

# ASX ANNOUNCEMENT

7 September 2017

## Scheme of Arrangement becomes effective

Further to the announcement on Wednesday 6 September 2017, SMS Management & Technology Limited (ASX: SMX) (**SMS**) confirms that an office copy of the orders made by the Supreme Court of Victoria, approving the scheme of arrangement for the proposed acquisition of SMS by ASG Group Limited (**Scheme**), has been lodged with the Australian Securities and Investments Commission this morning. A copy of the Court orders approving the Scheme is attached to this announcement.

Accordingly, pursuant to section 411(10) of the *Corporations Act 2001* (Cth), the Scheme is now legally effective.

Now that the Scheme is effective, the special dividend of 10.2 cents per SMS share, announced by SMS on 1 September 2017, will be paid to SMS shareholders on the SMS Share Register at the special dividend record date (7.00pm on Monday, 11 September 2017). The payment date of the special dividend is Monday, 18 September 2017. The Scheme Consideration (being \$1.80 in cash per SMS share) will be reduced by the cash value of the special dividend paid (being 10.2 cents per SMS share), to \$1.698 per SMS share.

It is expected that trading in SMS's shares on ASX will be suspended from close of trading today.

## Further Information

No action is required by SMS shareholders.

SMS shareholders can obtain further information by contacting the SMS Shareholder Information Line, which is available between 8:30am and 5:30pm (Melbourne time) Monday to Friday on 1300 970 086 (within Australia) or +61 1300 970 086 (outside Australia).

## About SMS

SMS is an ASX-listed Australian business specialising in business and IT advisory, technology solutions, managed services and recruitment. SMS cultivates innovation, digital, mobile and design-led business and technology capability to empower organisations across all industry sectors. With over 1,400 staff across Australia, Hong Kong, Singapore and the Philippines, SMS promotes and delivers next-generation customer-centric outcomes for our clients.

For more information please visit [www.smsmt.com](http://www.smsmt.com)

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMERCIAL COURT  
REDCREST CORPORATIONS LIST**



**IN THE MATTER OF SMS MANAGEMENT & TECHNOLOGY LIMITED  
ACN 009 558 865**

**SMS MANAGEMENT & TECHNOLOGY LIMITED**

Plaintiff

**GENERAL FORM OF ORDER**

**JUDGE:** The Honourable Justice Robson

**DATE MADE:** 6 September 2017

**ORIGINATING PROCESS:** Originating Process filed 4 February 2016

**HOW OBTAINED:** On the adjourned hearing of the Originating Process

**ATTENDANCE:** Mr R. D. Strong of counsel for the Plaintiff  
Mr J Redwood of counsel for ASG Group Limited

**OTHER MATTERS:** The Court received into evidence the affidavit of Katrina Anne Sleiman affirmed 6 September 2017 and the exhibits thereto.

There has been produced to the Court a statement in writing by the Australian Securities and Investments Commission ("the Commission") in accordance with section 411(17)(b) of the *Corporations Act 2001* (Cth) stating that the Commission has no objection to the scheme of arrangement between the Plaintiff and its members referred to in this Order.

Associate Justice Efthim has by order made on 5 September 2017 declared that the meeting of the members of the Plaintiff convened pursuant to the order of the Honourable Justice Robson made on First Hearing and held on 1 September 2017 was duly convened and held and the resolution considered by the said meeting was duly passed.

**THE COURT ORDERS THAT:**

1. Pursuant to section 411(4)(b) of the *Corporations Act 2001* (Cth) ("Act"), the scheme of arrangement between the Plaintiff and its members agreed to by the said members at the meeting convened pursuant to the order of the Honourable Justice Robson made at

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the First Hearing and held on 1 September 2017, the terms of which are set out in the document annexed as Schedule 1 to this order, be and is hereby approved.

2. The Plaintiff be exempted from compliance with section 411(11) of the Act in relation to this order.
3. This order be drawn up by the solicitors for the Plaintiff and it be signed by the Honourable Justice Robson pursuant to rule 60.02(2) of the *Supreme Court (General Civil Procedure) Rules 2015*.



The Honourable Justice Robson

## SCHEDULE 1 - SCHEME

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SMS Management & Technology Limited

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Scheme Participants

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# Scheme of Arrangement

Pursuant to section 411 of the Corporations Act

3439-5969-7669v4

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## Parties

**SMS Management & Technology Limited** ACN 009 558 865 of Level 41, 140 William Street, Melbourne, Victoria 3000 (**Target**)

### Scheme Participants

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## Agreed terms

### 1 Definitions

In this document these terms have the following meanings:

<b>ASIC</b>	The Australian Securities and Investments Commission.
<b>Associate</b>	In relation to a party, has the meaning given in sections 11, 12 and 16 of the Corporations Act.
<b>ASX</b>	ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it.
<b>ASX Listing Rules</b>	The official listing rules of ASX.
<b>Bidder</b>	ASG Group Limited ACN 070 045 117 of Level 9, 167 St Georges Terrace, Perth, Western Australia 6000.
<b>Bidder Registry</b>	Link Market Services Pty Ltd or any replacement provider of share registry services to Bidder.
<b>Business Day</b>	The meaning given by the ASX Listing Rules.
<b>CHESS</b>	The Clearing House Electronic Subregister System, which facilitates electronic security transfer in Australia, operated by ASX Settlement and Transfer Corporation Pty Limited ACN 008 504 532.
<b>Corporations Act</b>	The <i>Corporations Act 2001</i> (Cth).
<b>Court</b>	The Supreme Court of Victoria or any other court of competent jurisdiction under the Corporations Act determined by Target.
<b>Cut Off Time</b>	8.00 am on the Second Court Date.
<b>Deed Poll</b>	The deed poll to be executed by Bidder in favour of the Scheme Participants, a copy of which is to be annexed to the Scheme Booklet, under which Bidder covenants in favour of each Scheme Participant to comply with all of

	Bidder's obligations under the Scheme Implementation Agreement and to perform the actions attributed to Bidder under this Scheme, including to provide the Scheme Consideration in accordance with this Scheme.
<b>Effective</b>	The time at which the Scheme Order takes effect pursuant to section 411(10) of the Corporations Act.
<b>Effective Date</b>	The date on which the Scheme becomes Effective.
<b>End Date</b>	31 December 2017
<b>Excluded Share</b>	A Target Share held by Bidder or a Related Body Corporate of Bidder.
<b>Governmental Agency</b>	Any government, whether foreign or Australian, Federal, State or Territory, municipal or local, and any agency, authority, commission, department, instrumentality, regulator or tribunal thereof, including the Commissioner of Taxation, Australian Taxation Office and Australian Competition and Consumer Commission.
<b>GST</b>	The meaning given to that term in the <i>A New Tax System (Goods &amp; Services Tax) Act 1999</i> (Cth).
<b>Implementation Date</b>	The fifth Business Day following the Record Date or such other date as ordered by the Court or agreed between Bidder and Target.
<b>Independent Expert</b>	An independent expert determined by Target.
<b>Non-resident shareholder</b>	A Scheme Participant that is not an "Australian resident" within the meaning of the Tax Administration Act 1953 (Cth).
<b>Record Date</b>	7.00 pm on the fourth Business Day following the Effective Date or such other date and time as Target and Bidder agree.
<b>Registered Address</b>	In relation to a Target Shareholder, the address shown in the Target Register as at the Record Date.
<b>Related Body Corporate</b>	The meaning given to that term in the Corporations Act.
<b>Scheme</b>	This scheme of arrangement, 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.
<b>Scheme Booklet</b>	The information to be dispatched to Target Shareholders for the purposes of the Scheme Meeting, including the Scheme, explanatory statement in relation to the Scheme issued pursuant to section 412 of the Corporations Act and registered with ASIC, an independent expert's report



	prepared by the Independent Expert, the Deed Poll, a tax opinion on the Scheme provided by Target's taxation advisers and notices convening the Scheme Meeting (together with proxy forms).
<b>Scheme Consideration</b>	In respect of each Scheme Share held by a Scheme Participant, a cash amount equal to \$1.80 less the cash value of any Target Permitted Special Dividend paid.
<b>Scheme Implementation Agreement</b>	The scheme implementation agreement between Bidder and Target dated 20 June 2017.
<b>Scheme Meeting</b>	The meeting to be ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act in respect of the Scheme.
<b>Scheme Order</b>	The order of the Court made for the purposes of section 411(4)(b) of the Corporations Act approving the Scheme.
<b>Scheme Participant</b>	Each holder of Scheme Shares as at the Record Date.
<b>Scheme Shares</b>	All the Target Shares on issue on the Record Date other than the Excluded Shares.
<b>Scheme Transfer</b>	For each Scheme Participant, a proper instrument of transfer of the Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all Scheme Shares.
<b>Second Court Date</b>	The first day of the Second Court Hearing or, if the Second Court Hearing is adjourned for any reason, the first day on which the adjourned application is heard.
<b>Second Court Hearing</b>	The hearing of the application made to the Court for the Scheme Order.
<b>Target Option</b>	An option to acquire Target Shares.
<b>Target Register</b>	The register of members of Target maintained by or on behalf of Target in accordance with the Corporations Act and <b>Target Registry</b> has a corresponding meaning.
<b>Target Share</b>	A fully paid ordinary share in the capital of Target.
<b>Target Shareholder</b>	Each person who is registered in the Target Register as the holder of Target Shares.
<b>Target Permitted Special Dividend</b>	A dividend actually paid on Target Shares as a special dividend, pursuant to Target's discretion to do so under <b>clause 6.2</b> of the Scheme Implementation Agreement.
<b>Target Permitted Special Dividend</b>	A date to be determined by Target at its sole discretion but in any event prior to the Record Date.

**Record Date**

## **2 Preliminary**

### **2.1 Target**

- (a) Target is a public company incorporated in Australia and registered in Victoria, having its registered office at Level 41, 140 William Street, Melbourne, Victoria 3000.
- (b) Target is a public company limited by shares under section 112(1) of the Corporations Act.
- (c) Target is admitted to the official list of ASX and fully paid Target Shares are quoted on the official list of ASX.
- (d) As at the date of the Scheme Implementation Agreement:
  - (i) 68,536,340 Target Shares were on issue;
  - (ii) 1,656,236 performance rights which may convert into Target Shares were on issue; and
  - (iii) no Target Options which may convert into Target Shares were on issue.

### **2.2 Bidder**

- (a) Bidder is a public company incorporated in Australia and registered in Victoria, having its registered office at Level 9, 167 St Georges Terrace, Perth, Western Australia 6000.
- (b) Bidder is a public company limited by shares under section 112(1) of the Corporations Act.

### **2.3 Summary of the Scheme**

If the Scheme becomes Effective, but subject to **clauses 3.1, 3.5, 3.6 and 3.7**, then:

- (a) in consideration of the transfer of the Scheme Shares to Bidder, Bidder will provide to each Scheme Participant the Scheme Consideration in respect of each Scheme Share held by the Scheme Participant;
- (b) subject to Bidder's compliance with its obligations in **clause 2.3(a)** and the Deed Poll, all of the Scheme Shares and all rights attaching to them as at the Implementation Date (other than the right to receive any Target Permitted Special Dividend) will be transferred to Bidder; and
- (c) Target will enter the name and address of Bidder in the Target Register as the holder of the Scheme Shares transferred to Bidder,

in each case, in accordance with and subject to the terms of this Scheme and the Deed Poll.

## **2.4 Scheme Implementation Agreement**

Bidder and Target have agreed, by executing the Scheme Implementation Agreement, to implement the terms of the Scheme and to perform their respective obligations under the Scheme.

## **2.5 Deed Poll**

This Scheme attributes actions to Bidder but does not itself impose an obligation on Bidder to perform those actions. Bidder has executed the Deed Poll in favour of the Scheme Participants pursuant to which it has covenanted to perform the actions attributed to Bidder under the Scheme, including to provide to each Scheme Participant the Scheme Consideration to which such Scheme Participant is entitled under the Scheme and to carry out its other obligations under the Scheme Implementation Agreement.

# **3 Conditions**

## **3.1 Conditions of Scheme**

The Scheme is conditional upon:

- (a) all of the conditions precedent in **clause 3.1** of the Scheme Implementation Agreement (other than the condition precedent in the Scheme Implementation Agreement relating to Court approval of the Scheme) having been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement by the Cut Off Time;
- (b) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms as at the Cut Off Time;
- (c) the Court having approved the Scheme pursuant to section 411(4)(b) of the Corporations Act, without modification or with modifications which are agreed to in writing by both the Target and Bidder;
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act as are agreed to in writing by the Bidder and Target being satisfied or waived; and
- (e) the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) approving this Scheme coming into effect pursuant to section 411(10) of the Corporations Act on or before the End Date.

## **3.2 Effect of conditions**

The fulfilment of the conditions in **clause 3.1** is a condition precedent to the operation of the provisions of **clauses 4.2 to 4.5, 5, 6 and 8**.

## **3.3 Certificate**

Target and Bidder must each provide to the Court by no later than 8.30 am on the Second Court Date, a certificate (or such other evidence as the Court may request) stating whether or not all the conditions precedent in **clauses 3.1(a)**

and 3.1(b) have been satisfied, or if not satisfied, are waived, as at the Cut Off Time.

### **3.4 Conclusive evidence**

The giving of a certificate by each of Target and Bidder in accordance with **clause 3.3** will, in the absence of manifest error, be conclusive evidence of the matters referred to in the certificate.

### **3.5 Termination of Scheme Implementation Agreement**

Without limiting rights under the Scheme Implementation Agreement, if the Scheme Implementation Agreement is terminated in accordance with its terms before the Cut Off Time, Target and Bidder are each released from:

- (a) any further obligation to take steps to implement the Scheme; and
- (b) any liability with respect to the Scheme,

provided that Target and Bidder retain the rights they have against each other in respect of any prior breach of the Scheme Implementation Agreement.

### **3.6 Effective Date**

This Scheme takes effect on the Effective Date.

### **3.7 End Date**

The Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the End Date.

## **4 Scheme**

### **4.1 Lodgement of Court order**

Following the approval of the Scheme by the Court in accordance with section 411(4)(b) of the Corporations Act, Target will, as soon as possible and in any event by no later than 5.00 pm on the first Business Day after the Court approves this Scheme, lodge with ASIC an office copy of the Scheme Order in accordance with section 411(10) of the Corporations Act.

### **4.2 Transfer of Scheme Shares held by Scheme Participants**

On the Implementation Date in consideration of and subject to provision by Bidder of the Scheme Consideration in accordance with **clauses 5.1** and **5.2(a)** and subject to Bidder having provided written confirmation thereof to Target, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at that date other than the right to receive any Target Permitted Special Dividend, will be transferred to Bidder without the need for any further acts by any Scheme Participant (other than acts performed by Target as attorney and agent for Scheme Participants under **clause 6**) by:

- (a) Target delivering to Bidder a duly completed Scheme Transfer executed by Target as attorney for the Scheme Participants for execution by Bidder; and
- (b) Bidder duly executing the Scheme Transfer, attending to any necessary stamping, and delivering the Scheme Transfer to Target.

#### **4.3 Transfer documentation**

As soon as practicable after receipt by Target of the Scheme Transfer duly executed by Bidder as transferee pursuant to **clause 4.2(b)**, but in any event on the Implementation Date, Target must (subject to any necessary stamping) register Bidder in the Target Register as the holder of all of the Scheme Shares.

#### **4.4 Beneficial entitlement by Bidder**

From the time of the provision of the Scheme Consideration to the Scheme Participants in accordance with **clauses 5.1 and 5.2(a)**, Bidder will be beneficially entitled to the Scheme Shares (together with all rights and entitlements attached to the Scheme Shares other than the right to receive any Target Permitted Special Dividend) to be transferred to it under the Scheme pending registration of Bidder in the Target Register as the holder of those Scheme Shares.

#### **4.5 Enforcement of Deed Poll**

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

### **5 Scheme Consideration**

#### **5.1 Entitlement to Scheme Consideration**

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

#### **5.2 Provision of Scheme Consideration**

- (a) Before 8.00 am on the Business Day immediately prior to the Implementation Date, Bidder must provide, or procure the provision of, the Scheme Consideration to each Scheme Participant by depositing (or procuring the deposit of) an amount equal to the aggregate Scheme Consideration payable to all Scheme Participants in cleared funds into an Australian dollar denominated trust account, operated by Target as trustee for the Scheme Participants, to be held on trust for the Scheme Participants for the purpose of paying the Scheme Consideration to each Scheme Participant, except that any interest on the amounts deposited (less bank fees and other charges) will be to Bidder's account.

- (b) On the Implementation Date and subject to Bidder having complied with **clause 5.2(a)** and having provided written confirmation thereof to Target, Target must pay or procure the payment of the Scheme Consideration to each Scheme Participant from the account referred to in **clause 5.2(a)**.
- (c) The obligations of Target under **clause 5.2(b)** will be satisfied by Target taking the following actions on the Implementation Date:
  - (i) despatching, or procuring the despatch, to each Scheme Participant of a pre-printed cheque in the name of that Scheme Participant and for the relevant amount (denominated in Australian currency) with such despatch to be made by pre-paid post to that Scheme Participant's Registered Address; or
  - (ii) making, or procuring the making of, a deposit for the relevant amount (denominated in Australian currency) in an account with any Australian authorised deposit-taking institution in Australia notified by the relevant Scheme Participant to Target for the purposes of receiving dividends and recorded in or for the purposes of the Target Register as at the Record Date.

### **5.3 Joint holders**

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

### **5.4 Unclaimed monies**

- (a) Target may cancel a cheque issued under **clause 5.2(c)** if the cheque:
  - (i) is returned to Target; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Participant to Target (or the Target Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), Target must reissue a cheque that was previously cancelled under this **clause 5.4**.
- (c) The *Unclaimed Money Act 2008 (Vic)* will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of the *Unclaimed Money Act 2008 (Vic)*).

### **5.5 Orders of a court or Governmental Agency**

If written notice is given to Target (or the Target Registry) of an order or direction made by a court of competent jurisdiction or by another Governmental Agency that:

- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Participant, which would otherwise

be payable or required to be provided or issued to that Scheme Participant by Target in accordance with this **clause 5**, then Target shall be entitled to procure that provision of such consideration is made in accordance with the relevant order or direction; or

- (b) prevents Target from providing consideration to any particular Scheme Participant in accordance with this **clause 5**, or the payment or issuance

of such consideration is otherwise prohibited by applicable law, Target shall be entitled to retain an amount, in Australian dollars, equal to the Scheme Consideration to which that Scheme Participant would otherwise be entitled to under this **clause 5** until such time as provision of the consideration in accordance with this **clause 5** is permitted by that order or direction or otherwise by law.

## **6 Scheme Participants**

### **6.1 Appointment of Bidder as sole proxy**

From the Implementation Date until Target registers Bidder as the holder of all the Scheme Shares in the Target Register, each Scheme Participant:

- (a) is deemed to have irrevocably appointed Bidder as its attorney and agent (and directed Bidder in such capacity) to appoint such officer or agent nominated by Bidder to be its sole proxy and, where applicable, corporate representative, to attend shareholders' meetings of Target, exercise the votes attaching to Scheme Shares registered in its name and sign any shareholders' resolution, whether in person, by proxy or by corporate representative, and no Scheme Participant may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this **clause 6.1(a)**); and
- (b) must take all other actions in the capacity of the registered holder of Scheme Shares as Bidder directs.

### **6.2 Appointment of Target as sole attorney and agent**

Each Scheme Participant, without the need for any further act, irrevocably appoints Target and each of the directors and officers of Target, jointly and severally, as the Scheme Participant's attorney and agent for the purpose of:

- (a) enforcing the Deed Poll against Bidder;
- (b) executing any document necessary or expedient to give effect to the Scheme (including executing a Scheme Transfer and any instrument appointing Bidder as sole proxy for or, where applicable, corporate representative of each Scheme Participant as contemplated by **clause 6.1**); or
- (c) doing any other act necessary or desirable to give full effect to the Scheme and the transactions contemplated by it.

### **6.3 Scheme Participant's consent**

Each Scheme Participant:

- (a) consents to Target 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 the Scheme and Target, as agent of each Scheme Participant, may sub-delegate its functions under this **clause 6.3** to any of its directors and officers, severally; and
- (b) agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares to Bidder, in accordance with the Scheme.

### **6.4 Warranties by Scheme Participants**

Each Scheme Participant is deemed to have warranted to Target, in its own right and for the benefit of Bidder, that:

- (a) all of the Scheme Shares (including any rights and entitlements attaching to those shares) which are transferred to Bidder under the Scheme will be transferred to Bidder fully paid and free from all mortgages, pledges, charges, liens, encumbrances, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise and restrictions on transfer of any kind (but acknowledging that a security interest holder may potentially have an interest in the Scheme Consideration in accordance with the terms of such security interest); and
- (b) they have full power and capacity to sell and transfer their Scheme Shares to Bidder (including any rights and entitlements attaching to those shares).

### **6.5 Non-resident shareholders**

- (a) Each Non-resident Shareholder is deemed to have declared to Target, in its own right and for the benefit of Bidder that its Scheme Shares are "membership interests" in Target but are not "indirect Australian real property interests" (as those terms are defined in section 995-1(1) of the *Income Tax Assessment Act 1997*).
- (b) Bidder acknowledges that it does not believe or suspect the declaration made under **clause 6.5(a)** to be false and therefore is able to rely on that declaration.

## **7 Dealings in Target Shares**

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

- (a) For the purpose of establishing the persons who are the Scheme Participants, dealings in Scheme Shares will only be recognised if:



- (i) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the Target Register as the holder of the relevant Scheme Shares at the Target Permitted Special Dividend Record Date; and
  - (ii) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received at or before 5.00pm on the day on which the Target Permitted Special Dividend Record Date occurs at the place where the Target Register is kept.
- (b) Target must register registrable transmission applications or transfers of the kind referred to in **clause 7.1(a)(ii)** by or as soon practicable after the Target Permitted Special Dividend Record Date.
- (c) Target will not accept for registration or recognise for any purpose any transmission applications or transfers in respect of Scheme Shares received after 5.00pm on the day on which the Target Permitted Special Dividend Record Date occurs or received prior to that time, but not in registrable form, other than a transfer to Bidder in accordance with the Scheme and any subsequent transfer by Bidder, or its successors in title.
- (d) If the Scheme becomes Effective, a holder of Target Shares (and any person claiming through that holder) must not dispose of or purport to agree to dispose of any Target Shares or any interest in them after the Effective Date other than in accordance with this Scheme, and any such disposal will be void and of no legal effect whatsoever.

## **7.2 Maintenance of Target Register**

- (a) For the purpose of determining entitlements to the Scheme Consideration, Target will, until the Scheme Consideration has been provided, maintain the Target Register in accordance with the provisions of this **clause 7** and the Target Register in this form will solely determine entitlements to the Scheme Consideration.
- (b) All certificates and holding statements for Scheme Shares (other than holding statements in favour of Bidder and its successors in title after the Implementation Date) will cease to have any effect from the Record Date as documents of title in respect of those Scheme Shares. Subject to provision of the Scheme Consideration by Bidder and registration of the transfer to Bidder of the Scheme Shares contemplated by **clause 4.2**, after the Record Date, each entry current at that date on the Target Register relating to Scheme Shares will cease to be of any effect other than as evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.

## **7.3 Information to be made available to Bidder**

Target will procure that, as soon as reasonably practicable after the Record Date, details of the names, Registered Addresses and holdings of Scheme Shares of every Scheme Participant as shown in the Target Register as at the

Record Date are made available to Bidder in such form as Bidder or the Bidder Registry reasonably requires.

## 8 Quotation of Target Shares

Target will apply for termination of the official quotation of Target Shares on ASX and the removal of Target from the official list of ASX with effect from the Business Day after the date on which all transfers of the Scheme Shares to Bidder have been duly registered by Target in accordance with the Scheme.

## 9 Notices

### 9.1 General

Any notice, transfer, transmission, application, direction, demand, consent or other communication (**Notice**) given or made under this document must be in writing in English and signed by the sender or a person duly authorised by the sender.

### 9.2 Communications by post

Subject to **clause 9.3**, where a Notice referred to in this document is sent by post to Target, it will not be deemed to have been received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at Target's registered office or at the Target Registry.

### 9.3 After hours communications

If a Notice is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

## 10 General

### 10.1 Target and Scheme Participants bound

The Scheme binds Target and all Scheme Participants (including Scheme Participants who do not attend the Scheme Meeting, do not vote at that meeting or vote against the Scheme) and will, for all purposes, to the extent of any inconsistencies and permitted by law, have effect notwithstanding any provision in the constitution of Target.

## **10.2 Further assurances**

Subject to **clause 10.3**, Target will execute all documents and do all acts and things (on its own behalf and on behalf of each Target Shareholder) necessary or expedient for the implementation of, and performance of its obligations under, the Scheme.

## **10.3 Alterations and conditions**

Target may, with the consent of Bidder, by its counsel consent on behalf of all Scheme Participants to any modifications or conditions which the Court thinks fit to impose, provided that in no circumstances will Target be obliged to do so. Each Scheme Participant agrees to any such modifications or conditions which counsel for Target has consented to.

## **10.4 GST**

Target must pay to the Scheme Participants an amount equal to any GST for which the Scheme Participants are liable on any supply by the Scheme Participants under or in connection with the Scheme, without deduction or set off of any other amount.

## **10.5 Costs**

Bidder must:

- (a) pay all stamp duties and any related fines, interest and penalties, costs and brokerage in respect of or in connection with the Scheme, the performance of the Scheme and each transaction effected by or made or any instrument executed under the Scheme or the Deed Poll, including the transfer of Scheme Shares under the Scheme; and
- (b) indemnify each Scheme Participant on demand against any liability arising from Bidder's failure to comply with **clause 10.5(a)**.

## **10.6 Governing law and jurisdiction**

- (a) This document is governed by and is to be construed in accordance with the laws applicable in the State of Victoria, Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of Victoria, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

## **10.7 Construction**

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (c) 'includes' means includes without limitation;

- (d) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (e) words and phrases have the same meaning (if any) given to them in the Corporations Act;
- (f) a reference to:
  - (i) a holder includes a joint holder;
  - (ii) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (iii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iv) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (v) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
  - (vi) a right includes a benefit, remedy, discretion or power;
  - (vii) time is to local time in Melbourne, Australia;
  - (viii) '\$' or 'dollars' is a reference to Australian currency;
  - (ix) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
  - (x) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
  - (xi) this document includes all schedules and annexures to it; and
  - (xii) a clause, party, schedule, exhibit or annexure is a reference to a clause, party, schedule, exhibit or annexure, as the case may be, of this document;
- (g) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day;
- (h) where Target is obliged to "procure" Bidder to take any action or to refrain from taking any action, that obligation will be fully discharged by Target or its directors or officers taking all reasonable available steps to enforce the Deed Poll against Bidder as the attorney and agent of any Scheme Participant; and

- (i) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

**10.8 Headings**

Headings do not affect the interpretation of this document.