

**ASX Announcement****ASX: AND****13 February 2024**

## **Ansarada enters into Scheme Implementation Deed with Datasite**

- **Ansarada Group Limited (ASX: AND) (“Ansarada” or “Group”) has entered into a Scheme Implementation Deed with Datasite<sup>1</sup>, an entity owned by funds managed by CapVest, to acquire 100% of the fully diluted share capital in Ansarada by way of a Scheme of Arrangement (“Scheme”)**
- **Under the terms of the Scheme, Ansarada shareholders will be entitled to receive A\$2.50 cash per share, which implies an equity value of A\$236.3 million<sup>2</sup> and represents a premium of:**
  - **19.0% to the last closing price of A\$2.10<sup>3</sup> per share;**
  - **36.4% to the 7-day Volume Weighted Average Price (“VWAP”)<sup>4</sup>;**
  - **45.4% to the 3-month VWAP<sup>5</sup>; and**
  - **57.1% to the 6-month VWAP<sup>6</sup>**
- **The Scheme is the culmination of a period of extensive and meaningful engagement between Ansarada and Datasite to explore the opportunity and value proposition presented by combining Ansarada’s Deals and Procure products with Datasite**
- **As the engagement between the parties progressed, Datasite’s interest was directed towards acquiring Ansarada’s Deals and Procure products rather than Ansarada’s ESG, GRC and Board products (the “Carve-Out Assets”). Ultimately, Datasite confirmed that it did not wish to acquire Ansarada’s ESG, GRC and Board businesses as part of the Scheme**
- **Sam Riley (Ansarada CEO and Co-Founder) has agreed to acquire the Carve-Out Assets to enable the Scheme to proceed and give shareholders the opportunity to receive A\$2.50 cash per Ansarada share**
- **Accordingly, implementation of the Scheme is conditional on the divestment of the Carve-Out Assets to an entity associated with Sam Riley (the “Carve-Out Transaction”)**
- **Implementation of the Scheme and the Carve-Out Transaction are inter-conditional, and neither will proceed if the other does not proceed**
- **The Ansarada Recommending Directors<sup>7</sup> unanimously recommend Ansarada shareholders vote in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Ansarada shareholders**
- **Implementation of the Scheme is subject to Foreign Investment Review Board (“FIRB”) approval and other customary conditions, including Ansarada shareholder and Court approvals**
- **Ansarada shareholders do not need to take any action at the present time**

<sup>1</sup> Datasite has entered into the Scheme Implementation Deed via DS Answer Pty Ltd, an entity that is wholly controlled by Datasite.

<sup>2</sup> Fully diluted shares of 94.5 million, comprising 89.3 million issued ordinary shares and 5.2 million options (representing the number of shares equal to the number of options times A\$2.50 less the exercise cost associated with the outstanding options). It is expected that the options will vest and become issued ordinary shares by implementation of the Scheme.

<sup>3</sup> As of 12 February 2024.

<sup>4</sup> VWAP based on cumulative trading volume from 2 February 2024 up to and including 12 February 2024.

<sup>5</sup> VWAP based on cumulative trading volume from 13 November 2023 up to and including 12 February 2024.

<sup>6</sup> VWAP based on cumulative trading volume from 14 August 2023 up to and including 12 February 2024.

<sup>7</sup> The Ansarada Recommending Directors are all directors of Ansarada, other than Sam Riley.

## Transaction Overview

Ansarada is pleased to announce that it has entered into a binding Scheme Implementation Deed (“**SID**”) with Datasite for the acquisition of all issued securities in Ansarada for A\$2.50 cash per share (“**Scheme Consideration**”) pursuant to a Scheme of Arrangement (“**Scheme**”).

The Scheme Consideration implies a fully diluted equity valuation of A\$236.3 million<sup>8</sup> for Ansarada, and represents a:

- 168.8% premium to Ansarada’s closing share price of A\$0.93 on initial engagement with Datasite in June 2023;
- 19.0% premium to Ansarada’s last closing share price of A\$2.10 on 12 February 2024;
- 36.4% premium to Ansarada’s 7-day VWAP of \$1.83<sup>9</sup>;
- 37.4% premium to the 1-month VWAP of A\$1.82<sup>10</sup>;
- 45.4% premium to the 3-month VWAP of A\$1.72<sup>11</sup>; and
- 57.1% premium to the 6-month VWAP of A\$1.59<sup>12</sup>.

## Ansarada Independent Board Committee and Ansarada Recommending Directors unanimously recommend the Scheme

Ansarada’s independent non-executive directors, Mr Peter James, Ms Nancy Hobhouse, and Mr David Pullini, formed an independent board committee (“**Ansarada IBC**”) to consider Datasite’s indicative proposal.

During an extensive period of engagement from when Ansarada was initially approached by Datasite in June 2023, the Ansarada IBC (with the assistance of the management team, and financial and legal advisors) informed Datasite of Ansarada’s business, in particular the Deals and Procure products, and considered with Datasite a number of acquisition structures that would enable an attractive offer to be put to Ansarada shareholders. As a result of this engagement, the Ansarada IBC received an NBIO in November 2023, which the Ansarada IBC assessed with their advisors and determined it was not in the best interest of shareholders. Following further engagement, the Ansarada IBC received a revised and improved NBIO in mid-December 2023 which enabled further value to be unlocked through a structured solution whereby Ansarada would divest non-core Carve-Out Assets and Datasite would solely acquire the Deals and Procure products. As part of granting due diligence to Datasite, the Ansarada IBC agreed to propose the inter-conditional Scheme and Carve-Out Transaction.

The Ansarada IBC and executive director, Stuart Clout (together, the “**Ansarada Recommending Directors**”) unanimously recommend that Ansarada shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of the Ansarada shareholders. Subject to those qualifications, the Ansarada Recommending Directors each intend to vote all the Ansarada shares held or controlled by them in favour of the Scheme. The Ansarada Recommending Directors excludes Sam Riley, who was deemed to be conflicted due to his personal interests in the inter-conditional Carve-Out Transaction.

The Ansarada Recommending Directors believe that this is an attractive offer for Ansarada shareholders for the following reasons:

- **Share price premium:** the premium implied by the Scheme Consideration, which is enabled by the Carve-Out Transaction, represents an attractive value for Ansarada shareholders;

<sup>8</sup> Fully diluted shares of 94.5 million, comprising 89.3 million issued ordinary shares and 5.2 million options (representing the number of shares equal to the number of options times A\$2.50 less the exercise cost associated with the outstanding options). It is expected that the options will vest and become issued ordinary shares by implementation of the Scheme.

<sup>9</sup> VWAP based on cumulative trading volume from 2 February 2024 up to and including 12 February 2024.

<sup>10</sup> VWAP based on cumulative trading volume from 15 January 2024 up to and including 12 February 2024.

<sup>11</sup> VWAP based on cumulative trading volume from 13 November 2023 up to and including 12 February 2024.

<sup>12</sup> VWAP based on cumulative trading volume from 14 August 2023 up to and including 12 February 2024.

- **Certainty of value:** 100% cash consideration provides certainty of value and the opportunity to realise their investment in full for cash; and
- **Limited conditionality:** the Scheme is subject to customary conditions for a transaction of this nature and not subject to financing or due diligence.

Sam Riley has abstained from giving a recommendation in respect of how Ansarada shareholders should vote on the Scheme due to his personal interests in the inter-conditional Carve-Out Transaction. Mr Riley will also abstain from voting on the Scheme.

### **Carve-Out Transaction**

Implementation of the Scheme is subject to Ansarada divesting of the Carve-Out Assets to an entity associated with Sam Riley for A\$500,000. The Carve-Out Assets are at their early stages in adjacent areas, are cashflow negative and are considered to be non-core to Datasite's strategy and business. Therefore, Datasite required Ansarada to divest the Carve-Out Assets if the Scheme is implemented. Sam Riley has agreed to acquire the Carve-Out Assets, which will have increased risks as a standalone business. The Carve-Out Transaction enables an attractive outcome for shareholders, ensures customers who rely on the products are served well and provides continuity for the team to continue developing the products. The Scheme is therefore conditional on the approval of the Carve-Out Transaction by Ansarada shareholders.

As Sam Riley is a related party of Ansarada, completion of the Carve-Out Transaction is subject to (among other things):

- Ansarada shareholder approval of the Carve-Out Transaction being obtained pursuant to ASX Listing Rule 10.1 and Chapter 2E of the Corporations Act at an extraordinary general meeting (which is expected to be held immediately prior to the Scheme meeting). Sam Riley and his respective associates are not eligible to vote on the resolutions to approve the Carve-Out Transaction; and
- the Scheme becoming effective.

Implementation of the Scheme is subject to (among other things) Ansarada shareholders approving the Carve-Out Transaction. Accordingly, neither the Scheme nor the Carve-Out Transaction will proceed unless Ansarada shareholders approve both the Scheme and Carve-Out Transaction. Given his personal interest in the inter-conditional Carve-Out Transaction, Sam Riley will also abstain from voting on the Carve-Out Transaction.

### **Ansarada Chairman and Independent Director, Peter James, said:**

"The all-cash acquisition of Ansarada offered by Datasite, and the premium it represents, reflects a constructive process between Ansarada and Datasite that has involved board members and key management personnel from both parties. The Independent Directors believe the offer made to Ansarada shareholders appropriately values the Deals and Procure products. After an extensive and collaborative process, we are pleased to be entering into this binding transaction and believe it is in the best interests of our shareholders.

Datasite believes that Ansarada's Deals and Procure products are complementary to their strategy moving forward, which form the basis of the Scheme and the Carve-Out Transaction. It is intended that the early-stage ESG, GRC and Board businesses will continue to operate on a standalone basis with a pre-committed level of working capital. These businesses remain in their infancy, and as a collective are loss-making to the Ansarada Group and require continued investment and focus on product market fit, go-to-market strategies and other early-stage business considerations.

The Ansarada IBC have unanimously concluded the Scheme represents an attractive outcome for Ansarada shareholders. The offer premia reflects the inherent value of the Ansarada Group."

**Ansarada CEO and Co-Founder, Sam Riley, said:**

“As a Co-Founder of Ansarada I am very excited by the prospect of Ansarada and Datasite joining forces. The proposed transaction represents the culmination of almost 18 years of work to improve the deal management process. At this stage of our lifecycle, we see tremendous value in combining the Ansarada Deals and Procure products with Datasite. We have a shared vision of development and how we should serve our customers, and joining forces allows a broader and deeper product suite for our customers, and opportunities for the Ansarada team in a global business.

The Carve-Out Transaction, whilst presenting more risk as a standalone business, enables maximum value for Ansarada shareholders. I’m passionate about ensuring every stakeholder in this transaction is served well.

The Carve-Out Transaction ensures those early-stage products, customers and the team behind them continue strongly.”

**Datasite President and CEO, Rusty Wiley, said:**

“Datasite continues to focus on empowering global enterprises to work smarter and execute their strategic projects in a fast, simple, and secure manner. Ansarada’s Deals and Procure products are therefore highly complementary to Datasite’s existing platform.

We are excited to continue our expansion in Asia Pacific and to accelerate the growth of Ansarada’s Deals and Procure products through Datasite’s global footprint. Over the last several months we have assessed the other components of Ansarada’s portfolio and concluded that these were non-core to Datasite and should be divested. We have therefore required Ansarada to carve-out those components and have reached an agreement with them as to the terms on which this should occur.

We also look forward to welcoming Ansarada’s talented team to Datasite and partnering together to deliver high-quality service, innovation and value to our customers around the world.”

**Key terms of the Scheme Implementation Deed**

Implementation of the Scheme is subject to conditions customary for a transaction of this nature including:

- FIRB approval;
- Ansarada shareholder approval;
- an Independent Expert report concluding (and continuing to conclude) that the Scheme is in the best interests of Ansarada shareholders;
- Court approval;
- no Ansarada material adverse change; and
- no prescribed occurrences.

Implementation of the Scheme is also subject to the entry into arrangements to effect the Carve-Out Transaction (on terms that reflect agreed binding term sheets), and Ansarada shareholders approving the Carve-Out Transaction. These arrangements contemplate that:

- an entity associated with Sam Riley will acquire the Carve-Out Assets (comprising intellectual property used in, and working capital to support, the ESG, GRC and Board businesses, as well as the assumption of related employee costs and associated contractual liabilities of those businesses); and
- Ansarada providing transitional services for an initial period of up to 12 months to support the ESG, GRC and Board businesses.

The Scheme is not subject to a financing condition and Datasite has advised Ansarada it expects to fully fund the all-cash Scheme Consideration from existing financing resources.

The SID contains customary exclusivity provisions, including no shop, no talk and no due diligence obligations, notification obligations and a matching right. A break fee will be payable by Ansarada to Datasite in certain circumstances, and a reverse break fee will be payable by Datasite to Ansarada in certain circumstances.

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

### **Indicative timetable and next steps**

Ansarada shareholders do not need to take any action at the present time. A Scheme Booklet containing information relating to the Scheme, the reasons for the Ansarada Recommending Directors' recommendation, an Independent Expert Report opining on whether the Scheme is in the best interests of Ansarada shareholders and details of the Scheme Meeting is expected to be sent to shareholders in April 2024. Ansarada shareholders will be given the opportunity to vote on the Scheme at a court convened Scheme Meeting and the Carve-Out Transaction at an extraordinary general meeting, which are both anticipated to be held in May 2024, and if approved, the Scheme and the Carve-Out Transaction are expected to be implemented shortly thereafter.

### **Advisers**

Ansarada is being advised by MA Moelis Australia and DLA Piper Australia.

Datasite is being advised by Jefferies Australia and Allens.

This announcement was authorised for release by the Board of Ansarada Group Limited.

**-ENDS-**

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**About Ansarada (ASX:AND)**

Ansarada is a SaaS (Software-as-a-Service) Platform with products used by the world's top companies, advisors and governments to govern their most critical information and processes in Deals and Transaction Management, Board Management, Governance, Risk and Compliance and Infrastructure procurement. Ansarada enables organisations across the globe to be run more efficiently, with reduced risk and an increased ability to make fast confident decisions.

Ansarada is purpose-driven with a mission to help organisations be confident in every critical decision throughout their lifecycle so they can fully realise their potential.

For more information, please visit [www.ansarada.com/investor-relations](http://www.ansarada.com/investor-relations)

**About Datasite**

Datasite is a leading SaaS platform that is used by enterprises globally to execute complex mission-critical projects. Datasite's innovative products drive workflow automation and efficiencies, while generating unique data insights to empower knowledge workers around the world to succeed across the entire project lifecycle.

Datasite is owned by CapVest Partners LLP ("CapVest"). CapVest is a leading international private equity investor that partners with ambitious companies supplying essential goods and services to transform their businesses. As an active and patient investor, CapVest has established a strong record of success in delivering attractive returns by working closely with management in transforming the size and scale of its portfolio companies through a combination of organic and acquisition-led growth. For more information, visit [www.capvest.com](http://www.capvest.com)

# Scheme Implementation Deed

DS Answer Pty Ltd (ACN 674 445 375)  
Ansarada Group Limited (ACN 602 586 407)  
Mermaid BidCo Inc. (Delaware File Number 3570833)

Dated 13 February 2024



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This deed is made on 13 February 2024

# Parties

**Bidder**

Name DS Answer Pty Ltd  
ACN 674 445 375  
Address C/O Tricor, Level 3, 1049 Victoria Road, West Ryde, NSW, 2114  
Email [REDACTED]  
Attention [REDACTED]

**Bidder Guarantor**

Name Mermaid BidCo Inc.  
DE File Number 3570833  
Address 733 Marquette Avenue South, Suite 600, Minneapolis, MN 55402  
Email [REDACTED]  
Attention [REDACTED]

**Target**

Name Ansarada Group Limited  
ACN 602 586 407  
Address Level 2 80 George Street The Rocks NSW 2000  
Email [REDACTED]  
Attention [REDACTED]

# Background

- A The parties have proposed that Bidder will acquire all of the Target Shares by way of a scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders.
- B Bidder is a Subsidiary of Bidder Guarantor.
- C The parties have agreed to propose and, if approved, implement, the Scheme on and subject to the terms and conditions of this deed.

# Agreed terms

## 1 Defined terms and interpretation

**Definitions**

- 1.1 In this deed the following definitions apply:

**Acceptable Confidentiality Agreement** means a confidentiality agreement which contains obligations on the recipient of confidential information which are no less onerous in any material respect than the obligations of the Bidder’s Related Body Corporate under the Confidentiality Agreement (including in respect of the standstill obligations set out in clause 11 of the Confidentiality Agreement).

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

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

**Associate** has the meaning given in section 12(2) of the Corporations Act as if Target was the "designated body".

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

**Authorised Person** means, in respect of a person:

- (a) a director, officer, contractor, agent or employee of the person; and
- (b) an Adviser of the person.

**Bidder Group** means Bidder and its Related Bodies Corporate (including Bidder Guarantor and Mermaid EquityCo L.P.) and **Bidder Group Member** means any one of them as the context otherwise requires.

**Bidder Parties** means each Bidder Group Member and any Authorised Persons of a Bidder Group Member and **Bidder Party** means any one of them as the context otherwise requires.

**Bidder Information** means information regarding the Bidder Group provided by or on behalf of Bidder to Target or the Independent Expert for inclusion in the Scheme Booklet or use in preparation of the Independent Expert's Report, being:

- (a) information about Bidder, other Bidder Group Members, its business and interests and dealings in Target Shares and Bidder's intentions for the Target Group (including its assets, business and employees) and Bidder's funding; and
- (b) any other information required under the Corporations Act, Corporations Regulations or RG 60 to enable the Scheme Booklet to be prepared that the parties agree is "Bidder Information" and that is identified in the Scheme Booklet as such,

but does not include any Target Information.

**Bidder Warranties** means the warranties of Bidder and Bidder Guarantor set out in clause 9.1 and **Bidder Warranty** means any one of them as the context requires.

**Break Fee** means \$2,360,000 (exclusive of any applicable GST).

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

**Carve-Out Buyer** means an entity to be incorporated that will be directly or indirectly owned by Sam Riley.

**Carve-Out Co** means TriLine GRC Pty Ltd ACN 134 219 284.

**Carve-Out Assets** means the assets which comprise the Target Group's "GRC", "ESG" and "Board" businesses which will be held by Carve-Out Co immediately prior to Implementation.

**Carve-Out General Meeting** means the general meeting of Target Shareholders to be convened to consider and vote on the Carve-Out Resolutions and includes any meeting convened following any adjournment or postponement of such a meeting.

**Carve-Out Resolutions** means the resolutions to be put to Target Shareholders to approve the Carve-Out Transaction for the purposes of Listing Rule 10.1 and Chapter 2E of the Corporations Act.

**Carve-Out Transaction** means the sale of the Carve-Out Assets by Target to Carve-Out Buyer pursuant to the terms and conditions of the Carve-Out Transaction Documents (and, prior to entry into the Carve-Out Transaction Documents, the term sheets referred to in the definition of Carve-Out Transaction Documents).

**Carve-Out Transaction Documents** means the final binding long-form documentation in respect of the Carve-Out Transaction as contemplated by:

- (a) the carve out term sheet entered into between Carve-Out Co, Target, Sam Riley (and to be entered into by the Carve-Out Buyer) on or around the date of this deed; and
- (b) the TSA term sheet entered into between Carve-Out Co and Target on or around the date of this deed.

**Change of Control Requirements** has the meaning given to that term in clauses 7.10 to 7.12.

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

**Competing Bidder** means a person other than Bidder, any other Bidder Group Member and their respective Associates.

**Competing Proposal** means any actual, proposed or potential proposal, offer, expression of interest, agreement, arrangement or transaction, which, if entered into or completed substantially in accordance with its terms, would result in a Competing Bidder (either alone or together with any Associate(s)):

- (a) directly or indirectly acquiring a relevant interest in, or having a right to acquire a legal, beneficial or economic interest in, or control of, 20% or more of the Target Shares or voting power of 20% or more in Target;
- (b) directly or indirectly acquiring all or a substantial or material part of the assets, business or undertakings of Target or a Target Group Member or otherwise acquiring, becoming the holder of or having a right to acquire a legal, beneficial or economic interest in all or a substantial or material part of the assets, business or undertakings of Target or a Target Group Member;
- (c) acquiring Control of Target or any Target Group Member;
- (d) otherwise directly or indirectly acquiring, or merging with, Target or any Target Group Member; or
- (e) requiring Target to abandon, or otherwise fail to proceed with, the Transaction,

whether by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale or purchase of securities or assets, strategic alliance, dual listed company structure (or other synthetic merger), joint venture or partnership, reverse takeover bid, shareholder

approved acquisition or disposal, divestment, sell-down, capital raising, security buy-back or other transaction or arrangement (and for the avoidance of doubt does not include the Carve-Out Transaction). For the avoidance of doubt, each successive material modification or variation of any expression of interest, proposal, offer, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

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

**Confidentiality Agreement** means the mutual non-disclosure agreement dated 18 August 2023 between Target and Mermaid EquityCo L.P..

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

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

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

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

**Deed Poll** means the deed poll to be executed and delivered by Bidder and Bidder Guarantor prior to the First Court Date, in the form set out in Schedule 3 or in such other form as is approved by Target in writing.

**Disclosure Letter** means a letter identified as such and dated on or about the date of this deed between Target, Bidder and Bidder Guarantor.

**Effective** means, when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to that Scheme.

**Effective Date**, with respect to the Scheme, means the date on which the Scheme becomes Effective.

**Encumbrance** means a mortgage charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

**End Date** means the date that is 8 months after the date of this deed, or such other date agreed in writing by the parties.

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

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

**Fairly Disclosed** means disclosed to a Bidder Group Member in good faith and in sufficient detail so as to enable a reasonable and sophisticated buyer experienced in transactions similar to the Transaction and experienced in a business similar to any business conducted by the Target Group, to identify the nature and scope of the relevant matter, event or circumstance.

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

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

**FIRB Condition** means the Condition in clause 3.1(a).

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

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

**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 by proxy.

**Implementation Date** means, with respect to the Scheme, the fifth Business Day, or such other Business Day as the parties agree, after the Scheme Record Date.

**Independent Expert** means an expert, independent of the parties, engaged by Target to prepare the Independent Expert's Report.

**Independent Expert's Report** means the report from the Independent Expert commissioned by Target for inclusion in the Scheme Booklet, which includes a statement by the Independent Expert on whether, in its opinion, the Transaction is in the best interests of Target Shareholders, and includes any update of that report by the Independent Expert.

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

- (a) the person becoming unable to or states that it is unable to pay its debts as they fall due or stops or threatens to stop paying its debts as they fall due;
- (b) any indebtedness of the person becoming subject to a moratorium;
- (c) a liquidator, provisional liquidator or administrator has been appointed to the person, a controller (as defined in section 9 of the Corporations Act) has been appointed to any property of the person, or an event which gives any other person a right to seek such an appointment;
- (d) an order has been made, a resolution has been passed or proposed in a notice of meeting or in an announcement to any recognised securities exchange, or an application to court has been made for the winding up or dissolution of the person or for the entry into of any arrangement, compromise or composition with, or assignment for the benefit of, creditors of the person or any class of them (other than frivolous or vexatious orders or applications);
- (e) a security interest (within the meaning of section 51A of the Corporations Act) becomes enforceable or is enforced over, or a writ of execution, garnishee order, mareva injunction or similar order has been issued over or affecting, all or a substantial part of the assets of the person; or
- (f) the person has otherwise become, or is otherwise taken to be, insolvent in any jurisdiction or an event occurs in any jurisdiction in relation to the person which is

analogous to, or which has a substantially similar effect to, any of the events referred to in paragraphs (a) to (e) above,

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

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

**Material Adverse Change** means a change, event, circumstance, occurrence, condition, matter or thing (each a **Specified Event**) which, whether individually or when aggregated with all such Specified Events that have occurred, has had or would be considered reasonably likely to have the net effect of reducing the:

- (a) consolidated annual revenue of the Target Group (excluding revenue solely attributable to any of the Carve-Out Assets) for the financial year ending 30 June 2024 or the financial year ending 30 June 2025 by \$5,600,000 or more against what it would reasonably be expected to have been but for that Specified Event; or
- (b) cash balance of the Target Group (excluding cash solely attributable to any of the Carve-Out Assets) after the date of this deed and before the Second Court Date to less than \$8,500,000,

each as calculated in accordance with the accounting policies and practices applied by Target as at the date of this deed and taking into account any matters which offset, or are reasonably likely to offset the impact of the same Specified Event(s) on the consolidated annual revenue or cash (as applicable) of the Target Group, in each case other than a Specified Event:

- (c) required or permitted under this deed, the Scheme, or the Carve-Out Transaction or the transactions contemplated under this deed, the Scheme or the Carve-Out Transaction;
- (d) to the extent it affects revenue or cash (as applicable) solely attributable to any of the Carve-Out Assets;
- (e) to the extent Fairly Disclosed in:
  - (i) the Target Disclosure Materials; or
  - (ii) an announcement made by Target to ASX or a publicly available document lodged by a Target Group Member with ASIC, in the three years prior to the date of this deed;
- (f) consented to in writing by Bidder;
- (g) relating to the costs and expenses incurred by Target in connection with the Transaction or the Carve-Out Transaction or the directors' and officers' runoff insurance contemplated by clause 16.9;
- (h) that is within the knowledge of a Bidder Group Member as described in clause 1.5;
- (i) that would have been Fairly Disclosed to Bidder, or which ought to have been expected to arise from anything which would have been Fairly Disclosed to Bidder, had Bidder conducted searches of public records maintained by:
  - (i) ASIC;
  - (ii) the PPSR; or

- (iii) the registries of the High Court of Australia, the Federal Court of Australia and the Supreme Court in every State and Territory in Australia; or
- (j) which arise from:
  - (i) any disease, epidemic or pandemic (including the outbreak, escalation or any impact of, or recovery from, COVID-19 or any related epidemic or pandemic arising from a mutation, variation or derivative of the COVID-19 virus);
  - (ii) changes in taxation rates, exchange rates or interest rates;
  - (iii) general economic, political or business conditions, including material adverse changes or disruptions to, or fluctuations in, domestic or international financial markets or economic, business, industry or political conditions, and acts of terrorism, outbreak, war (or escalation of war, whether or not declared), major hostilities, civil unrest, act of god, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, or other natural disaster or adverse weather conditions or the like; or
  - (iv) any actual or proposed changes to accounting standards, laws, regulations or policies of a Government Agency or the interpretation of any of the foregoing,

other than where such conditions or changes have a materially disproportionate effect on the Target Group as compared to other participants in the industry in which the Target Group operates.

**Material Contract** means:

- (a) in relation to clause 7.1(k), a contract, agreement, arrangement or commitment to which a Target Group Member is a party under which a Target Group Member is obligated to make or receive payments in excess of \$100,000 in any 12 month period; and
- (b) in all other cases, a contract, agreement, arrangement or commitment to which a Target Group Member is a party under which a Target Group Member is obligated to make or receive payments in excess of \$50,000 in any 12 month period.

**Permitted Encumbrance** means:

- (a) any Encumbrance where a Target Group Member is the secured party;
- (b) any Encumbrance created under or in connection with this deed;
- (c) any Encumbrance arising in favour of a Government Agency by operation of law in the ordinary course of business;
- (d) any Encumbrance arising in connection with any retention of title arrangement arising in the ordinary course of business;
- (e) any Encumbrance for money payable for work performed by suppliers, mechanics, workmen, repairmen or similar service providers or employees, or other like lien, in each case, arising in the ordinary course of business;
- (f) any Encumbrance arising as a consequence of any finance lease, capital lease, hire purchase arrangement or any other purchase money security interest (as that term is defined in the PPSA);

- (g) any Encumbrance made in favour of a landlord to secure performance under a lease of a Target Group Member where required under the terms of the lease;
- (h) any rights of set-off or withholding under a commercial contract entered into by a Target Group Member in the ordinary course of business;
- (i) any Encumbrance that is a security interest solely by virtue of section 12(3) of the PPSA; or
- (j) any Encumbrance granted by a Target Group Member, as at the date of this deed.

**Permitted Special Dividend** means a special dividend declared or determined by the Target Board, paid by Target to Target Shareholders between the date of this deed and the Implementation Date (which must be fully franked), in respect of which all of the requirements in clause 4.6 have been satisfied.

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

**PPSR** means the register of security interests maintained in accordance with the PPSA.

**Recommendation** has the meaning given to that term in clause 6.2.

**Regulatory Approval** means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Government Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Government Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

**Regulatory Guides** means the regulatory guides published by ASIC from time to time.

**Related Body Corporate** of a person, means a related body corporate of that person under section 50 of the Corporations Act and includes any body corporate that would be a related body corporate if section 48(2) of the Corporations Act was omitted.

**Reverse Break Fee** means \$2,360,000 (exclusive of any applicable GST).

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

**Scheme** means the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between Target and the Scheme Shareholders, substantially in the form set out in Schedule 2 or in such other form as Target and Bidder agree in writing, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Target and Bidder.

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

**Scheme Consideration** means the consideration to be provided by Bidder to each Scheme Shareholder for the transfer to Bidder of each Scheme Share, being \$2.50 cash for each Target Share held by a Scheme Shareholder as at the Scheme Record Date less the cash



amount of any Permitted Special Dividend paid to Target Shareholders in accordance with clause 4.5.

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

**Scheme Record Date** means the time and date for determining entitlements to receive the Scheme Consideration, being 7:00pm on the second Business Day after the Effective Date (or such other time and date as the parties agree in writing).

**Scheme Share** means a Target Share on issue as at the Scheme Record Date.

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

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

**Security Interest** has the meaning given in section 12 of the *Personal Property Securities Act 2009* (Cth).

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

**Subsidiary** has the meaning given to that term in Division 6 of Part 1.2 of the Corporations Act.

**Superior Proposal** means a bona fide Competing Proposal which the Target IBC determines, acting in good faith and in order to satisfy what Target IBC considers to be the Target IBC Members' statutory or fiduciary duties (after having received advice from its external legal advisors and, if appropriate, financial advisors):

- (a) is reasonably capable of being valued and completed in a timely manner; and
- (b) would if completed substantially in accordance with its terms, be reasonably likely to result in a transaction that is more favourable to Target Shareholders as a whole than the Transaction,

having regard to the terms and conditions of the Competing Proposal, the identity of the person making the Competing Proposal, the consideration proposed, conditionality, funding, certainty and timing.

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

**Target Director** means any director of Target as the context requires.

**Target Disclosure Materials** means the Target Due Diligence Materials and the Disclosure Letter.

**Target Due Diligence Materials** means all written information (including management presentations and the responses to questions or requests for information) included in the online dataroom established by or on behalf of Target at [www.ansarada.com](http://www.ansarada.com) prior to 5:00pm on 9 February 2024, the index of which has been initialled for identification by or on behalf of Target and Bidder.

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

**Target IBC** means the independent committee of the Target Board from time to time established to consider the Transaction and the Carve-Out Transaction comprising, as at the date of this deed, Mr Peter James, Ms Nancy Hobhouse, and Mr David Pullini, and **Target IBC Member** means any one of them as the context requires.

**Target Information** means all information included in the Scheme Booklet other than the Bidder Information, the Independent Expert's Report (and references to the Independent Expert's analysis or conclusions) and any other report or letter issued by someone other than Target.

**Target Option** means an option to acquire an unissued Target Share itemised in Schedule 4.

**Target Parties** means each Target Group Member and any Authorised Persons of a Target Group Member and **Target Party** means any one of them as the context otherwise requires.

**Target Prescribed Occurrence** means the occurrence of any of the following events:

- (a) Target converts all or any of its securities into a larger or smaller number of securities;
- (b) a Target Group Member resolves to reduce, reclassify, convert, split, redeem, combine or repurchase its share capital in any way whether directly or indirectly;
- (c) a Target Group Member:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) any Target Group Member issues securities (including shares, or securities convertible into shares), or grants a performance right, an option over its securities, or agrees to make such an issue or grant such a security, right or option (including by way of an amendment or variation of an existing employee incentive plan), other than:
  - (i) to any other Target Group Member; or
  - (ii) the issue of Target Shares upon the exercise of a Target Option as contemplated by this deed;
- (e) any Target Group Member issues, or agrees to issue, convertible securities (other than to any other Target Group Member);
- (f) any Target Group Member 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) except any Permitted Special Dividend in accordance with this deed;
- (g) any Target Group Member amends its constitution or any other of its corporate governance documentation, including by adopting a new constitution;
- (h) any Target Group Member becomes Insolvent;
- (i) any Target Group Member disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property; or

- (j) a Target Group Member grants, or agrees to grant, an Encumbrance in the whole, or a substantial part, of its business or property other than a lien securing an obligation that is not yet due which arises by operation of law, legislation or which arises in the ordinary course of the Target Group's business or a Permitted Encumbrance,

provided that a Target Prescribed Occurrence will not include any matter:

- (k) expressly required or permitted to be done by this deed, the Scheme or the Carve-Out Transaction, provided that, in respect of the Carve-Out Transaction, the matter is effected in accordance with the Carve-Out Transaction Documents as approved by Bidder where required in accordance with clause 5.9(c);
- (l) to the extent it is Fairly Disclosed in, or which ought to have been expected to arise from anything Fairly Disclosed in:
  - (i) the Target Disclosure Materials; or
  - (ii) an announcement made by Target to ASX or a publicly available document lodged by a Target Group Member with ASIC, in the three years prior to the date of this deed; or
- (m) the undertaking of which Bidder has previously approved in writing (which approval must not be unreasonably withheld, conditioned or delayed).

**Target Recommending Directors** means the following Target Directors:

- (a) Mr Peter James;
- (b) Mr Stuart James Clout;
- (c) Ms Nancy Hobhouse; and
- (d) Mr David Pullini,

and **Target Recommending Director** means anyone of them as the context requires.

**Target Registry** means Boardroom Pty Limited ACN 003 209 836, or any replacement provider of share registry services to Target.

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

**Target Share 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.

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

**Target Warranties** means the warranties of Target set out in clause 9.2 and **Target Warranty** means any one of them as the context requires.

**Tax Condition** means a condition or undertaking which are in the form, or substantially in the form, consistent with the "standard tax conditions" in the Australia Foreign Investment Review Board's Guidance Note 12 (*Tax conditions overview*) as last updated on 18 August 2023 and updated from time to time.

**Third Party** means a person other than Bidder or any other Bidder Group Member.

**Timetable** means the indicative timetable in relation to the Transaction set out in Schedule 1 with such modifications as may be agreed in writing by the parties.

**Transaction** means the proposed acquisition by Bidder, in accordance with the terms and conditions of this deed, of all of the Target Shares through the implementation of the Scheme.

**Voting Intention** has the meaning given to that term in clause 6.2.

## **Interpretation**

- 1.2 In this deed, the headings do not affect interpretation and unless the context otherwise requires:
- (a) any reference, express or implied, to any legislation in any jurisdiction includes:
    - (i) that legislation as amended, extended or applied by or under any other legislation made before or after signature of this deed;
    - (ii) any legislation which that legislation re-enacts with or without modification; and
    - (iii) any subordinate legislation made before or after signature of this deed under that legislation, including (where applicable) that legislation as amended, extended or applied as described in clause 1.2(a)(i), or under any legislation which it re-enacts as described in clause 1.2(a)(ii);
  - (b) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
  - (c) references to an individual or a natural person include his or her estate and personal representatives;
  - (d) a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix of or to this deed (and the schedules and appendices form part of this deed);
  - (e) subject to clause 19.2, references to a party to this deed include the successors or assigns (immediate or otherwise) of that party;
  - (f) a reference to any instrument or document includes any variation or replacement of it;
  - (g) unless otherwise indicated, a reference to any time is, a reference to that time in Sydney, Australia;
  - (h) a reference to \$, A\$ or dollars is to Australian currency;
  - (i) singular words include the plural and vice versa;
  - (j) a word of any gender includes the corresponding words of any other gender;
  - (k) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
  - (l) general words must not be given a restrictive meaning just because they are followed by particular examples intended to be embraced by the general words (including particular examples introduced by “including”, “for example”, “such as” or similar expressions);

- (m) any agreement, representation, warranty or indemnity on the part of two or more persons binds them jointly and severally;
- (n) nothing is to be construed adversely to a party just because that party put forward this deed or the relevant part of this deed;
- (o) this deed includes any schedule;
- (p) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this deed;
- (q) a term defined in or for the purposes of the GST Act, and which is not defined in clause 1.1, has the same meaning when used in this deed;
- (r) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is taken to be subject to any waiver or exemption granted to the compliance of those rules by a party;
- (s) 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;
- (t) if a party must do something under this deed 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
- (u) if the day on which a party must do something under this deed is not a Business Day, the party must do it on the next Business Day.

#### **Target awareness**

- 1.3 In this deed, a reference to the knowledge, belief or awareness of Target or a Target Group Member is limited to its actual knowledge, belief or awareness, deemed only to comprise, the facts, matters and circumstances of which any of the persons in the list of persons agreed by Target and Bidder in the Disclosure Letter is actually aware as at the date of this deed having made reasonable enquiries of each other and their direct reports. The knowledge, belief and awareness of any other person will not be imputed to Target nor any other Target Group Member (except to the extent referred to in this clause 1.3).
- 1.4 Without limiting clause 16, none of the persons referred to in clause 1.3 as being agreed between the parties in writing will bear any personal liability in respect of the Target Warranties, except where such person has engaged in wilful misconduct, wilful concealment or fraud.

#### **Bidder awareness**

- 1.5 In this deed, a reference to the knowledge, belief or awareness of Bidder or a Bidder Group Member is limited to its actual knowledge, belief or awareness, deemed only to comprise, the facts, matters and circumstances of which any of the persons in the list of persons agreed by Target and Bidder in the Disclosure Letter is actually aware as at the date of this deed having made reasonable enquiries of each other and their direct reports. The knowledge, belief and awareness of any other person will not be imputed to Bidder nor any other Bidder Group Member (except to the extent referred to in this clause 1.5).
- 1.6 Without limiting clause 16, none of the persons referred to in clause 1.5 as being agreed between the parties in writing will bear any personal liability in respect of Bidder Warranties, except where such person has engaged in wilful misconduct, wilful concealment or fraud.

#### **Best and reasonable endeavours**

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

(a) pay any money or to provide any financial compensation, or any other incentive to or for the benefit of any person in the form of an inducement or consideration except for payment of:

(i) any application fee for the lodgement or filing of any relevant application with any Government Agency; or

(ii) immaterial expenses or costs, including costs of advisers,

to procure the relevant thing; or

(b) commence or defend any legal action or proceeding against any person,

except, in each case, where that provision expressly specifies otherwise and, for the avoidance of doubt, that party will not breach the relevant provision requiring the use of best, all reasonable endeavours or similar where the party does not procure that the thing is performed or occurs or does not occur as a result of matters outside the control or influence of the party.

## 2 Agreement to propose Scheme

### Proposal of Scheme

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

2.2 Bidder agrees to assist Target to propose the Scheme on and subject to the terms and conditions of this deed.

2.3 The parties agree to implement the Scheme on and subject to the terms and conditions of this deed.

## 3 Conditions precedent

### Conditions to Scheme

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

Item	Condition Precedent	Party entitled to benefit	Party Responsible
(a)	<p><b>(FIRB approval):</b> before 5:00pm on the Business Day before the Second Court Date, either:</p> <p>(i) Bidder has received a written notice under FATA, by or on behalf of the Treasurer of the Commonwealth of Australia, stating that the Commonwealth Government does not object to the acquisition by Bidder of the Scheme</p>	Both, but cannot be waived	Bidder

Item	Condition Precedent	Party entitled to benefit	Party Responsible
	<p>Shares pursuant to the Scheme, either unconditionally or subject to conditions acceptable to Bidder acting reasonably and in good faith (subject to clause 3.3(f)(i) and 3.3(f)(ii)), and the written notice has not been withdrawn, suspended or revoked;</p> <p>(ii) the Treasurer of the Commonwealth of Australia becomes precluded by the passage of time from making an order under Division 2 of Part 3 of the FATA in relation to the acquisition by Bidder of the Scheme Shares pursuant to the Scheme and the acquisition by Bidder of the Scheme Shares is not prohibited by the FATA; or</p> <p>(iii) if an interim order is made under FATA in respect of the acquisition by Bidder of the Scheme Shares, the subsequent period for making a final order prohibiting the acquisition of the Scheme Shares by Bidder elapses without a final order being made.</p>		
(b)	<b>(No restraints):</b> as at 8:00am on the Second Court Date, there is not in effect any temporary, preliminary or final order, decision or decree issued by any court of competent jurisdiction or Government Agency which restrains, prohibits, or prevents, implementation of the Scheme or the Carve-Out Transaction.	Both	Both
(c)	<b>(Target Shareholder approval):</b> subject to clause 3.16, Target Shareholders approve the Scheme by the requisite majorities at the Scheme Meeting under section 411(4)(a)(ii) of the Corporations Act.	Both, but cannot be waived	Both
(d)	<b>(Independent Expert):</b> the Independent Expert issues an Independent Expert's Report which concludes that the Scheme is in the best interests of Target Shareholders before the time when the Scheme Booklet is registered with ASIC and the Independent Expert does not withdraw, qualify or change that conclusion at any time before 8:00am on the Second Court Date.	Target	-
(e)	<b>(Court approval):</b> the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.	Both, but cannot be waived	Both

Item	Condition Precedent	Party entitled to benefit	Party Responsible
(f)	<b>(No Target Prescribed Occurrence)</b> : no Target Prescribed Occurrence occurs between (and including) the date of this deed and 8:00am on the Second Court Date.	Bidder	Target
(g)	<b>(No Material Adverse Change)</b> : no Material Adverse Change occurs between (and including) the date of this deed and 8:00am on the Second Court Date.	Bidder	Target
(h)	<b>(Carve-Out Transaction)</b> as at 8:00am on the Second Court Date, the Carve-Out Transaction Documents remain on foot and Target Shareholders have approved the Carve-Out Resolutions at the Carve-Out General Meeting by the requisite majorities in accordance with the Listing Rules and the Corporations Act.	Both	Both

### Satisfaction of Conditions

#### 3.2 Each of Target and Bidder must:

- (a) use its best endeavours (other than waiver) to procure that each Condition for which it is responsible as noted in the table in clause 3.1 (whether solely or together with the other party):
  - (i) is satisfied as soon as practicable after the date of this deed; and
  - (ii) continues to be satisfied until the last time it is to be satisfied (as the context requires);
- (b) promptly provide the other party with all information and other assistance reasonably required by the party responsible for satisfying a Condition for the purposes of seeking to satisfy the Condition; and
- (c) not take any action that will or is likely to hinder or prevent the satisfaction of a Condition.

#### 3.3 Without limiting clause 3.2, in respect of the FIRB Condition, Bidder must:

- (a) to the extent to which it has not done so, promptly (and in any event within five days after the date of this deed) prepare and lodge each notice or application required to be given (including its FIRB application);
- (b) provide to Target successive drafts of the FIRB application for the purpose of enabling Target to review and comment on those draft documents and take into account in good faith all timely and reasonable comments made by Target;
- (c) respond to requests for information and otherwise take all steps that must be taken by it as part of the process to satisfy the FIRB Condition as soon as reasonably practicable;
- (d) consult with Target and keep Target informed in relation to all material communications (whether written or oral, and whether direct or via Advisers) with any Government Agency in connection with procuring that the FIRB Condition is satisfied,



including by keeping Target updated as to the content and outcome of any material communications with the Government Agency, provided that in doing so, Bidder may withhold or redact information if and to the extent the information is confidential to a third party or materially commercially sensitive to Bidder (or any of its Related Bodies Corporate);

- (e) give Target reasonable notice of all meetings and telephone calls with any Government Agency in relation to the satisfaction of the FIRB Condition and a reasonable opportunity to participate in them (except to the extent the Government Agency expressly requests that Target not be present at the meeting or part of the meeting); and
- (f) agree or accept any:
  - (i) conditions or undertakings in the form of, substantially in the form of, or otherwise consistent with the Tax Conditions; and
  - (ii) any other conditions relating to security clearances and restrictions on access to sensitive data, cybersecurity, restrictions on the location of data storage unless such conditions would, or would be reasonably likely to:
    - (A) have a material impact on the business conducted by the Target Group;
    - (B) have a material impact on the value expected to be derived by Bidder from the Transaction as a whole;
    - (C) have a material impact on the conduct or operation of Target Group's business after implementation of the Scheme; or
    - (D) be material to any Bidder Group Member's decision to enter into this deed or pursue the Transaction on the terms set out in this deed,

and must respond to FIRB promptly after such conditions or undertakings are requested.

3.4 Each party must, to the extent it is within its respective power to do so, use its best endeavours to procure that:

- (a) the Condition in clause 3.1(b) (*No restraints*) is not triggered; and
- (b) there is no occurrence or non-occurrence within its control or the control of:
  - (i) in the case of Target, any other Target Group Member; or
  - (ii) in the case of Bidder, any other Bidder Group Member,
 that would (or would be reasonably likely to) prevent any of the Conditions being or remaining satisfied.

3.5 In respect of the Condition in clauses 3.1(f) (*No Target Prescribed Occurrences*) and 3.1(g) (*No Material Adverse Change*), if a Target Prescribed Occurrence or a Material Adverse Change occurs between (and including) the date of this deed and 8:00am on the Second Court Date, the Condition in clause 3.1(f) (*No Target Prescribed Occurrences*) or clause 3.1(g) (*No Material Adverse Change*) (as the case may be) will not be taken to have been breached or not satisfied unless:

- (a) Bidder has given, or should have given, written notice to Target in accordance with clause 3.12, setting out the relevant circumstances of the breach; and
- (b) Target has failed to remedy the breach within five Business Days (or any shorter period ending at 5:00pm on the Business Day before the Second Court Date) after the date on which notice is given or should have been given in accordance with clause 3.12.

3.6 Target will not be in breach of its obligations under clause 3.2 or clause 3.4(b) to the extent that it takes an action in response to a Competing Proposal as permitted by clause 12.

#### **Waiver**

3.7 Each Condition is only for the benefit of, and may only be waived by:

- (a) if one party is noted as having the benefit of the Condition in the table in clause 3.1, that party, by notice in writing to the other parties; or
- (b) if both parties are noted as having the benefit of the Condition in the table in clause 3.1, written agreement of both parties,

provided that the Conditions in clauses 3.1(a) (*FIRB approval*), 3.1(c) (*Target Shareholder approval*) and 3.1(e) (*Court approval*) of the table in clause 3.1 cannot be waived.

3.8 A party entitled to waive a Condition (either individually or with another party) may do so in its absolute discretion.

3.9 Any waiver of a Condition by a party who is entitled to do so pursuant to clause 3.7 is only effective if such waiver is given at or prior to 8:00am on the Second Court Date.

3.10 If a party waives a Condition, that waiver will not preclude it from suing another party for any breach of this deed, including a breach that resulted in the non-satisfaction of the Condition that was waived.

3.11 Waiver of a Condition does not constitute:

- (a) a waiver of breach or non-satisfaction of any other Condition resulting from the same event; or
- (b) a waiver of breach or non-satisfaction of that Condition arising from any other event.

#### **Notifications**

3.12 Each party must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of each Condition;
- (b) promptly (and in any event within 48 hours) notify the other in writing if it becomes aware that any Condition has been satisfied; and
- (c) promptly (and in any event within 48 hours) notify the other in writing if it becomes aware that any Condition is or has become incapable of being satisfied.

For the avoidance of doubt, multiple notices may be required under this clause 3.12.

**Certificate**

- 3.13 At the hearing on the Second Court Date, Target will provide to the Court:
- (a) a certificate (signed for and on behalf of Target) in the form of a deed (substantially in the form set out in Schedule 5) confirming whether or not the Conditions (other than the Condition in clause 3.1(e) (*Court approval*)) have been satisfied or waived in accordance with this deed, a draft of which must be provided by Target to Bidder on or before 5:00pm on the date that is two Business Days before the Second Court Date; and
  - (b) any certificate provided to it by Bidder pursuant to clause 3.15.
- 3.14 Before the commencement of the hearing on the Second Court Date, Bidder will provide to Target for provision to the Court at that hearing, a certificate (signed for and on behalf of Bidder) in the form of a deed (substantially in the form set out in Schedule 5) confirming whether or not the Conditions (other than the Condition in clause 3.1(e) (*Court approval*)) have been satisfied or waived in accordance with this deed, a draft of which must be provided by Bidder to Target on or before 5:00pm on the date that is two Business Days before the Second Court Date.

**Scheme voted down because of Headcount Test**

- 3.15 If the Scheme is not approved by Target Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and Target or Bidder considers, acting reasonably, that Share Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied then Target must:
- (a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
  - (b) make such submissions to the Court and file such evidence as counsel engaged by Target to represent it in Court proceedings related 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.

**Conditions not capable of being satisfied**

- 3.16 If:
- (a) there is a breach or non-satisfaction of a Condition by the time specified for its satisfaction, that has not (where capable of waiver) been waived in accordance with clauses 3.8 to 3.12;
  - (b) a Condition becomes incapable of satisfaction by the time specified for its satisfaction, and the breach or non-satisfaction of that Condition that has occurred, or would otherwise occur, has not (where capable of waiver) been waived in accordance with clauses 3.8 to 3.12; or
  - (c) the Scheme has not become Effective by 11:59pm on the End Date,
- and neither of the following has occurred:
- (d) the Independent Expert opines to the effect that the Scheme is not in the best interests of Target Shareholders; or

- (e) Target has, without breaching clause 12, entered into a legally binding agreement (other than an Acceptable Confidentiality Agreement) in relation to a Superior Proposal,

then Bidder and Target must consult in good faith to determine whether they can reach agreement with respect to one or more of the following:

- (f) extending the time for satisfaction of the relevant Condition or the End Date (as the case may be), or both;
- (g) changing the date on which an application is made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application to a date agreed between Bidder and Target (as applicable); or
- (h) the Transaction proceeding by way of alternative means or methods.

3.17 If Bidder and Target are unable to reach such agreement within five Business Days after them both becoming aware of the relevant occurrence which triggered the obligation to consult in good faith (or any shorter period ending at 5:00pm on the day before the Second Court Date), then unless the relevant Condition (if applicable) has been waived in accordance with clauses 3.8 to 3.12, either Bidder or Target (in this clause 3.18, the **Terminating Party**) may terminate this deed by giving written notice (**Termination Notice**) to the other, provided that if the basis upon which the Terminating Party is seeking to terminate this deed is the occurrence of an event described in clause 3.17(a) or 3.17(b):

- (a) the Terminating Party had the benefit of the applicable Condition; and
- (b) the applicable Condition has not been satisfied (or become incapable of being satisfied) as a result of a breach of this deed by the Terminating Party, or a deliberate act or omission of the Terminating Party which either alone or together with other circumstances prevents the Condition from being satisfied.

3.18 Where a Termination Notice is given under clause 3.18, this deed will terminate with immediate effect and clause 15.4 will apply.

#### **Interpretation**

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

## **4 Scheme and Scheme Consideration**

### **Scheme**

4.1 Target must propose the Scheme to Target Shareholders on and subject to the terms and conditions of this deed.

### **Scheme Consideration**

4.2 Bidder covenants in favour of Target (in Target's own right and separately as trustee or nominee of each Scheme Shareholder) that, if the Scheme becomes Effective, in consideration for the transfer to Bidder of the Scheme Shares held by each Scheme Shareholder under the terms of the Scheme, Bidder will accept that transfer and will provide to each Scheme Shareholder the Scheme Consideration for each Scheme Share held by them in accordance with the terms of this deed and the Scheme.

**Fractional entitlements**

- 4.3 Where the calculation of the Scheme Consideration to be issued to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up to the nearest whole cent.

**No amendment to Scheme without consent**

- 4.4 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, acting reasonably (or the consent of Bidder's legal counsel if such a request is made at a Court hearing).

**Permitted Special Dividend**

- 4.5 Subject to clause 4.6, Bidder acknowledges and agrees that at any time prior to the Implementation Date, Target may (in its absolute discretion) announce, declare and pay to Target Shareholders, one or more Permitted Special Dividends.
- 4.6 If Target announces, declares and pays a Permitted Special Dividend in accordance with clause 4.5:
- (a) the payment of the Permitted Special Dividend will be determined by Target in consultation with Bidder provided that the Permitted Special Dividend is paid no later than the Implementation Date and that the Special Dividend does not breach the Benchmark Franking Rule of section 203-25 of the *Income Tax Assessment Act, 1997*;
  - (b) the maximum aggregate amount of the Permitted Special Dividend must not exceed \$0.0784 per Target Share;
  - (c) the Permitted Special Dividend must be paid at least one day prior to the Implementation Date;
  - (d) the Scheme Consideration per Target Share will be reduced by the cash amount of the Permitted Special Dividend;
  - (e) the Permitted Special Dividend must be paid in cash franked to the maximum extent possible, subject to the franking account of Target not being in deficit at any time after the payment of the Permitted Special Dividend (and prior to the declaration of or resolution to pay any Permitted Special Dividend), and Target must provide Bidder with supporting documents evidencing (to Bidder's reasonable satisfaction) that the franking account of Target will not be in deficit after the payment of such and that the Permitted Special Dividend does not breach the Benchmark Franking Rule of section 203-25 of the *Income Tax Assessment Act, 1997*); and
  - (f) to facilitate the payment of any Permitted Special Dividend, one or more Target Group Members may settle intercompany balances or enter into other intercompany transactions or pay a dividend out of its profits, retained earnings or distributable reserves (or a combination of all or some of them) to another Target Group Member, provided that:
    - (i) such dividend does not result in any deficit in the franking account of any Target Group Member and is otherwise in accordance with the *Corporations Act*; and
    - (ii) Target prepares and provides to Bidder a forecast income statement and balance sheet for each relevant entity from which dividends will be paid to

fund any Permitted Special Dividend prior to the meeting at which the Target Board approves the declaration of such Permitted Special Dividend which confirm that sufficient retained earnings exist out of which to pay such dividend.

### **Target Options**

- 4.7 Target confirms and Bidder acknowledges that subject to the Scheme becoming Effective, Target will, prior to the Scheme Record Date, give effect to the treatment of all Target Options in the manner Fairly Disclosed to Bidder in the Disclosure Letter and, without limiting this clause 4.7, ensure that there are no Target Options or any other Target securities or rights other than Target Shares on issue as at 8.00am on the Scheme Record Date.
- 4.8 For the avoidance of doubt, the parties agree that the exercise of any discretion by the Target Board, or any other action, which is in accordance with clauses 4.5, 4.6 or 4.7, will not themselves be a Material Adverse Change, a Target Prescribed Occurrence or a breach of any provision of this deed, or give rise to any right to terminate this deed and will be disregarded when assessing the operation of any other part of this deed.

## **5 Implementation of the Scheme**

### **Target's obligations**

- 5.1 Subject to any change in recommendation by the Target Recommending Directors that is permitted by clause 6.4, Target must, acting at all times in good faith, take all steps within its control and reasonably necessary to propose and implement the Scheme as soon as reasonably practicable and, without limiting the foregoing, substantially in accordance with the Timetable and in particular must:

#### **Scheme Booklet**

- (a) as soon as practicable after the date of this deed, prepare the Scheme Booklet (excluding the Bidder Information, the Independent Expert's Report and any report or letter issued by someone other than Target) in accordance with all applicable laws and in particular with the Corporations Act, Corporations Regulations, the Listing Rules, RG 60 and other relevant Regulatory Guides;
- (b) ensure that the Scheme Booklet will include or be accompanied by:
  - (i) the Scheme;
  - (ii) the Deed Poll;
  - (iii) the Recommendation and Voting Intention;
  - (iv) the notice convening the Scheme Meeting, and any other notice of meeting in respect of any resolution that is necessary, expedient or incidental to give effect to the Scheme, together with a proxy form for the Scheme Meeting; and
  - (v) a copy of the Independent Expert's Report.

#### **Independent Expert's Report**

- (c) promptly after the date of this deed (if the Independent Expert has not been appointed prior to the date of this deed) appoints an Independent Expert to provide the Independent Expert's Report (and request that the Independent Expert opines on

whether or not the Scheme is in the best interests of Target Shareholders), and provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report (including any updates to such report);

### **Consultation**

- (d) consult with Bidder in relation to the Scheme Booklet including by:
  - (i) providing to Bidder successive drafts of the Scheme Booklet and the Independent Expert's Report for the purpose of enabling Bidder to review and comment on those draft documents. In relation to the Independent Expert's Report, Bidder's review is to be limited to a factual accuracy review and Target makes no representation as to the extent to which the Independent Expert will receive or consider those comments;
  - (ii) taking into account in good faith all timely and reasonable comments made by Bidder when producing a revised draft of the Scheme Booklet;
  - (iii) providing Bidder with a revised draft of the Scheme Booklet within a reasonable time before the Scheme Booklet is finalised, to enable Bidder to review that draft before the date of its submission to ASIC for approval pursuant to section 411(2) of the Corporations Act; and
  - (iv) obtaining written consent from Bidder for the form and content in which the Bidder Information appears in the Scheme Booklet (which consent must not be unreasonably withheld, conditioned or delayed);

### **Verification**

- (e) undertake appropriate verification processes in relation to the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report);

### **Liaison with ASIC**

- (f) as soon as reasonably practicable after the date of this deed:
  - (i) provide an advanced draft of the Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
  - (ii) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet and keep Bidder reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet and provide prior written notice to, and in consultation with, Bidder, resolve any such matters (provided that where such matters relate to the Bidder Information, Target must not resolve them without Bidder's prior written consent, which must not be unreasonably withheld, conditioned or delayed);

### **Publication on Website**

- (g) promptly after they become available, publish on its website the date fixed for any Court hearing in relation to the Scheme, including any adjournments or continuance of the hearing, the date of the Scheme Meeting and the text of all announcements made to ASX in connection with the Scheme;

### **Approval of Scheme Booklet**

- (h) as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Target IBC is held to consider approving the Scheme Booklet for despatch to the Target Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;

**Section 411(17)(b) statements**

- (i) apply to ASIC for the production of:
  - (i) an indication of intent letter stating that ASIC does not intend to appear before the Court on the First Court Date; and
  - (ii) a statement under paragraph 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;

**Court documents**

- (j) prepare the Court documents for the purposes of the Court hearings held for the purposes of section 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme, provide a draft of those documents to Bidder and, acting reasonably and in good faith, consult with and take into account all timely and reasonable comments from Bidder on those drafts;

**Bidder representation at Court hearings**

- (k) allow, and not oppose, any application by Bidder for leave of the Court to be represented by counsel at a Court hearing;

**First Court hearing**

- (l) lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that, the approval in clause 5.1(h) has been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;

**Registration of Scheme Booklet**

- (m) if the Court directs Target to convene the Scheme Meeting, as soon as possible after such orders are made, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;

**Despatch Scheme Booklet**

- (n) as soon as reasonably practicable following registration of the Scheme Booklet by ASIC, despatch the Scheme Booklet to Target Shareholders following Bidder's written consent to the inclusion of the Bidder Information in the form and context in which the Bidder Information appears in such version of the Scheme Booklet (such consent not to be unreasonably withheld, conditioned or delayed);



**Supplementary disclosure**

- (o) if, after despatch of the Scheme Booklet until the date of the Scheme Meeting, 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 or RG 60 but was not included in the Scheme Booklet,

promptly consult with Bidder in good faith as to the need for, and form of, any supplementary disclosure to Target Shareholders, and make any such disclosure that it considers reasonably necessary in the circumstances, having regard to applicable laws and RG 60. Such consultation with Bidder includes, to the extent reasonably practicable, providing Bidder with a reasonable opportunity to review and comment on such disclosure before it is made and must consider in good faith any comments provided by or on behalf of Bidder, provided the comments are given in a timely manner. To the extent that the supplementary disclosure relates to (or constitutes) Bidder Information, it may only be made with Bidder's prior written consent (not to be unreasonably withheld, conditioned or delayed);

**Promote Transaction**

- (p) participate in efforts reasonably requested by Bidder to promote the merits of the Transaction and the Scheme Consideration, including, where reasonably requested by Bidder, meeting with key Target Shareholders and soliciting proxy votes in favour of the Scheme, in each case, to the extent permitted by all applicable laws and regulations;

**Proxy Reports**

- (q) keep Bidder reasonably informed of the status of proxy forms received for the Scheme Meeting, including on a regular basis (as requested) over the period commencing 15 Business Days before the Scheme Meeting and ending on the deadline for the receipt of proxy forms;

**Convening the Scheme Meeting**

- (r) convene and hold the Scheme Meeting in accordance with the orders made by the Court pursuant to section 411(1) of the Corporations Act;

**Convene the Carve-Out General Meeting**

- (s) convene and hold the Carve-Out General Meeting on the same day as the Scheme Meeting and immediately before the Scheme Meeting;

**Representation**

- (t) procure that it is represented by counsel at the Court hearings convened for the purposes of section 411(1) and section 411(4)(b) of the Corporations Act;

**Court approval**

- (u) subject to the Conditions (other than the Condition in clause 3.1(e) (*Court approval*)) being satisfied or waived in accordance with clause 3, apply to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme;

**Lodge copy of Court order**

- (v) if the Scheme is approved by the Court, lodge with ASIC an office copy of the Court order in accordance with section 411(1) of the Corporations Act approving the Scheme by no later than the Business Day after the date on which the Court order was made (or such later date as agreed in writing by Bidder);

**Listing**

- (w) subject to clause 5.1(x)(i), not do anything to cause the Target Shares to cease being quoted on ASX or to become permanently suspended from quotation prior to implementation of the Transaction unless Bidder has agreed in writing;

**Implementation**

- (x) if the Scheme becomes Effective:
  - (i) apply to the ASX to suspend trading in Target Shares from the close of trading on the Effective Date;
  - (ii) finalise and close the Target Share Register as at the Scheme Record Date and determine the identity of the Scheme Shareholders and their entitlements to the Scheme Consideration in accordance with the Scheme;
  - (iii) provide to Bidder, or procure that the Target Registry provides to Bidder, all necessary information about the Scheme and the Scheme Shareholders that Bidder reasonably requires in order for Bidder to provide, or procure the provision of, the Scheme Consideration in accordance with the Scheme;
  - (iv) subject to Bidder having delivered the Scheme Consideration, execute, on behalf of Scheme Shareholders, proper instruments of transfer of and effect and register the transfer of the Scheme Shares to Bidder on the Implementation Date; and
  - (v) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme; and

**Compliance with laws**

- (y) do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

**Bidder's obligations**

- 5.2 Bidder must, acting at all times in good faith, and Bidder Guarantor must procure that Bidder, takes all steps within its control and reasonably necessary to assist Target to implement the Scheme as soon as reasonably practicable and, without limiting the foregoing, substantially in accordance with the Timetable and in particular must:

**Bidder Information**

- (a) as soon as reasonably practicable after the date of this deed, prepare and promptly provide to Target the Bidder Information for inclusion in the Scheme Booklet in accordance with all applicable laws (including the Corporations Act and the Corporations Regulations), applicable Takeovers Panel guidance notes, the Listing Rules, RG 60 and other relevant Regulatory Guides;

### **Scheme Booklet and Court documents**

- (b) promptly provide assistance or information reasonably requested by Target in connection with the preparation of the Scheme Booklet (including any updated or supplementary Scheme Booklet) including documents required to be filed with the Court in respect of the Scheme;
- (c) promptly review the drafts of the Scheme Booklet (including any updated or supplementary Scheme Booklet) prepared by Target and provide comments promptly on those drafts in good faith;

### **Confirmation of Bidder Information**

- (d) subject to clause 5.8, promptly after Target requests that it does so, confirm in writing to Target that it consents to the inclusion of the Bidder Information in the Scheme Booklet (such consent not to be unreasonably withheld, conditioned or delayed and Target must not lodge the Scheme Booklet with ASIC until such approval is obtained from Bidder), in the form and context in which the Bidder Information appears;

### **Independent Expert**

- (e) promptly provide all assistance and information reasonably requested by Target or the Independent Expert to enable the Independent Expert to prepare the Independent Expert's Report (including any updates to such report) and any other materials to be prepared by the Independent Expert's Report for inclusion in the Scheme Booklet (including any updates to such materials);

### **Due diligence and verification**

- (f) undertake appropriate due diligence and verification processes in relation to Bidder Information;

### **Representation**

- (g) procure that, if requested by Target, Bidder is represented by counsel at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act;

### **Deed Poll**

- (h) by no later than the Business Day prior to the First Court Date, execute and deliver, and cause Bidder Guarantor to execute and deliver, to Target the Deed Poll;

### **Accuracy of Bidder Information**

- (i) as soon as reasonably practicable after the receipt of the final draft Scheme Booklet from Target, and in any event, before a draft of the Scheme Booklet is lodged with ASIC, and again before the Scheme Booklet is dispatched to Target Shareholders, confirm in writing to Target the accuracy of the Bidder Information in the Scheme Booklet, including that it does not contain any material statement that is false or misleading in a material respect, whether because of any material omission from that statement or otherwise;

### **Update Bidder Information**

- (j) until the date of the Scheme Meeting, promptly provide to Target any information that arises after the Scheme Booklet has been despatched that is necessary to ensure the Bidder Information contained in the Scheme Booklet does not contain any material

statement that is false or misleading in a material respect including because of any material omission from that statement;

**Share transfer**

- (k) if the Scheme becomes Effective:
  - (i) accept a transfer of the Scheme Shares as contemplated by clause 4.2; and
  - (ii) execute instruments of transfer in respect of the Scheme Shares;

**Scheme Consideration**

- (l) if the Scheme becomes Effective, provide the Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Scheme and the Deed Poll;

**Promote merits of Transaction**

- (m) participate in efforts reasonably requested by Target to promote the merits of the Transaction and the Scheme Consideration, including meeting with key Target Shareholders at the reasonable request of Target;

**Financing**

- (n) do everything necessary to ensure that all finance (both debt and equity) agreements and arrangements to which any Bidder Group Member is party relating to the availability of funds for the purposes of paying the Scheme Consideration remain on foot, that all conditions precedent to draw down of funds have been satisfied or waived under those agreements or arrangements and to hold the proceeds of financing to the extent required to pay the Scheme Consideration to the Scheme Shareholders in accordance with the requirements of the Scheme;

**Legal opinion**

- (o) if required by the Court, provide a legal opinion by an appropriately qualified legal adviser on the enforceability of the guarantee provided by Bidder Guarantor pursuant to the Deed Poll;

**Compliance with laws**

- (p) do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations; and

**Other things necessary**

- (q) if the Scheme becomes Effective, do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme in accordance with all applicable laws and regulations.

**Court process**

- 5.3 Bidder and Target are entitled to separate representation at all Court proceedings affecting the Transaction.
- 5.4 This deed does not give a party any right or power to give undertakings to the Court for or on behalf of another party without that other party's written consent.

- 5.5 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 Transaction as contemplated by this deed.
- 5.6 If the Court refuses to make any orders directing Target to convene the Scheme Meeting or approving the Scheme, Target and Bidder must:
- (a) consult with each other in good faith as to whether to appeal the Court's decision; and
  - (b) appeal the Court decision unless Target and Bidder agree otherwise or an independent senior counsel opines that, in his or her view, an appeal would have no reasonable prospect of success.

#### **Responsibility statements**

- 5.7 The Scheme Booklet will include a responsibility statement, in a form to be agreed by the parties, which will contain words to the following effect:
- (a) Bidder has prepared, and is responsible for, the Bidder Information contained in the Scheme Booklet and, to the maximum extent possible at law, Target is not responsible for any Bidder Information or the Independent Expert's Report and will disclaim any liability for any Bidder Information or the Independent Expert's Report appearing in the Scheme Booklet;
  - (b) Target has prepared, and is responsible for, the Target Information contained in the Scheme Booklet and, to the maximum extent possible at law, Bidder is not responsible for the Target Information or the Independent Expert's Report appearing in the Scheme Booklet and will disclaim any liability for any Target Information or the Independent Expert's Report appearing in the Scheme Booklet; and
  - (c) the Independent Expert is responsible for the Independent Expert's Report and neither Target, Bidder nor any of their respective directors or officers assume any responsibility or completeness of the Independent Expert's Report.

#### **Disagreement on content**

- 5.8 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 after two Business Days complete agreement is not reached after reasonable consultation, then:
- (a) where the determination relates to Bidder Information, Bidder, acting reasonably and in good faith will make the final determination, acting reasonably, as to the form and content of the Bidder Information; and
  - (b) in any other case, Target, acting reasonably and in good faith, will make the final determination as to the form and content of the Scheme Booklet.

#### **Carve-Out Transaction**

- 5.9 Target undertakes to carry out the Carve-Out Transaction in good faith and to consult with Bidder in all respects in relation to the Carve-Out Transaction Documents, including, but not limited to:
- (a) providing to Bidder the successive drafts of the Carve-Out Transaction Documents for the purpose of enabling Bidder to review and comment on those draft documents before they are executed;

- (b) taking into account in good faith all timely and reasonable comments made by Bidder when producing a revised draft of the Carve-Out Transaction Documents; and
- (c) obtaining written consent from Bidder on the form and content of the Carve-Out Transaction Documents provided:
  - (i) Bidder must not unreasonably withhold, condition or delay, its consent; and
  - (ii) Bidder cannot withhold its consent unless the provisions of the Carve-Out Transaction Documents depart from the terms set out in term sheets executed on or about the date of this deed (except for any departures which are not material in the context of the Carve-Out Transaction).

## 6 Target Recommending Directors' Recommendation

### Recommendation

- 6.1 Target must use reasonable endeavours to procure that, subject to there being no requirement or request of the Court or a Government Agency that the Target Recommending Director abstain or withdraw from making a recommendation that Target Shareholders vote in favour of the Scheme, each Target Recommending Director will recommend that Target Shareholders vote in favour of the Scheme at the Scheme Meeting, qualified only by the words to the effect of "*in the absence of a superior proposal and subject to the Independent Expert concluding and continuing to conclude that the Scheme is in the best interests of Target Shareholders*".

### Confirmation

- 6.2 Target warrants to Bidder that, as at the date this deed, each Target Recommending Director has confirmed that:
- (a) his or her recommendation in respect of the Scheme is that Target Shareholders vote in favour of the Scheme (**Recommendation**); and
  - (b) he or she intends to vote, or cause to be voted, all Target Shares that he or she holds or controls in favour of the Scheme (**Voting Intention**),

in each case subject to:

- (c) no Superior Proposal emerging; and
- (d) the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of Target Shareholders.

### Public Announcements

- 6.3 Subject to clause 6.4, Target must use reasonable endeavours to ensure that the Scheme Booklet and all public announcements by Target in relation to the Scheme include a statement by the Target Recommending Directors to the effect of the Recommendation and the Voting Intention.

### Withdrawal or modification of Recommendation and Voting Intention

- 6.4 Target must use reasonable endeavours to procure that each Target Recommending Director does not adversely change, withdraw, or adversely modify his or her Recommendation or Voting Intention unless:

- (a) Target receives a Competing Proposal and the Target IBC determines that the Competing Proposal constitutes a Superior Proposal (and the procedures set out in clause 12 have been duly followed);
- (b) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of Target Shareholders, or the Independent Expert concludes in the Independent Expert's Report that the Scheme is in the best interests of Target Shareholders but then adversely changes, qualifies or withdraws this conclusion prior to 8:00am on the Second Court Date; or
- (c) the change, withdrawal or modification of his or her Recommendation or Voting Intention occurs because of a requirement of a court or Government Agency that the Target Recommending Director abstain or withdraw from making a recommendation that Target Shareholders vote in favour of the Scheme.

6.5 For the purposes of clause 6.4, customary qualifications and explanations contained in the Scheme Booklet and any public announcements in relation to a Recommendation or Voting Intention to the effect that the Recommendation is made:

- (a) in the absence of a Superior Proposal;
- (b) in respect of any public announcement issued before the issue of the Scheme Booklet, "*subject to the Independent Expert concluding and continuing to conclude that the Scheme is in the best interests of Target Shareholders*"; and
- (c) in respect of the Scheme Booklet and any public announcements issued at the time of or after the issue of the Scheme Booklet, "*subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Target Shareholders*",

will not be regarded as a failure to make, or an adverse change, withdrawal, adverse modification or adverse qualification of, a Recommendation or Voting Intention (as applicable).

6.6 Despite anything to the contrary in this clause 6, a statement made by Target, the Target IBC or any Target Director in relation to the Carve-Out Transaction, or to the effect that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target IBC or the completion of the matching right process set out in clause 11 shall not contravene this clause 6 or any other provision of this deed.

#### **Notification**

6.7 Subject to the Listing Rules and all applicable laws and regulations, if Target becomes aware that a Target Recommending Director proposes to withdraw, change or modify his or her Recommendation or Voting Intentions in accordance with this clause 6, Target must notify Bidder in writing as soon as practicable (and in any case, within 24 hours).

## **7 Conduct of business**

### **Conduct of Target business**

7.1 Subject to clauses 7.2 and 7.3, from the date of this deed up to and including the Implementation Date, Target must:

- (a) **(ordinary course)** conduct its business, and cause each of its Subsidiaries to conduct their businesses:

- (i) in the ordinary and usual course of business and in compliance in all material respects with all applicable laws, regulations and regulatory approvals; and
  - (ii) consistent with past practice, in generally the same manner as conducted in the 12 months prior to the date of this deed; and
- (b) **(preserve business)** use reasonable endeavours to:
  - (i) preserve intact Target Group's current business organisation;
  - (ii) maintain the condition of its business and assets in accordance with the ordinary course of its business;
  - (iii) preserve their relationships with Government Agencies, customers, suppliers, landlords, licensors, licensees and others having material business dealings with them; and
  - (iv) retain the services of key employees;
- (c) **(working capital)** maintain adequate working capital consistent with past practices;
- (d) **(fees)** not, and must ensure that the Target Group Members do not, pay, or agree to pay or incur, any third party costs or expenses in connection with the transactions contemplated by this deed or the Carve-Out Transaction (including legal, financial, tax, accounting, communications and public relations, counsel, expert and court fees and fees payable to Government Agencies) other than as Fairly Disclosed in the Disclosure Letter;
- (e) **(related party agreements)** not, and must ensure that the Target Group Members do not, enter into any agreement or arrangement with a related party (as defined in section 228 of the Corporations Act) of a Target Group Member;
- (f) **(conduct of litigation)** not, and must ensure that the Target Group Members do not, settle or compromise any legal proceedings, claims (including any tax claims), investigations, arbitration or other similar proceedings in relation to a Target Group Member where the settlement terms:
  - (i) require payment in excess of \$50,000 by a Target Group Member;
  - (ii) involve any admission of criminal liability or otherwise accept any undertakings or conditions by a Target Group Member which will cause material reputational damage to the Target Group (taken as a whole),

other than as claimant in respect of the collection of trade debts arising in the ordinary course of the Target Group's business;
- (g) **(accounting policies)** not, and must ensure that the Target Group Members do not, alter any accounting policy of any member of the Target Group, other than any change required by applicable accounting standards;
- (h) **(tax)** not, and must ensure that the Target Group Members do not, make, change or revoke any material election in respect of taxes, change any material method of tax accounting applied by it in the 12 months prior to the date of this deed, change any tax accounting period, amend any material tax return, or settle, compromise or surrender any claim, audit or proceeding with respect to a material amount of taxes;
- (i) **(acquisitions, leases or disposals)** not, and must ensure that the Target Group Members do not, acquire, agree to acquire, lease, agree to lease, dispose of, agree



to dispose of or offer, propose or announce a bid or tender for any entity, business, assets or undertaking the value of which exceeds \$50,000 (in aggregate) other than:

- (i) in the ordinary course of business and consistent with past practice of the relevant Target Group Member; or
  - (ii) the renewal or extension of a lease, or entry into a new lease, in respect of real property that is leased by a Target Group Member as at the date of this deed (in each case, on substantially the same terms but subject to any market-based increases in rent);
- (j) **(employment arrangements)** other than in the ordinary course of business and consistent with past practice of the relevant Target Group Member, not, and must ensure that the Target Group Members do not:
- (i) materially increase the remuneration or benefits of any of its directors, officers or employees, or otherwise materially vary the employment arrangements with, any of its directors, officers or employees (other than as Fairly Disclosed or otherwise agreed between the parties);
  - (ii) increase the remuneration or benefits of more than 10% of its workforce or, in respect of an individual employee more than 5% (other than as Fairly Disclosed or otherwise agreed between the parties);
  - (iii) accelerate the rights of any of its directors, officers or employees to compensation or benefits of any kind (excluding any acceleration of Target Options in accordance with clause 4.7); or
  - (iv) pay any of its directors, officers, or employees a termination, redundancy, retention or bonus payment (other than as Fairly Disclosed in the Disclosure Letter or in accordance with, or having substantially the same economic effect as provided in, an existing contract in place at the date of this deed which has been Fairly Disclosed or otherwise as may reasonably be required in the ordinary course of business);
- (k) **(Material Contract)** not, and must ensure that the Target Group Members do not, enter into, terminate, amend in a material manner (including any amendment that would cause a reduction in revenue in the 3-month rolling ARPA (being the average monthly revenue generated from deals customers on subscription-based contracts) by 10% or more as compared with such measure as at the date of this date of this deed) or waive any material third party default, any material claims or rights in respect of, or waive the benefit of any material provision of, a Material Contract, except for the:
- (i) entry into any agreement by Target Group Member that is on substantially the same terms as agreements that have previously been entered into by that Target Group Member and that have been Fairly Disclosed (other than agreements with a Government Agency);
  - (ii) renewal or extension of a lease, or entry into a new lease, in respect of real property that is leased by a Target Group Member as at the date of this deed (in each case, on substantially the same terms but subject to any market-based increases in rent);
  - (iii) renewal of any existing software license agreements (in each case, on substantially the same terms but subject to any market-based increases in licence fees);

- (iv) renewal or replacement of insurance policies to cover similar risks to those covered by existing insurance policies, as part of the annual insurance review, on terms materially no less favourable overall than such existing insurance policies (other than in respect of price, provided that the new price is consistent with current market terms), which in any event will be deemed to have been satisfied by following the recommendation from a reputable insurance broker; and
- (v) entry into or renewal of any Material Contract under which a Target Group Member is to receive payments in excess of \$100,000 in any 12 month period,

and for the avoidance of doubt, expiry of a Material Contract in accordance with its terms does not constitute termination;

- (l) **(capital expenditure)** not, and must ensure that the Target Group Members do not, undertake capital expenditure in excess of \$1,000,000 for any single item (other than as Fairly Disclosed);
- (m) **(financial indebtedness)** not, and must ensure that the Target Group Members do not, incur any financial indebtedness in excess of \$1,000,000 or issue any indebtedness or debt securities, other than as Fairly Disclosed, or otherwise as permitted by this deed;
- (n) **(granting of loans)** not, and must ensure that the Target Group Members do not, make any loan, advance or capital contribution to, or investment in, any other person in excess of \$1,000,000, other than in the ordinary course of business;
- (o) **(prescribed occurrences)** not take or fail to take any action that constitutes a Target Prescribed Occurrence; and
- (p) **(notification of breach)** promptly notify Bidder of any suspected or actual breach of this clause 7.1.

#### **Target permitted activities**

7.2 The obligations of Target under clause 7.1 do not apply in respect of the Carve-Out Assets nor any matter:

- (a) required or permitted to be done by this deed, the Scheme or the Carve-Out Transaction, provided that, in respect of the Carve-Out Transaction, the matter is effected in accordance with the Carve-Out Transaction Documents as approved by Bidder where required in accordance with clause 5.9(c);
- (b) to the extent it is Fairly Disclosed in the Disclosure Letter, or which ought to have been expected to arise from anything Fairly Disclosed in:
  - (i) the Target Disclosure Materials; or
  - (ii) an announcement made by Target to ASX or a publicly available document lodged by a Target Group Member with ASIC within three years prior to the date of this deed;
- (c) which, after reasonable consultation with Bidder (to the extent reasonably practicable), is required to be done to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or material damage to property); or

- (d) which Bidder has approved in writing (which approval must not be unreasonably withheld, conditioned or delayed).

7.3 Without limiting clause 12, nothing in clause 7.1 restricts the ability of Target to respond to a Competing Proposal in accordance with the terms of this deed.

#### **Access to Target**

7.4 Subject to clauses 7.5 and 7.6, between the date of this deed and the Implementation Date, Target must procure that Bidder is provided with access to information, documents, records, premises and senior executives, of the Target Group, reasonably requested by Bidder solely for the purposes of:

- (a) implementing the Transaction;
- (b) obtaining an understanding, or furthering its understanding, of the Target Group or its business, financial position, prospects or assets in order to allow Bidder to develop, finalise and implement its plans for the Target Group following implementation of the Transaction;
- (c) keeping Bidder informed of material developments relating to the Target Group; or
- (d) any other purpose agreed between Bidder and Target,

provided that:

- (e) Target will not be required to provide any access or information or otherwise take any action or omit to take any action contemplated by this clause 7.4 to the extent that to do so would:
  - (i) breach any confidentiality obligation owed to a third party, applicable law, regulatory requirement, authorisation or court order;
  - (ii) result in a waiver or loss of legal professional privilege;
  - (iii) breach any director's duty;
  - (iv) cause undue disruption to the Target Group's business; or
  - (v) result in disclosure of information concerning the Target IBC's consideration of the Transaction, or any Competing Proposal;
- (f) Bidder must, and must procure that its Authorised Persons, each other Bidder Group Member and their respective Authorised Persons:
  - (i) keep all information obtained by it or them as a result of this clause 7.4 in accordance with the terms of the Confidentiality Agreement;
  - (ii) provide Target with reasonable notice of any request for information or access;
  - (iii) comply with the reasonable requirements of Target in relation to any access granted; and
- (g) nothing in this clause 7.4 will require Target to provide, or procure the provision of, information concerning Target Group's business that is, in the reasonable opinion of Target, commercially or competitively sensitive, including any specific pricing and margin information or customer details where the provision of such information is

reasonably likely to cause prejudice to the commercial or legal interests of Target Group taken as a whole.

- 7.5 The obligations of Target under clause 7.4 do not apply in respect of the Carve-Out Assets.
- 7.6 The parties acknowledge that all information provided pursuant to clause 7.4 is provided subject to the terms of the Confidentiality Agreement.

#### **Transition and Integration Team**

- 7.7 As soon as practicable after the date of this deed, Target and Bidder will form a transition and integration team which will comprise senior management representatives from each of Target and Bidder, and such other persons as Target and Bidder may agree from time to time (**Transition and Integration Team**).
- 7.8 Subject to clause 7.9 and the requirements and limitations in any protocols agreed between Target and Bidder to govern the activities of the Transition and Integration Team, the Transition and Integration Team will work together in good faith to consider and plan matters relevant to the implementation of the Scheme and the integration of Target and Bidder.
- 7.9 Each party acknowledges and agrees that:
- (a) the requirements in clauses 7.7 and 7.8 are subject to all applicable laws;
  - (b) the Transition and Integration Team is a consultative body only that will make recommendations to Target and Bidder, and the members of the Transition and Integration Team have no power to bind, or to give any consent, approval or waiver on behalf of, any party;
  - (c) the business of Target Group is to continue to operate independently of Bidder Group, and to the extent that Bidder and Target may be competitors in relation to the supply or acquisition of any products or services, they will:
    - (i) not share competitively sensitive information unless and until the general nature of the information proposed to be discussed is approved in writing by the parties (in consultation with their respective legal counsels); and
    - (ii) continue to actively compete in relation to the supply or acquisition of those products or services, until (and subject to) the Implementation Date; and
  - (d) nothing in clauses 7.7 and 7.8 or elsewhere in this deed:
    - (i) requires a party to act at the direction of another party;
    - (ii) gives a party any rights as to the decision making of another party;
    - (iii) is intended to constitute or create the relationship of partnership, joint venture or similar between the parties; or
    - (iv) requires any Target representative on the Transition and Integration Team to do anything which would unduly interfere with their responsibilities to the Target Group or the on-going conduct of the Target Group's business.

#### **Change of control**

- 7.10 As soon as practicable after the date of this deed, Bidder and Target must:

- (a) seek to identify any change of control or unilateral termination rights in any material contract (including any lease) to which a Target Group Member is party which may be triggered by the implementation of the Transaction (**Change of Control Requirements**); and
  - (b) use all reasonable endeavours to agree a proposed strategy to obtain any consents or confirmations required in accordance with the terms of any identified Change of Control Requirements, and to then expeditiously seek those consents or confirmations in accordance with the agreed strategy.
- 7.11 A failure to obtain any counterparty consent or confirmation will not constitute a breach of this deed by Target, and together with any consequences which arise, will be disregarded when assessing the operation of any other provision of this deed.
- 7.12 Bidder must co-operate with, and provide all reasonable assistance to, Target to obtain such consents or confirmations in relation any identified Change of Control Requirements, including by
- (a) promptly providing any information reasonably required by counterparties;
  - (b) entering into such form of parent guarantees as counterparties may require; and
  - (c) making officers and employees reasonably available where necessary to meet with counterparties to deal with any issues arising in relation to the relevant Change of Control Requirement.

## 8 Reconstitution of the Target Board

### Reconstitution of the Target Board

- 8.1 Subject to the Scheme Consideration having been delivered to Scheme Shareholders in accordance with the Scheme, Target must as soon as practicable take all reasonable steps to:
- (a) cause the appointment of the nominees of Bidder to the Target Board;
  - (b) procure that each Target Director, other than:
    - (i) the nominees of Bidder appointed pursuant to clause 8.1(a); and
    - (ii) any existing Target Director which Bidder has agreed in writing will remain on the Target Board,
 resigns from their office as a director of Target by providing to the Target Board their resignation in writing (such resignation, to the extent reasonable, to include a statement to the effect that the outgoing director has no claim outstanding against any Target Group Member, in their capacity as a Target Director, and without prejudice to any rights they may have under any deed of indemnity, access and insurance or policy of directors and officers insurance, or equivalent); and
  - (c) procure that each director of each other Target Group Member (other than any existing director of a Target Group Member which Bidder has agreed in writing will remain on the board of the relevant Target Group Member) resigns from their office as a director by providing to the board of the relevant Target Group Member their resignation in writing (such resignation, to the extent reasonable, to include a statement to the effect that the outgoing director has no claim outstanding against any Target Group Member, in their capacity as a director, and without prejudice to

any rights they may have under any deed of indemnity, access and insurance or policy of directors and officers insurance, or equivalent), and cause the appointment of the nominees of Bidder to those boards,

in each case subject to the requirements of the relevant company's constituent documents, the Corporations Act, Listing Rules and any other laws.

### **Sequence of actions**

- 8.2 The transactions which form part of the Scheme will be implemented in the following sequence:
- (a) Bidder will deposit the aggregate Scheme Consideration into a specified Target trust account in accordance with the Scheme;
  - (b) on the Implementation Date, Target will disburse the Scheme Consideration to the Scheme Shareholders in accordance with the Scheme;
  - (c) Bidder will acquire all of the Scheme Shares in accordance with the Scheme; and
  - (d) the Target Board will be reconstituted in accordance with clause 8.1.

## **9 Warranties**

### **Bidder warranties**

- 9.1 Each of Bidder and Bidder Guarantor warrant to Target that:

#### **Validly existing**

- (a) each of Bidder and Bidder Guarantor is a validly existing corporation registered under the laws of its place of incorporation;

#### **Authority and power**

- (b) the execution and delivery of this deed and the Deed Poll has been properly authorised by all necessary corporate action and each of Bidder and Bidder Guarantor has full capacity, corporate power and lawful authority to execute and deliver this deed and the Deed Poll and to perform or cause to be performed its obligations under this deed and the Deed Poll;

#### **No default**

- (c) the execution and delivery of this deed by Bidder and Bidder Guarantor does not, and the execution and delivery by Bidder and Bidder Guarantor of the Deed Poll will not, conflict with or result in a breach of or default under:
  - (i) any provision of any Bidder Group Member's constituent documents; or
  - (ii) any writ, order or injunction, rule, contract, agreement, obligation or regulation to which Bidder, Bidder Guarantor or any other Bidder Group Member is a party or is bound,

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

### **Deed binding**

- (d) this deed is a valid and binding obligation of each of Bidder and Bidder Guarantor, enforceable in accordance with its terms;

### **No approvals**

- (e) other than as expressly contemplated by clause 3, no shareholder or Regulatory Approvals are required to be obtained by Bidder in order for it to execute and perform its obligations under this deed or the Deed Poll;

### **Bidder Information**

- (f) as at the First Court Date, the date the Scheme Booklet is despatched to Target Shareholders and the date of the Scheme Meeting, the Bidder Information in the Scheme Booklet (as updated by the Bidder Information in any supplementary disclosure to Target Shareholders) will:
  - (i) comply in all material respects with the requirements of all applicable laws (including the Corporations Act, Corporations Regulations, the Listing Rules, RG 60 and other relevant Regulatory Guides); and
  - (ii) not be false or misleading or deceptive in any material respect (whether by omission or otherwise);

### **New information**

- (g) Bidder will, as a continuing obligation, provide to Target all further or new information which arises after the Scheme Booklet has been dispatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information is true and correct, and not misleading or deceptive in any material respect (including by way of omission);

### **Independent Expert**

- (h) all information provided by or on behalf of Bidder to the Independent Expert to enable the Independent Expert's Report to be included in the Scheme Booklet to be prepared and completed will not be false or misleading or deceptive in any material respect (whether by omission or otherwise) and will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report for inclusion in the Scheme Booklet;

### **Dealings with officers and employees**

- (i) neither Bidder nor any of its Associates has any agreement, arrangement or understanding with any director, officer or employee of any Target Group Member relating in any way to the Transaction;

### **Sufficient cash amounts**

- (j) at all times between the date of this deed and the Implementation Date (both inclusive), Bidder will have available to it on an unconditional basis sufficient cash amounts (whether from internal cash resources or external financing commitments, or a combination of both) to satisfy Bidder's obligation to pay the aggregate Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;

**Dealings in Target securities**

- (k) as at the date of this deed:
- (i) no Bidder Group Member (or any of their respective Associates) has a relevant interest in any Target Shares, and no Bidder Group Member (or any of their respective Associates) has a relevant interest in, or a right to acquire, any other Target Shares (whether issued or not or held by Bidder or not); and
  - (ii) no Bidder Group Member (or any of their respective Associates) has entered into any agreement or arrangement that confers rights the economic effect of which is equivalent or substantially equivalent to holding, acquiring or disposing of securities in any Target Group Member or of any assets of any Target Group Member (including cash-settled derivative contracts, contracts for difference or other derivative contracts);

**Other dealings**

- (l) other than as contemplated by this deed or the Scheme, no Bidder Group Member (or any of their respective Associates) has any agreement, arrangement or understanding with:
- (i) any person in relation to the securities, business, operations or assets of a Target Group Member or the performance or conduct of the business of a Target Group Member (in whole or in part); and
  - (ii) any Scheme Shareholder under which that Scheme Shareholder (or an Associate of that Scheme Shareholder) would be entitled to receive consideration for their Scheme Shares different from the Scheme Consideration or under which the Scheme Shareholder agrees to vote in favour of the Scheme or against any Competing Proposal; and

**Insolvency Event or regulatory action**

- (m) no Bidder Group Member is Insolvent, nor has any regulatory action of any nature been taken that would prevent or restrict its ability to fulfil its obligations under this deed, the Scheme or the Deed Poll.

**Target warranties**

## 9.2 Target warrants to Bidder that:

**Validly existing**

- (a) Target is a validly existing corporation registered under the laws of its place of incorporation;

**Authority and power**

- (b) the execution and delivery of this deed by Target has been properly authorised by all necessary corporate action and Target has full capacity, corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed;

**No default**

- (c) the execution and delivery of this deed by Target does not conflict with or result in a breach of or default under any provision of Target's constitution or any law, writ, order



or injunction, rule, contracts, agreement, obligation or regulation to which Target is a party or is bound;

#### **Deed binding**

- (d) this deed is a valid and binding obligation of Target, enforceable in accordance with its terms;

#### **No approvals**

- (e) other than as expressly contemplated by clause 3, no shareholder or Regulatory Approvals are required to be obtained by Target in order for it to execute and perform its obligations under this deed or the Scheme;

#### **Target Information**

- (f) as at the First Court Date, the date the Scheme Booklet is despatched to Target Shareholders and the date of the Scheme Meeting, the Target Information in the Scheme Booklet (as updated by Target Information in any supplementary disclosure to Target Shareholders) will:
  - (i) comply in all material respects with the requirements of all applicable laws (including the Corporations Act, Corporations Regulations, Listing Rules and RG 60 other relevant Regulatory Guides); and
  - (ii) be true and correct, and not be misleading or deceptive in any material respect (whether by omission or otherwise);

#### **New information**

- (g) Target will, as a continuing obligation (but in respect of Bidder Information, only to the extent that Bidder provides Target with updates to the Bidder Information), ensure that the Scheme Booklet is updated and supplemented to include all further and new information which arises and Target becomes aware of after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Scheme Booklet is true and correct, and not misleading or deceptive in any material respect (including by way of omission);

#### **Independent Expert**

- (h) All information provided by or on behalf of Target to the Independent Expert to enable the Independent Expert's Report to be included in the Scheme Booklet to be prepared and completed will not be true and correct, and not misleading or deceptive in any material respect (whether by omission or otherwise) and will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report for inclusion in the Scheme Booklet;

#### **Continuous disclosure**

- (i) as at the date of this deed, Target has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Transaction and the Carve-Out Transaction or as Fairly Disclosed in the Target Disclosure Materials);

### **Issued capital**

- (j) the issued securities of Target as of the date of this deed is set out in Schedule 4 and Target has not issued (and has not agreed to issue or is subject to any obligation, including any contingent obligation) any other Target Shares, Target Options or performance rights, warrants, convertible notes, instruments or other securities that may convert into Target Shares;

### **Due diligence information**

- (k) the Target Due Diligence Materials were provided or made available to Bidder in good faith and Target is not aware of any factual statement in the Target Due Diligence Materials which was misleading or deceptive in any material respect (whether by omission or otherwise), on the date they were provided or made available to Bidder, however Target does not make any representation or warranty as to the accuracy or adequacy of any forecast, prediction, projection, budget, business plan or other forward looking statement included in the Target Due Diligence Materials;

### **Insolvency Event or regulatory action**

- (l) no Target Group Member is Insolvent, nor has any regulatory action of any nature been taken that would prevent or restrict its ability to fulfil its obligations under this deed;

### **Interest**

- (m) the Target Due Diligence Materials set out full details of any company, partnership, trust, joint venture (whether incorporated or unincorporated) or other enterprise in which Target or another Target Group Member owns or otherwise holds any interest;

### **Financial Statements**

- (n) at the date of this deed, so far as it is aware, there has not been any event, change, effect or development that would require Target to restate Target's financial statements as disclosed to ASX within three years prior to the date of this deed, and in particular, Target's financial statements for the financial year ending 30 June 2023:
  - (i) comply with applicable statutory requirements and were prepared in accordance with the Corporations Act, accounting standards and all other applicable laws and regulations; and
  - (ii) give a true and fair view in all material respects of the financial position and the assets and liabilities of the Target Group;

### **Compliance with Laws**

- (o) as at the date of this deed, each Target Group Member has complied in all material respects with all Australian or foreign laws and regulations applicable to it or orders of Australian or foreign Government Agencies having jurisdiction over it;

### **Material Adverse Change**

- (p) as at the date of this deed, Target is not aware of any information relating to the Target Group or its respective businesses or operations that has or could reasonably be expected to give rise to a Material Adverse Change;

### **No Default Under Material Contracts**

- (q) so far as Target is aware, at the date of this deed, no Target Group Member is in material default under a Material Contract to which it is a party, and, as far as Target is aware, nothing has occurred which is (or would be following the giving of notice or the lapse of time) an event of default or would give another party a termination right or right to accelerate any material right or obligation under any Material Contract;

### **Regulatory**

- (r) so far as Target is aware, as at the date of this deed, the Target Group has all material licences, permits and authorisations necessary for it to conduct its activities as they are conducted as at the date of this deed and so far as Target is aware, as at the date of this deed, no Target Group Member:
  - (i) is in material breach of, or default under, any such licence, permit or authorisation; or
  - (ii) has received any notice in respect of the termination, revocation, variation or non-renewal of any such licence, permit or authorisation; and

### **No Material Litigation**

- (s) so far as Target is aware, as at the date of this deed:
  - (i) there are no material actions, suits, arbitrations, legal or administrative proceedings taking place, or to Target's knowledge, pending or threatened against any Target Group Member which is or may be materially prejudicial to the financial position of the Target Group (taken as a whole, but excluding the Carve-Out Assets);
  - (ii) to Target's knowledge, no Target Group Member is the subject of any material, or any material pending or material threatened, investigation, inquiry or commission which is or may be materially prejudicial to the financial position of the Target Group (taken as a whole, but excluding the Carve-Out Assets); and
  - (iii) no Target Group Member or the respective assets, properties or business of any Target Group Member is subject to any judgment, order, writ, injunction or decree of any court, Government Agency or arbitration tribunal which is or may be materially prejudicial to the financial position of the Target Group (taken as a whole, but excluding the Carve-Out Assets);

### **Qualifications on the Target Warranties**

9.3 Each of the Target Warranties are subject to matters:

- (a) Fairly Disclosed in, or which ought to have been expected to arise from anything Fairly Disclosed in:
  - (i) the Target Disclosure Materials; or
  - (ii) any announcement by Target to the ASX, or in a publicly available document lodged by it or a Target Group Member with ASIC, in each case within three years prior to the date of this deed;
- (b) that are within the knowledge of Bidder as described in clause 1.5;
- (c) required by law or by an order of a court or Government Agency or by generally accepted accounting standards or generally accepted accounting principles;

- (d) required or permitted to be done by this deed, the Scheme or the Carve-Out Transaction, provided that, in respect of the Carve-Out Transaction, the matter is effected in accordance with the Carve-Out Transaction Documents as approved by Bidder where required in accordance with clause 5.9(c); or
- (e) that would have been Fairly Disclosed to Bidder, or which ought to have been expected to arise from anything which would have been Fairly Disclosed to Bidder, had Bidder conducted searches of public records maintained by:
  - (i) ASIC on 25 January 2024;
  - (ii) the PPSR on 25 January 2024; or
  - (iii) the registries of the High Court of Australia, the Federal Court of Australia and the Supreme Court in every State and Territory in Australia on 8 December 2023.

#### **Survival of warranties**

##### **9.4 Each Bidder Warranty and Target Warranty:**

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

#### **Timing of warranties**

- 9.5 Each warranty given under clause 9.1 or clause 9.2 is given at the date of this deed, the date of despatch of the Scheme Booklet, the date of the Scheme Meeting and as at 8:00am on the Second Court Date unless that representation or warranty is expressed to be given only at a particular time, in which case it is given only at that time.

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

- 9.6 Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- 9.7 Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representations or inducement expressly set out in this deed.

#### **Notification**

- 9.8 Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes a material breach of any Bidder Warranty or Target Warranty (as applicable).

## **10 Guarantee by Bidder Guarantor**

### **Guarantee and indemnity**

10.1 For valuable consideration, Bidder Guarantor:

- (a) unconditionally and irrevocably guarantees to Target, the due and punctual performance by Bidder of all its obligations contained in this deed and the Deed Poll, and must on demand perform these obligations; and
- (b) indemnifies Target, on demand, against all losses and Claims which may be incurred by, or brought, made or recovered against, Target as a result of any default or delay by Bidder in the due and punctual performance of its obligations under this deed and the Deed Poll.

### **Principal Obligations**

10.2 The obligations of Bidder Guarantor under this clause 10 are irrevocable and:

- (a) are principal obligations of Bidder Guarantor and not ancillary or collateral to any other right or obligation; and
- (b) may be enforced against Bidder Guarantor without Target first being required to exhaust any remedy it may have against Bidder.

### **Continuity**

10.3 This clause 10 is a continuing guarantee and indemnity and remains in full force and effect for so long as Bidder has any liability or obligation to Target under this deed or otherwise has any liability or obligation under the Deed Poll and until all those liabilities and obligations are fully discharged.

### **Liability unaffected by other events**

10.4 The liability of Bidder Guarantor under this clause 10 extends to and is not affected by, any circumstance, act or omission which, but for this provision, might otherwise affect it at law or in equity.

### **No set-off**

10.5 Bidder Guarantor has no right to set-off, deduct or withhold any moneys which it is liable to pay to Target under this clause 10 against any moneys which Target (or a Related Body Corporate of Target), is liable to pay to Bidder or Bidder Guarantor.

### **Currency**

10.6 All moneys which Bidder Guarantor is liable to pay under this clause 10 are due and payable in the currency in which they are payable under this deed or the Deed Poll.

## **11 Public Announcements**

### **Public Announcements on execution**

11.1 Immediately after execution of this deed, Bidder and Target must issue a public announcement in a form previously agreed to in writing between them, which, for the avoidance of doubt, must include the Recommendation and the Voting Intention.

**Public announcements**

- 11.2 Subject to clause 11.3, no public announcement or public disclosure of the Transaction or any other transaction the subject of this deed, the Deed Poll or the Scheme may be made other than in a form approved by each party in writing (such approval not to be unreasonably withheld, conditioned or delayed), provided that neither party will be required to consult with the other in relation to any public announcement or disclosure relating to termination of this deed or any Competing Proposal.

**Required Disclosure**

- 11.3 Where a party is required by applicable law or the Listing Rules to make any announcement or to make any disclosure in connection with the Transaction, the Carve-Out Transaction, or any other transaction the subject of this deed, the Deed Poll or the Scheme, it may do so despite clause 11.2, but must use all reasonable endeavours, to the extent practicable and lawful, to consult with the other parties prior to making the relevant disclosure.

**12 Exclusivity****No current discussions**

- 12.1 Target warrants that, as at the time of execution of this deed:
- (a) it is not directly or indirectly in any negotiations or discussions, and has ceased any negotiations or discussions, in respect of any Competing Proposal with any person; and
  - (b) any due diligence access granted to any Third Party for the purposes of such Third Party making, formulating, developing or finalising, or assisting in the making, formulation, development or finalisation of, a Competing Proposal has been terminated.

**No-shop**

- 12.2 During the Exclusivity Period, Target must not, and must ensure that its Authorised Persons do not directly or indirectly:
- (a) solicit, invite, initiate or encourage any Competing Proposal;
  - (b) solicit, invite, initiate or encourage any enquiries, proposals, discussions or negotiations in relation to, or which may reasonably be expected to lead to, a Competing Proposal; or
  - (c) communicate to any person any intention to do any of the things referred to in clauses 12.2(a) or 12.2(b).

**No-talk**

- 12.3 Subject to clause 12.7, during the Exclusivity Period, Target must not, and must ensure that its Authorised Persons do not, directly or indirectly:
- (a) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make, or which would reasonably be expected to lead to the making of, a Competing Proposal;
  - (b) negotiate, accept or enter into any agreement, arrangement or understanding regarding a Competing Proposal; or

- (c) communicate to any person an intention to do anything referred to in clauses 12.3(a) or 12.3(b).

#### **No due diligence restriction**

- 12.4 Subject to clause 12.7, during the Exclusivity Period, Target must not, and must ensure its Advisers do not, directly or indirectly:

- (a) enable any other person other than Bidder or any of its Advisers to undertake due diligence investigations on any member of the Target Group, any of the operations or assets of the Target Group's businesses or any part thereof; or
- (b) disclose or otherwise provide any non-public information about the business or affairs of the Target Group to any person (other than Bidder, its Related Bodies Corporate or their respective Authorised Persons),

in each case, with a view to obtaining or which may reasonably be expected to lead to the formulation, receipt or announcement of, an actual, proposed or potential Competing Proposal.

#### **Notification of approaches**

- 12.5 During the Exclusivity Period, Target must promptly (and in any case, within 24 hours) notify Bidder if it or its Authorised Persons receives a written proposal with respect to a Competing Proposal (including a written proposal to engage in any activity prohibited by this clause 12, or which would be prohibited by this clause 12, but for clause 12.7) (each, a **Notifiable Proposal**).

- 12.6 The notice referred to in clause 12.5 must set out the material terms of the Notifiable Proposal including the name and identity of the relevant person making or proposing (or stated to be involved in) the Notifiable Proposal, the proposed price or, to the extent stated in the Notifiable Proposal, implied value (including details of the consideration if not cash alone), conditions, timing and break fee (if any) (to the extent known by Target and its Authorised Persons), and Bidder agrees that:

- (a) any such information received shall be confidential information and subject to the Confidentiality Agreement; and
- (b) it shall not, directly or indirectly, contact the Third Party that made the Notifiable Proposal for any purpose relating to the Transaction, the Competing Proposal or any similar transaction, without the prior written consent of Target.

#### **Fiduciary out**

- 12.7 Clauses 12.3 and 12.4 do not apply to the extent that they prohibit or restrict Target or any of its Authorised Persons from taking or refusing to take any action with respect to a Competing Proposal (in relation to which there has been no material contravention of this clause 12) provided that the Target IBC has determined in good faith after:

- (a) consultation with Target's financial and legal advisers, that the Competing Proposal, approach, inquiry, proposal or request for information (as the case may be) is or may be reasonably expected to lead to a Superior Proposal; and
- (b) receiving written advice from Target's external legal advisers, that compliance with clause 12.3 or 12.4 (as the case may be) would constitute, or would be reasonably

likely to constitute, a breach of any of the fiduciary or statutory duties of the Target IBC Members,

and, provided that, Target enters into an Acceptable Confidentiality Agreement before taking any action set out in clause 12.4. For the avoidance of doubt, the evaluation of a Competing Proposal for the purposes of this clause 12.7 is not a breach of this clause 12.

### Matching right

12.8 If during the Exclusivity Period any Competing Proposal is made, announced or received, Target must:

- (a) not, and must procure that each of its Subsidiaries does not, enter into any legally binding agreement, arrangement or understanding to give effect to, consent to, or accept the Competing Proposal; and
- (b) procure each Target Recommending Director not to withdraw, adversely change or modify his or her Recommendation or Voting Intention (as set out in clause 6) in response to a Competing Proposal, or publicly recommend, support or endorse a Competing Proposal,

unless:

- (c) the Target IBC determines that the actual, proposed or potential Competing Proposal would be or would be reasonably likely to be a Superior Proposal;
- (d) Target has notified Bidder of the material terms and conditions of the Competing Proposal, including the price and identity of any person(s) making the Competing Proposal (in each case, to the extent known); and
- (e) either:
  - (i) Bidder has not announced or provided to Target a revised proposal in writing to Target (**Updated Bidder Proposal**) on or before the date which falls five Business Days after the notification given by Target under clause 12.8(d) (**Cut off Date**); or
  - (ii) Bidder has announced or provided to Target an Updated Bidder Proposal on or before the Cut off Date and the Target IBC has determined in accordance with clause 12.9(a), in good faith, that the Updated Bidder Proposal would not provide an outcome for Target Shareholders that is equally as favourable to, or more favourable to, Target Shareholders as a whole than the relevant Competing Proposal.

12.9 If Target gives notice to Bidder under clause 12.8(d), Bidder may on or before the Cut off Date, provide the Updated Bidder Proposal to Target and if it does so then:

- (a) the Target IBC must promptly (and in any case, within five Business Days) review the Updated Bidder Proposal in good faith to determine whether, having consulted their external legal and financial advisors, the Updated Bidder Proposal would provide an outcome for Target Shareholders that is equally as favourable to, or more favourable to, Target Shareholders as a whole than the relevant Competing Proposal (having regard to matters including, but not limited to, consideration, conditionality, funding, certainty and timing); and
- (b) if the Target IBC determines that the Updated Bidder Proposal would provide an outcome for Target Shareholders that is equally as favourable to, or more favourable to, Target Shareholders as a whole than the relevant Competing Proposal (having



regard to matters including, but not limited to, consideration, conditionality, funding, certainty and timing), then Bidder and Target must use their respective best endeavours to agree and enter into such documentation as is reasonably necessary to reflect the Updated Bidder Proposal, as soon as reasonably practicable, and Target must use its respective best endeavours to ensure that each Target Recommending Director continues to recommend the Scheme (as modified by the Updated Bidder Proposal) to Target Shareholders (other than as otherwise permitted by this deed).

12.10 Notwithstanding any other provision of this deed, a statement by Target, Target IBC or any Target Director only to the effect that:

- (a) the Target IBC has made the determination contemplated by clause 12.7 and has commenced the matching right process in this clause 12; or
- (b) Target Shareholders should take no action pending the completion of the matching rights process in this clause 12,

does not by itself:

- (c) constitute an adverse change, withdrawal, adverse modification or adverse qualification of the Recommendation by any Target Recommending Director or an endorsement of a Competing Proposal;
- (d) contravene this deed;
- (e) give rise to an obligation to pay the Break Fee under clause 13.4; or
- (f) give rise to a termination right under clause 15.

#### **Variations to a Competing Proposal**

12.11 For the purposes of clauses 12.5, 12.6, 12.8 and 12.9, any material modification to a Competing Proposal shall be taken to make that proposal a new Competing Proposal in respect of which Target must comply with its obligations under that clause.

#### **Normal provision of information**

12.12 Nothing in this clause 12 prevents Target or its Authorised Persons from:

- (a) providing information required to be provided by any law, any court of competent jurisdiction, any Government Agency or the Listing Rules, including in order to comply with continuous disclosure obligations; or
- (b) making presentations to, and responding to enquiries from, Target Shareholders, brokers, portfolio investors and equity market analysts in relation to the Transaction or the business of the Target Group, in the ordinary course.

## **13 Break Fee**

#### **Background to Break Fee**

13.1 Target and Bidder each acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, Bidder will incur significant costs, including those set out in clause 13.8.

- 13.2 In the circumstances in clause 13.1, Target has agreed that provision be made for the payment outlined in clause 13.4, without which Bidder would not have entered into this deed or otherwise agreed to implement the Scheme.
- 13.3 Target and the Target IBC believe, having taken advice from their legal and financial advisors, that the implementation of the Scheme will provide benefits to Target and Target Shareholders and that it is appropriate for Target to agree to the payment referred to in clause 13.4 in order to secure Bidder's participation in the Transaction.

#### **Break Fee**

- 13.4 Target must pay the Break Fee to Bidder if, during the Exclusivity Period:
- (a) any Target Recommending Director:
    - (i) fails to make, or makes and then withdraws or adversely revises their Recommendation, Voting Intention or support for the Scheme; or
    - (ii) publicly recommends, supports or endorses a Competing Proposal,
 unless:
    - (iii) the Independent Expert concludes in the Independent Expert's Report (or any update of, revision or amendment or addendum to, that report) that the Scheme is not in the best interests of Target Shareholders (except where that conclusion is due to (wholly or partly) the existence of a Competing Proposal);
    - (iv) the Target Recommending Director is permitted to do so under clause 6.4(c); or
    - (v) Target is entitled to terminate this deed pursuant to clause 15.1(a) and has given the appropriate termination notice to Bidder;
  - (b) a Competing Proposal of any kind is announced prior to the Effective Date (or, if earlier, the date this deed is terminated under clause 15) (whether or not such proposal is stated to be subject any pre-conditions) and, within 12 months after the date of such announcement, the Competing Bidder (either alone or together with any Associate(s)):
    - (i) completes in all material respects a transaction of the kind referred to in paragraphs (b),(c) or (d) of the definition of Competing Proposal; or
    - (ii) acquires a relevant interest in 50% or more of the Target Shares under a transaction that is or has become unconditional;
  - (c) Bidder has validly terminated this deed under clauses 15.1(a) or 15.3(c); or
  - (d) Target has validly terminated this deed under clause 15.2(a).
- 13.5 The parties agree that no Break Fee will be payable in any circumstances solely as the result of a Condition not being satisfied, provided that Target has complied with its obligations under clauses 3.2 and 3.3, and for the avoidance of doubt, no Break Fee is payable merely because a resolution submitted to the Scheme Meeting in respect of the Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act or any of the Carve-Out Resolutions are not passed.

**Demand for Payment of Break Fee**

- 13.6 Target must pay the Break Fee into an account nominated by Bidder, without set-off or withholding, within 10 Business Days after receiving a demand for payment from Bidder in accordance with the requirements of clause 13.7.
- 13.7 A demand by Bidder for payment of the Break Fee under clause 13.6 must:
- (a) be in writing;
  - (b) only be made after the occurrence of the event in clause 13.4, giving rise to the right to payment;
  - (c) state the circumstances which give rise to the demand; and
  - (d) nominate an account into which Target is to pay the Break Fee.

**Basis of Break Fee**

- 13.8 The Break Fee has been calculated to reimburse Bidder for costs, including the following:
- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
  - (b) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative transactions or strategic initiatives;
  - (c) costs of management and directors' time in planning and implementing the Transaction;
  - (d) out of pocket expenses incurred directly or by employees, advisors and agents in planning and implementing the Transaction; and
  - (e) any damage to Bidder's reputation associated with a failed transaction and the implications of that damage to Bidder's business,
- and Bidder and Target agree that:
- (f) the costs actually incurred Bidder will be of such a nature that they cannot all be accurately ascertained;
  - (g) the Break Fee is a genuine and reasonable pre-estimate of those costs; and
  - (h) both parties have received advice from their respective legal advisors on the operation of this clause 13.

**No payment if Scheme becomes Effective**

- 13.9 No Break Fee is payable if the Scheme becomes Effective or Bidder or an Associate of Bidder otherwise acquires Control of Target. To the extent that any amount has already been paid under this clause 13 and the Scheme becomes Effective, or Bidder or an Associate of Bidder otherwise acquires Control of Target, such amount must be immediately refunded to Target.

**Break Fee payable once**

- 13.10 The Break Fee is payable by Target to Bidder only once and where the Break Fee becomes payable to Bidder under clause 13.4 and is actually paid to Bidder, Bidder cannot make any

claim or commence or continue any legal proceedings against Target for any further payment of a Break Fee.

### **Other Claims by Bidder**

13.11 Notwithstanding any other provision of this deed (but subject to clause 13.12):

- (a) where an amount becomes payable to Bidder under clause 13.4 and is actually paid to Bidder (or is payable, but no demand is made under clauses 13.6 to 13.7):
  - (i) that amount is received by Bidder in complete settlement of any and all Claims that Bidder has or may have against Target; and
  - (ii) Bidder may not make any claim (other than a claim under this clause 13) or commence or continue legal proceedings against Target which relates to the event that gave rise to the right to make a demand under clauses 13.6 to 13.7;
- (b) the maximum aggregate liability of Target to Bidder under or in connection with this deed, the Transaction or the Scheme, including in respect of any breach of this deed, is the amount of the Break Fee; and
- (c) payment by Target to Bidder of the Break Fee in accordance with this clause 13 represents the sole and absolute remedy for Bidder under or in connection with this deed, the Transaction and the Scheme and:
  - (i) no further damages, fees, expenses or reimbursements of any kind will be payable by Target to Bidder in connection with this deed, the Transaction and the Scheme; and
  - (ii) neither Bidder nor any of its Related Bodies Corporate may make any claim or commence or continue legal proceedings in connection with this deed whatsoever, including for specific performance, injunctive relief, damages, loss, liability, compensation, payments, fees, expenses or reimbursements against Target or any other Target Party.

### **Wilful Fraud**

13.12 The limitations in clause 13.11 do not apply if, and to the extent, that Target has:

- (a) engaged in fraud, gross negligence, wilful breach, wilful misconduct, wilful concealment;
- (b) acted in bad faith; or
- (c) acted in a manner designed or intended to deliberately frustrate the Transaction.

### **Compliance with law**

13.13 If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court (or Bidder and Target agree in writing not to appeal the decision) that all or any part of the Break Fee required to be paid under clause 13.4 (**Break Fee Impugned Amount**):

- (a) is unenforceable or unlawful;
- (b) involves a breach of directors' duties; or

- (c) constitutes unacceptable circumstances or breaches an order of the Takeovers Panel,

then:

- (d) the requirement to pay the Break Fee does not apply to the extent of the Break Fee Impugned Amount; and
- (e) if Bidder has received the Break Fee Impugned Amount, it must refund it to Target within five Business Days of the final determination being made.

### **Regulatory Intervention**

- 13.14 If any regulatory body (including ASIC or the Takeovers Panel) or a court requires any modification (including requiring such a modification as a condition of consenting to or approving the Scheme or as a condition of not opposing the Scheme) to the Break Fee, including as to the amount or circumstances in which it is to be paid, then:

- (a) Bidder and Target will accept this determination and amend this deed to that extent; and
- (b) it will not result in a breach of this deed or termination of the transactions contemplated by it.

## **14 Reverse Break Fee**

### **Background to Reverse Break Fee**

- 14.1 Target and Bidder each acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, Target will incur significant costs, including those set out in clause 14.9.
- 14.2 In these circumstances, Bidder has agreed that provision be made for the payment outlined in clause 14.9, without which Target would not have entered into this deed or otherwise agreed to implement the Scheme.
- 14.3 Bidder believes, having taken advice from its legal and financial advisors, that the implementation of the Scheme will provide benefits to Bidder (and its shareholders) and that it is appropriate for Bidder to agree to the payment referred to in clause 14.5 in order to secure Target's participation in the Transaction.
- 14.4 Neither Bidder nor Target must make or cause or permit to be made any application to the Takeovers Panel or a court for or in relation to a declaration or determination that the Reverse Break Fee is invalid or unenforceable.

### **Reverse Break Fee**

- 14.5 Bidder must pay the Reverse Break Fee to Target if:
- (a) Target has validly terminated this deed under clause 15.1(a) or clause 15.2(b); or
  - (b) the Scheme becomes Effective but Bidder does not pay the Scheme Consideration in accordance with its obligations under this deed and the Deed Poll.
- 14.6 The parties agree that no Reverse Break Fee will be payable in any circumstances solely as the result of a Condition not being satisfied, provided that Bidder has complied with its obligations under clauses 3.2 and 3.3.

### **Demand for payment of Reverse Break Fee**

- 14.7 Bidder must pay the Reverse Break Fee into an account nominated by Target, without set-off or withholding, within 10 Business Days after receiving a demand for payment from Target in accordance with the requirements of clause 14.8.
- 14.8 A demand by Target for payment of the Reverse Break Fee under clause 14.7 must:
- (a) be in writing;
  - (b) only be made after the occurrence of the event in clause 14.5, giving rise to the right to payment;
  - (c) state the circumstances which give rise to the demand; and
  - (d) nominate an account into which Bidder is to pay the Reverse Break Fee.

### **Basis of Reverse Break Fee**

- 14.9 The Reverse Break Fee has been calculated to reimburse Target for costs, including the following:
- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
  - (b) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative transactions or strategic initiatives;
  - (c) costs of management and directors' time in planning and implementing the Transaction;
  - (d) out of pocket expenses incurred directly or by employees, advisors and agents in planning and implementing the Transaction; and
  - (e) any damage to Target's reputation associated with a failed transaction and the implications of that damage to Target's business,

and Bidder and Target agree that:

- (f) the costs actually incurred by Target will be of such a nature that they cannot all be accurately ascertained;
- (g) the Reverse Break Fee is a genuine and reasonable pre-estimate of those costs;
- (h) the implementation of the Transaction will provide benefits to Bidder, such that it is reasonable and appropriate for Bidder to agree to the Reverse Break Fee in order to secure Target's participation in the Transaction; and
- (i) both parties have received advice from their respective legal advisors on the operation of this clause 14.

### **Reverse Break Fee payable once**

- 14.10 The Reverse Break Fee is payable by Bidder to Target only once and where the Reverse Break Fee becomes payable to Target under clause 14.5 and is actually paid to Target, Target cannot make any claim or commence legal proceedings against Bidder for any subsequent payment of a Reverse Break Fee.

### **Other Claims by Target**

14.11 Notwithstanding any other provision of this deed (other than clause 14.12):

- (a) where an amount becomes payable to Target under clause 14.5 and is actually paid to Target, Target may not make any claim (other than a claim under this clause 14) or commence legal proceedings against Bidder which relates to the event referred to clause 14.5;
- (b) the maximum aggregate damages payable by Bidder to Target under or in connection with this deed, the Transaction or the Scheme, including in respect of any breach of this deed, is the amount of the Reverse Break Fee; and
- (c) payment by Bidder to Target of the Reverse Break Fee in accordance with this clause 14 represents the sole and absolute damages, fees, expenses or reimbursements payable by Bidder to Target under or in connection with this deed, the Transaction and the Scheme and no further damages, fees, expenses or reimbursements of any kind will be payable by Bidder to Target in connection with this deed, the Transaction and the Scheme.

### **Exceptions to limitation of liability**

14.12 The limitations in clause 14.11 do not apply:

- (a) to any failure by Bidder to pay the amount in clause 4.2;
- (b) if, and to the extent, that Bidder has:
  - (i) engaged in fraud, gross negligence, wilful breach, wilful misconduct, wilful concealment;
  - (ii) acted in bad faith; or
  - (iii) acted in a manner designed or intended to deliberately frustrate the Transaction,

and nothing in this clause 14 limits the liability of Bidder or any other Bidder Party under the Deed Poll or the Confidentiality Agreement.

## **15 Termination**

### **Termination by notice**

15.1 Target or Bidder may terminate this deed by written notice to the other party at any time before 8:00am on the Second Court Date:

- (a) if the other party (in the case of Target, Bidder or Bidder Guarantor) has materially breached this deed (other than in respect of a breach of either a Target Warranty or a Bidder Warranty, which are dealt with in clauses 15.2(b) and 15.3(c) respectively) and the party in breach has failed to remedy the breach within ten Business Days (or such shorter period ending at 5:00pm on the Business Day before the Second Court Date) after receipt by it of a notice in writing from the terminating party setting out details of the relevant circumstances giving rise to the breach and requesting the party in breach of this deed to remedy the breach;
- (b) in the circumstances set out in, and in accordance with, clauses 3.16 to 3.18; or

- (c) if the Effective Date for the Scheme has not occurred, or will not occur, on or before the End Date.

#### **Termination by Target**

- 15.2 Target may, by notice in writing to Bidder, terminate this deed at any time prior to 8:00am on the Second Court Date if at any time before then:
- (a) a majority of the Target Recommending Directors change, withdraw or modify their Recommendation as permitted under clause 6.4(a), in which case the Break Fee will become payable in accordance with clause 13.4; or
  - (b) Bidder or Bidder Guarantor breaches a Bidder Warranty and the breach is material in the context of the Transaction taken as a whole, and Bidder or Bidder Guarantor (as applicable) has failed to remedy the breach within ten Business Days (or such shorter period ending at 5:00pm on the Business Day before the Second Court Date) after receipt by it of a notice in writing from Target setting out details of the relevant circumstances giving rise to the breach and requesting Bidder or Bidder Guarantor to remedy the breach.

#### **Termination by Bidder**

- 15.3 Bidder may, by notice in writing to Target, terminate this deed at any time prior to 8:00am on the Second Court Date if, at any time before then:
- (a) a Target Recommending Director:
    - (i) publicly withdraws or adversely revises his or her Recommendation or Voting Intention, other than where the Target Recommending Director withdraws their Recommendation in accordance with clause 6.4(c); or
    - (ii) publicly recommends, endorses or supports any Competing Proposal;
  - (b) a Target Group Member enters into a definitive agreement to give effect to or implement a Competing Proposal. For the avoidance of doubt, any such definitive agreement does not include a Target Group Member entering into an Acceptable Confidentiality Agreement; or
  - (c) Target breaches a Target Warranty, and the breach is material in the context of the Transaction taken as a whole, and Target has failed to remedy the breach within ten Business Days (or such shorter period ending at 5:00pm on the Business Day before the Second Court Date) after receipt by it of a notice in writing from Bidder setting out details of the relevant circumstances giving rise to the breach and requesting Target to remedy the breach.

#### **Effect of termination**

- 15.4 In the event of termination of this deed in accordance with clause 3.18 or clauses 15.1 to 15.3 (inclusive), this deed will cease to have force and effect without any liability or obligation on the part of any party, except that:
- (a) the provisions of this clause 15.4 and clauses 1, 9.4, 10, 13, 14, 16, 17, 18 and 19 survive termination;
  - (b) each party will retain the rights it has or may have against the other parties in respect of any past breach of this deed; and



- (c) in all other respects, all future obligations of the parties under this deed will immediately terminate and be of no further force and effect including any further obligations in respect of the Scheme.

#### **No other termination**

- 15.5 Neither party may terminate or rescind this deed, except as permitted under clauses 3.16 to 3.18, or this clause 15, or if the parties agree in writing to terminate this deed.

## **16 Releases**

### **Target and Target Directors and officers**

- 16.1 Bidder and Bidder Guarantor releases its rights, and agrees with Target that neither it nor any of its Related Bodies Corporate as at the date of this deed and from time to time will make a claim, against any Target Party (other than Target and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with any matter arising in connection with this deed or the Transaction, including:

- (a) Target's execution and delivery of this deed;
- (b) any breach of any representations and warranties of Target or any other Target Group Member in this deed;
- (c) the implementation of the Scheme;
- (d) any disclosures containing any statement which is false or misleading whether in content or by omission; or
- (e) any failure to provide information in connection with the Transaction,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Target Party has engaged in wilful misconduct, wilful concealment or fraud. For the avoidance of doubt, nothing in this clause 16.1 limits Bidder's rights to terminate this deed under clause 15.1(a) or 15.3(c).

- 16.2 This clause 16.1 is subject to any Corporations Act restriction and will be read down accordingly.

- 16.3 Target receives and holds the benefit of this clause 16 to the extent it relates to each Target Party on behalf of each of them.

### **Bidder and Bidder directors and officers**

- 16.4 Target releases its rights, and agrees with Bidder that it will not make a claim, against any Bidder Party (other than Bidder and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with any matter arising in connection with this deed or the Transaction, including:

- (a) Bidder's execution and delivery of this deed;
- (b) any breach of any representations and warranties of Bidder or any other Bidder Group Member in this deed;
- (c) the implementation of the Scheme;

- (d) any disclosure containing any statement which is false or misleading whether in content or by omission; or
- (e) any failure to provide information in connection with the Transaction,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Bidder Party has engaged in wilful misconduct, wilful concealment or fraud. For the avoidance of doubt, nothing in this clause 16.4 limits Target's rights to terminate this deed under clause 15.1(a) or 15.2(b).

- 16.5 Bidder receives and holds the benefit of this clause 16 to the extent it relates to each Bidder Party on behalf of each of them.

#### **Deeds of indemnity**

- 16.6 Subject to the Scheme becoming Effective, Bidder undertakes in favour of Target and each other person who is a Target Party that it will:
- (a) for seven years from the Implementation Date, ensure that the constitutions of Target and each other Target Group Member continue to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a Target Group Member; and
  - (b) procure that Target and each other Target Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and, without limiting the foregoing, ensure that directors' and officers' runoff insurance cover entered into in accordance with clause 16.9 for such directors and officers is maintained for a period of seven years from the retirement date of each director and officer, and not take any action which would prejudice or adversely affect any directors' and officers' runoff insurance cover taken out in accordance with clause 16.9.
- 16.7 The undertakings contained in clause 16.6 are subject to any Corporations Act restriction, or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly.
- 16.8 Target receives and holds for the benefit of clause 16.6, to the extent it relates to the other Target Parties, on behalf of them.

#### **Directors' and officers' insurance**

- 16.9 Bidder acknowledges that, notwithstanding any other provision of this deed, Target may (within the parameters of clauses 16.6 to 16.8), prior to the Implementation Date, enter into arrangements to secure directors' and officers' runoff insurance for up to such seven year period referred to in clause 16.6(b) (**Policy**), and that any actions directly required to facilitate the Policy will not, by themselves, be a Material Adverse Change, a Target Prescribed Occurrence or a breach of any provision of this deed, or give rise to any right to terminate this deed and will be disregarded when assessing the operation of any other part of this deed, provided that:
- (a) Target must use reasonable endeavours to obtain the most attractive commercial terms for the Policy, from a reputable insurer, on no less favourable terms to the directors than the directors' and officers' insurance which Target has in place at the date of this deed (and will be deemed to have satisfied this requirement by following the recommendation of a reputable insurance broker);

- (b) the cost of such Policy shall not exceed the amount Fairly Disclosed in the Disclosure Letter; and
- (c) Target keeps Bidder reasonably informed of all material developments in relation to the Policy and consults with Bidder in good faith in relation to the Policy prior to securing the Policy.

#### **Obligations in relation to directors' and officers' insurance**

16.10 From the Implementation Date, Target must not:

- (a) vary or cancel the Policy; or
- (b) unless required under the Policy, commit any act or omission that may prejudice any claim by a director or officer of Target under the Policy,

as amended to provide for run off cover in accordance with clause 16.9.

## **17 Confidentiality**

17.1 Target and Bidder acknowledge and agree that Target and Bidder's Related Body Corporate continue to be bound by the Confidentiality Agreement after the date of this deed on the terms of that Confidentiality Agreement, which the Bidder and Bidder Guarantor agree to be bound as if named in it in place of Mermaid EquityCo L.P., provided that this deed prevails to the extent of any inconsistency. For the avoidance of doubt, the rights and obligations of the parties under the Confidentiality Agreement survive termination of this deed.

17.2 The parties agree that if this deed is terminated under clause 15, any party may:

- (a) where disclosure is required by the Listing Rules or that party is of the reasonable opinion that disclosure is required to ensure that the market in its securities is properly informed, disclose the fact that this deed has been terminated; and
- (b) disclose to ASIC, that this deed has been terminated.

## **18 Notices**

#### **Service of notices**

18.1 A notice, consent or other communication under this deed (**Notice**) is only effective if:

- (a) it is in writing, signed by or on behalf of the party giving it; and
- (b) it is directed to the recipient's address for notices as follows:

Target	
Address:	Level 2 80 George Street The Rocks NSW 2000
Email:	
Attn:	

<i>With a copy to:</i>	DLA Piper
Address:	Level 22 No.1 Martin Place Sydney NSW 2000
Email:	David.Ryan@dlapiper.com
Attn:	David Ryan, Partner
<b>Bidder</b>	
Address:	C/O Tricor Level 3, 1049 Victoria Road West Ryde NSW 2114
Email:	
Attn:	
<i>With a copy to:</i>	Allens
Address:	Level 28 Deutsche Bank Place 126 Phillip St Sydney NSW 2000
Email:	Tom.Story@allens.com.au
Attn:	Tom Story, Partner
<b>Bidder Guarantor</b>	
Address:	733 Marquette Avenue South, Suite 600, Minneapolis, MN 55402
Email:	
Attn:	
<i>With a copy to:</i>	Allens
Address:	Level 28 Deutsche Bank Place 126 Phillip St Sydney NSW 2000
Email:	Tom.Story@allens.com.au
Attn:	Tom Story, Partner

- 18.2 If a party changes address and fails to notify the other parties of this change and the new address, delivery of Notices to a new address, or otherwise brought to the attention of the addressee, are deemed compliant with the notice obligations under this clause 18.1 and clause 18.2.

**Effective on receipt**

18.3 A Notice given in accordance with clauses 18.1 and 18.2 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, the third day after the date of posting (or ninth day after posting if sent from one country to another); or
- (c) if sent by email, whichever of the following happens first:
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) four hours after the time sent (as recorded on the device from which the email was sent), provided that the sender does not receive an automated message that the email has not been delivered,

but if the delivery or transmission under clause 18.3(a) or 18.3(b) is not on a Business Day or after 5:00pm on a Business Day, the Notice is taken to be received at 9:00am on the Business Day after that delivery, receipt or transmission.

**19 General****Amendments**

19.1 This deed may only be amended in writing and where such amendment is signed by all the parties.

**Assignments**

19.2 None of the rights or obligations of a party under this deed may be assigned or transferred without the prior written consent of the other parties.

**No partnership or joint venture**

19.3 Subject to the terms of this deed, the business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this deed constitutes the relationship of a partnership or a joint venture between the parties.

**Consents and approvals**

19.4 Except as otherwise expressly provided in this deed a party may give or withhold its consent to or approval of any matter referred to in this deed in its absolute discretion and may give such consent or approval conditionally or unconditionally. A party that gives its consent to or approval of any matter referred to in this deed is not taken to have made any warranty or representation as to any matter or circumstance connected with the subject matter of that consent or approval.

**Costs**

19.5 Except as otherwise expressly provided in this deed, each party must pay the costs and expenses incurred by it in connection with entering into and performing its obligations under this deed, the Scheme and the Deed Poll.

**No withholdings**

- 19.6 Subject to clause 19.7, Bidder and Bidder Guarantor must make all payments that become due under this deed (including the Scheme Consideration) free and clear and without deduction of any withholdings (including taxes, duties, levies, imposts, deductions and charges of Australia or any other jurisdiction).
- 19.7 Subject to clause 19.8, if Bidder or Bidder Guarantor is required by law to deduct or withhold an amount from any payment due under this deed, then in addition to any payments under this deed, Bidder or Bidder Guarantor (as applicable) must pay to Target and/or each Scheme Shareholder an additional amount that ensures that, after the deduction or withholding is made, the net amount actually received equals the amount Target and/or Scheme Shareholder would have otherwise been entitled to, if the deduction or withholding was not required.
- 19.8 If Bidder or Bidder Guarantor 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, Bidder or Bidder Guarantor (as applicable) is permitted to deduct the relevant amounts from the Scheme Consideration paid to those Target Shareholders, and remit such amounts to the Commissioner of Taxation. The aggregate sum payable to those Target Shareholders by Bidder as Scheme Consideration will not be increased to reflect such deduction and the net aggregate sum payable to those Target Shareholders shall be taken to be in full and final satisfaction of Bidder's obligation to pay the Scheme Consideration to those Target Shareholders.
- 19.9 Each of Bidder and Bidder Guarantor acknowledges and agrees that it must not deduct from the Scheme Consideration or pay to the Commissioner of Taxation any amounts under clause 19.8 with respect to a Target Shareholder where it has received an entity declaration from the Target Shareholder prior to the Implementation Date (**Entity Declaration**) and:
- (a) the Entity Declaration is made in accordance with the requirements in section 14-225 of Subdivision 14-D and applies to a period that includes the Implementation Date; and
  - (b) Bidder or Bidder Guarantor does not know that the Entity Declaration is false.
- 19.10 If Bidder forms the view (acting reasonably) that an Entity Declaration it has received from a Target Shareholder is false, and Bidder received the Entity Declaration more than 30 days before the Implementation Date, Bidder agrees that it will not under clause 19.8 deduct from the Scheme Consideration or pay to the Commissioner of Taxation any amounts in respect of that Target Shareholder unless:
- (a) Bidder has, no fewer than 20 days before the Implementation Date, provided written notice to the Target Shareholder who has provided that Entity Declaration detailing the information upon which it relied to form that view;
  - (b) having provided the written notice referred to in clause 19.10(a) to the Target Shareholder, Bidder has provided that Target Shareholder the opportunity to review the information in that notice and respond with its views on the matters set out in that notice by or before the date that is 10 days before the Implementation Date; and
  - (c) the Target Shareholder has either not responded to that notice by the time specified in clause 19.10(b), or has responded to that notice and Bidder, after having considered in good faith that response, continues to hold the view that it has knowledge that the Entity Declaration it has received from that Target Shareholder is false.
- 19.11 Target agrees that Bidder may approach the ATO to obtain clarification as to the application of Subdivision 14-D to the Transaction and will provide all information and assistance that Bidder reasonably requires for the purpose of making any such approach. Bidder agrees:

- (a) to provide Target a reasonable opportunity to review the form and content of all materials to be provided to the ATO, and must incorporate Target's reasonable comments on those materials, and more to take into account Target's comments in relation to Bidder's engagement with the ATO, and provide Target a reasonable opportunity to participate in any discussions and correspondence between Bidder and the ATO in connection with the application of Subdivision 14-D to the Transaction; and
  - (b) not to contact any Target Shareholders in connection with the application of Subdivision 14-D to the Transaction without Target's prior written consent.
- 19.12 The parties agree to consult with each other in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the ATO following the process described in clause 19.11 in respect of any Target Shareholder.

### **Duty**

- 19.13 Bidder is liable for and must pay all stamp duty, registrations fees and similar taxes (including any related fines, interest and penalties) payable on or relating to this deed, the Scheme and any transfer of the Scheme Shares, but for the avoidance of doubt, is not liable for any stamp duty, registrations fees and similar taxes (including any related fines, interest and penalties) payable in respect of the Carve-Out Transaction.

### **GST**

- 19.14 For the purposes of clauses 19.10 to 19.15 (inclusive):
- (a) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
  - (b) a term which has a defined meaning in the GST Act has the same meaning when used in this clause, unless the contrary intention appears; and
  - (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.
- 19.15 Unless this deed expressly states otherwise, all consideration to be provided under this deed is exclusive of GST.
- 19.16 If GST is payable, or notionally payable, on a supply in connection with this deed, 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**).
- 19.17 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.
- 19.18 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.
- 19.19 If an adjustment event arises for a supply made in connection with this deed, 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.
- 19.20 Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this deed which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If

the reduced payment is consideration for a taxable supply, clause 19.16 will apply to the reduced payment. This clause 19.20 does not apply to payment of the Break Fee or the Reverse Break Fee, on the basis that the parties have agreed to set the Break Fee and Reverse Break Fee on the basis described in clause 13.8 and clause 14.9 respectively.

#### **No third party beneficiary**

- 19.21 This deed shall be binding on and inure solely to the benefit of each party to it and each of their respective permitted successors and assigns, and nothing in this deed is intended to or shall confer on any other person other than the Target Parties and the Bidder Parties, in each case to the extent set forth in clause 16, any third party beneficiary rights.

#### **Entire agreement**

- 19.22 This deed contains the entire agreement between the parties relating to the Transaction and supersedes all previous agreements, whether oral or in writing, between the parties relating to the Transaction.

#### **Execution in counterparts**

- 19.23 This deed may be executed in any number of counterparts. All counterparts taken together will be deemed to constitute one document. PDF and electronic signatures are taken to be valid and binding to the same extent as physical signatures.
- 19.24 A party may sign electronically a soft copy of this deed through an electronic signature or digital platform that indicates on the instrument that a digital signature was applied (including DocuSign) and bind itself accordingly. This will satisfy any statutory or other requirements for this deed to be in writing and signed by that party. The parties intend that:
- (a) any soft copy so signed will constitute an executed original counterpart, and any print out of the copy with the relevant signatures appearing will also constitute an executed original counterpart; and
  - (b) each signatory confirms that their signature appearing in this deed, including any such print-out (irrespective of which party printed it), is their personal signature authenticating it.

#### **Remedies cumulative**

- 19.25 Except as provided in this deed and permitted by law, the rights, powers and remedies provided in this deed are cumulative with, and not exclusive of, the rights, powers and remedies provided by law independently of this deed.

#### **Exercise and waiver of rights**

- 19.26 The rights of each party under this deed:
- (a) may be exercised as often as necessary;
  - (b) except as otherwise expressly provided by this deed, are cumulative and not exclusive of rights and remedies provided by law; and
  - (c) may be waived only in writing and specifically,
- and delay in exercising or non-exercise of any such right is not a waiver of that right.



#### **Further assurance**

- 19.27 Each party undertakes, at the request, cost and expense of the other party, to sign all documents and to do all other acts, which may be necessary to give full effect to this deed.

#### **No merger**

- 19.28 Each of the obligations, warranties any undertakings set out in this deed (excluding any obligation which is fully performed at the Implementation Date) must continue in force after the Implementation Date.

#### **No reliance**

- 19.29 Each party acknowledges that in agreeing to enter into this deed it has not relied on any express or implied representation, warranty, collateral contract or other assurance made by or on behalf of the any other party before the entering into of this deed. To the maximum extent permitted by law, each party waives all rights and remedies which, but for this clause 19.29 might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance including all rights and remedies under Part 7.10 of the Corporations Act, Part 2 Division 2 of the *Australian Securities and Investments Act 2001*(Cth), section 18, Schedule 2 (Australian Consumer Law) of the *Competition and Consumer Act 2010* (Cth) or any corresponding or equivalent provision of any legislation having effect in any relevant jurisdiction.

#### **Severability**

- 19.30 The provisions contained in each clause of this deed are enforceable independently of each other clause of this deed and the validity and enforceability of any clause of this deed will not be affected by the invalidity or unenforceability of any other clause.

#### **Service of process**

- 19.31 Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third party or other party notice) may be served on any party by being delivered to or left for that party at its address for service of Notices under clause 18.
- 19.32 Each of Bidder and Bidder Guarantor irrevocably appoint Allens as its agent for the service of process in Australia in relation to any matter arising out of this deed. If Allens ceases to be able to act as such or have an address in Australia, each of Bidder and Bidder Guarantor agrees to appoint a new process agent in Australia and deliver to Target within 10 Business Days a copy of a written acceptance of appointment by the process agent, upon receipt of which the new appointment becomes effective for the purpose of this deed. Bidder and Bidder Guarantor must inform Target in writing of any change in the address of its process agent within 10 Business Days of the change.

## Schedule 1 Indicative Timetable\*

Event	Date
Announcement and execution of this deed	13 February 2024
Lodge the Scheme Booklet with ASIC for review and comment	Late March
First Court Date	Early April
Scheme Booklet registered with ASIC	Early April
Despatch Scheme Booklet to Target Shareholders	Mid April
Scheme Meeting	Mid May
Carve-Out General Meeting	Mid May
If Target Shareholders approve the Scheme by the requisite majorities at the Scheme Meeting	
Second Court Date	Late May
Effective Date	Late May
If the Court approves the Scheme and the Scheme becomes Effective	
Scheme Record Date	Late May
Implementation Date	Early June
Date of delisting of Target	Early June

*\*Note, the Timetable is indicative only and dependent on timely receipt of regulatory approvals and is subject to change.*

## Schedule 2 Scheme of Arrangement

# Scheme of Arrangement

Ansarada Group Limited (ACN 602 586 407)  
Each Scheme Shareholder

Dated 2024



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This **Scheme of Agreement** is made under section 411 of the *Corporations Act 2001* (Cth) on **2024**.

## Parties

### Target

Name            Ansarada Group Limited  
ACN             602 586 407  
Address        Level 2, 80 George Street, The Rocks NSW 2000

### Each Scheme Shareholder

## Agreed terms

### 1 Defined terms and interpretation

#### Defined terms

1.1 In this Scheme the following definitions apply:

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

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

**Bidder** means DS Answer Pty Ltd ACN 674 445 375.

**Bidder Guarantor** means Mermaid BidCo Inc. Delaware File Number 3570833.

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

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

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

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

**Court** means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

**Deed Poll** means the deed poll in the form set out in Schedule 3 to the Scheme Implementation Deed under which Bidder and Bidder Guarantor covenants in favour of Scheme Shareholders to perform the obligations attributed to Bidder and Bidder Guarantor under this Scheme.

**Effective** means, with respect to the Scheme, 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.

**Effective Date**, with respect to the Scheme, means the date on which this Scheme becomes Effective.

**End Date** means the date that is 8 months after the date of this deed, or such other date agreed in writing by the parties.

**Government Agency** means any government or representative of a government or any governmental, non governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX, the Takeovers Panel and any regulatory organisation established under statute or any stock exchange.

**Implementation Date** means, with respect to the Scheme, the fifth Business Day, or such other Business Day as Bidder and Target agree, after the Scheme Record Date.

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

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

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

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

**Scheme Consideration** means the consideration to be provided by Bidder to each Scheme Shareholder for the transfer to Bidder of each Scheme Share, being \$2.50 cash for each Target Share held by a Scheme Shareholder as at the Scheme Record Date.

**Scheme Implementation Deed** means the scheme implementation deed dated 13 February 2024 between Bidder, Bidder Guarantor and Target.

**Scheme Record Date** means the time and date for determining entitlements to receive the Scheme Consideration, being 7:00pm on the second Business Day after the Effective Date (or such other time and date as the parties agree in writing).

**Scheme Share** means a Target Share on issue as at the Scheme Record Date.

**Scheme Shareholder** means each person who holds one or more Scheme Shares.

**Scheme Transfer** means one or more proper instruments of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, in favour of Bidder as transferee, which may be or include a master transfer of all or part of the Scheme Shares.

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

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

**Target Option** means an option conferring on its holder the right, but not the obligation, to acquire an unissued Target Share.

**Target Registry** means Boardroom Pty Limited ACN 003 209 836, or any replacement provider of share registry services to Target.

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

**Target Share 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.

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

**Trust Account** means an Australian dollar denominated trust account operated by or on behalf of Target as trustee for the Scheme Shareholders, details of which Target must notify to Bidder no later than five Business Days before the Implementation Date.

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

## Interpretation

- 1.2 In this Scheme the headings do not affect interpretation and the following provisions apply unless the context otherwise requires:
- (a) any reference, express or implied, to any legislation in any jurisdiction includes:
    - (i) that legislation as amended, extended or applied by or under any other legislation made before or after signature of this Scheme;
    - (ii) any legislation which that legislation re-enacts with or without modification; and
    - (iii) any subordinate legislation made before or after signature of this Scheme under that legislation, including (where applicable) that legislation as amended, extended or applied as described in clause 1.2(a)(i), or under any legislation which it re-enacts as described in clause 1.2(a)(ii);
  - (b) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
  - (c) references to an individual or a natural person include his estate and personal representatives;
  - (d) a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix of or to this Scheme (and the schedules and appendices form part of this Scheme);
  - (e) references to a party to this Scheme include the successors or assigns (immediate or otherwise) of that party;
  - (f) a reference to any instrument or document includes any variation or replacement of it;
  - (g) unless otherwise indicated, a reference to any time is, a reference to that time in Sydney, Australia;
  - (h) a reference to \$, A\$ or dollars is to Australian currency;
  - (i) singular words include the plural and vice versa;
  - (j) a word of any gender includes the corresponding words of any other gender;



- (k) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (l) general words must not be given a restrictive meaning just because they are followed by particular examples intended to be embraced by the general words (including particular examples introduced by "including", "for example", "such as" or similar expressions);
- (m) nothing is to be construed adversely to a party just because that party put forward this Scheme or the relevant part of this Scheme;
- (n) this Scheme includes any schedule;
- (o) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this Scheme;
- (p) a term defined in or for the purposes of the GST Law, and which is not defined in clause 1.1, has the same meaning when used in this Scheme;
- (q) a reference to the Operating Rules or Settlement Rules includes any variation, consolidation or replacement of these rules and is taken to be subject to any waiver or exemption granted to the compliance of those rules by a party;
- (r) 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;
- (s) if a party must do something under this Scheme 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
- (t) if the day on which a party must do something under this Scheme is not a Business Day, the party must do it on the next Business Day.

## 2 Preliminary matters

- 2.1 Target is an Australian public company limited by shares, and has been admitted to the official list of ASX. Target Shares are quoted for trading on the ASX.
- 2.2 As at the date of the Scheme Implementation Deed, Target had on issue or had granted (as applicable):
  - (a) 89,338,560 Target Shares, which are quoted for trading on the ASX; and
  - (b) Target Options, comprising:
    - (i) 200,000 unlisted options with an exercise price of \$0.01 and an expiry date of 31 August 2029;
    - (ii) 1,308,605 unlisted options with an exercise price of \$1.32 and an expiry date of 31 August 2029;
    - (iii) 184,389 unlisted options with an exercise price of \$0.01 and an expiry date of 31 August 2027;
    - (iv) 1,700,000 unlisted options with an exercise price of \$0.00 and an expiry date of 27 January 2026;

- (v) 969,014 unlisted options with an exercise price of \$1.845 and an expiry date of 30 June 2025;
  - (vi) 1,546,386 unlisted options with an exercise price of \$1.64 and an expiry date of 31 August 2026;
  - (vii) 407,339 unlisted options with an exercise price of \$1.64 and an expiry date of 28 November 2026;
  - (viii) 37,500 unlisted employee share options;
  - (ix) 868,728 unlisted options with an exercise price of \$1.44 and an expiry date of 1 December 2029; and
  - (x) 8,214,367 unlisted options with an exercise price of \$2.15 and an expiry date of 4 December 2024.
- 2.3 Bidder is a proprietary company incorporated in Australia for the purpose of acquiring all of the Target Shares by way of scheme of arrangement.
- 2.4 Bidder is a subsidiary of Bidder Guarantor.
- 2.5 Bidder, Target and Bidder Guarantor have entered into the Scheme Implementation Deed pursuant to which, amongst other things, Target has agreed to propose this Scheme to the Scheme Shareholders, and each of Target, Bidder and Bidder Guarantor have agreed to take certain steps to give effect to this Scheme.
- 2.6 If this Scheme becomes Effective, then subject to the terms of this Scheme, on the Implementation Date:
- (a) Bidder Guarantor and Bidder must provide or procure the provision of the Scheme Consideration to Scheme Shareholders in accordance with this Scheme and the Deed Poll; and
  - (b) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, will be transferred to Bidder and Target will enter the name of Bidder in the Target Share Register in respect of all the Scheme Shares.
- 2.7 This Scheme attributes actions to Bidder and Bidder Guarantor but does not itself impose an obligation on it to perform those actions. Bidder and Bidder Guarantor have agreed, by executing the Deed Poll, to perform the actions attributed to them under this Scheme, including the provision or procuring the provision of the Scheme Consideration to the Scheme Shareholders in accordance with the terms of this Scheme.

### 3 Conditions

#### Conditions precedent

- 3.1 This Scheme is conditional on and will have no force or effect unless and until the following conditions precedent are satisfied:
- (a) all the conditions in clause 3.1 of the Scheme Implementation Deed (other than the condition in clause 3.1(e) (*Court Approval*)) are satisfied or waived in accordance with the terms of the Scheme Implementation Deed;
  - (b) as at 8:00am on the Second Court Date, neither the Scheme Implementation Deed nor the Deed Poll is terminated in accordance with their terms;

- (c) the Court approves this Scheme under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act and agreed to or consented to in writing by Target and Bidder (such agreement not to be unreasonably withheld);
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme that are agreed to or consented to in writing by Target and Bidder are satisfied or waived; and
- (e) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving this Scheme come into effect pursuant to section 411(10) of the Corporations Act on or before the End Date.

### **Certificates**

- 3.2 Bidder and Target will provide to the Court on the Second Court Date certificates signed by Bidder and Target (or such other evidence as the Court requests) stating whether or not the conditions to this Scheme (other than the conditions in clauses 3.1(c) to 3.1(e) (inclusive) above and the condition in clause 3.1(e) (*Court Approval*) of the Scheme Implementation Deed) have been satisfied or waived in accordance with the terms of the Scheme Implementation Deed as at 8.00am on the Second Court Date.
- 3.3 The certificates given under clause 3.2 constitute conclusive evidence that such conditions precedent have been satisfied or waived.

### **Termination and End Date**

- 3.4 Without limiting any rights under the Scheme Implementation Deed, if:
  - (a) the Scheme Implementation Deed or the Deed Poll is terminated in accordance with its terms before the Scheme becomes Effective; or
  - (b) the Effective Date has not occurred on or before the End Date,

then the Scheme will lapse and each of Bidder and Target are released from any further obligation to take steps to implement this Scheme, and any liability with respect to this Scheme, unless Bidder and Target otherwise agree in writing (and, if required, as approved by the Court).

## **4 Implementation of this Scheme**

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

- 4.1 For the purposes of section 411(10) of the Corporations Act, Target must lodge with ASIC an office copy of the order made by the Court under section 411(4)(b) of the Corporations Act approving this Scheme before 5:00pm on the Business Day following the day on which such office copy is received by Target or such later date as Target and Bidder agree in writing.

### **Transfer of Scheme Shares**

- 4.2 On the Implementation Date:
  - (a) subject to Bidder providing or procuring the provision of the Scheme Consideration in accordance with this Scheme and the Deed Poll and confirming in writing to Target that it has done so, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, must be transferred to Bidder without the need for any further act by any Scheme Shareholder (other than

acts performed by Target as attorney and agent for Scheme Shareholders under clause 8 or otherwise) by:

- (i) Target delivering to Bidder a duly completed and executed Scheme Transfer, executed on behalf of the Scheme Shareholders by Target (or any of its officers) as their attorney and agent; and
  - (ii) Bidder duly executing the Scheme Transfer and delivering the executed and, if necessary, stamped Scheme Transfer, to Target for registration; and
- (b) immediately following receipt of the duly executed Scheme Transfer in accordance with clause 4.2(a)(ii), Target must enter, or procure the entry of, the name of Bidder in the Target Share Register in respect of all of the Scheme Shares transferred to Bidder in accordance with this Scheme.

## 5 Scheme Consideration

### Entitlement to Scheme Consideration

- 5.1 Subject to the terms of this Scheme, on the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, each Scheme Shareholder will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clauses 5.2 to 5.14 and the Deed Poll.

### Provision of Scheme Consideration

- 5.2 The obligation of Bidder to provide the Scheme Consideration under this Scheme and the Deed Poll will be satisfied by Bidder, by no later than the Business Day before the Implementation Date, depositing (or procuring the deposit), in immediately available funds, an amount equal to the aggregate amount in Australian dollars of the Scheme Consideration payable to all Scheme Shareholders into the Trust Account, such amount to be held by Target on trust for the purpose of paying the Scheme Consideration to Scheme Shareholders who are entitled to receive it pursuant to clause 5.11 (except that the amount of any interest on the amount deposited, less bank fees and other charges, will be credited to Bidder's account).
- 5.3 On the Implementation Date, and subject to receipt of the funds from Bidder in accordance with clause 5.2 and subject to clause 5.5, Target must pay (or procure payment) from the Trust Account to each Scheme Shareholder an amount equal to the applicable amount of Scheme Consideration that the Scheme Shareholder is entitled for each Scheme Share transferred to Bidder on the Implementation Date by that Scheme Shareholder.
- 5.4 Target's obligation under clause 5.3 will be satisfied by Target (in its absolute discretion, and despite any election referred to in clause 5.4(a) or authority referred to in clause 5.4(b) made or given by the Scheme Shareholder):
- (a) where a Scheme Shareholder has, before the Scheme Record Date, made an election in accordance with the requirements of the Target Registry to receive payments from Target by electronic funds transfer to an Australian dollar denominated bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
  - (b) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to an Australian dollar denominated bank account nominated by the Scheme Shareholder by an appropriate authority from the Scheme Shareholder to Target; or

- (c) dispatching, or procuring the dispatch of, a cheque in Australian currency for the relevant amount to the Scheme Shareholder by prepaid post to their Registered Address, such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with clause 5.8).

5.5 In the event that:

- (a) a Scheme Shareholder does not have a, or Target believes that the Scheme Shareholder is not known at their, Registered Address and no account has been notified in accordance with clause 5.4(a) or 5.4(b) or a deposit into such an account is rejected or refunded; or
- (b) a cheque issued under this clause 5 has been cancelled in accordance with clause 5.9,

Target as the trustee for the Scheme Shareholders may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of Target (**Separate Account**) to be held until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with unclaimed money legislation. To avoid doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with unclaimed money legislation.

- 5.6 Until such time as the amount is dealt with in accordance with the Unclaimed Money Act, Target must hold the amount on trust for the relevant Scheme Shareholder, 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 Scheme Shareholder 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.
- 5.7 To the extent that there is a surplus in the amount held by Target as the trustee for the Scheme Shareholders in the Trust Account, that surplus must be paid by Target as the trustee for the Scheme Shareholders to Bidder following the satisfaction of Target's obligations as the trustee for the Scheme Shareholders under clauses 5.2 to 5.7 (inclusive).

#### **Joint holders**

5.8 In the case of Scheme Shares held in joint names:

- (a) subject to clause 5.4, the Scheme Consideration 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 Target Share Register as at the Scheme Record Date or to the joint holders (unless the joint holders have nominated a bank account under clause 5.4(a) or clause 5.4(b), in which case the amount must be deposited directly to the nominated bank account of the joint holders); and
- (b) 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 Target Share Register as at the Record Date or to the joint holders.

#### **Cancellation and re issue of cheques**

5.9 Target may cancel a cheque issued under this clause 5 if the cheque:

- (a) is returned to Target; or

- (b) has not been presented for payment within six months after the date on which the cheque was sent.

- 5.10 During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Target (or the Target Registry) (which request may not be made until the date which is five Business Days after the Implementation Date), a cheque that was previously cancelled under clause 5.9 must be reissued.

#### **Unclaimed monies**

- 5.11 The Unclaimed Money Act will apply in relation to any Scheme Consideration which becomes "unclaimed money" (as defined in section 7 of the Unclaimed Money Act).
- 5.12 Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Bidder.

#### **Orders of a court**

- 5.13 If written notice is given to Target (or the Target Registry) or Bidder of an order or direction made by a court of competent jurisdiction or by another Government Agency that:
- (a) requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which sum would otherwise be payable to that Scheme Shareholder by Target in accordance with this clause 5, then Target will be entitled to make that payment (or procure that it is made) in accordance with that order or direction; or
  - (b) prevents Target from making a payment to a particular Scheme Shareholder in accordance with this clause 5, or such payment is otherwise prohibited by applicable law, Target will be entitled to retain an amount, in Australian dollars, equal to the amount of the relevant payment until such time as payment is permitted by that (or another) order or direction or otherwise by law.

To the extent that amounts are so deducted or withheld in accordance with this clause 5.13, such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the person in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted as required.

#### **Fractional entitlements**

- 5.14 Where the calculation of the Scheme Consideration to be issued to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, the fractional entitlement will, be rounded down to the nearest whole cent.

## **6 Dealings in Target Shares**

#### **Determination of Scheme Shareholders**

- 6.1 To establish the identity of the Scheme Shareholders, dealings in Target Shares or other alterations to the Target Share Register will only be recognised if:
- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Target Share Register as the holder of the relevant Target Shares at or before the Scheme Record Date; and

- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received on or before the Scheme Record Date at the place where the Target Share Register is kept,

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

### **Target Share Register**

- 6.2 Target must register, or cause to be registered, registrable transmission applications or transfers of Target Shares in accordance with clause 6.1(b) on or before the Scheme Record Date, provided that nothing in this clause 6.2 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' (as defined in the Operating Rules).
- 6.3 If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that holder) must not dispose of or otherwise deal with, or purport or agree to dispose of or otherwise deal with, any Scheme Shares or any interest in them after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and Target will be entitled to disregard any such disposal or other dealing.
- 6.4 For the purpose of determining entitlements to the Scheme Consideration, Target must maintain the Target Share Register in accordance with the provisions of clauses 6.2 to 6.6 (inclusive) until the Scheme Consideration has been paid to the Scheme Shareholders. The Target Share Register in this form will solely determine entitlements to the Scheme Consideration.
- 6.5 All statements of holding for Target Shares (other than statements of holding in favour of Bidder) will cease to have effect after the Scheme Record Date as documents of title in respect of those Target Shares and, as from that date, each entry current at that date on the Target Share Register (other than entries in respect of Bidder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.
- 6.6 As soon as possible after the Scheme Record Date, and in any event within one Business Day after the Scheme Record Date, Target will ensure that details of the names, Registered Addresses and holdings of Target Shares for each Scheme Shareholder as shown in the Target Share Register as at the Scheme Record Date are available to Bidder in the form Bidder reasonably requires.

## **7 Quotation of Target Shares**

- 7.1 Target will apply to ASX to suspend trading on the ASX of Target Shares with effect from the close of trading on the Effective Date.
- 7.2 Target will apply:
  - (a) for termination of the official quotation of Target Shares on the ASX; and
  - (b) to have itself removed from the official list of ASX,

in each case with effect on and from the close of trading on the trading day immediately following, or shortly after, the Implementation Date or on such other date after the Implementation Date as determined by Bidder.

## 8 General Scheme provisions

### Consent to amendments to this Scheme

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

- (a) Target may by its counsel or solicitors, consent on behalf of all persons concerned to those alterations or conditions to which Bidder has consented; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which Target has consented to in accordance with clause 8.1(a).

### Scheme Shareholders' agreements and warranties

8.2 Each Scheme Shareholder, without the need for any further act:

- (a) irrevocably agrees to the transfer of their Scheme Shares to Bidder together with all rights and entitlements attaching to those shares in accordance with this Scheme;
- (b) irrevocably agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (c) irrevocably agrees:
  - (i) that after the transfer of the Scheme Shares to Bidder, any share certificate relating to the Scheme Shares will not constitute evidence of title to those Scheme Shares; and
  - (ii) at the direction of Bidder, to destroy any share certificates relating to the Scheme Shares; and
- (d) who holds their Scheme Shares in a CHESS Holding irrevocably agrees to the conversion of those Scheme Shares to an Issuer Sponsored Holding and irrevocably authorises Target to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion;
- (e) acknowledges that this Scheme binds Target and all Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting) and, to the extent of any inconsistency, overrides any other part of the constitution of Target; and
- (f) irrevocably consents to Target and Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of this Scheme.

8.3 Each Scheme Shareholder is taken to have warranted to Target and Bidder, and appointed and authorised Target as its attorney and agent to warrant to Bidder, that as at the Implementation Date:

- (a) all their Scheme Shares (including any rights and entitlements attaching to their Scheme Shares) which are transferred under this Scheme will, at the time of transfer of them to Bidder, be fully paid and free from all:
  - (i) mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Properties Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise; and



- (ii) restrictions on transfer of any kind; and
  - (b) they have full power and capacity to transfer their Scheme Shares to Bidder together with any rights and entitlements attaching to those Scheme Shares; and
  - (c) they have no existing right to be issued any Target Shares, or any other Target securities.
- 8.4 Target undertakes that it will provide the warranties in clause 8.3 to Bidder as agent and attorney for each Scheme Shareholder.

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

- 8.5 To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme will, at the time of transfer of them to Bidder, vest in Bidder free from all:
- (a) mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the Personal Properties Securities Act 2009 (Cth)) and interests of third parties of any kind, whether legal or otherwise; and
  - (b) restrictions on transfer of any kind.
- 8.6 On and from the Implementation Date, subject to the Scheme having become Effective and the Scheme Consideration having been provided in accordance with clause 5.3, Bidder will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending registration by Target of Bidder in the Target Share Register as the holder of the Scheme Shares.

#### **Appointment of sole proxy**

- 8.7 Immediately upon the Scheme Consideration having been provided in accordance with clause 5.3 and until Target registers Bidder as the holder of all Scheme Shares in the Target Share Register, each Scheme Shareholder:
- (a) without the need for any further act, irrevocably appoints Bidder as attorney and agent (and directs Bidder in each such capacity) to appoint any director, officer, secretary or agent nominated by them as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution whether in person, by proxy or by corporate representative;
  - (b) must not attend or vote at any shareholders' meetings or sign any shareholders' resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.7(a));
  - (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and
  - (d) acknowledges and agrees that in exercising the powers conferred by clause 8.7(a), Bidder and any director, officer, secretary or agent nominated by Bidder under that clause may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

**Authority given to Target**

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

- (a) enforcing the Deed Poll against Bidder and Bidder Guarantor; and
- (b) executing any document, or doing or taking any other act, necessary, desirable or expedient to give full effect to this Scheme and the transactions contemplated by it, including executing and delivering the Scheme Transfer,

and Target accepts such appointment. Target, as attorney and agent of each Scheme Shareholder, may sub delegate its functions, authorities or powers under this clause 8.8 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

**Binding effect of this Scheme**

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

**9 General****Stamp duty**

9.1 Bidder will, and Bidder Guarantor unconditionally and irrevocably guarantees the obligation of Bidder to:

- (a) pay all stamp duty (if any) and any related fines and penalties payable on or in respect of the transfer by the Scheme Shareholders of the Scheme Shares to Bidder pursuant to this Scheme or the Deed Poll; and
- (b) indemnify each Scheme Shareholder against any liability incurred by the Scheme Shareholder arising from failure to comply with clause 9.1(a).

**Consent**

9.2 Each Scheme Shareholder consents to Target doing all things necessary or incidental to give full effect to the implementation of this Scheme and the transactions contemplated by it.

**Enforcement of Deed Poll**

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

**Notices**

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

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

### **Governing law and jurisdiction**

- 9.6 This Scheme and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New South Wales.
- 9.7 The courts having jurisdiction in New South Wales have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Scheme (including a dispute relating to any non-contractual obligations arising out of or in connection with this Scheme) and each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New South Wales.

### **Further action**

- 9.8 Target must do all things and execute all documents necessary to give full effect to this Scheme and the transactions contemplated by it.

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

- 9.9 None of Target, Bidder Guarantor, Bidder, nor any of their respective directors, officers, secretaries 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.

## Schedule 3 Deed Poll

# Deed Poll

DS Answer Pty Ltd (ACN 674 445 375)

Mermaid BidCo Inc.

In favour of each Target Scheme Shareholder

Dated

2024



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This deed poll is made on

2024

Parties

**Bidder**  
Name DS Answer Pty Ltd  
ACN 674 445 375  
Address C/O Tricor, Level 3, 1049 Victoria Road, West Ryde, NSW, 2114

**Bidder Guarantor**  
Name Mermaid BidCo Inc.  
Business No. Delaware File Number 3570833  
Address 733 Marquette Avenue South, Suite 600, Minneapolis, MN 55402

In favour of each Scheme Shareholder

Background

- A Bidder, Bidder Guarantor and Target have entered into the Scheme Implementation Deed, under which Bidder is to pay the Scheme Consideration and acquire all Scheme Shares held by Scheme Shareholders under the Scheme, and also under which Bidder has agreed to enter into (and procure that Bidder Guarantor enters into) this deed poll.
- B Bidder is entering into this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to perform its obligations under the Scheme Implementation Deed and the Scheme. Bidder Guarantor is entering into this deed poll for the purpose of guaranteeing that Bidder undertakes such actions.

Agreed terms

1 Defined terms and interpretation

Defined terms

- 1.1 Unless the context otherwise requires, terms defined in the Scheme have the same meaning when used in this deed poll and:

**First Court Date** means the date the Court first hears the application to order the convening of the Scheme Meetings under section 411(1) of the Corporations Act or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned or appeal application is heard.

**Insolvent** has the meaning given in the Scheme Implementation Deed.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders, substantially in the form set out in Schedule 2 to the Scheme Implementation Deed, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by Bidder and Target.

### **Interpretation**

- 1.2 Clause 1.2 of the Scheme applies to the interpretation of this deed poll, except that references to 'Scheme' are to be read as references to **deed poll**.

### **Nature of deed poll**

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

## **2 Conditions**

### **Conditions**

- 2.1 The obligations of Bidder and Bidder Guarantor under this deed poll are subject to the Scheme becoming Effective.

### **Termination**

- 2.2 The obligations of Bidder and Bidder Guarantor under this deed poll will automatically terminate and the terms of this deed poll will be of no further force or effect if:
- (a) the Scheme Implementation Deed is terminated in accordance with its terms; or
  - (b) the Scheme does not become Effective by the End Date or any later date as the Court, with the consent of Bidder and Target, may order; or
  - (c) the Scheme terminates and ceases to be of any further force or effect in accordance with its terms,

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

### **Consequences of termination**

- 2.3 If this deed poll is terminated under clause 2.2, in addition and without prejudice to any other available rights, powers or remedies:
- (a) Bidder and Bidder Guarantor are released from their obligations to further perform this deed poll, except those obligations contained in clause 6.1 and any other obligations which by their nature survive termination; and
  - (b) each Scheme Shareholder retains the rights they have against Bidder and Bidder Guarantor in respect of any breach of this deed poll which occurs before it was terminated.



### **3 Scheme obligations**

- 3.1 Subject to clause 2, Bidder covenants in favour of each Scheme Shareholder to:
- (a) provide or procure the provision of the Scheme Consideration for all Scheme Shares in accordance with the terms of the Scheme; and
  - (b) perform all other actions, and give each acknowledgement, representation and warranty (if any), attributed to it under the Scheme, as if it were a party to the Scheme; and
  - (c) comply with its obligations under the Scheme Implementation Deed, in so far as the Scheme Implementation Deed relates to the Scheme, and do all things necessary or expedient on its part to implement the Scheme.
- 3.2 Subject to clause 2, Bidder Guarantor covenants in favour of each Scheme Shareholder that it will unconditionally and irrevocably procure and guarantee the due and punctual performance by Bidder of all obligations contemplated of it under clause 3.1.

### **4 Warranties**

- 4.1 Bidder and Bidder Guarantor represents and warrants that:
- (a) it is a corporation validly existing under the laws of its place of incorporation;
  - (b) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
  - (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance by it of this deed poll;
  - (d) this deed poll is valid and binding on it and is enforceable against it in accordance with its terms;
  - (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound; and
  - (f) it is not Insolvent.

### **5 Continuing obligations**

- 5.1 This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until the earlier of:
- (a) each of Bidder and Bidder Guarantor having fully performed its obligations under this deed poll; or
  - (b) termination of this deed poll under clause 2.2.

## 6 General

### Stamp duty

6.1 Bidder must, and Bidder Guarantor unconditionally and irrevocably guarantees the obligation of Bidder to:

- (a) pay or procure the payment of all stamp duty (if any) and any related fines and penalties payable on or in respect of the transfer by the Scheme Shareholders of the Scheme Shares to Bidder pursuant to the Scheme or this deed poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 6.1(a).

### Notices

6.2 Any notice or other communication to Bidder or Bidder Guarantor in connection with this deed poll must be:

- (a) signed by the person making the communication or that person's duly authorised agent; and
- (b) given by hand delivery, pre-paid post or email in accordance with the details set out below:

Bidder	
Address:	C/O Tricor, Level 3, 1049 Victoria Road, West Ryde, NSW, 2114
Email:	
Attn:	
<i>With a copy to:</i>	Allens
Address:	Level 28 Deutsche Bank Place 126 Phillip St Sydney NSW 2000
Email:	Tom.Story@allens.com.au
Attn:	Tom Story, Partner

Bidder Guarantor	
Address:	733 Marquette Avenue South, Suite 600, Minneapolis, MN 55402
Email:	
Attn:	
<i>With a copy to:</i>	Allens

Address:	Level 28 Deutsche Bank Place 126 Phillip St Sydney NSW 2000
Email:	<a href="mailto:Tom.Story@allens.com.au">Tom.Story@allens.com.au</a>
Attn:	Tom Story, Partner

- (c) Subject to clause 6.2(d), any notice or other communication given in accordance with clause 6.2 will be deemed to have been duly given as follows:
- (i) if delivered by hand, on delivery;
  - (ii) if sent by pre-paid post, the third Business Day after the date of posting (or the ninth Business Day after posting if sent from one country to another); and
  - (iii) if sent by email, whichever of the following happens first:
    - (A) when the sender receives an automated message confirming delivery; or
    - (B) four hours after the time sent (as recorded on the device from which the email was sent), provided that the sender does not receive an automated message that the email has not been delivered.
- (d) Any notice or other communication that, pursuant to clause 6.2(c), would be deemed to be given:
- (i) other than on a Business Day or after 5:00pm on a Business Day is regarded as given at 9:00am on the following Business Day; and
  - (ii) before 9:00am on a Business Day is regarded as given at 9:00am on that Business Day,

where references to time are to time in the place the recipient is located.

### **Cumulative rights**

- 6.3 The rights, powers and remedies of Bidder, Bidder Guarantor and the Scheme Shareholders under this deed poll are cumulative with and do not exclude the rights, powers or remedies provided by law independently of this deed poll.

### **Waiver and variation**

- 6.4 A party waives a right under this deed poll only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- 6.5 Failure to exercise or enforce, a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed poll by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed poll.

6.6 A provision of this deed poll may not be varied unless:

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

in which event Bidder and Bidder Guarantor must enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.

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

6.7 This deed poll and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New South Wales.

6.8 The courts having jurisdiction in New South Wales have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this deed poll (including a dispute relating to any non-contractual obligations arising out of or in connection with this deed poll) and each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New South Wales.

#### **Assignment**

6.9 The rights and obligations created by this deed poll are personal to Bidder, Bidder Guarantor and each Scheme Shareholder and must not be assigned, charged, encumbered or otherwise dealt with at law or in equity without the prior written consent of Bidder and Bidder Guarantor.

6.10 Any purported dealing in contravention of clause 6.9 is invalid.

#### **Further assurances**

6.11 Bidder and Bidder Guarantor will, at its own expense, do all things reasonably required of it and execute all documents reasonably necessary to give full effect to this deed poll, the Scheme and the transactions contemplated by them.

#### **Joint and several obligations**

6.12 Bidder and Bidder Guarantor are jointly and severally liable for each obligation imposed on both of them by the terms of this deed poll.

# Signature page

Executed as a deed poll.

Executed by **DS Answer Pty Ltd (ACN 674 445 375)** in accordance with s127 of the *Corporations Act 2001* (Cth):

.....  
Signature of director

.....  
Signature of director/company secretary

.....  
Name of director (print)

.....  
Name of director/company secretary (print)

Executed by **Mermaid BidCo Inc.:**

.....  
Signature of Authorised Representative

.....  
Signature of Witness

.....  
Name of Authorised Representative (print)

.....  
Name of Witness (print)

## Schedule 4 Target issued capital

Security	Total number on issue
Target Shares	89,338,560
Target Options	<p>200,000 unlisted options with an exercise price of \$0.01 and an expiry date of 31 August 2029</p> <p>1,308,605 unlisted options with an exercise price of \$1.32 and an expiry date of 31 August 2029</p> <p>184,389 unlisted options with an exercise price of \$0.01 and an expiry date of 31 August 2027</p> <p>1,700,000 unlisted options with an exercise price of \$0.00 and an expiry date of 27 January 2026</p> <p>969,014 unlisted options with an exercise price of \$1.845 and an expiry date of 30 June 2025</p> <p>1,546,386 unlisted options with an exercise price of \$1.64 and an expiry date of 31 August 2026</p> <p>407,339 unlisted options with an exercise price of \$1.64 and an expiry date of 28 November 2026</p> <p>37,500 unlisted employee share options</p> <p>868,728 unlisted options with an exercise price of \$1.44 and an expiry date of 1 December 2029</p> <p>8,214,367 unlisted options with an exercise price of \$2.15 and an expiry date of 4 December 2024</p>

Schedule 5 Conditions Precedent Certificate

**Ansarada Group Limited (ACN 602 586 407) (Target)** and **DS Answer Pty Ltd (ACN 674 445 375) (Bidder)** certify and confirm, in respect of matters within each respective party's knowledge, and agree, that each of the conditions precedent:

- 1. in clause 3.1 (other than the condition in clause 3.1(e) relating to Court approval) of the scheme implementation deed dated **[insert date]** between Target and Bidder (**SID**) has been satisfied, waived, or is hereby waived by the relevant party (or parties) to the SID in accordance with the terms of the SID; and
- 2. in clauses 3.1(a) and (b) of the scheme of arrangement between Target and the relevant Target shareholders which appears in Annexure **[insert]** of Target's scheme booklet dated **[insert]** has been satisfied.

This deed is governed by the laws of New South Wales.

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Dated:

**Executed as a deed**

Executed by **Ansarada Group Limited (ACN 602 586 407)** in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....  
Signature of director

.....  
Name of director (print)

.....  
Signature of director/company secretary

.....  
Name of director/company secretary (print)

Executed by **DS Answer Pty Ltd (ACN 674 445 375)** in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....  
Signature of director

.....  
Name of director (print)

.....  
Signature of director/company secretary

.....  
Name of director/company secretary (print)

# Signature page

Executed as a deed.

Executed by **Ansarada Group Limited (ACN 602 586 407)** in accordance with section 127 of the *Corporations Act 2001* (Cth):

[Redacted Signature]

Signature of director

[Redacted Signature]

Signature of director/company secretary

[Redacted Name]

Name of director (print)

[Redacted Name]

Name of director/company secretary (print)

Executed by **DS Answer Pty Ltd (ACN 674 445 375)** in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....  
Signature of director

.....  
Signature of director/company secretary

.....  
Name of director (print)

.....  
Name of director/company secretary (print)

Executed by **Mermaid BidCo Inc. (Delaware File Number 3570833)** in accordance with its constituent documents:

.....  
Signature of authorised representative

.....  
Signature of witness

.....  
Name of authorised representative (print)

.....  
Name of witness (print)



# Signature page

Executed as a deed.

Executed by **Ansarada Group Limited (ACN 602 586 407)** in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....  
Signature of director

.....  
Signature of director/company secretary


.....  
Name of director (print)

.....  
Name of director/company secretary (print)

Executed by **DS Answer Pty Ltd (ACN 674 445 375)** in accordance with section 127 of the *Corporations Act 2001* (Cth):

  
.....  
Signature of director

  
.....  
Signature of director/company secretary

  
.....  
Name of director (print)

  
.....  
Name of director/company secretary (print)

Executed by **Mermaid BidCo Inc. (Delaware File Number 3570833)** in accordance with its constituent documents:

  
.....  
Signature of authorised representative

  
.....  
Signature of witness

  
.....  
Name of authorised representative (print)

  
.....  
Name of witness (print)