 and 13.3 do not apply to the extent that they restrict Target or its Representatives and Related Companies from taking, or not taking, any action with respect to a bona fide Competing Proposal (which was not solicited, invited, encouraged initiated or otherwise procured in breach of clause 13.1) if each of the following requirements are satisfied:

(a) the Directors have determined, acting in good faith, by majority decision and after obtaining written advice from Target's external financial adviser, that the Competing Proposal is, or is reasonably likely to become, a Superior Proposal;

(b) the Directors have determined, acting in good faith, by majority decision and after obtaining written advice from Target's external legal adviser, that failing to respond to such Competing Proposal or provide the requested non-public information (as the case may be) would be reasonably likely to constitute a breach of any Director's fiduciary or statutory duties;

(c) in the case of clause 13.3 only, the Third Party has first entered into a written agreement in favour of Target restricting the use and disclosure by the Third Party and its affiliates and advisers of the information made available to the Third Party, and any such agreement entered into after the Agreement Date is on terms which Target reasonably considers (acting in good faith) to be no more favourable in any material respect to the Third Party than those in the Confidentiality Agreement; and

(d) in the case of clause 13.3 only, to the extent that any non-public information made available to the Third Party is material and has not previously been provided to Bidder (or differs in any material respect from any information previously provided to Bidder), Target provides or makes that information available to Bidder at the same time as it is provided to the Third Party or promptly thereafter.

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## 13.5 General exceptions to exclusivity provisions

Nothing in clauses 13.1, 13.2 or 13.3 prevents Target or any of its Representatives and Related Companies from:

(a) making normal presentations to, or responding to bona fide enquiries from, brokers, portfolio investors and analysts in accordance with usual investor relations practice or for the purposes of promoting the Scheme;

(b) disclosing information to a Government Agency where Target is providing the information in response to a request by the Government Agency and Target has a reasonable expectation that the Government Agency will keep the information confidential (subject to the Government Agency's obligations under any applicable law);

(c) disclosing information required to be provided by law, any court of competent jurisdiction, or the rules of any recognised stock exchange or as may be requested or required by any Government Agency; or

(d) taking any action required by law (including the prohibition on defensive tactics in Rule 38 of the Takeovers Code) in response to a takeover notice given under rule 41 of the Takeovers Code in respect of, or takeover offer made under the Takeovers Code for, securities of Target.

## 13.6 Notification of approaches

(a) During the Exclusivity Period, Target must promptly and, in any event, within 24 hours notify Bidder if:

(i) Target or any of its Representatives or Related Companies receives any Competing Proposal or any offer or request to do any of the things referred to in clause 13.2(a) or clause 13.3(a); or

(ii) Target proposes to, or does, take any action in reliance on the exceptions in clause 13.4.

(b) A notice given under clause 13.6(a)(i) must be accompanied by all material terms and conditions of any Competing Proposal, including:

(i) the identity of the person who provided the Competing Proposal or made the relevant inquiry or approach to initiate discussions or to whom any information is proposed to be provided as referred to in clause 13.6(a);

(ii) all material terms and conditions of any Competing Proposal, including the amount and form of consideration to be offered, the conditions to which it is subject, the proposed timetable and any break fee arrangements (to the extent known);

(iii) whether or not Target intends to progress or respond to the relevant inquiry, approach, offer, bid, proposal or request (or whether, acting in good faith, Target has not yet been able to make such a decision); and

(iv) the nature of the information and access requested and/or provided or action proposed to be taken.

(c) If Target gives a notification under clause 13.6(a), Target may make any announcement to NZX and ASX that Target, acting in good faith, considers appropriate in the circumstances to ensure (but is limited to ensuring) that it complies

with applicable law and the Listing Rules. For clarity, any such announcement may contain any of the information or statements contemplated by clause 7.3(c).

## 13.7 Right to match

(a) Without limiting clause 13.1 or clause 13.2, during the Exclusivity Period, Target:

(i) must not, and must procure that each of its Representatives and Related Companies (other than Representatives which are professional firms, to the extent those firms are not acting on behalf of, or on the instructions or at the direction of, Target) does not, enter into, or agree to enter into, any agreement, arrangement or understanding to undertake, give effect to or implement any Competing Proposal;

(ii) must procure that no Director changes, qualifies or withdraws his or her Director Recommendation in favour of the Scheme in order to publicly recommend any Competing Proposal; and

(iii) must not make, and ensure that no Director makes, any public statement recommending any Competing Proposal to Shareholders,

unless and until:

(iv) the Directors have determined, acting in good faith, by majority decision and after having obtained written advice from Target's external financial and legal advisers, that the Competing Proposal is a Superior Proposal and failing to take one or more of the actions prohibited by clause 13.7(a)(i) to (iii) would be reasonably likely to constitute a breach of the fiduciary or statutory duties of any of the Directors;

(v) Target has, as soon as reasonably practicable after the Directors have determined that the Competing Proposal is a Superior Proposal and that failing to take one or more of the actions prohibited by clause 13.7(a)(i) to (iii) would be reasonably likely to constitute a breach of the fiduciary duties or statutory obligations of any of the Directors, given Bidder:

(A) a notice setting out all material terms of the Competing Proposal in accordance with clause 13.6(b) and a written explanation as to why the Directors consider the Competing Proposal is a Superior Proposal; and

(B) at the same time, to the extent not already provided under clause 13.4(d), any information that is required to be provided to Bidder under clause 13.4(d);

(vi) Target has given Bidder five Business Days after the date that Target gives the notice to Bidder under clause 13.7(a)(v) (including all of the information required to be provided under that clause) in respect of the Competing Proposal in which to provide a Counter Proposal in accordance with clause 13.7(a)(vii)(B) (**Matching Period**); and

(vii) upon expiry of the Matching Period:

(A) Bidder has not provided a Counter Proposal under clause 13.7(b); or

(B) if Bidder has provided a Counter Proposal under clause 13.7(b) and Target, having complied with clause 13.8, acting in good faith and after having taken written advice from its external financial and legal advisers, the Directors (acting by majority) have determined that (1) the Competing

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Proposal remains a Superior Proposal (taking into account the Counter Proposal); and (2) failing to respond to such Competing Proposal would continue to be reasonably likely to constitute a breach of the fiduciary duties or statutory obligations of any of the Directors.

(b) During the Matching Period, Bidder may (but is not required to) make an irrevocable written offer to Target or the Shareholders (in a form which, if accepted by Target, will be legally binding on Bidder) to amend the terms of the Scheme and this Agreement, which Bidder in good faith believes will provide a no less favourable outcome, taken as a whole, for Shareholders compared to the terms and conditions offered under the relevant Superior Proposal (a **Counter Proposal**).

(c) If Target gives notice to Bidder under clause 13.7(a)(v) then Target may:

(i) in its discretion, delay any action contemplated by the Timetable (including adjourning or rescheduling the Scheme Meeting) to allow the Matching Period to be exhausted and, if applicable, to agree a Counter Proposal under clause 13.8; and

(ii) make any announcement to NZX and ASX that Target, acting in good faith, considers appropriate in the circumstances to ensure that it complies with applicable law and the Listing Rules. For clarity, any such announcement may contain any of the information or statements contemplated by clause 7.3(c).

## 13.8 Target's response to Counter Proposal

If, during the Matching Period, Bidder makes a Counter Proposal:

(a) Target must procure that the Directors consider the Counter Proposal in good faith;

(b) if the Directors, acting by majority, determine that the terms and conditions of the Counter Proposal, taken as a whole, are less favourable to Shareholders than those in the relevant Superior Proposal, then Target must, for a period of not less than 48 hours, consult with Bidder as to the relative merits of the Counter Proposal and the Superior Proposal; and

(c) if the Directors, acting by majority, determine that the terms and conditions of the Counter Proposal, taken as a whole, are no less favourable to Shareholders than those in the relevant Superior Proposal, then:

(i) the parties must use their reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Counter Proposal as soon as reasonably practicable; and

(ii) Target must procure that each Director makes a public statement recommending the Counter Proposal to Shareholders (which recommendation may be expressed to be subject to there being no further Superior Proposal and the Independent Adviser concluding that the consideration contemplated by the Counter Proposal is within or above the Independent Adviser's valuation range for the Shares).

## 13.9 Changes to proposals

Any material change to a Competing Proposal, including any material change to the matters notified under clause 13.7(a)(v), will be taken to constitute a new Competing Proposal in respect of which Target must separately comply with its obligations under clauses 13.6 to 13.8.

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### 13.10 No matching

If:

(a) Target has complied with clause 13.7 and, if applicable, clause 13.8 in relation to a Competing Proposal; and

(b) clause 13.7(a)(vii) applies,

then:

(c) clause 13 (other than this clause 13.10) will cease to apply;

(d) the Exclusivity Period will end;

(e) Target may enter into a binding implementation agreement or similar binding arrangement to implement, and Target and the Target Board may take any action in respect of, any Competing Proposal; and

(f) either party may terminate this agreement by notice to the other party under clause 15.4.

## 14. Reimbursement Fee

### 14.1 Background

Target (on the one hand) and Bidder (on the other hand) each acknowledges and agrees that:

(a) the other and its Related Companies have incurred and will continue to incur significant costs and expenses in pursuing the Transaction including:

(i) advisory costs;

(ii) costs of management and directors' time;

(iii) in respect of Bidder, funding costs;

(iv) out of pocket expenses; and

(v) opportunity costs of pursuing the Transaction or in not pursuing alternative transactions or business opportunities;

(b) the costs and expenses actually incurred by each party and its Related Companies are of such nature that they cannot accurately be ascertained;

(c) the Bidder Reimbursement Fee and the Target Reimbursement Fee are each liquidated damages based on a genuine and reasonable estimate of the costs and expenses that have been or will be actually incurred by the relevant party and its Related Companies in pursuing the Transaction;

(d) the parties have negotiated the inclusion of this clause 14 in this Agreement and would not have entered into this Agreement without it; and

(e) each party has received external legal and financial advice in relation to this clause 14 and has concluded that it is reasonable and appropriate for it to agree to payment of

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the Bidder Reimbursement Fee or Target Reimbursement Fee (as applicable) in the circumstances described in clause 14.2 or 14.3 (as applicable) in order to secure the other party's entry into this Agreement.

## 14.2 Payment by Target to Bidder (Bidder Reimbursement Fee)

Subject to clause 14.5 and 14.6, Target must pay Bidder the Bidder Reimbursement Fee in accordance with clause 14.4 (without set-off or withholding, unless required by law) if:

(a) at any time before this Agreement is terminated (except for termination under clause 15.2), a Competing Proposal (excluding any announced or completed on-market or off-market acquisition of a relevant interest in more than 10% (but not exceeding 20%) of the Shares by a person or persons who are not acting in concert with, and were not advised, encouraged, or knowingly assisted by, Target in connection with that acquisition) is announced and within 12 months after the date of that announcement, the person making the Competing Proposal, or one or more Associates of that person, completes in all material respects a transaction of the kind referred to in the definition of Competing Proposal;

(b) at any time before this Agreement is terminated, any Director:

(i) fails to consent to the inclusion of the Director Recommendation in the Initial Announcement;

(ii) fails to consent to the inclusion of the Director Recommendation in the Scheme Booklet; or

(iii) subject to clause 7.3, withdraws or adversely revises, modifies or qualifies the Director Recommendation; or

(iv) makes a public statement that he or she no longer recommends the Scheme or to the effect that he or she supports, recommends or endorses a different transaction (including a Competing Proposal),

other than:

(v) as a result of the Independent Adviser issuing an Independent Adviser's Report which concludes that the Consideration is not within or above the Independent Adviser's valuation range for the Shares; or

(vi) Target receiving a Superior Proposal, subject to Target's compliance with clause 13.7 and, if applicable, 13.8; or

(c) Bidder terminates this Agreement pursuant to clause 15.1 or clause 15.10; or

(d) either party terminates this Agreement under clause 15.4.

## 14.3 Payment by Bidder to Target (Target Reimbursement Fee)

Subject to clause 14.5 and 14.7, Bidder must pay the Target Reimbursement Fee to Target if:

(a) Target terminates this Agreement as permitted under clause 15.2; or

(b) either party terminates this Agreement under clause 15.5, unless Bidder provides evidence satisfactory to Target (acting reasonably) that the failure to satisfy the OIO Condition was not due to:

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(i) a failure of Bidder, Bidder's Nominee, any intermediate entities and any individuals with control of those entities for the purposes of section 15 of the Overseas Investment Act 2005 to meet the investor test in section 18A of the Overseas Investment Act 2005; or

(ii) any matter within the reasonable control of Bidder.

## 14.4 Payment

If the Bidder Reimbursement Fee or Target Reimbursement Fee become payable under this Agreement, Target or Bidder (as the case requires) must pay it to or as directed by the other party without withholding or set-off (except as required by law) within 10 Business Days after receipt of a written demand for payment from the other party.

## 14.5 Circumstances where reimbursement fee not payable

Notwithstanding anything else in this Agreement:

(a) the Bidder Reimbursement Fee or the Target Reimbursement Fee (as the case may be) is only payable if this Agreement is terminated;

(b) neither the Bidder Reimbursement Fee nor the Target Reimbursement Fee (as the case may be) is payable if the Scheme becomes Effective. To the extent that any amounts have already been paid under this clause 14 and the Scheme becomes Effective, such amounts shall be immediately refunded in full to Bidder or Target (as applicable); and

(c) each of the Bidder Reimbursement Fee and the Target Reimbursement Fee (as the case may be) is payable only once.

## 14.6 Bidder exclusive remedy and Target liability cap

(a) Subject to clauses 14.6(c) and 14.9, Bidder acknowledges and agrees that:

(i) payment of the Bidder Reimbursement Fee is the sole and exclusive remedy available to Bidder in connection with any event or occurrence referred to in clause 14.2; and

(ii) Target is not liable for any Loss arising in connection with any such event or occurrence other than for any liability that it may have to pay Bidder the Bidder Reimbursement Fee under this clause 14.

(b) Notwithstanding any other provision of this Agreement but subject to clauses 14.6(c) and 14.9:

(i) Target's maximum aggregate liability under or in connection with this Agreement and the Transaction (whether under this Agreement, at law (including negligence), under any statute or regulation, in equity or otherwise) is limited to, and will not exceed, an amount equal to the Bidder Reimbursement Fee;

(ii) if the Bidder Reimbursement Fee has been demanded by Bidder and paid by Target, Target will have no further liability to Bidder under or in connection with this Agreement and the Transaction; and

(iii) the amount of the Bidder Reimbursement Fee payable to Bidder under this clause 14 shall be reduced by the amount of any loss or damages recovered by Bidder in relation to a breach of any clause of this Agreement.



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(c) Nothing in this clause 14.6 limits Target's liability for fraud.

## 14.7 Target exclusive remedy and Bidder liability cap

(a) Subject to clauses 14.7(c) and 14.9, Target acknowledges and agrees that:

(i) payment of the Target Reimbursement Fee is the sole and exclusive remedy available to Target in connection with any event or occurrence referred to in clause 14.3; and

(ii) Bidder is not liable for any Loss arising in connection with any such event or occurrence other than for any liability that it may have to pay Target the Target Reimbursement Fee under this clause 14.

(b) Notwithstanding any other provision of this Agreement but subject to clauses 14.7(c) and 14.9:

(i) Bidder's maximum aggregate liability under or in connection with this Agreement and the Transaction (whether under this Agreement, at law (including negligence), under any statute or regulation, in equity or otherwise) is limited to, and will not exceed, an amount equal to the Target Reimbursement Fee;

(ii) if the Target Reimbursement Fee has been demanded by Target and paid by Bidder, Bidder will have no further liability to Target under or in connection with this Agreement and the Transaction; and

(iii) the amount of the Target Reimbursement Fee payable to Target under this clause 14 shall be reduced by the amount of any loss or damages recovered by Target in relation to a breach of any clause of this Agreement.

(c) Nothing in this clause 14.7 limits Bidder's liability for fraud.

## 14.8 Amendments to Reimbursement Arrangements

If:

(a) the Takeovers Panel indicates to either party in writing that it requires any modification to the amount of the Bidder Reimbursement Fee or the Target Reimbursement Fee or the circumstances in which either is to be paid (the **Reimbursement Fee Arrangements**) as a condition of granting a Letter of Intention or No-objection Statement or not otherwise opposing the Scheme; or

(b) the Court requires any modification to the Reimbursement Fee Arrangements as a condition of making orders in connection with the Scheme,

then the parties must amend this clause 14 to the extent required to give effect to the requirements of the Takeovers Panel or the Court, as the case may be, and in the circumstances referred to in clause 14.8(b) must give any required undertakings.

## 14.9 Specific performance and equitable relief

(a) Subject to clauses 14.9(b) and 14.9(c), Target and Bidder are each entitled to bring, and nothing in this Agreement precludes Target or Bidder from bringing, proceedings against the other party for specific performance or other equitable relief in connection with the Transaction.

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(b) Bidder's right to receive the Bidder Reimbursement Fee will not limit or otherwise affect Bidder's right to seek specific performance or other equitable relief as provided in this clause 14.9, provided that in no event will Bidder be entitled to receive both:

(i) specific performance resulting in implementation of the Scheme and payment of the Bidder Reimbursement Fee; or

(ii) specific performance resulting in implementation of the Scheme and payment of any damages under this Agreement.

(c) Target's right to receive the Target Reimbursement Fee will not limit or otherwise affect Target's right to seek specific performance as provided in this clause 14.9, provided that in no event will Target be entitled to receive both:

(i) specific performance resulting in implementation of the Scheme and payment of the Target Reimbursement Fee; or

(ii) specific performance resulting in implementation of the Scheme and payment of any damages under this Agreement.

### 14.10 Deemed loss

Bidder agrees that if Target seeks damages from Bidder in connection with breach of this Agreement or the Deed Poll, any loss suffered by Shareholders as a result of a breach of the Agreement or the Deed Poll (as the case may be) by Bidder or Bidder Nominee (if applicable) will be deemed to be suffered by Target (except to the extent that Bidder or Bidder Nominee (if applicable) pays damages directly to Shareholders on account of any loss suffered due to the applicable breach).

### 14.11 Deed Poll

Nothing in this Agreement limits Shareholders' rights, or Target's rights as attorney and agent for Shareholders, under the Deed Poll.

## 15. Termination

### 15.1 Events affecting the Target Group

Bidder may terminate this Agreement by notice to Target if at any time before 8.00am on the Implementation Date:

(a) Target is in breach of this Agreement (including a breach of a Target Warranty), where the consequences of that breach are material in the context of the Scheme taken as a whole; or

(b) Target breaches clause 7.1 or 7.2.

### 15.2 Events affecting Bidder

Target may terminate this Agreement by notice to Bidder if at any time before 8.00am on the Implementation Date:

(a) Bidder is in breach of this Agreement (including a breach of a Bidder Warranty), where the consequences of that breach are material in the context of the Scheme taken as a whole; or

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(b) an Insolvency Event occurs in respect of Bidder; or

(c) Bidder or Bidder Nominee (if applicable) breaches its payment obligations under clause 4.2, the Scheme Plan, the Escrow Agreement or the Deed Poll.

## 15.3 Notice of termination

A party may only exercise a right of termination under clause 15.1 or 15.2 if:

(a) the party wishing to terminate has given notice to the other party promptly after becoming aware of the circumstances that it believes permit it to terminate this Agreement and, in any event, before 8.00am on the Implementation Date (or in the case of clause 15.2(c) only, before midday on the Implementation Date), which notice must state those circumstances and its intention to terminate this Agreement;

(b) the relevant circumstances have not been remedied within 15 Business Days after the time that the notice is given or any shorter period ending at 8.00am on the Implementation Date (or in the case of clause 15.2(c) only, before 2.00pm on the Implementation Date); and

(c) the party wishing to terminate does so by notice before the earlier to occur of 20 Business Days after the time that the notice is given under clause 15.3(a) and 9.00am on the Implementation Date (or in the case of clause 15.2(c) only, before 5.00pm on the Implementation Date).

## 15.4 Counter Proposal

Either party may, by notice to the other party, terminate this Agreement in accordance with clause 13.10(f) at any time before 8.00am on the Implementation Date.

## 15.5 Condition 3.1(a) - OIO Condition

If the OIO Condition becomes incapable of satisfaction by 5.00pm on the End Date or is not satisfied by 5.00pm on the End Date, then either party may terminate this Agreement by notice to the other before 5.00pm on the date which is two Business Days after the End Date, provided that the terminating party has complied in all material respects with that party's obligations under clause 3.5 in respect of the OIO Condition.

## 15.6 Condition 3.1(b) - Consideration below the Independent Adviser's valuation range

Target may terminate this Agreement by notice to Bidder at any time before the Scheme Meeting if the Independent Adviser's Report concludes that the Consideration is not within or above the Independent Adviser's valuation range for the Shares, provided that Target will not exercise its right to terminate the Agreement under this clause 15.6 without first consulting with Bidder in good faith.

## 15.7 Condition3.1(c) - Scheme Resolution not passed

Either Target or Bidder may terminate this Agreement by giving notice in writing to the other if:

(a) the Scheme Meeting is held but the Scheme Resolution is not passed by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act;

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(b) the parties do not agree, by 5.00pm on the earlier of the date that is five Business Days after the Scheme Meeting and the End Date, to hold another Scheme Meeting; and

(c) the terminating party has complied in all material respects with its obligations under this Agreement which are relevant to the Scheme Resolution not being passed by the requisite majorities.

## 15.8 Condition 3.1(d) - Court determines not to grant the Final Orders

(a) If:

(i) the Court determines not to grant the Final Orders;

(ii) Target is not required to make a further application for Final Orders under clause 5.1(r); and

(iii) the parties have not reached agreement under clause 5.1(s) to appeal that determination or the determination is not required to be appealed under clause 5.1(s) within 10 Business Days after the determination,

then either party may terminate this Agreement by notice to the other before 5.00pm on the End Date, provided that the terminating party has complied in all material respects with its obligations under this Agreement that are relevant to seeking or obtaining the Final Orders.

(b) If an appeal under clause 5.1(s) is unsuccessful or is withdrawn, then either party may terminate this Agreement by notice to the other before 5.00pm on the End Date.

## 15.9 Condition 3.1(e) – Regulatory restraint

If the Condition in clause 3.1(e) is not satisfied at 8.00am on the Implementation Date, then either party may terminate this Agreement by notice to the other at any time before 9.00am on the Implementation Date, provided that the terminating party has complied in all material respects with that party's obligations under clause 3.3 in respect of the Condition in clause 3.1(e).

## 15.10 Condition 3.1(f) – Prescribed Occurrences

If a Prescribed Occurrence occurs on or after the Agreement Date and before 8.00am on the Implementation Date, Bidder may terminate this Agreement by notice to Target before 9.00am on the Implementation Date.

## 15.11 Condition 3.1(g) – Material Adverse Change

Bidder may terminate this Agreement before 9.00am on the Implementation Date by notice to Target if each of the following is satisfied:

(a) a Material Adverse Change occurs between (and including) the Agreement Date and 8.00am on the Implementation Date;

(b) Bidder has first given Target at least two Business Days' (or such shorter period ending at 8.00am on the Implementation Date) notice in writing of its intention to terminate this Agreement under this clause 15.11; and

(c) the date on which termination will occur will not be more than 20 Business Days after the date on which Bidder became aware of the event or circumstance (or, in the case

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of a series of events or circumstances, the last such event of circumstance to occur) which entitles it to terminate this Agreement under this clause 15.11.

### 15.12 End Date

Either Target or Bidder may terminate this Agreement by giving notice in writing to the other if the Scheme has not become Effective by 8.00am on the date that is six Business Days after the End Date, provided that, if relevant, the terminating party's failure to comply with its obligations under this Agreement has not directly and materially contributed to the Scheme not becoming Effective by the End Date.

### 15.13 Termination by agreement

This Agreement is terminable if agreed to in writing by Target and Bidder.

### 15.14 Effect of termination

If this Agreement is terminated under this clause 15, then:

(a) except as provided in clause 15.14(c), all the provisions of this Agreement cease to have effect and each party is released from its obligations to further perform this Agreement;

(b) each party retains all rights that it has against the other party in respect of any breach of this Agreement occurring before termination; and

(c) the provisions of, and the rights and obligations of each party under, this clause 15 and each of the Surviving Clauses survive termination of this Agreement.

### 15.15 No other termination rights

Other than as set out in this clause 15, no party has any other rights to terminate or cancel this Agreement, whether before or after the Implementation Date, as a result of any matter, information or circumstance, including for misrepresentation, repudiation, anticipatory breach or breach of or in respect of any matter giving rise to or the subject of a claim arising out of or in connection with this Agreement (whether arising in tort (including negligence), in contract, statute, by operation of law or otherwise), and sections 36 and 37 of the Contract and Commercial Law Act 2017 will not apply to this Agreement. This Agreement cannot be terminated after implementation of the Scheme.

## 16. GST

### 16.1 Interpretation

Words and expressions that are defined in the GST Act have the same meaning when used in this clause 16. For the purposes of this clause 16, references to GST chargeable and input tax credit entitlements of any entity include GST chargeable against, and the input tax credit or deduction from output tax entitlements of, the representative member of the GST group of which the entity is a member.

### 16.2 Consideration exclusive of GST

For avoidance of doubt, the parties agree that the supply of Scheme Shares pursuant to this Agreement is an exempt supply of a financial service or a zero rated supply and therefore not subject to GST. Except for the Bidder Reimbursement Fee and the Target Reimbursement Fee (which are inclusive of GST, if any), all other stated amounts payable or

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consideration to be provided under or in connection with this Agreement do not include GST (**GST Exclusive Consideration**).

### 16.3 Payment of GST

If GST is chargeable on any supply made under or in connection with this Agreement the recipient must pay to the party that has made or will make the supply (the **Supplier**), in addition to the GST Exclusive Consideration, an additional amount equal to the GST chargeable on that supply including (subject to clause 16.3(b)) any GST Default Amounts (the **Additional Amount**). The recipient must pay the Additional Amount without set-off, demand or deduction, at the same time and in the same manner as any GST Exclusive Consideration for that supply is required to be paid, except that the recipient is not required:

(a) to pay the Additional Amount unless and until the Supplier has issued or provided taxable supply information under clause 16.4; or

(b) to pay any GST Default Amounts included in the Additional Amount if those GST Default Amounts result from the Supplier failing to comply with its obligations under the GST Act.

### 16.4 Taxable supply information

For any supply to which clause 16.3 applies, the Supplier must issue or provide taxable supply information which complies with the GST Act.

### 16.5 Adjustments

If an event referred to in section 25(1) of the GST Act occurs in relation to a taxable supply made under or in connection with this Agreement, the GST payable on that supply will be recalculated to reflect that adjustment, supply correction information will be provided as required by the GST Act and an appropriate payment will be made between the parties.

### 16.6 Input tax credits

Notwithstanding any other provision of this Agreement, if an amount payable under or in connection with this Agreement is calculated by reference to any loss, damage, cost, expense, charges or other liability incurred or suffered by a party, then the amount payable must be reduced by the amount of any input tax credit or other deduction from output tax to which that entity is entitled in respect of the acquisition of any supply to which the loss, damage, cost, expense, charge or other liability relates. For the avoidance of doubt, this clause 16.6 does not apply to adjust the Bidder Reimbursement Fee or Target Reimbursement Fee.

## 17. Notices

### 17.1 Form of notice

Each notice or other communication under this Agreement is to be in writing, is to be made by email, personal delivery or by post to the addressee at the email address or address, and is to be marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other parties. The initial email address, address and relevant person or office holder of each party is set out under its name at the end of this Agreement.

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17.2 **Notice effective**

No communication is to be effective until received. In the absence of earlier receipt, a communication will be deemed to be received by the addressee:

(a) **Email**

in the case of a communication sent by email, four business hours (being the hours between 9am and 5pm on a Business Day in the jurisdiction of the recipient) after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered (excluding an "out of office" automated message);

(b) **Personal delivery**

in the case of personal delivery, when delivered; and

(c) **Post**

in the case of a letter, on the fifth Business Day after posting,

provided that if the notice or other communication would otherwise be taken to be received after 5.00 pm or on a Saturday, Sunday or public holiday in the place of receipt, then the notice or communication is taken to be received at 9.00 am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

### 17.3 Proof of service

In proving service of a notice or other communication, it is sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid post or by prepaid airmail or that the e-mail was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's e-mail system, as the case may be.

## 18. Miscellaneous

### 18.1 Assignment

No party may assign or transfer all or part of their respective rights or obligations under this Agreement without the prior written consent of the other parties.

### 18.2 Expenses

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

### 18.3 Further assurances

Each party must execute and deliver any documents and do all things as may reasonably be required by any other party to obtain the full benefit of this Agreement.

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## 18.4 Severability

If any provision of this Agreement offends any law applicable to it and is as a consequence illegal, invalid or unenforceable then:

(a) **Read down to minimum extent**

where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature, it must be read down to the minimum extent necessary to achieve that result; and

(b) **Sever offending provision**

in any other case, the offending provision must be severed from this Agreement, in which event the remaining provisions of this Agreement operate as if the severed provision had not been included.

## 18.5 Non merger

The obligations, warranties, undertakings and indemnities undertaken or given pursuant to this Agreement, to the extent not already performed at Completion, are not to merge on completion of the Transaction, or on the execution or delivery of any document, pursuant to this Agreement, but are to remain enforceable to the fullest extent and notwithstanding any rule of law to the contrary.

## 18.6 Entire agreement

This Agreement constitutes the entire understanding and agreement of the parties relating to the Transaction and supersedes and extinguishes all prior agreements and understandings between the parties relating to the Transaction, except for clauses 1 to 6, 7.1, 7.2, 7.3(a), 7.4, 7.7, 7.8, 7.9 and 8 to 11 of the Confidentiality Agreement, which will continue to apply in accordance with their terms (provided that in the event of any inconsistency between the terms of this Agreement and those clauses of the Confidentiality Agreement, the terms of this Agreement will prevail to the extent of the inconsistency). For the avoidance of doubt, the other clauses of the Confidentiality Agreement not listed in this clause 18.6 will cease to apply to either party upon entry into this Agreement.

## 18.7 Amendments

No amendment to this Agreement is to be effective unless it is in writing and signed by all of the parties.

## 18.8 Counterparts

This Agreement may be executed in any number of counterparts each of which is to be deemed an original, but all of which together are to constitute one instrument. A party may enter into this Agreement by executing any counterpart. The parties acknowledge that this Agreement may be executed by an exchange of scanned PDF copies and execution of this Agreement by that means is valid and sufficient execution.

## 18.9 Governing law and jurisdiction

(a) **Governing law**

This Agreement is governed by and must be construed in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of

New Zealand in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

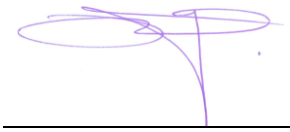
(b) **Appointment of agent**

Bidder appoints Rachel Dunne, Partner of Chapman Tripp as its agent in New Zealand for service of process and other documents in any legal action or proceedings arising out of or in connection with this Agreement and will ensure that at all times prior to the termination of this Agreement or the implementation of the Scheme, Rachel Dunne or a replacement appointed by Bidder and approved by Target (acting reasonably), is authorised and able to accept service of process and other documents on its behalf in New Zealand.

## Execution

**Executed** as an agreement.

**Smartpay Holdings Limited** by



Director / Authorised Signatory

Gregor Barclay

Print Name

**Address of Smartpay Holdings Limited**

| | |
|---|---|
| **Address** | 205 Wairau Rd, Glenfield,<br>Auckland, New Zealand<br>Attention: Martyn Pomeroy |
| **Email** | marty.pomeroy@smartpay.co.nz |

with a copy (which does not constitute notice) to:

| | |
|---|---|
| **Address** | Level 5, Deloitte Centre,<br>1 Queen Street,<br>Auckland, New Zealand<br><br>Attention: James Cooney / Anna Buchly |
| **Email** | james.cooney@bellgully.com /<br>anna.buchly@bellgully.com |

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Docusign Envelope ID: 243B9422-2197-4F8E-A4BB-8D9451A51CA2



**Shift4 Payments, LLC** by

| | |
|---|---|
| Jordan Frankel | Taylor Lauber |
| Authorised Signatory | Authorised Signatory |
| Jordan Frankel | Taylor Lauber |
| Print Name | Print Name |

**Address of Shift4 Payments, LLC**

| | |
|---|---|
| **Address** | 3501 Corporate Parkway, Center Valley PA 18034 USA<br><br>Attention: Jordan Frankel, General Counsel |
| **Email** | jfrankel@shift4.com |

With a copy to

| | |
|---|---|
| **Address** | Level 34, PwC Tower<br>15 Customs Street West<br>Auckland, New Zealand<br><br>Attention: Rachel Dunne / Joshua Pringle |
| **Email** | rachel.dunne@chapmantripp.com / joshua.pringle@chapmantripp.com |

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# Schedule 1: Prescribed Occurrences

1. Target or any other Target Group Member authorises, declares, pays, or makes any distribution (within the meaning of the Companies Act) of any nature (including, without limitation, any dividend, share buyback, redemption or other form of capital reduction), in each case other than a distribution by a Target Group Member to Target or a wholly owned subsidiary of Target.

2. Any Target Group Member issues, agrees to issue, or grants, or agrees to grant, an option or right to subscribe for, shares, convertible securities, other securities or financial products of any nature (including warrants, options, convertible notes, entitlements, rights or interests in any ordinary shares or other financial products) other than the issue of shares by a wholly owned subsidiary of Target to Target or another wholly owned subsidiary of Target or as a result of the issuance of Shares upon the exercise of Share Performance Rights in accordance with clause 8.5.

3. Target or any other Target Group Member:

   (a) alters the rights, privileges, benefits, entitlements or restrictions attaching to any securities (including the Shares) or other securities or financial products (if any) of any other Target Group Member;

   (b) converts all or any of the shares into a larger or smaller number;

   (c) buys back (or agrees to buy back) any shares or other securities.

4. Any alteration to the constitutional documents of any Target Group Member (except as required by law or the Listing Rules).

5. An Insolvency Event occurs in respect of a Target Group Member (other than of a non-trading entity) which has not been resolved to Bidder's reasonable satisfaction by the earlier of 5.00pm on the day that is five Business Days after the Insolvency Event and 8.00am on the Implementation Date.

6. A resolution is passed for any amalgamation of any Target Group Member, or any of them is involved in any merger or scheme of arrangement (other than a solvent scheme of arrangement or an amalgamation, merger or scheme of arrangement involving solely Target and/or one or more wholly owned subsidiaries of Target).

7. The Shares cease to be quoted on the NZX or are suspended for trading on the NZX Main Board for a period of more than three trading days (other than in connection with implementation of the Scheme).

8. A member of the Target Group is, or will be, under any obligation to make any payment or provide any consideration to any of its employees or directors in the event of any member of the Target Group becoming a subsidiary of Bidder or under Bidder's control (unless previously approved in writing by Bidder or as fairly disclosed in the Due Diligence Materials).

9. A member of the Target Group increases the remuneration of (including with regard to any superannuation, benefits, incentives or bonuses), or materially varies the terms of employment of, or terminates the employment of (other than for fraud, serious misconduct or any other matter constituting "cause", as determined consistent with the past practice of the Target Group), any of its directors, officers or members of the Target's Executive Team, other than within the exceptions provided in clauses 6.1(e)(xiv), 6.2 or 8.6, as permitted under clause 8.5 or on the basis of retirement by rotation under the NZX Listing Rules.



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10. A member of the Target Group accelerates the rights of any of its directors, officers or employees to benefits of any kind, other than as permitted under clauses 6.1(e)(xv) or 8.5.

11. A member of the Target Group amends (or agrees to amend) in a material respect any agreement or arrangement with any financial advisor in relation to the Transaction or a Competing Proposal, or enters into an agreement or arrangement with a new financial advisor, in respect of the Transaction or a Competing Proposal.

12. Any Target Group Member disposes (or agrees to dispose) of, or grants any person an Encumbrance (other than a Permitted Encumbrance) over, the whole or a substantial part of the Target Group's business or property (other than a disposal of the Target Group's business or property under a Superior Proposal entered into in accordance with clause 13).

13. A Target Group Member enters into a transaction with a Related Party (as that term is defined in the NZX Listing Rules), other than a Related Party who is also a Target Group Member, that is material to the Target Group taken as a whole.

14. The board or shareholders of any Target Group Member pass a resolution to do or authorise the doing of any act or matter referred to in any of the preceding clauses of this Schedule 1.

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# Schedule 2: Target Warranties

1. **Existence**: Each Target Group Member is a company duly incorporated or registered and validly existing under the laws of New Zealand or Australia.

2. **Capacity**: Target has the power to execute this Agreement and to perform its obligations under this Agreement and the Scheme, and has taken all necessary corporate action to authorise such execution.

3. **Binding effect**: Target's obligations under this Agreement are legal, valid and binding obligations enforceable subject to and in accordance with their terms.

4. **No conflicts**: The execution by Target of this Agreement and the performance of its obligations under this Agreement and the Scheme do not and will not conflict with or constitute a default under any provision of:

   (a) any agreement or instrument to which Target is a party;

   (b) its constitution; or

   (c) any law, order, judgment, award, injunction, decree, rule or regulation by which Target is bound and which would prevent it from entering into and performing its obligations under this Agreement.

5. **Compliance**:

   (a) Except as contemplated by the Conditions, no approval from any Government Agency is required to be obtained by Target for Target to execute and perform this Agreement.

   (b) At Agreement Date, Target is not aware of any action by a Government Agency that would prevent or restrict Target's ability to perform its obligations under this Agreement.

6. **Share capital**:

   (a) As at the Agreement Date:

      (i) the entire share capital of Target is 242,113,395 Shares (including 169,931 Shares which are held by Target as treasury stock);

      (ii) there are 5,024,541 Share Performance Rights issued by Target outstanding;

      (iii) except for:

         (A) the Shares referred to in paragraph 6(a)(i) of this Schedule 3 and the Share Performance Rights referred to in paragraph 6(a)(ii) of this Schedule 3; and

         (B) ordinary shares that have been issued by Subsidiaries of Target to other Target Group Members,

      there are no other equity securities (including shares and options to subscribe for shares) or other securities or instruments which are convertible into or exchangeable for equity securities in a Target Group Member (**Target Equity Securities**) on issue; and



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(iv) except for any Shares issued upon exercise or vesting of the Share Performance Rights referred to in paragraph 6(a)(ii) of this Schedule 3, no Target Group Member has offered or agreed to issue or grant, and no person has any right to call for the issue or grant of, any Target Equity Securities.

***(b)*** As at 8.00am on the Implementation Date, there will be on issue no Target Equity Securities other than as contemplated by paragraph 6(a) of this Schedule 3 (excluding the 169,931 Shares which are held by Target as treasury stock as at the Agreement Date and that will be cancelled by the Target Board under section 67A(3) of the Companies Act prior to the Record Date) and any Shares issued upon exercise or vesting of the Share Performance Rights referred to in paragraph 6(a)(ii) of this Schedule 3.

7. **Corporate structure**: Except as disclosed in the Due Diligence Materials, no Target Group Member:

(a) has any subsidiaries and no Target Group Member holds or is beneficially entitled to any financial products in any company or other body corporate which is not a Target Group Member, or is a party to any other arrangement, the effect of which is or will be to render that other company in substance or effect a subsidiary of that Target Group Member, or vice versa;

(b) is legally or beneficially entitled, directly or indirectly, to any shares or other financial products, or securities or instruments which are convertible into or exchangeable for shares or other equity securities, in any person which is not a Target Group Member; or

(c) is a party to any joint venture or partnership (whether incorporated or not).

8. **Disclosure**:

(a) Target is in compliance with its continuous and periodic disclosure obligations under the Listing Rules.

(b) At the Agreement Date, except:

(i) as fairly disclosed in the Due Diligence Materials; and

(ii) for the details and existence of the Transaction,

Target is not withholding from disclosure to NZX any material information in reliance on a 'safe harbour' from the continuous disclosure provisions in the NZX Listing Rules.

9. **Due Diligence Materials**: The Due Diligence Materials were prepared and provided in good faith and, as far as Target is aware, on the date that they were prepared, the items comprising the Due Diligence Materials were true and accurate in all material respects and were not, when given, false or misleading in any material respect (including by omission).

10. **No undisclosed liabilities or contingent liabilities**: At the Agreement Date, no Target Group Member has any non-ordinary course liability which exceeds $2,000,000 or, as far as Target is aware, non-ordinary course contingent liability the value of which exceeds $2,000,000 except, in either case as fairly disclosed in the Due Diligence Materials.

11. **No default**:

(a) No Target Group Member is in material breach or material default under any material document, agreement or instrument binding on it or its assets.

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(b) At the Agreement Date, as far as Target is aware, nothing has occurred, other than the Transaction, which is or would with the giving of notice or the lapse of time constitute an event of breach, default, prepayment event or similar event, where the breach, the default or the occurrence would be reasonably likely to give rise to:

(i) a loss or liability for the Target Group of more than $2,000,000; or

(ii) right of termination by a third party which, if that right were to be exercised, would have material adverse consequences for the Target Group (as a whole).

12. **Adverse rights**: Except as fairly disclosed in the Due Diligence Materials, at the Agreement Date, neither the execution of this Agreement, nor the implementation of the Scheme, will:

(a) entitle any person to any material payment, or the provision of any other material valuable consideration, by a Target Group Member; or

(b) so far as Target is aware, be likely to cause any material supplier or customer of any Target Group Member to discontinue or substantially reduce its business with the Target Group; or

(c) otherwise cause or be reasonably likely to cause any material right, benefit, interest or asset held or enjoyed by any Target Group Member to be acquired by another person, or cancelled, terminated or lost or materially adversely qualified or impaired.

13. **No onerous contracts**: Except as disclosed in the Due Diligence Materials, at the Agreement Date, no Target Group Member is party to any material contract, commitment or arrangement which Target is aware and considers to be unusual, abnormal or onerous.

14. **Payments outside of the ordinary course**: Except as disclosed in the Due Diligence Materials, no Target Group Member has made or incurred (or agreed to make or incur) any payments or commitments outside of the ordinary course of business which are material to the Target Group taken as a whole, except as permitted by clause 6.2.

15. **Land**: No Target Group Member has a legal interest or equitable interest in land that has not been disclosed in the Due Diligence Materials.

16. **Authorisations**:

(a) Each Target Group Member has complied and is in compliance in all material respects with all material New Zealand and material foreign laws and regulations applicable to it.

(b) Except as fairly disclosed in the Due Diligence Materials, at the Agreement Date, each Target Group Member has all material Authorisations necessary for it to conduct the Business as presently being conducted.

(c) No Target Group Member is in material breach of any material Authorisation held by it.

(d) At the Agreement Date, as far as Target is aware, no Target Group Member is under investigation with respect to the violation of any applicable material laws or material Authorisations.

17. **Disputes**: Except as fairly disclosed in the Due Diligence Materials, at the Agreement Date, there is:

(a) no current, or



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(b) so far as Target is aware, no pending or threatened,

claim, dispute, demand, action, litigation, prosecution, arbitration, investigation, audit, mediation or other proceeding which could reasonably be expected to result in:

(c) an award, settlement, fine, penalty, order, loss or other liability to the Target Group of more than $1,000,000; or

(d) reputational damage which is material to the Target Group (taken as a whole).

18. **No claims**: On the Agreement Date, Target is not aware of any circumstances which are reasonably likely to give rise to a breach of any Target Warranty.

19. **Scheme Booklet and Independent Adviser's Report**:

(a) On the date on which the Scheme Booklet was sent to Shareholders, the Target Information:

(i) was true and accurate in all material respects and not false or misleading in any material respect (including by omission); and

(ii) complied with the Companies Act and all other applicable New Zealand laws.

(b) All information provided by Target to the Independent Adviser for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet was, when provided, provided in good faith, true and accurate in all material respects and not false or misleading in any material respect (including by omission).

20. **Off balance sheet financing**: Except as fairly disclosed in the Due Diligence Materials, between 31 March 2024 and the Agreement Date, no Target Group Member has engaged in any material financing of a type which is not required to be shown or reflected in its financial statements or notes thereto.

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# Schedule 3: Bidder Warranties

1. **Existence**: Bidder is a company duly incorporated and validly existing under the laws of Delaware, United States of America.

2. **Capacity**: Bidder has the power to execute this Agreement and to perform its obligations under this Agreement, the Scheme and the Deed Poll, and has taken all necessary corporate action to authorise such execution.

3. **Binding effect**: Bidder's obligations under this Agreement are, and the obligations of Bidder under the Deed Poll will on execution of the Deed Poll be, legal, valid and binding obligations enforceable subject to and in accordance with their terms.

4. **No conflicts**: The execution by Bidder of this Agreement and the performance of its obligations under this Agreement and the Scheme, and the execution and, in due course, delivery by Bidder of the Deed Poll, do not and will not conflict with or constitute a default under any provision of:

   (a) any agreement or instrument to which Bidder is a party;

   (b) its articles, memorandum of incorporation, constitution or other constitutional documents; or

   (c) any law, order, judgment, award, injunction, decree, rule or regulation by which Bidder is bound and which would prevent it from entering into and performing its obligations under this Agreement.

5. **No restrictions**: At the Agreement Date, Bidder is not aware of any action by a Government Agency that would prevent or restrict Bidder's ability to perform its obligations under this Agreement.

6. **Compliance**: Except as contemplated by the Conditions, no approval from any Government Agency is required to be obtained by Bidder for Bidder to execute and perform this Agreement.

7. **Financing**:

   (a) Bidder has a reasonable basis to expect that it will have available to it by 8.00am on the Implementation Date sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both), to satisfy its obligations to pay the Consideration in accordance with clause 4.2, the Scheme Plan and the Deed Poll.

   (b) By 8.00am on the Second Court Date, Bidder will have available to it on an unconditional basis (other than conditions relating to the approval of the Court and other conditions within the control of Bidder) sufficient cash reserves (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy all of its obligations under this Agreement and the Deed Poll and otherwise in connection with the Scheme, including to pay the Consideration in accordance with its obligations under this Agreement, the Scheme and the Deed Poll.

8. **OIO**: Bidder, Bidder's Nominee, any intermediate entities and any individuals with control of those entities for the purposes of section 15 of the Overseas Investment Act 2005 meet the investor test in section 18A of the Overseas Investment Act 2005.

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9. **Scheme Booklet and Independent Adviser's Report**:

   (a) On the date on which the Scheme Booklet was sent to Shareholders, the Bidder Information:

      (i) was true and accurate in all material respects and not false or misleading in any material respect (including by omission); and

      (ii) complied with the Companies Act and all other applicable New Zealand laws.

   (b) All information provided by or on behalf of Bidder to the Independent Adviser for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet was, when provided, provided in good faith, true and accurate in all material respects and not false or misleading in any material respect (including by omission).

10. **Insolvency Event**: Bidder is not the subject of an Insolvency Event.

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# Schedule 4: Defined terms and interpretation

## 1. Defined terms

In this Agreement, unless the context otherwise requires:

**2025 STI Scheme** means the Target Group short term incentive scheme for the financial year ending 31 March 2025;

**Additional Amount** has the meaning given to it in clause 16.3;

**Agreement Date** means the date of this Agreement;

**Associate** has the meaning set out in rule 4 of the Takeovers Code;

**ASX** means ASX Limited or Australian Securities Exchange, as the context requires;

**Authorisation** means any permit, licence, consent, approval, registration, accreditation, certification or other authorisation given or issued by any Government Agency;

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

**Bidder Indemnified Parties** means Bidder and each of its Related Companies and its and their respective directors, officers, employees, contractors and advisers;

**Bidder Information** means information regarding the Bidder Group provided by Bidder or its Representatives to Target in writing for inclusion in the Scheme Booklet or any supplementary information for Shareholders, being:

(a) information about Bidder, Bidder Nominee (if applicable) and the Bidder Group;

(b) information about the funding arrangements available to Bidder to fund the Consideration; and

(c) any other information concerning Bidder and its Related Companies (or its or their Associates):

(i) required under section 236(2)(a) of the Companies Act;

(ii) contemplated by the requirements of the Schemes Guidance Note (including information equivalent to the information that would meet the requirements of the Takeovers Code); or

(iii) required by the Takeovers Panel or the Court;

**Bidder Nominee** has the meaning given to that term in clause 2.4;

**Bidder Reimbursement Fee** means NZ$2,963,616.06 (including GST, if any);

**Bidder Shareholder Communications** has the meaning given to it in clause 8.4(a);

**Bidder Warranties** means the warranties of Bidder set out in Schedule 3;

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**Business** means the business carried on by the Target Group as at the Agreement Date;

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which trading banks are open for general banking business in Auckland, New Zealand;

**Change of Control Consent or Notification** has the meaning given to it in clause 6.6(a);

**Communication Principles** has the meaning given to it in clause 8.3;

**Companies Act** means the Companies Act 1993;

**Competing Proposal** means a proposal, transaction or arrangement from or with any Third Party or Third Parties which are not acting in concert with Bidder relating to:

(a) any acquisition (whether directly or indirectly) of an interest in, or the right to acquire or have an economic interest in, directly or indirectly, more than 20% of the Shares (other than Custodial Shares);

(b) any acquisition (whether directly or indirectly) of, or the right to acquire or have an economic interest in, directly or indirectly, a material part of the business of Target Group;

(c) a transfer of control of Target or a material part of the business or Target Group; or

(d) otherwise an acquisition of, or merger with, Target,

whether by takeover offer, scheme of arrangement, acquisition, capital reduction or buy-back, sale or purchase of shares or assets, share issue or other recapitalisation, joint venture, insolvency proceeding, dual-listed company structure (or other synthetic merger), or other transaction or arrangements.

For the purposes of paragraphs (b) and (c) above, the acquisition of an interest in or right to acquire a part of the business of Target Group will be material if the acquisition entitles, or the right when exercised would entitle, the acquirer to share in:

(a) 20% or more the consolidated net profit after tax of the Target Group; or

(b) 20% or more of the total consolidated assets of the Target Group;

**Conditions** means the conditions set out in the “Condition” column of the table set out in clause 3.1;

**Confidentiality Agreement** means the confidentiality agreement dated 5 March 2025 between Target and Bidder;

**Consideration** means NZ$1.20 in respect of each Share held by a Scheme Shareholder;

**Counter Proposal** has the meaning given to it in clause 13.7(b);

**Court** means the High Court of New Zealand, Auckland Registry;

**Custodial Shares** means Shares held by a person as bare trustee where that person does not have:

(a) a beneficial entitlement to, or a beneficial interest in, the shares; or

(b) the right to exercise or control the exercise of voting powers at a meeting of Target, other than on the instructions of the beneficial owner of the shares;

**Deed Poll** means the deed poll to be entered into by Bidder and Bidder Nominee (if applicable) in favour of the Scheme Shareholders in the form set out in Annexure 2 or such other form as agreed in writing between the parties;

**Director** means a director of Target, from time to time.

**Director Intentions Statement** has the meaning given to it in clause 5.1(a);

**Director Recommendation** has the meaning given to it in clause 5.1(a);

**D&O Run-off Policy** has the meaning given to it in clause 11.3(b)(i);

**Disclosure Letter** means a letter from Target provided to Bidder and countersigned by Bidder prior to execution of this Agreement;

**Due Diligence Materials** means contents of the virtual data room established by Target for the Transaction and hosted by Ansarada (including all written responses provided by or on behalf of the Target Group in response to written questions or requests for information) as at 9.00am on 20 June 2025, and that data room the **Data Room**;

**Effective** means, when used in relation to the Scheme, the coming into effect, under section 236(3) of the Companies Act of the order of the Court made under section 236(1) in relation to the Scheme and all of the Conditions (and any other conditions in the Scheme Plan) having been satisfied or, if capable of waiver, waived in accordance with this Agreement and the Scheme;

**Encumbrance** means any security interest (within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999) and any option, right to acquire, right of pre-emption, assignment by way of security or trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind (other than any reservation of title by suppliers in the ordinary course of business), and any agreement to create any of the foregoing;

**End Date** means, subject to clause 5.1(s)(ii), the date which is nine months after the Agreement Date, or such other date as agreed in writing by the parties;

**Escrow Agreement** means the escrow agreement between Bidder, Target and the Registrar in the form set out in Annexure 4, or in such other form as the parties agree in writing;

**Excluded Matter** means:

(a) a Competing Proposal;

(b) the actual or purported termination of this Agreement; or

(c) any claim under, or disagreement or dispute between the parties in respect of, this Agreement, the Deed Poll, the Escrow Agreement or the Transaction;

**Exclusivity Period** means the period from and including the Agreement Date to the earlier of:

(a) the end of the Exclusivity Period under clause 13.10(d);

(b) the termination of this Agreement;

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(c) if Bidder formally purports to terminate this Agreement, the date of such purported termination (whether or not that purported termination is ultimately agreed, or determined, to be legally effective);

(d) the Implementation Date; and

(e) 5.00pm on the End Date;

**Existing Indemnity Deeds** has the meaning given in clause 11.3(a)(ii)(B);

**Final Orders** means orders of the Court on application of Target, that the Scheme shall be binding on Target, Bidder, Bidder Nominee (if applicable), the Shareholders and such other persons or class of persons as the Court may specify, subject to the conditions of the Scheme, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act;

**Final Orders Date** means the day on which the Final Orders are granted by the Court;

**First Court Date** means the first day on which the application is made to the Court for the Initial Orders is held;

**FMCA** means the Financial Markets Conduct Act 2013;

**Forward Looking Information** means:

(a) any information about the future performance, future prospects, future financial condition, future results of operations, or future results of the strategy and plans of the Target Group; and

(b) any other information about the future, including any budget, forecast, outlook about the future, scenario about the future, projection, prediction, estimate, opinion or other forward-looking statement;

**Government Agency** means, in respect of New Zealand or any other jurisdiction, any:

(a) government or any department, officer, ministry or minister of any government;

(b) governmental, semi-governmental, regulatory, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, supervisor, tribunal or entity; and

(a) court of competent jurisdiction;

**GST** means goods and services tax chargeable, or to which a person may be liable, under the GST Act, and includes any GST Default Amounts;

**GST Act** means the Goods and Services Tax Act 1985;

**GST Default Amounts** means any penalties, additional tax or interest payable in respect of goods and services tax;

**GST Exclusive Consideration** has the meaning given in clause 16.2;

**Implementation Date** means the date on which the Scheme is to be implemented, being two Business Days after the Record Date (or such other date agreed between the parties in writing);

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**Independent Adviser** means the person appointed by Target, and approved by the Takeovers Panel, as the independent adviser to prepare the Independent Adviser's Report;

**Independent Adviser's Report** means the independent adviser's report prepared by the Independent Adviser in relation to the Scheme as amended or updated from time to time and including any supplementary or replacement report;

**Initial Announcement** has the meaning given to it in clause 12.1;

**Initial Orders** means, on application of Target, orders made by the Court for the purposes of section 236(2) of the Companies Act;

**Insolvency Event** means, in relation to an entity:

(a) the person ceases or threatens to cease to carry on all or substantially all of its business or operations;

(b) an application or an order is made, or a resolution is passed, for the person's dissolution;

(c) the person is or becomes unable to pay its debts when due (as defined in, and in accordance with section 287 of, the Companies Act), or enters into dealings with any of its creditors with a view to avoiding or in expectation of insolvency, or makes a general assignment or an arrangement or composition with or for the benefit of any of its creditors, or stops or threatens to stop payments generally;

(d) the person goes into receivership or has a receiver, receiver and manager, official manager, trustee or other similar officer appointed in respect of a substantial portion of its property;

(e) the person enters into a scheme of arrangement (other than the Scheme) or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;

(f) any resolution is passed, or any proceeding is commenced, for the liquidation or dissolution of that person; and

(g) anything analogous to anything referred to in the above sub-clauses, or which has substantially similar effect, occurs with respect to it, including under any applicable foreign law;

**Letter of Intention** means a letter from the Takeovers Panel stating that it:

(a) intends to provide a No-objection Statement; and

(b) does not intend to appear at the Court in respect of the application for Initial Orders;

**Listing Rules** means:

(a) in relation to Target and its Related Companies:

(i) in relation to NZX, the NZX Listing Rules as amended from time to time; and

(ii) in relation to ASX, the ASX Listing Rules as amended from time to time;

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(b) in relation to Bidder and its Related Companies, the NYSE Listed Company Manual and Regulation FD under the United States Securities Act of 1933, each as amended from time to time;

**Loss** means all losses, damages, costs, expenses, charges and other liabilities, provided however that the parties will not be liable for any indirect loss, economic loss, loss of opportunity or loss of profit whatsoever and however arising, including:

(a) consequential loss or damage; or

(b) loss of use, production, revenue, income, profits, business and savings or business interruption (whether or not the indirect loss or damage was foreseeable);

**LTI Scheme** means the Target Group long term incentive plan;

**LTI Scheme Rules** means the rules of the LTI Scheme as set out at item 02.01.05.01 of the Data Room;

**Matching Period** has the meaning given to it in clause 13.7(a)(vi);

**Material Adverse Change** means any event or circumstance that occurs or is announced or is discovered (or a series of related events or circumstances that occur or are announced or are discovered) on or after the Agreement Date which reduces, or is reasonably likely to reduce, the consolidated EBITDA of the Target Group for the financial year ending 31 March 2026 by more than $5,755,246.40 compared to what EBITDA would reasonably have been expected to have been for that period but for such event or circumstance (or series of related events or circumstances), calculated in accordance with the accounting policies and practices applied by Target as at the Agreement Date and taking into account any matters which offset, or are reasonably likely to offset, the impact of the such event or circumstance (or series of related events or circumstances) on the consolidated EBITDA of the Target Group, in each case determined after excluding or disregarding:

(a) any one-off or non-recurring impact of the relevant event or circumstance;

(b) any transaction costs incurred by the Target Group in connection with the Transaction and any out-of-pocket costs incurred in connection with the D&O Run-off Policy; and

(c) any event or circumstance:

(i) to the extent fairly disclosed:

(A) in the Due Diligence Materials;

(B) by Target through the NZX or ASX market announcement platforms in the 24-month period ending two Business Days before the Agreement Date;

(ii) done, or not done, at the written request or with the written approval of Bidder, or resulting from compliance with the terms of, or the taking or omission of any action expressly required or permitted by, this Agreement, and any reasonably foreseeable consequences arising as a result of the relevant action or omission;

(iii) resulting from legal or regulatory requirements generally affecting the payments industry;

(iv) without limiting paragraph (iii), resulting from any change in regulation or other changes made, proposed or recommended by the Reserve Bank of Australia in connection with its review of merchant payment costs and surcharging;

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(v) resulting from the actual or anticipated change of control of the Target Group contemplated by this Agreement;

(vi) resulting from any change:

(A) in law, regulation, generally accepted accounting standards or generally accepted accounting principles or the interpretation of any such standards or principles, or policy of a Government Agency;

(B) to the accounting policies of any member of the Target Group that is required by law;

(C) in general economic conditions (including changes in foreign exchange rates, interest rates, tax rate or commodity prices) or general political conditions; or

(D) in securities, equity, credit, financial or other capital markets conditions;

(vii) resulting from or relating to geopolitical conditions, the outbreak or escalation of hostilities, any generalised or localised rioting or public unrest, civil disobedience, acts of war and military conditions or activity, sabotage or terrorism (excluding cyberattacks), or any escalation, expansion or worsening of any of the foregoing;

(viii) resulting from any natural disaster (including an earthquake, fire, landslide, volcanic eruption or tidal wave), weather development (including a storm, flood, hurricane, tornado, cyclone or lightning), or other comparable natural events; or

(ix) resulting from the outbreak or escalation of any disease, epidemic or pandemic and any restrictions on the Business or the Target Group imposed or recommended by any Government Agency or other regulatory authority in connection with any disease, epidemic or pandemic;

**No-objection Statement** means a written statement under section 236A(2)(b)(ii) of the Companies Act stating that the Takeovers Panel has no objection to the Court granting the Final Orders;

**NZX** means NZX Limited and, where the context requires, the main board financial market that it operates;

**OIO** means the New Zealand Overseas Investment Office;

**OIO Condition** means the Condition set out in clause 3.1(a);

**OIO Standard Terms and Conditions** means:

(a) the standard conditions of consent published on the OIO website (https://www.linz.govt.nz/overseas-investment) on the Agreement Date, as are applicable to the Transaction; and

(b) to the extent applicable, the conditions of consent contemplated by Part 5 of Schedule 2 to the Overseas Investment Act 2005;

**Permitted Encumbrances** means in respect of the Target Group's assets, but not the Scheme Shares:

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(a) a reservation of ownership or other purchase money security interest entered into to secure the unpaid balance of purchase money in respect of supplies to a member of the Target Group in the ordinary course of business;

(b) a right or set-off or combination thereof arising by operation of law or practice over money deposited with a bank or financial institution in the ordinary course of business;

(c) a security interest arising by operation of law and in the ordinary course of business provided that the debt it secures is paid when due or contested in good faith by appropriate proceedings;

(d) a security interest arising under section 17(1)(b) of the Personal Property Securities Act 1999 that does not secure payment or performance of an obligation; and

(e) an Encumbrance granted by a Target Group member in favour of ASB Bank Limited over all of its present and after acquired property,

in each case existing on the Agreement Date or, other than in the case of paragraph (e) above, is granted by the Target Group in the period commencing on the Agreement Date and ending on the Implementation Date (both dates inclusive) without breaching clause 6.1;

**Prescribed Occurrence** means the occurrence of any of the events listed in Schedule 1 during the period commencing on the Agreement Date and ending at 8.00am on the Implementation Date, other than:

(a) as expressly required or permitted by this Agreement or the Scheme; or

(b) with the prior written consent of Bidder;

**Public Registers** means:

(a) in respect of New Zealand, the New Zealand Companies Office, the Intellectual Property Office of New Zealand, the High Court of New Zealand, the Personal Property Securities Register and Land Information New Zealand; and

(b) in respect of Australia, Australian Securities and Investment Commission, Australian Personal Property Securities Register, IP Australia, the High Court of Australia, the Federal Court of Australia, the Supreme Courts of Victoria, New South Wales, Queensland, South Australia, Western Australia, the Australian Capital Territory, the Northern Territory and Tasmania;

**Record Date** means 5.00pm on the fourth Business Day after the later of:

(a) Final Orders Date; and

(b) the date on which the OIO Condition is satisfied;

or such other date agreed between the parties in writing;

**Reference Rate** means, in relation to interest payable on any payment due under this Agreement, the mid or "FRA" rate for 90 day bank accepted bills (expressed as a percentage) as quoted on the Reserve Bank of New Zealand website (or any successor page) at or about 10.45am on the first Business Day of the period in respect of which such rate of interest is to be calculated, and thereafter on each succeeding Business Day of the period;

**Registrar** means Computershare Investor Services Limited, being Target's share registrar;

**Reimbursement Fee Arrangements** has the meaning given to it in clause 14.8(a);

**Related Company** has the meaning set out in section 2(3) of the Companies Act read as if a reference to a company was a reference to a company or body corporate wherever incorporated;

**Representative** means, in relation to a person, any director, officer or employee or agent of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, that person or any Related Company of that person;

**Scheme** means the scheme of arrangement under part 15 of the Companies Act between Target, Bidder, Bidder Nominee (if applicable) and the Scheme Shareholders in accordance with the Scheme Plan;

**Scheme Booklet** means the explanatory memorandum (including the notice of meeting and proxy form) to be prepared in accordance with this agreement in connection with the Scheme, the despatch of which is to be approved by the Court and which is to be sent to Shareholders in advance of the Scheme Meeting, and includes, where applicable, any supplement, addendum or other update or change to that booklet after it has been sent to Shareholders;

**Scheme Meeting** means the meeting of Shareholders ordered by the Court to be convened pursuant to the Initial Orders in respect of the Scheme and includes any adjournment or rescheduling of that meeting;

**Scheme Plan** means the scheme plan in the form set out in Annexure 1 (or in any other form the parties agree in writing) which (as applicable) is to be, or has been, approved by the Court under section 236(1) of the Companies Act;

**Scheme Resolution** means the resolution put to, or to be put to, Shareholders at the Scheme Meeting to approve the Scheme;

**Scheme Share** means a Share held as at the Record Date by a Scheme Shareholder;

**Scheme Shareholder** means a Shareholder recorded in the Share Register as at the Record Date;

**Schemes Guidance Note** means the guidance note issued by the Takeovers Panel in relation to schemes of arrangement under Part 15 of the Companies Act dated 31 July 2024 (as amended, updated or reissued from time to time);

**Second Court Date** means:

(a) if no hearing is held in respect of the Final Orders, the day on which the Final Orders are granted by the Court; and

(b) if there is a hearing in respect of the Final Orders, the first date of such hearing, provided that if such hearing is adjourned, it means the first date on which the adjourned application is heard;

**Share** means a fully paid ordinary share of Target;

**Shareholder** means each person who is registered as the holder of a Share from time to time;

**Share Performance Right** means a right to acquire Shares held by employees of the Target Group in accordance with the LTI Scheme Rules;

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**Share Register** means the register of shareholders of Target maintained in accordance with the Companies Act;

**Subsidiary** has the meaning set out in section 5 of the Companies Act;

**Superior Proposal** means a bona fide Competing Proposal which the Directors, acting in good faith, by majority decision and after having taken advice from Target's external financial and legal advisers, determine:

(a) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Proposal (including any timing considerations, conditions precedent and the identity of the proponent); and

(b) would, if completed substantially in accordance with its terms, be more favourable to Shareholders (as a whole) than the Scheme, taking into account all terms and conditions of the Competing Proposal (including consideration, conditionality, funding, certainty and timing) and any other matters affecting the probability of the Competing Proposal being completed in accordance with its terms;

**Supplier** has the meaning given to it in clause 16.3;

**Surviving Clauses** means Schedule 4 (*Defined terms and interpretation*), clause 5.1(s)(ii)(B)(*Appeal costs*), clause 9.2(b)(*Financing costs*), clause 10 (*Warranties*), clause 11.1 (*Release of Target Indemnified Parties*), clause 11.2 (*Release of Bidder Indemnified Parties*), clause 12 (*Announcements*), clause 14 (*Reimbursement Fee*), clause 15.14 (*Effect of termination*), clause 16 (*GST*), clause 17 (*Notices*) and clause 18 (*Miscellaneous*) (other than clause 18.3 (*Further assurances*))**;**

**Takeovers Code** means the takeovers code approved in the Takeovers Regulations 2000 (SR 2000/210) as amended, including any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993;

**Takeovers Panel** means the Takeovers Panel as constituted under the Takeovers Act 1993;

**Target Board** means the board of directors of Target from time to time;

**Target Information** means the content of the Scheme Booklet other than, to the maximum extent permitted by law:

(a) the Bidder Information;

(b) the Independent Adviser's Report; and

(c) any other report or letter issued to Target by a Third Party;

**Target's Executive Team** means Marty Pomeroy (Chief Executive Officer), Cherise Barrie (Chief Financial Officer), Aidan Murphy (Chief Business Officer), Peter Thomas (Chief Marketing & Product Officer), Arron Patterson (Chief Technology Officer), Andrew Davies (Chief Revenue Officer), Lucy Williams (Chief Customer Officer) and Denise Doyle (Chief People Officer), and any other person occupying these roles from time to time;

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

**Target Indemnified Parties** means Target and its Related Companies and its and their respective directors, officers, employees, contractors and advisers;

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**Target Reimbursement Fee** means NZ$2,963,616.06 (including GST, if any);

**Target Warranties** means the warranties of Target set out in Schedule 2;

**Tax** means a tax, levy, charge, impost, fee, deduction, withholding or duty of any nature, including stamp and transaction duty or any goods and services tax, value added tax or consumption tax, which is imposed or collected by a Government Agency and includes any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts;

**Third Party** means a person other than a member of the Bidder Group;

**Timetable** means the indicative timetable for the implementation of the Transaction set out in Annexure 3, as modified from time to time with the agreement of the parties in writing; and

**Transaction** means the acquisition of Target by Bidder through implementation of the Scheme.

# 2. Interpretation

## 2.1 General

In this Agreement, headings are for convenience only and do not affect interpretation and, unless the context requires otherwise:

(a) words importing the singular include the plural and vice versa;

(b) words importing a gender include any gender;

(c) a reference to a person includes:

(i) an individual, a body corporate, an association of persons (whether body corporate or not), a trust, a state and an agency of state, in each case whether or not having a separate legal personality; and

(ii) the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;

(d) a reference to a clause, party, Annexure or schedule is a reference to a clause of, and a party, Annexure, and schedule to this Agreement, and a reference to this Agreement includes any Annexure and schedule;

(e) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the Agreement Date);

(f) a reference to any document or agreement (including this Agreement) is to that document or agreement as amended, varied, supplemented, novated or replaced from time to time;

(g) a reference to the Listing Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party;

(h) the word "includes" in any form is not a word of limitation;

(i) a reference to "$" or "dollar" is to New Zealand currency;

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(j) a reference to any time is, unless otherwise indicated, a reference to New Zealand time; and

(k) a reference to "fairly disclosed", "disclosed" or similar expression means disclosed in writing (including via the Due Diligence Materials) to Bidder or any of its Representatives in a manner and in sufficient detail, so as to enable a diligent and reasonable purchaser experienced in transactions of this nature and in a business similar to any business conducted by the Target Group, to identify the nature and scope of the relevant matter, event or circumstance in the ordinary course of carrying out a due diligence exercise in respect of the Target Group and its business, in sufficient detail such that a purchaser could reasonably be expected to understand the nature, relevance and materiality of such matter, event or circumstance.

## 2.2 Business Days

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

## 2.3 Contra proferentem excluded

No term or condition of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or a provision of it.

## 2.4 Target's knowledge

Where a warranty is given "so far as Target is aware" or with a similar qualification as to Target's awareness or knowledge, Target's awareness or knowledge is limited to and deemed to only include those facts, matters or circumstances of which Martyn Pomeroy, Cherise Barrie, Aidan Murphy or Arron Patterson actually aware as at the Agreement Date and includes such additional facts or circumstances of which any such person would or ought to have been aware had he or she made due enquiry of his or her direct reports as at the Agreement Date. For the avoidance of doubt, and without limiting clause 11.1, none of the individuals referred to in this clause 2.4 has any personal liability in respect of the Target Warranties.

## 2.5 Independent Adviser's conclusion

For the avoidance of doubt, for the purposes of this Agreement:

(a) the Independent Adviser's Report will not be treated as having concluded that the Consideration is within or above the Independent Adviser's valuation range for the Shares; and

(b) the Independent Adviser's Report will be treated as having concluded that the Consideration is below the Independent Adviser's valuation range for the Shares,

if, after the finalisation of the initial Independent Adviser's Report but prior to the date of the Scheme Meeting, the Independent Adviser issues an updated, replacement or supplementary report containing a revised valuation range for the Shares and the Consideration is below the revised valuation range (and, for clarity, such update, replacement or supplementary report, or any subsequent update, replacement or supplementary report, is not superseded by a further update, replacement or supplementary report prior to the date of the Scheme Meeting containing a revised valuation range for the Shares and the Consideration is within or above the revised valuation range for the Shares).

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## 2.6 Consents and consultation

If under this Agreement the doing of any act, matter or thing is subject to the consent or approval of a party, then unless expressly specified otherwise in this Agreement, that consent or approval may be given (on a conditional or unconditional basis) or withheld in the party's absolute discretion. If a party has an obligation to consult with another party under this Agreement (whether or not in good faith), that requirement to consult does not fetter or otherwise limit in any way the first-mentioned party's right to make the relevant decision or to decide whether or not to take the relevant action to which the consultation relates.

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## Annexure 1: Scheme Plan

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**SCHEME PLAN**

for a **scheme of arrangement** under Part 15 of the Companies Act 1993

between

Smartpay Holdings Limited (**Target**)

and

Each person who is registered in the Share Register as the holder of one or more Scheme Shares on the Record Date (together the **Scheme Shareholders**)

and

**[***name of Bidder Nominee under the SIA***]** (**Bidder**)

***[Note: This draft assumes that there is a Bidder Nominee under the SIA. The Bidder Nominee will be the Bidder under this Scheme Plan. If no Bidder Nominee is elected, then the guarantee included in this draft will be removed and Shift4 Payments, LLC will become the Bidder for the purposes of this Scheme Plan]***

and

**Shift4 Payments, LLC**, a company incorporated in Delaware, USA whose registered office is at 3501 Corporate Parkway, Center Valley PA 18034 USA (**Guarantor**)

# 1. Conditions

The implementation of the Scheme is conditional in all respects on:

(a) all of the Conditions having been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement by 8.00am on the Implementation Date;

(b) such other conditions (if any) made or required by the Court under section 236(1) and 237 of the Companies Act and agreed to in writing by Target and the Guarantor having been satisfied or waived before 8.00am on the Implementation Date;

(c) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with its terms before 9.00am on the Implementation Date; and

(d) the orders of the Court made under subsection 236(1) of the Companies Act approving this Scheme Plan coming into effect, pursuant to subsection 236(3) of the Companies Act, on or before the End Date.

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# 2. Consideration into trust account

## 2.1 Obligation to pay Consideration into Trust Account

Subject to the Scheme Implementation Agreement not having been terminated and the Scheme having become Unconditional (save for the Conditions set out in clause 3.1(e) to (g) (inclusive) of the Scheme Implementation Agreement), Bidder must, by no later than 5.00pm on the Business Day before the Implementation Date, deposit (or procure the deposit of) in immediately available cleared funds an amount equal to the aggregate amount of the Consideration payable to Scheme Shareholders in a New Zealand dollar denominated trust account operated by the Registrar recorded in the Escrow Agreement (that account being the **Trust Account**).

## 2.2 Details of trust account

(a) The Trust Account will be established and operated by the Registrar in accordance with the Escrow Agreement.

(b) Prior to payment of the Consideration in accordance with clause 3.1(d) and clause 4, the Registrar will hold all amounts deposited by Bidder into the Trust Account on trust for Bidder under the Escrow Agreement.

## 2.3 Interest

Any interest earned on the amounts deposited by Bidder into the Trust Account will be payable to Bidder (less any bank fees or other third party costs or withholdings or deductions required by law) by the Registrar as directed by Bidder in writing.

## 2.4 Scheme not implemented

Should the implementation of the Scheme not occur by 5.00pm on the Implementation Date for any reason, or the Scheme becomes void under clause 7.5, the Registrar must, on request by Bidder in accordance with the Escrow Agreement, immediately repay all amounts in the Trust Account (less any bank fees or other third party costs or withholdings or deductions required by law) to Bidder in accordance with Bidder's written instructions to the Registrar.

# 3. Implementation

3.1 Subject to:

(a) Target and Bidder providing the Registrar with written notice that the Scheme is Unconditional in accordance with the Escrow Agreement; and

(b) the Consideration having been deposited into the Trust Account in accordance with clause 2.1,

commencing at 10.00am on the Implementation Date and in the following order:

(c) first, without any further act or formality:

(i) all the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred to Bidder; and

(ii) Target must enter, or procure the entry of, the name of Bidder in the Share Register in respect of all of the Scheme Shares; and then

(d) second, subject to compliance in full with clauses 2.1 and 3.1(c) Bidder is deemed to have irrevocably authorised and instructed the Registrar to pay, and the Registrar must pay, from the Trust Account the Consideration to each Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Share Register as at the Record Date in accordance with clause 4.

# 4. Payment of the Consideration

## 4.1 Method of payment

The payment obligations under clause 3.1(d) will be satisfied by:

(a) where a Scheme Shareholder has, before the Record Date, provided bank account details to enable the Registrar to make payments of New Zealand dollars by electronic funds transfer, the Registrar must make the relevant payment in New Zealand dollars to the Scheme Shareholder by electronic funds transfer of the relevant amount to the bank account nominated by that Scheme Shareholder;

(b) where a Scheme Shareholder has not, before the Record Date, provided bank account details to enable the Registrar to make payments of New Zealand dollars by electronic funds transfer, the following provisions and clause 4.7 will apply:

(i) where a Scheme Shareholder has, before the Record Date, provided bank account details to enable the Registrar to make payments of Australian dollars by electronic funds transfer, the Registrar must make the relevant payment (less any applicable costs, exchange rate spreads and fees) in Australian dollars to the Scheme Shareholder by electronic funds transfer of the relevant amount to the bank account nominated by that Scheme Shareholder; and

(ii) where a Scheme Shareholder with a Registered Address outside of New Zealand and Australia has, prior to the Record Date, provided sufficient written instructions (to the Registrar's satisfaction) to enable the Registrar to make payment in a currency other than New Zealand dollars or Australian dollars (and the Registrar is able to make payment in that currency), the Registrar must make the relevant payment (less any applicable costs, exchange rate spreads and fees) to the Scheme Shareholder, in the currency nominated by the Scheme Shareholder, by electronic funds transfer of the relevant amount to the bank account nominated by that Scheme Shareholder; and

(c) where a Scheme Shareholder has not provided the information and/or taken the steps contemplated by clauses 4.1(a) or 4.1(b) to enable payment to be made to such Scheme Shareholder in a manner contemplated by one of those clauses (or if an electronic payment to such Scheme Shareholder is rejected by the recipient bank) the Registrar must retain the relevant amount owed to that Scheme Shareholder in the Trust Account. Any such retained amount may be claimed by that Scheme Shareholder in accordance with clause 4.5.

If a Shareholder has given more than one payment direction, then the later direction in time of receipt will be followed.

## 4.2 Joint holders

In the case of Scheme Shares held in joint names:

(a) the Consideration is payable to the bank account nominated by the joint holders or, at the sole discretion of Target, nominated by the holder whose name appears first in the Share Register as at the Record Date; and

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

## 4.3 Surplus in trust account

To the extent that, following satisfaction of the obligations under clause 3.1(d), there is a surplus in the Trust Account, the Registrar must pay that surplus, less:

(a) any amount retained under clause 4.1(c) or 4.6(b); and

(b) any bank fees or other third party costs or withholdings or deductions required by law,

to Bidder in accordance with Bidder's instructions to the Registrar.

## 4.4 Holding on trust

(a) Target must, in respect of any monies retained by the Registrar pursuant to clauses 4.1(c) or 4.6(b), instruct the Registrar to hold, and the Registrar must hold, such monies in the Trust Account on trust for the relevant Scheme Shareholders (**Unpaid Shareholders**) for a period of 24 months after the Implementation Date and thereafter, without the requirement for any further action but subject to clause 4.5, to pay, and the Registrar must pay, any remaining money in the Trust Account to Target (**Remaining Money**).

(b) Once the Remaining Money (if any) has been paid to Target under clause 4.4(a), Target is permitted to use the Remaining Money for the benefit of Target (and to comingle the Remaining Money with its other funds) provided, however, that:

(i) subject to clause 4.4(b)(ii), each Unpaid Shareholder retains a claim against Target, as an unsecured creditor, for the Consideration that was payable to such Unpaid Shareholder under clause 3.1(d); and

(ii) nothing in this clause 4.4(b) prevents Target from dealing with the Remaining Money (or any part of it) in accordance with the Unclaimed Money Act 1971.

## 4.5 Unclaimed monies

During the period of 24 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder that has not received payment of the Consideration in accordance with clause 4.1(a) or 4.1(b), the Registrar must, if such Scheme Shareholder has taken the necessary steps required to effect payment to such Scheme Shareholder in a manner contemplated by clause 4.1(a) or 4.1(b), pay to that Scheme Shareholder the Consideration held on trust for that Scheme Shareholder in a manner contemplated by clause 4.1(a) or 4.1(b) (or in any other manner approved by the Registrar and agreed to by that Scheme Shareholder).

## 4.6 Orders of a court or Government Authority

Notwithstanding any other provision of this Scheme Plan, if written notice is given to Target or Bidder on or prior to the Record Date of an order or direction made by a Government Agency, or of any applicable law, that:

(a) requires Consideration to be provided to a person in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder by Target in accordance with clause 3.1(d), Target will be entitled to procure, and Bidder will be deemed to have instructed the Registrar to ensure that

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provision of that Consideration is made in accordance with that order or direction or law; or

(b) prevents the Consideration from being provided to any particular Scheme Shareholder in accordance with clause 3.1(d), or the payment of such consideration is otherwise prohibited by applicable law, Target will be entitled to retain, subject to clause 4.4, the payment (equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Consideration) in the Trust Account until such time as provision of the Consideration to the Scheme Shareholder in accordance with clause 3.1(d) or clause 4.5 (as applicable) is permitted by that order or direction or otherwise by law,

and such provision or retention (as the case may be) will constitute the full discharge of Bidder's and the Registrar's obligations under clause 3.1(d) with respect to the amount so provided or retained.

### 4.7 Exchange rate

If a Scheme Shareholder elects to be paid in Australian dollars (as contemplated by clause 4.1(b)(i)) or in a currency other than New Zealand dollars or Australian dollars (as contemplated by clause 4.1(b)(ii)), the conversion of any payment from New Zealand dollars into the relevant currency will be undertaken in a manner and at an exchange rate determined by the Registrar (in the Registrar's discretion) and none of Bidder, Target or the Registrar will be responsible for, or have any liability of any nature, in connection with that conversion (including for the exchange rate at which the relevant conversion occurs).

### 4.8 Lowest price

For the purposes of the financial arrangements rules in the Income Tax Act 2007, the parties agree that:

(a) the Consideration is the lowest price (within the meaning of section EW 32 of the Income Tax Act 2007) that would have been agreed for the transfer of each Scheme Share, on the date the Scheme Implementation Agreement was entered into, if payment had been required in full at the time the first right in each Scheme Share was transferred; and

(b) the Consideration is the value of each Scheme Share.

## 5. Dealing in Target Shares

### 5.1 Recognition of dealings

(a) Following the granting of the Final Orders, Target must:

(i) release a copy of the sealed Final Order through the NZX market announcement platform, once the sealed Final Orders are received;

(ii) once known, release through the NZX market announcement platform the Trading Halt Date and Record Date; and

(iii) use its reasonable endeavours to procure that the NZX suspends trading in the Shares from the close of trading on the Trading Halt Date.

(b) Target must not accept for registration, nor recognise for any purpose (except a transfer to Bidder pursuant to this Scheme Plan and any subsequent transfer by Bidder or its successors in title), any Share transfer or Share transmission application or other similar

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request received after 5.00pm on the Record Date, or received prior to such time but not in registrable or actionable forms.

### 5.2 Share Register

(a) Target must register registrable transmission applications or registrable transfers of the Scheme Shares received prior to the Trading Halt Date before 5.00pm on the Record Date provided that, for the avoidance of doubt, nothing in this clause 5.2(a) requires Target to register a transfer that relates to a transfer of Shares over which Target has a lien.

(b) A holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or attempt or agree to dispose of, any Scheme Shares, or any interest in them, after 5.00pm on the Trading Halt Date otherwise than pursuant to this Scheme Plan, and any attempt to do so will have no effect and Target, Bidder and the Registrar shall be entitled to disregard any such disposal.

(c) For the purpose of determining entitlements to the Consideration, but subject to the requirements of the Listing Rules, Target must maintain the Share Register in accordance with the provisions of this clause 5.2 until the Consideration has been paid to the Scheme Shareholders. The Share Register in this form will solely determine entitlements to the Consideration.

(d) From 5.00pm on the Record Date, each entry that is current on the Share Register will cease to have effect except as evidence of entitlement to the Consideration in respect of Shares relating to that entry. This clause 5.2(d) does not apply to the entry of Bidder on the Share Register under clause 3.1(c) or to any subsequent transfer by Bidder or its successors in title.

(e) As soon as possible on the first Business Day after the Record Date and in any event by 5.00pm on that day, Target must make available to Bidder in the form Bidder reasonably requires, details of the names, Registered Addresses and holdings of Shares for each Scheme Shareholder as shown in the Share Register as at the Record Date.

## 6. Guarantee

### 6.1 Guarantee

Guarantor guarantees, as primary obligor and not merely as surety, the due and punctual performance by Bidder of all its obligations under this Scheme Plan.

### 6.2 No discharge

(a) The Guarantor is not to be discharged, nor are the Guarantor's obligations to be affected, by any matter or thing which, but for this clause 6.2(a), would or might have discharged the Guarantor or affected its obligations, including:

(i) the giving of time, credit or other indulgence or concession to Bidder, the Guarantor or any other person; or

(ii) anything done, or omitted to be done, by a Scheme Shareholder or Target in the exercise or non-exercise of its right and powers; or

(iii) Bidder or the Guarantor or any other person being incompetent to be bound by this Scheme Plan or failing to be legally bound in whole or in part by it or the validity, regularity and enforceability of any provision of this Scheme Plan; or

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(iv) any release, discharge, compromise, or other arrangement given to or made with Bidder, the Guarantor or any other person; or

(v) the dissolution of Bidder, any change in the status, function, control or ownership of Bidder, or any consolidation, merger or conveyance of Bidder; or

(vi) any other circumstances which might otherwise constitute a legal or equitable discharge of or defence to a surety and the Guarantor remains liable irrespective of whether any present or other obligations would be enforceable against Bidder,

it being the intention of the parties that the guarantee and obligations of the Guarantor are to be absolute and unconditional in all circumstances, and neither the Scheme Shareholders nor Target are under any liability to the Guarantor in respect of the items listed in this clause 6.2 even though the Guarantor's rights in subrogation may be prejudiced as a result.

(b) If any payment made by or on behalf of Bidder to Target or Scheme Shareholders is avoided by law, that payment is not to be deemed to have discharged the liability of Bidder or the Guarantor in respect of it.

### 6.3 Cumulative rights

The rights of Target and Scheme Shareholders under this clause 6 are cumulative and not exclusive of any rights provided by law and are to remain in full force until the discharge by Bidder of all of its obligations under this Scheme Plan.

## 7. General provisions

### 7.1 Amendments to Consideration

Bidder may increase the Consideration by written notice at any time to Target prior to 5.00pm on the Business Day prior to the Implementation Date, provided that the Scheme Implementation Agreement has not been terminated in accordance with its terms prior to that date.

### 7.2 Title to and rights in Scheme Shares

(a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme Plan to Bidder will, at the time of transfer of them to Bidder, vest in Bidder free from all Security Interests and free from any restrictions on transfer of any kind.

(b) Each Scheme Shareholder is taken to have warranted to Bidder on the Implementation Date that all of their Scheme Shares (including any rights and entitlements attaching to those Shares) which are transferred under this Scheme Plan will, at the time of transfer, be fully paid and free from all Security Interests and restrictions on transfer of any kind, and that the Scheme Shareholder has full power and capacity to transfer their Shares to Bidder together with any rights and entitlements attaching to those shares.

### 7.3 Authority given to Target

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

(a) on and from the date which is the later of:

(i) the Final Orders Date; and

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(ii) the date on which Target announces to NZX that the OIO Condition has been satisfied,

irrevocably appoints Target as its attorney and agent for the purpose of enforcing the Scheme and the Deed Poll against Bidder (but without limiting each Scheme Shareholder's right to itself enforce the Scheme and the Deed Poll); and

(b) on the Implementation Date, irrevocably appoints Target as its attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to the Scheme and the transactions contemplated by it,

and Target accepts each such appointment. Target, as attorney and agent, may sub-delegate its functions, authorities or powers under this clause 7.3 to one or more of Target's directors or senior executives.

## 7.4 Binding effect of Scheme

(a) The Scheme binds:

(i) Target;

(ii) all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on the Scheme, did not vote at the Scheme Meeting, or voted against the Scheme at the Scheme Meeting);

(iii) Bidder; and

(iv) the Guarantor.

(b) In the event of any inconsistency, this Scheme Plan overrides the constitution of Target.

## 7.5 When the Scheme becomes void

If the Scheme does not become Unconditional on or before 8.00am on the End Date, or if the Scheme Implementation Agreement is terminated in accordance with its terms at any time before 9.00am on the Implementation Date, this Scheme Plan is immediately void and of no further force or effect (other than clauses 2.3, 2.4 and 7.8).

## 7.6 Successor obligations

To the extent that any provision of the Scheme or this Scheme Plan imposes any obligation on Bidder or Target that continues or arises after the implementation of the Scheme, such obligation may instead be performed by any successor or related company of Bidder or Target (as applicable), in which case the obligation will be satisfied as if performed by Bidder or Target (as applicable).

## 7.7 Governing law

(a) This Scheme Plan and any non-contractual obligations arising out of or in connection with it are governed by the law applying in New Zealand.

(b) The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Scheme Plan (including a dispute relating to any non-contractual obligations arising out of or in connection with this Scheme Plan) and the parties irrevocably submit to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.

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### 7.8 No liability when acting in good faith

Each Scheme Shareholder agrees that none of the directors, officers or employees of Target or Bidder will be liable for anything done or omitted to be done in the performance of the Scheme in good faith.

## 8. Definitions and interpretation

### 8.1 Definitions

In this Scheme Plan:

**Deed Poll** means the deed poll entered into by Bidder and the Guarantor in favour of the Scheme Shareholders dated [●] 2025;

**Escrow Agreement** means the escrow agreement between Bidder, Target and the Registrar dated [●] 2025;

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

**Scheme** means this scheme of arrangement subject to any alterations or conditions made or required by the Court under Part 15 of the Companies Act and approved by Target and the Guarantor in writing;

**Scheme Implementation Agreemen**t means the scheme implementation agreement dated 23 June 2025 between Target and the Guarantor;

**Security Interest** means any security interest (within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999) and any option, right to acquire, right of pre-emption, assignment by way of security, trust arrangement for the purposes of providing security, retention arrangement or other security interest of any kind.

**Trading Halt Date** means the date which is two Business Days after the Final Orders Date or such other date as Target and the Guarantor agree in writing;

**Trust Account** has the meaning given to it in clause 2.1 of this Scheme Plan; and

**Unconditional** means the satisfaction or waiver of each of the conditions in clause 1.

### 8.2 Interpretation

In this Scheme Plan:

(a) capitalised terms which are used but not otherwise defined have the meanings given to them in the Scheme Implementation Agreement;

(b) headings are for convenience only and do not affect the interpretation of this Scheme Plan;

(c) the singular includes the plural and the plural includes the singular;

(d) words of any gender include all genders;

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(e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Authority, as well as an individual;

(f) a reference to a clause, is a reference to a clause of this Scheme Plan;

(g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Authority with legal power to do so);

(h) a reference to a document (including this Scheme Plan) includes all amendments or supplements to, or replacements or novations of, that document;

(i) the word includes in any form is not a word of limitation;

(j) a reference to $, NZ$ or dollar is to New Zealand currency, unless denominated otherwise;

(k) a reference to any time is, unless otherwise indicated, a reference to that time in Auckland, New Zealand;

(l) a reference to a party to a document includes that party's successors and permitted assignees; and

(m) no provision of this Scheme Plan will be construed adversely to a party because that party was responsible for the preparation of this Scheme Plan or that provision.

## 8.3 Business Day

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

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# Annexure 2: Deed Poll

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# Deed Poll

**relating to**

a scheme of arrangement pursuant to Part 15 of the Companies Act 1993 involving Smartpay Holdings Limited

**Shift4 Payments, LLC**

Bidder

**and**

**Each person who is registered in the Share Register as the holder of one or more Scheme Shares on the Record Date**

Scheme Shareholders

**[●] 2025**

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This **Deed Poll** is made on 2025

**by** (1) Shift4 Payments, LLC (**Bidder**)

**in favour of** (2) Each person who is registered in the Share Register as the holder of one or more Scheme Shares on the Record Date (**Scheme Shareholders**)

# Introduction

A. Smartpay Holdings Limited (**Target**) and Bidder are parties to the Scheme Implementation Agreement.

B. Target has agreed in the Scheme Implementation Agreement to propose a scheme of arrangement between Target, Bidder and the Scheme Shareholders, the effect of which will be that all Scheme Shares will be transferred to Bidder (or its permitted nominee) and Bidder will provide or procure the provision of the Consideration to the Scheme Shareholders.

C. Bidder is entering into this Deed Poll for the purpose of undertaking in favour of the Scheme Shareholders to pay the Consideration to the Scheme Shareholders in accordance with the terms of the Scheme Plan.

# By this deed poll it is declared as follows

## 1. Defined terms and interpretation

### 1.1 Defined terms

In this Deed, unless the context requires otherwise,

words defined in:

(a) the Scheme Plan which are not separately defined in this Deed Poll have the same meaning when used in this Deed Poll; and

(b) the Scheme Implementation Agreement which are not separately defined in this Deed Poll or the Scheme Plan have the same meaning in this Deed Poll.

### 1.2 Interpretation

Clauses 8.2 and 8.3 of the Scheme Plan apply to the interpretation of this Deed Poll, except that references to “this Scheme Plan” are to be read as reference to “this Deed Poll”.

## 2. Nature of this Deed Poll

### 2.1 Third party rights and appointment of attorney

Bidder acknowledges and agrees that:

(a) this Deed Poll is intended to, and does, confer a benefit upon, and therefore may be relied upon and enforced by, any Scheme Shareholder in accordance with its terms under Part 2, Subpart 1 of the Contract and Commercial Law Act 2017 (but not otherwise), even though the Scheme Shareholders are not party to it; and

(b) under the Scheme Plan each Scheme Shareholder appoints Target as its agent and attorney to enforce this Deed Poll against Bidder with effect on and from the date prescribed for such appointment in the Scheme Plan (but without limiting each Scheme Shareholder's right to itself enforce this Deed Poll).

Notwithstanding the foregoing, this Deed Poll may be varied by agreement between Target and Bidder in accordance with clause 7.2 without the approval of any Scheme Shareholder.

### 2.2 Continuing obligations

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

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

(b) it is terminated under clause 3.2.

## 3. Conditions

### 3.1 Conditions

This Deed Poll, and the obligations of Bidder under it, are conditional in all respects upon satisfaction of the requirements set out in clauses 4.1(a) and 4.1(b).

### 3.2 Termination

The obligations of Bidder under this Deed Poll will automatically terminate, and the terms of this Deed Poll will be of no force or effect, if the Scheme Implementation Agreement is validly terminated in accordance with its terms before the Scheme becomes Unconditional, unless Bidder and Target otherwise agree in writing.

### 3.3 Consequences of termination

If this Deed Poll is terminated under clause 3.2, then Bidder is released from its obligations to further perform this Deed Poll.

## 4. Consideration

4.1 Subject to:

(a) the Scheme Implementation Agreement not being terminated; and

(b) the Scheme having become Unconditional (save for the Conditions set out in clause 3.1(e) to (g) (inclusive) of the Scheme Implementation Agreement),

Bidder undertakes in favour of each Scheme Shareholder to deposit, or procure the deposit of, in immediately available cleared funds, by no later than 5.00pm on the Business Day before the Implementation Date an amount equal to the aggregate amount

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of the Consideration payable to all Scheme Shareholders as set out in the Scheme Plan, such deposit to be made into the Trust Account to be held and dealt with by the Registrar in accordance with the Scheme Plan and the Escrow Agreement.

4.2 Subject to clause 3, Bidder irrevocably acknowledges and agrees that, subject to and conditional on the Scheme becoming Unconditional and compliance in full by Target with its obligations under clause 3.1(c) of the Scheme Plan, the Consideration deposited into the Trust Account must be, and will be, paid in accordance with clauses 3.1(d) and 4 of the Scheme Plan in satisfaction of the Scheme Shareholders' respective entitlements to receive the Consideration under the Scheme in accordance with the Scheme Plan.

# 5. Warranties

Bidder warrants in favour of each Scheme Shareholder that:

(a) it is a company or other body corporate validly incorporated under the laws of its place of registration;

(b) it has the corporate power to enter into, and perform its obligations under, this Deed Poll and to carry out the transactions contemplated by this Deed Poll;

(c) it has taken all necessary corporate action to authorise its entry into this Deed Poll and has taken, or will prior to the Implementation Date take, all necessary corporate actions to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;

(d) this Deed Poll is valid and binding on it and enforceable against it in accordance with its terms; and

(e) this Deed Poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

# 6. Notices

## 6.1 Manner of giving notice

Any notice or other communication to be given under this Deed Poll must be given in writing (which includes email) and may be delivered or sent by post or email to Bidder at:

| | |
|---|---|
| Address: | 3501 Corporate Parkway, Center Valley PA 18034 USA |
| Email: | jfrankel@shift4.com |
| For the attention of: | Jordan Frankel, General Counsel |

with a copy to (which do not constitute notice):

| | |
|---|---|
| Address: | Chapman Tripp, Level 34, PwC Tower, 15 Customs Street West, Auckland 1010, New Zealand |
| Email: | rachel.dunne@chapmantripp.com / joshua.pringle@chapmantripp.com |

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For the attention of: Rachel Dunne / Joshua Pringle

or at any such other address or email address notified for this purpose to the other parties under this clause. Any notice or other communication sent by post must be sent by prepaid ordinary post (if the country of destination is the same as the country of origin) or by airmail (if the country of destination is not the same as the country of origin).

### 6.2 Notice effective

No communication is to be effective until received. In the absence of earlier receipt, a communication will be deemed to be received by the addressee:

(a) **Email**

in the case of a communication sent by email, four business hours (being the hours between 9am and 5pm on a Business Day in the jurisdiction of the recipient) after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered (excluding an "out of office" automated message);

(b) **Personal delivery**

in the case of personal delivery, when delivered; and

(c) **Post**

in the case of a letter, on the fifth Business Day after posting,

provided that if the notice or other communication would otherwise be taken to be received after 5.00 pm or on a Saturday, Sunday or public holiday in the place of receipt, then the notice or communication is taken to be received at 9.00 am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

### 6.3 Proof of service

In proving service of a notice or other communication, it is sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid post or by prepaid airmail or that the e-mail was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's e-mail system, as the case may be.

## 7. General

### 7.1 Waiver

(a) Bidder may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right in respect of the Scheme unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.

(b) For the purposes of clause 7.1(a):

(i) conduct includes a delay in exercising a right;

(ii) right means any right arising under or in connection with this Deed Poll and includes the right to rely on this clause; and

(iii) waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

## 7.2 Variation

(a) Subject to clauses 7.2(b) and 7.2(c), this Deed Poll may not be varied.

(b) Before the date on which the Final Orders are made, this Deed Poll may be varied by agreement in writing between Target and Bidder in which event Bidder will enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.

(c) If the Court orders that it is a condition of the Scheme that Bidder enter into a new deed poll which has the effect of reversing any variation under clause 7.2(b), then, if Bidder so agrees, Bidder must promptly enter into a further deed poll in favour of the Scheme Shareholders to give effect to the reversal of that variation.

## 7.3 Cumulative rights

The rights, powers and remedies of Bidder and the Scheme Shareholders under this Deed Poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this Deed Poll.

## 7.4 Assignment

The rights and obligations of Bidder and each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with at law or in equity. Any purported dealing in contravention of this clause 7.4 is invalid.

## 7.5 Governing law and jurisdiction

(a) This Deed Poll and any non-contractual obligations arising out of or in connection with it are governed by the law applying in New Zealand.

(b) The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed Poll (including a dispute relating to any non-contractual obligations arising out of or in connection with this Deed Poll) and Bidder irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand in respect of any proceedings arising out of or in connection with this Deed Poll, and irrevocably waives any objection to the venue of any legal process in those courts on the basis that the proceeding has been brought in an inconvenient forum.

(c) Bidder appoints Rachel Dunne, Partner of Chapman Tripp as its agent in New Zealand for service of process and other documents in any legal action or proceedings arising out of or in connection with this Deed Poll and will ensure that at all times prior to the termination of this Deed Poll or the implementation of the Scheme, Rachel Dunne or a replacement appointed by Bidder and approved by Target (acting reasonably), is authorised and able to accept service of process and other documents on its behalf in New Zealand.

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## Execution

**Executed** and delivered as a deed poll.

**Shift4 Payments, LLC** by

| | |
|---|---|
| Director | Director |
| Print Name | Print Name |

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## Annexure 3: Indicative timetable

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## Timetable

| | Event | Indicative Timetable |
|---|---|---|
| 1. | Execution of this Agreement by Target and the Bidder | 23 June 2025 |
| 2. | Announcement that this Agreement has been entered into | 23 June 2025 |
| 3. | Bidder to submit its application under the Overseas Investment Act 2005 | Within 10 Business Days of item 1 |
| 4. | Target to submit its Vendor Information Form under the Overseas Investment Act 2005 | Within 1 Business Day of item 3 |
| 5. | Draft Scheme Booklet (including Independent Adviser's Report (subject to clause 5.1(d)(i)(B)) provided to Bidder | Within 20 Business Days of item 2 |
| 6. | Comments on Scheme Booklet provided by Bidder to Target for review | Within 5 Business Days of item 5 |
| 7. | Final draft Scheme Booklet (including Independent Adviser's Report (subject to clause 5.1(d)(i)(B)) provided to Bidder for review | Within 3 Business Days of item 6 |
| 8. | Further comments on Scheme Booklet provided by Bidder to Target for review | Within 2 Business Days of item 7 |
| 9. | Final draft Scheme Booklet (including Independent Adviser's Report) provided to the Takeovers Panel for review | Within 2 Business Days of item 8 |
| 10. | Final draft of Scheme Booklet provided to Bidder | On the same date as item 9 |
| 11. | Scheme Booklet (including Independent Adviser's Report) approved by Takeovers Panel and Panel issues Letter of Intention | Within 15 Business Days of item 10 |
| 12. | Application for Initial Orders filed | Within 1 Business Day of item 11 |
| 13. | First Court Date | As soon as possible after item 12, subject to court availability |
| 14. | Sealed Initial Orders and a Minute of the Court from the First Court Date sent to Takeovers Panel (together with any updated material) | As soon as possible after the Initial Orders are granted |
| 15. | Scheme Booklet (including Independent Adviser's Report) sent to Shareholders | Within 4 Business Days of receiving the Initial Orders |
| 16. | Time and date for determining eligibility to vote at Scheme Meeting | 48 hours before the scheduled meeting time for the Scheme Meeting |
| 17. | Scheme Meeting | Within 15 Business Days of item 15 |

| | | |
|---|---|---|
| 18. | Documents filed in respect of Second Court Date | Within 5 Business Days after the Scheme Meeting |
| 19. | Second Court Date | Within 5 Business Days (of item 18 (subject to court availability) |
| 20. | Final Orders Date | On the Second Court Date |
| 21. | Suspend trading on NZX and ASX | 2 Business Days after the later of:<br>• the Final Orders Date; or<br>• the date on which the OIO Condition is satisfied. |
| 22. | Record Date | 4 Business Days after the later of:<br>• the Final Orders Date; or<br>• the date on which the OIO Condition is satisfied. |
| 23. | Implementation Date | 2 Business Days after the Record Date |

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## Annexure 4: Escrow Agreement

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**[Date]**

TO: **SHIFT4 PAYMENTS, LLC** (**Bidder**)

AND TO: **SMARTPAY HOLDINGS LIMITED** (**Target**)

**Acquisition of shares in Target by Bidder by way of court-approved scheme of arrangement under Part 15 of the Companies Act 1993 (the Scheme)**

The parties acknowledge that the Scheme will be implemented pursuant to the Scheme Plan attached as the Schedule to this letter (or in any other form the parties agree in writing) which (as applicable) is to be, or has been, approved by the Court under section 236(1) of the Companies Act (**Scheme Plan**). Computershare Investor Services Limited (**Computershare**) agrees to be bound by the Scheme Plan approved by the Court as if it were listed in clause 7.4(a) of the Scheme Plan. In this letter, unless the context requires otherwise, words defined in:

(a) the Scheme Plan which are not separately defined in this letter have the same meaning when used in this letter; and

(b) the Scheme Implementation Agreement which are not separately defined in this letter or the Scheme Plan have the same meaning in this letter.

Computershare agrees to arrange a "ring fenced" bank account (**Account**) with [ANZ Bank New Zealand Limited] (**Bank**) which will be used for the sole purpose of paying the Consideration to Scheme Shareholders on the Implementation Date.

The details of the Account that will be set up are as follows:

| | |
|---|---|
| Full Name: | COMPUTERSHARE INVESTOR SERVICES LIMITED O/A SMARTPAY HOLDINGS LIMITED |
| Account (System/Account): | **[●]** |
| SWIFT: | **[●]** |

The terms on which Computershare will manage the Account are as follows:

1. **Status of the Account**

1.1 Computershare will manage the Account on behalf of Bidder and Target in accordance with this letter and the Scheme Plan.

1.2 This letter is the Escrow Agreement referred to in the Scheme Plan. The Account will be the Trust Account referred to in the Scheme Plan. Bidder acknowledges that this letter records the Trust Account for the purposes of clause 2.2 of the Scheme Plan.

2. **Pre-implementation**

2.1 Bidder and Target will provide Computershare prior written notice of the Record Date and the Implementation Date.

2.2 Computershare will prepare the Share Register as at 5.00pm (NZT) on the Record Date, recording the Scheme Shareholders and the number of Scheme Shares held by each Scheme

Shareholder at that time. Computershare will provide a copy of the Share Register to Bidder and Target promptly after it has been prepared.

2.3 Computershare will comply with clause 5.2(a) of the Scheme Plan and will not register any transfer of Shares after 5.00pm (NZT) on the Record Date (except a transfer pursuant to the Scheme Plan and any subsequent transfer by Bidder or its successors in title).

3. **Payment and holding of Consideration**

3.1 Bidder will pay an amount equal to the aggregate amount of the Consideration payable to all Scheme Shareholders into the Account in accordance with clause 2.1 of the Scheme Plan. Computershare will provide written confirmation to Bidder and Target as soon as practicable after Computershare has received those funds.

3.2 Computershare will receive, and hold, all funds paid into the Account on trust for Bidder. Computershare will only pay funds out of the Account in accordance with this letter, unless otherwise:

(a) jointly instructed in writing by Bidder and Target; or

(b) instructed by the Court.

3.3 Computershare will not grant a Security Interest over any funds in the Account and, within five Business Days after establishing the Account, Computershare will provide to Bidder and Target a written confirmation from the Bank that:

(a) the Account that is managed by Computershare on behalf of Bidder and Target will not be included in any set off arrangement between the Bank and Computershare; and

(b) all funds in the Account will be held independently from all other Computershare funds and accounts.

3.4 Bidder will be solely entitled to receive all interest accrued on any amounts paid into the Account and Computershare must pay such interest (less any bank fees or other third party costs or withholdings or deductions required by law) to an account nominated in writing by Bidder.

4. **Implementation**

4.1 If, after 9.00am on the Implementation Date, Bidder and Target give written notice to Computershare that the Scheme is Unconditional ("**Unconditional Notice**"), Computershare will, starting at 10.00am on the Implementation Date (and after the completion of any earlier steps set out in clause 3.1 of the Scheme Plan), in the following order:

(a) register the transfer of all of the Scheme Shares to Bidder; and

(b) after complying with paragraph (a),

(i) subject to clause 4.2, pay from the Account, in accordance with the Scheme Plan, to each Scheme Shareholder the Consideration multiplied by the Scheme Shareholder's Scheme Shares; and

(ii) pending payment of the Consideration to a Scheme Shareholder (including in the circumstances contemplated by clause 4.1(c) of the Scheme Plan), hold an amount equal to the Consideration multiplied by the Scheme Shareholder's Scheme Shares on trust for that Scheme Shareholder.

4.2 If, prior to the Implementation Date, Target gives written notice to Computershare that Consideration payable to a Scheme Shareholder must:

(a) be provided to a third party under clause 4.6(a) of the Scheme Plan; or

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(b) not be provided to a Scheme Shareholder as contemplated by clause 4.6(b) of the Scheme Plan,

then, as applicable, Computershare will pay or hold the Consideration in accordance with clause 4.4 of the Scheme Plan.

5. **Post-implementation**

5.1 As required by clause 4.3]of the Scheme Plan, if, following the payment of the Consideration under paragraph 4.1(b)(i), there is any surplus in the Trust Account (including as a result of any accrued interest), Computershare must pay that surplus, less:

(a) any amount retained in the Account under paragraphs 4.1(b)(ii) or 4.2(b); and

(b) any bank fees or other third party costs or withholdings or deductions required by law,

to an account nominated in writing by Bidder.

5.2 Computershare must hold any amount retained in the Account under paragraphs 4.1(b)(ii) or 4.2(b) on trust for each relevant Scheme Shareholder for a period of 24 months (**Trust Period**). During the Trust Period, Computershare must comply with clause 4.4 of the Scheme Plan in respect of amounts of the Consideration that are held in the Account.

5.3 At the end of the Trust Period, Computershare must pay any remaining money in the Account to Target.

6. **Condition failure**

6.1 If the Scheme has not been implemented for any reason by 5.00pm (NZT) on the Implementation Date or the Scheme becomes void under clause 7.5 of the Scheme Plan, Computershare must, on written request by Bidder, pay all of the funds in the Account (less any bank fees or other third party costs or withholdings or deductions required by law) to an account nominated in writing by Bidder.

Yours sincerely

***[Signature of Computershare]***

**Computershare Investor Services Limited**

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This letter is acknowledged, accepted and agreed by:

**SHIFT4 PAYMENTS, LLC** by:

_____
Authorised signatory

_____
Name

**SMARTPAY HOLDINGS LIMITED** by:

_____
Authorised signatory

_____
Name

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**Schedule**

Scheme Plan

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