

ASX ANNOUNCEMENT

McMillan Shakespeare and Eclipx merger

Creates a leading salary packaging and fleet management company

- MMS and Eclipx have agreed to merge pursuant to a Scheme Implementation Agreement whereby MMS will acquire all shares in Eclipx
- Eclipx shareholders are to receive 0.1414 MMS shares plus 46 cents cash for each Eclipx share held, implying a total value of \$2.85¹ per Eclipx share
- The industrial logic of combining these complementary businesses is compelling
- Anticipated ultimately to deliver EBITDA run-rate synergies of \$50 million per annum following integration, before implementation and transaction costs
- The merger is expected to be EPS accretive pre synergies
- Delivers an improved offering for all customers and material benefits for employees
- The shareholders in each company continue to retain upside of their respective businesses, in addition to sharing in the growth opportunities and synergies of the combined group through their holdings in the merged group under MMS
- MMS Board expanded to include three Eclipx directors. MMS CEO and CFO, Mike Salisbury and Mark Blackburn, to continue as CEO and CFO of the combined group
- The merger to be put to Eclipx shareholders in early 2019 is unanimously recommended by the Board of Eclipx

Merger overview

McMillan Shakespeare Limited ("**MMS**", ASX: MMS) and Eclipx Group Limited ("**Eclipx**", ASX: ECX) are pleased to announce that the companies propose to merge in a Scheme Implementation Agreement, establishing a leading salary packaging and fleet management company ("**Combined Group**"). The proposed transaction (the "**Merger**"), which is subject to conditions, will be implemented by MMS acquiring all shares in Eclipx under an Eclipx Scheme of Arrangement ("**Eclipx Scheme**").

Upon completion of the Merger, the Combined Group's Board will include three current Eclipx Directors. The Chief Executive Officer and Managing Director of the Combined Group will be MMS' Mike Salisbury and MMS' Mark Blackburn will be Chief Financial Officer.

¹ Based on MMS' last closing price of \$16.90 on Wednesday, 7 November 2018

The Merger is unanimously recommended by the Board of Eclipx, in the absence of a superior proposal and subject to an independent expert concluding that the Merger is in the best interests of the Eclipx shareholders. Subject to those same qualifications, the Directors of Eclipx intend to vote all Eclipx shares held or controlled by them in favour of the Merger.

Merger terms

Under the terms of the Merger, Eclipx shareholders will receive 0.1414 MMS shares plus 46 cents cash for each Eclipx share held ("**Consideration**").

The Consideration implies a total value of \$2.85 per Eclipx share based on MMS' last closing price of \$16.90 on Wednesday, 7 November 2018. The Consideration represents a 33.2% premium to Eclipx's closing price of \$2.14 on Friday, 17 August 2018, the last trading day prior to SG Fleet's unsolicited, non-binding and indicative proposal to acquire all shares in Eclipx for \$2.52.

Upon completion of the Merger, existing MMS shareholders will own circa 64% of the Combined Group and Eclipx shareholders will hold the remaining circa 36%.

The Combined Group is anticipated ultimately to realise an estimated \$50 million in EBITDA run-rate synergies per annum, to be fully realised in the third year following completion of the Merger. Given the complementary nature of each business, it is expected that there will be scope to extract additional benefits over time.

Benefits to key stakeholders of the Combined Group

The Merger is anticipated to deliver a number of benefits to stakeholders of the Combined Group:

- Establishes a leading provider of salary packaging, novated leasing, fleet leasing and fleet management services within Australia, combining the best-in-breed of both organisations
- Creates an enhanced service and product offering to the merged client base and provides a strong foundation to pursue growth opportunities in business adjacencies and other jurisdictions, in part, arising from access to the enlarged customer base
- The Merger is anticipated to generate shareholder value and be earnings accretive in the first full year following completion, before realisation of EBITDA run-rate synergies of an estimated \$50 million per annum following integration
- The Combined Group will benefit from a robust balance sheet, underpinned by Eclipx's sophisticated funding solutions, allowing for improved optionality in capital allocation
- The profile of the Combined Group will possess a significantly larger revenue base as well as improved customer and geographic diversification
- Increased financial capability to invest in innovation and technology solutions for customers

The Directors of MMS and Eclipx consider the Merger not only represents a unique opportunity to create significant value for shareholders but also gives the Combined Group additional capabilities to provide a more compelling offer to customers and material benefits and opportunities to employees, partners and key stakeholders.

MMS Chairman Tim Poole commented "We are delighted to announce the Merger of two industry leading businesses to create a unique, diversified and best-in-class platform. We are confident in the strategic and financial logic of this combination and look forward to partnering with the highly skilled Eclipx team."

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Eclipx Chairman Kerry Roxburgh stated “There is strong industrial logic for the proposed Merger on the terms agreed between Eclipx and MMS, which provides a strong foundation for future success. The Merger will ensure our shareholders retain exposure to the quality of the Eclipx portfolio, whilst also participating in the synergistic benefits that arise from a combination with MMS. We strongly believe that this Merger represents a unique and compelling value creation proposition for both companies. As a Combined Group, we will deepen management capabilities, reinforce the balance sheet and, in turn, deliver stronger returns for shareholders.”

Scheme Implementation Agreement

The attached Scheme Implementation Agreement contains customary terms and conditions on which MMS and Eclipx will implement the Merger, including:

- Approval by Eclipx shareholders of the Eclipx Scheme;
- Receipt of certain regulatory approvals;
- No material adverse change and prescribed occurrences;
- An independent expert concluding that the Eclipx Scheme is in the best interests of Eclipx shareholders; and
- Court approval for the Eclipx Scheme

Customary deal protections have also been agreed by MMS and Eclipx.

Timetable and next steps

Under the proposed timetable, a Scheme Booklet is expected to be circulated to all Eclipx shareholders in December 2018 / early January 2019 and an Eclipx Scheme Meeting to consider the Eclipx Scheme is likely to be scheduled for February 2019. Subject to conditions defined within the Eclipx Scheme being satisfied, MMS and Eclipx anticipate the Merger to complete in the first quarter of 2019.

Advisers

Deutsche Bank AG, Sydney Branch is acting as financial adviser to MMS, King & Wood Mallesons is acting as legal adviser.

UBS AG, Australia Branch is acting as financial adviser to Eclipx, Herbert Smith Freehills is acting as legal adviser.

About MMS: Operating in both Australasia and the UK, MMS’ business divisions collectively provide expertise in novated leasing, salary packaging, associated Fringe Benefits Tax administration and management, operating leases and asset management for ‘tool of trade’ vehicles and other business assets, retail finance, insurance and warranty.

About Eclipx: Eclipx is a leading provider of fleet, equipment leasing and management, vehicle rentals and online auction services to corporate, SME and consumers in Australia and corporate and SME customers in New Zealand. As at 30 September 2018, Eclipx managed or financed 117,060 vehicles with \$2.4 billion in assets under management. It operates in Australia and New Zealand under nine primary brand names, “FleetPartners”, “FleetPlus”, “CarLoans.com.au”, “Georgie”, “areyouselling.com.au”, “FleetChoice”, “AutoSelect”, “Right2Drive” and “GraysOnline”.

Webcast

MMS will hold a webcast on Thursday 8 November 2018 at 12.00pm.

The link to hear the live presentation will be placed on the McMillan Shakespeare website www.mmsg.com.au

Alternatively, investors may go direct <http://openbriefing.com/OB/3125.aspx>

For more information please contact:

Mark Blackburn

CFO and Company Secretary
McMillan Shakespeare Limited

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Scheme Implementation Agreement

Dated 8 November 2018

McMillan Shakespeare Limited (**Miller**)
Eclix Group Limited (**Elliot**)

King & Wood Mallesons

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Scheme Implementation Agreement

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Scheme Implementation Agreement

Details

Parties	McMillan Shakespeare Limited and Eclipx Group Limited	
Miller	Name	McMillan Shakespeare Limited
	ACN	107 233 983
	Formed in	Australia
	Address	Level 21, 360 Elizabeth Street, Melbourne, VIC 3000
	Email	mark.blackburn@mmsg.com.au (with a copy delivered by email to diana.nicholson@au.kwm.com)
	Attention	Chief Financial Officer and Company Secretary
Elliot	Name	Eclipx Group Limited
	ACN	131 557 901
	Formed in	Australia
	Address	Level 32, 1 O'Connell Street, Sydney, NSW 2000
	Email	matt.sinnamon@eclipx.com (with a copy delivered by email to philippa.stone@hsf.com)
	Attention	Group General Counsel and Company Secretary
Governing law	Victoria, Australia	
Recitals	A	The parties have agreed that Miller will acquire all of the ordinary shares in Elliot by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Elliot and the Scheme Participants.
	B	At the request of Miller, Elliot intends to propose the Scheme and issue the Scheme Booklet to Elliot Shareholders.
	C	Elliot and Miller have agreed to undertake certain steps to enable the Scheme to be proposed, approved and implemented by means of the Scheme, subject to and on the terms and conditions of this document.

Scheme Implementation Agreement

General terms

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

ACCC means the Australian Competition and Consumer Commission.

Agreed Principles means the agreed principles in relation to the treatment of the Elliot Incentives set out in the Herbert Smith Freehills document titled “Project Playwright Equity incentives” (dated 8 November 2018), the EY “Project Playwright: Treatment of Equity Awards” spreadsheets to which it refers (dated 8 November 2018), and the EY “Eclix Group Limited Illustrative value of options – Illustrative valuation date of 18 February 2018” paper dated 25 October 2018 in each case contained in the Elliot Disclosure Materials as documents 11.20, 11.21 and 11.14 respectively.

ASIC means the Australian Securities & Investments Commission.

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

ASX means ASX Limited or the market operated by it, as the context requires.

ATO means the Australian Taxation Office.

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

Break Fee means \$7,255,753.

Business Day means a business day as defined in the Listing Rules.

Competing Transaction means any proposal, agreement, arrangement or transaction which, if entered into or completed, would mean that a person (other than Miller or its Related Bodies Corporate) whether alone or with any Associate would:

- (a) directly or indirectly acquire an interest or Relevant Interest in or have a right to acquire a legal, beneficial or economic interest in, or control of, 20% or more of Elliot’s Shares (or the ordinary shares of its material Related Bodies Corporate) (other than as custodian, nominee or bare trustee);
- (b) directly or indirectly acquire or become the holder of, or otherwise acquire or have a right to acquire, a legal, beneficial or economic interest in, or control of, all of or substantially all of the business or assets of Elliot (or any of its material Related Bodies Corporate);
- (c) acquire Control of Elliot (or any of its Related Bodies Corporate) (either alone or with any Associate); or
- (d) otherwise acquire or merge with Elliot,

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whether by way of a takeover bid, scheme, shareholder-approved acquisition, capital reduction, buy-back, sale or purchase of shares or other securities or assets, assignment of assets or liabilities, incorporated or unincorporated joint venture, dual listed company, other synthetic merger, deed of company arrangement, any debt for equity arrangement, or other transaction or arrangement. A “**Competing Transaction**” also includes a proposal, agreement, arrangement or transaction by which Elliot or a member of the Elliot Group would issue, on a fully diluted basis, 20% or more of its capital as consideration for the securities or assets of another person.

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

Confidential Information means Miller Confidential Information or Elliot Confidential Information.

Confidentiality Deed means the Confidentiality Deed between the parties dated 26 September 2018.

Control has the meaning it has in section 50AA of the Corporations Act.

Controller has the meaning it has in the Corporations Act.

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

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

Costs includes costs, charges and expenses, including those incurred in connection with advisers and any legal costs on a full indemnity basis.

Court means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed by the parties.

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

Details means the section of this document headed “Details”.

Disclosed, in respect of a party, means fairly disclosed:

- (a) by that party or its Representatives in writing to the other party or its Representatives prior to the date of this document or contained in the Elliot Disclosure Materials or Miller Disclosure Materials (as applicable), but excludes for the purpose of clause 8 disclosure contained in the letter dated 7 November 2018 to the Miller Directors in relation to LogbookMe and a securitisation program establishment; or
- (b) in any announcement made by the party on ASX after 1 January 2015 and prior to the date of this document.

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

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

Elliot Board means the board of directors of Elliot.

Elliot Confidential Information means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged

between the parties before, on or after the date of this document relating to the business, technology or other affairs of Elliot.

Elliot Constitution means the constitution of Elliot.

Elliot Disclosure Materials means the:

- (a) documents and information contained in the data room made available by Elliot to Miller and its Representatives, the index of which has been initialled by, or on behalf of, each of Elliot and Miller for identification; and
- (b) written responses from Elliot and its Representatives to requests for further information made by Miller and its Representatives a copy of which has been initialled by, or on behalf of, each of Miller and Elliot for identification.

Elliot Group means Elliot and its Subsidiaries.

Elliot Incentives means the Elliot Options and the Elliot Performance Rights.

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

Elliot Information means all information contained in the Scheme Booklet (including information relating to the Merged Group to the extent derived from information provided by Elliot or its Representatives) other than the Miller Information, the Independent Expert's Report and any other report or letter issued to Elliot by a third party.

Elliot Material Adverse Effect means a Specified Event which has, has had, or is reasonably likely to have, either individually or when aggregated with any Specified Events of a similar kind or category:

- (a) a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Elliot Group taken as a whole; or
- (b) without limiting paragraph (a):
 - (i) the effect that the value of the net tangible assets of the Elliot Group (taken as a whole) is reduced by at least \$13 million, measured against the net tangible assets stated in the Elliot Group's audited FY18 financial statements;
 - (ii) the effect that the value of the annual NPATA (being net profit after tax adjusted to exclude the after tax effect of the amortisation of intangible assets and material one-off adjustments or costs that do not reflect the ongoing operations of the business) of the Elliot Group is reduced by at least 10%, measured against the NPATA stated in the Elliot Group's audited FY18 financial statements,

but does not include:

- (c) any matter Disclosed;
- (d) any matter, event or circumstance arising from:
 - (i) changes in general economic or political conditions, the securities market in general or law;

- (ii) any change in taxation, interest rates or general economic conditions which impact on Elliot and its competitors in a similar manner; or
- (iii) any change in generally accepted accounting principles or the interpretation of them,

provided that matter, event or circumstance does not have a disproportionate effect on the Elliot Group as compared to other participants in the industries in which the Elliot Group operates;

- (e) any matter, event or circumstance expressly required or permitted by this document, the Scheme or the transactions contemplated by them; or
- (f) any change occurring with the written consent of Miller.

Elliot Options means the options to acquire unissued Elliot Shares referred to in Schedule 2 (which include options issued to both executives of Elliot Group entities (**Executive Options**) and directors of Elliot (**NED Options**)).

Elliot Performance Rights means the rights to acquire unissued Elliot Shares referred to in Schedule 2 (which include performance rights issued both to executives of Elliot Group entities and to vendors of businesses to the Elliot Group).

Elliot Permitted Dividend means a dividend of no more than 8 cents per Elliot Share.

Elliot Prescribed Occurrence means, except to the extent contemplated by this document (including as expressly permitted or required by provisions relating to the treatment of Elliot Incentives) or the Scheme or Disclosed, any of the following events:

- (a) **(conversion)** Elliot converts all or any of its shares into a larger or smaller number of shares;
- (b) **(reduction of share capital)** Elliot or another member of the Elliot Group resolves to reduce its share capital in any way or resolves to reclassify, combine, split or redeem or repurchase directly or indirectly any of its shares in any way;
- (c) **(buy-back)** Elliot or another member of the Elliot Group:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(distribution)** Elliot makes or declares, or announces an intention to make or declare, any distribution or other share of its profits or assets or returning or agreeing to return any capital (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie), other than the Elliot Permitted Dividend;
- (e) **(issuing or granting shares or options)** any member of the Elliot Group, except as contemplated in Schedule 2:
 - (i) issues shares;
 - (ii) grants an option over its shares;

- (iii) grants any performance right or phantom performance right;
- (iv) issues any convertible notes or debt securities; or
- (v) agrees to make such an issue or grant such an option, security or right,

(including under any dividend reinvestment plan or equivalent plan operated by a Elliot Group Member);
- (g) **(constitution)** Elliot adopts a new constitution or modifies or repeals its constitution or a provision of it;
- (h) **(disposals)** any member of the Elliot Group disposes, or agrees to dispose of the whole or a substantial part of its business or property;
- (i) **(acquisitions, disposals or tenders)** any member of the Elliot Group:
 - (i) acquires, leases or disposes of;
 - (ii) agrees to acquire, lease or dispose of; or
 - (iii) offers, proposes, announces a bid or tenders for,

any business, assets, entity or undertaking the value of which exceeds \$10 million;
- (j) **(Encumbrances)** any member of the Elliot Group creates, or agrees to create, any Encumbrance over or declares itself the trustee of the whole or a substantial part of its business or property;
- (k) **(employment arrangements)** other than in the ordinary course of business and consistent with existing contractual arrangements any member of the Elliot Group:
 - (i) increases the remuneration of, or otherwise varies the employment arrangements with, any of its directors or employees, including entering into any enterprise bargaining agreement or any other form of collective agreement concerning the terms of the employment of employees of the Elliot Group;
 - (ii) accelerates the rights of any of its directors or employees to compensation or benefits of any kind (including under any Elliot executive or employee share plans); or
 - (iii) pays any of its directors or employees a termination or retention payment (otherwise than in accordance with an existing contract in place at the date of this document);
- (l) **(financial event)** the occurrence of any review event or event of default after the date of this document under any third party loan or other financing arrangement to Elliot or a member of the Elliot Group and the taking of any step by any lender to enforce the terms of that loan and which results, or is reasonably likely to result, in an Elliot Material Adverse Effect;
- (m) **(related party transaction)** a member of the Elliot Group entering into, or resolving to enter into, any transaction with any related party of the Elliot Group, as defined in section 228 of the Corporations Act, other than a related party which is a member of the Elliot Group; or

- (n) **(Insolvency)** Elliot or any of its Related Bodies Corporate becomes Insolvent,

provided that an Elliot Prescribed Occurrence will not occur where Elliot has Disclosed the relevant event or has first consulted with Miller in relation to the event and Miller has approved the proposed event in writing (other than in relation to paragraph (n) (Insolvency)).

Elliot Representations and Warranties means the representations and warranties of Elliot set out in clauses 10.1 and 13.1.

Elliot Share means an ordinary fully paid share in the capital of Elliot.

Elliot Shareholder means each person registered in the Register as a holder of Elliot Shares.

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

End Date means 30 April 2019 or such other date as is agreed by Miller and Elliot.

Exclusivity Period means the period from and including the date of this document to the earlier of:

- (a) the termination of this document in accordance with its terms; and
- (b) the End Date.

First Court Date means the first day on which an application made to the Court, in accordance with clause 5.2(i), for orders under section 411(1) of the Corporations Act convening the Scheme Meeting is heard.

Implementation Date means the date that is five Business Days after the Record Date or such other date as is agreed by Miller and Elliot.

Independent Expert means the independent expert and appointed by Elliot under clause 5.2(c).

Independent Expert's Report means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating whether or not in the Independent Expert's opinion the Scheme is fair and reasonable to, and in the best interests of, Scheme Participants.

Ineligible Foreign Shareholder has the meaning given in the Scheme.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document); or

- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in paragraphs (a), (b) or (c); or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Listing Rules means the Listing Rules of ASX modified to the extent of any express written waiver by ASX.

Loan Shares means the “Pre-IPO loan shares” and “IPO loan shares” referred to in the Agreed Principles, being outstanding Elliot Shares funded by loans.

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

Merged Group means the combination of the Miller Group and the Elliot Group, as comprised by Miller and its Subsidiaries following implementation of the Scheme.

Miller Board means the board of directors of Miller.

Miller Confidential Information means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, on, or after the date of this document relating to the business, technology or other affairs of Miller.

Miller Disclosure Materials means the:

- (a) documents and information contained in the data room made available by Miller to Elliot and its Representatives, the index of which has been initialled by, or on behalf of, each of Elliot and Miller for identification; and
- (b) written responses from Miller and its Representatives to requests for further information made by Elliot and its Representatives a copy of which has been initialled by, or on behalf of, each of Miller and Elliot for identification.

Miller Group means Miller and its Subsidiaries.

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

Miller Information means the information regarding Miller, Miller’s intentions and the Merged Group as is required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or ASIC Regulatory Guide 60, but excluding Elliot Information.

Miller Material Adverse Effect means a Specified Event which has, has had, or is reasonably likely to have, either individually or when aggregated with any Specified Events of a similar kind or category:

- (a) a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Miller Group (taken as a whole); or
- (b) without limiting paragraph (a):
 - (i) the effect that the value of the net tangible assets of the Miller Group (taken as a whole) is reduced by at least \$13 million measured against the net tangible assets stated in the Miller Group's audited FY18 financial statements; or
 - (ii) the effect that the value of the annual UNPATA (being net profit after tax but before the after tax impact of acquisition related items (including impairment charge for intangible assets, acquisition expenses, amortisation of acquired intangible assets and contingent consideration items) and disposal of business) of the Miller Group is reduced by at least 10%, measured against the UNPATA stated in the Miller Group's audited FY18 financial statements,

but does not include:

- (c) any matter Disclosed;
- (d) any matter, event or circumstance arising from:
 - (i) changes in general economic or political conditions, the securities market in general or law;
 - (ii) any change in taxation, interest rates or general economic conditions which impact on Miller and its competitors in a similar manner; or
 - (iii) any change in generally accepted accounting principles or the interpretation of them,

provided that matter, event or circumstance does not have a disproportionate effect on the Miller Group as compared to other participants in the industries in which the Miller Group operates;

- (e) any matter, event or circumstance required or permitted by this document, the Scheme or the transactions contemplated by them; or
- (f) any change occurring with the written consent of Elliot.

Miller Permitted Dividend means a dividend of up to 35 cents per Miller Share.

Miller Prescribed Occurrence means, except to the extent contemplated by this document or the Scheme or Disclosed, any of the following events:

- (a) **(conversion)** Miller converts all or any of its shares into a larger or smaller number of shares;
- (b) **(reduction of share capital)** Miller or another member of the Miller Group resolves to reduce its share capital in any way or resolves to reclassify, combine, split or redeem or repurchase directly or indirectly any of its shares in any way;

- (c) **(buy-back)** Miller or another member of the Miller Group:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(distribution)** Miller makes or declares, or announces an intention to make or declare, any distribution or other share of its profits or assets or returning or agreeing to return any capital (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie), other than the Miller Permitted Dividend;
- (e) **(issuing or granting shares or options)** any member of the Miller Group:
 - (i) issues shares;
 - (ii) grants an option over its shares;
 - (iii) grants any performance right or phantom performance right;
 - (iv) issues any convertible notes or debt securities; or
 - (v) agrees to make such an issue or grant such an option or right;
- (f) **(constitution)** Miller adopts a new constitution or modifies or repeals its constitution or a provision of it;
- (g) **(disposals)** any member of the Miller Group disposes, or agrees to dispose of the whole or a substantial part of its business or property;
- (h) **(acquisitions, disposals or tenders)** any member of the Miller Group:
 - (i) acquires, leases or disposes of;
 - (ii) agrees to acquire, lease or dispose of; or
 - (iii) offers, proposes, announces a bid or tenders for,

any business, assets, entity or undertaking the value of which exceeds \$10 million (individually or in aggregate);
- (i) **(Encumbrances)** any member of the Miller Group creates, or agrees to create, any Encumbrance over or declares itself the trustee of the whole or a substantial part of its business or property;
- (j) **(employment arrangements)** other than in the ordinary course of business and consistent with existing contractual arrangements any member of the Miller Group:
 - (i) increases the remuneration of, or otherwise varies the employment arrangements with, any of its directors or employees, including entering into any enterprise bargaining agreement or any other form of collective agreement concerning the terms of the employment of employees of the Miller Group;
 - (ii) accelerates the rights of any of its directors or employees to compensation or benefits of any kind (including under any Miller executive or employee share plans); or

- (iii) pays any of its directors or employees a termination or retention payment (otherwise than in accordance with an existing contract in place at the date of this document) where such payments, in aggregate, exceed \$3,000,000;
- (k) **(financial event)** the occurrence of any review event or event of default after the date of this document under any third party loan or other financing arrangement to Miller or a member of the Miller Group and the taking of any step by any lender to enforce the terms of that loan and which results, or is reasonably likely to result, in a Miller Material Adverse Effect;
- (l) **(related party transaction)** a member of the Miller Group entering into, or resolving to enter into, any transaction with any related party of the Miller Group, as defined in section 228 of the Corporations Act, other than a related party which is a member of the Elliot Group; or
- (m) **(Insolvency)** Miller or any of its Related Bodies Corporate becomes Insolvent,

provided that a Miller Prescribed Occurrence will not occur where Miller has Disclosed the relevant event or first consulted with Elliot in relation to the event and Elliot has approved the proposed event in writing (other than in relation to paragraph (m) (Insolvency)).

Miller Representations and Warranties means the representations and warranties of Miller set out in clause 13.2.

Miller Share means an ordinary fully paid share in the capital of Miller.

New Miller Share a fully paid ordinary share in Miller to be issued to Scheme Participants.

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

Record Date means 5.00pm on the fifth Business Day after the Effective Date or such other date as Elliot and Miller agree.

Register means the share register of Elliot and **Registry** has a corresponding meaning.

Regulator's Draft means an advanced draft of the Scheme Booklet in a form acceptable to both parties which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

Regulatory Approval means any approval of a Regulatory Authority to the Scheme or any aspect of it which Miller and Elliot, both acting reasonably, determine is necessary or desirable to implement the Scheme.

Regulatory Authority includes:

- (a) ASX, ACCC, ASIC and the Takeovers Panel;
- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute.

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

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

Representative means, in relation to a person or party:

- (a) a director, officer or employee of the person or any of the person's Related Bodies Corporate; or
- (b) an adviser to the person or any of the person's Related Bodies Corporate, where an "adviser" means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, tax adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity and who has been engaged by that person in that capacity in relation to the Transaction.

Reverse Break Fee means \$7,255,753.

Scheme means the scheme of arrangement under part 5.1 of the Corporations Act under which all the Elliot Shares will be transferred to Miller substantially in the form of Annexure B together with any amendment or modification made pursuant to section 411(6) of the Corporations Act.

Scheme Booklet means, in respect of the Scheme, the information booklet to be approved by the Court and despatched to Elliot Shareholders which includes the Scheme, an explanatory statement complying with the requirements of the Corporations Act and notices of meeting and proxy forms.

Scheme Consideration means the consideration payable by Miller for the transfer of Elliot Shares held by a Scheme Participant to Miller, as set out in the Scheme.

Scheme Meeting means the meeting to be convened by the Court at which Elliot Shareholders will vote on the Scheme.

Scheme Participants means each person who is an Elliot Shareholder at the Record Date.

Second Court Date means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme.

Specified Event means an event, occurrence or matter (including, to avoid doubt, a change in law or regulation or any proposal to make such a change) that:

- (a) occurs after the date of this document; or
- (b) occurs before the date of this document but is only announced or publicly disclosed after the date of this document.

Subsidiary of an entity means another entity which:

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

A trust may be a subsidiary (and an entity may be a subsidiary of a trust) if it would have been a subsidiary under this definition if that trust were a body corporate. For these purposes, a unit or other beneficial interest in a trust is to be regarded as a share.

Superior Proposal means a bona fide Competing Transaction which the Elliot Board determines, acting in good faith and in order to satisfy what it considers to be its statutory or fiduciary duties to Elliot Shareholders would, if completed substantially in accordance with its terms:

- (a) be more favourable to Elliot Shareholders than the Scheme, having regard to matters including consideration, conditionality, funding certainty and timing;
- (b) be completed within 9 months after the date that the third party (or any of its Representatives) first approached or approaches Elliot (or any of its Associates, Related Bodies Corporates, or any of their respective Representatives) in relation to the Competing Transaction; and
- (c) result in a transaction relating to, or an offer for, all of the issued securities in Elliot, or all of the business or assets of Elliot and its Related Bodies Corporate and Associates.

Timetable means the timetable set out in Schedule 1.

Transaction Implementation Committee means a committee to be made up of:

- (a) the chief executive officer of each of Elliot and Miller;
- (b) a representative from each of the legal and financial advisers of each party; and
- (c) such other persons as the parties may agree from time to time.

Transaction means the acquisition of all of the Elliot Shares by Miller through implementation of the Scheme in accordance with the terms of this document.

1.2 General interpretation

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

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

- (g) a reference to a time of day is a reference to Melbourne time;
- (h) where a thing is to be done on a day which is not a Business Day, it must be done on the next day which is a Business Day;
- (i) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (j) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (k) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (l) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (m) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually; and
- (n) a reference to any thing (including an amount) is a reference to the whole and each part of it.

2 Agreement to propose and implement Scheme

2.1 Elliot to propose Scheme

Elliot agrees to propose the Scheme on and subject to the terms and conditions of this document.

2.2 Nomination of acquirer Subsidiary

At any time prior to the date which is two Business Days before the First Court Date, Miller may nominate any Subsidiary of Miller (“**Miller Nominee**”) to acquire Elliot Shares under the Scheme by providing a written notice which sets out the details of Miller Nominee to Elliot. If Miller decides to nominate Miller Nominee to acquire Elliot Shares:

- (a) the parties must procure that the Elliot Shares transferred under the Scheme are transferred to Miller Nominee rather than Miller; and
- (b) Miller must procure that Miller Nominee complies with all of the relevant obligations of Miller under this document and the Scheme.

2.3 Agreement to implement Scheme

The parties agree to implement the Scheme on the terms and conditions of this document.

3 Conditions Precedent

3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Scheme are not binding, until each of the following Conditions Precedent are satisfied or waived to the extent and in the manner set out in this clause.

Condition Precedent		Party entitled to benefit	Party responsible
(a)	(ASIC and ASX) before 8.00am on the Second Court Date, ASIC and ASX issue or provide any consents or approvals, or have done any other acts, which the parties agree are reasonably necessary or desirable to implement the Scheme, and those consents, approvals or other acts have not been withdrawn, revoked, suspended, cancelled or adversely amended at that time.	Both	Both
(b)	(ACCC) before 8.00am on the Second Court Date, the ACCC has advised Miller in writing that it does not intend to oppose the proposed Scheme (or it does not intend to oppose the proposed Scheme subject to undertakings, and those undertakings being acceptable to Miller and Elliot, both acting reasonably) and that advice has not been withdrawn, revoked, suspended, cancelled or adversely amended at that time.	Both	Both
(c)	(Shareholder approval) Elliot Shareholders approve the Scheme by the requisite majorities in accordance with the Corporations Act.	Cannot be waived	Elliot
(d)	(Court approval) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.	Cannot be waived	Elliot
(e)	<p>(Regulatory intervention) between and including the date of this document and 8.00am on the Second Court Date:</p> <p>(i) there is not in effect any law, statute, ordinance, regulation, rule, preliminary or permanent injunction or other temporary, preliminary or final judgment, ruling, decision, order or degree issued by any court of competent jurisdiction or any Regulatory Authority (and no such court of Regulatory Authority has taken any steps to issue any such order); and</p> <p>(ii) no action or investigation is announced or commenced by any Regulatory Authority (including in connection with or against or involving any member of the Elliot Group or Miller Group),</p> <p>in consequence of or in connection with the Scheme, which:</p> <p>(iii) enjoins, restrains or otherwise imposes a legal restraint or prohibition preventing the Scheme; or</p> <p>(iv) requires the divestiture by Miller or any Miller Group member of any Elliot Shares or any assets of Elliot or Miller or any Related Body Corporate of either of them,</p> <p>unless such matter has been disposed of to the satisfaction of both parties, acting reasonably, or is otherwise no longer effective or</p>	Both	Both

Condition Precedent	Party entitled to benefit	Party responsible
(f) (Independent Expert) the Independent Expert issues a report which concludes that the Scheme is in the best interests of Scheme Participants before the date on which the Scheme Booklet is lodged with ASIC.	Elliot	Elliot
(g) (No Elliot Prescribed Occurrence) no Elliot Prescribed Occurrence occurs between the date of this document and 8.00am on the Second Court Date.	Miller	Elliot
(h) (No Miller Prescribed Occurrence) no Miller Prescribed Occurrence occurs between the date of this document and 8.00am on the Second Court Date.	Elliot	Miller
(i) (No Elliot Material Adverse Effect) no Elliot Material Adverse Effect occurs between the date of this document and 8.00am on the Second Court Date.	Miller	Elliot
(j) (No Miller Material Adverse Effect) no Miller Material Adverse Effect occurs between the date of this document and 8.00am on the Second Court Date.	Elliot	Miller
(k) (Elliot Incentives) before 8.00am on the Second Court Date, all of the Elliot Incentives have been converted into Elliot Shares in accordance with the Agreed Principles, and are subject to the Scheme, and (except to the extent, if any, otherwise agreed by Elliot and Miller) the terms of the loans attributable to Loan Shares have been amended in accordance with the Agreed Principles.	Miller	Elliot
(l) (Elliot consents) no person exercises or purports to exercise, or states an intention to exercise, any rights under any provision of any agreement or other instrument to which any Elliot Group Member, or any special purpose vehicle established by an Elliot Group Member, is a party, or by or to which any Elliot Group Member or any Subsidiary of Elliot or special purpose vehicle established by an Elliot Group Member or any of their assets may be bound or be subject, which results, or is reasonably likely to result, to an extent which is material in the context of the Elliot Group taken as a whole, in: <ul style="list-style-type: none"> <li data-bbox="571 1765 1078 1928">(i) any monies borrowed by Elliot or any Subsidiary of Elliot being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement or other instrument; <li data-bbox="571 1944 1078 2020">(ii) any such agreement or other instrument being terminated or modified or any action being taken or arising thereunder; 	Miller	Elliot

Condition Precedent	Party entitled to benefit	Party responsible
<p>(iii) the interest of Elliot or any subsidiary of Elliot in any firm, joint venture, trust, corporation or other entity (or any arrangements relating to such interest) being terminated or modified;</p> <p>(iv) the business of Elliot or any Subsidiary of Elliot with any other person being adversely affected; or</p> <p>(v) any Elliot Group Member or any special purpose vehicle established by an Elliot Group Member not being able to obtain or utilise financial accommodation under the relevant agreement or other instrument,</p> <p>as a result of the acquisition of Elliot Shares by Miller, and each financier and noteholder who has such a right that would have such a result (or who would, as a result of the acquisition of Elliot Shares by Miller, have such a right that would have such a result) confirms that it will not exercise that right, between the date of this document and 8.00am on the Second Court Date.</p>		
<p>(m) (Miller consents) no person exercises or purports to exercise, or states an intention to exercise, any rights under any provision of any agreement or other instrument to which any Miller Group Member, or any special purpose vehicle established by an Miller Group Member, is a party, or by or to which any Miller Group Member or any Subsidiary of Miller or special purpose vehicle established by an Miller Group Member or any of their assets may be bound or be subject, which results, or is reasonably likely to result, to an extent which is material in the context of the Miller Group taken as a whole, in:</p> <p>(i) any monies borrowed by Miller or any Subsidiary of Miller being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement or other instrument;</p> <p>(ii) any agreement or other instrument being terminated or modified or any action being taken or arising thereunder;</p> <p>(iii) the interest of Miller or any Subsidiary of Miller in any firm, joint venture, trust, corporation or other entity (or any arrangements relating to such interest) being terminated or modified;</p> <p>(iv) the business of Miller or any Subsidiary of Miller with any other person being adversely affected; or</p> <p>(v) any Miller Group Member or any special purpose vehicle established by an Miller Group Member not being able to obtain or utilise financial accommodation under the relevant agreement or other instrument,</p>	Elliot	Miller

Condition Precedent	Party entitled to benefit	Party responsible
<p>as a result of the acquisition of Elliot Shares by Miller, and each financier and noteholder who has such a right that would have such a result (or who would, as a result of the acquisition of Elliot Shares by Miller, have such a right that would have such a result) confirms that it will not exercise that right, between the date of this document and 8.00am on the Second Court Date.</p>		

3.2 Reasonable endeavours

Each of Elliot and Miller agree to use reasonable endeavours to procure that:

- (a) each of the Conditions Precedent for which it is a party responsible (as noted in clause 3.1) (**Responsible Party**):
 - (i) is satisfied as soon as practicable after the date of this document; and
 - (ii) continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
- (b) there is no occurrence that would prevent the Condition Precedent for which it is the Responsible Party being satisfied.

3.3 Regulatory matters

Without limiting clause 3.2, each party:

- (a) (**applying for Regulatory Approvals**) to the extent that it is a Responsible Party for a Regulatory Approval, must promptly apply for (and where there is more than one Responsible Party for a Condition, must cooperate with the other Responsible Party in good faith with the other Responsible Party to apply for) all relevant Regulatory Approvals and provide each other party with a copy of those applications (provided that any commercially sensitive information may be redacted from the copy provided);
- (b) (**Regulatory Approvals process**) regardless of whether it is the Responsible Party, must take all steps it is responsible for (or assumes responsibility for) as part of the Regulatory Approval process, including responding to requests for information at the earliest practicable time;
- (c) (**assistance**) regardless of whether it is the Responsible Party, provide the other party or the relevant Regulatory Authority with all assistance and information that it reasonably requests in connection with an application for a Regulatory Approval to be lodged by that other party (including in the case of Elliot, by fully supporting Miller's ACCC application process);
- (d) (**consultation**) must consult with the other party in advance in relation to all material communications (whether written or oral, and whether direct or via a Representative) with any Regulatory Authority relating to any Regulatory Approval and:
 - (i) provide the other party with drafts of any material written communications to be sent to a Regulatory Authority; and

- (ii) provide copies of any material written communications sent to or received from a Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so; and

provided that:

- (e) neither party is required to disclose any confidential or commercially sensitive information to the other party or information which would be damaging to the commercial or legal interests of the discloser or any of its Related Bodies Corporate, or information disclosure of which is not permitted by law (in each case which information may be redacted); and
- (f) the party applying for a Regulatory Approval is not prevented from taking any step (including communicating with a Regulatory Authority) in respect of a Regulatory Approval if the other party has not promptly responded under this clause 3.3.

3.4 Waiver of Conditions Precedent

- (f) A Condition Precedent may only be waived in writing by the party or parties entitled to the benefit of that Condition Precedent as noted in clause 3.1 and will be effective only to the extent specifically set out in that waiver.
- (a) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.4 may do so in its absolute discretion.
- (b) If either Elliot or Miller waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause 3.4, then:
 - (i) subject to clause 3.4(b)(ii), that waiver precludes that party from suing the other for any breach of this document arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; but
 - (ii) if the waiver of the Condition Precedent is itself conditional and the other party:
 - (A) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with clause 3.4(b)(i); or
 - (B) does not accept the condition, the Condition Precedent has not been waived.
- (c) A waiver of a breach or non-fulfilment in respect of a Condition Precedent does not constitute:
 - (i) a waiver of a breach or non-fulfilment of any other Condition Precedent arising from the same event; or
 - (ii) a waiver of a breach or non-fulfilment of that Condition Precedent resulting from any other event.

3.5 Notices in relation to Conditions Precedent

Each party must:

- (a) **(notice of satisfaction)** promptly notify the other of satisfaction of a Condition Precedent and must keep the other informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;
- (b) **(notice of failure)** immediately give written notice to the other of a breach or non-fulfilment of a Condition Precedent, or of any event which will prevent a Condition Precedent being satisfied; and
- (c) **(notice of waiver)** upon receipt of a notice given under clause 3.5(b), give written notice to the other party as soon as possible (and in any event before 5.00pm on the day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question.

3.6 Consultation on failure of Condition Precedent

If:

- (a) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this document by the time or date specified in this document for the satisfaction of the Condition Precedent; or
- (b) there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this document for the satisfaction of the Condition Precedent (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this document),

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

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

3.7 Failure to agree

- (a) If the parties are unable to reach agreement under clause 3.6 within five Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date):
 - (i) if a Condition Precedent may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this document (and that termination will be in accordance with clause 14.1(e)(i)); or
 - (ii) subject to clause 3.7(a)(i), either party may terminate this document (and that termination will be in accordance with clause 14.1(e)(ii)),

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

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

4 Outline of Scheme

4.1 Scheme

Elliot must propose a scheme of arrangement under which:

- (a) all of the Elliot Shares held by Scheme Participants at the Record Date will be transferred to Miller; and
- (b) each Scheme Participant will be entitled to receive the Scheme Consideration.

4.2 No amendment to the Scheme without consent

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

4.3 Scheme Consideration

- (a) The Scheme Consideration to be received by each Scheme Participant is as described in clause 6 of the Scheme.
- (b) Subject to and in accordance with this document and the Scheme, each Scheme Participant is entitled to receive the Scheme Consideration in respect of each Elliot Share held by that Scheme Participant.

4.4 Provision of Scheme Consideration

Subject to this document and the Scheme, Miller undertakes and warrants to Elliot (in its own right and separately as trustee or nominee of each Scheme Participant) that, in consideration of the transfer to Miller of each Elliot Share held by a Scheme Participant, Miller will, on the Implementation Date:

- (a) accept that transfer; and
- (b) provide to each Scheme Participant the Scheme Consideration for each Elliot Share in accordance with the terms of this document, the Scheme and the Deed Poll.

4.5 Provision of Share information

- (a) In order to facilitate the provision of the Scheme Consideration, Elliot must provide, or procure the provision of, to Miller or a nominee of Miller a complete copy of the Register as at the Record Date (which must include the name, registered address and registered holding of each Elliot Shareholder as at the Record Date), within one Business Day after the Record Date.
- (b) The details and information to be provided under clause 4.5(a) must be provided in such form as Miller or its nominee may reasonably require.

4.6 Ineligible Foreign Shareholders

Miller is not required to issue, and will not issue, any New Miller Share to any Ineligible Foreign Shareholder under the Scheme as part of the Scheme Consideration, and instead must ensure that any New Miller Share to which an Ineligible Foreign Shareholder would otherwise have been entitled, is dealt with in accordance with clause 6.3 of the Scheme.

4.7 ASX waiver of Listing Rule 6.23 (and if applicable Listing Rule 10.11)

- (a) As soon as reasonably practicable after the date of this deed, Elliot must use its reasonable endeavours to procure, to the extent necessary in

connection with arrangements relating to the Elliot Incentives referred to in clause 3.1(k), that ASX grants a waiver from rule 6.23 (and if applicable rule 10.11) of the Listing Rules in respect of the Elliot Incentives.

- (b) If the waiver referred to in clause 4.7(a):
- (1) is obtained on or before the date the Regulator's Draft is provided to ASIC, but is subject to one or more conditions that are not reasonably satisfactory to Elliot or Miller; or
 - (2) is not obtained on or before the date the Regulator's Draft is provided to ASIC,

Elliot agrees to seek any approvals that are required from the Elliot Shareholders under rule 6.23 (or if applicable 10.11) of the Listing Rules in relation to the Elliot Incentives on the same date on which the meeting of Elliot Shareholders is held to consider and, if thought fit, agree to the Scheme.

5 Implementation

5.1 General obligations

- (a) Elliot and Miller must each use all reasonable endeavours to:
- (i) commit necessary resources (including management and corporate relations resources and the resources of external advisers); and
 - (ii) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending meetings and by providing information),
- in order to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable and in accordance with the Timetable.
- (b) Subject to clause 5.1(a), the parties acknowledge the Timetable as an indicative timetable and will consult with each other regularly in relation to:
- (i) performing their respective obligations within the framework established by the Timetable; and
 - (ii) any need to modify the Timetable.

5.2 Elliot's obligations

Subject to any change of recommendation by the Elliot Board that is permitted by clause 6.1, Elliot must take all reasonable steps to implement the Scheme on a basis consistent with this document and as soon as reasonably practicable, and in particular must:

- (a) **(announce directors' recommendation)** following execution of this document, announce, in a form agreed between Elliot and Miller (on the basis of statements made to Elliot by each member of the Elliot Board) that:
- (i) the Elliot Board intends to unanimously recommend to Scheme Participants that the Scheme be approved; and

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

subject to:

- (iii) the Independent Expert concluding, and continuing to conclude, that the Scheme is fair and reasonable to, and in the best interests of, Elliot Shareholders; and
 - (iv) there being no Superior Proposal;
- (b) **(preparation of Scheme Booklet)** subject to clause 5.2(f)(i), as soon as practicable after the date of this document, prepare and despatch the Scheme Booklet:
- (i) in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules; and
 - (ii) which includes a statement by the Elliot Board:
 - (A) unanimously recommending that Elliot Shareholders vote in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is fair and reasonable to, and in the best interests of, Elliot Shareholders and there being no Superior Proposal; and
 - (B) that each Elliot Board member who holds Elliot Shares intends to vote his or her Elliot Shares in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is fair and reasonable to, and in the best interests of, Elliot Shareholders and there being no Superior Proposal,
- subject to any change of recommendation permitted under clause 6.1;
- (c) **(Independent Expert)** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare its report for the Scheme Booklet as soon as practicable;
 - (d) **(section 411(17)(b) statement)** apply to ASIC for the production of a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
 - (e) **(ATO class ruling)** determine whether it is reasonably necessary to seek any ATO class rulings in relation to the Scheme, and use reasonable endeavours to procure the receipt of all ATO class rulings which it has determined are reasonably necessary;
 - (f) **(consultation with Miller)** consult with Miller as to the content and presentation of:
 - (i) the Scheme Booklet, which includes:
 - (A) allowing Miller a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet (accepting that any review of the Independent

Expert's Report is limited to review for factual accuracy of those parts that include information relating to Miller);

- (B) taking any reasonable comments made by Miller into account in good faith when producing a revised draft of the Scheme Booklet;
- (C) providing to Miller a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act is finalised; and
- (D) obtaining Miller's consent to the inclusion of the Miller Information, including in respect of the form and context in which the Miller Information appears in the Scheme Booklet, noting that:
 - (aa) Elliot must not include any Miller Information in a draft of the Scheme Booklet provided to ASIC without such consent; and
 - (ab) Elliot must provide to Miller all information in relation to Elliot that Miller reasonably requires to prepare any information about the Merged Group to be included in the Scheme Booklet; and
- (ii) documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any comments on, or suggested amendments to, those documents from Miller prior to filing those documents with the Court;
- (g) **(lodgement of Regulator's Draft)**
 - (i) no later than 14 days before the First Court Date, provide the Regulator's Draft to ASIC for its review for the purposes of section 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to Miller immediately thereafter; and
 - (ii) keep Miller reasonably informed of any material issues raised by ASIC in relation to the Regulator's Draft and, where practical to do so, consult with Miller in good faith prior to taking any steps or actions to address those material issues (provided that, where those issues relate to Miller Information, Elliot must not take any steps to address them without Miller's prior written consent, not to be unreasonably withheld or delayed);
- (h) **(approval of Scheme Booklet)** as soon as reasonably practicable after the conclusion of ASIC's review of the Regulator's Draft, procure that a meeting of the Elliot Board (or of a committee of the Elliot Board appointed for that purpose) is held to consider approving the Scheme Booklet for despatch to Elliot Shareholders, subject to an order of the Court under section 411(e) of the Corporations Act;
- (i) **(Court application)** apply to the Court for an order under section 411(1) of the Corporations Act directing Elliot to convene the Scheme Meeting;

- (j) **(registration of Scheme Booklet)** as soon as practicable after the Court orders Elliot to convene the Scheme Meeting, request ASIC to register the Scheme Booklet in accordance with section 412(6) of the Corporations Act;
- (k) **(send Scheme Booklet)** as soon as practicable after the Court orders Elliot to convene the Scheme Meeting, send the Scheme Booklet to Elliot Shareholders;
- (l) **(supplementary disclosure)** if, after despatch of the Scheme Booklet until the date of the Scheme Meeting, Elliot becomes aware:
 - (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
 - (ii) of information that is required to be disclosed to Elliot Shareholders under any applicable law but was not included in the Scheme Booklet,

promptly consult with Miller in good faith as to the need for, and the form of, any supplementary disclosure to Elliot Shareholders, and make any disclosure that Elliot considers reasonably necessary in the circumstances, having regard to applicable laws and to ensure that there would be no breach of clause 13.1(g) if it applied as at the date that information arose;

- (m) **(Scheme Meeting)** convene the Scheme Meeting to agree to the Scheme in accordance with any orders made by the Court pursuant to section 411(1) of the Corporations Act;
- (n) **(Court approval)** subject to all Conditions Precedent, other than the Condition set out in clause 3.1(d), being satisfied or waived in accordance with this document, apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (o) **(Conditions Precedent certificate)** at the hearing on the Second Court Date, provide to the Court (through its counsel):
 - (i) a certificate confirming (in respect of matters within Elliot's knowledge) whether or not the Conditions Precedent for which it is responsible, as noted in clause 3.1 (other than paragraph (d)), have been satisfied or (if applicable) waived in accordance with clause 3, a draft of which must be provided to Miller by 5.00pm on the Business Day prior to the Second Court Date; and
 - (ii) any certificate provided to it by Miller under clause 5.3(g);
- (p) **(lodge copy of Court order)** lodge with ASIC an office copy of the Court order approving the Scheme as approved by the Elliot Shareholders at the Scheme Meeting in accordance with section 411(10) of the Corporations Act on the Business Day after that office copy is received (or any later date agreed in writing by Miller);
- (q) **(Register)** if the Scheme becomes Effective, close the Register as at the Record Date to determine the identity of Scheme Participants and their entitlements to Scheme Consideration in accordance with clause 4.4, the Scheme and the Deed Poll;

- (r) **(instruments of transfer)** if the Scheme becomes Effective and subject to Miller satisfying its obligations under clause 4.4, the Scheme and the Deed Poll, on the Implementation Date:
- (i) execute proper instruments of transfer and effect the transfer of Elliot Shares to Miller in accordance with the Scheme; and
 - (ii) register all transfers of Elliot Shares held by Scheme Participants to Miller;
- (s) **(Suspension of trading)** apply to ASX to suspend trading in Elliot Shares with effect from the close of trading on the Effective Date;
- (t) **(listing)** subject to clause 5.2(s), not do anything to cause Elliot Shares to cease being quoted on ASX or to become permanently suspended from quotation prior to implementation of the Transaction unless Miller has agreed in writing;
- (u) **(register)** provide Miller with a copy of the Elliot share register and details of the beneficial ownership of Elliot Shares, upon the reasonable request of Miller and in any event weekly between the date of this document and the Record Date; and
- (v) **(other steps)** do all other things necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

5.3 Miller's obligations

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

- (a) **(Miller Information)** prepare and promptly provide to Elliot for inclusion in the Scheme Booklet the Miller Information (in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules) and consent to the inclusion of that information in the Scheme Booklet;
- (b) **(review of Scheme Booklet)** review the drafts of the Scheme Booklet prepared by Elliot and promptly provide comments in good faith on those drafts;
- (c) **(new Miller Information)** promptly provide to Elliot any further or new Miller Information as may arise after the Scheme Booklet has been sent to Elliot Shareholders and until the date of the Scheme Meeting as may be necessary to ensure that the Miller Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission) and to ensure that there would be no breach of clause 13.2(g) if it applied as at the date on which such further or new Miller Information arose;
- (d) **(Independent Expert information)** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (e) **(representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel, Miller must undertake (if requested by the court) to do all things and take all steps within its power

as may be necessary in order to ensure the fulfilment of its obligations under this document and the Scheme;

- (f) **(Deed Poll)** prior to the First Court Date, sign and deliver the Deed Poll to Elliot;
- (g) **(Conditions Precedent certificate)** before 8.00am on the Second Court Date, provide to Elliot for provision to the Court at the hearing on that date a certificate confirming (in respect of matters within Miller's knowledge) whether or not the Conditions Precedent for which Miller is responsible, as noted in clause 3.1 (other than paragraph (d)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to Elliot by 5.00pm on the Business Day prior to the Second Court Date;
- (h) **(Share transfer)** if the Scheme becomes Effective, accept a transfer of the Elliot Shares as contemplated by clause 4.4(a) and execute the instruments of transfer;
- (i) **(ATO class ruling)** provide all reasonable assistance in relation to any ATO class rulings in relation to the Scheme, including all reasonable actions necessary to facilitate the Scheme Participants who receive New Miller Shares to qualify for roll-over relief; and
- (j) **(Scheme Consideration)** if the Scheme becomes Effective, pay or procure the payment of the Scheme Consideration in the manner and amount contemplated by clause 4.4 and the terms of the Scheme and the Deed Poll.

5.4 Scheme Booklet responsibility statement

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

- (a) Elliot has prepared, and is responsible for, the content of the Scheme Booklet other than, to the maximum extent permitted by law, the Miller Information, the Independent Expert's Report or any other report or letter issued to Elliot by a third party; and
- (b) Miller has prepared, and is responsible for, the Miller Information in the Scheme Booklet (and no other part of the Scheme Booklet).

5.5 Disagreement on content of Scheme Booklet

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

- (a) if the disagreement relates to the form or content of the Miller Information contained in the Scheme Booklet, Elliot will make any amendments as Miller reasonably requires; and
- (b) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the Elliot Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet.

5.6 Verification

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

5.7 Conduct of Court proceeding

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

5.8 Appeal process

- (a) If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, Miller and Elliot must appeal the Court's decision to the fullest extent possible except to the extent that:
 - (i) the parties agree otherwise; or
 - (ii) an independent senior counsel advises that, in their opinion, an appeal would have no reasonable prospect of success before the End Date,in which case either party may terminate this document in accordance with clause 14.1(e)(iii).
- (b) The costs of any such appeal must be shared and paid equally by Miller and Elliot.

5.9 Transaction Implementation Committee

The parties must establish a Transaction Implementation Committee as soon as reasonably practical after the date of this document. The role of the Transaction Implementation Committee will be to act as a forum for consultation and planning by the parties to:

- (a) implement the Scheme; and
- (b) subject to clause 5.10, ensure the smooth transition of the management of the business and affairs of the Elliot Group to Miller following the implementation of the Scheme.

5.10 No partnership or joint venture

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

5.11 Promotion of Scheme

During the Exclusivity Period, provided that the Elliot board members have not changed their recommendation to vote in favour of the Scheme in accordance with clause 6.1 and subject to applicable law, Miller and Elliot must co-operate in good faith and participate in efforts reasonably requested by the other to:

- (a) promote the merits of the Transaction and solicit proxy votes in favour of the Scheme, including by meeting with key Elliot Shareholders; and
- (b) promote the merits of the Transaction to Elliot's employees and to third parties including the customers, suppliers and others with whom the Elliot Group has business dealings.

6 Elliot Board recommendation

6.1 Best endeavours

Elliot must use its best endeavours to procure that none of its directors withdraws, or changes their recommendation or stated voting intention in favour of the Scheme, except:

- (a) where the Elliot Board determines, that a Competing Transaction is or may reasonably be expected to lead to a Superior Proposal, provided that Elliot has complied with its obligations under clause 10.6 and Miller has failed to provide a Miller Counterproposal in accordance with clause 10.6(f); or
- (b) where the Independent Expert concludes that the Scheme is not in the best interests of Elliot Shareholders, or adversely changes its previously given opinion that the Scheme is in the best interests of Elliot Shareholders; or
- (c) where the Elliot Board determines in good faith, after receiving written advice from Elliot's external legal advisors practising in the area of corporate law, that the Elliot Board, by virtue of the directors' duties of the Elliot Board Members, is required to change, withdraw or modify its recommendation.

6.2 Customary qualifications

For the purposes of clause 6.1, customary qualifications and explanations contained in the Scheme Booklet in relation to a recommendation to vote in favour of the Scheme to the effect that the recommendation is made in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is fair and reasonable to, and in the best interests of, Elliot Shareholders, will not be regarded as a failure to make, or a change, withdrawal or modification of, a recommendation in favour of the Scheme.

7 Directors and employees

7.1 Release of Elliot and Elliot Indemnified Parties

- (a) Subject to the Corporations Act, Miller releases its rights, and agrees with Elliot that it will not make a claim, against any Elliot Indemnified Party (other than Elliot and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:
 - (i) any breach of any representations and warranties of Elliot or any other member of the Miller Group in this document or any breach of any covenant given by Elliot in this document; or
 - (ii) any disclosure containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Elliot Indemnified Party has not acted in good faith or has engaged in wilful misconduct, wilful concealment or fraud. Nothing in this clause 7.1 limits Miller's rights to terminate this document under clause 14.1.

- (b) Elliot receives and holds the benefit of this clause 7.1 to the extent it relates to each Elliot Indemnified Party as trustee for each of them.

7.2 Release of Miller and Miller Indemnified Parties

- (a) Subject to the Corporations Act, Elliot releases its rights, and agrees with Miller that it will not make a claim, against any Miller Indemnified Party (other than Miller and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:
- (i) any breach of any representations and warranties of Miller or any other member of the Miller Group in this document or any breach of any covenant given by Elliot in this document; or
 - (ii) any disclosure containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Miller Indemnified Party has not acted in good faith or has engaged in wilful misconduct, wilful concealment or fraud. Nothing in this clause 7.2 limits Miller's rights to terminate this document under clause 14.1.

- (b) Miller receives and holds the benefit of this clause 7.2 to the extent it relates to each Miller Indemnified Party as trustee for each of them.

7.3 Appointment/retirement of Elliot directors

On the Implementation Date, but subject to the Scheme Consideration having been paid to the Scheme Participants and receipt by Elliot of signed consents to act, Elliot must use its reasonable endeavours to:

- (a) as directed by Miller in writing, cause the appointment of certain persons to the Elliot Board; and
- (b) as directed by Miller in writing, procure that certain directors on the board of Elliot retire from the Elliot Board and provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against Elliot,

in each case, in accordance with the Elliot Constitution, the Corporations Act and the Listing Rules.

7.4 Appointment / retirement of Elliot Subsidiary directors

On the Implementation Date, but subject to the Scheme Consideration having been paid to the Scheme Participants and receipt by Elliot of signed consents to act, Elliot must use its reasonable endeavours to:

- (a) as directed by Miller in writing, procure that certain directors on the boards of Elliot's Subsidiaries retire from those boards and provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against any member of the Elliot Group; and
- (b) as directed by Miller in writing, cause the appointment of nominees of Miller to the boards of those Elliot Subsidiaries,

in each case in accordance with the constitution of each relevant Elliot Subsidiary and the Corporations Act.

7.5 Appointment of Elliot directors to Miller

From the Implementation Date, subject to receipt by Miller of signed consents to act, Miller must cause the appointment to the Miller Board of 3 persons (as agreed between Miller and Elliot) who are directors of Elliot as at the date of this

agreement, in accordance with the Miller Constitution, the Corporations Act and the Listing Rule.

7.6 Deeds of indemnity and insurance

- (a) Subject to the Scheme becoming Effective and the Transaction completing, Miller undertakes in favour of Elliot and each other Elliot Indemnified Party that it will:
- (i) for a period of seven years from the Implementation Date, ensure that the constitutions of Elliot and each other Elliot Group Member continues to contain such rules as are contained in those constitutions at the date of this document that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than an Elliot Group Member; and
 - (ii) procure that Elliot and each other Elliot Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and, without limiting the foregoing, ensure that directors' and officers' run-off insurance cover for such directors and officers is maintained for a period of seven years from the retirement date of each director and officer (and Elliot may, at its election, pay any amounts that it considers reasonably necessary to ensure such maintenance upfront prior to the implementation of the Scheme, provided that it reasonably consults with Miller in advance of paying any such amount).
- (b) Miller acknowledges that notwithstanding any other provision of this document, Elliot may, prior to the Implementation Date, enter into arrangements to secure directors and officers run off insurance for up to such seven year period, and that any actions to facilitate that insurance or in connection with such insurance will not be an Elliot Prescribed Occurrence or a breach of any provision of this document, provided that Elliot consults with Miller in advance in relation to the obtaining of such directors' and officers' run-off insurance.
- (c) The undertakings contained in clause 7.6(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (d) Elliot receives and holds the benefit of clause 7.6(a), to the extent it relates to the other Elliot Indemnified Parties, as trustee for each of them.

8 Elliot conduct of business before Implementation Date

8.1 Overview

Subject to clause 8.3, from the date of this document up to and including the Implementation Date, Elliot must, and must cause each member of the Elliot Group to, conduct its business in the ordinary course consistent with business plans and budgets Disclosed and in substantially the same manner as previously conducted and must regularly consult with Miller on the manner of conduct of the business.

8.2 Specific obligations

Subject to clause 8.3 and without limiting clause 8.1 and other than with the prior approval of Miller (which approval must not be unreasonably withheld or delayed)

or as required by this document, Elliot must, during the period contemplated by clause 8.1, use all reasonable endeavours to ensure that Elliot and each member of the Elliot Group:

- (f) **(business and assets)** maintains the condition of its business and assets;
- (g) **(officers and employees)** keeps available the services of its officers and employees;
- (h) **(relationships)** preserves its relationships with customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings;
- (i) **(change of control provisions)** identifies any change of control or similar provisions in any significant contracts or any joint venture documentation or any other contract requested by Miller (acting reasonably), and obtain the consents of relevant persons who have rights in respect of such contracts to the transactions contemplated by the Scheme;
- (j) **(cash)** ensures there is no material decrease in the amount of cash or cash equivalents in Elliot other than as:
 - (i) used in the ordinary course of business and in a manner consistent with forecast and budgeted cash utilisation;
 - (ii) a result of reasonable costs incurred directly in relation to the transactions contemplated by the Scheme; or
 - (iii) used in paying the Elliot Permitted Dividend;
- (k) **(no Elliot Prescribed Occurrence or Elliot Material Adverse Effect)** ensures that, between the date of this document and 8.00am on the Second Court Date, there is no Elliot Prescribed Occurrence or Elliot Material Adverse Effect;
- (l) **(information technology)** will not take any action in respect of its information technology systems which would have a material impact on those systems;
- (m) **(financing arrangements)** will not:
 - (i) enter into any new material financing arrangement, agreement or otherwise provide financial accommodation (irrespective of what form that accommodation takes), or amend the term of any existing material financing arrangement, agreement or instrument in a material respect, other than, in each case, in the usual and ordinary course of business and consistent with past practice; or
 - (ii) incur any additional financial indebtedness (except for draw-downs on existing facilities), or guarantee or indemnify the obligations of any person other than a member of the Elliot Group, other than, in each case, in the usual and ordinary course of business and consistent with past practice;
- (n) **(financial benefit)** will not give or agree to give a financial benefit to a related party of Elliot, other than to a wholly owned Subsidiary of Elliot or any joint venture in which the Elliot Group holds at least a 50% interest;

- (o) **(accounting policies)** will not alter in any material respect any accounting policy of any member of the Elliot Group;
- (p) **(commitments and settlements)** will not:
- (i) enter into any contract or commitment, or request or respond to any tender, involving payments by the Elliot Group of more than \$5 million over the term of the contract or commitment;
 - (ii) (without limiting the above) enter into any contract or commitment, or request or respond to or request any tender, relating to the same matter or project involving expenditure by the Elliot Group which exceeds \$5 million in aggregate over the term of the contracts or commitments;
 - (iii) terminate or amend in a material manner any contract material to the conduct of the Elliot Group's business or which involves revenue or expenditure of more than \$5 million over the term of the contract;
 - (iv) waive any material third party default; or
 - (v) accept as a settlement or compromise of a matter (relating to an amount in excess of \$5 million) less than the full compensation due to Elliot or a Subsidiary of Elliot; or
- (q) **(agree)** will not agree to do any of the matters set out in paragraphs (a) to (k) above.

8.3 Exceptions to conduct of business provisions

Nothing in this clause 8 restricts the ability of Elliot to take any action which:

- (a) is expressly required or permitted by this document, the Scheme, or otherwise required by law or by a Regulatory Authority;
- (b) has been Disclosed to Miller;
- (c) has been agreed to in writing by Miller (which agreement must not be unreasonably withheld or delayed);
- (d) is undertaken in response to a Competing Transaction as permitted by clause 10; or
- (e) is required for the payment of the Elliot Permitted Dividend or the placing of directors and officers insurance as permitted under clause 7.6.

8.4 Access to people and Elliot Information

Between the date of this document and the Implementation Date, Elliot must:

- (a) as soon as reasonably practicable, provide Miller and its officers and advisers with reasonable access to any documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) reasonably requested by them; and
- (b) provide Miller and its officers and advisers with reasonable access to Elliot's officers and advisers which Miller reasonably requires,

for the purposes of:

- (c) understanding Elliot's financial position (including its cash flow and working capital position), trading performance and management control systems;
- (d) implementing the Scheme; and
- (e) any other purpose which is agreed in writing between the parties,

provided in every case that:

- (f) nothing in this clause 8.4 will require Elliot to provide, or procure the provision of, information concerning:
 - (i) Elliot's directors and management's consideration of the Scheme; or
 - (ii) any actual, proposed or potential Competing Transaction (including directors' and management's consideration of any actual, proposed or potential Competing Transaction),but this proviso does not limit Elliot's obligations under clause 10;
- (g) Miller must:
 - (i) provide Elliot with reasonable notice of any request for information or access; and
 - (ii) comply with the reasonable requirements of Elliot in relation to any access granted; and
- (h) nothing in this clause 8.4 will require Elliot to provide, or procure the provision of, information if to do so would or would be reasonably likely to breach any confidentiality obligation owed to a third party or any applicable law.

9 Miller conduct of business before Implementation Date

9.1 Overview

Subject to clause 9.3, from the date of this document up to and including the Implementation Date, Miller must, and must cause each member of the Miller Group to, conduct its business in the ordinary course generally consistent with business plans and budgets Disclosed and in substantially the same manner as previously conducted and must regularly consult with Elliot on the manner of conduct of the business.

9.2 Specific obligations

Subject to clause 9.3 and without limiting clause 9.1 and other than with the prior approval of Elliot (which approval must not be unreasonably withheld or delayed) or as required by this document, Miller must, during the period contemplated by clause 9.1, use all reasonable endeavours to ensure that Miller and each member of the Miller Group:

- (a) **(business and assets)** maintains the condition of its business and assets;

- (b) **(officers and employees)** keeps available the services of its officers and employees;
- (c) **(relationships)** preserves its relationships with customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings; and
- (d) **(cash)** ensures there is no material decrease in the amount of cash or cash equivalents in Miller other than as:
 - (i) used in the ordinary course of business and in a manner consistent with forecast and budgeted cash utilisation;
 - (ii) a result of reasonable costs incurred directly in relation to the transactions contemplated by the Scheme; or
 - (iii) used in paying the Miller Permitted Dividend;
- (e) **(no Miller Prescribed Occurrence or Miller Material Adverse Effect)** ensures that, between the date of this document and 8.00am on the Second Court Date, there is no Miller Prescribed Occurrence or Miller Material Adverse Effect;
- (f) **(change of control provisions)** identifies any change of control or similar provisions in any significant contracts or any joint venture documentation or any other contract requested by Elliot (acting reasonably), and obtain the consents of relevant persons who have rights in respect of such contracts to the transactions contemplated by the Scheme;
- (g) **(information technology)** will not take any action in respect of its information technology systems which would have a material impact on those systems;
- (h) **(financing arrangements)** will not:
 - (i) enter into any new material financing arrangement, agreement or otherwise provide financial accommodation (irrespective of what form that accommodation takes), or amend the term of any existing material financing arrangement, agreement or instrument in a material respect, other than, in each case, in the usual and ordinary course of business and consistent with past practice; or
 - (ii) incur any additional financial indebtedness (except for draw-downs on existing facilities), or guarantee or indemnify the obligations of any person other than a member of the Miller Group, other than, in each case, in the usual and ordinary course of business and consistent with past practice;
- (i) **(financial benefit)** will not give or agree to give a financial benefit to a related party of Miller other than a wholly owned Subsidiary of Miller or any joint venture in which the Miller Group holds at least a 50% interest;
- (j) **(accounting policies)** will not alter in any material respect any accounting policy of any member of the Miller Group;
- (k) **(commitments and settlements)** will not:
 - (i) enter into any contract or commitment, or request or respond to any tender, involving payments by the Miller Group of more than \$5 million over the term of the contract or commitment;

- (ii) (without limiting the above) enter into any contract or commitment, or request or respond to or request any tender, relating to the same matter or project involving expenditure which exceeds \$5 million in aggregate over the term of the contracts or commitments;
 - (iii) terminate or amend in a material manner any contract material to the conduct of the Miller Group's business or which involves revenue or expenditure of more than \$5 million over the term of the contract;
 - (iv) waive any material third party default; or
 - (v) accept as a settlement or compromise of a matter (relating to an amount in excess of \$5 million) less than the full compensation due to Miller or a Subsidiary of Miller; or
- (l) **(agree)** will not agree to do any of the matters set out in paragraphs (a) to (k) above.

9.3 Exceptions to conduct of business provisions

Nothing in this clause 9 restricts the ability of Miller to take any action which:

- (a) is expressly required or permitted by this document, the Scheme, or otherwise required by law or by a Regulatory Authority;
- (b) has been Disclosed to Elliot;
- (c) relates to the payment of the Miller Permitted Dividend; or
- (d) has been agreed to in writing by Elliot (which agreement must not be unreasonably withheld or delayed).

9.4 Miller Permitted Dividend

Elliot Shareholders are not entitled to participate in any Miller Permitted Dividend in respect of any New Miller Shares.

9.5 Access to people and Elliot Information

Between the date of this document and the Implementation Date, Miller must:

- (a) as soon as reasonably practicable, provide Elliot and its officers and advisers with reasonable access to any documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) reasonably requested by them; and
- (b) provide Elliot and its officers and advisers with reasonable access to Miller's officers and advisers which Elliot reasonably requires,

for the purposes of:

- (c) understanding Miller's financial position (including its cash flow and working capital position), trading performance and management control systems;
- (d) implementing the Scheme; and
- (e) any other purpose which is agreed in writing between the parties,

provided in every case that:

- (f) nothing in this clause 9.5 will require Miller to provide, or procure the provision of, information concerning:
 - (i) Miller's directors and management's consideration of the Scheme; or
 - (ii) Miller's response to an actual, proposed or potential Competing Transaction (including directors' and management's consideration of any response to an actual, proposed or potential Competing Transaction);
- (g) Elliot must:
 - (i) provide Miller with reasonable notice of any request for information or access; and
 - (ii) comply with the reasonable requirements of Miller in relation to any access granted; and
- (h) nothing in this clause 9.4 will require Miller to provide, or procure the provision of, information if to do so would or would be reasonably likely to breach any confidentiality obligation owed to a third party or any applicable law.

10 Exclusivity

10.1 No existing discussions

- (a) Elliot represents and warrants that, other than the discussions with Miller in respect of the Scheme, neither Elliot nor any of its Related Bodies Corporate or any of their respective Representatives are in negotiations or discussions relating to any actual, proposed or potential transaction that would, or would be reasonably expected to, lead to a Competing Transaction ("**Existing Discussions**").
- (b) To the extent that Elliot and its Related Bodies Corporate, or any of their Representatives has disclosed or permitted to be disclosed any information in the last 12 months which would, if disclosed to Miller, fall within the definition of Elliot Confidential Information, in connection with any Discussions, Elliot must use all reasonable endeavours to procure that the third party immediately return to Elliot, or delete, destroy and erase, all original documents and copies that are or include that Elliot Confidential Information or that reproduce, are based on, utilise or relate to that Elliot Confidential Information.
- (c) Elliot agrees not to waive, and to enforce, any standstill obligations (if any) of any such third party, except in relation to a Competing Transaction where Miller has failed to provide a matching or superior proposal which satisfies clause 10.6(f).

10.2 No shop

During the Exclusivity Period, Elliot must not, and must procure that its Related Bodies Corporate and any of their respective Representatives do not, directly or indirectly:

- (a) solicit, invite, initiate or encourage any Competing Transaction or any enquiries, proposals, discussions or negotiations with any third party; or
- (b) communicates any intention to do any of these things,

in relation to, or which may reasonably be expected to lead to, any offer, proposal or expression of interest from any person in relation to a Competing Transaction, or communicate any intention to do any of these things.

10.3 No talk

Subject to clause 10.8, during the Exclusivity Period, Elliot:

- (f) must not; and
- (g) must procure that its Related Bodies Corporate and any of their respective Representatives do not:

directly or indirectly:
 - (h) negotiate or enter into, or participate in negotiations or discussions with any other person regarding, a Competing Transaction or any agreement, understanding or arrangement that may be reasonably expected to lead to a Competing Transaction; or
 - (i) communicate any intention to do any of those things,

even if that person's Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by Elliot or any of its Representatives; and even if the person has publicly announced the Competing Transaction.

10.4 Due diligence information

Subject to clauses 10.8 and 10.9, during the Exclusivity Period, Elliot:

- (f) must not, and
- (g) must procure that its Related Bodies Corporate and any of their respective Representatives do not,

directly or indirectly:
 - (h) facilitate or permit any person to undertake due diligence investigations or receive any non-public information in respect of it, or its Related Bodies Corporate, or any of their businesses or operations in connection with such person developing, formulating or finalising a Competing Transaction (or assisting in doing so); or
 - (i) communicate any intention to do any of those things,

even if the Competing Transaction, or potential Competing Transaction, was not (directly or indirectly) solicited, encouraged, initiated or invited by Elliot (or any of its Representatives), and even if the person has publicly announced the Competing Transaction.

10.5 Notice of unsolicited approach

- (a) During the Exclusivity Period, Elliot must immediately (and in any event within 24 hours) notify Miller in writing ("**Proposal Notice**") of:
 - (i) any approach, inquiry or proposal made by any person to Elliot, or any of its Representatives (to its knowledge), to initiate any discussions or negotiations that concern, or that could reasonably be expected to lead to, a Competing Transaction; and

- (ii) any request made by any person to Elliot, or any of its Representatives (to its knowledge), for any non-public information relating to Elliot or its Related Bodies Corporate, or any of their businesses or operations in connection with such person developing, formulating or finalising a Competing Transaction (or assisting in doing so).
- (b) Subject to clause 10.8, any Proposal Notice given under clause 10.5(a) must be accompanied by all material details of the relevant event, including:
 - (i) the identity of the person who made the relevant approach, proposal, inquiry or request for information; and
 - (ii) the material terms of any Competing Transaction or proposed Competing Transaction, including price or implied value (including details of the consideration if not cash alone), conditions precedent, timetable, break fee (if any) and any other material terms.

10.6 Matching right

Subject to clause 10.8 and without limiting clauses 10.2 and 10.3, during the Exclusivity Period, Elliot:

- (a) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a third party, Elliot or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Transaction; and
- (b) must use its best endeavours to procure that none of its directors change their recommendation in favour of the Scheme to publicly recommend an actual, proposed or potential Competing Transaction (or recommend against the Scheme),

unless:

- (c) the Elliot Board (having received written advice from its external legal advisers) determines that the Competing Transaction would be or would be reasonably likely to be an actual, proposed or potential Superior Proposal;
- (d) Elliot has provided Miller with the material terms and conditions of the actual, proposed or potential Competing Transaction, including price and the identity of the Third Party making the actual, proposed or potential Competing Transaction;
- (e) Elliot has given Miller at least 5 Business Days after the date of the provision of the information referred to in clause 10.6(d) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction; and
- (f) Miller has not announced a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction by the expiry of the 5 Business Day period referred to in clause 10.6(e).

Elliot acknowledges and agrees that each successive material modification of any actual, proposed or potential Competing Transaction will constitute a new actual, proposed or potential Competing Transaction for the purposes of the requirements under clause 10.6 and accordingly Elliot must comply with clause 10.6(a) and clause 10.6(b) of this clause in respect of any materially amended

actual, proposed or potential Competing Transaction unless clause 10.6(c) to 10.6(f) (inclusive) apply.

10.7 Miller Counterproposal

If Miller proposes to Elliot, or announces amendments to the Scheme or a new proposal that constitute a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction (“**Miller Counterproposal**”) by the expiry of the 5 Business Day period referred to in clause 10.6(e), Elliot must procure that the Elliot Board considers the Miller Counterproposal and if the Elliot Board, acting reasonably and in good faith, determines that the Miller Counterproposal would provide an equivalent or superior outcome for Elliot Shareholders as a whole compared with the Competing Transaction, taking into account all of the terms and conditions of the Miller Counterproposal, then:

- (a) Elliot and Miller must use their best endeavours to agree the amendments to this document and, if applicable, the Scheme and Deed Poll that are reasonably necessary to reflect the Miller Counterproposal and to implement the Miller Counterproposal, in each case as soon as reasonably practicable; and
- (b) Elliot must use its best endeavours to procure that each of the directors of Elliot continues to recommend the Scheme (as modified by the Miller Counterproposal) to Elliot Shareholders.

10.8 Exceptions

The restrictions in clauses 10.3, 10.4, 10.5(b) and 10.6 do not apply to the extent that they restrict Elliot or the Elliot Board (and their Representatives) from taking or refusing to take any action with respect to a Competing Transaction (in respect of which there has been no breach of clause 10) provided that the Elliot Board has determined, in good faith:

- (a) after receiving written advice from Elliot’s external legal advisers practising in the area of corporate law, that failing to take the action, or refusing to take the action (as the case may be) with respect to the Competing Transaction is, or may be reasonably expected to constitute, a breach of the fiduciary or statutory duties of the directors of Elliot; and
- (b) after consulting with Elliot’s financial adviser, that the Competing Transaction is or may reasonably be expected to lead to a Superior Proposal.

10.9 Further exceptions

Nothing in this document prevents Elliot from:

- (a) continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Scheme or its business generally; or
- (b) fulfilling its continuous disclosure requirements.

10.10 Legal advice

Elliot acknowledges that it has received legal advice on this document and the operation of this clause.

11 Break Fee

11.1 Background

This clause has been agreed in circumstances where:

- (a) Miller and Elliot believe that the Scheme will provide significant benefits to Miller, Elliot and their respective shareholders, and Miller and Elliot acknowledge that, if they enter into this document and the Scheme is subsequently not implemented, Miller will incur significant costs, including those set out in clause 11.5;
- (b) Miller requested that provision be made for the Break Fee, without which Miller would not have entered into this document;
- (c) both the Miller Board and Elliot Board believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure Miller's participation in the Scheme; and
- (d) both parties have received legal advice on this document and the operation of this clause.

11.2 Payment by Elliot to Miller

Subject to clauses 11.3, 11.4, 11.6 and 11.8 Elliot agrees to pay the Break Fee to Miller without withholding or set off where the Scheme does not proceed because:

- (a) **(Competing Transaction)** on or before the last day of the Exclusivity Period, a Competing Transaction is announced, and within 12 months of the date of such announcement the third party associated with the announced Competing Transaction (alone or together with any of its Associates):
 - (i) completes a Competing Transaction of a kind referred to in any of paragraphs (b) to (d) of the definition of "Competing Transaction"; or
 - (ii) directly or indirectly acquires a Relevant Interest in more than 50% of Elliot under a transaction that is or has become wholly unconditional; or
- (b) **(change of recommendation)** during the Exclusivity Period the Elliot Board fails to recommend the Scheme or withdraws their recommendation, adversely changes or qualifies their recommendation or otherwise makes a public statement indicating that they no longer supports the Scheme, except:
 - (i) where the change of recommendation or statement is made after the Independent Expert concludes that in the opinion of the Independent Expert the Scheme is not in the best interests of Elliot Shareholders (other than where the sole reason for the Independent Expert's conclusion is the existence of a Competing Transaction which the Independent Expert may reasonably regard to be on more favourable terms than the transaction contemplated by this document);
 - (ii) Elliot is entitled to terminate this document pursuant to clause 14.1(c), clause 14.1(e) or clause 14.2(b), and has given the appropriate termination notice to Miller; or

- (c) **(termination)** Miller validly terminates this document in accordance with:
- (i) clause 14.1(c); or
 - (ii) clause 14.2(a).

11.3 No amount payable

- (a) Notwithstanding the occurrence of any event in clause 11.2, if the Scheme becomes Effective:
- (i) no amount is payable by Elliot under clause 11.2; and
 - (ii) if any amount has already been paid under clause 11.2 it must be refunded by Miller.
- (b) Elliot can only ever be liable to pay the Break Fee once.
- (c) The Break Fee is not payable merely because the resolution submitted to the Scheme Meeting in respect of the Scheme is not approved by the majorities required under section 411(4)(a)(ii).
- (d) The Break Fee is not payable where Elliot has become entitled to the Reverse Break Fee.

11.4 Timing of payment

- (a) A demand by Miller for payment of the Break Fee under clause 11.2 must:
- (i) be in writing;
 - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account in the name of Miller into which Elliot must pay the Break Fee.
- (b) Elliot must pay the Break Fee to Miller under clause 11.2 without withholding or set-off within five Business Days of receipt by Elliot of a valid demand for payment from Miller under clause 11.4(a).

The demand may only be made after the occurrence of an event referred to in clause 11.2.

11.5 Nature of payment

The Break Fee is an amount to compensate Miller for:

- (a) advisory costs;
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;
- (d) the distraction of Miller's management from conducting Miller's business as usual caused by pursuing the Scheme;

- (e) reasonable opportunity costs incurred by Miller in pursuing the Scheme or in not pursuing alternative acquisitions or strategic initiatives which Miller could have developed to further its business and objectives; and
- (f) damage to Miller's reputation associated with a failed transaction and the implications of that damage to Miller's business.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 11.2.

11.6 Limitation of Elliot's liability

Notwithstanding any other provision of this document but subject to clauses 4.2 and 11.8:

- (a) the maximum liability of Elliot to Miller under or in connection with this document including in respect of any breach of this document will be the Break Fee; and
- (b) the payment by Elliot of the Break Fee represents the sole and absolute amount of liability of Elliot under or in connection with this document and no further damages, fees, expenses or reimbursements of any kind will be payable by Elliot under or in connection with this document.

11.7 Reduction in amount payable

- (a) The Break Fee is reduced by an amount equal to the amount which is recovered by Miller as a result of a claim against Elliot pursuant to any other remedies available to Miller under this document including pursuant to clause 14.
- (b) Where the Break Fee has already been paid, Miller must, within 2 Business Days of the event contemplated by clause 11.7(a) which would have reduced the amount payable, refund an amount to Miller which is equivalent to that calculated under clause 11.7(a).

11.8 Compliance with law

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a Court that all or any part of the amount payable under clause 11.2:

- (a) is unlawful or would if performed be, unlawful;
- (b) involves a breach of the duties of the Elliot Board; or
- (c) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then Elliot's obligation to pay the applicable amount or part of the amount payable under clause 11.2 does not apply and if Miller has received any such part of the payment due under clause 11.2 it must refund it within five Business Days of such final determination.

The parties must not make or cause or permit to be made any application to a Court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in this clause 11.8.

12 Reverse Break Fee

12.1 Background

This clause has been agreed in circumstances where:

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

12.2 Payment by Miller to Elliot

Subject to clauses 12.3, 12.4, 12.6 and 12.8 Miller agrees to pay the Reverse Break Fee to Elliot without withholding or set off where the Scheme does not proceed because Elliot validly terminates this document in accordance with clauses 14.1(c) or 14.2(b).

12.3 No amount payable

- (a) Notwithstanding the occurrence of any event in clause 12.2, if the Scheme becomes Effective:
 - (i) no amount is payable by Miller under clause 12.2; and
 - (ii) if any amount has already been paid under clause 12.2 it must be refunded by Elliot.
- (b) Miller can only ever be liable to pay the Reverse Break Fee once.
- (c) The Reverse Break Fee is not payable where Miller has become entitled to the Break Fee under clause 11.2(c).

12.4 Timing of payment

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

The demand may only be made after the occurrence of an event referred to in clause 12.2.

12.5 Nature of payment

The Reverse Break Fee is an amount to compensate Elliot for:

- (a) advisory costs;
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;
- (d) the distraction of Elliot's management from conducting Elliot's business as usual caused by pursuing the Scheme;
- (e) reasonable opportunity costs incurred by Elliot in pursuing the Scheme or in not pursuing alternative acquisitions or strategic initiatives which Elliot could have developed to further its business and objectives; and
- (f) damage to Elliot reputation associated with a failed transaction and the implications of that damage to Elliot's business.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 12.2.

12.6 Limitation of Miller's liability

Notwithstanding any other provision of this document but subject to clauses 4.2 and 12.8:

- (a) the maximum liability of Miller to Elliot under or in connection with this document including in respect of any breach of this document will be the Reverse Break Fee; and
- (b) the payment by Miller of the Reverse Break Fee represents the sole and absolute amount of liability of Miller under or in connection with this document and no further damages, fees, expenses or reimbursements of any kind will be payable by Miller under or in connection with this document.

Nothing in this clause limits Miller's liability under clause 4.4, the Deed Poll or the Scheme.

12.7 Reduction in amount payable

- (a) The Reverse Break Fee is reduced by an amount equal to the amount which is recovered by Elliot as a result of a claim against Miller pursuant to any other remedies available to Elliot under this document including pursuant to clause 14.
- (b) Where the Reverse Break Fee has already been paid, Elliot must, within 2 Business Days of the event contemplated by clause 12.7(a) which would have reduced the amount payable, refund an amount to Miller which is equivalent to that calculated under clause 12.7(a).

12.8 Compliance with law

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a Court that all or any part of the amount payable under clause 12.2:

- (a) is unlawful or would if performed be, unlawful;
- (b) involves a breach of the duties of the Miller Board; or
- (c) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then Miller's obligation to pay the applicable amount or part of the amount payable under clause 12.2 does not apply and if Elliot has received any such part of the payment due under clause 12.2 it must refund it within five Business Days of such final determination.

The parties must not make or cause or permit to be made any application to a Court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in this clause 12.7.

13 Representations and warranties

13.1 Elliot's representations and warranties

Elliot represents and warrants to Miller (on its own behalf and separately as trustee or nominee for each of the Miller Indemnified Parties) that each of the following statements is true and correct in all material respects as at the date of this document and unless expressly stated otherwise, at all times until 8.00am on the Second Court Date:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(reliance)** the Elliot Information contained in the Scheme Booklet will be included in good faith and on the understanding that Miller and its directors will rely on that information for the purposes of considering and approving the Miller Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme in accordance with the Corporations Act;
- (g) **(Elliot Information)** the Elliot Information provided in accordance with this document and included in the Scheme Booklet as at the date of the Scheme Booklet will not contain any material statement which is materially misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements (with any statement of belief or opinion having been formed on a reasonable basis) and will

comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;

- (h) **(disclosure)** Elliot has collated and prepared the Elliot Disclosure Materials in good faith and, so far as Elliot is aware, the Elliot Disclosure Materials have been collated with reasonable skill and care;
- (i) **(continuous disclosure)** Elliot is not in breach of its continuous disclosure obligations under the Listing Rules in any material respect and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure (other than the transaction contemplated by this document);
- (j) **(reasonable assumptions)** to the extent information provided to Miller, whether under due diligence or not, in connection with this document, includes forward looking statements, those forward looking statements are based on assumptions which Elliot believes, as at the date the information was provided and continues to believe, to be reasonable;
- (k) **(compliance)** the Elliot Group has complied in all material respects with all Australian and foreign laws and regulations applicable to it and orders of Australian and foreign governmental agencies having jurisdiction over it and has all material licenses, permits and franchises necessary for it to conduct its respective businesses as presently being conducted;
- (l) **(opinions)** any statement of opinion or belief contained in the Elliot Information is honestly held and there are reasonable grounds for holding the opinion or belief;
- (m) **(provision of information to Independent Expert)** all information provided by or on behalf of Elliot to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (n) **(no default)** so far as Elliot is aware, neither Elliot nor any of its Subsidiaries is in default under any material document, agreement or instrument binding on it or its assets nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect;
- (o) **(securities)** Schedule 2 correctly sets out all of the issued securities of Elliot as at the date of this document, and it has not issued or agreed to issue any other securities or instruments which are still outstanding and which may convert into Elliot Shares or any other securities in Elliot, other than:
- (i) up to 24,440,000 Elliot Shares to be issued to the holders of the Elliot Incentives which are currently on issue, in satisfaction of the rights of the holders of such Elliot Incentives, in accordance with Schedule 2 and the Agreed Principles and prior to the Record Date; and
 - (ii) up to 7,520,000 new Elliot Options and up to 2,770,000 new Elliot Performance Rights, which (if and to the extent issued) must be issued on terms that they will lapse and cease to exist if the Scheme is approved by the Court on or before the day 2

weeks before the End Date, such that they will not participate in the Scheme, as set out in Schedule 2;

- (p) **(Insolvency event)** no member of the Elliot Group is Insolvent;
- (q) **(litigation)** between the date of this document and 8.00am on the Second Court Date, no person has announced, commenced or threatened any claim, dispute or litigation (including any court proceeding, arbitration or expert determination) against Elliot or any Elliot Group entity, which is material in the context of the Elliot Group as a whole. Without limiting the preceding sentence, a matter is 'material' for the purposes of this paragraph if:
- (i) Elliot would be obliged to inform ASX of it pursuant to Listing Rule 3.1 (disregarding the exception in Listing Rule 3.1A); or
 - (ii) it relates to the whole or a material part of the Elliot Group's business,
- whether by any single claim or in the aggregate of multiple claims which are announced, commenced or threatened;
- (r) **(enforcement)** between the date of this document and 8.00am on the Second Court Date, no material enforcement action or investigation has been announced or commenced by a Regulatory Authority against or involving a Elliot Group entity.

13.2 Miller's representations and warranties

Miller represents and warrants to Elliot (on its own behalf and separately as trustee or nominee for each of the Elliot Indemnified Parties) that each of the following statements is true and correct in all material respects as at the date of this document and at all subsequent times until 8.00am on the Second Court Date:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(reliance)** the Miller Information provided to Elliot for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that Elliot and its directors will rely on that information for the purposes of

preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act;

- (g) **(Miller Information)** the Miller Information provided in accordance with this document and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is materially misleading or deceptive in any material respect nor contain any material omission having regard to applicable disclosure requirements (with any statement of belief or opinion having been formed on a reasonable basis) and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (h) **(disclosure)** Miller has collated and prepared the Miller Disclosure Materials in good faith and, so far as Elliot is aware, the Miller Disclosure Materials have been collated with reasonable skill and care;
- (i) **(continuous disclosure)** Miller is not in breach of its continuous disclosure obligations under the Listing Rules in any material respect and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure (other than the transaction contemplated by this document);
- (j) **(reasonable assumptions)** to the extent information provided to Elliot, whether under due diligence or not, in connection with this document, includes forward looking statements, those forward looking statements are based on assumptions which Miller believes, as at the date the information was provided and continues to believe, to be reasonable;
- (k) **(compliance)** the Miller Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over it and has all material licenses, permits and franchises necessary for it to conduct its businesses as presently being conducted;
- (l) **(opinions)** any statement of opinion or belief contained in the Miller Information is honestly held and there are reasonable grounds for holding the opinion or belief;
- (m) **(provision of information to Independent Expert)** all information provided by or on behalf of Miller to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (n) **(no default)** so far as Miller is aware, neither Miller nor any of its Subsidiaries is in default under any material document, agreement or instrument binding on it or its assets nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect;
- (o) **(securities)** the issued securities of Miller as at the date of this document are set out in Schedule 2, and it has not issued or agreed to issue any other securities or instruments which are still outstanding and which may convert into Miller Shares or any other securities in Miller;
- (p) **(Insolvency event)** no member of the Miller Group is Insolvent;

- (q) **(litigation)** between the date of this document and 8.00am on the Second Court Date, no person has announced, commenced or threatened any claim, dispute or litigation (including any court proceeding, arbitration or expert determination) against Miller or any Miller Group entity, which is material in the context of the Miller Group as a whole. Without limiting the preceding sentence, a matter is 'material' for the purposes of this paragraph if:
 - (i) Miller would be obliged to inform ASX of it pursuant to Listing Rule 3.1 (disregarding the exception in Listing Rule 3.1A); or
 - (ii) it relates to the whole or a material part of the Miller Group's business,whether by any single claim or in the aggregate of multiple claims which are announced, commenced or threatened;
- (r) **(enforcement)** between the date of this document and 8.00am on the Second Court Date, no material enforcement action or investigation has been announced or commenced by a Regulatory Authority against or involving a Miller Group entity;
- (s) **(no dealing with Elliot Shareholders)** neither it nor any of its associates has any agreement, arrangement or understanding with any Elliot Shareholder under which that Elliot Shareholder (or an associate of that Elliot Shareholder) would be entitled to receive consideration for their Elliot Shares different from the Scheme Consideration or under which the Elliot Shareholder agrees to vote in favour of the Scheme or against any Competing Transaction;
- (t) **(reasonable basis)** it has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy Miller's obligations to pay the Scheme Consideration in accordance with its obligations under this document, the Scheme and the Deed Poll; and
- (u) **(New Miller Shares)** the New Miller Shares to be issued in accordance with clause 4.4 and the terms of the Scheme and Deed Poll will be duly authorised and validly issued or transferred, fully paid and free of all security interests and third party rights and will rank equally with all other Miller Shares then on issue.

13.3 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or is reasonably expected to constitute a breach of any of the representations or warranties given by it under this clause 13.

13.4 Qualifications on Elliot's representations and warranties

The representations and warranties made or given by Elliot in clause 13.1, are subject to matters that:

- (a) have been Disclosed; or
- (b) are required or expressly permitted by this document or the Scheme.

13.5 Qualifications on Miller's representations and warranties

The representations and warranties made or given by Miller in clause 13.2, are subject to matters that:

- (a) have been Disclosed; or
- (b) are required or expressly permitted by this document or the Scheme.

13.6 Survival of representations

Each representation and warranty in this clause 13:

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

14 Termination

14.1 Termination events

This document may be terminated:

- (a) **(End Date)** by either party, if the Scheme has not become Effective on or before the End Date;
- (b) **(lack of support)** by Miller, at any time prior to 8.00am on the Second Court Date, if the Elliot Board changes its recommendation to the Scheme Participants that they vote in favour of the resolution to approve the Scheme, including any adverse modification to its recommendation, or otherwise makes a public statement indicating that the Elliot Board no longer supports the Scheme (excluding a statement that no action be taken pending the assessment of a Competing Proposal by the Elliot Board);
- (c) **(material breach)** by either Miller or Elliot at any time prior to 8.00am on the Second Court Date, if the other is in material breach of a term of this document (other than any representation or warranty, which is dealt with in clause 14.2), provided that the terminating party has given written notice to the other party setting out the relevant circumstances and the relevant circumstances continue to exist five Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the time such notice is given;
- (d) **(Recommendation)** by Elliot, if the Elliot Board has changed, withdrawn or modified its recommendation of the Scheme as permitted under clause 6.1;
- (e) **(consultation or appeal failure)** in accordance with and pursuant to:
 - (i) clause 3.7(a)(i);
 - (ii) clause 3.7(a)(ii); or
 - (iii) clause 5.8; or
- (f) **(agreement)** if agreed to in writing by Miller and Elliot; or

14.2 Termination for breach of representations and warranties

- (a) Miller may, at any time prior to 8.00am on the Second Court Date, terminate this document for breach of an Elliot Representation and Warranty only if:
 - (i) Miller has given written notice to Elliot setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
 - (ii) the relevant breach continues to exist five Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 14.2(a)(i); and
 - (iii) the relevant breach is material in the context of the Scheme taken as a whole.
- (b) Elliot may, at any time before 8.00am on the Second Court Date, terminate this document for breach of a Miller Representation and Warranty only if:
 - (i) Elliot has given written notice to Miller setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
 - (ii) the relevant breach continues to exist five Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 14.2(b)(i); and
 - (iii) the relevant breach is material in the context of the Scheme taken as a whole.

14.3 Termination

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

14.4 Effect of Termination

If this document is terminated by either party, or if this document otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this document, other than the obligations set out in this clause and in clauses 5.8, 11.2, and 15 to 21 (inclusive) will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause releases any party from liability for any pre-termination breach of this document.

14.5 Damages

Subject to clauses 11.6 and 12.6, in addition to the right of termination under clauses 14.1 and 14.2 where there is no appropriate remedy for the breach in this document (other than termination), the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this document.

15 Public announcements

15.1 Public announcement of Scheme

Immediately after signing this document, Elliot and Miller must issue a joint public announcement of the proposed Scheme in the form contained in Annexure A.

15.2 Required disclosure

Where a party is required by any applicable law or any Listing Rule to make any announcement or make any disclosure in connection with the Scheme or any other transaction the subject of this document or Scheme, it may do so, but must use all reasonable endeavours, to the extent possible and permitted by law, to consult with the other party prior to making the relevant disclosure.

15.3 Other announcements

Subject to clauses 15.1 and 15.2 and to the extent permitted by law, no party may make any public announcement or disclosure in connection with the Scheme (including disclosure to a Regulatory Authority) other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable. For the avoidance of doubt, this clause 15.3 does not apply to any announcement or disclosure relating to a Competing Transaction.

16 Confidential Information

16.1 Confidentiality

- (a) Each party acknowledges and agrees that it continues to be bound by clauses 2, 3, 4, 5, 6, 7, 8, 9 and 13 of the Confidentiality Deed in respect of all Confidential Information received by it from the other party on, before or after the date of this document.
- (b) This clause will survive termination (for whatever reason) of this document.

17 Notices and other communications

17.1 Form

Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing and signed by the sender (if an individual) or an Authorised Officer of the sender.

All communications (other than email communications) must also be marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).

Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

17.2 Delivery

Communications must be:

- (a) left at the address referred to in the Details;
- (b) sent by regular ordinary post (airmail if appropriate) to the address referred to in the Details; or
- (c) sent by email to the address referred to in the Details.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

17.3 When effective

Communications take effect from the time they are received or taken to be received under clause 17.4 (whichever happens first) unless a later time is specified in the communication.

17.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, six Business Days after posting (or ten days after posting if sent from one country to another);
- (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

17.5 Receipt outside business hours

Despite anything else in this clause 17, if communications are received or taken to be received under clause 17.4 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

18 GST

18.1 Definitions and interpretation

For the purposes of this clause:

- (a) “**GST Act**” means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (b) a term which has a defined meaning in the GST Act has the same meaning when used in this clause, unless the contrary intention appears; and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.

18.2 GST exclusive

Unless this document expressly states otherwise, all consideration to be provided under this document is exclusive of GST.

18.3 Payment of GST

- (a) If GST is payable, or notionally payable, on a supply in connection with this document, the party providing the consideration for the supply

agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply ("**GST Amount**").

- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

18.4 Adjustment events

If an adjustment event arises for a supply made in connection with this document, the GST Amount must be recalculated to reflect that adjustment. The supplier or the recipient (as the case may be) agrees to make any payments necessary to reflect the adjustment and the supplier agrees to issue an adjustment note.

18.5 Reimbursements

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this document which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 18.3 will apply to the reduced payment.

19 Costs

19.1 Costs

The parties agree to pay their own Costs in connection with the preparation, negotiation, execution and completion of this document, except for amounts covered by clause 19.2.

19.2 Stamp duty and registration fees

Miller:

- (a) agrees to pay or reimburse all stamp duty, registration fees and similar duties payable or assessed as being payable in connection with this document or any other transaction contemplated by this document (including any fees, fines, penalties and interest in connection with any of those amounts); and
- (b) indemnifies Elliot against, and agrees to reimburse and compensate it for, any liability in respect of stamp duty under clause 19.2(a).

Miller agrees to pay amounts due to Elliot under this clause within three Business Days of demand from Elliot.

However, Miller need not pay, reimburse or indemnify against any fees, fines, penalties or interest to the extent they have been imposed because of Elliot's delay other than where such delay was caused or contributed to by Miller.

20 General

20.1 Variation and waiver

A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

20.2 Consents, approvals or waivers

By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

20.3 Discretion in exercising rights

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

20.4 Partial exercising of rights

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

20.5 Conflict of interest

Each party may exercise their rights, powers and remedies in connection with this document even if this involves a conflict of duty or they have a personal interest in their exercise.

20.6 Remedies cumulative

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

20.7 Indemnities and reimbursement obligations

Any indemnity, reimbursement or similar obligation in this document:

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this document, any settlement or any other thing;
- (b) is independent of any other obligations under this document; and
- (c) continues after this document, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this document.

20.8 Inconsistent law

To the extent the law permits, this document prevails to the extent it is inconsistent with any law.

20.9 Supervening law

Any present or future law which operates to vary the obligations of a party in connection with this document with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

20.10 Counterparts

This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document.

20.11 Entire agreement

This document together with the Scheme, the Deed Poll and the Confidentiality Deed constitute the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

20.12 Further steps

Each party agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed), which the other party asks and considers necessary to:

- (a) bind the party and any other person intended to be bound under this document; or
- (b) show whether the party is complying with this document.

20.13 No liability for loss

Unless this document expressly states otherwise, a party is not liable for any loss, liability or costs arising in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this document.

20.14 Severability

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this document or is contrary to public policy.

20.15 Rules of construction

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

20.16 Assignment

A party may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the prior written consent of the other party.

20.17 Enforceability

For the purpose of this document:

- (a) Elliot is taken to be acting as agent and trustee on behalf of and for the benefit of all Elliot Indemnified Parties; and
- (b) Miller is taken to be acting as agent and trustee on behalf of and for the benefit of all Miller Indemnified Parties,

and all of those persons are to this extent taken to be parties to this document.

20.18 No representation or reliance

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this document,

except for representations or inducements expressly set out in this document;

- (b) it does not enter into this document in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this document; and
- (c) clauses 20.18(a) and 20.18(b) above do not prejudice any rights a party may have in relation to information which has been filed by the other party with ASIC or ASX.

21 Governing law

21.1 Governing law and jurisdiction

This government is governed by the law in force in the Victoria. The parties submit to the non-exclusive jurisdiction of the courts of that place and courts of appeal from them.

21.2 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address for service of notices under clause 17.2.

EXECUTED as an agreement

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Scheme Implementation Agreement

Schedule 1 Timetable

Event	Date
Lodge Scheme Booklet with ASIC and ASX	3 December 2018
Application in respect of the Court hearing to be held on the First Court Date, filed with the Court, served on ASIC	3 December 2018
First Court Date	21 December 2018
Printing and despatch of Scheme Booklet	7 January 2019
Last time and date by which the Scheme Meeting proxy forms must be received by the Share Registry	10am on 18 February 2019
Voting Record Date	7pm on 18 February 2019
Scheme Meeting held	10am on 20 February 2019 (provided that this is to be after the date that Miller's results for the half year ended 31 December 2018 have been filed with ASX)
Second Court Date	27 February 2019
Lodge Court order with ASIC (Effective Date)	27 February 2019
Suspension of Elliot Shares from trading on ASX	Close of trading on 27 February 2019
Scheme Record Date	6 March 2019
Implementation Date	13 March 2019

Scheme Implementation Agreement

Schedule 2 Securities

1 Elliot securities

The following table sets out:

- in column 1, all of the issued securities of Elliot as at the date of this document (note that these include the Loan Shares);
- in column 2, the maximum numbers of Elliot Options and Elliot Performance Rights which Elliot either has agreed to issue or may elect to issue under incentive plans on the basis that (if and to the extent they are issued) they must be issued on terms that they will lapse and cease to exist if the Scheme is approved by the Court on or before the day 2 weeks before the End Date, such that they will not participate in the Scheme (**Non-Participating Elliot Incentives**), as set out in further detail in the Agreed Principles;
- in column 3, the maximum number of Elliot Shares to be issued to the holders of the Elliot Incentives which are currently on issue, in satisfaction of the rights of the holders of such Elliot Incentives, in accordance with the Agreed Principles and this Schedule and prior to the Record Date (**Participating Elliot Incentives**), as set out in further detail in the Agreed Principles; and
- in column 4, the maximum number of Elliot securities to be on issue as at the Record Date for the Scheme.

Security	1 Number on issue as at date of SIA	2 Maximum numbers of Non-Participating Elliot Incentives	3 Maximum number of Elliot Shares to be issued in satisfaction of Participating Elliot Incentives ¹	4 Maximum number of Elliot securities to be on issue at the Record Date (following lapse of Non-Participating Elliot Incentives and issue of Elliot Shares in satisfaction of Participating Elliot Incentives)
Elliot Shares	319,636,693	NIL	NIL	344,076,693
Elliot Options:				
- Executive Options	18,674,000	7,520,000	18,674,000	NIL
- NED Options	485,000	NIL	485,000	NIL
Elliot Performance Rights	5,281,000	2,770,000	5,281,000	NIL

¹ The maximum number of Elliot Shares to be issued for Participating Elliot Incentives is calculated on the basis of one Elliot Share issued for each Participating Elliot Incentive currently on issue. However, the actual number of Elliot Shares issued for the Participating Elliot Incentives in accordance with the Agreed Principles will be lower. As an illustrative example, if the Elliot Share 5 day VWAP as at the Scheme Meeting is \$2.85, the maximum number of additional Elliot Shares issued by Elliot for the Participating Elliot Incentives would be 4,870,931.

Total:	344,076,693	10,290,000	24,440,000	344,076,693
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2 Miller securities

Security	Number as at date of SIA	Maximum number of securities immediately following Implementation
Miller Shares	83,204,720	83,204,720
New Miller Shares	0	45,138,105 ²
Employee Options	538,129	538,129
Employee Performance Options	1,532,321	1,532,321
Employee Voluntary Options	21,479	21,479
Employee Performance Rights	348,558	348,558
Total:	85,645,207	130,783,312²

² This does not account for any New Miller Shares to be issued under the Scheme in respect of Elliot Shares that are issued pursuant to Elliot Options or Elliot Performance Rights and participate in the Scheme.

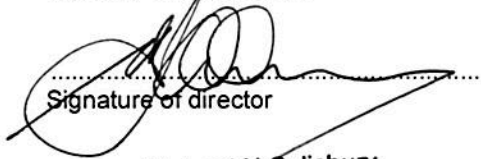
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Scheme Implementation Agreement

Signing page

DATED: 8 NOVEMBER 2018

EXECUTED by **MCMILLIAN
SHAKESPEARE LIMITED** in
accordance with section 127(1) of the
Corporations Act 2001 (Cth) by
authority of its directors:


.....
Signature of director

Michael N Salisbury

.....
Name of director (block letters)


.....

Signature of director/company
secretary*

*delete whichever is not applicable

Mark S Blackburn

.....
Name of director/company secretary*
(block letters)

*delete whichever is not applicable

EXECUTED by **ECLIPX GROUP
LIMITED** in accordance with section
127(1) of the *Corporations Act 2001*
(Cth) by authority of its directors:

.....
Signature of director

.....
Name of director (block letters)

.....
Signature of director/company
secretary*

*delete whichever is not applicable

.....
Name of director/company secretary*
(block letters)

*delete whichever is not applicable

For personal use only

Scheme Implementation Agreement

Signing page

DATED: _____

**EXECUTED by MCMILLIAN
SHAKESPEARE LIMITED** in
accordance with section 127(1) of the
Corporations Act 2001 (Cth) by
authority of its directors:

.....
Signature of director

.....
Name of director (block letters)

.....
Signature of director/company
secretary*
*delete whichever is not applicable

.....
Name of director/company secretary*
(block letters)
*delete whichever is not applicable

**EXECUTED by ECLIPX GROUP
LIMITED** in accordance with section
127(1) of the *Corporations Act 2001*
(Cth) by authority of its directors:

.....
Signature of director

.....
Name of director (block letters)

.....
Signature of director/company
secretary*
*delete whichever is not applicable

.....
Name of director/company secretary*
(block letters)
*delete whichever is not applicable



Kevin Klutz



Gerry McLennan

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Scheme Implementation Agreement

Annexure A Public announcement

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ASX ANNOUNCEMENT

McMillan Shakespeare and Eclipx merger

Creates a leading salary packaging and fleet management company

- MMS and Eclipx have agreed to merge pursuant to a Scheme Implementation Agreement whereby MMS will acquire all shares in Eclipx
- Eclipx shareholders are to receive 0.1414 MMS shares plus 46 cents cash for each Eclipx share held, implying a total value of \$2.85¹ per Eclipx share
- The industrial logic of combining these complementary businesses is compelling
- Anticipated ultimately to deliver EBITDA run-rate synergies of \$50 million per annum following integration, before implementation and transaction costs
- The merger is expected to be EPS accretive pre synergies
- Delivers an improved offering for all customers and material benefits for employees
- The shareholders in each company continue to retain upside of their respective businesses, in addition to sharing in the growth opportunities and synergies of the combined group through their holdings in the merged group under MMS
- MMS Board expanded to include three Eclipx directors. MMS CEO and CFO, Mike Salisbury and Mark Blackburn, to continue as CEO and CFO of the combined group
- The merger to be put to Eclipx shareholders in early 2019 is unanimously recommended by the Board of Eclipx

Merger overview

McMillan Shakespeare Limited ("**MMS**", ASX: MMS) and Eclipx Group Limited ("**Eclipx**", ASX: ECX) are pleased to announce that the companies propose to merge in a Scheme Implementation Agreement, establishing a leading salary packaging and fleet management company ("**Combined Group**"). The proposed transaction (the "**Merger**"), which is subject to conditions, will be implemented by MMS acquiring all shares in Eclipx under an Eclipx Scheme of Arrangement ("**Eclipx Scheme**").

Upon completion of the Merger, the Combined Group's Board will include three current Eclipx Directors. The Chief Executive Officer and Managing Director of the Combined Group will be MMS' Mike Salisbury and MMS' Mark Blackburn will be Chief Financial Officer.

¹ Based on MMS' last closing price of \$16.90 on Wednesday, 7 November 2018

The Merger is unanimously recommended by the Board of Eclipx, in the absence of a superior proposal and subject to an independent expert concluding that the Merger is in the best interests of the Eclipx shareholders. Subject to those same qualifications, the Directors of Eclipx intend to vote all Eclipx shares held or controlled by them in favour of the Merger.

Merger terms

Under the terms of the Merger, Eclipx shareholders will receive 0.1414 MMS shares plus 46 cents cash for each Eclipx share held ("**Consideration**").

The Consideration implies a total value of \$2.85 per Eclipx share based on MMS' last closing price of \$16.90 on Wednesday, 7 November 2018. The Consideration represents a 33.2% premium to Eclipx's closing price of \$2.14 on Friday, 17 August 2018, the last trading day prior to SG Fleet's unsolicited, non-binding and indicative proposal to acquire all shares in Eclipx for \$2.52.

Upon completion of the Merger, existing MMS shareholders will own circa 64% of the Combined Group and Eclipx shareholders will hold the remaining circa 36%.

The Combined Group is anticipated ultimately to realise an estimated \$50 million in EBITDA run-rate synergies per annum, to be fully realised in the third year following completion of the Merger. Given the complementary nature of each business, it is expected that there will be scope to extract additional benefits over time.

Benefits to key stakeholders of the Combined Group

The Merger is anticipated to deliver a number of benefits to stakeholders of the Combined Group:

- Establishes a leading provider of salary packaging, novated leasing, fleet leasing and fleet management services within Australia, combining the best-in-breed of both organisations
- Creates an enhanced service and product offering to the merged client base and provides a strong foundation to pursue growth opportunities in business adjacencies and other jurisdictions, in part, arising from access to the enlarged customer base
- The Merger is anticipated to generate shareholder value and be earnings accretive in the first full year following completion, before realisation of EBITDA run-rate synergies of an estimated \$50 million per annum following integration
- The Combined Group will benefit from a robust balance sheet, underpinned by Eclipx's sophisticated funding solutions, allowing for improved optionality in capital allocation
- The profile of the Combined Group will possess a significantly larger revenue base as well as improved customer and geographic diversification
- Increased financial capability to invest in innovation and technology solutions for customers

The Directors of MMS and Eclipx consider the Merger not only represents a unique opportunity to create significant value for shareholders but also gives the Combined Group additional capabilities to provide a more compelling offer to customers and material benefits and opportunities to employees, partners and key stakeholders.

MMS Chairman Tim Poole commented "We are delighted to announce the Merger of two industry leading businesses to create a unique, diversified and best-in-class platform. We are confident in the strategic and financial logic of this combination and look forward to partnering with the highly skilled Eclipx team."

McMillan Shakespeare Limited
Level 21, 360 Elizabeth Street, Melbourne, Victoria 3000
ABN 74 107 233 983 AFSL No. 299054
Phone: +61 3 9097 3273 Web: www.mmsg.com.au

Eclipx Chairman Kerry Roxburgh stated “There is strong industrial logic for the proposed Merger on the terms agreed between Eclipx and MMS, which provides a strong foundation for future success. The Merger will ensure our shareholders retain exposure to the quality of the Eclipx portfolio, whilst also participating in the synergistic benefits that arise from a combination with MMS. We strongly believe that this Merger represents a unique and compelling value creation proposition for both companies. As a Combined Group, we will deepen management capabilities, reinforce the balance sheet and, in turn, deliver stronger returns for shareholders.”

Scheme Implementation Agreement

The attached Scheme Implementation Agreement contains customary terms and conditions on which MMS and Eclipx will implement the Merger, including:

- Approval by Eclipx shareholders of the Eclipx Scheme;
- Receipt of certain regulatory approvals;
- No material adverse change and prescribed occurrences;
- An independent expert concluding that the Eclipx Scheme is in the best interests of Eclipx shareholders; and
- Court approval for the Eclipx Scheme

Customary deal protections have also been agreed by MMS and Eclipx.

Timetable and next steps

Under the proposed timetable, a Scheme Booklet is expected to be circulated to all Eclipx shareholders in December 2018 / early January 2019 and an Eclipx Scheme Meeting to consider the Eclipx Scheme is likely to be scheduled for February 2019. Subject to conditions defined within the Eclipx Scheme being satisfied, MMS and Eclipx anticipate the Merger to complete in the first quarter of 2019.

Advisers

Deutsche Bank AG, Sydney Branch is acting as financial adviser to MMS, King & Wood Mallesons is acting as legal adviser.

UBS AG, Australia Branch is acting as financial adviser to Eclipx, Herbert Smith Freehills is acting as legal adviser.

About MMS: Operating in both Australasia and the UK, MMS’ business divisions collectively provide expertise in novated leasing, salary packaging, associated Fringe Benefits Tax administration and management, operating leases and asset management for ‘tool of trade’ vehicles and other business assets, retail finance, insurance and warranty.

About Eclipx: Eclipx is a leading provider of fleet, equipment leasing and management, vehicle rentals and online auction services to corporate, SME and consumers in Australia and corporate and SME customers in New Zealand. As at 30 September 2018, Eclipx managed or financed 117,060 vehicles with \$2.4 billion in assets under management. It operates in Australia and New Zealand under nine primary brand names, “FleetPartners”, “FleetPlus”, “CarLoans.com.au”, “Georgie”, “areyouselling.com.au”, “FleetChoice”, “AutoSelect”, “Right2Drive” and “GraysOnline”.

Webcast

MMS will hold a webcast on Thursday 8 November 2018 at 12.00pm.

The link to hear the live presentation will be placed on the McMillan Shakespeare website www.mmsg.com.au

Alternatively, investors may go direct <http://openbriefing.com/OB/3125.aspx>

For more information please contact:

Mark Blackburn

CFO and Company Secretary
McMillan Shakespeare Limited

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Scheme Implementation Agreement

Annexure B Scheme of Arrangement

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Scheme of Arrangement

Dated

Eclix Group Limited (“**Elliot**”)

Scheme Participants

King & Wood Mallesons

Level 50
Bourke Place
600 Bourke Street
Melbourne VIC 3000
Australia
T +61 3 9643 4000
F +61 3 9643 5999
DX 101 Melbourne
www.kwm.com

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Scheme of Arrangement

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Scheme of Arrangement

Details

Parties

Elliot	Name	Elliot
	ACN	131 557 901
	Formed in	Victoria, Australia
	Address	Level 32, 1 O'Connell Street, Sydney, NSW 2000
	Email	matt.sinnamon@eclipx.com (with a copy delivered by email to philippa.stone@hsf.com)
	Attention	Group General Counsel and Company Secretary

Scheme Participants	Each person registered as a holder of fully paid ordinary shares in Elliot on the Record Date
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Governing law	Victoria, Australia
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General terms

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

ASIC means the Australian Securities & Investments Commission.

ASX means ASX Limited or the market operated by it, as the context requires.

Business Day means a business day as defined in the Listing Rules.

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

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

Court means the Federal Court of Australia, or such other court of competent jurisdiction under the Corporations Act agreed in writing between Miller and Elliot.

Deed Poll means the deed poll executed by Miller substantially in the form of Annexure C of the Scheme Implementation Agreement or as otherwise agreed by Miller and Elliot under which Miller covenants in favour of each Scheme Participant to perform its obligations under this Scheme.

Details means the section of this agreement headed "Details".

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

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

Elliot Share means an ordinary fully paid share in the capital of Elliot.

Elliot Shareholder means each person registered in the Register as a holder of Elliot Shares.

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

End Date means 30 April 2019 or such other date as is agreed in writing by Miller and Elliot.

Gross Proceeds has the meaning given in clause 6.4(c).

Immediately Available Funds means a bank cheque or other form of cleared funds acceptable to Elliot.

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Implementation Date means the date that is five Business Days after the Record Date or such other date as is agreed by Miller and Elliot.

Ineligible Foreign Shareholder means a Scheme Participant whose Registered Address on the Record Date is a place outside Australia, New Zealand and any other countries agreed by Miller and Elliot for the purposes of this definition, and their external territories, unless Miller determines that it is lawful and not unduly onerous or impracticable to provide that Elliot Shareholder with New Miller Shares when the Scheme becomes Effective.

Listing Rules means the Listing Rules of the ASX modified to the extent of any express written waiver by ASX.

Miller means McMillan Shakespeare Limited (ACN 107 233 983).

Miller Registry means the registry of shareholders maintained by Miller or its agent.

Miller Sale Shares has the meaning given in clause 6.4(a).

New Miller Share means a fully paid ordinary share in Miller to be issued to Scheme Participants.

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

Record Date means 5.00pm on the fifth Business Day after the Effective Date or such other date as Elliot and Miller agree.

Register means the share register of Elliot and **Registry** has a corresponding meaning.

Registered Address means, in relation to an Elliot Shareholder, the address shown in the Register.

Sale Agent means the sale agent appointed to sell the Miller Sale Shares in accordance with clause 6.4.

Sale Facility means the facility provided for in clause 6.4.

Scheme means this scheme of arrangement between Elliot and Scheme Participants under which all of the Scheme Shares will be transferred to Miller under Part 5.1 of the Corporations Act, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Elliot and Miller in accordance with clause 8 of this Scheme.

Scheme Booklet means, in respect of the Scheme, the information booklet to be approved by the Court and despatched to Elliot Shareholders which includes the Scheme, an explanatory statement complying with the requirements of the Corporations Act and notices of meeting and proxy forms.

Scheme Consideration means the consideration payable under clause 6 in respect of each Scheme Share to be provided by Miller to Scheme Participants under the terms of this Scheme for the transfer to Miller of their Scheme Shares.

Scheme Implementation Agreement means the scheme implementation agreement dated 8 November 2018 between Elliot and Miller under which, amongst other things, Elliot has agreed to propose this Scheme to Elliot Shareholders, and each of Miller and Elliot has agreed to take certain steps to give effect to this Scheme.

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Scheme Meeting means the meeting to be convened by the Court at which Elliot Shareholders will vote on the Scheme.

Scheme Participants means each person who is an Elliot Shareholder as at the Record Date.

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

Second Court Date means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme.

Selling Scheme Participant means a Scheme Participant in respect of whom New Miller Shares are issued to the Sale Agent in the circumstances referred to in clause 6.4(a).

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

Trust Account means the trust account operated by or on behalf of Elliot to hold the Scheme Consideration on trust for the purpose of paying the Scheme Consideration to the Scheme Participants in accordance with clause 6.5 of this Scheme.

1.2 General interpretation

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

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Melbourne time;
- (h) where a thing is to be done on a day which is not a Business Day, it must be done on the next day which is a Business Day;
- (i) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (j) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);

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- (k) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (l) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (m) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (n) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (o) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day; and
- (p) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day.

2 Preliminary

2.1 Elliot

Elliot is:

- (a) a public company limited by shares;
- (b) incorporated in Victoria, Australia; and
- (c) admitted to the official list of the ASX and Elliot Shares are officially quoted on the stock market conducted by ASX.

As at [the date of the Scheme Booklet], Elliot’s issued securities are:

- (d) Elliot Shares: 319,636,693; and
- (e) [18,674,000] options issued to non-executive directors and executives of Elliot; and
- (f) [5,281,000] performance rights. [Note: These figures are to be adjusted downwards for lapsed options/performance rights and, if applicable, to note the existence and status of any Non-Participating Elliot Incentives as referred to in Schedule 2 to the Scheme implementation Agreement]

2.2 Miller

Miller is:

- (a) a public company limited by shares;
- (b) incorporated in Victoria, Australia; and
- (c) admitted to the official list of the ASX and Miller Shares are officially quoted on the stock market conducted by ASX.

2.3 If Scheme becomes Effective

If this Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share to Miller, Elliot will procure Miller to provide the Scheme Consideration to Elliot on behalf of each Scheme Participant in accordance with the terms of this Scheme and the Deed Poll;
- (b) all Scheme Shares will be transferred to Miller on the Implementation Date; and
- (c) Elliot will enter the name of Miller in the Register in respect of all Scheme Shares transferred to Miller in accordance with the terms of this Scheme.

2.4 Scheme Implementation Agreement

Elliot and Miller have agreed by executing the Scheme Implementation Agreement to implement the terms of this Scheme.

2.5 Deed Poll

- (a) This Scheme attributes actions to Miller but does not itself impose an obligation on Miller to perform those actions.
- (b) Miller has executed the Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform (or procure the performance of) its obligations as contemplated by this Scheme, including to provide the Scheme Consideration.

3 Conditions precedent

3.1 Conditions precedent to Scheme

This Scheme is conditional on, and the Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Scheme are not binding, until each of the following conditions precedent are satisfied to the extent and in the manner set out in this clause:

- (a) as at 8.00am on the Second Court Date, neither the Scheme Implementation Agreement nor the Deed Poll having been terminated;
- (b) all of the conditions precedent in clause 3.1 of the Scheme Implementation Agreement having been satisfied or waived (other than the conditions precedent in paragraph (d) of that clause) in accordance with the terms of the Scheme Implementation Agreement;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Elliot and Miller having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act; and
- (d) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

3.2 Conditions precedent and operation of clause 5

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

3.3 Certificate in relation to conditions precedent

- (a) Elliot and Miller must provide to the Court on the Second Court Date a certificate in the form of a deed confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent set out in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and clause 3.1(d) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date.
- (b) The certificate referred to in clause 3.3(a) will constitute conclusive evidence of whether the conditions precedent referred to in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and 3.1(d) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date.

4 Scheme

4.1 Effective Date

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

4.2 End Date

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

5 Implementation of Scheme

5.1 Lodgement of Court orders with ASIC

If the conditions precedent set out in clause 3.1 of this Scheme (other than the condition precedent in clause 3.1(d) of this Scheme) are satisfied, Elliot must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 5.00pm on the first Business Day after the day on which the Court approves this Scheme or such later time as Miller and Elliot agree in writing.

5.2 Transfer and registration of Elliot Shares

On the Implementation Date, but subject to the provision of the Scheme Consideration for the Scheme Shares in accordance with clause 6 of this Scheme:

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Miller without the need for any further act by any Scheme Participant (other than acts performed by Elliot as attorney and agent for Scheme Participants under clause 8 of this Scheme) by:
 - (i) Elliot delivering to Miller a duly completed and executed Share Scheme Transfer executed on behalf of the Scheme Participants; and

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- (ii) Miller duly executing the Share Scheme Transfer and delivering it to Elliot for registration; and
- (b) as soon as practicable after receipt of the duly executed Share Scheme Transfer, Elliot must enter or procure the entry of the name of Miller in the Register in respect of all Scheme Shares transferred to Miller in accordance with the terms of this Scheme.

5.3 Entitlement to Scheme Consideration

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

5.4 Title and rights in Elliot Shares

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

5.5 Scheme Participants' agreements

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

5.6 Warranty by Scheme Participants

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

- (a) all their Scheme Shares (including any rights and entitlements attaching to those shares) will, as at the date of the transfer, be fully paid and free from all Encumbrances; and
- (b) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those shares) to Miller under the Scheme.

5.7 Transfer free of encumbrances

To the extent permitted by law, all Elliot Shares (including any rights and entitlements attaching to those shares) which are transferred to Miller under this Scheme will, at the date of the transfer of them to Miller, vest in Miller free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind not referred to in this Scheme.

5.8 Appointment of Miller as sole proxy

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clauses 5.2, 6.5 and 6.6 of this Scheme, on and from the Implementation Date until Elliot registers Miller as the holder of all of the Elliot Shares in the Register, each Scheme Participant:

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- (a) irrevocably appoints Elliot as attorney and agent (and directs Elliot in such capacity) to appoint Miller and each of its directors from time to time (jointly and each of them individually) as its sole proxy, and where applicable corporate representative, to attend shareholders' meetings, exercise the votes attaching to Elliot Shares registered in its name and sign any shareholders resolution, and no Scheme Participant may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 5.8(a)); and
 - (b) must take all other actions in the capacity of the registered holder of Elliot Shares as Miller directs.

Elliot undertakes in favour of each Scheme Participant that it will appoint Miller and each of its directors from time to time (jointly and each of them individually) as that Scheme Participant's proxy or, where applicable, corporate representative in accordance with clause 5.8(a) of this Scheme.

6 Scheme Consideration

6.1 Scheme Consideration

Subject to the remaining provisions of this clause 6, each Scheme Participant will be entitled to receive for each Scheme Share held by that Scheme Participant at the Record Date:

- (a) a cash amount equal to \$0.46; and
- (b) 0.1414 New Miller Shares.

6.2 Fractions and splitting

- (a) Any entitlement of a Scheme Participant under this Scheme to be provided a fraction of a New Miller Share will be rounded down to the nearest whole number of New Miller Shares after calculating the Scheme Participant's entitlement (prior to rounding) to its entire holding of Scheme Shares.
- (b) Any cash amount payable to a Scheme Participant under this Scheme must be rounded to the nearest whole cent after calculating the Scheme Participant's entitlement (prior to rounding) to its entire holding of Scheme Shares.
- (c) If Miller is of the opinion, formed reasonably, that several Scheme Participants, each of which holds a holding of Elliot Shares have, before the Record Date, been party to a shareholding splitting or division in an attempt to obtain an advantage by reference to the rounding provided for in the calculation of each Scheme Participant's entitlement to the Scheme Consideration, or otherwise in connection with the Scheme, Miller may direct Elliot to give notice to those Scheme Participants:
 - (i) setting out the names and Registered Addresses of all of them;
 - (ii) stating that opinion; and
 - (iii) attributing to one of them specifically identified in the notice the Elliot Shares held by all of them,

and, after the notice has been so given, the Scheme Participants specifically identified in the notice shall, for the purposes of this Scheme,

be taken to hold all those Elliot Shares and each of the other Scheme Participants whose names are set out in the notice shall, for the purposes of this Scheme, be taken to hold no Elliot Shares.

6.3 Ineligible Foreign Shareholders

Notwithstanding any other provision of this clause 6, Miller will be under no obligation to provide, and must not provide, any New Miller Shares under this Scheme to any Ineligible Foreign Shareholder, and, instead, subject to clause 6.10, must procure that those New Miller Shares which, but for this clause 6.3, would be required to be so provided are dealt with on behalf of the Ineligible Foreign Shareholders in accordance with clause 6.4.

6.4 Sale Facility

- (a) New Miller Shares that are required to be dealt with under this clause by clause 6.3, must not be issued to the relevant Scheme Participant and, instead, must be issued by Miller to the Sale Agent on or before the Implementation Date (rounded down after being aggregated, if necessary, to the nearest whole number) (together, the **Miller Sale Shares**) and subsequently sold in accordance with this clause 6.4.
- (b) The Sale Facility will only be available in respect of New Miller Shares issued to the Sale Agent in the circumstances referred to in clause 6.4(a).
- (c) Miller must procure that as soon as practicable after the Implementation Date and, in any event, not more than 20 Business Days after the Implementation Date, the Sale Agent, in consultation with Miller, sells or procures the sale of all the Miller Sale Shares in such manner, at such price or prices and on such other terms as the Sale Agent determines in good faith, and remits to Elliot the proceeds of the sale (if applicable, converted into Australian dollars in such manner, at such price or prices and on such other terms as the Sale Agent determines in good faith) (**Gross Proceeds**).
- (d) Promptly after receiving the Gross Proceeds in respect of the sale of all of the New Miller Shares referred to in clause 6.4(a), Elliot must pay, or procure the payment, to each Selling Scheme Participant (in accordance with this clause 6.4) an amount calculated as follows:

$$A \div B \times C$$

Where:

A = the Gross Proceeds (less any applicable brokerage, taxes, duty, currency conversion costs and other costs and charges);

B = the total number of New Miller Shares issued to the Sale Agent under clause 6.4(a); and

C = the number of New Miller Shares issued to the Sale Agent under clause 6.4(a) in respect of that Selling Scheme Participant (which, for the avoidance of doubt, may be or include a fraction of a New Miller Share).

- (e) None of Miller, Elliot or the Sale Agent gives any assurance as to the price that will be achieved for the sale of New Miller Shares described in this clause 6.4. The sale of New Miller Shares under this clause 6.4 will be at the risk of the Selling Scheme Participant.

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- (f) Elliot must make payments to Selling Scheme Participants under clause 6.4(d) by either (in the absolute discretion of Elliot):
- (i) where a Selling Scheme Participant has, before the Record Date, made a valid election in accordance with the requirements of the Registry to receive dividend payments from Elliot by electronic funds transfer to a bank account nominated by the Selling Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
 - (ii) whether or not the Selling Scheme Participant has made an election referred to in clause 6.4(f)(i), despatching, or procuring the despatch of, a cheque for the relevant amount in Australian currency to the Selling Scheme Participant by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Selling Scheme Participant (or in the case of joint holders, in accordance with the procedures set out in clause 6.10).
- (g) If Elliot receives professional advice that any withholding or other tax is required by law to be withheld from a payment to a Selling Scheme Participant, Elliot is entitled to withhold the relevant amount before making the payment to the Selling Scheme Participant (and payment of the reduced amount shall be taken to be full payment of the relevant amount for the purposes of this Scheme, including clause 6.4(d)). Elliot must pay any amount so withheld to the relevant taxation authorities within the time permitted by law, and, if requested in writing by the relevant Selling Scheme Participant, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Selling Scheme Participant.
- (h) Each Selling Scheme Participant appoints Elliot as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) that the Sale Agent is required to provide to Selling Scheme Participants under the Corporations Act.
- (i) Payment of an amount to a Selling Scheme Participant in accordance with this clause 6.4 will be in full satisfaction of the obligations of Miller and Elliot to the Selling Scheme Participant under the Scheme in respect of the scrip component of that Selling Scheme Shareholder's Scheme Consideration.
- (j) Where the provision of New Miller Shares to which a Scheme Participant would otherwise be entitled under this Scheme would result in a breach of law:
- (i) Miller will provide the maximum possible number of New Miller Shares to the Scheme Participant without giving rise to such a breach; and
 - (ii) any New Miller Shares to which that Scheme Shareholder is entitled, but the provision of which to the Scheme Participant would give rise to such a breach, will instead be issued to the Sale Agent and dealt with under the preceding provisions in this clause 6.4, as if a reference to Selling Scheme Participants also included that Scheme Participant and references to that person's New Miller Shares in clause 6.4 were limited to the New Miller Shares issued to the Sale Agent under this clause.

6.5 Provision of cash component of Scheme Consideration

- (a) No later than the Business Day before the Implementation Date, Miller must deposit (or procure the deposit) in Immediately Available Funds the aggregate amount of the cash component of the Scheme Consideration payable to all Scheme Participants into the Trust Account.
- (b) Any interest on the amount deposited in the Trust Account under clause 6.5(a) (less bank fees and other charges) will be credited to Miller's account.
- (c) On the Implementation Date, subject to receipt of the cash component of the Scheme Consideration from Miller in accordance with clause 6.5(a) of this Scheme, Elliot must pay to each Scheme Participant an amount equal to the cash component to which each Scheme Participant is entitled under this clause 6 (if any, and taking into account the impact of the Sale Facility).
- (d) Unless otherwise directed by the Scheme Participants before the Record Date, the amounts referred to in clause 6.5(b) of this Scheme must be paid by direct credit or sending a cheque drawn on an Australian bank in Australian currency on the Implementation Date to each Scheme Participant by pre-paid ordinary post (or, if the address of the Scheme Participant in the Register is outside Australia, by pre-paid airmail post) to their address recorded in the Register on the Record Date.

6.6 Provision of scrip component of Scheme Consideration

Miller must:

- (a) on the Implementation Date:
 - (i) issue the New Miller Shares to which each Scheme Participant is entitled under this clause 6 (if any, and taking into account the impact of the Sale Facility); and
 - (ii) procure that the name and Registered Address of each such Scheme Participant is entered in the Miller Registry in respect of those New Miller Shares; and
- (b) procure that on or before the date that is two Business Days after the Implementation Date, a share certificate or holding statement (or equivalent document) is sent to the Registered Address of each such Scheme Participant to whom New Miller Shares are issued in accordance with clause 6.6(a) representing the number of New Miller Shares issued to that Scheme Participant pursuant to this Scheme.

6.7 Status of New Miller Shares

Subject to this Scheme becoming Effective, Miller must:

- (a) issue the New Miller Shares required to be issued by it under this Scheme on terms such that each New Miller Share will rank equally in all respects with each existing Miller Share; and
- (b) use reasonable endeavours to ensure that New Miller Shares are, from the Business Day following the date this Scheme becomes Effective (or such later date as ASX requires), quoted for trading on the ASX initially on a deferred settlement basis and thereafter on an ordinary settlement basis.

6.8 Unclaimed monies

- (a) Elliot may cancel a cheque issued under clause 6.5 of this Scheme if the cheque:
 - (i) is returned to Elliot; or
 - (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.
- (b) During the period of 1 year commencing on the Implementation Date, on request in writing from a Scheme Participant, Elliot must reissue a cheque that was previously cancelled under this clause 6.8.

6.9 Orders of a court

In the case of notice having been given to Elliot (or the Registry) of an order made by a court of competent jurisdiction:

- (a) which requires consideration to be provided to a third party (either through payment of a sum or issuance of a security) in respect of Scheme Shares held by a particular Scheme Participant, which would otherwise be payable or required to be issued to that Scheme Participant in accordance with clauses 6.5 or 6.6 of this Scheme, then Elliot must procure that provision of that consideration is made in accordance with that order; or
- (b) which would prevent Elliot from providing consideration to any particular Scheme Participant in accordance with clauses 6.5 or 6.6 of this Scheme or the payment or issuance of such consideration is otherwise prohibited by applicable law, Elliot shall be entitled to:
 - (i) retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Participant multiplied by the cash portion of the Scheme Consideration until such time as payment in accordance with clause 6.5 of this Scheme is permitted by law; and
 - (ii) direct Miller not to issue, or to issue to a trustee or nominee, such number of New Miller Shares as that Scheme Shareholder would otherwise be entitled to under clause 6.6.

6.10 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any New Miller Shares to be provided under this Scheme to Scheme Participants by Miller must be provided to and registered in the names of the joint holders; and
- (b) any bank cheque required to be paid to Scheme Participants by Miller must be payable to the joint holders and be forwarded to the holder whose name appears first in the Register on the Record Date.

7 Dealings in Scheme Shares

7.1 Determination of Scheme Participants

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

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Register as the holder of the relevant Scheme Shares on or before the Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received on or before the Record Date at the place where the Register is kept.

7.2 Register

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

7.3 No disposals after Effective Date

- (a) If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Effective Date in any way except as set out in this Scheme and any such disposal will be void and of no legal effect whatsoever.
- (b) Elliot will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Shares received after the Record Date (except a transfer to Miller pursuant to this Scheme and any subsequent transfer by Miller or its successors in title).

7.4 Maintenance of Elliot Register

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

7.5 Effect of certificates and holding statements

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

7.6 Details of Scheme Participants

Within 2 Business Days after the Record Date Elliot will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant, as shown in the Register on the Record Date are available to Miller in such form as Miller reasonably requires.

7.7 Quotation of Elliot Shares

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

7.8 Termination of quotation of Elliot Shares

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

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

8 Power of attorney

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

- (a) on the Implementation Date, executing any document necessary or expedient to give effect to this Scheme including the Share Scheme Transfer; and
 - (b) on and from the Effective Date, enforcing the Deed Poll against Miller,
- and Elliot accepts such appointment in respect of itself and on behalf of each of its directors and secretaries.

9 Notices

9.1 No deemed receipt

If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Elliot, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at Elliot's registered office or at the office of the registrar of Elliot Shares.

9.2 Accidental omission

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

10 General

10.1 Variations, alterations and conditions

Elliot may, with the consent of Miller (which cannot be unreasonably withheld), by its counsel or solicitor consent on behalf of and as agent and attorney for all persons concerned (including the Scheme Participants) to any variations, alterations or conditions to this Scheme which the Court thinks fit to impose.

10.2 Further action by Elliot

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

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10.3 Authority and acknowledgement

Each of the Scheme Participants:

- (a) irrevocably consents to Elliot and Miller doing all things necessary or expedient for or incidental to the implementation of this Scheme; and
- (b) acknowledges that this Scheme binds Elliot and all Scheme Participants (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against the Scheme at that Meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of Elliot.

10.4 No liability when acting in good faith

Neither Elliot nor Miller, nor any of their respective officers, will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

10.5 Enforcement of Deed Poll

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

10.6 Stamp duty

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

11 Governing law

11.1 Governing law and jurisdiction

The law in force in the place specified in the Details governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

11.2 Serving documents

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

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Scheme Implementation Agreement

Annexure C Deed Poll

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Deed Poll

Dated

Given by McMillan Shakespeare Limited (ACN 107 233 983) ("**Miller**")

In favour of each registered holder of fully paid ordinary shares in Eclix Group Limited (ACN 131 557 901) ("**Elliot**") as at the Record Date ("**Scheme Participants**")

King & Wood Mallesons

Level 50
Bourke Place
600 Bourke Street
Melbourne VIC 3000
Australia
T +61 3 9643 4000
F +61 3 9643 5999
DX 101 Melbourne
www.kwm.com

Deed Poll

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Deed Poll

Details

Parties

Miller	Name	Miller
	ACN	107 233 983
	Formed in	Victoria, Australia
	Address	Level 21, 360 Elizabeth Street, Melbourne, VIC 3000
	Email	mark.blackburn@mmsg.com.au (with a copy delivered by email to diana.nicholson@au.kwm.com)
	Attention	Chief Financial Officer and Company Secretary

In favour of Each Scheme Participant

Governing law Victoria, Australia

Recitals	A	The directors of Elliot have resolved that Elliot should propose the Scheme.
	B	The effect of the Scheme will be that all Scheme Shares will be transferred to Miller.
	C	Elliot and Miller have entered into the Scheme Implementation Agreement.
	D	Miller is entering into this deed poll for the purpose of covenanting in favour of Scheme Participants to perform its obligations in relation to the Scheme.

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Deed Poll

General terms

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

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

Details means the section of this deed poll headed “Details”.

Scheme Implementation Agreement means the scheme implementation agreement dated 8 November 2018 between Elliot and Miller under which, amongst other things, Elliot has agreed to propose the Scheme to Elliot Shareholders, and each of Miller and Elliot has agreed to take certain steps to give effect to the Scheme.

All other words and phrases used in this deed poll have the same meaning as given to them in the Scheme Implementation Agreement.

1.2 General interpretation

The provisions of clause 1.2 of the Scheme Implementation Agreement form part of this deed poll as if set out in this deed poll, and on the basis that references to “this document” in that clause are references to this deed poll.

1.3 Nature of deed poll

Miller acknowledges that:

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

2 Conditions precedent and termination

2.1 Conditions precedent

This deed poll and Miller’s obligations under clause 3 are subject to the Scheme becoming Effective.

2.2 Termination

Miller’s obligations under this deed poll will automatically terminate and the terms of this deed poll will be of no further force or effect if:

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- (a) the Scheme has not become Effective on or before the End Date; or
- (b) the Scheme Implementation Agreement is terminated in accordance with its terms.

2.3 Consequences of termination

If this deed poll terminates under clause 2.2, then, in addition and without prejudice to any other rights, powers or remedies available to Scheme Participants:

- (a) Miller is released from its obligations to further perform this deed poll except those obligations contained in clause 6.2 and any other obligations which by their nature survive termination; and
- (b) each Scheme Participant retains the rights, powers or remedies they have against Miller in respect of any breach of this deed poll which occurs before it is terminated.

3 Performance of obligations including with respect to Scheme Consideration

3.1 Scheme Consideration

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

- (a) provide, or procure the provision of, the Scheme Consideration to each Scheme Participant in accordance with the terms of the Scheme, including by:
 - (i) depositing, or procuring the deposit of, in cleared funds, by no later than the Business Day before the Implementation Date, an amount equal to the aggregate amount of the cash component of the Scheme Consideration payable to all Scheme Participants under the Scheme into an Australian dollar denominated trust account operated by Elliot as trustee for the Scheme Participants, except that any interest on the amounts deposited (less bank fees and other charges) will be credited to Miller's account; and
 - (ii) issuing, on or before the Implementation Date, the New Miller Shares to which each Scheme Participant is entitled (if any, and taking into account the impact of the Sale Facility) and procure that the name and address of each such Scheme Participant is entered in the Miller Registry in respect of those New Miller Shares; and
- (b) undertake all other actions attributed to it under the Scheme, subject to and in accordance with the terms of the Scheme.

3.2 Shares to rank equally

Miller covenants in favour of each Scheme Participant that the New Miller Shares which are issued to each Scheme Participant in accordance with the Scheme will:

- (a) rank equally with all Miller's other existing ordinary shares on issue at the date of this deed poll; and

- (b) be duly authorised and validly issued or transferred, fully paid and free from any Encumbrance (except for any lien arising under Miller's constitution applying equally to all of Miller's existing ordinary shares).

3.3 Joint holders

In the case of Scheme Shares held in joint names any bank cheque required to be paid to Scheme Participants by Miller must be payable to the joint holders and be forwarded to the holder whose name appears first in the Register as at the Record Date.

4 Representations and warranties

Miller represents and warrants that:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power)** it has power to enter into this deed poll, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this deed poll do not and will not conflict with:
- (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
 - (ii) any law binding on or applicable to it or its assets; or
 - (iii) any Encumbrance or document binding on or applicable to it;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this deed poll, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this deed poll are valid and binding and are enforceable against it in accordance with its terms; and
- (f) **(solvency)** it is not Insolvent.

5 Continuing obligations

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

- (a) Miller has fully performed its obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.2.

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6 Costs

6.1 Costs

The parties agree to pay their own costs in respect of the Scheme (including, in connection with the transfer of Elliot Shares to Miller in accordance with the terms of the Scheme) except for amounts covered by clause 6.2.

6.2 Stamp duty and registration fees

Miller:

- (a) agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this deed poll or any other transaction contemplated by this deed poll (including any fees, fines, penalties and interest in connection with any of these amounts); and
- (b) indemnifies each Scheme Participant against, and agrees to reimburse and compensate it, for any liability in respect of stamp duty under clause 6.2(a).

However, Miller need not pay, reimburse or indemnify against any fees, fines, penalties or interest to the extent they have been imposed because of Elliot's delay.

7 Notices

Notices and other communications in connection with this deed poll must be in writing. They must be sent to the address or email address referred to in the Details and (except in the case of email) marked for the attention of the person referred to in the Details. If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

8 General

8.1 Variation

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

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

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

8.2 Partial exercising of rights

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

8.3 Remedies cumulative

The rights, powers and remedies in connection with this deed poll are cumulative and are in addition to other rights, powers and remedies given by law independently of this deed poll and any arising in respect of the Scheme.

8.4 Assignment or other dealings

Miller and each Scheme Participant may not assign or otherwise deal with its rights under this deed poll or allow any interest in them to arise or be varied without the consent of Miller and Elliot.

8.5 Further steps

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

9 Governing law and jurisdiction

9.1 Governing law and jurisdiction

The law in force in the place specified in the Details governs this deed poll. Miller submits to the non-exclusive jurisdiction of the courts of that place.

9.2 Serving documents

Without preventing any other method of service, any document in an action in connection with this deed poll may be served on Miller by being delivered or left at Miller's address set out in the Details.

EXECUTED as a deed poll

Deed Poll

Signing page

DATED: _____

EXECUTED by **MILLER** in accordance)
with section 127(1) of the Corporations)
Act 2001 (Cth) by authority of its)
directors:)

.....)
Signature of director)

.....)
Name of director (block letters))

.....)
Signature of director/company)
secretary)

.....)
Name of director/company secretary)
(block letters)

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