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24 October 2019

## FUJI XEROX PROPOSES TO ACQUIRE CSG IN A RECOMMENDED TRANSACTION

- *Proposed Scheme of Arrangement under which a subsidiary of Fuji Xerox Co., Ltd (**Fuji Xerox**) would acquire CSG for A\$0.31 per CSG share in cash*
- *Cash price of A\$0.31 per CSG share represents a significant premium of 35.4% to the 1-month VWAP<sup>1</sup> of A\$0.229 per share*
- *Values CSG issued equity at A\$140.8 million and enterprise value at A\$181.6 million<sup>2</sup>*
- *Each member of the CSG Board recommends that CSG shareholders vote in favour of the Scheme in the absence of a Superior Proposal<sup>3</sup> and subject to the Independent Expert concluding in the Independent Expert's Report<sup>4</sup> that the Scheme is in the best interests of CSG shareholders*
- *As part of the Fuji Xerox group, CSG will leverage Fuji Xerox's significant global reach and expertise to offer an expanded print and technology platform to its Australian and New Zealand customers across the SME and Enterprise sectors*
- *CSG's largest shareholder, Caledonia (Private) Investments Pty Limited and its associates, intends to vote its current 29.1% holding (as at the date of this announcement) in favour of the Scheme<sup>5</sup>*

CSG Limited (**CSG**, ASX:CSV) and Fuji Xerox are pleased to announce that CSG and Fuji Xerox Asia Pacific Pte Ltd (**Fuji Xerox Asia Pacific**), a subsidiary of Fuji Xerox, have entered into a Scheme Implementation Deed under which it is proposed that Fuji Xerox Asia Pacific would acquire 100% of the shares in CSG by way of a Scheme of Arrangement (**Scheme**) that is subject to shareholder and court approval in accordance with the requirements of Part 5.1 of the Australian Corporations Act 2001 (Cth).

Under the Scheme, CSG shareholders will receive cash consideration of A\$0.31 per CSG share (**Scheme Consideration**) and CSG will become a wholly-owned subsidiary of Fuji Xerox Asia Pacific.

The Scheme Consideration values CSG's issued equity at A\$140.8 million and enterprise value at A\$181.6 million<sup>2</sup>. The transaction will be funded from Fuji Xerox Asia Pacific's existing cash on balance sheet.

Each member of the CSG Board recommends that CSG shareholders vote in favour of the Scheme at the Scheme meeting in the absence of a Superior Proposal<sup>6</sup> and subject to the Independent Expert concluding in the Independent Expert's Report (or in any update of, or revision, amendment or

<sup>1</sup> Volume weighted average price based on cumulative trading volume and value up to and including 23 October 2019 (being the last trading day prior to this announcement).

<sup>2</sup> Implied diluted equity value of \$140.8 million based on the Scheme Consideration of \$0.31 per CSG share multiplied by current shares on issue of 449,257,045 shares and 5,000,000 unlisted performance rights that will vest as a result of the Scheme. Enterprise value includes CSG net debt (adjusted for restricted cash) of \$24.9 million and minority interests of \$15.9 million as at 30 June 2019.

<sup>3</sup> As that term is defined in the attached Scheme Implementation Deed.

<sup>4</sup> Or in any update of, or revision, amendment or addendum to, that report.

<sup>5</sup> Based on the disclosed terms of the Scheme, and subject to no superior proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of CSG shareholders.

<sup>6</sup> As that term is defined in the attached Scheme Implementation Deed.



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addendum to, that report) that the Scheme is in the best interests of CSG shareholders. Subject to those same qualifications, each CSG Director intends to vote the CSG shares held or controlled by them in favour of the Scheme.

CSG Directors believe this is a compelling offer for CSG shareholders for the following reasons:

- **Significant premium:** The Scheme Consideration of A\$0.31 per share represents:
  - 31.9% premium to the closing price of CSG shares on ASX of A\$0.235 per share on 23 October 2019<sup>7</sup>
  - 35.4% premium to the 1-month VWAP<sup>8</sup> of CSG shares of A\$0.229 per share; and
  - 55.2% premium to the VWAP<sup>8</sup> of CSG shares of A\$0.200 per share since the announcement of the CSG's FY2019 full year result.
- **Certainty of value:** the 100% cash consideration provides CSG shareholders with certainty of value and the opportunity to realise their investment in full for cash.
- **Limited conditionality:** The Scheme is subject only to conditions customary for transactions of this type, including regulatory approvals, court approval and approval by the shareholders of CSG.

CSG's largest shareholder, Caledonia (Private) Investments Pty Limited, who with its associates has a relevant interest in CSG shares (29.1%) at the date of this announcement, has advised CSG that it intends to vote in favour of the Scheme based on the disclosed terms of the Scheme, and subject to no superior proposal emerging and subject to the independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of CSG shareholders.

**CSG Chairman, Bernie Campbell, said:** "CSG is the ideal strategic fit for Fuji Xerox's global business with our expertise in IT managed services and office solutions for the SME sector in Australia and New Zealand complementing Fuji Xerox's leading print and technology operations.

"The all-cash offer is attractive for shareholders and reflects the positive impact of the transformation achieved to date as part of our 2021 strategy. Our more than 10,000 SME customers across Australia and New Zealand will benefit from our long-term integration with Fuji Xerox through increased scale, broader product and service capability.

"The Scheme provides certainty for our shareholders to realise value at a significant premium. It will also provide growth opportunities for our 670 employees within a global and culturally aligned business."

**CSG Acting CEO & Managing Director, Mark Bayliss, said:** "The Scheme represents an outstanding outcome for all CSG stakeholders: shareholders, employees, around 10,000 customers and other business partners. The opportunity to realise certain value at a significant premium represents a great outcome for our shareholders, who have been supportive over the company's recent period of strategic transformation."

"Fuji Xerox's globally leading print and technology platform coupled with industry expertise and experience, will enable CSG to drive growth for our customers and employees."

<sup>7</sup> 23 October 2019, being the last trading day prior to this announcement.

<sup>8</sup> Volume weighted average price based on cumulative trading volume and value up to and including 23 October 2019.



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### **Fuji Xerox's intentions for CSG**

Through this acquisition, Fuji Xerox aims to further expand business operations in relation to SMEs in Australia and New Zealand, by harnessing the synergies it believes exist between the two businesses in relation to the supply of office printing equipment and IT services.

Fuji Xerox is a joint venture partnership formed in 1962 between Fuji Photo Film (then, currently FUJIFILM Holdings Corporation) and Rank Xerox (then, currently Xerox Limited) to develop, produce and sell printers and document-related products and services in the Asia-Pacific region.

Fuji Xerox is one of the largest integrated document and print management providers in the Asia-Pacific region, and a market leader in Australia and New Zealand.

Fuji Xerox believes that the combination of CSG with its Asia-Pacific business allows Fuji Xerox to strengthen its leading presence providing IT print device and managed print solutions, and to grow its technology product and service offerings to the important SMEs in both Australia and New Zealand.

Fuji Xerox President and Representative Director, Kouichi Tamai said: "Fuji Xerox has a long history of providing best-in-class print and document management solutions to its customers in Australia and New Zealand. The combination of Fuji Xerox and CSG represents an exciting opportunity for our stakeholders, employees and business partners, as well as enhancing the products and services available to help customers navigate their evolving technology needs."

### **Details of the Scheme Implementation Deed**

The Scheme Implementation Deed entered into between Fuji Xerox Asia Pacific and CSG (**SID**) contains customary terms and conditions on which CSG and Fuji Xerox Asia Pacific will implement the Scheme.

The Scheme is conditional on obtaining necessary regulatory approvals (including the approval of the Australian Competition and Consumer Commission and the New Zealand Commerce Commission), approval of CSG shareholders, court approval, no material adverse change and no prescribed occurrences, among other customary conditions.

In addition, the SID contains certain customary exclusivity provisions, including no shop restrictions, no talk restrictions, a notification obligation and a matching right. The SID also contains limited circumstances under which CSG may be required to pay a break fee of approximately A\$1.4 million.

Full details of the conditions to the Scheme and other agreed terms are set out in the SID, a copy of which is attached to this announcement.

### **Indicative Timetable and Next Steps**

CSG shareholders do not need to take any action at the present time.

A scheme booklet containing information relating to the Scheme, reasons for the CSG Directors recommendation, an Independent Expert's Report on whether the Scheme is in the best interests of CSG shareholders and details of the Scheme meeting, is expected to be sent to CSG shareholders in December 2019.

Shareholders will then have the opportunity to vote on the Scheme at a court convened shareholder meeting, expected to be held in early February 2020.



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Subject to CSG shareholder approval being obtained by the requisite majorities and other conditions of the Scheme being satisfied, the Scheme is expected to be implemented in mid February 2020.

<b>Event</b>	<b>Expected Date</b>
First court hearing	Mid December 2019
Dispatch of Scheme booklet to CSG shareholders	Late December 2019
Scheme meeting	Early February 2020
Second court hearing	Early February 2020
Effective date	Early February 2020
Record date	Mid February 2020
Implementation date	Mid February 2020

### **Investor Conference Call**

CSG will host a group investor conference call at 9:30am AEDT today (Thursday 24 October 2019) to discuss the matter

Dial-in details: +61 2 9007 3187 or 1800 870 643 (Australia toll free)

Conference ID: 10002586

To bypass the operator and gain immediate access to the call, participants can pre-register via:

<https://s1.c-conf.com/diamondpass/marketeye-10002586-invite.html>

### **Advisers**

CSG is being advised by Moelis Australia as financial adviser and MinterEllison as legal counsel.

### **CSG Contacts**

Further information

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### **About CSG Limited**

Founded in 1988, CSG is a publicly listed ASX company with a 30-year history of providing print and business technology solutions in Australia and New Zealand, supported by an in-house equipment

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financing business. CSG has a national sales and service footprint in both countries concentrating on SME customers.

CSG provides print and display solutions, managed information technology, desktop, cloud-unified communications and contact centre solutions. CSG focuses on providing these information technology services and technologies as a subscription service, supported by a national service network.

CSG's product and service offering provides SMEs with access to the latest technologies with minimal capital outlay as well as a single point of contact for their entire office technology needs.

CSG employs approximately 670 people and operates out of 27 offices across Australia and New Zealand.

For further information please visit [www.csg.com.au](http://www.csg.com.au) or [www.csg.co.nz](http://www.csg.co.nz)

### **About Fuji Xerox**

Founded in 1962, Fuji Xerox Co., Ltd. is a leading company offering smarter ways to work with its document-related solutions and services, as well as with the world-class office multifunction devices, printers and production printers that we develop and manufacture for worldwide distribution.

Fuji Xerox is a consolidated subsidiary of FUJIFILM Holdings Corporation with direct sales force covering Japan and the Asia-Pacific region including China. As a 10 billion dollar enterprise, it employs approximately 40,000 people globally, with more than 80 domestic and overseas affiliates / sales subsidiaries.

Fuji Xerox Asia Pacific is the subsidiary of Fuji Xerox overseeing sales operations in the Asia-Pacific region.

<http://www.fujixerox.com>

Xerox, Xerox and Design, as well as Fuji Xerox and Design are registered trademarks or trademarks of Xerox Corporation in Japan and/or other countries.

**Ends**

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# Scheme Implementation Deed

—  
CSG Limited (**Target**)  
Fuji Xerox Asia Pacific Pte Ltd (**Bidder**)  
—

# Scheme Implementation Deed

<b>Details</b>	<b>5</b>
<b>Agreed terms</b>	<b>6</b>
<b>1. Defined terms &amp; interpretation</b>	<b>6</b>
1.1 Defined terms	6
1.2 Interpretation	14
1.3 Headings	15
1.4 Listing requirements included as law	15
1.5 Statements on the basis of knowledge	15
1.6 Reasonable endeavours	16
<b>2. Agreement to propose Scheme</b>	<b>16</b>
<b>3. Conditions precedent and pre-implementation steps</b>	<b>16</b>
3.1 Conditions to Scheme	16
3.2 Benefit and waiver of conditions precedent	17
3.3 Reasonable endeavours to satisfy Conditions	18
3.4 Target Performance Rights	19
3.5 Notifications	19
3.6 Scheme voted down	19
3.7 Conditions not capable of being fulfilled	19
3.8 Interpretation	20
<b>4. Scheme structure</b>	<b>20</b>
4.1 Scheme	20
4.2 Scheme Consideration	20
<b>5. Scheme – parties' respective implementation obligations</b>	<b>21</b>
5.1 Target's obligations	21
5.2 The Bidder's obligations	24
5.3 Scheme Booklet - preparation principles	25
5.4 New information	26
5.5 Verification	26
5.6 Responsibility statements	27
5.7 Good faith cooperation	27
<b>6. Board recommendation</b>	<b>27</b>
<b>7. Conduct of business before the Implementation Date</b>	<b>28</b>
7.1 Conduct of Target business	28
7.2 Prohibited actions	28
7.3 Permitted activities	30
7.4 Access	30
7.5 Access to the Bidder information	31
7.6 Third Party Consent Contracts	31
<b>8. Reconstitution of the board of each Target Group Member</b>	<b>32</b>
8.1 Appointment of directors	32
8.2 Resignation of directors	32
<b>9. Representations and warranties</b>	<b>32</b>
9.1 Bidder representations and warranties	32
9.2 Bidder's indemnity	33
9.3 Target representations and warranties	33
9.4 Target's indemnity	35
9.5 Notifications	35

9.6	Survival of representations	36
9.7	Survival of indemnities	36
9.8	Limitations on Claims against the Target	36
9.9	Limitation on Claims against the Bidder	36
<b>10.</b>	<b>Exclusivity</b>	<b>36</b>
10.1	No existing discussions	36
10.2	No-shop	37
10.3	No-talk	37
10.4	No due diligence	37
10.5	Notification of approaches	38
10.6	Target's response to Rival Acquirer and the Bidder's right to respond	38
10.7	Fiduciary out	39
<b>11.</b>	<b>Target Break Fee</b>	<b>39</b>
11.1	Background	39
11.2	Costs incurred by the Bidder	40
11.3	Payment by the Target to the Bidder	40
<b>12.</b>	<b>Break Fee qualification</b>	<b>41</b>
12.1	Determination by Governmental Agency	41
12.2	Obligations of the Bidder and the Target	42
<b>13.</b>	<b>Confidentiality and Public Announcement</b>	<b>42</b>
13.1	Confidentiality	42
13.2	Agreed Announcement on execution	42
13.3	Further public announcements	42
13.4	Required announcement	42
13.5	Statements on termination	42
<b>14.</b>	<b>Termination</b>	<b>43</b>
14.1	Termination by notice	43
14.2	Automatic termination	43
14.3	Effect of termination	43
<b>15.</b>	<b>Releases</b>	<b>44</b>
15.1	Release of Target Indemnified Parties	44
15.2	Release of Bidder Indemnified Parties	44
15.3	Deeds of indemnity	44
15.4	Directors' and officers' insurance	45
<b>16.</b>	<b>Notices</b>	<b>45</b>
<b>17.</b>	<b>General</b>	<b>46</b>
17.1	Further acts	46
17.2	Timetable	46
17.3	Payments	46
17.4	Interest	46
17.5	Consents or approvals	46
17.6	GST	47
17.7	Stamp duty	47
17.8	Expenses	47
17.9	Amendments	47
17.10	Assignment	47
17.11	Business Day	47
17.12	Waiver	48
17.13	Counterparts	48
17.14	Entire agreement	48

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17.15	No representation or reliance	48
17.16	No merger	48
17.17	Governing law	48
	<b>Schedule 1 – Indicative timetable</b>	<b>49</b>
	<b>Signing page</b>	<b>50</b>

**Annexure A – Deed Poll**

**Annexure B – Scheme**

**Annexure C – Certificate**

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# Details

Date 23 October 2019

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## Parties

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Name **CSG Limited**  
ABN 64 123 989 631  
Short form name **Target**  
Notice details Level 11, 175 Pitt Street, Sydney NSW 2000  
Email: Howard.Edelman@csg.com.au  
Attention: Mr Howard Edelman  
Copy to: Michael Gajic: Michael.Gajic@minterellison.com  
Copy to: Michael Scarf: Michael.Scarf@minterellison.com

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Name Fuji Xerox Asia Pacific Pte Ltd  
Short form name **Bidder**  
Notice details 80 Anson Road, #37-00 Fuji Xerox Towers, Singapore 079907  
Email: hitoaki.tsutsui@fujixerox.co.jp  
Attention: Hiroaki Tsutsui

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## Background

- A The Target and the Bidder have agreed to implement the Proposed Transaction on the terms, and subject to the conditions, of this deed.
- B The Target and the Bidder have agreed certain other matters in connection with the Proposed Transaction as set out in this deed.

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# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Defined terms

In this deed, unless the context otherwise requires, the following words and expressions have meanings as follows:

**ACCC** means the Australian Competition and Consumer Commission.

**ACCC Condition Precedent** means the condition in clause 3.1(d).

**Adviser** means any person who is engaged to provide professional advice of any type (including legal, accounting, consulting or financial advice) to the Target or the Bidder in connection with the Proposed Transaction.

**Agreed Announcement** has the meaning given to that expression in clause 13.2.

**ASIC** means the Australian Securities and Investments Commission.

**Associate** has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of that Act included a reference to this deed and the Target was the designated body.

**ASX** means ASX Limited ABN 98 008 624 691 or, if the context requires, the financial market operated by it.

**Authorised Persons** means, in relation to a person, each:

- (a) director, officer, partner, member or employee of the person;
- (b) Adviser of the person; and
- (c) director, officer or employee of an Adviser of the person,

and **Authorised Person** means any one of them.

**Bidder Disclosure Letter** means the letter so entitled provided by the Bidder to the Target prior to the date of this deed.

**Bidder Group** means the Bidder and each Subsidiary of the Bidder (excluding, at any time, each Target Group Member to the extent that such Target Group Member is a subsidiary of the Bidder at that time) and **Bidder Group Member** means any one of them.

**Bidder Indemnified Parties** means each Bidder Group Member and each director, officer, partner, member or employee of each Bidder Group Member.

**Bidder Information** means the information regarding the Bidder Group, the merged Bidder-Target entity following implementation of the Scheme, the Scheme Consideration and the Bidder's intentions relating to the Target Group's business, assets and employees that is provided by or on behalf of the Bidder or any of its Advisers to the Target in writing for inclusion in the Scheme Booklet (excluding any information provided by the Target to the Bidder, or obtained by the Bidder from an announcement made by the Target to ASX or from a publicly available document lodged by the Target with ASIC, contained in, or used in the preparation of, the information regarding the merged Bidder-Target entity following implementation of the Scheme). For the avoidance of doubt, the Bidder Information excludes the Target Information, the Independent Expert's Report, any investigating accountant's report and any description of the taxation effect of the Proposed Transaction on Scheme Shareholders.

**Bidder Knowledge Persons** means each director of the Bidder.

**Bidder Parties** means each Bidder Group Member and each Authorised Person relating to each Bidder Group Member.

**Bidder Warranties** means the representations and warranties of the Bidder set out in clause 9.1.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales, Australia or Tokyo, Japan.

**Claim** means a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgement, award, damage, loss, costs, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute.

**Competing Proposal** means any offer, expression of interest, proposal, transaction or arrangement by a Third Party that, if entered into or completed, would mean a person or two or more persons who are Associates:

- (a) would acquire a Relevant Interest or voting power in 15% or more of the aggregate number of Target Shares or of securities of any other Target Group Member;
- (b) would enter into, buy, dispose of, terminate or otherwise deal with any cash settled equity swap or other synthetic, economic or derivative transaction connected with or relating to 15% or more of the aggregate number of Target Shares or of the securities of any other Target Group Member;
- (c) would directly or indirectly acquire or become the holder of, or otherwise acquire or have the right to acquire, any legal, beneficial or economic interest in, or control of, all or a substantial part or material part of the business conducted by, or assets or property of, the Target Group;
- (d) would acquire Control of the Target or any other material Target Group Member;
- (e) may otherwise acquire, or merge with, the Target or any other material Target Group Member; or
- (f) require Target to abandon, or otherwise fail to proceed with, the Proposed Transaction, whether by way of takeover bid, scheme of arrangement, capital reduction, buy-back or sale of assets, sale of securities, strategic alliance, dual listed company structure (or other synthetic merger), joint venture, partnership, any proposal by the Target to implement any reorganisation of capital or any other transaction or arrangement, and on the basis that each successive material modification or variation of any proposal, offer, arrangement, expression of interest or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

**Conditions** means the conditions set out in clause 3.1 and **Condition** means any one of them.

**Confidentiality Agreement** means the exclusivity and confidentiality deed dated 21 May 2019 between the Target and the Bidder.

**Consultation Notice** has the meaning given to that expression in clause 3.7(a).

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

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

**Court** means the Supreme Court of New South Wales or any other court of competent jurisdiction under the Corporations Act as the Target and the Bidder may agree in writing.

**Cut off Time** 8 am on the Second Court Date.

**Deed Poll** means the deed poll to be executed by the Bidder in favour of the Scheme Shareholders prior to the First Court Date in the form set out in Annexure A or such other form acceptable to the Target (acting reasonably).

**Delivery Time** means the time being 2 hours before the commencement of the hearing of the Court on the Second Court Date.

**Due Diligence Material** means:

- (a) the documents and information (including all written responses provided by or on behalf of the Target Group in response to written requests for information) that were at any time prior to 5.00pm on 22 October 2019 contained in the online data room established by or on behalf of the Target Group and made available to the Bidder and the Bidder's

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Authorised Persons prior to the date of this deed, the index of which has been initialled as at the date of this deed by, or on behalf of, the Target and the Bidder for identification; and

- (b) to the extent not contained in the Due Diligence Material, all written information disclosed by or on behalf of the Target Group in management presentations made to the Bidder and the Bidder's Authorised Persons prior to the date of this deed, provided copies of which are attached to the Target Disclosure Letter.

**EBITDA** means earnings of the Target Group before interest, tax, depreciation and amortisation, calculated in the same manner in which the budgeted EBITDA of the Target Group for the year ending 30 June 2020 was calculated in data room document "FY20 Board Approved Budget Key Assumptions". **Effective** means, in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme.

**Effective Date** means, in relation to the Scheme, the date on which the Scheme becomes Effective.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest (including a security interest as defined in section 12 of the *Personal Property Securities Act 2009* (Cth)), title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person, whether registered or unregistered.

**End Date** means 1 June 2020 or such other date agreed in writing between the Target and the Bidder.

**Excluded Shareholder** means any Target Shareholder who is a Bidder Group Member or any other Target Shareholder to the extent it holds Target Shares on behalf of, or for the benefit of, any Bidder Group Member.

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

- (a) the End Date;
- (b) the Effective Date; and
- (c) the date this deed is terminated in accordance with its terms.

**Fairly Disclosed** means, in relation to information disclosed in respect of a matter, event or circumstance to the Bidder or any of the Bidder's Authorised Persons, disclosed to a sufficient extent, and in sufficient detail, so as to enable a reasonable and sophisticated recipient of the relevant information who is experienced in transactions similar to the Proposed Transaction to identify or ascertain the nature and scope of the relevant matter, event or circumstance from the information disclosed.

**Fighting Fund Amount** means the amount spent or committed to be spent by the Target Group between the date of this deed and the Delivery Date to incentivise its employees, contractors and consultants (but not to reduce the cost of goods sold of the Target Group) in accordance with the plan developed by the Target for this purpose and provided to the Bidder prior to the date of this deed, provided that the amount spent or committed to be spent cannot exceed \$1.9 million.

**First Court Date** means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act that the Scheme Meeting be convened is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

**Governmental Agency** means any Australian or foreign government or representative of a government or any Australian or foreign governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity, and includes any minister, ASIC, ASX or any other stock exchange and any regulatory organisation established under statute.

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

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**Implementation Date** means, in relation to the Scheme, the date being 5 Business Days after the Record Date or such other Business Day agreed in writing by the Target and the Bidder.

**Impugned Amount** has the meaning given to that expression in clause 12.1.

**Incoming Officer** has the meaning given to that expression in clause 8.1.

**Independent Expert** means an expert, independent of the parties, appointed by the Target in good faith to opine on whether the Scheme is in the best interest of Target Shareholders.

**Independent Expert's Report** means the report issued by the Independent Expert in connection with the Scheme for inclusion in the Scheme Booklet, which includes a statement by the Independent Expert on whether, in the Independent Expert's opinion, the Scheme is in the best interest of Target Shareholders, but does not include any supplement, addendum or update of that report unless expressly stated otherwise in this deed.

**Insolvency Event** means, in relation to a person:

- (a) **insolvency official:** the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 14 days;
- (b) **arrangements:** the entry by the person into a compromise or arrangement with its creditors generally;
- (c) **winding up:** the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;
- (d) **suspends payments:** the person suspends or threatens to suspend payment of its debts as and when they become due;
- (e) **insolvency:** the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (f) **deregistration:** the person is deregistered as a company or otherwise dissolved;
- (g) **deed of company arrangement:** the person executing a deed of company arrangement; or
- (h) **analogous events:** anything analogous to those set out in any of paragraphs (a) to (g) (inclusive) of this definition occurs in relation to the person under the laws of a foreign jurisdiction,

and the person shall be **Insolvent** if any event specified in paragraphs (a) to (h) (inclusive) of this definition occurs in respect of that person.

**Interest Rate** means, in relation to an amount due for payment, the 30 day Bank Bill Swap Reference Rate as published as at the relevant due date for payment in the 'Money & Bond Markets' section of The Australian Financial Review.

**Listing Rules** means the official listing rules of ASX as amended or waived from time to time.

**MIF** means any print-capable product, machine, device, piece of equipment, or similar subscription type service which is the subject of a current contract between any Target Group Member and a third party customer pursuant to which a Target Group Member finances, leases, services or manages that print-capable product, machine, device, piece of equipment, or similar subscription type service (or has the right to do so) for that customer.

**Outgoing Officer** has the meaning given to that expression in clause 8.2.

**Proposed Transaction** means:

- (a) the proposed acquisition by Bidder in accordance with the terms and conditions of this deed of all of the Target Shares (other than the Target Shares owned or held by an Excluded Shareholder) through the implementation of the Scheme; and
- (b) all transactions and steps contemplated by this deed.

**Receiving Party** has the meaning given to that expression in clause 17.3.

**Record Date** means 7.00pm on the date being 5 Business Days after the Effective Date or such other Business Day agreed in writing between the Target and the Bidder.

**Regulatory Approvals** means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, license, direction, declaration, authority, waiver, modification, or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Governmental Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without such intervention or action.
- (c) **Related Body Corporate** means, in relation to a person, a related body corporate of that person under section 50 of the Corporations Act.

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

**Relevant Notice** has the meaning given to that expression in clause 10.6(a)(iv).

**Rival Acquirer** has the meaning given to that term in clause 10.6(a)(v).

**RG 60** means ASIC Regulatory Guide 60 issued by ASIC.

**Scheme** means a members' scheme of arrangement under Part 5.1 of the Corporations Act between the Target and Scheme Shareholders under which Bidder proposes to acquire all of the Target Shares (other than any Target Shares held by an Excluded Shareholder), substantially in the form set out in Annexure B, subject to any alterations or conditions:

- (a) agreed to in writing by the Target and the Bidder; or
- (b) made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Target and the Bidder.

**Scheme Booklet** means the explanatory booklet to be prepared by the Target in respect of the Proposed Transaction in accordance with the terms of this deed and to be despatched to Target Shareholders.

**Scheme Consideration** means \$0.310 per Scheme Share.

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

**Scheme Share** means a Target Share on issue as at the Record Date other than any Target Share then held by an Excluded Shareholder (but including any such Target Share held on behalf of one or more third parties or otherwise in a fiduciary capacity).

**Scheme Shareholder** means a Target Shareholder that holds Scheme Shares as at the Record Date.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

**Share Splitting** means the splitting by a holder of Target Shares into two or more parcels of Target Shares whether or not it results in any change in beneficial ownership of the Target Shares.

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**Specified Event** means any event, occurrence or matter that:

- (a) occurs after the date of this deed; or
- (b) occurs before the date of this deed but only becomes known to the Bidder (or any Bidder Knowledge Person) after the date of this deed.

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

**Superior Proposal** means a bona fide Competing Proposal:

- (a) of the kind referred to in any of paragraphs (c), (d) or (e) of the definition of 'Competing Proposal'; and
- (b) not resulting from a breach by the Target of any of its obligations under clause 10 of this deed (it being understood that any actions by the other Target Group Members or the Authorised Persons of any Target Group Member not permitted by clause 10 shall be deemed to be a breach by the Target for the purposes hereof),
- (c) which in the determination of the Target Board acting in good faith in order to satisfy what the Target Board reasonably considers to be its fiduciary or statutory obligations (after having taken written advice from their external legal counsel and financial advisers in relation to the financial aspects of the Competing Proposal):
- (d) is reasonably capable of being valued and reasonably likely to be completed in accordance with its terms in a timely fashion, taking into account all financial, regulatory and other aspects of such proposal, including the ability of the proposing party to consummate the transactions contemplated by the Competing Proposal; and
- (e) would, if completed substantially in accordance with its terms, be reasonably likely to result in a transaction more favourable to Target Shareholders as a whole than the terms of the Proposed Transaction (as completed) as notified at that time by the Bidder (or any Authorised Person of the Bidder) to the Target (including, for the avoidance of doubt, following the application of the matching right in clause 10.6), taking into account all of the terms and conditions of the Competing Proposal, including consideration, conditionality, funding, certainty, timing, the identity of the proponent and any other matters affecting the probability of the Competing Proposal being completed.

**Target Board** means the board of directors of the Target as constituted from time to time (or any committee of the board of directors of the Target constituted from time to time to consider the Proposed Transaction on behalf of the Target).

**Target Break Fee** has the meaning given to that term in clause 11.3(a).

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

**Target Director Shares** means, in relation to a Target Director, all Target Shares:

- (a) held by or on behalf of the Target Director; or
- (b) listed as an indirect interest in an Appendix 3X or Appendix 3Y lodged by the Target with ASX in respect of the Target Director.

**Target Disclosure Letter** means the letter so entitled provided by the Target to the Bidder at least 5 Business Days prior to the date of this deed (including any schedules or annexures to that letter).

**Target Group** means the Target and its Subsidiaries and **Target Group Member** means any one of them.

**Target Indemnified Parties** means each Target Group Member and each director, officer, partner, member or employee of of each Target Group Member.

**Target Information** means:

- (a) the entirety of the information to be included in the Scheme Booklet (excluding the Bidder Information, the Independent Expert's Report, any investigating accountant's report and any description of the taxation effect of the Proposed Transaction on Scheme Shareholders prepared by an external adviser to the Target); and

- (b) any information provided by the Target to the Bidder, or obtained by the Bidder from an announcement made by the Target to ASX or from a publicly available document lodged by the Target with ASIC, contained in, or used in the preparation of, the information regarding the merged Bidder-Target entity following implementation of the Scheme.

**Target Knowledge Persons** means each director of the Target.

**Target Material Adverse Change** means a Specified Event which (either individually or when aggregated with other Specified Events of the same or substantially similar nature):

- (a) results in the MIF of the Target Group (without any double counting) falling below 35,742 MIF for any period of at least 5 consecutive Business Days ending on or before the Delivery Time; or
- (b) would be reasonably likely to result in the value of EBITDA of the Target Group for the financial year ending 30 June 2020 (when calculated in accordance with the same accounting policies and practices applied by the Target Group in relation to the financial year ended 30 June 2019) (**FY20 EBITDA**) being less than the Trigger Amount,
- (c) provided that:
- (d) the impact of the relevant Specified Event(s) on the MIF of the Target Group and/or the FY20 EBITDA (as applicable) must be determined after taking into account any matters which offset, or are reasonably likely to offset, the impact of the same Specified Event(s) on the MIF of the Target Group and/or the FY20 EBITDA (as applicable), subject to the Target Group providing reasonable evidence to Bidder of the impact that such matters will have, or are reasonably likely to have, on the MIF of the Target Group and/or the FY20 EBITDA (as applicable);
- (e) any reduction in the FY20 EBITDA will be disregarded to the extent that it is a result of the application of the accounting standards or the existing accounting policies of the Target Group to the treatment of Target Performance Rights (including their cancellation and/or lapse) in connection with the Proposed Transaction in the manner agreed by the Bidder and Target<sup>1</sup>;
- (f) any event, matter or occurrence will be disregarded if it:
- (i) is required or permitted by this deed or the Scheme or transactions contemplated by either;
  - (ii) has been Fairly Disclosed prior to the date of this deed in Filings of the Target Group on ASX or with ASIC;
  - (iii) has been Fairly Disclosed in the Due Diligence Materials or the Target Disclosure Letter (which, for the avoidance of doubt, includes undertaking actions and matters Fairly Disclosed in the Due Diligence Materials or Target Disclosure Letter which the Target Group is considering or proposing to undertake) as at the date of this deed;
  - (iv) is within the actual knowledge of the Bidder Knowledge Persons as at the date of this deed;
  - (v) is approved, or consented to, or requested by a Bidder Group Member;
  - (vi) relates to costs and expenses incurred by the Target Group in connection with the Proposed Transaction, including all fees payable to any Adviser of a Target Group Member, provided that Target Group must use reasonable endeavours not to materially exceed the estimated amount of such costs and expenses specified in the Due Diligence Materials or Target Disclosure Letter; or
  - (vii) results or arises from or in connection with:
    - (A) any action of the Bidder Group;

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- (B) any actual or proposed change in any law, regulation or policy, or in any accounting principle or standard, or in the interpretation of any of the foregoing (whether or not retrospective in effect); or
  - (C) general economic, business or political conditions or changes in any such conditions (including disruptions to, or fluctuations in, financial markets, or changes in interest rates, foreign currency exchange rates or commodity prices) other than such conditions, or changes in any such conditions, that have a disproportionate effect on the Target Group as compared to other participants in the industries in which the Target Group operates; or
  - (D) any act of terrorism, war (whether or not declared) natural disaster or the like.

**Target Parties** means:

- (a) the Target Group Members; and
- (b) each Authorised Person of each Target Group Member,

and **Target Party** means any one of them.

**Target Performance Rights** means the:

- (a) 5,000,000 rights granted as at the date of this deed to the Chief Executive Officer under Target's executive performance rights plan; and
- (b) 14,087,499 rights granted as at the date of this deed to employees of the Target Group other than the Chief Executive Officer under Target's executive performance rights plan,
- (c) in each case as disclosed by Target to ASX in the Appendix 3B dated 26 September 2019.

**Target Prescribed Occurrence** means the occurrence of any of the following on or after the date of this deed and before the Delivery Time:

- (a) the Target converts all or any of its shares into a larger or smaller number of shares (as contemplated under section 254H of the Corporations Act or otherwise);
- (b) the Target resolves to reduce its share capital in any way or to reclassify, combine, split or redeem any of the shares in the Target;
- (c) the Target:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) any Target Group Member issues securities (including, without limitation, shares), or grants a performance right or an option over securities (including, without limitation, shares) in the Target Group Member, or agrees to make such an issue or grant such a performance right or option other than pursuant to vesting prior to the Record Date of a Target Performance Right (only if such vesting has been consented to in writing by the Bidder);
- (e) any Target Group Member issues, or agrees to issue, securities convertible into shares in the Target Group Member other than a Target Performance Right;
- (f) any Target Group Member issues, or agrees to issue, convertible notes;
- (g) any Target Group Member disposes, or agrees to dispose, of the whole, or a substantial part, of the business or property of the Target Group Member;
- (h) any Target Group Member creates or agrees to create any Encumbrance over the whole, or a substantial part, of the business or property of the Target Group Member;
- (i) any Target Group Member becomes Insolvent;
- (j) any Target Group Member makes any change to its constitution or convenes a meeting to consider a resolution to change the constitution of any other Target Group Member;

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- (k) any Target Group Member ceases, or threatens to cease, to carry on the business of the Target Group Member conducted as at the date of this deed;
  - (l) any Target Group Member is deregistered as a company or is otherwise dissolved;
  - (m) any Target Group Member disposes of shares or securities in any Target Group Member other than to another Target Group Member; or
  - (n) any Target Group Member directly or indirectly authorises, commits or agrees to take or publicly announces any of the actions referred to in paragraphs (a) to (m) (inclusive) of this definition,
  - (o) provided that a Target Prescribed Occurrence will not include any matter:
  - (p) required or permitted to be done or procured by a Target Group Member under, or pursuant to, this deed or the Scheme;
  - (q) Fairly Disclosed prior to the date of this deed in filings of the Target on ASX;
  - (r) required by law or by an order of a court or other Governmental Agency;
  - (s) to the extent it is Fairly Disclosed in the Due Diligence Materials or the Target Disclosure Letter; or
  - (t) the undertaking of which the Bidder has approved in writing.
  - (u) **Target Register** means the register of members of the Target maintained by, or on behalf of, the Target in accordance with section 168(1) of the Corporations Act.
  - (v) **Target Registry** means Computershare Investor Services Pty Limited or any replacement provider of share registry services to the Target from time to time.
  - (w) **Target Share** means an issued fully paid ordinary share in the capital of the Target.
  - (x) **Target Shareholder** means each person who is registered in the Target Register as a holder of Target Shares.
  - (y) **Target Warranties** means the representations and warranties of the Target set out in clause 9.3.

**Termination Notice** has the meaning given to that expression in clause 3.7(c).

**Third Party** means any person or entity (including a Governmental Agency) other than a Target Group Member or a Bidder Group Member.

**Third Party Consent Contract** means a contract the Bidder and the Target agree in writing on or before the date of this document is a "Third Party Consent Contract" for the purposes of this document.

**Timetable** means the indicative timetable in relation to the Proposed Transaction set out in Schedule 1 as may be amended from time to time by written agreement of the Target and the Bidder.

**Trigger Amount** means:

- (a) \$13.1 million; *less*
- (b) the Fighting Fund Amount.

## 1.2 Interpretation

In this deed, except where the context otherwise requires:

- (a) the singular includes the plural, and the converse also applies;
- (b) gender includes other genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;

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- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
  - (f) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
  - (g) a reference to time is to Sydney, Australia time;
  - (h) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
  - (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
  - (j) a reference to legislation or to a provision of legislation (including a listing rule or operating rule of a financial market or of a clearing and settlement facility) includes a modification or re enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
  - (k) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
  - (l) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
  - (m) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
  - (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it; and
  - (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

### 1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

### 1.4 Listing requirements included as law

A listing rule or operating rule of a financial market or of a clearing and settlement facility will be regarded as a law, and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

### 1.5 Statements on the basis of knowledge

- (a) Any statement made in this deed by the Target on the basis of the Target's knowledge or awareness is made on the basis that the Target's knowledge or awareness is limited to the knowledge that any of the Target Knowledge Persons has or would have if the Target Knowledge Persons had made all reasonable inquiries of the officers, managers, employees and other persons with responsibility for the matters to which the statement relates.
- (b) Any statement made by the Bidder on the basis of the Bidder's knowledge or awareness is made on the basis that the Bidder's knowledge is limited to the knowledge or awareness that any of Bidder Knowledge Persons has or would have if the Bidder Knowledge Persons had made all reasonable inquiries of the officers, managers, employees and other persons with responsibility for the matters to which the statement relates.

## 1.6 Reasonable endeavours

Any provision of this deed which requires a party to use reasonable endeavours or best endeavours to procure that something is performed or occurs or does not occur does not include any obligation:

- (a) to pay any money or provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any Governmental Agency; or
- (b) to commence any legal action or proceeding against any person, except where that provision expressly specifies otherwise.

## 2. Agreement to propose Scheme

- (a) The Target agrees to propose and implement the Scheme on, and subject to, the terms and conditions of this deed, and substantially in accordance with the Timetable.
- (b) The Bidder agrees to assist the Target in proposing and implementing the Scheme on, and subject to, the terms and conditions of this deed, and substantially in accordance with the Timetable.

## 3. Conditions precedent and pre-implementation steps

### 3.1 Conditions to Scheme

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the Target and the Bidder in relation to the implementation of the Scheme will not be binding, until each of the following conditions precedent is satisfied or waived to the extent and in the manner set out in this clause 3:

- (a) **(Shareholder approval):** the Scheme is approved by Target Shareholders (other than Excluded Shareholders) at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
- (b) **(Court approval):** the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act;
- (c) **(Regulatory Approvals):** any Regulatory Approvals that are required by law, or by any Governmental Agency, to implement the Scheme are granted, given, made or obtained on an unconditional basis (or conditional only on the Scheme becoming Effective) and remain in full force and effect in all respects, and have not been withdrawn, revoked, suspended, restricted or amended (or become subject to any notice, intimation or indication of intention to do any such thing) before the Delivery Time
- (d) **(ACCC)** Target and Bidder have received notice in writing from the ACCC stating, or stating to the effect (either unconditionally or on conditions that are acceptable to Bidder in its absolute discretion), that the ACCC does not propose to intervene or seek to prevent the acquisition of Target Shares by Bidder and that notice remains in full force and effect in all respects and has not been withdrawn, revoked, suspended, restricted or amended (or become subject to any notice, intimation or indication of intention to do any such thing) before the Cut Off Time.
- (e) **(NZCC Approval):** a clearance being given, or authorisation being granted, by the New Zealand Commerce Commission (**NZCC**) under the New Zealand Commerce Act 1986 for the acquisition of the Target Shares by the Bidder, or the Bidder otherwise advising the Target in writing that, having taken competent legal advice, it has elected to not seek NZCC clearance or authorisation under the New Zealand Commerce Act 1986;
- (f) **(Restraints):** between (and including) the date of this deed and the Delivery Time:

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- (i) there is not in effect any temporary, preliminary or permanent injunction, decision or other order issued by any court of competent jurisdiction or other Governmental Agency or other material legal restraint or prohibition;
  - (ii) no action or investigation is announced, commenced or threatened by a Governmental Agency; and
  - (iii) no application is made to any Governmental Agency,
  - (iv) in consequence of, or in connection with, the Scheme which:
  - (v) restrains, prohibits or prevents (or could reasonably be expected restrain, prohibit or prevent) the Scheme, the implementation of the Proposed Transaction or the rights of the Bidder in respect of the Target Shares to be acquired under the Scheme; or
  - (vi) requires the divestiture by the Bidder of any Target Shares or the divestiture of any assets of the Bidder Group or the Target Group,
  - (vii) unless such injunction decision, order, action, investigation or application has been disposed of to the satisfaction of the Bidder acting reasonably, or is otherwise no longer effective or enforceable, by the Delivery Time;
- (g) **(ASIC and ASX)**: before the Delivery Time, ASIC and ASX issue or provide such consents, waivers, exemptions, declarations or approvals as are necessary or which the Target and the Bidder agree are necessary or desirable to implement the Scheme and no such consent, waiver, exemption, declaration or approval has been withdrawn or revoked before the Delivery Time;
  - (h) **(No Target Prescribed Occurrence)**: no Target Prescribed Occurrence occurs between the date of this deed and the Delivery Time;
  - (i) **(No Target Material Adverse Change)**: no Target Material Adverse Change occurs between the date of this deed and the Delivery Time;
  - (j) **(Target Warranties)**: each Target Warranty is true and correct in all material respects as at the relevant time or times (as the case may be) set out in clause 9.3(a) in relation to that Target Warranty;
  - (k) **(Bidder Warranties)**: each Bidder Warranty is true and correct in all material respects as at the relevant time or times (as the case may be) set out in clause 9.1(a) in relation to that Bidder Warranty;
  - (l) **(Independent Expert)**: the Independent Expert concludes in the Independent Expert's Report that the Scheme is in the best interest of Scheme Shareholders before the time when the Scheme Booklet is registered by ASIC; and
  - (m) **(Target Performance Rights)** Either:
    - (i) all Target Performance Rights have been cancelled on terms agreed by the Bidder or have automatically vested in accordance with their terms by the Cut-Off Time, and any necessary waiver of, or approval under, the ASX Listing Rules have been obtained in relation to the cancellation of the Target Performance Rights; or
    - (ii) all Target Performance Rights have been cancelled for no consideration or have automatically vested in accordance with their terms by the Cut-Off Time, in such manner as does not require any waiver of, or approval under, the ASX Listing Rules in relation to the cancellation of the Target Performance Rights.

### 3.2 Benefit and waiver of conditions precedent

- (a) The Conditions in clauses 3.1(a) (*Shareholder approval*), 3.1(b) and (*Court approval*) cannot be waived.
- (b) The Conditions in clauses 3.1(c) (*Regulatory Approvals*), 3.1(d) (*ACCC*), 3.1(e) (*NZCC*), 3.1(g) (*ASIC and ASX*), and 3.1(f) (*Restraints*) and are for the benefit of both the Target and the Bidder and any breach or non-satisfaction of them may only be waived (if capable of waiver) with the written consent of both the Target and the Bidder.

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- (c) The Conditions in clauses 3.1(h) (*No Target Prescribed Occurrences*), 3.1(i) (*No Target Material Adverse Change*) and 3.1(j) (*Target Warranties*) and 3.1(m) (*Target Performance Rights*) are for the sole benefit of the Bidder and any breach or non-satisfaction of them may only be waived by the Bidder by notice in writing to the Target.
  - (d) The Conditions in clauses 3.1(k) (*Bidder Warranties*) and 3.1(l) (*Independent Expert*) are for the sole benefit of the Target and any breach or non-satisfaction of them may only be waived by the Target by notice in writing to the Bidder.
  - (e) A party entitled to waive the breach or non-satisfaction of a Condition pursuant to this clause 3.2 (either individually or jointly) may do so in its absolute discretion. Any waiver of a Condition by a party for whose benefit the Condition applies must take place on or prior to the Delivery Time.
  - (f) If a party waives the breach or non-satisfaction of any Condition, that waiver will not preclude it from suing the other party for any breach of this deed including, without limitation, a breach that resulted in the non-fulfilment of the Condition that was waived.

### 3.3 Reasonable endeavours to satisfy Conditions

- (a) Subject to clause 3.3(e), the Target and the Bidder must and must procure that each of their Related Bodies Corporate:
  - (i) use all reasonable endeavours to satisfy the Conditions Precedent as soon as possible after the date of this agreement including, to the extent within its control, procuring performance by a Third Party;
  - (ii) provide all reasonable assistance to the other as is necessary to satisfy the Conditions Precedent; and
  - (iii) not take any action that will or is likely to hinder or prevent the satisfaction of the Conditions Precedent.
- (b) Subject to clause 3.3(e), the Target must provide the Bidder with all information the Bidder reasonably requires to prepare any application, submission, response or other material for the purpose of seeking to satisfy the ACCC Condition Precedent and obtaining all Regulatory Approvals.
- (c) Subject to clause 3.3(e), the Bidder must:
  - (i) file all notices and applications for approval that are necessary with the ACCC in respect to the ACCC Condition Precedent obtaining all Regulatory Approvals;
  - (ii) provide the Target's representative with drafts of any submissions or substantive correspondence proposed to be sent to the ACCC in respect to the ACCC Condition Precedent and any Government Agency in respect of any other Regulatory Approvals, and allow the Target's representative a reasonable opportunity to comment on any such submissions or correspondence;
  - (iii) promptly provide the Target's representative with a copy of all material correspondence received from the ACCC any Government Agency in respect of any other Regulatory Approvals; and
  - (iv) keep the Target's representative reasonably informed of its progress in a timely manner in seeking to ensure the satisfaction of the ACCC Condition Precedent and in respect of any other Regulatory Approvals.
- (d) The Target must not, and must procure that Target Group Members do not, make any unsolicited contact with the ACCC or any other Government Agency in relation to the transactions contemplated by this agreement without the prior written consent of the Bidder (not to be unreasonably withheld).
- (e) In relation to any required disclosure of competitively sensitive information, the Target may comply with clause 3.3(b), and the Bidder may comply with clause 3.3(c), by providing such information to the other party's external lawyers on an external-counsel-only basis.

### 3.4 Target Performance Rights

- (a) The Target must, before the Cut-Off Time, take all action necessary to ensure that all Target Performance Rights are cancelled, or automatically vest in accordance with their terms, and must use all reasonable efforts to obtain any necessary waivers of the ASX Listing Rules in relation to such cancellation.

### 3.5 Notifications

The Target and the Bidder must each:

- (a) keep the other party promptly and reasonably informed of the steps the party has taken and of the party's progress towards satisfaction of the Conditions;
- (b) promptly notify the other party in writing if the party becomes aware that any Condition has been satisfied; and
- (c) promptly notify the other party in writing if the party becomes aware that any Condition is, or has become, incapable of being satisfied by the date specified in this deed for the satisfaction of the Condition (having regard to the respective obligations of each party under clause 3.3).

### 3.6 Scheme voted down

If the Condition in clause 3.1(a) is not satisfied by reason only of the non-satisfaction of the Headcount Test and the Target or the Bidder considers (acting reasonably) that Share Splitting or some other abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied, then the Target must:

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

### 3.7 Conditions not capable of being fulfilled

- (a) If any Condition:
  - (i) is not satisfied;
  - (ii) becomes incapable of being satisfied; or
  - (iii) where the Condition is capable of waiver, is not waived in accordance with clause 3.2,in each case by the date specified in this deed for the satisfaction of the Condition, then, subject to clause 3.7(d), either of the Target or the Bidder may give written notice (**Consultation Notice**) to the other within 5 Business Days after the date that the relevant notice relating to the Condition is given under clause 3.5(c).
- (b) Upon delivery of the Consultation Notice, the Target and the Bidder must consult in good faith with a view to determining whether the Target and the Bidder can reach agreement with respect to:
  - (i) the terms (if any) on which the party with the benefit of the relevant Condition the subject of the Consultation Notice will waive that Condition;
  - (ii) an extension of the time for satisfaction of the relevant Condition the subject of the Consultation Notice or an extension of the End Date (as the case may be); or
  - (iii) the Proposed Transaction proceeding by way of alternative means or methods.
- (c) If:

- (i) the Target and the Bidder are unable to reach agreement in the manner contemplated under clause 3.7(b) within 5 Business Days after a Consultation Notice is given;
- (ii) a Consultation Notice is not given within the timeframe specified in clause 3.7(a); or
- (iii) the Scheme has not become Effective by the End Date,

then, subject to clause 3.2 and clause 3.7(d), either the Target or the Bidder may terminate this deed by notice in writing prior to the Delivery Time (**Termination Notice**) to the other without any liability to any party by reason of that termination alone.

- (d) A party will not be entitled to give a Consultation Notice or a Termination Notice if the relevant Condition has not been satisfied or has become incapable of being satisfied or the Scheme has not become Effective by the End Date (as the case may be) as a result of:
  - (i) a breach of this deed by that party; or
  - (ii) a deliberate act or omission of that party which directly or materially contributed to that Condition not being satisfied or the Scheme not becoming Effective by the End Date (as the case may be).

### 3.8 Interpretation

For the purposes of this clause 3, a Condition is incapable of satisfaction, or will be incapable of being satisfied, if there is an act, failure to act or occurrence that will prevent the Condition being satisfied by the date specified in this deed for the satisfaction of the Condition (and the breach or non-satisfaction that would otherwise have occurred has not already been waived in accordance with this deed).

## 4. Scheme structure

### 4.1 Scheme

The parties acknowledge and agree that, subject to the Scheme becoming Effective, the general effect of the Scheme will be that:

- (a) each Scheme Shareholder will be entitled to receive the Scheme Consideration for each Scheme Share held by the Scheme Shareholder at the Record Date; and
- (b) all of the Scheme Shares will be transferred to Bidder as provided for in the Scheme,
- (c) in each case on the Implementation Date and otherwise in accordance with the terms of the Scheme.

### 4.2 Scheme Consideration

- (a) Bidder covenants in favour of Target (in its own right and separately as trustee for each Scheme Shareholder) that, if the Scheme becomes Effective, in consideration of the transfer to Bidder of all the Scheme Shares held by a Scheme Shareholder under the Scheme:
  - (i) on the Implementation Date it will accept that transfer; and
  - (ii) it will pay, or procure the payment, into a trust account operated by Target as trustee for the Scheme Shareholders (in proportion to their respective holdings of Scheme Shares) of an amount in cleared funds equal to the aggregate amount of the Scheme Consideration for all Scheme Shares, by no later than the Business Day before the Implementation Date (provided that any interest on the amount so deposited (less bank fees and other charges) will accrue for the benefit of Bidder),
  - (iii) in each case in accordance with the terms of the Scheme.

- (b) Subject to the Scheme becoming Effective and Bidder complying with its obligations under clause 4.2(a), at 10.00am on the Implementation Date, the transactions which form part of the Scheme will be implemented in the following sequence:
- (i) all Scheme Shares will be transferred to Bidder; and
  - (ii) in exchange, each Scheme Shareholder will receive the Scheme Consideration, which Target will procure is paid to each Scheme Shareholder from the trust account referred to in clause 4.2(a)(ii).
  - (iii) Where the calculation of the Scheme Consideration to be provided to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up to the nearest whole cent.

## 5. Scheme – parties' respective implementation obligations

### 5.1 Target's obligations

The Target must take all steps reasonably necessary to propose and (subject to all of the Conditions being satisfied or waived in accordance with their terms) implement the Scheme as soon as reasonably practicable after the date of this deed and substantially in accordance with the Timetable, including without limitation taking each of the following steps:

- (a) (**Scheme Booklet**): prepare the Scheme Booklet in compliance with all applicable laws, RG 60 and in accordance with clause 5.3;
- (b) (**Target Information**): ensure that the Target Information is not misleading or deceptive in any material respect (whether by omission or otherwise) including in the form and context in which it appears in the Scheme Booklet;
- (c) (**consultation with the Bidder in relation to Scheme Booklet**): consult with the Bidder as to the content and presentation of the Scheme Booklet including:
  - (i) making available to the Bidder drafts of the Scheme Booklet and the Independent Expert's Report for the purpose of enabling the Bidder to review and comment on those draft documents. In relation to the Independent Expert's Report, the Bidder's review is to be limited to a factual accuracy review;
  - (ii) consulting with the Bidder in relation to the content of those drafts (other than the Bidder Information), and consider in good faith, for the purposes of amending those drafts, comments from the Bidder on those drafts; and
  - (iii) providing to the Bidder a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet referred to in clause 5.1(i)(i) is finalised and to enable the Bidder to review that draft of the Scheme Booklet before its submission to ASIC in the manner contemplated under clause 5.1(i)(i);
- (d) (**directors' recommendation**): Subject to clause 66(d), include in the Scheme Booklet:
  - (i) the statement by the Target Board contemplated under clause 6(a)(ii); and
  - (ii) a statement that all Target Directors will (in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (or in any update of, or revision, amendment or addendum to, that report) that the Scheme is in the best interest of Scheme Shareholders) vote, or procure the voting of, any Target Director Shares relating to them as at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting,
- (e) unless there has been a change of recommendation contemplated by clause 6(b) or other than as a result of the circumstances described in clause 66(d);
- (f) (**Independent Expert**): promptly appoint the Independent Expert to prepare and provide the Independent Expert's Report, and provide any assistance and information to enable the Independent Expert to prepare the Independent Expert's Report;

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- (g) (**approval of the Bidder Information**): subject to clause 5.3(c), seek written approval from the Bidder for the form and context in which the Bidder Information appears in the Scheme Booklet (which approval the Bidder must not unreasonably withhold or delay) and not lodge the Scheme Booklet with ASIC until such approval is obtained from the Bidder;
  - (h) (**approval of draft for ASIC**): as soon as reasonably practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a meeting of the Target Board, or of a committee of the Target Board appointed for the purpose, is held to consider approving that draft as being in a form appropriate for provision to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act;
  - (i) (**liaison with ASIC and ASX**): as soon as reasonably practicable after the date of this deed:
    - (i) provide an advanced draft of the Scheme Booklet approved in accordance with clauses 5.1(h) and 5.2(f) to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
    - (ii) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet and keep the Bidder reasonably informed of any matters raised by ASIC or ASX in relation to the Scheme Booklet or the Proposed Transaction and use reasonable endeavours, in consultation with the Bidder, to resolve any such matters;
  - (j) (**information**): provide all necessary information, and procure that the Target Registry provides all necessary information, in each case in a form reasonably requested by the Bidder, about the Scheme, the Scheme Shareholders and Target Shareholders to the Bidder and its Authorised Persons, which the Bidder reasonably requires in order to canvass support of the Scheme by Target Shareholders (including the results of directions by the Target to Target Shareholders under Part 6C.2 of the Corporations Act), and the Target must comply with any reasonable request of the Bidder for the Target to give directions to Target Shareholders pursuant to Part 6C.2 of the Corporations Act from time to time for one of these purposes;
  - (k) (**Shareholder support**) promote to its Shareholders the merits of the Scheme, including soliciting proxy votes in favour of the Scheme;
  - (l) (**approval of Scheme Booklet**): as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Target Board, or of a committee of the Target Board appointed for the purpose, is held to consider approving the Scheme Booklet for despatch to Target Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
  - (m) (**listing**): subject to clause 5.1(y), not do anything to cause Target Shares to cease being quoted on ASX or to become permanently suspended from quotation prior to implementation of the Proposed Transaction unless the Bidder has agreed in writing;
  - (n) (**update Scheme Booklet**): without limiting the Target's obligations under clause 5.4(a), until the date of the Scheme Meeting, promptly update or supplement the Scheme Booklet with, or where appropriate otherwise inform the market by way of announcement of, any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement, and seek the Court's approval for the despatch of any updated or supplementary Scheme Booklet. The Target must consult with the Bidder as to the content and presentation of the updated or supplementary Scheme Booklet, or the market announcement, in the manner contemplated by clause 5.1(c);
  - (o) (**section 411(17)(b) statements**): apply to ASIC for the production of:
    - (i) an indication of intent letter stating that ASIC does not intend to appear before the Court on the First Court Date; and

- (ii) a statement in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (p) **(first Court hearing)**: lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that, the approval in clause 5.1(l) and the written statements in clause 5.1(o) have been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meeting;
- (q) **(representation)**: procure that the Target is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act and at which, through its counsel or solicitors, the Target will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed, the Scheme and/or in connection with the Proposed Transaction;
- (r) **(registration of Scheme Booklet)**: if the Court directs Target to convene the Scheme Meeting, as soon as possible after such orders are made, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (s) **(convening Scheme Meeting)**: take all reasonable steps necessary to comply with the orders of the Court given on the First Court Date including, as required, despatching the Scheme Booklet to Target Shareholders and convening and holding the Scheme Meeting, provided that if this deed is terminated under clause 14 Target will take all steps reasonably required to ensure the Scheme Meeting is not held;
- (t) **(certificate)**: at the Court hearing on the Second Court Date, provide to the Court:
- (i) a certificate, in the form of a deed, (substantially in the form attached in Annexure C) confirming (in respect of matters within the Target's knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b)) have been satisfied or waived in accordance with this deed. A draft of such certificate shall be provided by the Target to the Bidder by 5.00pm on the date that is 2 Business Days prior to the Second Court Date; and
- (ii) any certificate provided to it by the Bidder pursuant to clause 5.2(l);
- (u) **(Court approval application)**: if:
- (i) the resolution submitted to the Scheme Meeting is passed by the majorities required under the Corporations Act or, where clause 3.6 applies, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act; and
- (ii) where necessary, the Target and the Bidder agree on the Business Day immediately following the Scheme Meeting that it can be reasonably expected that all of the Conditions (other than the Condition in clause 3.1(b)) will be satisfied or waived prior to the Delivery Time,
- apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme;
- (v) **(appeal process)**: if the Court refuses to make any orders directing the Target to convene the Scheme Meeting or approving the Scheme, the Target and the Bidder must:
- (i) consult with each other in good faith as to whether to appeal the Court's decision; and
- (ii) appeal the court decision unless the parties agree otherwise or an independent senior counsel opines that, in his or her view, an appeal would have no reasonable prospect of success;
- (w) **(implementation of Scheme)**: if the Scheme is approved by the Court:
- (i) subject to the Listing Rules, lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act

by no later than the Business Day after the date on which the Court orders were made (or such later date as agreed in writing between the Target and the Bidder);

- (ii) determine entitlements to the Scheme Consideration as at the Record Date in accordance with the Scheme;
  - (iii) execute proper instruments of transfer of and effect and register the transfer of the Scheme Shares to Bidder on the Implementation Date; and
  - (iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (x) (**documents**): consult with the Bidder in relation to the content of the documents required for the purpose of the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith, for the purpose of amending drafts of those documents, comments from the Bidder and its Authorised Persons on those documents;
- (y) (**suspension from trading**): apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date; and
- (z) (**compliance with laws**): do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

## 5.2 The Bidder's obligations

The Bidder must take all steps reasonably necessary to assist the Target to implement the Scheme as soon as reasonably practicable after the date of this deed and substantially in accordance with the Timetable including, without limitation, taking each of the following steps:

- (a) (**Bidder Information**): provide to the Target, in a form appropriate for inclusion in the Scheme Booklet, the Bidder Information, which information must (without limiting the foregoing):
- (i) contain all information necessary to enable Target to ensure that the Scheme Booklet complies with the requirements of RG 60; and
  - (ii) not be misleading or deceptive in any material respect (whether by omission or otherwise) including in the form and context in which it appears in the Scheme Booklet;
- (b) (**confirmation of Bidder Information**): subject to clause 5.3(c), promptly after the Target requests that it does so, confirm in writing to the Target that the Bidder consents to the inclusion of the Bidder Information in the Scheme Booklet, in the form and context in which the Bidder Information appears (such consent not to be unreasonably withheld or delayed provided that the Target has complied with clause 5.3(c));
- (c) (**Independent Expert**): promptly provide all assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare the Independent Expert's Report for inclusion in the Scheme Booklet;
- (d) (**assistance with Scheme Booklet and Court documents**): promptly provide any assistance or information reasonably requested by the Target or its Advisers in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to Target Shareholders) and any documents required to be filed with the Court in respect of the Scheme;
- (e) (**review of Scheme Booklet**): as soon as reasonably practicable after receipt, review the drafts of the Scheme Booklet prepared by the Target and provide comments on those drafts in good faith;
- (f) (**approval of draft for ASIC**): as soon as reasonably practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a board of directors of the Bidder, or of a committee of the board of directors of the Bidder appointed for the purpose, duly resolve to approve those sections of that draft that relate to the Bidder as being in a form appropriate for provision to ASIC for review;

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- (g) (**approval of Scheme Booklet**): as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that the board of directors of the Bidder, or of a committee of the board of directors of the Bidder appointed for the purpose, duly resolve to approve those sections of the Scheme Booklet that relate to the Bidder as being in a form appropriate for despatch to Target Shareholders, subject to approval of the Court;
  - (h) (**update of Bidder Information**): without limiting the Bidder's obligations under clause 5.2(a), until the date of the Scheme Meeting:
    - (i) promptly update or supplement the Bidder Information with all information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Bidder Information does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement; and
    - (ii) promptly provide to the Target any such information contemplated under clause 5.2(h)(i), in a form appropriate for inclusion in any update of the Scheme Booklet, in order to ensure that the Target is able to comply with the Target's obligations under clause 5.1(n);
  - (i) (**representation**): procure that, if requested by Target, the Bidder is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act and at which, through its counsel or solicitors, the Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed, the Scheme, the Deed Poll and/or in connection with the Proposed Transaction;
  - (j) (**Deed Poll**): prior to the First Court Date, execute the Deed Poll;
  - (k) (**Target Information**): without the prior written consent of the Target, not use the Target Information for any purposes inconsistent with the Confidentiality Agreement;
  - (l) (**certificate**): as soon as reasonably practicable after the Delivery Time and, in any event, before the commencement of the Court hearing on the Second Court Date, provide to the Target for provision to the Court at that hearing a certificate, in the form of a deed, (substantially in the form attached in Annexure C) confirming (in respect of matters within the Bidder's knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b)) have been satisfied or waived in accordance with this deed; and
  - (m) (**compliance with laws**): do everything reasonably within the Bidder's power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

### 5.3 Scheme Booklet - preparation principles

- (a) As soon as reasonably practicable after the date of this deed and substantially in accordance with the Timetable, the Target must prepare the Scheme Booklet in compliance with:
  - (i) all applicable laws, in particular with the Corporations Act, RG 60 and the Listing Rules; and
  - (ii) this clause 5.3.
- (b) The Scheme Booklet will include:
  - (i) the terms of the Scheme;
  - (ii) the notice of Scheme Meeting;
  - (iii) the Target Information (other than the Target Information referred to in clauses 5.3(b)(i) and 5.3(b)(ii));
  - (iv) the Bidder Information;
  - (v) a copy of this deed (without the schedules or annexures);
  - (vi) a copy of the Deed Poll executed by the Bidder; and

- (vii) a copy of the Independent's Expert Report.
- (c) If the Target and the Bidder disagree on the form or content of the Scheme Booklet, the Target and the Bidder 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:
- (i) if the disagreement relates to the form or content of any information appearing in the Scheme Booklet other than the Bidder Information, the Target Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet; and
  - (ii) if the disagreement relates to the form or content of the Bidder Information, the Target will make such amendments to the form or content of the disputed part of the Bidder Information as the Bidder, acting in good faith, requires.
- (d) The Target must take all reasonable steps to ensure that the Scheme Booklet (other than the Bidder Information) is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date it is despatched to Target Shareholders.
- (e) The Bidder must take all reasonable steps to ensure that the Bidder Information is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Scheme Booklet is despatched to Target Shareholders.
- (f) The Target and the Bidder each agree that the efficient preparation of the Scheme Booklet and the implementation of the Scheme are in the interests of Target Shareholders and the Bidder and that they will use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external advisers) to comply with their respective obligations under this clause 5.3 and to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable.

#### **5.4 New information**

- (a) The Target must provide to the Bidder all such further or new information of which the Target becomes aware that arises after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is, or may be, necessary to ensure that the Scheme Booklet continues to comply with the Corporations Act, RG 60 and the Listing Rules.
- (b) The Bidder must provide to Target all such further or new information of which the Bidder becomes aware that arises after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is, or may be, necessary to ensure that the Scheme Booklet continues to comply with the Corporations Act, RG 60 and the Listing Rules.

#### **5.5 Verification**

- (a) The Target must undertake reasonable verification processes in relation to the information included in the Scheme Booklet (other than the Bidder Information) so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and, once those processes have been completed, provide written confirmation to the Bidder of the completion of such processes and provide to the Court any such evidence as the Target's counsel considers necessary or desirable concerning those verification processes.
- (b) The Bidder must undertake reasonable verification processes in relation to the Bidder Information included in the Scheme Booklet so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and, once those processes have been completed, provide written confirmation to the Target of the completion of such processes and provide to the Court any such evidence as the Target's counsel considers necessary or desirable concerning those verification processes.

## 5.6 Responsibility statements

The Scheme Booklet will include a responsibility statement, that will contain words to the following effect:

- (a) the Target is responsible for the Target Information and that, to the maximum extent permitted by law, the Target will not be responsible for any Bidder Information and will disclaim any liability for the Bidder Information appearing in the Scheme Booklet; and
- (b) the Bidder is responsible for the Bidder Information and that, to the maximum extent permitted by law, the Bidder will not be responsible for any information appearing in the Scheme Booklet other than the Bidder Information and will disclaim any liability for any information appearing in the Scheme Booklet other than the Bidder Information.

## 5.7 Good faith cooperation

The Target and the Bidder must each use all reasonable endeavours to procure that its Authorised Persons work (including by attending meetings and by providing information) in good faith and in a timely and co-operative manner with the other parties to implement the Scheme, to prepare all documents required relating to the Scheme.

## 6. Board recommendation

- (a) Subject to clause 6(d), the Target must use its best endeavours to procure that, subject to clause 6(b):
  - (i) each member of the Target Board recommends that Target Shareholders vote in favour of the Scheme at the Scheme Meeting in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (or in any update of, or revision, amendment or addendum to, that report) that the Scheme is in the best interest of Scheme Shareholders; and
  - (ii) the Scheme Booklet includes a statement by the Target Board to the effect set out in clause 6(a)(i).
- (b) Subject to clause 6(d), the Target must use its best endeavours to procure the Target Board collectively, and each member of the Target Board individually, does not change, withdraw or modify its, his or her recommendation to vote in favour of the Scheme unless:
  - (i) the Independent Expert concludes in the Independent Expert's Report (or any update of, or revision, amendment or addendum to, that report) that the Scheme is not in the best interest of Scheme Shareholders;
  - (ii) the Target has received (other than as a result of a breach by the Target of clause 10), a Competing Proposal and the Target Directors unanimously determine, after all of Bidder's rights under clause 10.6 have been exhausted, that the Competing Proposal constitutes a Superior Proposal; or
  - (iii) in the case of the recommendation in clause 6(a)(i) by a Target Director, the Target Director may withdraw his or her recommendation so as to not make any recommendation only to the extent that, after first obtaining written advice from independent senior counsel of the New South Wales bar, the Target Director reasonably determines that he or she has an interest in the Scheme that renders it inappropriate for him or her to maintain any such recommendation (**Scheme Interest**), and the Court would be unlikely to grant an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting or under section 411(4)(b) and 411(6) of the Corporations Act approving the Scheme, in each case solely as a result of the Scheme Interest,and the Target has complied with its obligations under clause 10.
- (c) For the purposes of this clause 6, 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/or subject to the Independent Expert concluding in the Independent Expert's Report (or in

any update of, or revision, amendment or addendum to, that report) that the Scheme is in the best interest of Scheme Shareholders will not be regarded as a failure to make, or a withdrawal of the making of, a recommendation in favour of the Scheme.

- (d) The obligations of the Target under clauses 6(a) and 6(b) to ensure that each member of the Target Board provides and maintains his or her recommendation to vote in favour of the Scheme is qualified to the extent that any member of the Target Board considers, after taking written advice from his or her legal adviser, that he or she should not provide or continue to maintain any recommendation (positive or adverse) because that member of the Target Board has an interest that is so materially different from other Target Shareholders which would properly preclude him or her from providing any such recommendation.

## 7. Conduct of business before the Implementation Date

### 7.1 Conduct of Target business

- (a) Subject to clauses 7.2 and 7.3, from the date of this deed up to and including the Implementation Date, and without limiting any other obligations of the Target under this deed, the Target must ensure that the business of the Target Group is conducted in the ordinary and usual course of business and must:
  - (i) operate the business of the Target Group consistent with past practice, in substantially the same manner as previously conducted in the 12 months before the date of this deed;
  - (ii) take all reasonable steps to ensure customers under existing contracts maintain their custom with the Target Group on similar terms after completion of the Proposed Transaction;
  - (iii) use reasonable endeavours to preserve its relationships, and the relationships of the other Target Group Members, with customers, suppliers, landlords, licensors, licensees, Governmental Agencies and others having material business dealings with a Target Group Member, and to retain the services of all key employees of the Target Group;
  - (iv) use reasonable endeavours to ensure that all assets of each Target Group Member are maintained in the normal course consistent with past practice; and
  - (v) use reasonable endeavours to ensure compliance in all material respects by each Target Group Member with all material contracts to which a Target Group Member is a party, and with all laws, authorisations and licenses applicable to each Target Group Member.
- (b) From the date of this deed up to and including the Implementation Date, and without limiting any other obligations of the Target under this deed, the Target must:
  - (i) not take or fail to take (and procure that each other Target Group Member does not take or fail to take) any action that constitutes a Target Prescribed Occurrence or that could reasonably be expected to result in a Target Prescribed Occurrence; and
  - (ii) not take or fail to take (and procure that each other Target Group Member does not take or fail to take) any action that would, or would be likely to, prevent a Condition being satisfied or result in a Condition not being satisfied.

### 7.2 Prohibited actions

Subject to clause 7.3 and without limiting the generality of clause 7.1, from the date of this deed up to and including the Implementation Date, the Target must not, and must procure that each other Target Group Member does not:

- (a) declare, pay or distribute any dividend, bonus or other share of its profits or assets or return or agree to return any capital to its members;

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- (b) make any change to its constitution, except with the written consent of the Bidder;
  - (c) commence or undertake business activities which are materially different in nature to business activities already carried out as at the date of this deed, whether by way of acquisition or otherwise;
  - (d) do any of the following:
    - (i) acquire or dispose of;
    - (ii) agree, offer or propose to acquire or dispose of; or
    - (iii) announce a bid or tendering for,  
any business, entity or undertaking (including any shares or other interests in any company or other entity) or interest in real property (including giving notice under, or otherwise bringing about the termination or extinguishment of any lease to which any Target Group Member is a party);
  - (e) do any of the following:
    - (i) enter into, terminate or materially amend any contract (including renewing or otherwise extending any existing contract) or commitment (other than in respect of financial accommodation or information technology) requiring payments by the Target Group in excess of \$3 million (individually or in aggregate);
    - (ii) waive any material third party default where the financial impact on the Target Group will be in excess of \$500,000 (individually or in aggregate);
    - (iii) write-off any asset or assets where the financial impact on the Target Group will be in excess of \$500,000 (individually or in aggregate), other than where such write-off is required in accordance with applicable accounting standards (including as applied by the Target's Group's auditors or Target Board as part of their review of the financial report for the half-year ended 31 December 2019) or the existing accounting policies of the Target Group;
    - (iv) enter into any lease or lease renewal (or agreement to lease or to renew any lease) in respect of real property, except the Target Group will be permitted to do so where:
      - (A) the term of such lease would be no more than 2 (two) years or where the lease renewal would extend the terms of such lease by no more than 12 months; or
      - (B) the aggregate yearly rent payable pursuant to that lease is not greater than \$50,000;
    - (v) acquire or dispose of, or enter into or announce any agreement for the acquisition or disposal of, any asset or business, or entering into any corporate transaction, which would or would reasonably be likely to involve a material change in the manner in which the Target Group conducts its business or the nature (including balance sheet classification); or
    - (vi) enter into a contract or commitment restraining a Target Group Member from competing with any person or conducting any activities in any market;
  - (f) provide, or enter into any contract or commitment to provide, financial accommodation (irrespective of what form of financial indebtedness that accommodation takes) in excess of \$1 million (individually) other than to wholly owned members of the Target Group and other than in the ordinary course of the Target Groups business including the leasing of equipment to customers;
  - (g) receive, or enter into any contract or commitment to receive, financial accommodation other than:
    - (i) from one or more wholly owned Target Group Members; or
    - (ii) draw-downs on existing banking facilities to provide financial accommodation;

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- (h) enter into any agreement, arrangement or transaction with respect to derivative instruments (including, but not limited to, swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments;
  - (i) enter into, or resolve to enter into, a transaction with any "related party" (as defined in section 228 of the Corporations Act) of the Target or another Target Group Member (other than a related party which is a wholly owned Target Group Member);
  - (j) employ, or offer to employ, an individual who is not an employee of a Target Group Member as at the time of signing this deed where the total remuneration payable to that individual would exceed \$300,000 (inclusive of superannuation and other entitlements) in any 12 month period;
  - (k) enter into or alter, vary or amend any employment, consulting, severance or similar agreement or arrangement with one or more of its existing officers, directors, other executives or employees, or accelerating or otherwise increasing compensation or benefits for any of the above, where the aggregate financial impact on the Target Group of all such entries, alterations, variations or amendments would be greater than \$1 million in any 12 month period, other than:
    - (i) pursuant to contractual arrangements in effect on the date of this deed and which have been Fairly Disclosed in the Due Diligence Material and/or the Target Disclosure Letter;
    - (ii) as expressly provided for in the Target's policies and guidelines in effect on the date of this deed and which have been Fairly Disclosed in the Due Diligence Material and/or the Target Disclosure Letter;
    - (iii) as expressly provided for in clause 8; or
    - (iv) an increase in compensation or benefits that is in the ordinary and usual course of business, consistent with the Target Group's practice throughout the 12 months preceding the date of this deed, to employees other than executives, or members of the management team, of the Target Group;
  - (l) enter into any enterprise bargaining agreement;
  - (m) change any accounting policy applied by them to report their financial position other than any change in policy required by a change in accounting standards;
  - (n) do anything that would result in a change in the Target Group's consolidated tax group; or
  - (o) agree to do any of the matters set in clauses 7.2(a) to 7.2(n) (inclusive).

### 7.3 Permitted activities

The obligations of the Target under clauses 7.1(a) and 7.2 do not apply in respect of any event, change, circumstance, occurrence, matter or thing:

- (a) expressly required to be done or procured by the Target pursuant to, or which otherwise are contemplated by, this deed or the Scheme;
- (b) required by law or by an order of a court or Government Agency (except where that requirement arises as a result of an action by a Target Group Member); or
- (c) the undertaking or occurrence of which the Bidder has approved in writing (which approval must not be unreasonably withheld or delayed).

### 7.4 Access

- (a) In the period from the date of this deed to the Implementation Date, the Target must:
  - (i) respond to any reasonable request from the Bidder or its Authorised Persons (including in response to requests for information from financial markets and any Governmental Agency) for information concerning the Target Group and its business and operations as may be required solely in order to implement the Proposed Transaction and on the basis that such information will not be used for any purposes inconsistent with the Confidentiality Agreement; and

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- (ii) provide the Bidder and its Authorised Persons with all reasonable access during normal business hours and on reasonable notice to the management, offices, books, records and business operations of the Target that the Bidder reasonably requires in order to implement the Proposed Transaction or for the Bidder to prepare for the transition of ownership of the Target Group to the Bidder.
  - (b) Nothing in this clause 7.4 obliges the Target to provide to the Bidder or its Authorised Persons with any information:
    - (i) concerning the Target Directors' consideration of the Scheme; or
    - (ii) which would breach an obligation of confidentiality to any person or any applicable privacy laws.
  - (c) The Target will provide reasonable assistance to the Bidder for the purpose of satisfying the obligations which are imposed on the Target under this clause 7.4, but nothing in this clause 7.4 requires the Target to provide access to any documentation or to take any other action that would unreasonably disrupt the usual and ordinary course of the businesses and operations of the Target Group.

#### **7.5 Access to the Bidder information**

- (a) In the period from the date of this deed up until and including the Implementation Date, the Bidder must ensure that the Bidder Group Members respond to any reasonable request from the Target and its Authorised Persons (including in response to requests for information from financial markets and any Governmental Agency) for information concerning the Bidder Group and its business and operations as may be required solely in order to implement the Proposed Transaction and on the basis that such information will not be used for any purposes inconsistent with the Confidentiality Agreement.
- (b) Nothing in this clause 7.5 requires the Bidder to provide the Target with any information:
  - (i) concerning the consideration of the Proposed Transaction by the board of directors of the Bidder; or
  - (ii) which would breach an obligation of confidentiality to any person or any applicable privacy laws.
- (c) The Bidder will provide reasonable assistance to the Target for the purpose of satisfying the obligations which are imposed on the Bidder under this clause 7.5, but nothing in this clause 7.5 requires the Bidder to provide access to any documentation or to take any other action that would disrupt the usual and ordinary course of the businesses and operations of the Bidder Group.

#### **7.6 Third Party Consent Contracts**

The Target must as soon as possible after the date of this agreement use reasonable endeavours to obtain the consent or waiver of each counterparty to a Third Party Consent Contract in which, as a result of the announcement or implementation of the Proposed Transaction, a Target Group Member is or will be required to obtain the consent of a counterparty, or the counterparty is or will be entitled to be provided with a notification of the Proposed Transaction including by taking the following actions, and such other actions as are agreed by the Bidder in writing:

- (a) writing a letter to the counterparty to a Third Party Consent Contract on terms agreed with the Bidder, which must be issued by no later than 5 Business Days after the date of this document;
- (b) meeting face to face with each counterparty to a Third Party Consent Contract agreed with the Bidder, to provide an overview of the Proposed Transaction and of the Bidder and broadly following a communications script to be agreed in writing by the parties as soon as possible after the date of this document and inviting a representative of the Bidder to attend all such meetings; and

- (c) promptly responding to all questions from, and continuing to pro-actively interact with and seek the consent or waiver from each counterparty to a Third Party Consent Contract to obtain that consent or wavier prior to the Cut Off Time,

## 8. Reconstitution of the board of each Target Group Member

### 8.1 Appointment of directors

- (a) On or prior to the Implementation Date, the Target must take all actions necessary (and in accordance with the constitution of each relevant Target Group Member, the Corporations Act and the Listing Rules) to appoint with effect from implementation of the Scheme each person nominated by the Bidder prior to the Implementation Date as a director and/or secretary of a Target Group Member (**Incoming Officer**), subject to:
- (b) the Scheme Consideration having been provided in full by the Bidder in accordance with the Scheme; and
- (c) the Target having received from each Incoming Officer prior to the Implementation Date a signed consent to act as a director and/or secretary of each relevant Target Group Member that the Incoming Officer is proposed to be appointed as a director and/or secretary (as the case may be).

### 8.2 Resignation of directors

- (a) Without limiting clause 8.1, on or prior to the Implementation Date, the Target must take all actions necessary (and in accordance with the constitution of each relevant Target Group Member, the Corporations Act and the Listing Rules) to:
- (b) procure, prior to the Implementation Date, from each person acting immediately prior to the Implementation Date as a director and/or secretary of each Target Group Member (**Outgoing Officer**) a written resignation as a director and/or secretary (as the case may be) of the relevant Target Group Member and to the effect that the Outgoing Officer has no Claim outstanding against any Target Group Member in respect of the Outgoing Officer's office as a director and/or secretary of a Target Group Member; and
- (c) subject to the Scheme Consideration having been provided in full by the Bidder in accordance with the Scheme, cause each Outgoing Officer to resign as a director and/or secretary of the Target Group Member with effect from implementation of the Scheme.

## 9. Representations and warranties

### 9.1 Bidder representations and warranties

- (a) The Bidder represents and warrants to the Target (on the Target's own behalf and separately as trustee for each other Target Indemnified Party) that each of the matters set out in clause 9.1(b) is true and correct as at the date of this deed and at all subsequent times until the Delivery Time (except that where any statement is expressed to be made at a particular date or time only it is given only at that date or time).
- (b) The Bidder represents and warrants to the Target that:
- (i) the Bidder Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Target Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having being formed on a reasonable basis), including by way of omission from that statement;
- (ii) the Bidder Information:
- (A) will be provided to the Target in good faith and on the understanding that the Target and each other Target Party will rely on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme; and

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- (B) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules,

and all information provided by the Bidder to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;

- (iii) the Bidder will, as a continuing obligation, provide to the Target all further or new information which arises after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information is not misleading or deceptive (including by way of omission);
- (iv) the Bidder is a validly existing corporation registered under the laws of its place of incorporation;
- (v) the execution and delivery of this deed has been properly authorised by all necessary corporate action of the Bidder;
- (vi) the Bidder has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (vii) this deed does not conflict with or result in the breach of or a default under:
- (A) any provision of the Bidder's constitution; or
- (B) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which the Bidder or any other Bidder Group Member is bound,

and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;

- (viii) this deed is a valid and binding obligation of the Bidder, enforceable in accordance with its terms;
- (ix) the Bidder does not require the approval of its shareholders or the approval or consent of any other person to enter into or perform any of its obligations under this deed, other than approvals already obtained;
- (x) no Insolvency Event has occurred in relation to the Bidder or another substantial Bidder Group Member, nor has any regulatory action of any nature of which the Bidder is aware been taken that would prevent or restrict the Bidder's ability to fulfil its obligations under this deed;

## 9.2 Bidder's indemnity

The Bidder agrees with the Target (on the Target's own behalf and separately as trustee or nominee for each other Target Indemnified Party) to indemnify and keep indemnified each Target Indemnified Party from and against all Claims which any Target Indemnified Party may suffer or incur by reason of any of the representations and warranties in clauses 9.1(a) or 9.1(b) being untrue or incorrect or any breach of any of the representations and warranties in clauses 9.1(a) or 9.1(b).

## 9.3 Target representations and warranties

- (a) The Target represents and warrants to the Bidder (on the Bidder's own behalf and separately as trustee for each other Bidder Indemnified Party) that each of the matters set out in clause 9.3(b) is true and correct as at the date of this deed and at all subsequent times until the Delivery Time (except that where any statement is expressed to be made at a particular date or time only it is given only at that date or time).
- (b) The Target represents and warrants to the Bidder that:
- (i) the Target Information, as at the date the Scheme Booklet is despatched to Target Shareholders, will not contain any statement which is materially misleading or

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deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;

- (ii) the Target Information:
  - (A) will be prepared in good faith and on the understanding that the Bidder and each other Bidder Party will rely on that information for the purposes of determining whether to proceed with the Proposed Transaction; and
  - (B) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules,

and all information provided by the Target to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;

- (iii) the Target will, as a continuing obligation (but in respect of the Bidder Information, only to the extent that the Bidder provides the Target with updates to the Bidder Information), ensure that the Scheme Booklet is updated to include all further or new information which arises after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Target Information is not misleading or deceptive (including by way of omission);
- (iv) the Target is a validly existing corporation registered under the laws of its place of incorporation;
- (v) the execution and delivery of this deed has been properly authorised by all necessary corporate action of the Target;
- (vi) the Target has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (vii) this deed does not conflict with or result in the breach of or a default under:
  - (A) any provision of the Target's constitution; or
  - (B) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which the Target or any other Target Group Member is bound,

and it is not otherwise bound by any agreement that would prevent or restrict the Target from entering into or performing this deed;

- (viii) this deed is a valid and binding obligation of the Target, enforceable in accordance with its terms;
- (ix) the Target has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure, other than in relation to:
  - (A) the Proposed Transaction; or
  - (B) any matter Fairly Disclosed by the Target to the Bidder prior to the date of this deed;
- (x) the Target's capital structure, including all issued securities as at the date of this deed, is as set out below and the Target has not issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into Target Shares and the Target is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any Target Shares, options, warrants, performance rights or other securities or instruments in the Target:
  - (A) 449,257,045 Target Shares; and

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(B) the Target Performance Rights;

- (xi) all the issued securities of each Target Group Member (other than the Target) are held by either the Target or a another Target Group Member that is directly or indirectly wholly-owned by the Target and no Target Group Member has issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into shares and no Target Group Member is under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any shares, options, warrants, performance rights or other securities or instruments in a Target Group Member;
- (xii) any company, partnership, trust, joint venture or other enterprise or entity in which a Target Group Member owns or has an equity interest is set out in the Due Diligence Material and/or the Target Disclosure Letter;
- (xiii) except for approval under section 411(4)(a)(ii) of the Corporations Act, the Target does not require the approval of its shareholders or, so far as the Target is aware, the approval or consent of any other person to enter into or perform any of its obligations under this deed;
- (xiv) no Insolvency Event has occurred in relation to the Target or another substantial Target Group Member, nor has any regulatory action of any nature of which it is aware been taken that would prevent or restrict its ability to fulfil its obligations under this deed;
- (xv) each Target Group Member 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 them and have all material licenses, authorisations and permits necessary for them to conduct the business of the Target Group as presently being conducted;
- (xvi) the Target has collated and prepared all of the Due Diligence Materials and the Target Disclosure Letter in good faith and, as far as the Target is aware, the Due Diligence Materials and Target Disclosure Letter have been collated and prepared with all reasonable care and skill;
- (xvii) as at the date of this deed, the Target is not aware of any information relating to the Target Group or its respective businesses or operations (having made reasonable enquiries) as at the date of this deed that has or could reasonably be expected to give rise to a material adverse change in respect of the Target Group that has not been disclosed to ASX or to the Bidder in writing prior to the date of this deed; and
- (xviii) it has not, before the date of this deed, received written notice of any material investigation, prosecution, arbitration, litigation or dispute threatened against a Target Group Member which could reasonably be expected to give rise to a liability for the Target Group in excess of \$1,000,000 (**Material Proceedings**) and, as at the date of this deed is not aware of circumstances which could reasonably be expected to give rise to any Material Proceedings.

#### 9.4 Target's indemnity

The Target agrees with the Bidder (on the Bidder's own behalf and separately as trustee or nominee for each other Bidder Indemnified Party) to indemnify and keep indemnified each Bidder Indemnified Party from and against all Claims which any Bidder Indemnified Party may suffer or incur by reason of any of the representations and warranties in clauses 9.3(a) or 9.3(b) being untrue or incorrect or any breach of any of the representations and warranties in clauses 9.3(a) or 9.3(b).

#### 9.5 Notifications

Each party must promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which causes or may cause any of the representations and warranties given by it in

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under this clause 9 to be untrue or inaccurate or which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 9.

## **9.6 Survival of representations**

Each representation and warranty in clauses 9.1 and 9.3:

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

## **9.7 Survival of indemnities**

Each indemnity in this deed (including those in clauses 9.2 and 9.4) will:

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

## **9.8 Limitations on Claims against the Target**

The Target's representations and warranties in clause 9.3 and the indemnity given by the Target in clause 9.4 are each subject to, and no Claim by any Bidder Indemnified Party in connection with any representation and warranty in clauses 9.3(a) or 9.3(b) being untrue or incorrect or any breach of any of the representations and warranties in clauses 9.3(a) or 9.3(b) can be made against the Target, in respect of any fact, matter or thing:

- (a) which was Fairly Disclosed in an announcement made by the Target to the ASX prior to the date of this deed or a document lodged by the Target with ASIC prior to the date of this deed;
- (b) which was Fairly Disclosed in the Due Diligence Material and/or the Target Disclosure Letter; or
- (c) the undertaking of which the Bidder has approved in writing.

## **9.9 Limitation on Claims against the Bidder**

The Bidder's representations and warranties in clause 9.1 and the indemnity given by the Bidder in clause 9.2 are each subject to, and no Claim by any Target Indemnified Party in connection with any representation and warranty in clauses 9.1(a) or 9.1(b) being untrue or incorrect or any breach of any of the representations and warranties in clauses 9.1(a) or 9.1(b) can be made against the Bidder in respect of any fact, matter or thing:

- (a) which was Fairly Disclosed in the Bidder Disclosure Letter; or
- (b) the undertaking of which the Target has approved in writing.

# **10. Exclusivity**

## **10.1 No existing discussions**

Other than in relation to the discussions with the Bidder in connection with the Proposed Transaction, the Target represents and warrants to the Bidder that as at the date of this deed:

- (a) no Target Group Member nor any Authorised Person of a Target Group Member is a party to any agreement, arrangement or understanding with a Third Party in relation to any actual, proposed or potential Competing Proposal; and

- (b) no Target Group Member nor any Authorised Person of a Target Group Member is, directly or indirectly, participating in any discussions or negotiations with any Third Party that concern, or that could reasonably be expected to lead to, a Competing Proposal.

## 10.2 No-shop

During the Exclusivity Period, the Target must not, and must ensure that each other Target Group Member and each Authorised Person of a Target Group Member does not, directly or indirectly:

- (a) solicit, invite, initiate or encourage (including, without limiting the application of clause 10.4, by the provision of any non-public information relating to the Target or any Target Group Member (or any of their respective businesses and operations) to any Third Party other than any Authorised Person of a Bidder Group Member) any enquiry, expression of interest, proposal, offer, discussion or negotiation in relation to, or that could reasonably be expected to lead to, the making of an actual, proposed or potential Competing Proposal; or
- (b) communicate to a Third Party (other than any Authorised Person of a Bidder Group Member) any intention to do any of the things referred to in clause 10.2(a).

## 10.3 No-talk

Subject to clause 10.7, during the Exclusivity Period, the Target must not, and must ensure that each other Target Group Member and each Authorised Person of a Target Group Member does not, directly or indirectly:

- (a) negotiate or enter into or participate in correspondence, negotiations or discussions with any Third Party (other than any Authorised Person of a Bidder Group Member);
- (b) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding with any Third Party (other than any Authorised Person of a Bidder Group Member); or
- (c) communicate to any Third Party (other than any Authorised Person of a Bidder Group Member) any intention to do any of the things referred to in clauses 10.3(a) or 10.3(b), in relation to, or which may reasonably be expected to lead to, an actual, proposed or potential Competing Proposal, even if:
- (d) that Third Party's actual, proposed or potential Competing Proposal was not directly or indirectly solicited, invited, initiated by a Target Group Member or any Authorised Person of a Target Group Member; or
- (e) that Third Party has publicly announced the Competing Proposal.

## 10.4 No due diligence

- (a) Subject to clause 10.7, during the Exclusivity Period, except with the prior written consent of the Bidder, the Target must ensure that each Target Group Member and each Authorised Person of a Target Group Member does not, directly or indirectly, disclose, provide or otherwise make available to any Third Party, or permit any such person to receive any non-public information relating to the Target or any Target Group Member (or any of their respective businesses or operations) in connection with, with a view to obtaining or which could reasonably be expected to lead to, the formulation, development, finalisation or announcement of an actual, proposed or potential Competing Proposal (whether by that Third Party or another person), including providing such information for the purposes of the conduct of due diligence investigations in respect of the Target, any other Target Group Member or the business of the Target Group.
- (b) If the Target proposes that any non-public information be disclosed, provided or otherwise made available to a Third Party, then:
- (i) before such information is disclosed, provided or made available by or on behalf of the Target, the Third Party must enter into a confidentiality agreement with the Target which contains obligations on the Third Party as to confidentiality which are, on the whole, no less onerous in any material respect than the obligations of the Bidder under the Confidentiality Agreement; and

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- (ii) any non-public information disclosed, provided or made available to that Third Party must also be provided to the Bidder as soon as reasonably practicable after the non-public information is disclosed, provided or made available to that Third Party (unless the information has already been provided to the Bidder or an Authorised Person of a Bidder Group Member), and in any event within 2 Business Days.
  - (iii) For the avoidance of doubt, any of the acts described in this clause 10.4(b) may only be taken by the Target or any Target Group Member or Authorised Person of a Target Group Member if not proscribed by clause 10.4(a).

#### 10.5 Notification of approaches

- (a) During the Exclusivity Period, the Target must as soon as possible after becoming aware of any of the matters referred to in clauses 10.5(a)(i) or 10.5(a)(ii) (and, in any event, no later than 10:00am on the day being 2 Business Days after becoming aware of any such matters) notify the Bidder in writing of:
  - (i) any negotiations or discussions, approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate negotiations or discussions, in respect of any expression of interest, inquiry, offer or proposal in relation to any actual, proposed or potential Competing Proposal; or
  - (ii) a proposal (whether or not made to the Target or any Target Group Member or Authorised Person of a Target Group Member) in connection with, or in respect of any exploration or consummation of an actual, proposed or potential Competing Proposal,
  - (iii) whether such matters are solicited or unsolicited, and in writing or otherwise.
- (b) For the avoidance of doubt, any of the acts described in clauses 10.5(a)(i) and 10.5(a)(ii) above may only be taken by the Target or any Target Group Member or Authorised Person of a Target Group Member if not proscribed by clauses 10.2 to 10.4 (inclusive).
- (c) Subject to clause 10.7, a notification under clause 10.5(a) must include the identity of the relevant person making or proposing the relevant actual, proposed or potential Competing Proposal, together with all material terms and conditions (including price) of the actual, proposed or potential Competing Proposal. The Target must also notify the Bidder in writing as soon as possible after becoming aware of any material developments in relation to such actual, proposed or potential Competing Proposal.

#### 10.6 Target's response to Rival Acquirer and the Bidder's right to respond

- (a) If the Target receives a Competing Proposal and as a result, any Target Director proposes to either:
  - (i) change, withdraw or modify his or her recommendation of the Scheme; or
  - (ii) approve or recommend the entry into any agreement, commitment, arrangement or understanding relating to the Competing Proposal,the Target must ensure that no Target Director does so until each of the following has occurred:
  - (iii) the Target Board has determined in good faith after consultation with Target's financial advisers that the Competing Proposal is, or would reasonably be expected to lead to, a Superior Proposal;
  - (iv) the Target has given the Bidder written notice (**Relevant Notice**) of the Target Director's proposal to take the action referred to in clauses 10.6(a)(i) or 10.6(a)(ii) (as applicable) (subject to the Bidder's rights under clause 10.6(b)), including details of the grounds on which the Target Director proposes to take such action;
  - (v) the Target has provided the Bidder with the identity of the relevant Third Party (**Rival Acquirer**) and the material terms of the Competing Proposal;
  - (vi) the Bidder's rights under clause 10.6(b) have been exhausted; and

- (vii) the Target Board has determined in good faith after consultation with Target's financial advisers that the Competing Proposal is, or would reasonably be expected to lead to, a Superior Proposal after evaluation of any Counter Proposal by the Bidder pursuant to 10.6(b).
- (b) If the Target gives a Relevant Notice to the Bidder under clause 10.6(a)(iv), the Bidder will have the right, but not the obligation, at any time during the period of 5 Business Days following the receipt of the Relevant Notice, to amend by notice in writing to the Target the terms of the Proposed Transaction including increasing the amount of consideration offered under the Proposed Transaction or proposing any other form of transaction (**Counter Proposal**), and if the Bidder makes a Counter Proposal then the Target Directors must review the Counter Proposal in good faith and in consultation with Target's legal and financial advisers. If the Target Directors determine in good faith after consultation with Target's legal and financial advisers that the Counter Proposal would be more favourable, or at least no less favourable, to the Target and the Target Shareholders than the Competing Proposal which the Bidder has responded to with that Counter Proposal (having regard to the matters noted in clause 10.7), then:
- (i) the Target and the Bidder must use their respective best endeavours to agree the amendments to this deed that are reasonably necessary to reflect the Counter Proposal and to enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal; and
- (ii) the Target must use its best endeavours to procure that the Target Directors, other in the circumstances described in clause 66(d), unanimously recommend the Counter Proposal to the Target Shareholders and not recommend the Competing Proposal which the Bidder has responded to with that Counter Proposal.
- (c) For the purposes of this clause 10.6, each successive material modification of any expression of interest, offer or proposal by a Third Party in relation to a Competing Proposal will constitute a new Competing Proposal in respect of which this clause 10.6 will apply.

## 10.7 Fiduciary out

The restrictions in clauses 10.3, 10.4 and 10.5(c) do not apply to the extent they restrict the Target or any Target Director from taking or refusing to take any action with respect to an actual, proposed or potential Competing Proposal in relation to which there has been no contravention by the Target of this clause 10, provided that:

- (a) the actual, proposed or potential Competing Proposal is bona fide; and
- (b) the Target Board has determined in good faith after:
- (i) consultation with Target's financial advisers in respect of the financial aspects of the Competing Proposal, that the Competing Proposal is or would reasonably be expected to lead to a Superior Proposal; and
- (ii) receiving written advice from the Target's external Australian legal adviser 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 Proposal would constitute or would be likely to constitute a breach of the fiduciary or statutory obligations of any Target Director.

## 11. Target Break Fee

### 11.1 Background

- (a) The Target and the Bidder acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, the Bidder will incur significant costs including those described in clause 11.2.

- (b) In the circumstances referred to in clause 11.1(a), the Bidder has requested that provision be made for the payments outlined in clause 11.3, without the benefit of which the Bidder would not have entered into this deed.
- (c) The Target Board believes that the Scheme will provide benefit to the Target and the Target Shareholders and that it is appropriate for the Target to agree to the payments referred to in this clause 11 in order to secure the Bidder's participation in the Proposed Transaction.

## 11.2 Costs incurred by the Bidder

- (a) The fee payable under clause 11.3 has been calculated to reimburse the Bidder for the following:
- (i) fees for reasonable legal, financial and other professional advice in planning and implementing the Proposed Transaction;
  - (ii) reasonable opportunity costs incurred in engaging in the Proposed Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
  - (iii) costs of management and directors' time in planning and implementing the Proposed Transaction; and
  - (iv) out of pocket expenses incurred in planning and implementing the Proposed Transaction,
- in each case, incurred by the Bidder directly or indirectly as a result of having entered into this deed and pursuing the Proposed Transaction, and including any amounts in respect of GST incurred by the Bidder in respect of which it is not entitled to an input tax credit.
- (b) The parties acknowledge that:
- (i) the amount of fees, costs and losses referred to in this clause 11.2 is inherently unascertainable and that, even after termination of this deed, the costs will not be able to be accurately ascertained; and
  - (ii) the amount of the costs payable under clause 11.3 is a genuine and reasonable pre-estimate of those fees, costs and losses.

## 11.3 Payment by the Target to the Bidder

- (a) The Target agrees to pay to the Bidder \$1,408,196.84 (exclusive of GST) (**Target Break Fee**) if any of the following events occur:
- (i) **(Competing Proposal)**: a Competing Proposal is publicly announced prior to the Delivery Time (whether or not such proposal is stated to be subject to any preconditions) and, within 12 months from the date of the public announcement of that Competing Proposal, the proponent of that Competing Proposal (either alone or together with any Associates of the proponent of that Competing Proposal) or any Associate of that proponent:
    - (A) completes a Competing Proposal of a kind referred to in any of paragraphs (c), (d), (e) or (f) of the definition of 'Competing Proposal'; or
    - (B) becomes the legal holder of at least 50% of Target Shares;
  - (ii) **(Recommendation)**: at any time prior to the Delivery Time, any Target Director:
    - (A) fails to recommend the Scheme in the manner described in clause 6;
    - (B) withdraws or adversely modifies or adversely qualifies their recommendation of the Scheme or support for it (other than as a result of the circumstances described in clause 66(d));
    - (C) makes any public statement to the effect that the Scheme is not, or is no longer, recommended or supported by the Target Directors (other than as a result of the circumstances described in clause 66(d)); or

- (D) makes any public statement to the effect that they recommend or support a Competing Proposal,
  - (E) except:
  - (F) where the Independent Expert concludes in the Independent Expert's Report (or any update of, or revision, amendment or addendum to, that report) that the Scheme is not in the best interest of Scheme Shareholders (except where that conclusion is due wholly or partly to the existence, announcement or publication of a Competing Proposal); or
  - (G) as a result of any matter or thing giving the Target the right to terminate this deed under clause 14.1(a);
- (iii) **(Material Breach):** the Target is:
- (A) in material breach of any material obligations of the Target under this deed, including a breach of any obligations of Target under clauses 7.1 or 7.2; or
  - (B) in material breach of any representations and warranties given by the Target under clause 9.3,
  - (C) and the Bidder terminates this deed in accordance with clause 14.1(a).
- (b) The Target must pay the Bidder the Target Break Fee within 5 Business Days of receipt by the Target of a demand for payment from the Bidder that is made after the occurrence of the event referred to in clause 11.3(a).
- (c) The maximum amount payable by the Target under this clause 11.3 is \$1,408,196.84 (exclusive of GST).
- (d) The Target Break Fee:
- (i) will not be payable to the Bidder if the Scheme becomes Effective; and
  - (ii) is only payable once.
- (e) For the avoidance of doubt, the Target Break Fee is not payable merely because the resolution submitted to the Scheme Meeting in respect of the Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act.
- (f) Where the Target Break Fee becomes payable to the Bidder under this clause 11.3 and is actually paid to the Bidder, the Bidder (for itself and as agent of every other Bidder Group Member):
- (i) releases all rights against, and agrees with the Target that the Bidder will not make a Claim against, any Target Party under or in connection with this deed; and
  - (ii) indemnifies each Target Party against a Claim that is made by a Bidder Group Member contrary to the release under clause 15.1 .

## 12. Break Fee qualification

### 12.1 Determination by Governmental Agency

If:

- (a) a Governmental Agency determines or declares that payment of all or any part of the Target Break Fee is unenforceable or unlawful (including because it involves a breach of the fiduciary or statutory duties of the members of the Target Board or board of directors of the Bidder (as applicable)) or constitutes 'unacceptable circumstances' (as that term is used in the Corporations Act) (**Impugned Amount**); and
- (b) no appeal from or review of that determination or declaration is available, available appeals from or reviews of that determination or declaration have been exhausted, or the parties agree in writing not to appeal or seek review of that determination or declaration,

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- (c) then:
  - (d) the obligation of the Target to pay the Target Break Fee does not apply to the extent of the Impugned Amount; and
  - (e) if the Bidder has received any part of the Impugned Amount, it must refund it within five Business Days after that determination is made or the period for lodging has expired, whichever is later.
  - (f) For the avoidance of doubt, any part of the Target Break Fee that does not comprise the Impugned Amount must be paid by the Target.

## **12.2 Obligations of the Bidder and the Target**

- (a) The parties must:
- (b) take all steps within their respective control (or that of their respective Related Bodies Corporate) to ensure that any determination or declaration referred to in clause 12.1 applies to the minimum extent possible; and
- (c) not cause or permit to be made, and must procure that their respective Related Bodies Corporate do not cause or permit to be made, any application to the Takeovers Panel, a court or other Governmental Agency for or in relation to a declaration or determination referred to in clause 12.1.

## **13. Confidentiality and Public Announcement**

### **13.1 Confidentiality**

Each party agrees and acknowledges that it is bound by the terms of the Confidentiality Agreement save that the terms of this deed will prevail over the Confidentiality Agreement to the extent of any inconsistency.

### **13.2 Agreed Announcement on execution**

Immediately after the execution of this deed, the parties must issue public announcements in a form previously agreed to in writing between them (**Agreed Announcement**).

### **13.3 Further public announcements**

Subject to clause 13.4, other than the Agreed Announcement, any further public announcements by the Target or the Bidder in relation to, or in connection with, the Proposed Transaction or any other transaction the subject of this deed or the Scheme may only be made in a form approved by each party in writing (acting reasonably).

### **13.4 Required announcement**

Where a party is required by applicable law, the Listing Rules or any other applicable financial market regulation to make any announcement or to make any disclosure in connection with the Proposed Transaction or any other transaction the subject of this deed or the Scheme, it may do so but must use reasonable endeavours, to the extent practicable and lawful, to consult with the other party before making the relevant disclosure and must give the other party as much notice as reasonably practical.

### **13.5 Statements on termination**

The parties must use all reasonable endeavours to issue agreed statements in respect of any termination of this deed and, to that end but without limitation, clauses 13.3 and 13.4 apply to any such statements or disclosures.

## 14. Termination

### 14.1 Termination by notice

A party (**Terminating Party**) may, by notice in writing to the other party (**Other Party**), terminate this deed at any time prior to the Delivery Time:

- (a) if the Other Party:
  - (i) is:
    - (A) either the Target or the Bidder, and is in material breach of any of its material obligations under this deed including a material breach of a material representation or warranty given by the Other Party under clause 9.1 (if the Other Party is the Bidder) or clause 9.3 (if the Other Party is the Target); or
    - (B) the Target, and is in breach of any of its obligations under clause 7.1 or 7.2; and
  - (ii) has failed to remedy such breach prior to the earlier of the Delivery Time and the date being 5 Business Days after the date of receipt by the Other Party of a notice in writing from the Terminating Party setting out details of the relevant circumstance and requesting the Other Party to remedy such breach to the reasonable satisfaction of the Terminating Party;
- (b) in accordance with clause 3.7;
- (c) if the Court refuses to make any order directing the Target to convene the Scheme Meeting;
- (d) if the Effective Date for the Scheme has not occurred on or before the End Date; or
- (e) any Target Director:
  - (i) withdraws or adversely modifies or adversely qualifies their recommendation of the Scheme or support for it (other than as a result of the circumstances described in clause 66(d));
  - (ii) makes any public statement to the effect that the Scheme is not, or is no longer, recommended or supported by the Target Director (other than as a result of the circumstances described in clause 66(d)); or
  - (iii) makes any public statement to the effect that the Target Director recommend a Competing Proposal,
- (f) and does not, within 3 Business Days, reinstate their respective recommendation of the Scheme, provided that if the Terminating Party is the Target it may only terminate this deed under this clause 14.1(e) if:
  - (i) the action described in clauses 14.1(e)(i) to 14.1(e)(iii) (inclusive) that is taken by the relevant Target Directors is permitted by clause 6(b); and
  - (ii) the Bidder is entitled or will become entitled to the Target Break Fee as a result of that action by the one or more of the relevant Target Directors, that amount has been paid to the Bidder in accordance with clause 17.3.

### 14.2 Automatic termination

Without limiting any other term of this deed, this deed will terminate automatically if 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)(B) of the Corporations Act and, if applicable, the parties have complied with clause 3.6.

### 14.3 Effect of termination

- (a) In the event of termination of this deed under clause 3.7, 14.1 or 14.2, this deed will become void and have no effect, except that the provisions of clauses 9.6, 9.7, 11, 12, 13, 14, 15.1, 15.2 and 17.3 to 17.17 (inclusive) survive termination.

- (b) Termination of this deed does not affect any accrued rights of a party in respect of a breach of this deed prior to termination.

## 15. Releases

### 15.1 Release of Target Indemnified Parties

- (a) Subject to any restrictions imposed by law, the Bidder releases any and all rights that it may have as at the date of this deed and from time to time, and agrees with the Target that it will not, make any Claim, against a Target Indemnified Party (other than Target) in connection with:
- (i) the Target's execution or delivery of this deed;
  - (ii) any breach of any representation, warranty, covenant or obligation of the Target in this deed;
  - (iii) the implementation of the Scheme; or
  - (iv) any disclosure made by any Target Indemnified Party which is false or misleading (whether by omission or otherwise),
- except to the extent the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct or wilful concealment. To avoid doubt, nothing in this clause 15.1(a) limits the rights of the Bidder to terminate this deed under clause 14.
- (b) The Target receives and holds the benefit of clause 15.1(a) as trustee for each Target Indemnified Party.

### 15.2 Release of Bidder Indemnified Parties

- (a) Subject to any restrictions imposed by law, the Target releases any and all rights that it may have as at the date of this deed and from time to time, and agrees with the Bidder that it will not make any Claim, against a Bidder Indemnified Party (other than Bidder) in connection with:
- (i) the execution or delivery of this deed by the Bidder or the execution or delivery of the Deed Poll by the Bidder;
  - (ii) any breach of any representation, warranty, covenant or obligation of the Bidder in this deed;
  - (iii) the implementation of the Scheme; or
  - (iv) any disclosure made by any Bidder Indemnified Party which is false or misleading (whether by omission or otherwise),
- except to the extent the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or wilful concealment. To avoid doubt, nothing in this clause 15.2(a) limits the rights of the Target to terminate this deed under clause 14.
- (b) The Bidder receives and holds the benefit of clause 15.2(a) as trustee for each Bidder Indemnified Party.

### 15.3 Deeds of indemnity

- (a) Subject to the Scheme becoming Effective, the Bidder undertakes in favour of the Target and each other person who is a Target Indemnified Party that it will:
- (i) ensure that the constitutions of the Target and each other Target Group Member continue to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a Target Group Member; and

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- (ii) procure that the Target and each other Target 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.
  - (b) The undertakings contained in clause 15.3(a) are subject to any Corporations Act restriction, or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly.
  - (c) The Target receives and holds for the benefit of clause 15.3(a), to the extent it relates to any other Target Indemnified Party, as trustee for them.
  - (d) The undertakings contained in clause 15.3(a) are given:
    - (i) in the case of clause 15.3(a)(i), until the earlier of the time that the relevant Target Group Member ceases to be part of the Bidder Group or 7 years from the Implementation Date; or
    - (ii) in the case of clause 15.3(a)(ii), until the earlier of the time that the relevant Target Group Member ceases to be part of the Bidder Group or 7 years from the retirement of each director and officer.

#### 15.4 Directors' and officers' insurance

- (a) The Bidder acknowledges that the Target will in respect of the Target and all other Target Group Members:
  - (i) prior to the Effective Date, arrange for the cover currently provided under the directors' and officers' insurance policy for the Target and all other Target Group Members (**Policy**) to be extended for a further period of 12 months; and
  - (ii) by no later than the Implementation Date, to the extent practicable at normal commercial rates, arrange for the cover provided under the Policy to be amended so as to provide run off cover in accordance with the terms of the Policy for a 7 year period from the end of the term of the Policy, and pay all premiums required so as to ensure that insurance cover is provided under the Policy on those terms until that date,
- (b) and that any actions to facilitate that insurance or in connection therewith will not be or constitute a Target Prescribed Occurrence, a breach of clause 7, a Target Material Adverse Change or otherwise breach any provision of this deed.
- (c) The Target receives and holds the benefit of clause 15.4(a) as trustee for each director and officer of each Target Group Member.

#### 16. Notices

Any communication under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as shown on the Details page (or as otherwise notified by that party to the other party from time to time);
- (c) must be signed by the party making the communication or by a person duly authorised by that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 16(b); and
- (e) will be deemed to be received by the addressee:
  - (i) **(in the case of prepaid post)**: on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;
  - (ii) **(in the case of fax)**: at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which

confirms transmission of that fax in its entirety, unless that local time is not a Business Day, or is after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day;

- (iii) **(in the case of delivery by hand):** on delivery at the address of the addressee as provided in clause 16(b), unless that delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day; and
- (iv) **(in the case of email):** at the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered.

## 17. General

### 17.1 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this deed.

### 17.2 Timetable

The parties agree that the Timetable is indicative only and is not binding on the parties. The parties agree to consult regularly with each other in relation to:

- (a) performing their respective obligations within the framework established by the Timetable; and
- (b) any need to modify the Timetable.

### 17.3 Payments

Unless otherwise expressly provided in this deed, where an amount is required to be paid to a party (**Receiving Party**) by the other party under this deed, that amount shall be paid:

- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties may agree; and
- (b) without deduction, withholding or set-off.

### 17.4 Interest

- (a) If a party fails to pay any amount payable under this deed on the due date for payment, that party must pay interest on the amount unpaid at the higher of the Interest Rate plus 3% per annum or the rate (if any) fixed or payable under any judgment or other thing into which the liability to pay the amount becomes merged.
- (b) The interest payable under clause 17.4(a):
  - (i) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the amount becomes merged; and
  - (ii) may be capitalised by the person to whom it is payable at monthly intervals.

### 17.5 Consents or approvals

A party may:

- (a) give conditionally or unconditionally; or
- (b) withhold,

its approval or consent in its absolute discretion unless this deed expressly provides otherwise.

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## 17.6 GST

- (a) Any reference in this clause 17.6 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST.
- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this deed is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this deed but for the application of this clause 17.6(c) for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 17.6(c) does not apply to any taxable supply under or in connection with this deed that is expressly stated to include GST.
- (d) The amount on account of GST payable in accordance with this clause 17.6 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided. A party need not make a payment for a taxable supply made pursuant to this deed until it receives a tax invoice for the supply to which the payment relates.
- (e) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.
- (f) Unless expressly included, any monetary thresholds specified in this deed are exclusive of GST.

## 17.7 Stamp duty

The Bidder must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this deed or the Scheme or the steps to be taken under this deed or the Scheme (including without limitation the acquisition or transfer of Scheme Shares pursuant to the Scheme).

## 17.8 Expenses

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

## 17.9 Amendments

This deed may only be varied by a document signed by or on behalf of each of the parties.

## 17.10 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior written consent of each other party, which consent that other party may give or withhold in its absolute discretion.

## 17.11 Business Day

Except where otherwise expressly provided, where under this deed the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing will be done on the next Business Day.

### 17.12 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by any party under this deed will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) Nothing in this deed obliges a party to exercise a right to waive any conditional term of this deed that may be in its power.

### 17.13 Counterparts

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same deed.
- (b) This deed is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an original executed counterpart sent by facsimile machine or email to the facsimile number or email address (as the case may be) of the other party specified in the Details page (or as otherwise notified by that party to the other party from time to time), instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

### 17.14 Entire agreement

- (a) This deed:
  - (i) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and
  - (ii) supersedes any prior agreement (whether or not in writing) between the parties.
- (b) Despite clause 17.14(a), the Confidentiality Agreement continues to apply to the parties in accordance with its terms, except to the extent of any express inconsistency, in which case this deed prevails.

### 17.15 No representation or reliance

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

### 17.16 No merger

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

### 17.17 Governing law

- (a) This deed is governed by and will be construed according to the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and of the courts competent to determine appeals from those courts.

# Schedule 1 – Indicative timetable

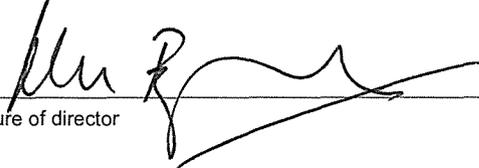
Event	Date
Enter into Scheme Implementation Deed	23 October 2019
Lodge Scheme Booklet with ASIC for review and comment	19 November 2019
First Court Date	17 December 2019 (subject to court availability)
Despatch Scheme Booklet to Target Shareholders	18 December 2019
Scheme Meeting	3 February (this date is subject to satisfaction of Conditions Precedent)
Second Court Date	5 February 2020 (subject to court availability)
Effective Date – lodge office copy of Court order approving the Scheme with ASIC	5 February 2020
Record Date	12 February 2020
Implementation Date:	19 February 2020
▪ Pay Scheme Consideration to Scheme Shareholders	
▪ Reconstitute boards of each Target Group Member	

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# Signing page

EXECUTED as a deed.

Executed by **CSG Limited** ACN 123 989 631 in accordance with Section 127 of the *Corporations Act 2001*

  
\_\_\_\_\_  
Signature of director

**MARK BAYLISS**  
\_\_\_\_\_  
Name of director (print)

  
\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

**Howard Edelman**  
\_\_\_\_\_  
Name of director/company secretary (print)

**Signed on behalf of, and sealed and delivered**  
by **Fuji Xerox Asia Pacific Pte Ltd** in the presence of

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Signatory of authorised signatory

\_\_\_\_\_  
Name of authorised signatory

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# Signing page

EXECUTED as a deed.

Executed by **CSG Limited** ACN 123 989 631 in accordance with Section 127 of the *Corporations Act 2001*

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)

**Signed on behalf of, and sealed and delivered**  
by **Fuji Xerox Asia Pacific Pte Ltd** in the presence of

  
\_\_\_\_\_  
Signature of witness

  
\_\_\_\_\_  
Signatory of authorised signatory

LEONG JIN CHIEW  
\_\_\_\_\_  
Name of witness (print)

MUTSUKI TAMONO  
\_\_\_\_\_  
Name of authorised signatory

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# Annexure A – Deed Poll

Annexure to Scheme Implementation Deed



## Deed poll

—

Fuji Xerox Asia Pacific Pte Ltd (**Bidder**)

—

# Deed poll

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<b>Details</b>	<b>53</b>
<b>Agreed terms</b>	<b>54</b>
<b>1. Defined terms &amp; interpretation</b>	<b>54</b>
1.1 Defined terms	54
1.2 Terms defined in Scheme Implementation Deed	54
1.3 Incorporation by reference	54
<b>2. Nature of this deed poll</b>	<b>54</b>
<b>3. Conditions</b>	<b>54</b>
3.1 Conditions	54
3.2 Termination	54
3.3 Consequences of termination	54
<b>4. Performance of obligations</b>	<b>55</b>
4.1 Generally	55
4.2 Provision of Scheme Consideration	55
<b>5. Warranties</b>	<b>55</b>
<b>6. Continuing Obligations</b>	<b>56</b>
6.1 Deed poll irrevocable	56
6.2 Variation	56
<b>7. Notices</b>	<b>56</b>
<b>8. General Provisions</b>	<b>56</b>
8.1 Assignment	56
8.2 Cumulative rights	57
8.3 No waiver	57
8.4 Stamp duty	57
8.5 Further assurances	57
8.6 Governing law and jurisdiction	57
<b>Signing page</b>	<b>58</b>

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# Details

Date

---

## Deed poll made by

Name Fuji Xerox Asia Pacific Pte Ltd  
Company number 199100883W  
Short form name **Bidder**  
Notice details 80 Anson Road, #37-00 Fuji Xerox Towers  
Singapore 079907  
Email: hitoaki.tsutsui@fujixerox.co.jp  
Attention: Hiroaki Tsutsui

## in favour of

each person registered in the Target Register as a holder of fully paid ordinary shares in the Target as at the Record Date (other than Excluded Shareholders).

---

## Background

- A On 23 October 2019, CSG Limited ABN 64 123 989 631 (**Target**) and Bidder entered into the Scheme Implementation Deed to provide for (among other matters) the implementation of the Scheme.
- B The effect of the Scheme will be to transfer all Scheme Shares to the Bidder in return for the Scheme Consideration.
- C Bidder enters this deed poll to covenant in favour of Scheme Shareholders to perform all obligations and actions attributed to it under, and otherwise comply with, the Scheme.

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# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Defined terms

In this document:

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders, the form of which is set out in Attachment 1, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed in writing by Bidder and the Target.

**Scheme Implementation Deed** means the Scheme Implementation Deed dated 23 October 2019 between Bidder and the Target.

### 1.2 Terms defined in Scheme Implementation Deed

Capitalised words and phrases defined in the Scheme have the same meaning in this deed poll unless the context requires otherwise.

### 1.3 Incorporation by reference

The provisions of clauses 1.2, 1.3 and 1.4 of the Scheme form part of this deed poll as if set out at length in this deed poll but with 'deed poll' substituted for 'deed' and with any reference to 'party' being taken to include the Scheme Shareholders.

## 2. Nature of this deed poll

Bidder acknowledges that:

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

## 3. Conditions

### 3.1 Conditions

This deed poll and the obligations of Bidder under this deed poll are subject to the Scheme becoming Effective.

### 3.2 Termination

The obligations of Bidder under this deed poll will automatically terminate and this deed poll will be of no further force or effect if:

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

unless the Target and the Bidder otherwise agree in writing.

### 3.3 Consequences of termination

If this deed poll terminates under clause 20.2, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Bidder is released from its obligations to further perform this deed poll except those obligations under clause 25.4; and

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- (b) Scheme Shareholders retain the rights they have against Bidder in respect of any breach of this deed poll which occurred before it terminated.

## 4. Performance of obligations

### 4.1 Generally

Subject to clause 20, Bidder covenants in favour of Scheme Shareholders to perform all obligations and actions attributed to it under, and otherwise comply with, the Scheme, as if it was a party to the Scheme.

### 4.2 Provision of Scheme Consideration

- (a) Subject to clause 20, Bidder undertakes in favour of each Scheme Shareholder to provide or procure the provision of the Scheme Consideration to each Scheme Shareholder in accordance with the terms of the Scheme.
- (b) The obligations of Bidder under clause 21.2(a) will be satisfied if, by no later than 5.00pm on the Business Day before the Implementation Date, in accordance with the provisions of the Scheme, the Bidder deposits the aggregate amount of the Scheme Consideration payable to all the Scheme Shares, in cleared funds into the Trust Account.

## 5. Warranties

Bidder represents and warrants to each Scheme Shareholder that:

- (a) **(status)**: it is a corporation duly incorporated and validly existing under the laws of the place of its registration;
- (b) **(power)**: it has the right and power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) **(corporate authorisations)**: it has taken all necessary corporate action to authorise the entry into and performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) **(documents binding)**: this deed poll is valid and binding on it and enforceable in accordance with its terms;
- (e) **(transactions permitted)**: the execution and performance by it of this deed poll and each transaction contemplated by this deed poll did not and will not violate in any respect a provision of:
- (i) a law or treaty or a judgment, ruling, order or decree of a Regulatory Authority binding on it;
  - (ii) its constitution or other constituent documents; or
  - (iii) any other document which is binding on it or its assets; and
- (f) **(solvency)**: it is solvent and no resolutions have been passed nor has any other step been taken or legal action or proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets.

## 6. Continuing Obligations

### 6.1 Deed poll irrevocable

This deed poll is irrevocable and, subject to clause 20, remains in full force and effect until the earlier of:

- (a) the Bidder having fully performed its obligations under this deed poll; and
- (b) termination of this deed poll under clause 20.2.

## 6.2 Variation

A provision of this deed poll may not be varied unless the variation is agreed by Bidder and:

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

in which event Bidder will enter into a further deed poll in favour of each Scheme Shareholder giving effect to the variation.

## 7. Notices

Any notice, demand or other communication (**Notice**) in respect of this deed poll:

- (a) must be in writing in English and signed by the sender or a person duly authorised by it;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or email to the address or email address specified in the Details; and
- (c) will be conclusively taken to be duly given or made:
  - (i) if delivered in person, when delivered at the address of the addressee as provided in clause 24(b), unless that delivery is not made on a Business Day, or is made after 5.00pm on a Business Day, in which case that Notice will be deemed to be received at 9.00am on the next Business Day;
  - (ii) if sent by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country);
  - (iii) if sent by email, at the local time (in the place of receipt of that email) which then equates to the time at which that email is sent as shown unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee, but if the local time is not a Business Day, or is after 5.00pm on a Business Day, that email communication will be deemed to be received at 9.00am on the next Business Day.

## 8. General Provisions

### 8.1 Assignment

- (a) The rights and obligations of the Bidder and each Scheme Shareholder under this deed poll are personal. They cannot be assigned, charged, encumbered or otherwise dealt with at law or in equity without the prior written consent of the Target and the Bidder.
- (b) Any purported dealing in contravention of clause 25.1(a) is invalid.

### 8.2 Cumulative rights

The rights, powers and remedies of the Bidder and each Scheme Shareholder under this deed poll are cumulative with and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

### 8.3 No waiver

- (a) Bidder may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) If a Scheme Shareholder does not exercise a right arising from a breach of this deed poll at a given time, it may, unless it has waived that right in writing, exercise the right at a later point in time.

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- (c) No Scheme Shareholder may rely on words or conduct of Bidder as a waiver of any right unless the waiver is in writing and signed by Bidder.
- (d) The meanings of the terms used in this clause 25.3 are set out below.

**conduct** includes delay in the exercise of a right;

**right** means any right arising under or in connection with this deed poll and includes the right to rely on this clause; and

**waiver** includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

#### **8.4 Stamp duty**

The Bidder:

- (a) must pay or procure the payment of all stamp duty (if any) any related fines, penalties and interest in respect of the Scheme and this deed poll (including the acquisition or transfer of Scheme Shares pursuant to the Scheme), the performance of this deed poll and each transaction effected by or made under or pursuant to the Scheme and this deed poll; and
- (b) indemnifies and undertakes to keep indemnified each Scheme Shareholder against any liability arising from failure to comply with clause 25.4(a).

#### **8.5 Further assurances**

Bidder must, at their own expense, do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.

#### **8.6 Governing law and jurisdiction**

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

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# Signing page

**EXECUTED** as a deed poll.

**Executed** on behalf of, and sealed and delivered by, **Fuji Xerox Asia Pacific Pte Ltd** in the presence of:

\_\_\_\_\_

Signature of witness

\_\_\_\_\_

Signature of authorised signatory

\_\_\_\_\_

Name of witness (print)

\_\_\_\_\_

Name of authorised signatory

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# Annexure B – Scheme

Annexure to Scheme Implementation Deed

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# Scheme of Arrangement

—  
CSG Limited (**Target**)

Scheme Shareholders  
—

# Scheme of Arrangement

<b>Details</b>	<b>62</b>
<b>1. Definitions and interpretation</b>	<b>62</b>
1.1 Definitions	62
1.2 Interpretation	64
1.3 Business Day	64
1.4 Listing requirements included as law	64
<b>2. Preliminary</b>	<b>65</b>
2.1 Target	65
2.2 Target securities	65
2.3 Bidder	65
2.4 General	65
2.5 Consequence of this Scheme becoming Effective	65
<b>3. Conditions</b>	<b>65</b>
3.2 Certificate	66
3.3 End date	66
<b>4. Implementation</b>	<b>66</b>
4.1 Lodgement of Court orders	66
4.2 Transfer of Scheme Shares	66
<b>5. Scheme Consideration</b>	<b>67</b>
5.1 Entitlement to Scheme Consideration	67
5.2 Payment of Scheme Consideration	67
5.3 Despatch of Scheme Consideration	67
5.4 Orders of a Governmental Agency	68
<b>6. Entitlement to participate and dealings in the Target Shares</b>	<b>68</b>
6.1 Entitlement to participate	68
6.2 Determination of Scheme Shareholders	68
6.3 Register	68
<b>7. Quotation of Target Shares</b>	<b>69</b>
7.1 Suspension of trading on ASX	69
7.2 Termination of official quotation	69
<b>8. General Scheme provisions</b>	<b>69</b>
8.1 Consent	69
8.2 Binding effect of Scheme	69
8.3 Scheme Shareholders' agreements and acknowledgment	69
8.4 Warranties by Scheme Shareholders	70
8.5 Title to and rights in Scheme Shares	70
8.6 Authority given to the Target	70
8.7 Appointment of sole proxy	71
<b>9. General</b>	<b>71</b>
9.1 Stamp duty	71
9.2 Notices	71
9.3 Further assurances	71
9.4 Governing law and jurisdiction	71

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# Details

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

Name	<b>CSG Limited</b>
ABN	64 123 989 631
Short name	<b>Target</b>
Address details	Level 1 357 Collins Street Melbourne VIC 3000 Email: howard.edelman@csg.com.au and <b>Each Scheme Shareholder</b>

## 1. Definitions and interpretation

### 1.1 Definitions

In this Scheme, unless the context requires otherwise:

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means ASX Limited ABN 98 008 624 691 or, if the context requires, the financial market operated by it.

**Bidder** means Fuji Xerox Asia Pacific Pte Ltd, Company number 199100883W.

**Bidder Group** means the Bidder and each other Subsidiary of Bidder (excluding, at any time, each Target Group Member to the extent that such Target Group Member is a subsidiary of Bidder at that time) and **Bidder Group Member** means any one of them.

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

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales, Australia or Tokyo, Japan.

**CHESS** means the clearing house electronic subregister system for the electronic transfer of securities operated by ASX Settlement Pty Limited ABN 49 008 504 532.

**CHESS Holding** has the meaning given to that expression in the Settlement Rules.

**Close of Trading** means the close of normal trading on ASX on the Effective Date.

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

**Court** means the New South Wales Supreme Court or any other court of competent jurisdiction under the Corporations Act as the Target and Bidder may agree in writing.

**Deed Poll** means the deed poll dated [insert] executed by the Bidder under which Bidder covenants in favour of the Scheme Shareholders to perform all obligations and actions attributed to it under, and otherwise comply with, the Scheme.

**Delivery Time** means the time being 2 hours before the commencement of the hearing of the Court on the Second Court Date.

**Effective** means the coming into effect under section 411(10) of the Corporations Act of the Scheme Order in relation to this Scheme.

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

**End Date** has the meaning given in the Scheme Implementation Deed.

**Excluded Shareholder** has the meaning given in the Scheme Implementation Deed.

**Governmental Agency** means any Australian or foreign government or representative of a government or any Australian or foreign governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX or any other stock exchange and any regulatory organisation established under statute.

**Implementation Date** means the date this Scheme will be implemented according to its terms, being 5 Business Days after the Record Date or such other Business Day agreed in writing by the Target and the Bidder.

**Issuer Sponsored Holding** has the meaning given in the Settlement Rules.

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

**Record Date** means 7.00pm on the fifth Business Days after the Effective Date or such other Business Day agreed in writing between the Target and the Bidder.

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

**Related Body Corporate** of a person has the meaning given to that term in the Scheme Implementation Deed.

**Scheme** means this scheme of arrangement pursuant to Part 5.1 of the Corporations Act between the Target and Scheme Shareholders in respect of all Scheme Shares, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed in writing by the Target and the Bidder.

**Scheme Consideration** means the amount of \$0.310 cash in respect of each Scheme Share held by a Scheme Shareholder.

**Scheme Implementation Deed** means the Scheme Implementation Deed dated 23 October 2019 between Bidder and the Target.

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

**Scheme Order** means the orders of the Court approving the Scheme made under section 411(4)(b) of the Corporations Act.

**Scheme Share** means a Target Share on issue as at the Record Date other than any Target Share held at that time by an Excluded Shareholder (but including any Target Share held on behalf of one or more Third Parties who are not Excluded Shareholders or otherwise in a fiduciary capacity on behalf of persons who are not Excluded Shareholders).

**Scheme Shareholder** means a Target Shareholder that holds one or more Scheme Shares as at the Record Date.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

**Settlement Rules** means the ASX Settlement Operating Rules.

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

**Target Group** means the Target and its Subsidiaries and **Target Group Member** means any one of them.

**Target Performance Right** has the meaning given in the Scheme Implementation Deed.

**Target Register** means the register of members of the Target maintained by, or on behalf of, the Target in accordance with section 168(1) of the Corporations Act.

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**Target Registry** means Computershare Investor Services Pty Limited or any replacement provider of share registry services to the Target from time to time.

**Target Share** means an issued fully paid ordinary share in the capital of the Target.

**Target Shareholder** means each person who is registered in the Target Register as a holder of Target Shares.

**Third Party** means any person or entity (including a Governmental Agency) other than a Target Group Member or a Bidder Group Member.

**Trust Account** has the meaning given under clause 30.2.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) the singular includes the plural, and the converse also applies;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) a reference to a clause or schedule is a reference to a clause of or schedule to this Scheme;
- (f) a reference to an **agreement** or **document** (including a reference to this Scheme) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Scheme or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document;
- (g) a reference to a party to this Scheme or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (h) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (i) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (j) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- (k) a reference to **A\$, \$A, dollars** or **\$** is to Australian currency;
- (l) all references to time are to Sydney, Australia time;
- (m) mentioning anything after *includes, including, for example*, or similar expressions, does not limit what else might be included; and
- (n) a reference to an **officer** is to that term as it is defined in the Corporations Act.

## 1.3 Business Day

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

## 1.4 Listing requirements included as law

A listing rule or operating rule of a financial market or of a clearing and settlement facility will be regarded as a law, and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

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## 2. Preliminary

### 2.1 Target

- (a) The Target is a public company limited by shares, registered in the Northern Territory, Australia and admitted to the official list of ASX.
- (b) The Target Shares are officially quoted on ASX.
- (c) The Target's registered office is at Level 1, 357 Collins Street, Melbourne, Victoria 3000.

### 2.2 Target securities

- (a) As at 23 October 2019, the Target's capital structure, including all issued securities as at the date of this deed, is as set out below:
  - (i) 449,257,045 Target Shares on issue which are officially quoted on ASX; and
  - (ii) 19,087,499 Target Performance Rights on issue which are not quoted on any financial market.

### 2.3 Bidder

- (a) The Bidder is a Singaporean company.
- (b) The Bidder's registered office is at 80 Anson Road, #37-00 Fuji Xerox Towers, Singapore 079907.

### 2.4 General

- (a) The Target and the Bidder have agreed by executing the Scheme Implementation Deed to implement this Scheme.
- (b) This Scheme attributes actions to the Bidder but does not itself impose an obligation on the Bidder to perform those actions, as the Bidder is not party to this Scheme. Bidder has agreed, by executing the Deed Poll, to perform its obligations under this Scheme, including the provision or procuring the provision of the Scheme Consideration to the Scheme Shareholders.

### 2.5 Consequence of this Scheme becoming Effective

If this Scheme becomes Effective:

- (a) the Bidder will provide or procure the provision of the Scheme Consideration to Scheme Shareholders in accordance with this Scheme and the Deed Poll;
- (b) all the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares, will be transferred to the Bidder;
- (c) the Target will enter the name of the Bidder in the Target Register as the holder of the Scheme Shares with the result that the Target will become a wholly-owned subsidiary of the Bidder;
- (d) it will bind the Target and all Scheme Shareholders, including those who do not attend the Scheme Meeting, those who do not vote at the meeting and those who vote against this Scheme at the meeting; and
- (e) it will override the constitution of the Target, to the extent of any inconsistency.

## 3. Conditions

- (a) This Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions precedent:
  - (i) each of the conditions precedent in clause 3.1 of the Scheme Implementation Deed (other than the condition in clause 3.1(b) relating to Court approval of the Scheme) having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed by the Delivery Time;

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- (ii) neither the Scheme Implementation Deed nor the Deed Poll having been terminated in accordance with their terms before the Delivery Time;
  - (iii) approval of this Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed in writing by the Bidder and the Target in accordance with clause 33.1;
  - (iv) such other conditions imposed by the Court under section 411(6) of the Corporations Act, as are agreed in writing by the Target and the Bidder in accordance with clause 33.1, having been satisfied; and
  - (v) the orders of the Court (including, if applicable, any orders of the Court under section 411(6) of the Corporations Act) approving the Scheme under section 411 of the Corporations Act coming into effect, under section 411(10) of the Corporations Act, on or before the End Date.
- (b) The satisfaction of each condition precedent referred to in clause 28(a) is a condition precedent to the operation of clauses 29 and 30 and the binding effect of this Scheme.
  - (c) Subject to clause 0, this Scheme will take effect on and from the Effective Date.

### 3.2 Certificate

- (a) The Target and the Bidder will provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all the conditions precedent in clauses 28(a)(i) and 28(a)(ii) have been satisfied or waived as at the Delivery Time.
- (b) The certificate referred to in clause 28.2(a) constitutes conclusive evidence that such conditions precedent were satisfied, waived or taken to be waived.

### 3.3 End date

Without limiting any rights under the Scheme Implementation Deed, this Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Scheme Implementation Deed is terminated before implementation of this Scheme on the Implementation Date,

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

## 4. Implementation

### 4.1 Lodgement of Court orders

The Target must lodge with ASIC office copies of any Court orders under section 411 of the Corporations Act approving this Scheme as soon as possible and in any event no later than by 5.00pm on the first Business Day after the date on which the Court approves this Scheme, or such later date as the Target and the Bidder agree in writing.

### 4.2 Transfer of Scheme Shares

Subject to the Scheme becoming Effective in accordance with clause 29.1:

- (a) by no later than 5.00pm on the Business Day before the Implementation Date, and in consideration for the transfer of the Scheme Shares to the Bidder under the Scheme, the Bidder must pay or procure payment of the Scheme Consideration to each Scheme Shareholder for each Scheme Share that is held by the Scheme Shareholder as at the Record Date in accordance with clause 30.2;
- (b) on the Implementation Date, and subject to the Bidder fulfilling its obligations to pay or procure payment of the Scheme Consideration in accordance with clause 30.2, all the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares

at the Implementation Date, will be transferred to the Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by the Target or its officers as agent and attorney of the Scheme Shareholders under clause 33.6 or otherwise) by:

- (i) the Target delivering to the Bidder a share transfer form duly completed and executed by the Target on behalf of Scheme Shareholders to transfer all the Scheme Shares to the Bidder; and
  - (ii) the Bidder duly executing such transfer form and delivering it to the Target for registration; and
- (c) immediately after receipt of the transfer form in accordance with clause 29.2(b)(ii), the Target must enter, or procure the entry of, the name of the Bidder in the Target Register in respect of the Scheme Shares.

## 5. Scheme Consideration

### 5.1 Entitlement to Scheme Consideration

Subject to the terms of this Scheme, each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share registered in the name of the Scheme Shareholder.

### 5.2 Payment of Scheme Consideration

The obligations of the Bidder to pay or procure payment of the Scheme Consideration pursuant to clause 29.2(a) will be satisfied by the Bidder depositing, by no later than 5.00pm on the Business Day before the Implementation Date, in cleared funds into an account established by, or on behalf of, the Target and in the name of the Target (**Trust Account**) an amount equal to the aggregate Scheme Consideration payable to all Scheme Shareholders, such amount to be held by the Target on trust for the Scheme Shareholders and for the purpose of sending the aggregate Scheme Consideration to the Scheme Shareholders.

### 5.3 Despatch of Scheme Consideration

- (a) Subject to the Bidder complying with its obligations under clause 30.2, the Target within five Business Days after the Implementation Date must pay or procure the payment of, from the Trust Account to each Scheme Shareholder, an amount equal to the Scheme Consideration due to that Scheme Shareholder in accordance with this Scheme by:
- (i) despatching or procuring the despatch to the Scheme Shareholder of a cheque for the relevant amount in Australian currency by pre-paid ordinary post (or, if the Registered Address of the Scheme Shareholder is outside Australia, by pre-paid airmail post) to their Registered Address. In the case of Scheme Shares held in joint names any cheque required to be paid to Scheme Shareholders must be payable to the joint holders and be forwarded to the holder whose name appears first in the Target Register as at the Record Date; or
  - (ii) making a deposit in an account with any ADI (as defined in the Banking Act 1959 (Cth)) in Australia notified by the Scheme Shareholder to the Target and recorded in or for the purposes of the Target Register as at the Record Date.
- (b) To the extent that a cheque properly dispatched by or on behalf of the Target pursuant to this clause 30.3 is returned to the Target or the cheque is not presented by a Scheme Shareholder earlier than six months after the Implementation Date (**Unclaimed Consideration**):
- (i) the Target must deal with the Unclaimed Consideration in accordance with any applicable unclaimed moneys legislation; and
  - (ii) subject to the Target complying with its obligations under clause 30.3(b)(i), the Target is discharged from liability to any Scheme Shareholder in respect of the Unclaimed Consideration.

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## 5.4 Orders of a Governmental Agency

In the case of notice having been given to the Target (or the Target Registry) of an order or direction made by a Governmental Agency:

- (a) which requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with clause 30.3, then the Target must procure that payment is made in accordance with that order or direction; or
- (b) which would prevent the Target from dispatching payment to any particular Scheme Shareholder in accordance with clause 30.3, the Target must retain an amount in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the applicable Scheme Consideration until such time as payment in accordance with clause 30.3 is permitted by the order or direction or otherwise permitted at law,

and the payment or retention by the Target will constitute full discharge of the Target's obligations under clause 30.3 with respect to the amount so paid or retained until it is no longer required to be retained under clause 30.4(b).

## 6. Entitlement to participate and dealings in the Target Shares

### 6.1 Entitlement to participate

Each Scheme Shareholder will be entitled to participate in the Scheme.

### 6.2 Determination of Scheme Shareholders

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

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

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

### 6.3 Register

- (a) **(Registration of transfers)** The Target must register registrable transmission applications or transfers of the kind referred to in clause 31.2(b) by the Record Date (provided that for the avoidance of doubt nothing in this clause 31.3 requires the Target to register a transfer that would result in a Target Shareholder holding a parcel of Target Shares that is less than a 'marketable parcel' (as defined in the Settlement Rules)).
- (b) **(No registration after Record Date)** The Target will not accept for registration or recognise for any purpose any transmission application or transfer in respect of the Target Shares received after the Record Date, other than to the Bidder in accordance with this Scheme.
- (c) **(Maintenance of the Target Register)** For the purpose of determining entitlements to the Scheme Consideration, the Target must maintain the Target Register in accordance with the provisions of this clause until the Scheme Consideration has been delivered to the Scheme Shareholders. The Target Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) **(No disposal after Record Date)** From the Record Date until registration of the Bidder in respect of all Scheme Shares under clause 29.2, no Target Shareholder may dispose or

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otherwise deal with the Target Shares or any interest in them in any way except as set out in this Scheme and any attempt to do so will have no effect and the Target will be entitled to disregard any such disposal or dealing.

- (e) **(Statements of holding from Record Date)** All statements of holding for Target Shares will cease to have effect from the Record Date as documents of title in respect of those shares (other than statements of holding in favour of any Excluded Shareholders). As from the Record Date, each entry current at that date on the Target Register (other than entries in respect of any Excluded Shareholder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Target Shares relating to that entry.
- (f) **(Provision of Scheme Shareholder details)** As soon as practicable after the Record Date and in any event by no later than 5:00pm on the Business Day after the Record Date, the Target will ensure that details of the names, Registered Addresses and holdings of the Target Shares for each Scheme Shareholder as shown in the Target Register as at the Record Date are available to the Bidder.

## 7. Quotation of Target Shares

### 7.1 Suspension of trading on ASX

The Target will apply to ASX to suspend trading on the ASX in the Target Shares with effect from the Close of Trading.

### 7.2 Termination of official quotation

On a date after the Implementation Date to be determined by the Bidder, and only after the transfer of the Scheme Shares has been registered in accordance with clause 29.2(c), the Target will apply:

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

## 8. General Scheme provisions

### 8.1 Consent

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

- (a) the Target may, by its counsel or solicitors, consent on behalf of all persons concerned to those alterations or conditions to which the Bidder has consented in writing (such consent by the Bidder to any alterations or conditions imposed by the Court must not to be unreasonably withheld or delayed); and
- (b) each Scheme Shareholder agrees to any such alterations or conditions to which the Target has consented.

### 8.2 Binding effect of Scheme

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

### 8.3 Scheme Shareholders' agreements and acknowledgment

Each Scheme Shareholder:

- (a) agrees to the transfer of the Target Shares registered in the name of the Scheme Shareholder as at the Record Date together with all rights and entitlements attaching to those Target Shares in accordance with this Scheme;
- (b) agrees to the variation, cancellation or modification of the rights attached to their Target Shares constituted by or resulting from this Scheme;

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- (c) who holds their the Target Shares in a CHESS Holding agrees to the conversion of those Target Shares to an Issuer Sponsored Holding and irrevocably authorises the Target to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion;
  - (d) agrees to, on the direction of the Bidder, destroy any share certificates relating to their Target Shares; and
  - (e) acknowledges that this Scheme binds the Target and all Scheme Shareholders (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against this Scheme at that Scheme Meeting).

#### 8.4 Warranties by Scheme Shareholders

- (a) Each Scheme Shareholder is deemed to have warranted to the Target and the Bidder, and appointed and authorised the Target as its attorney and agent to warrant to the Bidder on the Implementation Date that, as at the Implementation Date:
  - (i) all Target Shares registered in its name (including any rights and entitlements attaching to those shares) which are transferred to the Bidder under this Scheme will, on the date on which they are transferred to the Bidder, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind;
  - (ii) it has full power and capacity to transfer Target Shares registered in its name to the Bidder together with any rights and entitlements attaching to those shares; and
  - (iii) it has no existing right to be issued any Target Shares, Target Performance Rights or any other Target securities, other than, in the case of any Scheme Shareholder who is also the holder of Target Performance Rights, the right to be issued Target Shares on the exercise or vesting of those the Target Performance Rights in accordance with their terms.
- (b) The Target undertakes that it will provide the warranties in clause 33.4(a) to the Bidder as agent and attorney of each Scheme Shareholder.

#### 8.5 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to those shares) transferred under this Scheme will be transferred free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise and free from any restrictions on transfer of any kind.
- (b) Immediately on the provision of the Scheme Consideration for each Scheme Share to each Scheme Shareholder in the manner contemplated by clause 30, the Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by the Target of the Bidder in the Target Register as the holder of the Scheme Shares.

#### 8.6 Authority given to the Target

On and from the Effective Date, each Scheme Shareholder, without the need for any further act, irrevocably appoints the Target and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purposes of:

- (a) enforcing the Deed Poll against the Bidder; and
- (b) executing any document, or doing any other acts or things necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it including (without limitation) executing a proper instrument of transfer of the Scheme Shares for the purposes of section 1071B of the Corporations Act which may be a master transfer of all the Scheme Shares,

and the Target accepts each such appointment. The Target, as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 33.6 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

## **8.7 Appointment of sole proxy**

Immediately on the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 30 and until the Target registers the Bidder as the holder of all the Scheme Shares in the Target Register, each Scheme Shareholder:

- (a) is deemed to have irrevocably appointed the Bidder as its attorney and agent (and directed the Bidder in such capacity) to appoint an officer or agent nominated by the Bidder as its sole proxy and, where applicable, corporate representative to attend shareholders' meetings of the Target, exercise the votes attaching to the Scheme Shares registered in its name and sign any Target Shareholders' resolutions;
- (b) undertakes not to otherwise attend shareholders' meetings, exercise the votes attaching to Scheme Shares registered in their names or sign or vote on any shareholder resolutions (whether in person, by proxy or by corporate representative) other than as under clause 33.7(a);
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as the Bidder reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 33.7(a), the Bidder and any officer or agent nominated by the Bidder under clause 33.7(a) may act in the best interests of the Bidder as the intended registered holder of the Scheme Shares.

## **9. General**

### **9.1 Stamp duty**

The Bidder must pay all stamp duty and any related fines and penalties (if any) payable in connection with this Scheme and each transaction effected by or under this Scheme, including the transfer of the Scheme Shares to the Bidder.

### **9.2 Notices**

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

### **9.3 Further assurances**

- (a) The Target must do anything necessary (including executing agreements and documents) or incidental to give full effect to this Scheme and the transactions contemplated by it.
- (b) Each Scheme Shareholder consents to the Target doing all things necessary or incidental to give full effect to this Scheme and the transactions contemplated by it, whether on behalf of the Scheme Shareholder, the Target or otherwise.

### **9.4 Governing law and jurisdiction**

- (a) This Scheme is governed by the laws of New South Wales.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Scheme.

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# Annexure C – Certificate

Annexure to Scheme Implementation Deed

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## Conditions precedent certificate

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Date:

We refer to the scheme implementation deed dated 23 October 2019 between CSG Limited ACN 123 989 631 (**CSG**) and Fuji Xerox Asia Pacific Pte Ltd (**FX**) (**SID**).

1. CSG certifies, confirms and agrees that (in respect of matters within its knowledge) each of the following conditions precedent of the SID has been satisfied or waived in accordance with the terms of the SID:
  - clause 3.1(a) (**Shareholder approval**);
  - clause 3.1(c) (**Regulatory Approvals**);
  - clause 3.1(f) (**Restraints**);
  - clause 3.1(g) (**ASIC and ASX**);
  - clause 3.1(h) (**No Target Prescribed Occurrence**);
  - clause 3.1(i) (**No Target Material Adverse Change**);
  - clause 3.1(j) (**Target Warranties**);
  - clause 3.1(l) (**Independent Expert**); and
  - clause 3.1(m) (**Target Performance Rights**).
2. FX certifies, confirms and agrees that (in respect of matters within its knowledge) each of the following conditions precedent of the SID has been satisfied or waived in accordance with the terms of the SID:
  - clause 3.1(c) (**Regulatory Approvals**);
  - clause 3.1(d) (**ACCC**);
  - clause 3.1(e) (**NZCC Approval**);
  - clause 3.1(f) (**Restraints**);
  - clause 3.1(g) (**ASIC and ASX**); and
  - clause 3.1(k) (**Bidder Warranties**).

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**Executed as a deed**

Signed sealed and delivered by  
**CSG Limited** in accordance with Section  
127 of the *Corporations Act 2001*  
by

*sign here* ▶ \_\_\_\_\_  
Company Secretary/Director

*print name* \_\_\_\_\_

*sign here* ▶ \_\_\_\_\_  
Director

*print name* \_\_\_\_\_

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Signed on behalf of, and sealed and delivered by  
**Fuji Xerox Asia Pacific Pte Ltd** in the presence of  
by

*sign here* ▶ \_\_\_\_\_  
Authorised Signatory

*print name* \_\_\_\_\_

*sign here* ▶ \_\_\_\_\_  
Witness

*print name* \_\_\_\_\_

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