

11 March 2024

## TASK agrees to scheme agreement with PAR Technology

- Scheme - TASK Group Holdings Limited (ASX:TSK) (**TASK** or the **Company**) and PAR Technology Corporation (NYSE:PAR) (**PAR**) have entered into a Scheme Implementation Agreement under which it is proposed that PAR will acquire 100% of TASK by way of a Scheme of Arrangement (**Scheme**). TASK shareholders will have the ability to receive the Scheme consideration in cash or scrip by way of a mix and match facility<sup>1</sup>.
- Cash Consideration - Under the Scheme, TASK shareholders will have the opportunity to elect to receive consideration of 100% cash at a price of A\$0.81 per TASK Share (**Cash Consideration**). The Cash Consideration represents a 103% premium to the TASK closing price of A\$0.40 per share on 8 March 2024 and a 107% premium to the 30-day volume weighted average price.
- Mixed Consideration - Alternatively, under the Scheme, TASK shareholders will have the opportunity to elect to receive up to 50% of their consideration in shares of PAR common stock (**PAR Shares**) at a ratio of 0.015 PAR Shares for each TASK share held (**Share Consideration**) with the balance payable in Cash Consideration (**Mixed Consideration**). Based on the closing price of PAR Shares on 8 March 2024 (Eastern Daylight Time) of \$US43.41 per PAR Share, the Share Consideration implies a value of A\$0.98 per TASK Share.
- PAR is a leading global restaurant technology company and provider of unified commerce for enterprise restaurants. PAR's restaurant hardware, software, loyalty, drive-through, and back-office solutions is used in more than 70,000 restaurants in more than 110 countries.
- TASK's Board unanimously recommends that TASK shareholders vote in favour of the Scheme in the absence of a superior proposal and subject to an Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interest of TASK's shareholders.

### Scheme Overview

TASK is pleased to announce that it has entered into a Scheme Implementation Agreement (**SIA**) with PAR. Under the SIA it is proposed that PAR will acquire 100% of TASK's shares by way of a Court-approved scheme of arrangement for a total implied price of A\$0.81 TASK share. The Scheme values TASK's equity at A\$310m<sup>2</sup>. A 100% take-up of the 50% scrip consideration alternative implies a value for TASK's equity of A\$343m based on the closing price of PAR Shares on 8 March 2024 (Eastern Daylight Time) of \$US43.41 per PAR Share<sup>3</sup>.

Under the terms of the Scheme, TASK shareholders will have the option to elect to receive their scheme consideration in one of two ways:

- Cash Consideration, where shareholders can elect up to 100% cash consideration of A\$0.81 cents cash per Target

<sup>1</sup> Each TASK shareholder will be able to choose to maximise either cash or up to 50% of the consideration in PAR scrip.

<sup>2</sup> Equity offer value assuming total issued securities of 382m including Options, Restricted Share Units and Deferred Share Rights, at the Scheme Cash Consideration price of \$0.81 per share.

<sup>3</sup> Equity offer value assuming total issued securities of 382m including Options, Restricted Share Units and Deferred Share Rights, at an implied price of \$0.90 per TASK share for a Mixed Consideration 50% scrip election.

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share held;

- Mixed Consideration, where shareholders can elect up to 50% scrip consideration equating to 0.015 PAR Shares for each TASK share held, with the balance payable as Cash Consideration.

TASK shareholders who do not make an election or who make an invalid election will receive the Cash Consideration.

TASK will apply for a ruling from the Australian Taxation Office (**ATO**) in relation to the availability of scrip-for-scrip capital gains tax rollover relief (**Rollover Relief**) in regards to the transaction for TASK shareholders in Australia. Rollover Relief is expected to be available, and receipt of confirmation of such ruling is a condition precedent to the transaction.

## **Scheme Conditions**

Implementation of the Scheme is subject to limited customary conditions including, amongst other things:

- receipt of required regulatory approvals (including FIRB and OIO approvals);
- the approval of TASK shareholders in accordance with the Corporations Act;
- no material adverse effect, prescribed events or breach of representations and warranties in relation to either TASK or PAR;
- receipt of confirmation of the ATO class ruling;
- valid elections to receive the Mixed Consideration having been received from Task shareholders, such that the Share Consideration will comprise at least 18% of the aggregate Scheme consideration;
- the PAR Shares issuable as Share Consideration having been approved for listing on NYSE; and
- other customary conditions to a scheme of arrangement such as Australian court approval and an Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of TASK shareholders.

Implementation of the Scheme is not subject to any financing condition.

## **Scheme Implementation Agreement**

The SIA contains customary exclusivity provisions including “no shop” and “no talk” restrictions, a notification obligation and a matching right in favour of PAR, subject to TASK Directors’ fiduciary obligations where appropriate.

The SIA also provides for a break fee of A\$1.3m payable by TASK to PAR under certain circumstances and for a reverse break fee of A\$1.3m payable by PAR to TASK also under certain circumstances.

The Scheme is expected to be implemented in the third quarter of 2024 subject to TASK shareholder approval, court approval, and other relevant conditions being satisfied or waived.

Full details of the Scheme are set out in the SIA, a copy of which accompanies this announcement.

## **TASK Board Recommendation**

The TASK Board unanimously recommends that TASK shareholders vote in favour of the Scheme, and each Director intends to vote all of the TASK shares controlled or held by, or on behalf of, them in favour of the Scheme, in the absence of a superior proposal and subject to an Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of TASK shareholders. The TASK Board makes no recommendation in relation to the mix and match election,

# TASK.

which is a decision for each individual TASK shareholder.

The TASK Board believes the Scheme provides:

- **Significant premium for control:**
  - a premium of 103% to the closing price of TASK shares on 8 March 2024 (based on the Cash Consideration);
  - a premium of 107% over the 30-day volume weighted average price of A\$0.39 per share to 8 March 2024 (based on the Cash Consideration);
- **Certainty of value:** The Scheme provides certainty of value to TASK shareholders with the opportunity to sell 100% of their shareholdings for cash;
- **Potential for additional future value:** The option to elect for up to 50% Share Consideration allows TASK shareholders to benefit from any increase in the value of PAR over time. The combination of TASK and PAR has the potential to create meaningful synergies through:
  - expanding PAR's geographic coverage and providing a platform for international growth of PAR's business;
  - adding TASK's complimentary customer base of major hospitality, stadium, foodservice and casino groups; and
  - enhancing PAR's produce suite with Task's state-of-the-art end-to-end customer engagement and transaction platform.

Daniel Houden, the CEO of TASK, said today: "I am excited by the combination of TASK and PAR. It offers TASK a better base on which to achieve its international ambitions, provides a strong group with significant opportunities for our employees and provides certainty for our shareholders who have supported the growth of TASK to become a meaningful player in the global retail software market."

Savneet Singh, the President & CEO of PAR Technology, said today: "The combination of the two most complete technology solutions in our industry is incredibly exciting, together PAR and TASK will serve our respective customers globally and create a talent base we believe to be unmatched in the industry."

## Major shareholders support Scheme

TASK shareholders Kym Houden and TASK Retail Investment Pty Ltd, have each separately advised TASK that they intend to vote all TASK shares held or controlled by them (in aggregate approximately 18% of the issued TASK shares) in favour of the Scheme in the absence of a superior proposal being publicly announced before the Scheme Meeting and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of TASK shareholders.

## Indicative Timetable and Next Steps

TASK shareholders do not need to take any action at this stage.

Subject to Court Approval, a Scheme Booklet is expected to be provided to TASK shareholders in late April 2024.

The Scheme Booklet will contain information relating to the Scheme, the reasons for the TASK Board's unanimous recommendation, details of the Scheme meeting as well as an Independent Expert's Report providing an assessment as to whether the Scheme is in the best interests of TASK shareholders. TASK shareholders will then have the opportunity to vote on the Scheme at a court-convened Scheme Meeting, which is currently expected to be held in or around June 2024.

TASK will keep shareholders and the market informed in accordance with its continuous disclosure obligations.

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## Advisers

TASK is being advised on the proposed Scheme by Latimer Partners as corporate adviser and King & Wood Mallesons as legal adviser.

## ENDS

Approved for release by the Board of Directors of TASK Group Holdings Limited.

For more information contact, visit <https://tasksoftware.com/> or contact:

### For investors:

Daniel Houden  
CEO  
daniel@tasksoftware.com

Bill Crichton  
Chairman  
bill@crichtonlimited.com.au

### For Media:

Domestique  
Jon Snowball  
+61 477 946 068

Roger Newby  
+61 401 278 906

## ABOUT TASK GROUP

TASK Group is a leading provider of technology solutions enabling its global hospitality clients to maximise their customer relationships in an increasingly digital world.

TASK's end-to-end cloud-based platform helps clients to improve customer experiences across every transactional touchpoint, including digital customer-facing services, back-of-house and enterprise operations. The Group's ecosystem combines transaction services, personalisation, offer management and BI technology to help clients generate operational efficiencies, drive valuable data insights about their consumer base, activate new promotions and build brand loyalty.

## ABOUT PAR TECHNOLOGY

For more than 40 years, PAR's cutting-edge products and services have helped bold and passionate restaurant brands build lasting guest relationships. PAR is the partner enterprise restaurants rely on when they need to serve amazing moments from open to close, during the most hectic rush hours, and when the world forces them to adapt and overcome. More than 100,000 restaurants in more than 110 countries use PAR's restaurant point-of-sale, digital ordering, loyalty and back-office software solutions as well as industry-leading hardware and drive-thru offerings. To learn more, visit [partech.com](http://partech.com) or connect with them on LinkedIn, X (formerly Twitter), Facebook, and Instagram.

**Execution version**

# Scheme Implementation Agreement

Dated 9 March 2024

PAR Technology Corporation ("**Bidder**")

TASK Group Holdings Limited (ACN 605 696 820) ("**Target**")

**King & Wood Mallesons**  
Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Australia  
T +61 2 9296 2000  
F +61 2 9296 3999  
DX 113 Sydney  
[www.kwm.com](http://www.kwm.com)

# Scheme Implementation Agreement

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# Scheme Implementation Agreement

## Details

<b>Parties</b>	<b>Bidder and Target</b>	
<b>Bidder</b>	Name	<b>PAR Technology Corporation</b>
	Formed in	State of Delaware, United States
	Address	8383 Seneca Turnpike, New Hartford, New York 13413
	Email	bryan_menar@partech.com
	Attention	Bryan Menar
	<b>Copy to:</b>	Clayton Utz
	Address	Level 28, Riparian Plaza 71 Eagle Street Brisbane QLD 4000 Australia
	Email	ahay@claytonutz.com; cbarrett@claytonutz.com
	Attention	Andrew Hay, Partner
	<b>Target</b>	Name
ACN		605 696 820
Address		Suite 16, 90 Mona Vale Road, Mona Vale NSW 2103 Australia
Email		daniel@tasksoftware.com
Attention		Daniel Houden
<b>Copy to:</b>		King & Wood Mallesons
Address		Level 61, Governor Phillip Tower 1 Farrer Place, Sydney NSW 2000 Australia
Email		anthony.boogert@au.kwm.com
Attention		Anthony Boogert, Partner
<b>Governing law</b>		New South Wales
<b>Recitals</b>	<b>A</b>	Target and Bidder have agreed to undertake a merger by means of a members' scheme of arrangement under Part 5.1 of the Corporations Act.
	<b>B</b>	At the request of Bidder, Target intends to propose the Scheme and issue the Scheme Booklet.
	<b>C</b>	Target and Bidder have agreed to implement the Scheme on the terms and conditions of this document.

# Scheme Implementation Agreement

## General terms

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### 1 Definitions and interpretation

#### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

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

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

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

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

**ATO** means the Australian Taxation Office.

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

**Bidder Board** means the board of directors of Bidder.

**Bidder Data Room** means the virtual data room of Bidder hosted by SS&C Intralinks in connection with the Scheme.

**Bidder Disclosure Letter** means Bidder's executed disclosure letter given to Target by the date of this document.

**Bidder Due Diligence Information** means:

- (a) the contents of the Bidder Data Room (including all written responses to requests for information), as at 5.00pm on 7 March 2024 (or another date and time agreed by Target and Bidder in writing); and
- (b) the Bidder Disclosure Letter.

**Bidder Group** means Bidder and its Subsidiaries.

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

**Bidder Information** means the information regarding Bidder as is provided by the Bidder to the Target in writing for inclusion in the Scheme Booklet, being information regarding the Bidder required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or ASIC Regulatory Guide 60. Bidder Information does not include information about the Target Group (except to the extent it relates to any statement of intention relating to the Target Group following the Effective Date), information in the Independent Expert's Report or any description of the taxation effect of the Scheme on Scheme Participants.

**Bidder Material Adverse Effect** means any event, matter or circumstance which has, or would be reasonably likely to have, either individually or when aggregated with any other events, matters or circumstances a material adverse effect on the assets and liabilities (taken as a whole), financial condition, business or results of

operations of the Bidder Group (taken as a whole) but does not include events, matters or circumstances to the extent resulting from or arising out of:

- (a) any matter Disclosed;
- (b) any matter, event or circumstance arising from changes in general economic or political conditions, the securities market in general or law, other than where such matters have a disproportionately adverse impact on the Bidder Group as compared to other comparable participants in the markets in which the Bidder Group operates;
- (c) any change in law, taxation, interest rates or general economic conditions which impact on Target and Bidder in a similar manner;
- (d) any change in generally accepted accounting principles or the interpretation of them;
- (e) any change occurring directly or indirectly as a result of any matter, event or circumstance expressly required by this document, the Scheme or the transaction contemplated by them;
- (f) arising out of any act of terrorism, outbreak or escalation of war (whether or not declared) or major hostilities, an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, other natural disaster or adverse weather conditions or the like; or
- (g) any change occurring with the written consent of Target.

**Bidder Nominee** has the meaning given in clause 2.2.

**Bidder Prescribed Event** means, except to the extent contemplated by this document or the Scheme, any of the following events:

- (a) **(conversion)** Bidder converts all or any of its shares of capital stock into a larger or smaller number of shares;
- (b) **(reduction of share capital)** Bidder resolves to reduce its share capital in any way or resolves to reclassify, combine, split, buy-back, redeem or repurchase directly or indirectly any of its shares, other than repurchases or redemptions of incentive equity or otherwise in the ordinary course of its business;
- (c) **(distribution)** Bidder makes or declares, or announces an intention to make or declare, any distribution (whether in cash or in specie);
- (d) **(issuing or granting shares or options)** any member of the Bidder Group:
  - (i) issues Bidder Shares or securities convertible into Bidder Shares;
  - (ii) grants an option over Bidder Shares; or
  - (iii) agrees to make such an issue or grant such an option, in each case to a person outside the Bidder Group, other than:
    - (iv) in connection with any actual or proposed acquisition by the Bidder Group of any business or assets;
    - (v) the issuance of equity incentive grants to employees, service providers and consultants in the ordinary course of business;
    - (vi) the issuance of Bidder Shares that would not, individually, exceed 20% of the issued and outstanding Bidder Shares as of the time of issuance;
    - (vii) in connection with the financing of the transactions contemplated by this Scheme; or
    - (viii) on arms' length terms (including any public offering or private placement negotiated with an unaffiliated third party reflecting a market discount),

provided that if any action is proposed to be taken pursuant to paragraphs (iv), (vi), (vii) or (viii) above which requires the consent or approval of common equityholders of the Bidder and such action otherwise constitutes a Bidder Prescribed Event, such action may not be taken without the prior written consent of Target (which approval will not be unreasonably withheld, delayed or conditioned);

- (e) **(securities or other instruments)** any member of the Bidder Group issues or agrees to issue debt securities or other debt instruments convertible into Bidder Shares in each case to a person outside the Bidder Group, other than:
- (i) the issuance of securities that would not, individually, exceed 20% of the issued and outstanding Bidder Shares as of the time of issuance;
  - (ii) in connection with the financing of the transactions contemplated by this Scheme; or
  - (iii) on arms' length terms (including any public offering or private placement negotiated with an unaffiliated third party reflecting a market discount),

provided that if any action is proposed to be taken pursuant to paragraphs (i), (ii) or (iii) above which requires the consent or approval of common equityholders of the Bidder and such action otherwise constitutes a Bidder Prescribed Event, such action may not be taken without the prior written consent of Target (which approval will not be unreasonably withheld, delayed or conditioned);

- (f) **(charter)** Bidder adopts a new charter or modifies or repeals its charter or a provision of it other than any amendment that does not adversely affect the terms of the New Bidder Shares (for the avoidance of doubt, any amendment or modification in connection with, or to reflect the terms of, any equity issuance permitted by paragraphs (d) and (e) shall not be an amendment that adversely affects the terms of the New Bidder Shares);
- (g) **(merger)** Bidder merges or consolidates with any other person, or restructures, reorganises or completely or partially liquidates or dissolves itself, in any such case, if that change has a material adverse effect on the terms of the New Bidder Shares; or
- (h) **(Insolvency)** Bidder or any of its material Subsidiaries becomes Insolvent,

provided that a Bidder Prescribed Event listed in items (a) to (h) will not occur:

- (i) where the event was Disclosed;
- (j) where the event is required by law, regulation, changes in generally accepted accounting principles, or by an order of a court or Regulatory Authority; or
- (k) where Target has requested or approved in writing the proposed event (which approval will not be unreasonably withheld, delayed or conditioned).

**Bidder Representations and Warranties** means the representations and warranties of Bidder set out in clause 12.3.

**Bidder Share** means a share of common stock, par value \$0.02 per share, in the capital of Bidder.

**Break Fee** means A\$1,300,000.

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

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

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

**Class Ruling** means a binding public ruling issued by the Commissioner of Taxation pursuant to Division 358 of Schedule 1 to the TAA and as described in the class ruling CR 2001/1

**Code** means the United States Internal Revenue Code of 1986, as amended.

**Competing Transaction** means a proposal, transaction or arrangement (whether by way of takeover bid, members' or creditors' scheme of arrangement, reverse takeover, shareholder approved acquisition, capital reduction, buy-back, sale, lease or purchase of shares, other securities or assets, issue of securities, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, and debt for equity arrangement, reorganisation, recapitalisation, refinancing or otherwise) which, if completed, would mean a person (other than Bidder or its Subsidiaries) whether alone or together with its Associates would:

- (a) directly or indirectly, acquire an interest or Relevant Interest in or become the holder of, or otherwise acquire or have a legal, beneficial or economic interest in (including an economic interest by way of one or more derivative contracts, an economic swap, contract for difference or similar transaction or arrangement), or acquire control of, 20% or more of the Target Shares (other than as custodian, nominee or bare trustee);
- (b) acquire control of Target, within the meaning of section 50AA of the Corporations Act;
- (c) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain a legal, beneficial or economic interest in, or control of, all or a substantial part or a material part of the assets of or business conducted by the Target Group;
- (d) otherwise acquire, amalgamate or merge (including by a reverse takeover bid or dual listed company structure) with Target; or
- (e) require Target to abandon, or otherwise fail to proceed with, the Scheme.

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

**Confidentiality Agreement** means the Confidentiality Agreement between the parties dated 11 January 2024.

**Controller** has the meaning it has in the Corporations Act.

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

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

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

**Court** means the Supreme Court of New South Wales, or such other court of competent jurisdiction under the Corporations Act agreed by the parties.

**Deed Poll** means a deed poll substantially in the form of Annexure B to this document (with such changes as the parties, acting reasonably and in good faith, agree are reasonably necessary to reflect any nomination of an acquirer Subsidiary by the Bidder under clause 2.2).

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

**Disclosed** means fairly disclosed with sufficient detail and context as to enable a sophisticated investor entering into a transaction of the nature contemplated by this document to understand the nature and scope of the relevant matter, event or circumstance:

- (a) in the Target Due Diligence Information or the Bidder Due Diligence Information (as applicable);
- (b) in the case of Target, in any announcement made by Target on ASX in the 6 months prior to the date of this document (other than any forward looking, projected or hypothetical information); or
- (c) in the case of Bidder, in Bidder’s Annual Report on Form 10-K for the fiscal year ended December 31, 2023 as filed with the SEC and in any statement, prospectus, report, schedule or another form filed thereafter with the SEC by Bidder pursuant to the Securities Act or the Exchange Act 2 Business Days prior to the date of this document (other than any forward looking, projected or hypothetical information).

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

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

**Election Form** has the meaning given in the Scheme.

**Election Date** has the meaning given in the Scheme.

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

**End Date** means 5.00pm on 31 August 2024 or such other date as is agreed by Bidder and Target in writing.

**Exchange Act** means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

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

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

**FIRB** means the Australian Foreign Investment Review Board.

**FIRB Act** means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

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

**GST** means goods and services tax as defined in the GST Act.

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

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

**Implementation Date** means the 5<sup>th</sup> Business Day following the Record Date.

**Incoming Directors** means each person notified by Bidder to Target in writing no later than 5 Business Days before the Implementation Date.

**Independent Expert** means the independent expert appointed by Target under clause 5.2(c).

**Independent Expert's Report** means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating whether in the Independent Expert's opinion the Scheme is in the best interests of Target Shareholders.

A person is **Insolvent** if:

- (a) if the person is incorporated, registered or otherwise subject to the insolvency laws of Australia:
  - (i) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
  - (ii) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property;
  - (iii) it is subject to any arrangement (including a deed of company arrangement or scheme of arrangement), assignment, moratorium, compromise or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document);
  - (iv) an application or order has been made (and in the case of an application which is disputed by the person, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in any of the above paragraphs;
  - (v) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
  - (vi) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject); or
  - (vii) it is otherwise unable to pay its debts when they fall due; or
- (b) if the person is incorporated, registered or otherwise subject to the insolvency laws of a jurisdiction outside Australia, something having a substantially similar effect to any of the things described in the above

paragraphs happens in connection with that person under the law of any jurisdiction.

**Intellectual Property** means:

- (a) trademarks, service marks, brand names, internet domain names, internet and social media usernames, logos, symbols, certification marks, trade dress and other indications of origin, the goodwill associated with the foregoing and registrations in any jurisdiction of, and applications in any jurisdiction to register, the foregoing, including any extension, modification or renewal of any such registration or application;
- (b) inventions, discoveries and ideas, whether patentable or not, in any jurisdiction;
- (c) patents, applications for patents (including divisions, continuations, continuations in part and renewal applications), all improvements thereto, and any renewals, extensions or reissues thereof, in any jurisdiction;
- (d) non-public information, trade secrets and know-how, including processes, technologies, protocols, formulae, prototypes and confidential information and rights in any jurisdiction to limit the use or disclosure thereof by any person;
- (e) writings and other works, whether copyrightable or not and whether in published or unpublished works, in any jurisdiction;
- (f) rights of publicity, likeness rights, or other similar personality rights;
- (g) registrations or applications for registration of copyrights in any jurisdiction, and any renewals or extensions thereof; and
- (h) any similar intellectual property or proprietary rights in any jurisdiction.

**Listing Rules** means:

- (a) in respect of Bidder, the rules and regulations applicable to companies listed on the NYSE that are contained in its Listed Company Manual; and
- (b) in respect of Target, the Listing Rules of ASX and any other applicable rules of ASX modified to the extent of any applicable express written waiver by ASX.

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

**Material Contract** means:

- (a) in relation to a contract or commitment (or series of related contracts or commitments) requiring payments by the Target Group, a contract or commitment requiring annual payments in excess of A\$500,000 (excluding GST) and excludes an employment agreement entered into by the Target Group; or
- (b) in relation to a contract or commitment (or series of related contracts or commitments) projecting revenue for the Target Group, a contract or commitment (or series of related contracts or commitments) that generates or is projected or expected to generate annual gross revenue in excess of A\$500,000 (excluding GST).

**New Bidder Shares** means the Bidder Shares to be issued to Scheme Participants under the Scheme.

**NYSE** means the New York Stock Exchange.

**OIO** means the New Zealand Overseas Investment Office.

**Outgoing Directors** means all directors on the Target Board and the board of each other Target Group member, other than any Incoming Directors.

**Permitted Target ESS Issuances** means up to 1,614,934 Target Restricted Share Units which may be issued to such persons as the Target Board determines.

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

**Record Date** means 5.00pm on the 2<sup>nd</sup> Business Day following the Effective Date or such other date as Target and Bidder agree.

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

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

**Regulatory Approval** means any approval of a Regulatory Authority to the Scheme or any aspect of it which Bidder and Target, each acting reasonably, agree in writing is necessary or desirable to implement the Scheme.

**Regulatory Authority** includes:

- (a) ASX, ACCC, ASIC, the Takeovers Panel, FIRB and OIO;
- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government;
- (d) quasi-governmental, self-regulatory agency, commission or authority, including any national securities exchange or national quotation system; and
- (e) any regulatory organisation established under statute.

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

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

**Representative** means, in relation to a party:

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

**Reverse Break Fee** means A\$1,300,000.

**Scheme** means the scheme of arrangement under part 5.1 of the Corporations Act under which all the Target Shares will be transferred to Bidder substantially in the form of Annexure A (with such changes as the parties, acting reasonably and in good faith, agree are reasonably necessary to reflect any nomination of an acquirer Subsidiary by the Bidder under clause 2.2) together with any amendment or modification made pursuant to section 411(6) of the Corporations Act.

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

**Scheme Consideration** has the meaning given in the Scheme.

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

**Scheme Participants** means each person who is a Target Shareholder at the Record Date.

**Scheme Scrip Consideration** has the meaning given in the Scheme.

**SEC** means the United States Securities and Exchange Commission.

**Second Court Date** means the first day of the hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Securities Act** means the United States Securities Act of 1933, as amended, and the rules and regulations thereunder.

**Subsidiary** of an entity means another entity which:

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

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

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

- (a) reasonably capable of being completed on a reasonable timeline taking into account all aspects of the Competing Transaction, including its conditions; and
- (b) if completed substantially in accordance with its terms, is more favourable to Target Shareholders than the Scheme, taking into account all aspects of the Competing Transaction, including the identity, reputation and financial condition of the person making such proposal, the consideration, legal, regulatory and financial matters, certainty and any other matters affecting the probability of the relevant proposal being completed in accordance with its terms.

**TAA** means the *Taxation Administration Act 1953* (Cth).

**Target Board** means the board of directors of Target.

**Target Data Room** means the virtual data room of Target hosted by Ansarada in connection with the Scheme.

**Target Deferred Share Right** means a right to acquire a Target Share granted under Target's executive or employee performance rights plans, subject to the terms of such plan.

**Target Disclosure Letter** means Target's executed disclosure letter given to the Bidder by the date of this document.

**Target Due Diligence Information** means:

- (a) the contents of the Target Data Room (including all written responses to requests for information), as at 5.00pm on 7 March 2024 (or another date and time agreed by Target and Bidder in writing); and
- (b) the Target Disclosure Letter.

**Target ESS Interest** means an existing option, restricted share unit or deferred share right issued under an employee incentive plan (to avoid doubt, including any option, restricted share or performance rights plan) operated by the Target as at the date of this document, which includes the Target Options, Target Restricted Share Units and the Target Deferred Share Rights.

**Target ESS Interest Holder** means a holder of Target ESS Interests.

**Target ESS Interest Proposal** means the proposal for certain Target ESS Interests (as agreed between the parties in writing on or before the date of this document), conditional on the Scheme becoming Effective, to on or prior to the Effective Date be:

- (a) vested such that:
  - (i) those Target ESS Interests are or become Target Shares that are not subject to vesting requirements or related restrictions; or
  - (ii) cash equivalent payments are made to the relevant former Target ESS Interest Holder in respect of those Target ESS Interests; or
- (b) otherwise vested, forfeited, lapsed, cancelled or waived (as applicable), including arising from, or following, the provision of a cash equivalent payment to the holder of the relevant Target ESS Interests,

with such proposal to be given effect subject to:

- (c) the existing terms of the relevant Target ESS Interests;
- (d) any regulatory or legal requirements or restrictions including the applicable Listing Rules (and subject to any waivers that can be obtained); and
- (e) any amendments considered necessary or desirable by the Target (acting reasonably) to give effect to that proposal,

or as otherwise agreed between the parties in writing.

**Target Group** means Target and its Subsidiaries.

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

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

**Target Material Adverse Effect** means any event, matter or circumstance which has, or would be reasonably likely to have, either individually or when aggregated with any other events, matters or circumstances, a material adverse effect on the assets and liabilities (taken as a whole), financial condition, business or results of operations of the Target Group (taken as a whole), which, notwithstanding items

(a) through (h) below, effect shall be deemed to have occurred in the event, matter or circumstance of the termination, notice of termination, or any materially adverse amendment or modification, of any contract or contracts (including a Material Contract) that, in aggregate, represent annual revenue to the Target Group in excess of A\$2,000,000 (excluding GST and based on revenue to the Target Group over the 12 months prior to the date of this document), but does not otherwise include events, matters or circumstances to the extent resulting from or arising out of:

- (a) any matter Disclosed;
- (b) any matter, event or circumstance arising from changes in general economic or political conditions, the securities market in general or law, other than where such matters have a disproportionately adverse impact on the Target Group as compared to other comparable participants in the markets in which the Target Group operates;
- (c) any change in law, taxation, interest rates or general economic conditions which impact on Target and Bidder in a similar manner;
- (d) any change in generally accepted accounting principles or the interpretation of them;
- (e) any change occurring directly or indirectly as a result of any matter, event or circumstance expressly required by this document, the Scheme or the transaction contemplated by them (in each case, other than the termination, notice of termination or any materially adverse amendment or modification, of any contract or contracts (including a Material Contract) that, in aggregate, represent annual revenue to the Target Group in excess of A\$2,000,000 (excluding GST and based on revenue to the Target Group over the 12 months prior to the date of this document));
- (f) arising out of any act of terrorism, outbreak or escalation of war (whether or not declared) or major hostilities, an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, other natural disaster or adverse weather conditions or the like;
- (g) any matter, event or circumstance arising from a payment:
  - (ii) as a result of purchasing run-off insurance policy (of the type, scope and length contemplated by clause 7.6); or
  - (iii) made in accordance with clause 4.5; or
- (h) any change occurring with the written consent of Bidder.

**Target Option** means an option to acquire a Target Share granted under Target's executive or employee performance rights plans, subject to the terms of such plan.

**Target Prescribed Event** means, except to the extent contemplated by this document or the Scheme, any of the following events:

- (a) **(conversion)** Target converts all or any of its shares into a larger or smaller number of shares;
- (b) **(reduction of share capital)** Target or another member of the Target Group resolves to reduce its share capital in any way or resolves to reclassify, combine, split or redeem or repurchase directly or indirectly any of its shares;
- (c) **(buy-back)** Target or another member of the Target Group:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;

- (d) **(distribution)** Target makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);
- (e) **(issuing or granting shares or options)** any member of the Target Group:
  - (i) issues shares;
  - (ii) grants an option over its shares; or
  - (iii) agrees to make such an issue or grant such an option, in each case to a person outside the Target Group;
- (f) **(securities or other instruments)** any member of the Target Group issues or agrees to issue securities or other instruments convertible into shares or other securities (including equity or debt securities) in each case to a person outside the Target Group;
- (g) **(constitution)** Target adopts a new constitution or modifies or repeals its constitution or a provision of it;
- (h) **(Encumbrances)** other than in the ordinary course of business and consistent with past practice, any member of the Target Group creates, or agrees to create, any Encumbrance over any part of its business or property;
- (i) **(merger)** any member of the Target Group merges or consolidates with any other person, or restructures, reorganises or completely or partially liquidates or dissolves itself;
- (j) **(acquisitions, disposals or tenders)** other than in respect of assets acquired for resale in the ordinary course of business, any member of the Target Group:
  - (i) acquires or disposes of;
  - (ii) agrees to acquire or dispose of; or
  - (iii) offers, proposes, announces a bid or tenders for, any business, assets, property, entity or undertaking the value of which exceeds A\$250,000 (whether by way of a single transaction or series or related transactions); or
- (k) **(Insolvency)** Target or any of its Related Bodies Corporate becomes Insolvent,

provided that a Target Prescribed Event listed in items (a) to (j) will not occur:

- (l) where the event was Disclosed;
- (m) to the extent any member of Target Group is required to undertake the event in connection with the Scheme or this document, or is otherwise expressly permitted or contemplated by the Scheme or this document;
- (n) where the event is the issue of shares, on the exercise of rights or options under an employee or executive share scheme, which rights or options (i) had vested in the ordinary course and were capable of exercise in accordance with the terms of the relevant plan, or (ii) were vested in accordance with clause 4.5;
- (o) where the event is the Permitted Target ESS Issuance;
- (p) where the event relates to a distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie) where the recipient of that distribution is the Target or another member of the Target Group;
- (q) where the event is required by law, regulation, changes in generally accepted accounting principles, or by an order of a court or Regulatory Authority; or

- (r) where Bidder has requested or approved in writing the proposed event (which approval will not be unreasonably withheld, delayed or conditioned).

**Target Representations and Warranties** means the representations and warranties of Target set out in clauses 9.1 and 12.1.

**Target Restricted Share Unit** means an entitlement to be issued or transferred a Target Share per Target Restricted Share Unit granted under Target's executive or employee performance rights plans, subject to the terms of such plan.

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

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

**Tax** means any tax, levy, charge, excise, GST, impost, rates, duty, fee, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any fiscal Regulatory Authority and includes any interest, fine, penalty, charge or other amount imposed by any fiscal Regulatory Authority on or in respect of any of the above.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth), or both as the context requires.

**Third Party** means any person other than Bidder or any of its Related Bodies Corporate.

**Treasurer** means the Treasurer of Australia.

**Timetable** means the indicative timetable set out in Schedule 1 subject to any amendments agreed by the parties in writing.

## 1.2 General interpretation

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

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (e) a reference to "**person**" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Sydney time;
- (h) a reference to \$, A\$ or AUD is a reference to the currency of Australia, US\$ or USD is a reference to the currency of the United States of America, and NZ\$ or NZD is a reference to the currency of New Zealand;

- (i) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually; and
- (m) a reference to any thing (including an amount) is a reference to the whole and each part of it.

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## **2 Agreement to propose and implement Scheme**

### **2.1 Target to propose Scheme**

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

### **2.2 Nomination of acquirer Subsidiary**

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

- (a) the parties must procure that the Target Shares transferred under the Scheme are transferred to Bidder Nominee rather than Bidder;
- (b) Bidder must procure that Bidder Nominee complies with all of the relevant obligations of Bidder under this document and the Scheme; and
- (c) the nomination will not relieve Bidder of its obligations under this document, including the obligation to provide (or procure the provision of) the Scheme Consideration in accordance with the terms of the Scheme provided that Bidder will not be in breach of this document for failing to perform an obligation of Bidder if that obligation is fully discharged by Bidder Nominee.

### **2.3 Agreement to implement Scheme**

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

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## **3 Conditions Precedent**

### **3.1 Conditions Precedent**

Subject to this clause 3, the Scheme will not become Effective, and the obligations of Bidder under clause 4.2 are not binding, until each of the following Conditions Precedent are satisfied or waived to the extent and in the manner set out in this clause.

Condition Precedent	Party entitled to benefit	Party responsible
(a) <b>(Regulatory Approvals)</b> before 8.00am on the Second Court Date, all Regulatory Approvals which the parties (acting reasonably) agree are reasonably necessary or desirable to implement the Scheme are obtained, and those consents, approvals or other acts have not been withdrawn or revoked at that time.	Both	Both
(b) <b>(FIRB approval)</b> before 5.00pm on the Business Day before the Second Court Date either:  (i) the Treasurer (or the Treasurer's delegate) has provided a written no objection notification to the Scheme either without conditions or with conditions acceptable to Bidder (having regard to clauses 3.3(a)(v) and 3.3(a)(vi)); or  (ii) following notice of the proposed Scheme having been given by Palmer to the Treasurer under the FIRB Act, the Treasurer has ceased to be empowered to make any order under Part 3 of the FIRB Act because the applicable time limit on making orders and decisions under the FIRB Act has expired.	Cannot be waived	Bidder
(c) <b>(OIO approval)</b> either: (i) before 5.00pm on the Business Day before the Second Court Date, Bidder has received all consents required under the <i>Overseas Investment Act 2005</i> (NZ) and the <i>Overseas Investment Regulations 2005</i> (NZ) for the implementation of the Scheme either unconditionally or subject only to conditions imposed by the OIO that are substantially the same as the conditions of a kind commonly imposed by the OIO on such a consent and referred to as the 'Standard Conditions', and such consents have not been withdrawn or revoked at that time; or (ii) Bidder satisfies Target (acting reasonably) that no such consent is required (including because an exemption is available).	Cannot be waived	Bidder
(d) <b>(Target Shareholder approval)</b> Target Shareholders approve the Scheme by the requisite majorities in accordance with the Corporations Act (except to the extent the Court has ordered under s411(4)(a)(ii)(A) that the Headcount Test be disregarded as contemplated by clause 3.6).	Cannot be waived	Target

Condition Precedent	Party entitled to benefit	Party responsible
(e) <b>(Class Ruling)</b> Before 8.00am on the Second Court Date, Target has received confirmation from the ATO that it is prepared to issue a Class Ruling, in a form and substance satisfactory to Target (acting reasonably).	Target	Target
(f) <b>(Court approval)</b> the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.	Cannot be waived	Target
(g) <b>(Regulatory intervention)</b> no Court or Regulatory Authority has issued an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Scheme and none of those things is in effect as at 8.00am on the Second Court Date.	Both	Both
(h) <b>(Independent Expert)</b> the Independent Expert issues a report which concludes that the Scheme is in the best interests of Scheme Participants before the date on which the Scheme Booklet is lodged with ASIC and does not formally change its conclusion or withdraw its report before 8.00am on the Second Court Date.	Target	Target
(i) <b>(No Target Prescribed Event)</b> no Target Prescribed Event occurs between the date of this document and 8.00am on the Second Court Date.	Bidder	Target
(j) <b>(No Bidder Prescribed Event)</b> no Bidder Prescribed Event occurs between the date of this document and 8.00am on the Second Court Date.	Target	Bidder
(k) <b>(No Target Material Adverse Effect)</b> no Target Material Adverse Effect occurs between the date of this document and 8.00am on the Second Court Date.	Bidder	Target
(l) <b>(No Bidder Material Adverse Effect)</b> no Bidder Material Adverse Effect occurs between the date of this document and 8.00am on the Second Court Date.	Target	Bidder
(m) <b>(Target Representations and Warranties)</b> (i) the Target Representations and Warranties set out in clauses 12.1(a), 12.1(b), 12.1(c), 12.1(d) and 12.1(e) are true and correct as of the date of this document and as of 8.00am on the Second Court Date, except where	Bidder	Target

Condition Precedent	Party entitled to benefit	Party responsible
<p>expressed to be operative at another date; and</p> <p>(ii) all other Target Representations and Warranties (disregarding all qualifications and exceptions contained therein relating to materiality or Target Material Adverse Effect) are true and correct as of the date of this document and as of 8.00am on the Second Court Date, except where expressed to be operative at another date and except where the failure of such Target Representations and Warranties to be true and correct has not and would not reasonably be expected to have, individually or in the aggregate, an Target Material Adverse Effect.</p>		
<p>(n) <b>(Bidder Representations and Warranties)</b></p> <p>(i) the Bidder Representations and Warranties set out in clauses 12.3(a), 12.3(b), 12.3(c), 12.3(d) and 12.3(e) are true and correct as of the date of this document and as of 8.00am on the Second Court Date, except where expressed to be operative at another date; and</p> <p>(ii) all other Bidder Representations and Warranties (disregarding all qualifications and exceptions contained therein relating to materiality or Bidder Material Adverse Effect) are true and correct as of the date of this document and as of 8.00am on the Second Court Date, except where expressed to be operative at another date and except where the failure of such Bidder Representations and Warranties to be true and correct has not and would not reasonably be expected to have, individually or in the aggregate, a Bidder Material Adverse Effect.</p>	Target	Bidder
<p>(o) <b>(New Bidder Shares)</b> before 8.00am on the Second Court Date, the New Bidder Shares have been approved for listing on the NYSE, subject only to official notice of issuance.</p>	Target	Bidder
<p>(p) <b>(Minimum elections)</b> valid elections to receive Scheme Scrip Consideration have been received by the Target from Target Shareholders and are not withdrawn prior to the Election Date which, based on the Target Shareholders holdings in the</p>	Bidder	N/A

Condition Precedent	Party entitled to benefit	Party responsible
Target's register as at 5.00pm on the date which is two Business Days prior to the Second Court Date, such that Scheme Scrip Consideration will comprise at least 18% of the aggregate Scheme Consideration.		

### 3.2 Reasonable endeavours

Each of Target and Bidder agree to use reasonable endeavours (other than waiver) to procure that:

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

### 3.3 Regulatory matters

- (a) Without limiting clause 3.2, each party:
  - (i) **(applying for Regulatory Approvals)** must promptly apply for all relevant Regulatory Approvals and provide each other party with a copy of those applications (provided that any commercially sensitive information may be redacted from the copy provided);
  - (ii) **(Regulatory Approvals process)** must take all steps it is responsible for as part of the Regulatory Approval process, including responding to requests for information at the earliest practicable time;
  - (iii) **(representation)** has the right to be represented and make submissions at any meeting with any Regulatory Authority relating to a Regulatory Approval; and
  - (iv) **(consultation)** must, to the extent reasonable and practicable to do so, consult with the other party in advance in relation to all material communications (whether written or oral, and whether direct or via a Representative) with any Regulatory Authority relating to any Regulatory Approval and:
    - (A) provide the other party with drafts of any material written communications to be sent to a Regulatory Authority and make any amendments as the other party reasonably requires; and
    - (B) provide copies of any material written communications sent to or received from a Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so; and
  - (v) **(Regulatory Authority)** subject to clause 3.3(a)(vi), must promptly consider in good faith any undertakings or conditions proposed by the relevant Regulatory Authority to the extent they

are (provided, that Target shall not agree to any undertaking or condition without the consent of Bidder):

- (A) reasonably necessary to obtain the relevant Regulatory Approval;
- (B) do not require any divestiture, hold separate order or similar agreements by the Bidder Group or Target Group (as applicable); and
- (C) could not reasonably be expected to have a material adverse effect on the assets and liabilities (taken as a whole), financial condition, business or results of operations of the Bidder Group (taken as a whole) or Target Group (taken as a whole),

and provided that any such undertakings and conditions are contingent upon the implementation of the Scheme; and

- (vi) in respect of Bidder only, must offer and agree or accept, the standard tax conditions published at the date of this document in section D of Guidance Note 12 issued by FIRB from time to time.

- (b) Before providing any document or other information to the other parties (in this clause 3.3(b), the “**Recipient**”) pursuant to clause 3.3(a) or 8.6, a party (in this clause 3.3(b), the “**Discloser**”) may redact any part of that document, or not disclose any part of that information, which contains or is confidential, non-public information (“**Sensitive Commercial Information**”) if the Discloser reasonably believes that:

- (i) the Sensitive Commercial Information is of a commercially sensitive nature; or
- (ii) the disclosure of the Sensitive Commercial Information to the Recipient would be damaging to the commercial or legal interests of the Discloser or any of its related bodies corporate,

and may provide the document or disclose the information to the Recipient with any Sensitive Commercial Information redacted or excluded, provided that, where Sensitive Commercial Information is so redacted or excluded, the Discloser must provide the Recipient with as much detail about the relevant communication, submission or correspondence (and any other relevant circumstances) as is reasonably possible without disclosing the Sensitive Commercial Information, and provide to the Recipient’s external legal counsel a complete and unredacted version of the document or information, on the basis that the Recipient’s external legal counsel will not share any information that is marked as Sensitive Commercial Information.

### 3.4 Waiver of Conditions Precedent

- (a) A Condition Precedent may only be waived in writing by the party or parties entitled to the benefit of that Condition Precedent as noted in clause 3.1 and will be effective only to the extent specifically set out in that waiver.
- (b) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.4 may do so in its absolute discretion.
- (c) If either Target or Bidder waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause 3.4, then:
  - (i) subject to clause 3.4(c)(ii), that waiver precludes that party from suing the other for any breach of this document arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; but

- (ii) if the waiver of the Condition Precedent is itself conditional and the other party:
  - (A) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with clause 3.4(c)(i); or
  - (B) does not accept the condition, the Condition Precedent has not been waived.
- (d) A waiver of a breach or non-fulfilment in respect of a Condition Precedent does not constitute:
  - (i) a waiver of a breach or non-fulfilment of any other Condition Precedent arising from the same event; or
  - (ii) a waiver of a breach or non-fulfilment of that Condition Precedent resulting from any other event.

### 3.5 Notices in relation to Conditions Precedent

Each party must:

- (a) **(notice of satisfaction)** as soon as reasonably practicable notify the other of satisfaction of a Condition Precedent and must keep the other informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;
- (b) **(notice of failure)** immediately give written notice to the other of a breach or non-fulfilment of a Condition Precedent, or of any event which will, or is reasonably likely to, prevent a Condition Precedent being satisfied; and
- (c) **(Scheme Meeting or Second Court Date)** where it considers that a Condition Precedent (which the other party is responsible for satisfying) may not be satisfied by the Scheme Meeting or the Second Court Date, promptly give the other party notice.

### 3.6 Deferral of Second Court Date

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

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

### 3.7 Consultation on failure of Condition Precedent

If:

- (a) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this document by the time or date specified in this document for the satisfaction of the Condition Precedent;

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

then a party to whom clause 3.9 does not apply may by notice to the other party require that the parties must consult, acting reasonably and in good faith, with a view to determining whether:

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

### **3.8 Failure to agree**

If:

- (a) the parties are required to consult under clause 3.7 and are unable to reach agreement under clause 3.7 within 5 Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date); or
- (b) clause 3.9 applies to one of the parties and the party to whom clause 3.9 does not apply notifies the other party that it elects not to require consultation under clause 3.7,

then:

- (c) subject to clause 3.8(d), a party to whom clause 3.9 does not apply may terminate this document (and that termination will be in accordance with clause 13.1(e)(i)); or
- (d) if a Condition Precedent may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this document (and that termination will be in accordance with clause 13.1(e)(ii)),

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

### **3.9 Exception**

A party will not be entitled to require consultation under clause 3.7 or terminate this document under clause 3.8 if the relevant Condition Precedent has not been satisfied or agreement cannot be reached as a result of a breach of this document by that party or a deliberate act or omission of that party in breach of this document.

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## **4 Transaction steps**

### **4.1 Scheme**

Target must propose a scheme of arrangement under which:

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

## **4.2 Scheme Consideration**

- (a) The Scheme Consideration to be provided in respect of each Target Share is as described in the Scheme.
- (b) Each Scheme Participant is entitled to receive the Scheme Consideration in respect of each Target Share held by that Scheme Participant, in accordance with the terms of this document, the Scheme and the Deed Poll.
- (c) Subject to the terms of this document and the Scheme, Bidder undertakes and warrants to Target that, in consideration for the transfer to Bidder of each Target Share held by a Scheme Participant under the terms of the Scheme, on the Implementation Date:
  - (i) Bidder will accept that transfer; and
  - (ii) Bidder will provide or procure the provision to each Scheme Participant of the Scheme Consideration for each Target Share in accordance with the terms of this document, the Scheme and the Deed Poll.

## **4.3 Scheme Consideration election mechanism**

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

## **4.4 Provision of election updates and Target Share information**

- (a) In order to facilitate the provision of the Scheme Consideration, Target must provide, or procure the provision of, to Bidder:
  - (i) reasonable written updates of the elections that have been received in the period up to the closing time for elections on the Election Date;
  - (ii) written details of the final elections made by each Scheme Participant, within 1 Business Day after the Election Date'; and
  - (iii) a complete copy of the Register as at the Record Date (which must include the name, registered address and registered holding of each Target Shareholder as at the Record Date), within 2 Business Days after the Record Date.
- (b) The details and information to be provided under clause 4.4(a) must be provided in such form as Bidder may reasonably require.

## **4.5 Employee incentives**

- (a) Target and Bidder agree to use their respective best endeavours to implement the Target ESS Interest Proposal by taking all actions contemplated by the Target ESS Interest Proposal.
- (b) Without limiting clause 4.5(a), Target must ensure that, by no later than the Effective Date, there are no outstanding Target Options, Target Restricted Share Units or Target Deferred Share Rights.
- (c) In order to comply with its obligation under clause 4.5(b), Target must, in accordance with the Target ESS Interest Proposal:

- (i) cause:
  - (A) some or all of the outstanding Target ESS Interests to vest and, following such vesting, cause the relevant number of Target Shares to be transferred or issued (as applicable) to the relevant former Target ESS Interest Holder in sufficient time to allow the relevant former Target ESS Interest Holder to participate in the Scheme; or
  - (B) cash equivalent payments to be made to the relevant former Target ESS Interest Holder; and
- (ii) take such action as may be necessary to vest, forfeit, cause to lapse or cancel (as applicable) any outstanding Target ESS Interest which it does not cause to vest, forfeit, lapse or cancel in accordance with clause 4.5(c)(i) (if any).

#### **4.6 New Bidder Shares to rank equally**

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

- (a) the New Bidder Shares will, on their issue, rank equally in all respects with all other Bidder Shares on issue at the Effective Date, and the New Bidder Shares issued under the Scheme will be entitled to participate in and receive any dividends, any distribution of capital and any other entitlements accruing in respect of Bidder Shares after the Implementation Date; and
- (b) on issue, each New Bidder Share will be fully paid and free from any Encumbrance.

#### **4.7 No amendment to the Scheme without consent**

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

#### **4.8 Securities Act Exemption**

The parties agree that the Scheme will be carried out with the intention, and the parties will use their commercially reasonable efforts to ensure, that any and all New Bidder Shares to be issued on completion of the Scheme will be issued by Bidder in reliance on the exemption from the registration requirements of the Securities Act provided by Section 3(a)(10) of the Securities Act. In order to ensure the availability of the exemption from registration, the parties agree that the Scheme will be carried out on the following basis

- (a) the Scheme will be subject to approval of the Court;
- (b) the Court will be advised prior to the First Court Date of the intention of the parties to rely on the exemption from registration requirements provided by Section 3(a)(10) of the Securities Act with respect to the issuance of New Bidder Shares to Scheme Participants pursuant to the Scheme, based on the Court's approval of the Scheme, and that its approval of the Scheme is to be relied upon as a determination that the Court has satisfied itself as to the procedural and substantive fairness of the terms and conditions of the Scheme to all persons who are entitled to receive Scheme Consideration pursuant to the Scheme;
- (c) Target will file evidence with the Court and make an argument regarding the fairness of the Scheme, in order to satisfy the test for approval by the Court;
- (d) Target will seek a declaration (to be evidenced in Court approval of the Scheme under section 411(4)(b) of the Corporations Act) from, or a finding

of the Court that, the Scheme is procedurally and substantively fair to all persons entitled to receive Scheme Consideration pursuant to the Scheme;

- (e) Target will, following the First Court Date, ensure that each Scheme Participant and any other person entitled to receive Scheme Consideration pursuant to the Scheme will be given adequate and appropriate notice advising them of their right to attend the hearing of the Court to give approval of the Scheme and providing them with sufficient information necessary to exercise such right; and
- (f) the Scheme Booklet will state that each Scheme Participant and any other person entitled to receive Scheme Consideration pursuant to the Scheme will have the right to appear before the Court so long as they enter an appearance within a reasonable time.

#### 4.9 Australian Tax rollover

Bidder:

- (a) acknowledges that each Target Shareholder who is an Australian resident shareholder who holds their Target Shares on capital account is expected to seek roll-over relief under subdivision 124-M of the Tax Act, to the extent permitted under the Tax Act; and
- (b) undertakes that it will not make a choice to deny roll-over relief to the Target Shareholders under subsection 124-795(4) of the Tax Act.

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## 5 Implementation

### 5.1 General obligations

Target and Bidder must each:

- (a) use all reasonable endeavours and commit necessary resources (including management and corporate relations resources and the resources of external advisers); and
- (b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending meetings and by providing information),

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

### 5.2 Target's obligations

Target must take all reasonable steps to implement the Scheme on a basis consistent with this document as soon as reasonably practicable and must:

- (a) **(announce directors' recommendation)** following execution of this document, announce, in the form agreed between Target and Bidder (on the basis of statements made to Target by each member of the Target Board) that:
  - (i) the Target Board intends to unanimously recommend to Scheme Participants that the Scheme be approved;
  - (ii) each Target Board member who holds Target Shares, intends to vote, or cause to be voted, his or her Target Shares in favour of the Scheme; and
  - (iii) it is the Bidder's intention to rely upon the exemption from registration provided by Section 3(a)(10) of the Securities Act with respect to the issuance of the New Bidder Shares, based

on the Court approval of the Scheme under section 411(4)(b) of the Corporations Act,

subject to:

- (iv) the Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of Target Shareholders; and
  - (v) there being no Superior Proposal.
- (b) **(preparation of Scheme Booklet)** subject to clause 5.2(e)(i), as soon as practicable after the date of this document, prepare and despatch the Scheme Booklet:
- (i) in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the applicable Listing Rules; and
  - (ii) which includes a statement by the Target Board:
    - (A) unanimously recommending that Target Shareholders vote in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Target Shareholders and there being no Superior Proposal;
    - (B) that each Target Board member who holds Target Shares intends to vote his or her Target Shares in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Target Shareholders and there being no Superior Proposal; and
    - (C) it is the Bidder's intention to rely upon the exemption from registration provided by Section 3(a)(10) of the Securities Act with respect to the issuance of the New Bidder Shares, based on the Court approval of the Scheme under section 411(4)(b) of the Corporations Act;
- (c) **(Independent Expert)** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare its report for the Scheme Booklet as soon as practicable;
- (d) **(section 411(17)(b) statement)** apply to ASIC for the production of a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (e) **(consultation with Bidder)** consult with Bidder as to the content and presentation of:
- (i) the Scheme Booklet, which includes:
    - (A) allowing Bidder a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet (accepting that any review of the Independent Expert's Report is limited to review for factual accuracy of those parts that include information relating to Bidder);
    - (B) taking any reasonable comments made by Bidder into account in good faith when producing a revised draft of the Scheme Booklet;
    - (C) providing to Bidder a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for approval

pursuant to section 411(2) of the Corporations Act is finalised; and

- (D) obtaining Bidder's consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet); and
- (ii) documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any comments on, or suggested amendments to, those documents from Bidder prior to filing those documents with the Court;
- (f) **(lodgement of Regulator's Draft)**
  - (i) no later than 14 days before the First Court Date, provide the Regulator's Draft of the Scheme Booklet to ASIC for its review for the purposes of section 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to Bidder immediately thereafter; and
  - (ii) keep Bidder reasonably informed of any material issues raised by ASIC in relation to the Regulator's Draft and, where practical to do so, consult with Bidder in good faith prior to taking any steps or actions to address those material issues (provided that, where those issues relate to Bidder Information, Target must not take any steps to address them without Bidder's prior written consent, not to be unreasonably withheld);
- (g) **(supplementary disclosure)** if, after despatch of the Scheme Booklet, Target becomes aware:
  - (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
  - (ii) of information that is required to be disclosed to Target Shareholders under any applicable law but was not included in the Scheme Booklet,

promptly consult with Bidder in good faith as to the need for, and the form of, any supplementary disclosure to Target Shareholders, and make any disclosure that Target considers reasonably necessary in the circumstances, having regard to applicable laws and to ensure that there would be no breach of clause 12.1(g) if it applied as at the date that information arose;
- (h) **(Court application)** apply to the Court for an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;
- (i) **(send Scheme Booklet)** send the Scheme Booklet to Target Shareholders as soon as practicable after the Court orders Target to convene the Scheme Meeting;
- (j) **(Scheme Meeting)** convene the Scheme Meeting to agree to the Scheme in accordance with any orders made by the Court pursuant to section 411(1) of the Corporations Act;
- (k) **(director's voting)** use its reasonable endeavours to procure that each member of the Target Board votes any Target Shares in which they have a Relevant Interest in favour of the Scheme, subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Target Shareholders and there being no Superior Proposal;
- (l) **(Court approval)** subject to all Conditions Precedent, other than paragraph (f) in clause 3.1 being satisfied or waived in accordance with

this document, apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;

- (m) **(Conditions Precedent certificate)** at the hearing on the Second Court Date, provide to the Court (through its counsel):
  - (i) a certificate signed by one of its directors and made in accordance with a resolution of its board confirming (in respect of matters within Target's knowledge) whether or not the Conditions Precedent for which it is responsible, as noted in clause 3.1 (other than paragraph (f)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to 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 Bidder under clause 5.3(h);
- (n) **(lodge copy of Court order)** lodge with ASIC an office copy of the Court order approving the Scheme as approved by the Target Shareholders at the Scheme Meeting in accordance with section 411(10) of the Corporations Act on the day after that office copy is received (or any later date agreed in writing by Bidder);
- (o) **(Register)** close the Register as at the Record Date to determine the identity of Scheme Participants and their entitlements to Scheme Consideration;
- (p) **(Class Ruling)** promptly prepare and lodge its application for the Class Ruling, provide Bidder with a reasonable opportunity to review and provide comments on the draft Class Ruling prior to lodgement with the ATO, and provide any assistance and information reasonably requested by the ATO to enable the ATO to prepare the Class Ruling as soon as practicable;
- (q) **(instruments of transfer)** subject to Bidder satisfying its obligations under clause 4.2, on the Implementation Date:
  - (i) execute proper instruments of transfer and effect the transfer of Target Shares to Bidder in accordance with the Scheme; and
  - (ii) register all transfers of Target Shares held by Scheme Participants to Bidder;
- (r) **(Suspension of trading)** apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date;
- (s) **(Quotation of Target Shares)** apply to ASX to have the Target removed from the official list of ASX and quotation of the Target Shares on ASX terminated with effect from the close of trading on the trading day immediately following the Implementation Date;
- (t) **(listing)** take all reasonable steps to maintain Target's listing on ASX, notwithstanding any suspension of the quotation of Target Shares, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC;
- (u) **(proxy votes)** keep Bidder reasonably informed as to the proxies received by Target for the Scheme Meeting in the period up to the deadline for the receipt of proxies;
- (v) **(proxy solicitation):** consider in good faith Bidder's suggestions regarding shareholder engagement and proxy solicitation actions so as to promote the merits of the Scheme and encourage Target Shareholders to vote on the Scheme in accordance with the recommendation of the Target Board, subject to applicable law and ASIC policy;
- (a) **(compliance with laws)** do everything reasonably within its power to ensure that the Scheme is effected in accordance with all applicable laws and regulations; and

- (b) **(other steps)** do all other things necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

### 5.3 Bidder's obligations

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

- (a) **(assistance with Scheme Booklet and Court documents)** promptly provide any assistance or information reasonably requested by Target or its Representatives 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, promptly review the drafts of the Scheme Booklet (including any updated or supplementary Scheme Booklet) prepared by Target and provide comments on those drafts in a timely manner and in good faith;
- (b) **(Bidder Information)** prepare and promptly provide to Target for inclusion in the Scheme Booklet the Bidder Information (in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the applicable Listing Rules) and consent to the inclusion of that information in the Scheme Booklet;
- (c) **(further Bidder Information)** promptly provide to Target any further or new Bidder Information as may arise after the Scheme Booklet has been sent to Target Shareholders and until the date of the Scheme Meeting as may be necessary to ensure that the Bidder Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission) and to ensure that there would be no breach of clause 12.3(g) if it applied as at the date on which such further or new Bidder Information arose;
- (d) **(Independent Expert information)** provide any reasonable assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (e) **(representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel, Bidder must undertake (if requested by the court) to do all things and take all reasonable steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this document and the Scheme;
- (f) **(Class Ruling)** provide Target with such assistance and information as may reasonably be requested by Target for the purposes of obtaining from the ATO a Class Ruling in a form reasonably acceptable to Target in relation to scrip-for-scrip roll-over relief under subdivision 124-M of the Tax Act;
- (g) **(Deed Poll)** by no later than the Business Day prior to the First Court Date, sign and deliver the Deed Poll;
- (h) **(Conditions Precedent certificate)** before 8.00am on the Second Court Date, provide to Target for provision to the Court at the hearing on that date a certificate signed by one of its directors (or its Chief Executive Officer, Chief Financial Officer, Chief Legal Officer or Corporate Secretary) and made in accordance with a resolution of its board confirming (in respect of matters within Bidder's knowledge) whether or not the Conditions Precedent for which Bidder is responsible, as noted in clause 3.1 (other than paragraph (f)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to Target by 5.00pm on the date that is 2 Business Days prior to the Second Court Date;

- (i) **(Scheme Consideration)** if the Scheme becomes Effective:
  - (i) register, or cause to be registered, the Scheme Participants as the holders of New Bidder Shares to which the Scheme Participants are entitled under the Scheme;
  - (ii) pay or procure the payment of the Scheme Consideration in the manner and amount contemplated by clause 4.2(c)(ii) and the terms of the Scheme; and
  - (iii) accept a transfer of the Target Shares as contemplated by clause 4.2(c)(i);
- (j) **(listing)** use its best endeavours to ensure that the issue of New Bidder Shares to be issued pursuant to the Scheme has been approved by NYSE, and ensure that trading in the New Bidder Shares commences on a normal settlement basis on NYSE from the first Business Day after the Implementation Date (New York time); and
- (k) **(other steps)** do all things reasonably within its power that are reasonably necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

#### 5.4 Scheme Booklet responsibility statement

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

- (a) Target has prepared, and is responsible for, the content of the Scheme Booklet other than, to the maximum extent permitted by law, the Bidder Information, the Independent Expert's Report or any other report or letter issued to Target by a third party and that Bidder and its directors and officers do not assume any responsibility for the accuracy or completeness of the sections of the Scheme Booklet that Target has prepared and has responsibility for;
- (b) Bidder has prepared, and is responsible for, the Bidder Information in the Scheme Booklet (and no other part of the Scheme Booklet) and that Target and its directors and officers do not assume any responsibility for the accuracy or completeness of the sections of the Scheme Booklet that Bidder has prepared and has responsibility for;
- (c) the Independent Expert is responsible for the Independent Expert's Report and that none of Target, Bidder or their respective directors and officers assume any responsibility for the accuracy or completeness of the Independent Expert's Report; and
- (d) if the Scheme Booklet contains another report or letter issued to Target by a third party, that the third party is responsible for that report or letter and that none of Target, Bidder or their respective directors and officers assume any responsibility for the accuracy or completeness of that report or letter.

#### 5.5 Disagreement on content of Scheme Booklet

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

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

## **5.6 Verification**

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

## **5.7 Conduct of Court proceeding**

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

## **5.8 Appeal process**

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

- (a) the parties agree otherwise; or
- (b) an independent senior counsel of the New South Wales bar advises that, in their opinion, an appeal would have no reasonable prospect of success before the End Date,

in which case either party may terminate this document in accordance with clause 13.1(e)(iii).

## **5.9 No partnership or joint venture**

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

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# **6 Target Board recommendation**

## **6.1 Recommendation**

Target represents and warrants to Bidder that, as at the date this document, each Target director has confirmed that:

- (a) their recommendation in respect of the Scheme is that the Target Shareholders vote in favour of the Scheme; and
- (b) they intend to vote, or cause to be voted, all Target Shares in which they have a Relevant Interest in favour of the Scheme,

in each case subject only to:

- (c) the Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of Target Shareholders; and
- (d) there being no Superior Proposal.

## **6.2 No withdrawal or change**

Target must use its best endeavours to procure that none of its directors withdraws or changes their recommendation in favour of the Scheme (including making any public statement to such effect), unless:

- (a) there is a Superior Proposal;

- (b) the withdrawal or change of a member of the Target Board occurs because of a requirement of a court of competent jurisdiction, ASIC or the Takeovers Panel that the relevant member of the Target Board abstains from making a recommendation that Target Shareholders vote in favour of the Scheme after the date of this document; or
- (c) the Independent Expert concludes that the Scheme is not in the best interests of Target Shareholders, or adversely changes its previously given opinion with the effect that the Independent Expert concludes that the Scheme is not in the best interests of Target Shareholders,

and, in the case of the circumstances described in clause 6.2(a) and clause 6.2(c) only, the Target Board determines in good faith having received expert advice in writing from its legal advisors (who must be reputable advisers experienced in transactions of this nature) that they must do so because of their fiduciary or statutory duties to Target Shareholders.

### **6.3 Withdrawal or change of recommendation**

Without limiting clause 9, if a member of the Target Board proposes to withdraw or change its recommendation in accordance with clause 6.2(c):

- (a) Target must notify Bidder in writing immediately; and
- (b) the parties must consult in good faith for 5 Business Days after the date on which the notification in clause 6.3(a) is given to consider and determine whether the recommendation in place at the time can be maintained. To the extent permitted by law, Target must use its best endeavours to procure that recommendation is not withdrawn or changed in accordance with clause 6.1 until the end of the consultation period.

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## **7 Directors and employees**

### **7.1 Release of Target and Target directors and officers**

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

- (a) any breach of any representations and warranties of Target or any other member of Target Group in this document; or
- (b) any disclosures containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 7.1 limits Bidder's rights to terminate this document under clause 13.1.

### **7.2 Benefit for Target Indemnified Parties**

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

### **7.3 Release of Bidder and Bidder directors and officers**

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

- (a) any breach of any representations and warranties of Bidder or any other member of the Bidder Group in this document; or
- (b) any disclosure containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 7.3 limits Target's rights to terminate this document under clause 13.1.

#### **7.4 Benefit for Bidder Indemnified Parties**

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

#### **7.5 Appointment/retirement of Target directors**

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

- (a) cause the appointment of each Incoming Director to the Target Board and to the board of each other member of the Target Group; and
- (b) procure that each of the Outgoing Directors retire from the Target Board and to the board of each other member of the Target Group and provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against the Target Group or Bidder Group,

in each case, in accordance with the Target's and each other Target Group member's constitution, the Corporations Act and the applicable Listing Rules and, in the case of a Target Group member incorporated in a jurisdiction outside Australia, the laws of that jurisdiction.

#### **7.6 Target Group insurance**

- (a) Subject to the Scheme becoming Effective and subject to the Corporations Act, Bidder undertakes in favour of Target and each director and officer of a Target Group company that it will:
  - (i) for a period of 7 years from the Implementation Date, ensure that the constitutions of Target and each other member of the Target Group continue to contain such rules as are contained in those constitutions at the date of this document that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the Bidder Group;
  - (ii) procure that Target and each other member of the Target Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers as at the date of this document and without limiting the foregoing, ensure that the run-off insurance cover placed pursuant to clause 7.6(b) are maintained, subject to clause 7.7, for a period of 7 years after the Implementation Date; and
  - (iii) and will procure that Target and each other member of the Target Group at any time after the Implementation Date, not do anything or fail to do anything within its reasonable control (other than as may be required under existing insurance policies or the run-off cover placed pursuant to clause 7.6(b)) which would prejudice or adversely affect any run-off insurance cover placed pursuant to clause 7.6(b).

- (b) Bidder acknowledges that Target may, prior to the Implementation Date, enter into, and pay in full the premium in respect of, a directors' and officers' run-off insurance policy(ies) for a period of up to 7 years on and from the Implementation Date for the retiring directors and officers and former directors and officers of the Target Group who are insured under the existing directors' and officers' insurance policy(ies) for the Target Group in respect of acts or omissions occurring in the period up to and including the Implementation Date and on the same or substantially the same scope and terms as the existing insurance policies in place in respect of the Target Group at the date of this document. The Target must consult in good faith with the Bidder regarding the proposed terms of those run-off insurance policy(ies).

## 7.7 Period of undertaking

The undertakings contained in clause 7.6:

- (a) are subject to any applicable Corporations Act or other law restrictions and will be read down accordingly; and
- (b) are given until the earlier of the end of the relevant period specified in that clause or the relevant member of the Target Group ceasing to be part of the Bidder Group.

## 7.8 Benefit of undertaking for Target Group

Target acknowledges that it receives and holds the benefit of clause 7.6 to the extent it relates to each director and officer of a member of the Target Group on behalf of each of them.

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# 8 Conduct of business

## 8.1 Overview

Subject to clause 8.4, from the date of this document up to and including the Implementation Date Target must, and must cause each member of the Target Group to, conduct its business in the ordinary course and in substantially the same manner as previously conducted.

## 8.2 Target specific obligations

Without limiting clause 8.1 and subject to clause 8.4, other than with the prior written approval of Bidder (which approval must not be unreasonably withheld, conditioned or delayed) or as required by this document, Target shall, during the period contemplated by clause 8.1, use all reasonable endeavours to ensure that Target and each member of the Target Group:

- (a) **(business and assets)** maintains the condition of its business and assets in the ordinary course and substantially consistent with the manner in which such business and assets have been maintained in the 12 months prior to the date of this document;
- (b) **(insurance)** maintains (and where necessary, uses reasonable endeavours to renew) the policies of insurance held by the Target Group at the date of this document;
- (c) **(directors, officers and employees)** keeps available the overall services of its directors, officers and employees;
- (d) **(relationships)** preserves its relationships with material customers, suppliers, licensors, licensees, joint venturers and others with whom it has material business dealings;
- (e) **(Material Contracts)** complies in all material respects with all Material Contracts to which a member of the Target Group is a party;

- (f) **(opportunities)** use all reasonable endeavours to pursue all new business opportunities of the Target Group in the ordinary course and keep the Bidder updated in respect of the same; and
- (g) **(cash)** manage its working capital requirements in the ordinary course consistent with past practice including ensuring that, to the extent within the reasonable control of Target, there is no material decrease in the amount of Cash in the Target Group other than in the ordinary course of business and consistent with budgets and projections Disclosed to Bidder prior to the date of this document.

### 8.3 Target prohibited actions

Subject to clause 8.4, other than with the prior written approval of Bidder (which approval must not be unreasonably withheld or delayed) or as required by this document, Target must not, and must ensure that each member of the Target Group does not, during the period referred to in clause 8.1:

- (a) **(commitments and settlements)** other than in the ordinary course of business and consistent with past practice:
  - (i) enter into a Material Contract; or
  - (ii) terminate, or amend or waive in a material manner, a Material Contract;
- (b) **(employment agreements)** either:
  - (i) increase the remuneration of (including with regard to superannuation benefits) or benefits provided to or pays any bonus (other than in accordance with existing arrangements, as Disclosed, and in the ordinary course consistent with past practice) to, any of its directors, executives or employees;
  - (ii) issue any Target ESS Interests or any other securities, options, other instruments convertible into securities, or grant any other equity-based awards, to any of its directors, executives or employees, other than the Permitted Target ESS Issuances;
  - (iii) materially vary, or waive in a material respect, the employment agreements with any of its directors, executives or employees;
  - (iv) terminate any executive other than for cause; or
  - (v) pay a director, executive or employee a termination payment, other than as provided for in an existing employment contract in place as at the date of this document, but excluding any redundancy payment in connection with any redundancies of employees made in the ordinary course and consistent with historical practices of the Target Group or required by law; or
- (c) **(capital expenditure)** incur or make any capital expenditures or enter into arrangements or agreements providing for capital expenditures or otherwise commit to do so (other than in connection with the development of software in the ordinary course of business), whether in one transaction or in a series of related transactions, in excess of A\$750,000 in the aggregate or individually;
- (d) **(tax)** make any material election in relation to Tax, or otherwise engage in any transaction, act or event which gives rise to any material tax liability which is outside the ordinary course of business as it was conducted prior to the date of this document that could, in the reasonable discretion of Target, reasonably be expected to have the effect of materially increasing the Tax liability of the Bidder or its Subsidiaries (including Target Group) for any taxable period (or a portion thereof) beginning after the Implementation Date;
- (e) **(tax compromises)** settle or compromise or make, change or revoke any concessions in relation to any material tax claims, liabilities or disputes which gives rise to any Tax liability which is outside the ordinary

course of business as it was conducted prior to the date of this document;

- (f) **(legal proceedings)** commence, threaten in writing, settle or compromise any legal proceedings, claim, investigation, arbitration or other like proceeding involving the possible payment or receipt of amounts that exceed A\$500,000;
- (g) **(Third Party defaults)** waives any Third Party default where the financial impact of the waiver on the Target Group as a whole will, or is reasonably likely to be, in excess of A\$250,000 (individually or in aggregate);
- (h) **(accounting)** change any accounting method, practice or principle used by it, other than:
  - (i) as a result of changes in or the adoption of generally accepted accounting standards, generally accepted accounting principles or the interpretation of any of them; or
  - (ii) the Target Group changing its presentation currency from NZD to AUD;
- (i) **(related party transactions)** enters into, or resolves to enter into, a transaction with a related party of Target, including giving or agreeing to give a financial benefit to a related party (other than a related party that is a Target Group member) as defined in section 228 of the Corporations Act;
- (j) **(financial indebtedness)** incur, assume, guarantee or become liable for any financial indebtedness, other than:
  - (i) in the ordinary course of business, drawing down on: (x) undrawn existing financing facilities Disclosed by the Target in the Target Due Diligence Information; or (z) any existing credit card facilities of the Target Group Disclosed by the Target in the Target Due Diligence Information; or
  - (ii) intercompany financial indebtedness between Target Group members;
- (k) **(derivatives)** enters into any swap, derivative or hedging agreement or arrangement;
- (l) **(guarantees and indemnities)** guarantees or indemnifies the obligations of any other person, other than a member of the Target Group;
- (m) **(material Intellectual Property)** sells, assigns, transfers or grants any sole or exclusive license or other sole or exclusive right or interest in, abandons or permits to let lapse or expire, any Intellectual Property material to the business of the Target Group as conducted at the date of this document, and as proposed by the Target Group at the date of this document to be conducted in future;
- (n) **(real property)**
  - (i) acquire or agree to acquire any material real property or enter into, or agree to enter into, any material lease or sublease of real property (whether as a lessor, sublessor, lessee or sublessee);
  - (ii) sell, assign, dispose of, surrender or exercise any right to terminate, or agree to sell, assign, dispose of, surrender or exercise any right to terminate, any material lease or sublease of real property (whether as a lessor, sublessor, lessee or sublessee) other than, in each case, expirations or surrenders of any leases or subleases in accordance with their terms or in the ordinary course of business;

- (iii) materially modify or amend or exercise any right to renew any material lease, or waive any material term or condition thereof or grant any consents thereunder; or
- (iv) grant or otherwise create or consent to the creation of any easement, covenant, restriction, assessment or charge affecting, in any material respect, any material real property leased by a member of the Target Group, or any interest therein or part thereof;
- (o) **(commercial)**
  - (i) enters into or resolves to enter into a joint venture or partnership with any person; or
  - (ii) enters into a contract or commitment restraining a member of the Target Group from competing with any person or conducting activities in any market;
- (p) **(Target Prescribed Event)** take any action that, or fail to take any action whose omission, would give rise to any Target Prescribed Event; or
- (q) **(agree)** agree to do, or allow to be done, any of the matters set out above.

#### 8.4 Exceptions to conduct of business provisions

Nothing in this clause 8 restricts the ability of Target or any a member of the Target Group to take any action which:

- (a) is expressly required, permitted or otherwise contemplated by this document or the Scheme;
- (b) is required by law, by an order of a court or Regulatory Authority or its contractual obligations (to the extent existing at the date of this document and Disclosed in the Target Data Room);
- (c) is required to reasonably and prudently respond to an emergency or disaster affecting the Target Group (including the risk of personal injury or damage to property);
- (d) has been Disclosed to Bidder in the Target Disclosure Letter;
- (e) is the issue of shares on the exercise of Target ESS Interests, which rights or options (A) had vested in the ordinary course and were capable of exercise in accordance with the terms of the relevant plan, or (B) were vested in accordance with clause 4.5;
- (f) is the issue of the Permitted Target ESS Issuances;
- (g) constitutes a payment:
  - (i) to purchase a run-off insurance policy of the type, scope and length contemplated by clause 7.6(b); or
  - (ii) made in accordance with clause 4.5; or
- (h) has been agreed to in writing by Bidder (such agreement not to be unreasonably withheld, delayed or conditioned).

#### 8.5 Bidder specific obligations

- (a) Other than with the prior written approval of Target (such approval not to be unreasonably withheld, delayed or conditioned), Bidder must, from the date of this document up to and including the Implementation Date, use all reasonable endeavours to ensure that Bidder and each member of the Bidder Group maintains the condition of its business and material assets in all material respects.
- (b) Other than with the prior written approval of Target (such approval not to be unreasonably withheld, delayed or conditioned), from the date of this

document up to and including the earlier of termination of this document in accordance with its terms and the Implementation Date, Bidder must, and must cause each member of the Bidder Group to, not take any action that, or fail to take any action whose omission, would give rise to any Bidder Prescribed Event.

- (c) Nothing in this clause 8 restricts the ability of Bidder to take any action which:
  - (i) is expressly required or permitted by this document, the Scheme, or otherwise required by law or regulation; or
  - (ii) has been Disclosed to Target in the Bidder Disclosure Letter;
  - (iii) has been agreed to in writing with Target (such agreement not to be unreasonably withheld, delayed or conditioned).

## **8.6 Access to people and Target Information**

Between the date of this document and the Implementation Date, Target must provide, and must procure that each member of the Target Group provides, Bidder and its Representatives with reasonable access to the Target's and Target Group members' Representatives and documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, and applicable competition and privacy laws) which Bidder reasonably requires for the purposes of:

- (a) understanding the Target Group's financial position (including its cash flow and working capital position), trading performance and management control systems;
- (b) the Bidder obtaining or arranging any debt or equity financing in connection with the Scheme or meeting any conditions or requirements of the Bidder Group's financiers;
- (c) implementing the Scheme;
- (a) preparing for carrying on the business of the Target Group and the integration of the Bidder Group and Target Group following implementation of the Scheme;
- (b) applying for all relevant Regulatory Approvals; and
- (a) any other purpose which is agreed in writing between the parties (acting reasonably).

## **8.7 Change of control**

- (a) As soon as practicable after the date of this document, the parties must cooperate with each other in good faith, and will use all reasonable endeavours, to seek to ensure that as soon as practicable after the date of this document the parties identify any change of control or similar provisions in leases and Material Contracts, and any other contracts reasonably requested by Bidder, to which Target or a member of the Target Group is a party which may be triggered by the implementation of the Scheme and any consents, confirmations or notifications necessary or desirable under those provisions.
- (b) In respect of any lease or other contract identified under clause 8.7(a), the parties agree that:
  - (i) Target and Bidder will, each acting reasonably, agree upon a proposed course of action and then jointly initiate contact with the relevant landlord or counterparty and request that they provide any consents required;
  - (ii) neither Bidder nor its Representatives may contact any landlord or counterparty without Target's express written approval (which is not be unreasonably withheld or delayed); and

- (iii) each party must cooperate with, and provide reasonable assistance to, the other party to obtain such consents as expeditiously as possible, including by:
  - (A) promptly providing any information reasonably required by landlords or counterparties; and
  - (B) making its Representatives available, where necessary, to meet with landlords or counterparties to deal with issues arising in relation to the change of control of Target,but nothing in this clause 8.7(b)(iii) requires Target to incur material external expense; and
- (iv) provided that the Target has complied with this clause 8.7, a failure by a member of Target Group to obtain any landlord or third party consent will not, of itself, constitute a breach of this document by the Target.

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## **9 Exclusivity**

### **9.1 Termination of existing discussions**

- (a) Target represents and warrants in favour of Bidder that as at the date of this document, each of Target, its Related Bodies Corporate and each of their Representatives has:
  - (i) terminated all other negotiations and discussions with each Third Party in relation to any actual, anticipated, proposed or potential Competing Transaction; and
  - (ii) ceased the provision of any due diligence access and the making available of any non-public information in relation to Target and its business to any Third Party, where the due diligence access and provision of non-public information was for the purposes of, or related to, a potential Competing Transaction. The Target must promptly request and enforce the immediate return and/or destruction of the Target Group's confidential information previously provided or made available to any Third Party in accordance with the terms of any applicable confidentiality or non-disclosure agreement, and terminate their access to the Target Group's confidential information under that confidentiality or non-disclosure agreement to the extent the Target has not already done so.
- (b) Subject to clause 9.5, during the Exclusivity Period, Target agrees not to waive, and to enforce in full, any standstill obligations of any Third Parties.

### **9.2 No-shop**

During the Exclusivity Period, Target must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) solicits, invites, encourages or initiates any enquiries, discussions or proposals with a view to obtaining any offer, proposal or expression of interest from any person in relation to a Competing Transaction; or
- (b) communicates any intention to do any of the things referred to in clause 9.2(a).

### **9.3 No-talk**

Subject to clause 9.5, during the Exclusivity Period, Target must ensure that neither it nor any of its Representatives:

- (a) participates in negotiations or discussions with any other person regarding;
- (b) enters into any agreement, arrangement or understanding; or
- (c) communicates any intention to do any of those things,

in relation to, or which may reasonably be expected to lead to, a Competing Transaction, even if that person's Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by Target or any of its Representatives or the person has publicly announced the Competing Transaction.

#### **9.4 No due diligence**

Subject to clause 9.5, during the Exclusivity Period, Target must ensure that neither it nor any of its Representatives:

- (a) disclose or otherwise provide or make available any non-public information to a Third Party in connection with, with a view to obtaining or which could reasonably be expected to encourage or lead to the formulation, development, finalisation, receipt or announcement of any Competing Transaction (including providing such information for the purposes of the conduct of due diligence investigations in respect of the Target Group or their businesses or operations), whether by that Third Party or another person; or
- (b) communicate to any person an intention to do anything referred to in clause 9.4(a).

#### **9.5 Exceptions**

Clauses 9.1(b), 9.3 and 9.4 do not apply to the extent that these prohibit Target or the Target Board from taking or refusing to take any action with respect to a genuine Competing Transaction (which was not brought about, or facilitated by, any breach of clause 9.2) provided that the Target Board has determined, in good faith after receiving written legal advice from its external legal advisers, that:

- (a) the Competing Transaction is, or could reasonably be expected to become, a Superior Proposal; and
- (b) failing to respond to such a genuine Competing Transaction would be reasonably likely to constitute a breach of the Target Board's fiduciary or statutory obligations,

provided that if Target makes available to any such offeror any non-public information relating to any member of the Target Group or their businesses or operations, Target may only do so pursuant to a confidentiality agreement with terms no less onerous than the obligations of the Bidder under the Confidentiality Agreement.

#### **9.6 Further exceptions**

Nothing in this document prevents Target from:

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

#### **9.7 Notice of approach and information**

- (a) Subject to having first determined under clause 9.5 whether clauses 9.3 and 9.4 apply, during the Exclusivity Period, Target must promptly (and in any event within 48 hours) inform Bidder if it, or any of its Related Bodies Corporate or Representatives, receives any communication,

request or approach with respect to, or that may reasonably be expected to lead to, any actual, proposed or potential Competing Transaction and must disclose to Bidder the fact that a communication, request or approach has been made and the general nature of the communication, request or approach.

- (b) A notice given under clause 9.7(a) must include the material terms and conditions of any actual, proposed or potential Competing Transaction (including price, conditions precedent, timetable and break or reimbursement fees (if any)) and the identity of the Third Party making the actual, proposed or potential Competing Transaction, in each case to the extent known by the Target or any of its Related Bodies Corporate or Representatives.
- (c) During the Exclusivity Period, Target must promptly provide Bidder with any non-public information of the nature contemplated in clause 9.4(a) that has been disclosed or otherwise provided or made available to the Third Party and which differs from, or is more extensive than, the information that has been provided to the Bidder.

## 9.8 Matching right

- (a) Without limiting clauses 9.2 and 9.3, during the Exclusivity Period, Target:
  - (i) must not enter into any agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, Target or both proposes or propose to undertake or give effect to an actual, anticipated, proposed or potential Competing Transaction; and
  - (ii) must use its best endeavours to procure that none of the members of the Target Board publicly recommend an actual, anticipated, proposed or potential Competing Transaction (or recommend against the Scheme),unless:
  - (iii) the Target Board acting in good faith and in order to satisfy what the Target Board considers to be its statutory or fiduciary duties (having received written advice from its external legal advisers), determines that:
    - (A) the Competing Transaction would be or would be likely to be an actual, proposed or potential Superior Proposal; and
    - (B) failing to take an action specified in clause 9.8(a)(i) or 9.8(a)(ii) would be reasonably likely to constitute a breach of the Target Board's fiduciary or statutory obligations;
  - (iv) Target has provided Bidder with the material terms and conditions of the actual, proposed or potential Competing Transaction (including price, conditions precedent, timetable and break or reimbursement fees (if any)) and the identity of the third party making the actual, proposed or potential Competing Transaction;
  - (v) Target has given Bidder at least 4 clear Business Days after the date of the provision of the information referred to in clause 9.8(a)(iv) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction; and
  - (vi) Bidder has not provided Target with a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction by the expiry of the 4 clear Business Day period referred to in clause 9.8(a)(v).

- (b) Target acknowledges and agrees that each successive modification of any actual, proposed or potential Competing Transaction will constitute a new actual, proposed or potential Competing Transaction for the purposes of the requirements under clause 9.7 and clause 9.8 and accordingly, during the Exclusivity Period, Target must again comply with clause 9.7 and this clause 9.8 in respect of any such new actual, proposed or potential Competing Transaction.

## 9.9 Bidder counterproposal

If Bidder proposes to Target a new proposal that constitutes a matching or superior proposal to the Competing Transaction (“**Counterproposal**”) by the expiry of the 4 clear Business Day period referred to in clause 9.8(a)(v), during the Exclusivity Period, Target must procure that the Target Board promptly consider the Counterproposal in good faith and if the Target Board, acting reasonably and in good faith, determines that the Counterproposal would provide an equivalent or superior outcome for Target Shareholders as a whole compared with the Competing Transaction, taking into account all of the terms and conditions of the Counterproposal, then:

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

## 9.10 Target Board determination

Despite any provision in this document, a statement by Target or the Target Board to the effect that:

- (a) the Target Board has determined that a Competing Transaction is a Superior Proposal and commenced the matching right process set out in clause 9.8; or
- (b) Target Shareholders should take no action pending the completion of the matching right process set out in clause 9.8,

does not of itself:

- (c) constitute a withdrawal or change of the recommendation by the Target Board or an endorsement of a Competing Transaction;
- (d) contravene this document; or
- (e) give rise to a termination right under clause 13.1.

## 9.11 Compliance with law

If it is finally determined by a court of competent jurisdiction, or the Takeovers Panel, that the agreement by the parties under this clause 9 or any part of it:

- (a) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the Target Board;
- (b) constituted, or constitutes, or would constitute, ‘unacceptable circumstances’ within the meaning of the Corporations Act; or
- (c) was, or is, or would be, unlawful for any other reason,

then, only to the extent determined by the court or Takeovers Panel, Target will not be obliged to comply with that part of the provision of clause 9.

The parties must not make, or cause to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 9.11.

## 9.12 Legal advice

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

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# 10 Break Fee

## 10.1 Background

This clause has been agreed in circumstances where:

- (a) Bidder and Target believe that the Scheme will provide significant benefits to Bidder, Target and their respective shareholders, and Bidder and Target acknowledge that, if they enter into this document and the Scheme is subsequently not implemented, Bidder will incur significant costs, including those set out in clause 10.5;
- (b) Bidder requested that provision be made for the Break Fee, without which Bidder would not have entered into this document;
- (c) both the Bidder Board and Target Board believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure Bidder's participation in the Scheme; and
- (d) both parties have received legal advice on this document and the operation of this clause.

## 10.2 Payment by Target to Bidder

Target agrees to pay the Break Fee to Bidder without withholding or set off if:

- (a) **(Competing Transaction)** on or before the End Date a Competing Transaction is publicly announced or made (whether or not proposed subject to conditions) and within 12 months of the End Date, a Competing Transaction completes;
- (b) **(material breach)** Bidder validly terminates this document in accordance with clause 13.1(c);
- (c) **(change of recommendation)** Bidder validly terminates this document in accordance with clause 13.1(b), except where the withdrawal or change of recommendation or statement is made after the Independent Expert concludes that in the opinion of the Independent Expert the Scheme is not in the best interests of Target Shareholders (other than where the conclusion is due to the existence of a Superior Proposal); or
- (d) **(termination)** Bidder validly terminates this document in accordance with clause 13.1(e)(i) or clause 13.1(e)(ii) and the failure to satisfy the relevant Condition Precedent resulted from a breach of this document by Target or a deliberate act or omission of Target.

## 10.3 No amount payable if Scheme becomes Effective

Notwithstanding the occurrence of any event in clause 10.2, if the Scheme becomes Effective:

- (a) no amount is payable by Target under clause 10.2; and
- (b) if any amount has already been paid under clause 10.2 it must be refunded by Bidder.

#### **10.4 Timing of payment**

- (a) A demand by Bidder for payment of the Break Fee under clause 10.2 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account in the name of Bidder into which Target must pay the Break Fee.
- (b) Target must pay the Break Fee to Bidder under clause 10.2 without withholding or set off within 5 Business Days of receipt by Target of a valid demand for payment from Bidder under clause 10.4(a).

The demand may only be made after the occurrence of an event referred to in clause 10.2.

#### **10.5 Nature of payment**

The Break Fee is an amount to compensate Bidder for:

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

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 10.2.

#### **10.6 Reduction in amount payable**

- (a) The Break Fee is reduced by an amount equal to the amount which is recovered by Bidder as a result of a claim against Target pursuant to any other remedies available to Bidder under this document including pursuant to clause 12.1.
- (b) Where the Break Fee has already been paid, Bidder must, within 2 Business Days of the event contemplated by clause 10.6(a) which would have reduced the amount payable, refund an amount to Target which is equivalent to that calculated under clause 10.6(a).

#### **10.7 Compliance with law**

- (a) If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a Court that all or any part of the amount payable under clause 10.2:
  - (i) is unlawful or would if performed be, unlawful;
  - (ii) involves a breach of the duties of the Target Board; or
  - (iii) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then Target's obligation to pay the applicable amount or part of the amount payable under clause 10.2 does not apply and if Bidder has received any relevant part of the payment due under clause 10.2 it must refund it within 5 Business Days of the final determination.

- (b) For the avoidance of doubt, any part of the Break Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by Target.
- (c) The parties must not make or cause or permit to be made any application to a Court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in this clause 10.7.

## 10.8 Break Fee payable once

Where the Break Fee becomes payable to Bidder under clause 10.2 and is actually paid to Bidder, Bidder cannot make any claim against Target for payment of any subsequent Break Fee.

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# 11 Reverse Break Fee

## 11.1 Background

This clause has been agreed in circumstances where:

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

## 11.2 Payment by Bidder to Target

Bidder agrees to pay the Reverse Break Fee to Target without withholding or set off if:

- (a) **(material breach)** Target validly terminates this document in accordance with clause 13.1(c); or
- (b) **(failure to pay Scheme Consideration)** Bidder does not provide the aggregate Scheme Consideration in accordance with the terms and conditions of this document, the Scheme and the Deed Poll.

## 11.3 No amount payable if Scheme becomes Effective

Notwithstanding the occurrence of any event in clause 11.2, if the Scheme becomes Effective:

- (a) no amount is payable by Bidder under clause 11.2; and
- (b) if any amount has already been paid under clause 11.2 it must be refunded by Target.

#### **11.4 Timing of payment**

- (a) A demand by Target for payment of the Reverse Break Fee under clause 11.2 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account in the name of Target into which Bidder must pay the Reverse Break Fee.
- (b) Bidder must pay the Reverse Break Fee to Target under clause 11.2 without withholding or set off within 5 Business Days of receipt by Bidder of a valid demand for payment from Target under clause 11.4(a).

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

#### **11.5 Nature of payment**

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

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

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

#### **11.6 Reduction in amount payable**

- (a) The Reverse Break Fee is reduced by an amount equal to the amount which is recovered by Target as a result of a claim against Bidder pursuant to any other remedies available to Target under this document including pursuant to clause 12.3.
- (b) Where the Reverse Break Fee has already been paid, Target must, within 2 Business Days of the event contemplated by clause 11.6(a) which would have reduced the amount payable, refund an amount to Bidder which is equivalent to that calculated under clause 11.6(a).

#### **11.7 Compliance with law**

- (a) If it is finally determined following the exhaustion of all reasonable avenues of appeal by a Court that all or any part of the amount payable under clause 11.2 is unlawful or would if performed be, unlawful then Bidder's obligation to pay the applicable amount or part of the amount payable under clause 11.2 does not apply and if Target has received any relevant part of the payment due under clause 11.2 it must refund it within 5 Business Days of the final determination.
- (b) For the avoidance of doubt, any part of the Reverse Break Fee that is not unenforceable or unlawful (as applicable) must be paid by Bidder.

- (c) The parties must not make or cause or permit to be made any application to a Court for or in relation to a determination referred to in this clause 11.7.

## 11.8 Reverse Break Fee payable once

Where the Reverse Break Fee becomes payable to Target under clause 11.2 and is actually paid to Target, Target cannot make any claim against Bidder for payment of any subsequent Reverse Break Fee.

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# 12 Representations and warranties

## 12.1 Target's representations and warranties

Target represents and warrants to Bidder (on its own behalf and separately as trustee or nominee for each of the Bidder directors) that each of the following statements is true and correct in all material respects as at the date of this document and as at 5.00pm on the Business Day immediately prior to the Second Court Date:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
  - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(reliance)** the Target Information contained in the Scheme Booklet will be included in good faith and on the understanding that Bidder and its directors will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme;
- (g) **(Target Information)** the Target Information provided in accordance with this document and included in the Scheme Booklet as at the date of the Scheme Booklet will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the applicable Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (h) **(New information)** it will, as a continuing obligation (but in respect of the Bidder Information, only to the extent that Bidder provides 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 dispatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive in any material respect (including by way of omission);

- (i) **(Target Due Diligence Information)** Target has collated and prepared and made available to Bidder all of the Target Due Diligence Information in good faith for the purposes of a due diligence process, and, so far as Target is aware, the Target Due Diligence Information has been collated with all reasonable care and skill and is accurate in all material respects;
- (j) **(disclosure)** Target has not:
  - (i) omitted to disclose information to Bidder prior to the date of this document that would reasonably be expected to be material to the financial position or financial performance of the business of the Target Group taken as a whole or could reasonably be expected to be material to a reasonable and sophisticated buyer's evaluation of the Target Group or might reasonably be expected to have resulted in Bidder not entering into this document or not agreeing to implement the Scheme, or entering into this document on materially different terms;
  - (ii) deliberately omitted anything from the Target Due Diligence Information such as to make any part of that information materially false or misleading in any material respect; or
  - (iii) included anything materially false or misleading in the Target Due Diligence Information;
- (k) **(continuous disclosure)** since 1 January 2023, Target is not in breach of its continuous disclosure obligations under the applicable Listing Rules and is not relying on the carve-out in ASX Listing Rule 3.1A to withhold any information from disclosure (other than the transaction contemplated by this document);
- (l) **(opinions)** any statement of opinion or belief contained in the Target Information is honestly held and there are reasonable grounds for holding the opinion or belief;
- (m) **(provision of information to Independent Expert)** all information provided by or on behalf of Target to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (n) **(securities)** Target's issued securities as at the date of this document are:
  - (i) 356,288,272 Target Shares;
  - (ii) 3,758,757 Target Options;
  - (iii) 2,224,535 Target Restricted Share Units; and
  - (iv) 19,986,033 Target Deferred Share Rights;
 and:
  - (v) other than as Disclosed it has not issued or agreed to issue any other securities or instruments which are still outstanding, and which may convert into Target Shares; and
  - (vi) full details of all Target ESS Interests have been Disclosed and all information Disclosed that relates to the Target ESS Interests is true and accurate and complete in all respects and is not misleading or deceptive in any respect (including by omission);
- (o) **(regulatory approvals)**: so far as Target is aware, no regulatory approval is required to be obtained by Target in order for it to execute, deliver and perform this document, other than those approvals set out in clause 3.1;

- (p) **(compliance)** Target and its Subsidiaries have complied in all material respects with all Australian, New Zealand and other foreign laws and regulations applicable to them and orders of Regulatory Authorities having jurisdiction over them and have all material licences, authorisations, permits and franchises necessary for them to conduct their respective businesses as conducted as at the date of this document;
- (q) **(Material Contracts)** as at the date of this document, neither Target nor any of its Subsidiaries is in material breach or material default under any Material Contract to which it is a party nor has anything occurred which is or would be with the giving of notice or lapse of time constitute an event of default, prepayment or similar event, or give another party thereto a termination right or right to accelerate any material right or obligation, under any such Material Contract;
- (r) **(Insolvency event)** no member of the Target Group is Insolvent nor, as far as Target is aware, has any regulatory action of any nature been taken that would be reasonably be likely to prevent or restrict its ability to fulfil its obligations under this document or under the Scheme;
- (s) **(US Tax)** none of Target or any of its Subsidiaries is or has been, a “controlled foreign corporation” within the meaning of Section 957 of the Code. None of Target or any of its Subsidiaries is or expects to be a “passive foreign investment company” within the meaning of Section 1297 of the Code with respect to the taxable year of Target or the Subsidiary that includes the Implementation Date;
- (t) **(returns)** all Tax returns required to be lodged by a member of the Target Group have been lodged on a timely basis with the relevant governmental authority and are or will be true, complete and correct in all material respects;
- (u) **(Tax paid)** all Taxes for which a member of the Target Group is liable that are or have been due and payable, including any penalty or interest, have been paid or appropriately reserved for in the financial statements of the Target Group, and any obligation on a member of the Target Group under any Tax law to withhold amounts at source on account of Tax has been complied with;
- (v) **(Tax disputes)** there is no current, pending or threatened dispute between a member of the Target Group and any governmental authority in respect of any Tax, and no such dispute is anticipated, nor, to the Target’s knowledge, is there any current, pending or threatened audit or investigation of a member of the Target Group; and
- (w) **(Tax status)** each Target Share is not an Indirect Australian Real Property Interest within the meaning of section 855-25 of the Tax Act.

## 12.2 Target's indemnity

Target indemnifies the Bidder Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 12.1 not being true and correct.

## 12.3 Bidder’s representations and warranties

Bidder represents and warrants to Target (on its own behalf and separately as trustee or nominee for each of the Target directors) that each of the following statements is true and correct in all material respects as at the date of this document and as at 5.00pm on the Business Day immediately prior to the Second Court Date:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;

- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
  - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(reliance)** the Bidder Information provided to Target for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that Target and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act;
- (g) **(Bidder Information)** the Bidder Information provided in accordance with this document for inclusion in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the applicable Listing Rules, the Securities Act, the Exchange Act and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (h) **(provision of information to Independent Expert)** all information provided by or on behalf of Bidder to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (i) **(securities)** Bidder's authorized securities as of February 23, 2024 were:
  - (i) 58,000,000 shares of Bidder Shares, of which:
    - (A) 28,039,525 Bidder Shares were issued and outstanding;
    - (B) 4,196,451 Bidder Shares were reserved for issuance under Bidder's equity incentive plans;
    - (C) 8,432,404 Bidder Shares were reserved for issuance in connection with conversions of Bidder's 1.500% Convertible Senior Notes due 2027 and 2.875% Convertible Senior Notes due 2026, to the extent that holders elect to convert the notes and Bidder elects to satisfy conversions of the notes through physical settlement;
    - (D) 503,975 Bidder Shares were reserved for issuance upon the exercise of warrants issued to PAR Act III, LLC; and
  - (ii) 1,000,000 shares of preferred stock, par value \$0.02 per share, none of which were issued and outstanding,

and Bidder has not issued any securities since February 23, 2024 other than pursuant to Bidder's equity incentive plans or as disclosed in the Bidder Disclosure Letter, and, as of the date of this document, other than

as set forth above, as Disclosed or for equity incentives in the ordinary course, it has not issued or agreed to issue any other securities or instruments which are still outstanding, and which may convert into Bidder Shares;

- (j) **(New Bidder Shares)** the New Bidder Shares will be duly authorised and validly issued, fully paid and non-assessable, free of all Encumbrances and third party rights and the New Bidder Shares will rank equally with all other Bidder Shares then on issue;
- (k) **(no dealing with Target Shareholders)** neither it nor any of its associates has any agreement, arrangement or understanding with any Target Shareholder under which that Target Shareholder (or an associate of that Target Shareholder) would be entitled to receive consideration for their Target Shares different from the Scheme Consideration or under which the Target Shareholder agrees to vote in favour of the Scheme or against any Competing Transaction;
- (l) **(reasonable basis)** it has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts to satisfy Bidder's obligations to pay the Scheme Consideration in accordance with its obligations under this document, the Scheme and the Deed Poll;
- (m) **(SEC)** since 1 January 2023:
  - (i) Bidder has timely filed with or furnished to the SEC all reports, schedules, forms, statements, prospectuses, registration statements and other documents required to be filed with or furnished to the SEC by Bidder since 1 January 2023 (collectively, together with any exhibits and schedules thereto and other information incorporated therein, the "**Bidder Reporting Documents**");
  - (ii) as of its date, each Bidder Reporting Document filed with or furnished to the SEC complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable;
  - (iii) none of the Bidder Reporting Documents as of the date of their respective filings (or, if amended or superseded by a filing, on the date of such amended or superseding filing) contained an untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading;
- (n) **(conduct of business)** since 1 January 2023, except as set forth in the Bidder Reporting Documents, (x) Bidder has conducted its business and operations in the ordinary course of business in all material respects; and (y) no action has been taken by Bidder that would give rise to a Bidder Prescribed Event had such action been taken between the date of this document and the Implementation Date;
- (o) **(regulatory approvals)** so far as Bidder is aware, no regulatory approval is required to be obtained by Bidder in order for it to execute, deliver and perform this document, other than those approvals set out in clause 3.1; and
- (p) **(Insolvency event)** the Bidder is not Insolvent.

## 12.4 Bidder's indemnity

Bidder indemnifies the Target Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 12.3 not being true and correct.

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## 13 Termination

### 13.1 Termination events

This document may be terminated:

- (a) **(End Date)** by either party, if the Scheme has not become Effective on or before the End Date, unless the failure of the Scheme to become Effective on or before the End Date is due to the failure of the party seeking to terminate this document to perform or observe its obligations, covenants and agreements under this document;
- (b) **(lack of support)** by Bidder at any time prior to 8.00am on the Second Court Date if the Target Board or the Chief Executive Officer / Managing Director of Target:
  - (i) fails to recommend the Scheme in the manner described in clauses 5.2(b) and 6.1; or
  - (ii) withdraws or changes its recommendation to the Scheme Participants that they vote in favour of the resolution to approve the Scheme (including making any public statement to such effect);
- (c) **(material breach)** by either Bidder or Target at any time prior to 8.00am on the Second Court Date, if the other is in material breach of a term of this document (including any representation and warranty not being true and correct), taken in the context of the Scheme as a whole, provided that Bidder or Target (as the case may be) has, if practicable, given notice to the other setting out the relevant circumstances and the relevant circumstances continue to exist 10 Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the time such notice is given;
- (d) **(Superior Proposal)** by Target at any time prior to 8:00am on the Second Court Date if the Target Board determines, in accordance with clause 9.5 and after completion of the processes in, and having complied with its obligations under, clauses 9.7, 9.8 and 9.9, that a Competing Transaction (that was not directly or indirectly brought about, or facilitated by, any breach of clause 9.2) is a Superior Proposal;
- (e) **(consultation or appeal failure)** in accordance with and pursuant to:
  - (i) clause 3.8(c);
  - (ii) clause 3.8(d); or
  - (iii) clause 5.8; or
- (f) **(agreement)** if agreed to in writing by Bidder and Target.

### 13.2 Termination

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

### 13.3 Effect of Termination

If this document is terminated by either party, or if this document otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this document, other than the obligations set out in this clause and in clauses 5.8 10, 11 and 14 to 19 (inclusive) will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause releases any party from liability for any fraud or pre-termination breach of this document.

## **13.4 Damages**

- (a) In addition to the right of termination under clause 13.1, where there is no appropriate remedy for the breach in this document (other than termination), the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this document.
- (b) Nothing in this clause 13 affects the Bidder's right to specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law as a remedy for a breach or threatened breach of this document by any party.

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## **14 Public announcements**

### **14.1 Public announcement of Scheme**

Immediately after signing this document, Target and Bidder will issue separate public announcements of the proposed Scheme in the form agreed in writing between the parties at the time of signing this document.

### **14.2 Required disclosure**

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

### **14.3 Other announcements**

- (a) Subject to clauses 14.1 and 14.2, no party may make any public announcement or disclosure in connection with the Scheme (including disclosure to a Regulatory Authority) other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable.
- (b) The parties agree that, for the purposes of clause 14.3(a), if a party approves the form of an Announcement, that approval will also extend to any other public announcement or disclosure made in connection with the Scheme that is consistent in tone and substance with all or part of that announcement.

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## **15 Confidential Information**

### **15.1 Confidentiality Agreement**

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

### **15.2 Survival of obligations**

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

### **15.3 US Securities Law acknowledgement**

The Target acknowledges it is aware the United States securities laws prohibit any person who is in possession of material, non-public information concerning the Bidder from purchasing or selling securities of Bidder or from communicating such information to any other person under circumstances in which it is

reasonably foreseeable that such person is likely to purchase or sell such securities.

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## **16 Notices and other communications**

### **16.1 Form**

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

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

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

### **16.2 Delivery**

Communications must be:

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

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

### **16.3 When effective**

Communications take effect from the time they are received or taken to be received under clause 16.4 (“When taken to be received”) (whichever happens first) unless a later time is specified in the communication.

### **16.4 When taken to be received**

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another);
- (b) if sent by email:
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) 2 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed (which excludes any response generated by or at the instigation of the recipient such as an 'out of office' message),

whichever happens first.

### **16.5 Receipt outside business hours**

Despite anything else in this clause 16, if communications are received or taken to be received under clause 16.4 (“When taken to be received”) after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

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## 17 GST

### 17.1 Definitions and interpretation

For the purposes of this clause:

- (a) a term which has a defined meaning in the GST Act has the same meaning when used in this clause, unless the contrary intention appears; and
- (b) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.

### 17.2 GST exclusive

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

### 17.3 Payment of GST

- (a) If GST is payable, or notionally payable, on a supply in connection with this document, the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply ("**GST Amount**").
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

### 17.4 Adjustment events

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

### 17.5 Reimbursements

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this document which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled to. If the reduced payment is consideration for a taxable supply, clause 17.3 will apply to the reduced payment.

---

## 18 Costs

### 18.1 Costs

The parties agree to pay their own Costs in connection with the preparation, negotiation, execution and completion of this document, except for amounts covered by clause 18.2 ("Stamp duty and registration fees").

### 18.2 Stamp duty and registration fees

Bidder:

- (a) agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with the Scheme, this document or any other transaction entered into in

accordance with this document (including any surcharge, fees, fines, penalties and interest in connection with any of those amounts); and

- (b) indemnifies Target against, and agrees to reimburse and compensate it for, any liability in respect of stamp duty under clause 18.2(a).

Bidder agrees to pay amounts due to Target under this clause within 3 Business Days of demand from Bidder.

### 18.3 Withholding tax

- (a) If Bidder or any Bidder Nominee is required by Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (Subdivision 14-D) to pay amounts to the Commissioner of Taxation in respect of the acquisition of Target Shares from certain Target Shareholders, Bidder or Bidder Nominee is permitted to deduct the relevant amounts from the payment of the Scheme Consideration to those Target Shareholders, and remit such amounts to the Commissioner of Taxation. The aggregate sum payable to Target Shareholders shall not be increased to reflect the deduction and the net aggregate sum payable to those Target Shareholders shall be taken to be in full and final satisfaction of the amounts owing to those Target Shareholders.
- (b) Bidder, on its own behalf and on behalf of any Bidder Nominee, acknowledges and agrees, that it shall not pay any amounts to the Commissioner of Taxation under clause 18.3(a) with respect to a Target Shareholder where it receives an entity declaration from the Target Shareholder (or Target on behalf of any Target Shareholder) prior to the Implementation Date, where:
  - (i) the entity declaration is made in accordance with the requirements in section 14-225 of Subdivision 14-D and covers the Implementation Date (**Entity Declaration**); and
  - (ii) the Bidder and any Bidder Nominee does not know that the Entity Declaration is false.
- (c) If the Bidder and any Bidder Nominee form the view that it has knowledge that an Entity Declaration it has received is false, and the Bidder and any Bidder Nominee received the Entity Declaration more than 30 days before the Implementation Date, the Bidder, on its own behalf and on behalf of the any Bidder Nominee, agrees that it shall not pay any amounts to the Commissioner of Taxation in respect of that Target Shareholder until it has:
  - (i) provided information upon which it relied to form that view to the Target Shareholder who has provided that Entity Declaration no less than 20 days before the Implementation Date;
  - (ii) provided the Target Shareholder by notice in writing the opportunity to review the information provided to it and respond with their views no less than 10 days before the Implementation Date; and
  - (iii) reviewed any response from the Target Shareholder and, after having reconsidered its view, still be of the view that it has knowledge that the Entity Declaration it has received is false.
- (d) Target agrees that Bidder and any Bidder Nominee may approach the Australian Taxation Office to obtain clarification as to the application of Subdivision 14-D to the Scheme and will provide all information and assistance that Bidder and Bidder Nominee reasonably require in making any such approach. Bidder agrees and will procure any Bidder Nominee:
  - (i) to provide Target a reasonable opportunity to review the form and content of all materials to be provided to the Australian Taxation Office, and must incorporate Target's reasonable

comments on those materials, and more generally to take into account Target's comments in relation to the Bidder's and Bidder Nominee's engagement with the Australian Taxation Office, and provide Target a reasonable opportunity to participate in any discussions and correspondence between Bidder or Bidder Nominee and the Australian Taxation Office in connection with the application of Subdivision 14-D to the Scheme; and

- (ii) not to contact any Target Shareholders in connection with the application of Subdivision 14-D to the Scheme without Target's prior written consent.
- (e) The parties agree to consult in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the Australian Taxation Office following any process described in clause 18.3(b). The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable following that consultation which may include, without limitation, making amendments to this deed, the Scheme and the Deed Poll to ensure that relevant representations are obtained from Target Shareholders.
- (f) The parties hereto agree that, absent a change in applicable law, no withholding shall be made with respect to any amounts paid pursuant to this document and/or the Scheme as a result of the application of Section 304 of the Internal Revenue Code of 1986, as amended (the "Code"), provided that Target will confirm in writing on both the signature date of this Agreement and on the Effective Date that to Target's knowledge no more than 49.9% of the beneficial owners of Target Shares or any other direct or indirect interests in the Target, beneficially owns any direct or indirect interests in Bidder (in each case, taking into account the constructive ownership rules of Section 318 of the Code).

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## **19 General**

### **19.1 Variation and waiver**

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

### **19.2 Consents, approvals or waivers**

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

### **19.3 Discretion in exercising rights**

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

### **19.4 Partial exercising of rights**

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

### **19.5 Conflict of interest**

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

## **19.6 Remedies cumulative**

Except as expressly provided in this document, the rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

## **19.7 Indemnities and reimbursement obligations**

Any indemnity, reimbursement or similar obligation in this document.

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

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

## **19.8 Inconsistent law**

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

## **19.9 Supervening law**

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

## **19.10 Counterparts**

This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document.

## **19.11 Entire agreement**

This document constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

## **19.12 Further steps**

Each party agrees to use commercially reasonable efforts to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed), which the other party reasonably requests and considers necessary to:

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

## **19.13 No liability for loss**

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

## **19.14 Severability**

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

### **19.15 Rules of construction**

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

### **19.16 Assignment**

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

### **19.17 Enforceability**

For the purpose of this document:

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

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

### **19.18 Specific Performance**

- (a) The parties acknowledge and agree that irreparable harm would occur and that the parties would not have any adequate remedy at law:
  - (i) for any material breach of this document; or
  - (ii) in the event that any of the material provisions of this document were not performed in accordance with their specific terms.
- (b) It is accordingly agreed that the parties will be entitled to an injunction or injunctions to prevent material breaches or threatened material breaches of this document and to specifically enforce the material terms and provisions of this document (this being in addition to any other remedy to which they are entitled under this document or under applicable law). The parties agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to applicable law or inequitable for any reason, and not to assert that a remedy of monetary damages would provide an adequate remedy or that the parties otherwise have an adequate remedy at law.

### **19.19 No representation or reliance**

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document;
- (b) it does not enter into this document in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this document; and
- (c) clauses 19.19(a) and 19.19(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

---

## **20 Governing law**

### **20.1 Governing law and jurisdiction**

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

## 20.2 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address for service of notices under clause 16.2 ("Delivery").

## 20.3 Appointment of process agent

Without preventing any method of service allowed under any relevant law, Bidder:

- (a) irrevocably appoints Clayton Utz as its process agent to receive any document in an action in connection with this document, and agrees that any such document may be served on Bidder by being delivered to or left for Bidder at the following address:

Clayton Utz  
Level 28, Riparian Plaza  
71 Eagle Street  
Brisbane QLD 4000 Australia,

and

- (b) agrees that failure by a process agent to notify Bidder of any document in an action in connection with this document does not invalidate the action concerned.

If for any reason Clayton Utz ceases to be able to act as process agent, Bidder agrees to appoint another person as its process agent in the place referred to in clause 20.1 ensure that the replacement process agent accepts its appointment and confirms its appointment to Target.

The Bidder agrees that service of documents on its process agent is sufficient service on it.

**EXECUTED** as an agreement

# Scheme Implementation Agreement

## Schedule 1 Timetable (clause 5.1)

<b>Event</b>	<b>Indicative date</b>
Lodge Scheme Booklet with ASIC and ASX	Week commencing 8 April 2024
First Court Date	Week commencing 29 April 2024
Printing and despatch of Scheme Booklet	Week commencing 29 April 2024
Election Date	Week commencing 3 June 2024
Scheme Meeting held	Week commencing 3 June 2024
Second Court Date	Week commencing 24 June 2024
Lodge Court order with ASIC (Effective Date) Last day of trading in Target Shares on ASX	1 Business Day after Second Court Date
Record Date for the Scheme	2 Business Days after Effective Date
Implementation Date	5 Business Days after Record Date for the Scheme

# Scheme Implementation Agreement

## Signing pages

**Bidder**

**PAR TECHNOLOGY CORPORATION**

DocuSigned by:  
By: *Bryan Menar*  
Name: Bryan A. Menar  
Title: Chief Financial Officer

**Target**

**EXECUTED** by **TASK GROUP HOLDINGS LIMITED** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):



.....  
Signature of director

Daniel Houden

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



.....  
Signature of director/~~company~~  
secretary

William Crichton

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

# **Scheme Implementation Agreement**

## **Annexure A Scheme of Arrangement**

# Scheme of Arrangement

Dated

TASK Group Holdings Limited (ACN 605 696 820) ("**Target**")

Scheme Participants

**King & Wood Mallesons**

Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Australia  
**T** +61 2 9296 2000  
**F** +61 2 9296 3999  
DX 113 Sydney  
[www.kwm.com](http://www.kwm.com)

# Scheme of Arrangement

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# Scheme of Arrangement

## Details

### Parties

<b>Target</b>	Name	<b>TASK Group Holdings Limited</b>
	ACN	605 696 820
	Address	Suite 16, 90 Mona Vale Road, Mona Vale NSW 2103 Australia
	Email	daniel@tasksoftware.com
	Attention	Daniel Houden
	<b>Copy to:</b>	King & Wood Mallesons
	Address	Level 61, Governor Phillip Tower 1 Farrer Place, Sydney NSW 2000 Australia
	Email	anthony.boogert@au.kwm.com
	Attention	Anthony Boogert, Partner
<b>Scheme Participants</b>	Each person registered as a holder of fully paid ordinary shares in Target as at the Record Date.	
<b>Governing law</b>	New South Wales	

<b>Recitals</b>	<b>A</b>	Target and Bidder have agreed by executing the Scheme Implementation Agreement to implement the terms of this document.
	<b>B</b>	This document imposes obligations on Bidder that Bidder has agreed to but does not impose an obligation on Bidder to perform those obligations.
	<b>C</b>	Bidder has executed the Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform (or procure the performance) of its obligations as contemplated by this document.

# General terms

---

## 1 Definitions and interpretation

### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

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

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

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

**Bidder** means PAR Technology Corporation.

**Bidder Share** means a share of common stock, par value \$0.02 per share, in the capital of Bidder.

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

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

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

**Court** means the Supreme Court of New South Wales, or such other court of competent jurisdiction under the Corporations Act agreed in writing by Bidder and Target.

**Deed Poll** means the deed poll dated [*insert date*] executed by Bidder substantially in the form of Annexure B of the Scheme Implementation Agreement or as otherwise agreed by Bidder and Target under which Bidder covenants in favour of each Scheme Participant to perform certain actions attributed to Bidder under this Scheme.

**Details** means the section of this Scheme headed "Details".

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

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

**Election** means:

- (a) a Maximum Cash Consideration Election; or
- (b) a Mixed Consideration Election.

**Election Date** means 5.00pm on the fifth Business Day before the date of the Scheme Meeting (unless ASIC requires an earlier date, in which case such earlier date shall apply), or such other date as the Target and the Bidder agree in writing.

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

**Election Percentage** means, if a Target Shareholder makes an Election that is a Mixed Consideration Election, the percentage recorded by the Target Shareholder in their Election Form (representing the percentage of their Scheme Consideration that they wish to receive as Scheme Scrip Consideration provided that such percentage must not exceed 50%), subject to the terms and conditions of this Scheme.

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

**End Date** means the “End Date” determined in accordance with the Scheme Implementation Agreement, or such other date as is agreed by Bidder and Target in writing.

**First Court Date** has the meaning given in the Scheme Implementation Agreement.

**Foreign Scheme Shareholder** means a Scheme Participant whose address in the Register as at the Record Date is a place outside Australia, New Zealand, the United States of America or Poland, unless the Target and the Bidder agree in writing that it is lawful and not unduly onerous or impractical to issue Bidder Shares to the Scheme Participant if that Scheme Participant so elects under this Scheme.

**Immediately Available Funds** means by immediate electronic funds transfer or other form of cleared funds acceptable to Target.

**Implementation Date** means the fifth Business Day following the Record Date or such other date as is agreed by Bidder and Target.

**Listing Rules** means:

- (a) in respect of Bidder, the rules and regulations applicable to companies listed on the NYSE that are contained in its Listed Company Manual; and
- (b) in respect of Target, the Listing Rules of ASX and any other applicable rules of ASX modified to the extent of any applicable express written waiver by ASX.

**Maximum Cash Consideration** means for each Scheme Share held by the Scheme Participant, a cash amount equal to A\$0.81, subject to the terms and conditions of this Scheme.

**Maximum Cash Consideration Election** means an election by a Target Shareholder to receive the Maximum Cash Consideration.

**Mixed Consideration** means for each Scheme Share held by a Scheme Participant:

- (a) a cash amount calculated as follows:

$$A = A\$0.81 \times (100\% - B)$$

where:

A is the cash amount; and

B is the Scheme Participant’s Election Percentage;

*plus*

(b) a number of Bidder Shares calculated as follows:

$$A = B \times C$$

where:

A is the number of Bidder Shares;

B is the Scheme Participant's Election Percentage; and

C is 0.015.

**Mixed Consideration Election** means an election by a Target Shareholder to receive the Mixed Consideration.

**NYSE** means the New York Stock Exchange.

**Operating Rules** means the official operating rules of ASX.

**Permitted Target ESS Issuances** has the meaning given in the Scheme Implementation Agreement.

**Record Date** means the second Business Day following the Effective Date or such other date as Target and Bidder agree in writing.

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

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

**Registry** means Computershare Investor Services Pty Limited (ABN 48 078 279 277).

**Regulatory Authority** includes:

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

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

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

**Scheme Cash Consideration** means for each Scheme Share held by a Scheme Participant, the component of the Scheme Consideration which comprises cash, calculated in accordance with, and subject to the terms and conditions in the Scheme.

**Scheme Consideration** means, depending on the relevant Scheme Participant's Election and subject to the terms of the Scheme, the consideration to be provided to each Scheme Participant for the transfer to Bidder of each Scheme Share, being for each Scheme Share, either:

- (a) the Maximum Cash Consideration; or
- (b) the Mixed Consideration.

**Scheme Implementation Agreement** means the scheme implementation agreement dated 9 March 2024 between Target and Bidder under which, amongst other things, Target has agreed to propose this Scheme to Target Shareholders, and each of Bidder and Target has agreed to take certain steps to give effect to this Scheme.

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

**Scheme Participant** means each person who is a Target Shareholder on the Record Date.

**Scheme Scrip Consideration** means for each Scheme Share held by a Scheme Participant, the component of the Scheme Consideration which comprises Bidder Shares, the number of which is calculated in accordance with, and subject to the terms and conditions in this Scheme.

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

**Second Court Date** means the first day on which an application made to the Court for an order pursuant to 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.

**Securities Act** means the United States Securities Act of 1933, as amended, and the rules and regulations thereunder.

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

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

**Target Deferred Share Right** means a right to acquire a Target Share granted under Target's executive or employee performance rights plans, subject to the terms of such plan.

**Target Option** means an option to acquire a Target Share granted under Target's executive or employee performance rights plans, subject to the terms of such plan.

**Target Restricted Share Unit** means an entitlement to be issued or transferred a Target Share per Target Restricted Share Unit granted under Target's executive or employee performance rights plans, subject to the terms of such plan.

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

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

**Trust Account** means the Australian dollar denominated trust account with an authorised deposit-taking institution (as defined in the *Banking Act 1959* (Cth)) operated by or on behalf of Target to hold the Scheme Consideration on trust for the purpose of paying the Scheme Consideration to the Scheme Participants in accordance with clause 6.6 of this Scheme.

**Unclaimed Money Act** means the *Unclaimed Money Act 1995* (NSW).

## 1.2 General interpretation

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

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Sydney time;
- (h) a reference to \$, A\$ or AUD is a reference to the currency of Australia and US\$ or USD is a reference to the currency of the United States of America;
- (i) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (m) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (n) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (o) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day; and
- (p) if the day on which a party must do something under this document is not a Business Day, the party must do it on the next Business Day.

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## 2 Preliminary

### 2.1 Target

- (a) Target is:
  - (i) a public company limited by shares;
  - (ii) incorporated in Australia and registered in New South Wales; and
  - (iii) admitted to the official list of the ASX and Target Shares are officially quoted for trading on the stock market conducted by ASX.
  
- (b) As at the date of the Scheme Implementation Agreement, Target's issued securities are:
  - (i) 356,288,272 Target Shares;
  - (ii) 3,758,757 Target Options;
  - (iii) 2,224,535 Target Restricted Share Units; and
  - (iv) 19,986,033 Target Deferred Share Rights.

### 2.2 Bidder

- (a) Bidder is a corporation incorporated under the laws of the State of Delaware.
  
- (b) Bidder Shares are officially listed on the NYSE.
  
- (c) Bidder's authorized securities as of February 23, 2024 were:
  - (i) 58,000,000 shares of Bidder Shares, of which:
    - (A) 28,039,525 Bidder Shares were issued and outstanding;
    - (B) 4,196,451 Bidder Shares were reserved for issuance under Bidder's equity incentive plans;
    - (C) 8,432,404 Bidder Shares were reserved for issuance in connection with conversions of Bidder's 1.500% Convertible Senior Notes due 2027 and 2.875% Convertible Senior Notes due 2026, to the extent that holders elect to convert the notes and Bidder elects to satisfy conversions of the notes through physical settlement;
    - (D) 503,975 Bidder Shares were reserved for issuance upon the exercise of warrants issued to PAR Act III, LLC; and
  - (ii) 1,000,000 shares of preferred stock, par value \$0.02 per share, none of which were issued and outstanding.

### 2.3 If Scheme becomes Effective

If this Scheme becomes Effective:

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

- (b) all Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, must be transferred to Bidder on the Implementation Date; and
- (c) Target will enter the name of Bidder in the Register in respect of all of the Scheme Shares transferred to Bidder in accordance with the terms of this Scheme.

## **2.4 General**

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

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# **3 Conditions precedent**

## **3.1 Conditions precedent to Scheme**

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

- (a) as at 8.00am on the Second Court Date, neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms;
- (b) all of the conditions precedent in clause 3.1 of the Scheme Implementation Agreement having been satisfied or waived (other than the conditions precedent in clauses 3.1(b), 3.1(c), 3.1(d) and 3.1(f) which cannot be waived) in accordance with the terms of the Scheme Implementation Agreement;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Target and Bidder having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act;
- (d) subject to clause 12.1, such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and agreed to by Bidder and Target having been satisfied or waived; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme on or before the End Date (or any later date Target and Bidder agree in writing in accordance with the Scheme Implementation Agreement).

## **3.2 Conditions precedent and operation of clauses 5 and 6**

The satisfaction of each condition of clause 3.1 of this Scheme is a condition precedent to the operation of clauses 5 and 6 of this Scheme (other than, in respect of clause 5.1 of this Scheme only, the condition precedent in clause 3.1(e) of this Scheme).

### **3.3 Certificate in relation to conditions precedent**

Before 8.00am on the Second Court Date, each of Target and Bidder must provide to the Court a certificate signed by a duly authorised representative (or such other evidence as the Court requests) confirming (in respect of matters within their knowledge) whether or not the conditions precedent set out in clause 3.1(a) and clause 3.1(b) of this Scheme have been satisfied or waived as at that time.

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

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## **4 Scheme**

### **4.1 Effective Date**

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

### **4.2 End Date**

- (a) Unless Target and Bidder otherwise agree in writing this Scheme will lapse and be of no further force or effect if:
  - (i) the Effective Date does not occur on or before the End Date (or any later date Target and Bidder agree in writing in accordance with the Scheme Implementation Agreement); or
  - (ii) the Scheme Implementation Agreement or the Deed Poll is terminated in accordance with their terms before the Scheme becomes Effective.
- (b) Without limiting any rights under the Scheme Implementation Agreement, if any of the events referred to in clause 4.2(a) occur, Target and Bidder are each released from:
  - (i) any further obligation to take steps to implement this Scheme; and
  - (ii) any liability with respect to this Scheme.

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## **5 Implementation of Scheme**

### **5.1 Lodgement of Court orders with ASIC**

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

### **5.2 Transfer and registration of Scheme Shares**

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

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Bidder without the need for any further act by any Scheme Participant (other than acts performed by Target as attorney and agent for Scheme Participants under clause 8 of this Scheme) by:
  - (i) Target delivering to Bidder a duly completed and executed Share Scheme Transfer executed on behalf of the Scheme Participants; and
  - (ii) Bidder duly executing the Share Scheme Transfer and delivering it to Target for registration; and
- (b) immediately following receipt of the duly executed Share Scheme Transfer, but subject to the stamping of the Share Scheme Transfer (if required) Target must enter, or procure the entry of, the name of Bidder in the Register in respect of all of the Scheme Shares transferred to Bidder in accordance with the terms of this Scheme.

### **5.3 Title and rights in Scheme Shares**

- (a) Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 6 of this Scheme, on and from the Implementation Date, Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme, pending registration by Target of Bidder in the Register as the holder of the Scheme Shares.
- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Bidder will, at the time of transfer, vest in Bidder free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind.

### **5.4 Scheme Participants' agreements**

Under this Scheme, each Scheme Participant:

- (a) agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Bidder in accordance with the terms of this Scheme;
- (b) agrees that the payment of the Scheme Consideration in accordance with clause 6 shall constitute full satisfaction of that Scheme Shareholder's entitlements under the Scheme;
- (c) agrees to the variation, cancellation or modification of the rights attached to its Target Shares constituted by, or resulting from, this Scheme;
- (d) agrees to, on the direction of Bidder, destroy any holding statement or share certificates relating to its Target Shares;
- (e) who holds its Target Shares in a CHESS Holding (as defined in the Settlement Rules) agrees to the conversion of those Target Shares to an Issuer Sponsored Holding (as defined in the Settlement Rules), and irrevocably authorises Bidder to do anything necessary, expedient or incidental (whether required by the Settlement Rules or otherwise) to effect or facilitate that conversion;
- (f) to the extent they are to receive Scheme Scrip Consideration, agrees to become a member of Bidder and to be bound by the terms of the Bidder's constituent documents; and
- (g) acknowledges that this Scheme binds Target and all Scheme Participants (including those who do not attend the Scheme Meeting or do not vote at the Scheme Meeting or vote against the Scheme at the Scheme Meeting) and to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of Target,

in each case irrevocably and without the need for any further act by the Scheme Participant.

## **5.5 Warranty by Scheme Participants**

Each Scheme Participant warrants to Bidder and is deemed to have authorised Target to warrant to Bidder as agent and attorney for the Scheme Participant by virtue of this clause 5.5, that:

- (a) all their Scheme Shares (including any rights and entitlements attaching to those shares) transferred to Bidder under this Scheme will, as at the date of the transfer, be fully paid and free from all Encumbrances or any other third party interest or restrictions on transfer of any kind;
- (b) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) to Bidder under this Scheme; and
- (c) they have no existing right to be issued any Target Shares, options, performance rights, convertible notes or any other securities, other than the right to be issued:
  - (i) Target Shares upon the vesting or exercise of the Target Deferred Share Rights, Target Options or Target Restricted Share Units (as applicable); or
  - (ii) the Permitted Target ESS Issuances.

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## **6 Scheme Consideration**

### **6.1 Consideration under the Scheme**

- (a) On the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of their Scheme Shares in accordance with this clause 6.
- (b) It is the Bidder's intention to rely upon the exemption from registration provided by Section 3(a)(10) of the Securities Act with respect to the issuance of the Bidder Shares under this Scheme, based on the Court's approval of this Scheme.

### **6.2 Election procedure**

- (a) Each Target Shareholder (other than a Foreign Scheme Shareholder) will be entitled to make an Election.
- (b) All Elections will take effect in accordance with this Scheme to the extent that any Target Shareholder who makes an Election qualifies as a Scheme Participant.
- (c) Target must ensure that the Scheme Booklet is accompanied with an Election Form.
- (d) Subject to clause 6.2(h), an Election may only be made in accordance with the terms and conditions stated on the Election Form for it to be valid and must be completed and returned in writing to the address specified on the Election Form before the Election Date.
- (e) A Target Shareholder which makes an Election may vary, withdraw or revoke that Election by lodging a replacement Election Form so that it is received on or before the Election Date.

- (f) An Election must be made in accordance with the terms and conditions of the Election Form and this clause 6.2, and an Election not so made will not be a valid election for the purpose of this Scheme and will not be recognised by Bidder or Target for any purpose (provided that Bidder may, with the agreement of Target, waive this requirement and may, with the agreement of Target, settle as it thinks fit any difficulty, matter of interpretation or dispute which may arise in connection with determining the validity of any Election, and any such decision will be conclusive and binding on Bidder, Target and the relevant Scheme Participant).
- (g) Subject to clause 6.2(h), if a Target Shareholder makes an Election, that Election will be deemed to apply in respect of the Target Shareholder's entire registered holding of Target Shares at the Record Date, regardless of whether the Target Shareholder's holding of Target Shares at the Record Date is greater or less than the Target Shareholder's holding at the time it made its Election.
- (h) A Target Shareholder who is noted on the Register as holding one or more parcels of Target Shares as trustee or nominee for, or otherwise on account of, another person, may make separate Elections under this clause 6.2 in relation to each of those parcels of Target Shares (subject to providing to Bidder and Target any substantiating information they reasonably require), and if it does so it will be treated as a separate Scheme Participant in respect of each such parcel in respect of which a separate Election is made (and in respect of any balance of its holding), provided that if, at the Record Date, it holds fewer Target Shares than it held at the time that it made the Election, then, unless it has at the time of any sale of Target Shares notified Target whether the Target Shares sold relate to any such separate Election (and if so which separate Election the Target Shares sold relate to), it will be treated as not having made a valid Election in respect of any of its Target Shares (or will be treated in any other manner that Bidder and Target agree is fair to the Target Shareholder in all the circumstances acting reasonably).
- (i) The parties agree that the Election Form will include the following terms and conditions:
- (i) Foreign Scheme Shareholders may not make a Mixed Consideration Election and that any purported Election by such persons will be of no effect and clause 6.5 will apply to such persons;
  - (ii) if a Target Shareholder (who is not a Foreign Scheme Shareholder) does not make a valid Election, clause 6.4 will apply to that person;
  - (iii) if a Target Shareholder makes a Mixed Consideration Election, that Target Shareholder must only specify an Election Percentage that is equal to or less than 50% and if a Target Shareholder specifies an Election Percentage of greater than 50%, the Target Shareholder's Election Percentage will be deemed to be 50%;
  - (iv) Target Shareholders who receive Scheme Scrip Consideration will have such Scheme Scrip Consideration issued having the same holding name and address and other details as the holding of the relevant Scheme Shares; and
  - (v) such other terms and conditions as Bidder reasonably requires to be stated on the Election Form.

### **6.3 Scheme Consideration if valid Election made**

If a Target Shareholder makes a valid Election that Target Shareholder will be entitled to receive the Scheme Consideration as nominated by their Election.

#### **6.4 Scheme Consideration if valid Election not made**

If a Target Shareholder (not being a Foreign Scheme Shareholder) does not make a valid Election, the Scheme Consideration payable to that Target Shareholder will be the Maximum Cash Consideration.

#### **6.5 Scheme Consideration for Foreign Scheme Shareholders**

Notwithstanding any other provision of this Scheme:

- (a) if a Scheme Participant is a Foreign Scheme Shareholder, the Scheme Consideration payable to that Scheme Participant will be the Maximum Cash Consideration; and
- (b) Bidder has no obligation to provide, and will not provide under the Scheme, any Scheme Scrip Consideration to Foreign Scheme Shareholders regardless of the Election made by the Foreign Scheme Shareholders.

#### **6.6 Payment of Scheme Cash Consideration**

- (a) Bidder must, by no later than the Business Day before the Implementation Date, deposit (or procure the deposit) in Immediately Available Funds the aggregate amount of the Scheme Cash Consideration payable to all Scheme Participants into the Trust Account (except that the amount of any interest on the amount deposited (less bank fees and other charges) will be to Bidder's account).
- (b) On the Implementation Date, and subject to funds having been deposited by Bidder in accordance with clause 6.6(a) of this Scheme, Target must pay or procure the payment to each Scheme Participant an amount equal to the aggregate amount of the Scheme Cash Consideration due to that Scheme Participant in respect of its Scheme Shares in accordance with this Scheme on the Implementation Date from the Trust Account.
- (c) The obligations of Target under clause 6.6(b) will be satisfied by Target (in its absolute discretion), and despite any election referred to in clause 6.6(c)(i) or authority referred to in clause 6.6(c)(ii) made or given by the Scheme Participant:
  - (i) paying, or procuring the payment of, the relevant amount in A\$ by electronic means to a bank account nominated by the Scheme Participant, where the Scheme Participant has made a valid election prior to the Record Date in accordance with the requirements of the Registry to receive dividend payments from Target to that bank account;
  - (ii) paying, or procuring the payment of, the relevant amount in A\$ by electronic means to a bank account nominated by the Scheme Participant by an appropriate authority from the Scheme Participant to Target; or
  - (iii) dispatching, or procuring the dispatch of, a cheque drawn on an Australian bank for the relevant amount in A\$ to each Scheme Participant by pre-paid ordinary post (or, if the address of the Scheme Participant in the Register is outside Australia, by pre-paid airmail post) to their address recorded in the Register on the Record Date, such cheque being drawn in the name of the Scheme Participant (or in the case of joint holders, in accordance with the procedures set out in clause 6.11).
- (d) If:

- (i) a Scheme Participant does not have a Registered Address and no account has been notified in accordance with clause 6.6(c)(i) or a deposit into such account is rejected or refunded; or
- (ii) a cheque issued under this clause 6.6 has been cancelled in accordance with clause 6.8(a)(i),

Target as the trustee for the Scheme Participants may credit the amount payable to the relevant Scheme Participant to a separate bank account of Target ("**Separate Account**") to be held until the Scheme Participant claims the amount or the amount is dealt with under the Unclaimed Money Act. If the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Participant claims the amount or the amount is dealt with under the Unclaimed Money Act. Until such time as the amount is dealt with under the Unclaimed Money Act, Target must hold the amount on trust for the relevant Scheme Participant, but any interest or other benefit accruing from the amount will be to the benefit of Bidder. An amount credited to the Separate Account or Trust Account (as applicable) is to be treated as having been paid to the relevant Scheme Participant when credited to the Separate Account or Trust Account (as applicable). Target must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.

- (e) If, following satisfaction of Target's obligations under clause 6.6(d), there is a surplus in the amount held by Target as trustee for the Scheme Participants in the Trust Account, that surplus must be paid by Target to, or at the direction of, Bidder.
- (f) Target must pay any accrued interest (less bank fees and other charges) under clause 6.6(a) to any account nominated by Bidder following satisfaction of Target's obligations under this clause 6.6.

## 6.7 Provision of Scheme Scrip Consideration

- (a) Bidder must, before 12.00pm (or such later time as Bidder and Target may agree in writing) on the Implementation Date, procure that:
  - (i) Bidder issues the Bidder Shares to each Scheme Participant who is entitled under this Scheme to be issued the Bidder Shares; and
  - (ii) the name and address of each such Scheme Participant is entered in Bidder's register of shareholders (as maintained by Bidder or its agent) as the holder of those Bidder Shares with the same holding name and address and other details as the holding of the relevant Target Shares.
- (b) On or before the date that is 5 Business Days after the Implementation Date, Bidder must send or procure the sending of a share certificate or holding statement (or equivalent document) to the Registered Address of each Scheme Participant to whom Bidder Shares are issued under this Scheme, reflecting the issue of such Bidder Shares.
- (c) Bidder must ensure that the Bidder Shares issued in accordance with this Scheme, at the time they are issued:
  - (i) rank equally in all respects among themselves and with all other Bidder Shares on issue in Bidder; and
  - (ii) are fully paid, duly and validly issued in accordance with all applicable laws and free from any Encumbrance.
- (d) Bidder must use its best endeavours to ensure that the Bidder Shares to be issued in accordance with the Scheme will commence trading on NYSE from the first Business Day after the Implementation Date.

## 6.8 Unclaimed monies

- (a) Target may cancel a cheque issued under clause 6.6 of this Scheme if the cheque:
  - (i) is returned to Target; or
  - (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.
- (b) During the period of 1 year commencing on the Implementation Date, on request in writing from a Scheme Participant to Target or the Registry (which request may not be made until the date which is 20 Business Days after the Implementation Date), Target must reissue a cheque that was previously cancelled under this clause 6.8.
- (c) The Unclaimed Money Act will apply in relation to any Scheme Consideration which becomes "unclaimed money" (as defined in section 3 of the Unclaimed Money Act). Any interest or other benefit accruing from the unclaimed Scheme Consideration will be to the benefit of Bidder.

## 6.9 Fractional entitlements and splitting

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

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

## 6.10 Orders of a court or Regulatory Authority

In the case of notice having been given to Target (or the Registry) of an order made by or a requirement of a court of competent jurisdiction or other Regulatory Authority which:

- (a) requires consideration to be provided to a third party (either through payment of a sum or issuance of a security) in respect of Scheme Shares held by a particular Scheme Participant, which would otherwise be payable or required to be issued to that Scheme Participant in accordance with clause 6 of this Scheme, then Target or Bidder (as applicable) will be entitled to pay or issue that consideration (or procure that it is paid or issued) in accordance with that order or direction; or
- (b) would prevent Target from providing consideration to any particular Scheme Participant in accordance with clause 6 of this Scheme, or the payment or issuance of such consideration is otherwise prohibited by applicable law, Target will be entitled to (as applicable):
  - (i) retain an amount, in Australian dollars, equal to the cash component of the Scheme Consideration to which that Scheme Participant would otherwise be entitled to under this clause 6; and
  - (ii) direct Bidder not to issue, or to provide to a trustee or nominee, such number of Bidder Shares as that Scheme Participant would otherwise be entitled to under this clause 6,until such time as provision of the consideration in accordance with clause 6 of this Scheme is permitted by that order or otherwise by law.
- (c) To the extent that amounts are so deducted or withheld in accordance with this clause 6.10, such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the person in respect of which such deduction and withholding was made, provided

that such deducted or withheld amounts are actually remitted as required.

### **6.11 Joint holders**

In the case of Scheme Shares held in joint names:

- (a) subject to clause 6.11(c), any amount comprising the Scheme Cash Consideration payable in respect of those Scheme Shares is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of Target, the holder whose name appears first in the Register as at the Record Date or to the joint holders; and
- (b) any Bidder Shares to be provided under this Scheme as part of the Scheme Scrip Consideration must be provided to and registered in the names of the joint holders in the same order as the holders name in the Register; and
- (c) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of Target, the holder whose name appears first in the Register as at the Record Date or to the joint holders.

### **6.12 Securities Act Exemption**

Bidder and Target agree that the Scheme will be carried out with the intention, and Bidder and Target will use their commercially reasonable efforts to ensure, that any and all Bidder Shares to be issued on completion of the Scheme will be issued by Bidder in reliance on the exemption from the registration requirements of the Securities Act provided by Section 3(a)(10) of the Securities Act. In order to ensure the availability of the exemption from registration, the parties agree that the Scheme will be carried out on the following basis:

- (a) this Scheme will be subject to approval of the Court;
- (b) the Court will be advised prior to the First Court Date of the intention of the parties to rely on the exemption from registration requirements provided by Section 3(a)(10) of the Securities Act with respect to the issuance of Bidder Shares to Scheme Participants pursuant to the Scheme, based on the Court's approval of the Scheme, and that its approval of the Scheme is to be relied upon as a determination that the Court has satisfied itself as to the procedural and substantive fairness of the terms and conditions of the Scheme to all persons who are entitled to receive Scheme Consideration pursuant to the Scheme;
- (c) Target will file evidence with the Court and make an argument regarding the fairness of the Scheme, in order to satisfy the test for approval by the Court;
- (d) Target will seek a declaration (to be evidenced in Court approval of the Scheme under section 411(4)(b) of the Corporations Act) from, or a finding of the Court that, the Scheme is procedurally and substantively fair to all persons entitled to receive Scheme Consideration pursuant to the Scheme;
- (e) Target will, following the First Court Date, ensure that each Scheme Participant and any other person entitled to receive Scheme Consideration pursuant to the Scheme will be given adequate and appropriate notice advising them of their right to attend the hearing of the Court to give approval of the Scheme and providing them with sufficient information necessary to exercise such right; and
- (f) the Scheme Booklet will state that each Scheme Participant and any other person entitled to receive Scheme Consideration pursuant to the Scheme will have the right to appear before the Court so long as they enter an appearance within a reasonable time.

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## **7 Dealings in Scheme Shares**

### **7.1 Determination of Scheme Participants**

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

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

and Target will not accept for registration, nor recognise for any purpose (except a transfer to Bidder under this Scheme and any subsequent transfer by 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.

### **7.2 Register**

Target must register registrable transmission applications or transfers of the Scheme Shares in accordance with clause 7.1(b) before the Record Date provided that, for the avoidance of doubt, nothing in this clause 7.2 requires 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' (for the purposes of this clause 7.2, 'marketable parcel' has the meaning given in the Operating Rules).

### **7.3 No disposals after Effective Date**

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

### **7.4 Maintenance of Target Register**

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

### **7.5 Effect of certificates and holding statements**

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

## **7.6 Details of Scheme Participants**

- (a) Target must provide, or procure the provision, to Bidder, details of any Election made by Target Shareholders, on the Business Day after the Election Date, including the name and address of each Target Shareholder who has made a valid Election and the number of Bidder Shares that the Bidder must issue to those Target Shareholders to meet its obligations under the Scheme in accordance with those Target Shareholders' Elections subject to the terms of this Scheme.
- (b) Within 3 Business Days after the Record Date, Target will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant, as shown in the Register at the Record Date are available to Bidder in such form as Bidder reasonably requires.

## **7.7 Quotation of Target Shares**

Target must apply to ASX to suspend trading on ASX of Target Shares with effect from the close of trading on the Effective Date.

## **7.8 Termination of quotation of Target Shares**

After the Scheme has been fully implemented and at least one day after the Implementation Date, Target will apply:

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

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# **8 Appointment of Target as attorney for implementation of Scheme**

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

- (a) executing any document or doing or taking any other act necessary, desirable or expedient, or incidental to give effect to this Scheme and the transactions contemplated by it including executing and delivering any Share Scheme Transfer; and
- (b) on and from the Effective Date enforcing the Deed Poll against Bidder (and Target undertakes in favour of each Scheme Participant that it will enforce the Deed Poll against Bidder on behalf of, and as agent and attorney of, each Scheme Participant),

and Target accepts such appointment. Target, as attorney and agent of each Scheme Participant, may sub-delegate any of its functions, authorities or powers under this clause 8 to all or any of its directors or officers (jointly, individually or jointly and individually).

---

# **9 Appointment of Bidder as attorney in respect of Scheme Shares**

Immediately upon the provision of the Scheme Consideration to each Scheme Participant in the manner contemplated by clause 6, until Bidder is registered as the holder of all Scheme Shares in the Register, each Scheme Participant, without the need for any further act by any Scheme Participant:

- (a) irrevocably appoints Bidder as its agent and attorney (and irrevocably appoints Bidder in such capacity) to appoint any director or officer

nominated by Bidder as its sole proxy, and where applicable corporate representative to:

- (i) attend Target Shareholders' meetings;
  - (ii) exercise the votes attaching to the Scheme Shares; and
  - (iii) sign any Target Shareholders' resolution;
- (b) must not attend or vote at any Target Shareholders' meetings, exercise the votes attaching to Scheme Shares registered in their names or sign or vote on any Target Shareholders' resolution (whether in person, by proxy or by corporate representative) other than pursuant to clause 9(a); and
- (c) must take all other action in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs.

---

## 10 Instructions and elections

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

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

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

---

## 11 Notices

### 11.1 Accidental omission

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

### 11.2 Form

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

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

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

### **11.3 Delivery**

Communications must be:

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

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

### **11.4 When effective**

Communications take effect from the time they are received or taken to be received under clause 11.5 (whichever happens first) unless a later time is specified in the communication.

### **11.5 When taken to be received**

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another); or
- (b) if sent by email:
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) 2 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed (which excludes any response generated by or at the instigation of the recipient such as an 'out of office' message),

whichever happens first.

### **11.6 Receipt outside business hours**

Despite anything else in this clause 11, if communications are received or taken to be received under clause 11.5 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

---

## **12 General**

### **12.1 Variations, alterations and conditions**

- (a) Target may, with the prior consent of Bidder, by its counsel or solicitor, consent on behalf of all persons concerned to those variations, alterations or conditions to this Scheme which the Court thinks fit to impose; and
- (b) each Scheme Participant agrees to any such variations, alterations or conditions which Target has consented to.

### **12.2 Further action by Target**

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

### **12.3 Authority and acknowledgement**

Each of the Scheme Participants irrevocably consents to Target and Bidder doing all things necessary or expedient for or incidental to the implementation of this Scheme.

### **12.4 No liability when acting in good faith**

Each Scheme Participant agrees that neither Target nor Bidder, nor any of their respective officers or employees, will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

### **12.5 Enforcement of Deed Poll**

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

### **12.6 Stamp duty**

Bidder will:

- (a) pay all stamp duty (including any surcharge, fines, penalties and interest) payable in connection with this Scheme or the transactions effected by or made under the Scheme; and
- (b) indemnify each Scheme Participant against any liability arising from failure to comply with clause 12.6(a),

subject to and in accordance with clause 7 of the Deed Poll.

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## **13 Governing law**

### **13.1 Governing law and jurisdiction**

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

### **13.2 Serving documents**

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

# Scheme Implementation Agreement

## Annexure B Deed Poll

# Deed Poll

Dated

Given by PAR Technology Corporation ("**Bidder**")

In favour of each registered holder of fully paid ordinary shares in TASK Group Holdings Limited (ACN 605 696 820) ("**Target**") as at the Record Date ("**Scheme Participants**")

**King & Wood Mallesons**

Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Australia  
**T** +61 2 9296 2000  
**F** +61 2 9296 3999  
DX 113 Sydney  
[www.kwm.com](http://www.kwm.com)

# Deed Poll

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# Deed Poll

## Details

### Parties

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<b>Bidder</b>	Name	<b>PAR Technology Corporation</b>
	Formed in	State of Delaware, United States
	Address	8383 Seneca Turnpike, New Hartford, New York 13413
	Email	bryan_menar@partech.com
	Attention	Bryan Menar
	<b>Copy to:</b>	Clayton Utz
	Address	Level 28, Riparian Plaza 71 Eagle Street Brisbane QLD 4000 Australia
	Email	ahay@claytonutz.com; cbarrett@claytonutz.com
	Attention	Andrew Hay, Partner

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<b>In favour of</b>	Each registered holder of fully paid ordinary shares in Target as at the Record Date.
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<b>Governing law</b>	New South Wales
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- |                 |          |  |
|-----------------|----------|--|
| <b>Recitals</b> | <b>A</b> | The directors of Target have resolved that Target should propose the Scheme.   |
|                 | <b>B</b> | The effect of the Scheme will be that all Scheme Shares will be transferred to Bidder.   |
|                 | <b>C</b> | Target and Bidder have entered into the Scheme Implementation Agreement.   |
|                 | <b>D</b> | In the Scheme Implementation Agreement, Bidder agreed (amongst other things) to provide (or procure the provision of) the Scheme Cash Consideration to Target on behalf of the Scheme Participants and the Scheme Scrip Consideration to the Scheme Participants, subject to the satisfaction of certain conditions. |
|                 | <b>E</b> | Bidder is entering into this deed poll for the purpose of undertaking in favour of Scheme Participants to perform its obligations under the Scheme and the Scheme Implementation Agreement.  |
-

# Deed Poll

## General terms

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### 1 Definitions and interpretation

#### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

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

**Scheme Implementation Agreement** means the scheme implementation agreement dated 9 March 2024 between Target and Bidder under which, amongst other things, Target has agreed to propose the Scheme to Target Shareholders, and each of Bidder and Target has agreed to take certain steps to give effect to the Scheme.

All other words and phrases used in this document have the same meaning as given to them in the Scheme.

#### 1.2 General interpretation

Clause 1.2 of the Scheme applies to this document.

#### 1.3 Nature of deed poll

Bidder acknowledges that:

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

---

### 2 Conditions precedent and termination

#### 2.1 Conditions precedent

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

#### 2.2 Termination

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

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

unless Target and Bidder otherwise agree.

## 2.3 Consequences of termination

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

- (a) Bidder is released from its obligations to further perform this document except those obligations contained in clause 7 and any other obligations which by their nature survive termination; and
- (b) each Scheme Participant retains the rights, powers or remedies they have against Bidder in respect of any breach of this document which occurs before it is terminated.

---

## 3 Performance of obligations generally

- (a) Bidder must comply with its obligations under the Scheme Implementation Agreement and do all acts and things necessary or desirable on its part to give full effect to the Scheme.
- (b) Subject to clause 2, Bidder covenants in favour of each Scheme Participant that it will be bound by the terms of the Scheme as if it were a party to the Scheme and undertakes to perform all obligations and other actions, including those obligations and actions which relate to providing, or procuring the provision of, the Scheme Consideration, and give each acknowledgement, representation and warranty (if any), attributed to it under the Scheme, subject to and in accordance with the terms of the Scheme Implementation Agreement and the Scheme.

---

## 4 Scheme Consideration

### 4.1 Scheme Consideration

Subject to clause 2, Bidder undertakes in favour of each Scheme Participant to observe and perform all obligations contemplated of Bidder under the Scheme to provide or procure the provision of the Scheme Consideration to each Scheme Participant, in accordance with the Scheme.

### 4.2 Shares to rank equally

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

- (a) rank equally in all respects among themselves and with all other Bidder Shares on issue in the Bidder; and
- (b) be fully paid, duly and validly issued in accordance with all applicable laws and free from any Encumbrance.

---

## 5 Representations and warranties

Bidder represents and warrants that:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:

- (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
- (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms; and
- (f) **(solvency)** it is not Insolvent (as defined in the Scheme Implementation Agreement).

---

## 6 Continuing obligations

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

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

---

## 7 Stamp duty and registration

Bidder:

- (a) agrees to pay or reimburse, or procure the payment or reimbursement of, all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with the Scheme, this document or any other transaction entered into in accordance with this document (including any fees, fines, penalties and interest in connection with any of these amounts); and
- (b) indemnifies each Scheme Participant against, and agrees to reimburse and compensate it, for any liability in respect of stamp duty under clause 7(a).

---

## 8 Notices and other communications

### 8.1 Form

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

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

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

### 8.2 Delivery

Communications must be:

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

(c) sent by email to the address referred to in the Details.

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

### **8.3 When effective**

Communications take effect from the time they are received or taken to be received under clause 8.4 (whichever happens first) unless a later time is specified in the communication.

### **8.4 When taken to be received**

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another); or
- (b) if sent by email:
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) 2 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed (which excludes any response generated by or at the instigation of the recipient such as an 'out of office' message),

whichever happens first.

### **8.5 Receipt outside business hours**

Despite anything else in this clause 8, if communications are received or taken to be received under clause 8.4 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

---

## **9 General**

### **9.1 Variation**

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

- (a) if the variation occurs before the First Court Date (as that term is defined in the Scheme Implementation Agreement) the variation is agreed to by Target and Bidder in writing; and
- (b) if the variation occurs on or after the First Court Date (as that term is defined in the Scheme Implementation Agreement), the variation is agreed to by Target and Bidder in writing and the Court indicates (either at the hearing on the First Court Date, at an interlocutory hearing or at the hearing on the Second Court Date) that the variation, alteration or amendment would not itself preclude approval of the Scheme,

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

## **9.2 Partial exercising of rights**

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

## **9.3 No waiver**

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

No failure to exercise, nor any delay in exercising, any right, power or remedy by Bidder or by any Scheme Participant operates as a waiver. A waiver of any right, power or remedy on one or more occasions does not operate as a waiver of that right, power or remedy on any other occasion, or of any other right, power or remedy.

## **9.4 Remedies cumulative**

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

## **9.5 Assignment or other dealings**

Bidder and each Scheme Participant may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of Bidder and Target. Any purported dealing in contravention of this clause 9.5 is invalid.

## **9.6 Further steps**

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

## **9.7 Severability**

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

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# **10 Governing law and jurisdiction**

## **10.1 Governing law and jurisdiction**

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

## **10.2 Serving documents**

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

### 10.3 Appointment of process agent

Without preventing any method of service allowed under any relevant law, Bidder:

- (a) irrevocably appoints Clayton Utz as its process agent to receive any document in an action in connection with this document, and agrees that any such document may be served on Bidder by being delivered to or left for Bidder at the following address:

Clayton Utz  
Level 28, Riparian Plaza  
71 Eagle Street  
Brisbane QLD 4000 Australia,

and agrees that failure by a process agent to notify Bidder of any document in an action in connection with this document does not invalidate the action concerned; and

- (b) if for any reason Clayton Utz ceases to be able to act as process agent, Bidder agrees to appoint another person as their process agent in the place referred to in clause 10.1 and ensure that the replacement process agent accepts its appointment and confirms its appointment to Target.

Bidder agrees that service of documents on its process agent is sufficient service on it.

**EXECUTED** as a deed poll

# Deed Poll

## Signing page

DATED: \_\_\_\_\_ 2024

**Bidder**

**PAR TECHNOLOGY CORPORATION**

By: \_\_\_\_\_  
Name: Bryan A. Menar  
Title: Chief Financial Officer

# Deed Poll

## Annexure A - Scheme

*[Note: Annexure has been omitted.]*