

ASX ANNOUNCEMENT

20 June 2017

SMS enters into Scheme Implementation Agreement with ASG Group Limited

SMS Management & Technology Limited (**SMS**) (ASX:SMX) announces that it has entered into a Scheme Implementation Agreement (**SIA**) with ASG Group Limited (**ASG**, a 100% owned subsidiary of Nomura Research Institute, Ltd (**NRI**)) under which it is proposed that ASG will acquire 100% of the issued share capital of SMS for \$1.80 in cash per share by way of Scheme of Arrangement (**ASG Scheme**).

This follows the announcement on Monday, 19 June 2017, that the matching rights period available to DWS Limited (**DWS**) had expired and that SMS was informed by DWS that it would not submit a counter proposal. Consequently, SMS has terminated the DWS scheme implementation agreement prior to entering into the ASG SIA.

Cancellation of DWS scheme meeting

In light of the abovementioned developments, SMS wishes to inform shareholders that the postponed scheme meeting for shareholders to vote on the DWS scheme, as advised on 13 June 2017, will no longer take place. SMS will now apply to the Court for the DWS scheme meeting to be cancelled.

ASG Scheme Consideration

Should the ASG Scheme be implemented, SMS shareholders will receive \$1.80 in cash per share (**Scheme Consideration**). In addition, subject to a favourable draft ATO class ruling being obtained, SMS will have the discretion to pay a fully-franked special dividend of up to a maximum of 10.2 cents per share. The \$1.80 cash per share under the ASG Scheme will be reduced by the value of any special dividend paid by SMS (if declared). Those shareholders who are able to realise the full benefit of franking credits attached to any special dividend (if declared) will realise additional value of up to a maximum of 4.4 cents per share.

SMS Directors unanimously recommend the ASG Scheme

The SMS Directors consider that the ASG Scheme is in the best interests of SMS shareholders and recommend unanimously that SMS shareholders vote in favour of the ASG Scheme, in the absence of a superior proposal, and subject to an Independent Expert concluding the ASG Scheme is in the best interests of SMS shareholders.

The SMS Directors consider that this is a compelling offer for SMS shareholders for the following reasons:

- **Significant premium to undisturbed trading:** the value of the Scheme Consideration of \$1.80 represents a significant premium to the undisturbed SMS share price, including:
 - a 41% premium to the closing share price on 22 February 2017 (the last undisturbed share price close prior to the announcement of the DWS scheme) of \$1.28;
 - a 37% premium to the one month volume weighted average price (**VWAP**) to 22 February 2017 of \$1.32; and
 - a 40% premium to the VWAP since the SMS AGM on 14 November 2016 to 22 February 2017 of \$1.28.

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- **Premium to consideration under DWS scheme:** the value of the Scheme Consideration of \$1.80 represents a material premium to the consideration implied by the DWS scheme, including:
 - a 12.2% premium to the implied value of consideration based on the mid-point of the Independent Expert's valuation of DWS shares; and
 - a 10.5% premium to the implied value of consideration based on the VWAP of DWS shares from 27 February 2017 (when the DWS SIA was announced) to 26 May 2017 (when the ASG expression of interest was received).
 - **Attractive valuation:** the Scheme Consideration implies an enterprise value of \$134 million¹, which represents an EV/EBITDA² multiple of 12.9x for the 12 months to 31 December 2016. This represents an attractive valuation for SMS, particularly in the context of the structural changes to the industry, including intensified competition from large offshore entrants and expansion of professional services firms into the sector. These structural changes have impacted the performance of SMS over recent years.
 - **All cash consideration:** the Scheme Consideration provides certainty of value through the all cash consideration of the ASG Scheme.

As such, the SMS Directors intend to vote all shares in their control in favour of the proposed ASG Scheme, in the absence of a superior proposal, and subject to an Independent Expert concluding the ASG Scheme is in the best interests of SMS shareholders.

ASG SIA

The implementation of the ASG Scheme is subject to a number of customary conditions including:

- relevant ASIC approvals;
- the approval of SMS shareholders and the Court;
- no Material Adverse Change or Prescribed Occurrence (as defined in the ASG SIA) occurring in relation to SMS; and
- the Independent Expert concluding that the ASG Scheme is in the best interests of shareholders.

The ASG SIA contains customary exclusivity provisions including a "no shop" provision and a matching right. It also includes "no talk" restrictions, a no "due diligence" restriction, and a notification obligation each of which are subject to SMS Directors' fiduciary obligations. The ASG SIA contains a break fee of \$1.2 million to be paid by SMS in the event that the transaction does not proceed should SMS terminate the SIA upon a change of recommendation or the announcement of a superior proposal. Under the ASG SIA, SMS is entitled to a reimbursement fee of \$1.2 million if ASG does not pay the Scheme Consideration as required by the ASG SIA.

A copy of the executed ASG SIA accompanies this announcement.

SMS also has the benefit of a parent company guarantee from NRI, under which NRI guarantees the obligations of ASG in respect of payment of the Scheme Consideration.

Indicative timetable and next steps

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

A Scheme Booklet containing information relating to the proposed acquisition, reasons for the Directors' recommendation, an Independent Expert's Report and details of the Scheme meeting is expected to be sent to SMS shareholders by mid July 2017 after its preparation and review by ASIC.

¹ Based on net debt of \$10.3 million as at 31 December 2016 and total issued shares of 68.5 million

² Based on EBITDA in the 12 months to 31 December 2016, prior to significant items, of \$5.4 million in 2H FY16 and \$5.0 million in 1H FY17

SMS shareholders will be given the opportunity to vote on the ASG Scheme at a meeting expected to be held in early September 2017. Subject to shareholder approval and the other conditions of the ASG Scheme being satisfied, the Scheme is expected to be implemented in September 2017.

These dates are indicative and subject to change.

Advisers

SMS is being advised by Macquarie Capital (Australia) Limited as financial adviser and Corrs Chambers Westgarth as legal counsel.

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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.

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ASG Group Limited

SMS Management & Technology Limited

Scheme Implementation Agreement

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Date 20 June 2017

Parties

ASG Group Limited ACN 070 045 117 of Level 9, 167 St Georges Terrace, Perth, Western Australia 6000 (**Bidder**)

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

Background

- A Bidder has agreed with Target for Bidder to acquire all of the issued ordinary shares of Target by means of a scheme of arrangement.
 - B Target has agreed to propose the Scheme to Target Shareholders.
 - C Target is a party to a scheme implementation agreement dated 27 February 2017 with DWS Limited (**DWS**) (**DWS SIA**) with the terms of the DWS SIA and the scheme contemplated by it being terminated prior to this document being signed.
 - D Nomura Research Institute, Ltd (TSE:4307) (**NRI**), has agreed to give the Parent Guarantee to secure the financial obligations of the Bidder under this document. In consideration of, inter alia, the Parent Guarantee, Target has agreed to enter into this document.
 - E The parties have agreed to implement the Scheme on and subject to the terms set out in this document.
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Agreed terms

1 Definitions

In this document these terms have the following meanings:

Advisers	In relation to an entity, its legal, financial and other expert advisers in relation to the Transaction.
ASIC	The Australian Securities and Investments Commission.
Associate	In relation to each party, has the meaning given in sections 11, 12 and 16 of the Corporations Act.
ASX	ASX Limited ACN 008 624 691 or, as the context

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	requires, the financial market operated by it.
ASX Listing Rules	The official listing rules of ASX.
Bidder Board	The board of directors of Bidder.
Bidder Group	Bidder and each of its Related Entities.
Bidder Indemnified Parties	Each member of the Bidder Group and the Officers and employees of each of those entities.
Bidder Information	<p>All information regarding Bidder or the Bidder Group as is required to be included in the Scheme Booklet by:</p> <ul style="list-style-type: none">(a) the Corporations Act and the <i>Corporations Regulations 2001</i> (Cth);(b) ASIC policy (including Regulatory Guide 60);(c) the ASX Listing Rules; or(d) other applicable laws; <p>to the extent such information is within the Bidder's knowledge and includes:</p> <ul style="list-style-type: none">(e) information regarding Bidder's intentions on the matters referred to in paragraph 8310 of Schedule 8 of the Corporations Regulations;(f) any other information regarding Bidder or the Bidder Group which is within Bidder's knowledge and is material to Target Shareholders in making a decision on whether to vote in favour of the Scheme; and(g) all information reasonably requested by or on behalf of the Independent Expert to enable the Independent Expert's Report to be prepared and completed, <p>but excludes the Independent Expert's Report, the Tax Opinion and the Target Information.</p>
Bidder Warranties	Each of the representations and warranties given by Bidder to Target as set out in schedule 3 .
Break Fee	An amount of \$1,200,000.
Business Day	The meaning given in the ASX Listing Rules.
Condition	A condition set out in clause 3.1 .
Confidentiality Deed	The deed dated 29 May 2017 between Target and Bidder.
Control	The meaning given to that term in the Corporations Act.

Corporations Act	The <i>Corporations Act 2001</i> (Cth).
Court	The Supreme Court of Victoria or any other court of competent jurisdiction under the Corporations Act nominated by Target.
Cut Off Time	8.00 am on the Second Court Date.
Deed Poll	A deed poll in the form of annexure B or in such other form as agreed by Bidder and Target to be executed by Bidder in favour of the Scheme Participants, under which Bidder covenants in favour of each Scheme Participant to perform the actions attributed to Bidder under the Scheme and to pay the Scheme Consideration in accordance with the Scheme.
Disclosure Materials	The information disclosed by Target to Bidder as at 12pm (Melbourne time) on 13 June 2017 and made available by way of electronic data room titled "Project Refresh" accessible at https://dataroom.ansarada.com/ , the index of which has been provided by Target to Bidder and executed by both parties for identification.
DWS	Has the meaning given in recital C .
DWS SIA	Has the meaning given in recital C .
Effective	The time at which the Scheme Order takes effect pursuant to section 411(10) of the Corporations Act.
Effective Date	The date on which the Scheme becomes Effective.
End Date	31 December 2017.
Excluded Share	A Target Share held by Bidder or a Related Body Corporate of Bidder.
Exclusivity Period	The period from and including the date of this document to and including the earlier of the date this document is terminated in accordance with its terms or the End Date.
First Court Date	The first day of the First Court Hearing or, if the First Court Hearing is adjourned for any reason, the first day on which the adjourned application is heard.
First Court Hearing	The hearing of the application made to the Court for orders under section 411(1) of the Corporations Act that the Scheme Meeting be convened.
Governmental Agency	Any government, whether 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.

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Headcount Test	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	The fifth Business Day following the Record Date, or such other date as ordered by the Court or agreed between Bidder and Target.
Implementation Plan	Has the meaning given in clause 5.3(e) .
Independent Expert	An independent expert determined by the Target.
Independent Expert's Report	The report in connection with the Scheme to be prepared by the Independent Expert in accordance with the Corporations Act, and ASIC policy and practice, for inclusion in the Scheme Booklet.
Indicative Debt Forecast	The document prepared by Target and provided to Bidder as part of the Disclosure Materials, which provides a forecast of the indicative debt position for the Target Group's businesses in the period 1 July 2017 to 30 September 2017.
Insolvency Event	Any of the following: <ul style="list-style-type: none"> (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable; (b) a person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation; (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation, other than where such winding up or dissolution is undertaken voluntarily for the purposes of a solvent restructure or any application is dismissed, the order is set aside or the resolution is withdrawn within seven days; (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;

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- (e) a controller (as that term is defined in the Corporations Act) is appointed in respect of any property of a corporation;
- (f) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (g) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement other than the Scheme), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them;
- (h) the occurrence of any review event or event of default under any third party loan advanced to a person or any material subsidiary of that person, which results in the relevant lender taking action to enforce the terms of that loan or results in the repayment date of any amount owing under that loan being accelerated; or
- (i) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

KMC

KMC Mag Solutions Inc

Losses

All claims, actions, proceedings, liabilities, obligations, damages, loss, charges, costs, expenses and duties or other outgoings.

Material Adverse Change

- (a) Any matter, event, change or circumstance that occurs after the date of this document (a **Relevant Event**) whether or not it becomes public, where that Relevant Event has, has had, or could reasonably be expected to have, individually or when aggregated with all other such matters, events, changes or circumstances that have occurred or are reasonably likely to occur:
 - (i) the effect of diminishing the value of the net tangible assets of the Target Group taken as a whole by \$5 million or more, as compared to the value of the net tangible assets of the Target Group taken as a whole set out in its consolidated balance sheet as at 30 April 2017, other than as a result of payment of any Target Permitted Special Dividend; or
 - (ii) the effect of reducing on a recurring basis, the

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annualised earnings before interest, tax, depreciation and amortisation of the Target Group (before taking into account any significant or extraordinary items, including the impact of any non-cash impairment of intangible assets) taken as a whole as at the end of a financial year, by \$3 million or more, as compared to what those earnings would reasonably have been expected to have been, but for the Relevant Event,

other than a matter, change, event or circumstance:

- (iii) expressly required or expressly permitted to be done or procured by Target or its Related Entities pursuant to this document, the Scheme or the Deed Poll;
 - (iv) fairly disclosed by Target to Bidder prior to the date of this document;
 - (v) undertaken or occurring with the prior written approval of Bidder;
 - (vi) resulting from changes in law or in general economic, political or business conditions occurring after the date of this document that impact Target and its Australian competitors in a similar manner;
 - (vii) resulting from changes in generally accepted accounting principles or the interpretation of them;
 - (viii) resulting from an act of God, act of war declared or undeclared, public disorder, riot, civil disturbance, insurrection, rebellion, sabotage, cyber-attack or act of terrorists, technical failure, cable transmission and/or satellite failure or degradation, accident, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide or adverse weather conditions occurring on or after the date of this document; or
 - (ix) resulting from any deterioration in equity markets, interest rates, exchange rates or credit spreads that impact Target and its Australian competitors in a similar manner; or
- (b) a breach of any Target Warranty other than those in paragraph (j) of Schedule 2 which arises or is discovered before the Cut Off Time which is not

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remedied within 5 Business Days after such breach arises or is discovered or is not remedied by the Cut Off Time (whichever is earlier), and has, has had, or could reasonably be expected to have, individually or when aggregated with all other breaches of any Target Warranty, the financial effect on the Target Group described in paragraph (a)(i) or (a)(ii) of this definition.

Officer	In relation to an entity, its directors and senior executives.
Parent Guarantee	The guarantee given by NRI on or about the date of this document to support the Bidder's payment obligations in respect of the Scheme Consideration, the Scheme and the Deed Poll.
Prescribed Occurrence	<p>Other than:</p> <ul style="list-style-type: none"> (a) as expressly required or expressly contemplated by this document; or (b) as expressly required or expressly contemplated under the Scheme or Deed Poll; or (c) with the express written consent of Bidder; or (d) as fairly disclosed by Target to Bidder prior to the Bidder entering into this document; or (e) in relation to paragraphs (g), (h) and (k) only, where the relevant action is undertaken by a wholly owned direct or indirect subsidiary of Target; <p>the occurrence of any of the following:</p> <ul style="list-style-type: none"> (f) Target converting all or any of its shares into a larger or smaller number of shares; (g) any member of the Target Group resolving to reduce, or reducing, its share capital in any way, or reclassifying, redeeming, combining, splitting or repurchasing directly or indirectly any of its shares; (h) any member of the Target Group resolving to buy back, or buying back, any of its shares, including by: <ul style="list-style-type: none"> (i) entering into a buy-back agreement; or (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act; (i) any member of the Target Group issuing shares, or granting an option over its shares, or agreeing to make such an issue, other than an issue of ordinary shares following the valid exercise of any options or performance rights on issue at the date of this

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document or any other security convertible into ordinary shares in Target on issue at the date of this document, in all cases, the existence of which has been fairly disclosed to Bidder;

- (j) any member of the Target Group issuing, or agreeing to issue, securities convertible into shares or debt securities (including any performance rights or options) other than in accordance with any of Target's existing employee incentive plans, the terms of which have been fairly disclosed to Bidder;
- (k) any member of the Target Group making or declaring any distribution whether by way of dividend or capital reduction or otherwise and whether in cash or in specie other than by way of a Target Permitted Special Dividend;
- (l) other than in the ordinary course of business and consistent with past practice or under any Target Finance Document, any member of the Target Group creating or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property;
- (m) any member of the Target Group becoming subject to an Insolvency Event;
- (n) any member of the Target Group:
 - (i) acquiring, leasing or disposing of;
 - (ii) agreeing to acquire, lease or dispose of; or
 - (iii) offering or proposing to acquire, lease or dispose of,any material business, assets (other than trading inventories and consumables acquired, leased or disposed of in the ordinary and usual course of business, or pursuant to any contract or commitment to provide goods or services to a customer of a nature ordinarily provided by that member of the Target Group, or pursuant to any non-cash impairment of intangible assets) or entity, in each case with a value greater than \$1 million, or entering into any joint venture, partnership or similar arrangement;
- (o) any member of the Target Group adopting a new constitution or modifying or repealing its constitution or a provision of it or a similar constituent document;

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- (p) any member of the Target Group incurring any additional indebtedness or issuing any additional indebtedness by way of borrowings, loans or advances for amounts in aggregate in excess of \$1 million other than in accordance with the Target Finance Documents;
 - (q) any member of the Target Group making, or committing to, in aggregate, capital expenditure in excess of \$1 million on projects not commenced or approved prior to the date of this document;
 - (r) any member of the Target Group entering into any contract or commitment (or a series of related contracts or commitments) involving expenditure of more than \$1 million over the term of the contract or commitment, other than:
 - (i) in the ordinary course of business and consistent with past practice; or
 - (ii) any contract or commitment to provide goods or services to a customer of a nature ordinarily provided by that member of the Target Group; or
 - (iii) any contract or commitment in respect of an Adviser engaged by a member of the Target Group or in respect of any professional engaged to produce the Independent Expert's Report or the Tax Opinion;
 - (s) any member of the Target Group:
 - (i) waiving any material third party default where the financial impact on the Target Group of that waiver will be in excess of \$2 million (individually or in aggregate); or
 - (ii) accepting as a compromise of a matter less than the full compensation due to a member of the Target Group where the financial impact of the compromise on the Target Group is more than \$1 million (individually or in aggregate); or
 - (iii) other than in the ordinary course of business and consistent with past practice:
 - (A) paying any bonus to, or increasing the compensation of, any Officer or employee of any member of the Target Group, except to the extent provided for in an existing employment contract

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- entered into in the ordinary course of business;
- (B) accelerating the rights of any Officer or employee of any member of the Target Group to compensation or benefits of any kind or making a payment in lieu of any such rights (including under any Target executive or employee share plan or equity or other incentive scheme);
- (C) passing any resolution or otherwise acting in a manner that is contrary to any resolution passed by the Target Board prior to the date of this document in relation to any employee equity or other incentive scheme;
- (D) granting to any Officer or employee of any member of the Target Group any increase in severance or termination pay or superannuation entitlements or by issuing any Target Shares or securities convertible to Target Shares to any of those persons; or
- (E) establishing, adopting, entering into or amending in any material respect (including by taking any action to accelerate any rights or benefits due under) any enterprise bargaining agreement, Australian workplace agreement, employee benefit plan or superannuation scheme of Target or relating to the Officers or employees of any member of the Target Group;
- (t) any member of the Target Group making any change in its accounting methods, principles or practices which would materially affect the reported consolidated assets, liabilities or results of operations of any member of the Target Group, other than as required to comply with any changes to generally accepted accounting principles, standards, guidelines or practices in the jurisdiction of the relevant entity's incorporation; or
- (u) a breach of the Target Warranty in paragraph (j) of Schedule 2 arises or is discovered before the Cut Off Time and is not remedied within 5 Business Days after such breach arises or is discovered or is

not remedied by the Cut Off Time (whichever is earlier).

Record Date	7.00 pm on the fourth Business Day following the Effective Date or such other date and time as Bidder and Target agree.
Register	The register of members of Target maintained by or on behalf of Target in accordance with the Corporations Act.
Registered Address	In relation to a Target Shareholder, the address shown in the Register as at the Record Date.
Regulator's Draft	The draft of the Scheme Booklet provided to ASIC for review pursuant to section 411(2) of the Corporations Act.
Regulatory Authority	Any Australian or foreign government or governmental, semi-governmental, administrative, fiscal, regulatory or judicial entity, commission, tribunal agency or authority or any Minister, department, office or delegate of any government. It includes a self-regulatory organisation established under statute or a stock exchange, ASIC, ASX, the Foreign Investment Review Board and the Australian Competition and Consumer Commission.
Reimbursement Fee	An amount of \$1,200,000.
Related Body Corporate	The meaning given to that term in the Corporations Act.
Related Entity	Of a party means another entity which: <ul style="list-style-type: none"> (a) is a Related Body Corporate of the first entity; (b) is in any consolidated entity (as defined in section 9 of the Corporations Act) which contains the party; or (c) the party Controls.
Relevant Interest	The meaning given to that term in the Corporations Act.
Representative	In relation to a party: <ul style="list-style-type: none"> (a) each of the party's Related Entities; and (b) each of the Officers, employees and Advisers of the party or of any of its Related Entities.
Scheme	The proposed scheme of arrangement between Target and the Scheme Participants under Part 5.1 of the Corporations Act in the form of annexure A (or in such other form as agreed by Bidder and Target), 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 Bidder and Target.

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Scheme Booklet	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, the Independent Expert's Report, the Deed Poll, a summary of this document, the Tax Opinion and the notice convening the Scheme Meeting (together with proxy forms).
Scheme Consideration	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.
Scheme Meeting	The meeting ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act in respect of the Scheme, including any adjournment or postponement of that meeting.
Scheme Order	The order of the Court made for the purposes of section 411(4)(b) of the Corporations Act in relation to the Scheme.
Scheme Participant	Each holder of Scheme Shares as at the Record Date.
Scheme Shares	The Target Shares other than the Excluded Shares.
Second Court Date	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.
Second Court Hearing	The hearing of the application made to the Court for the Scheme Order.
Specified Officer	In relation to Target, each of the following persons: <ul style="list-style-type: none"> (a) Rick Rostolis; (b) Peter Sherar; (c) Penny Grau; (d) Nick Smith; (e) Chris Sandham; and (f) Tina Mitas. In relation to the Bidder, each of the following persons: <ul style="list-style-type: none"> (g) Geoffrey Lewis; (h) Dean Langenbach; and (i) Gerald Strautins.
Subsidiary	The meaning given to that term in the Corporations Act.
Superior	A publicly announced bona fide Third Party Proposal (but

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Proposal	<p>does not include any proposal made by DWS prior to the date of this document, including any proposal arising under the DWS SIA) received or arising after the date of this document which the Target Board acting in good faith and reasonably (after consultation with its external legal and financial advisers) determines:</p> <ul style="list-style-type: none"> (a) is reasonably capable of being completed on a timely basis taking into account all aspects of the Third Party Proposal; and (b) would, if completed substantially in accordance with the offered terms, be more favourable to Target Shareholders (as a whole) than the Scheme, taking into account, among other things, all legal, financial, regulatory and other aspects of the Third Party Proposal and the identity of the offeror.
Takeovers Panel	The body established under section 171 of the <i>Australian Securities and Investments Commission Act 2001</i> as the primary forum for resolving disputes about takeovers.
Target Board	The board of directors of Target.
Target Director	A director of Target.
Target Finance Documents	<ul style="list-style-type: none"> (a) The ANZ Facility Agreement between Target (as borrower) and Australia and New Zealand Banking Group Limited (as lender) dated 6 April 2010 as varied, amended, amended and restated or replaced from time to time; and (b) any special purpose debt facility entered into by Target (whether before, on or after the date of this document) for the purpose of funding the Target Permitted Special Dividend.
Target Group	Target and each of its Related Entities.
Target Indemnified Parties	Each member of the Target Group and the Officers and employees of each of those entities.
Target Information	All information contained in the Scheme Booklet and all information provided by or on behalf of Target to the Independent Expert to enable the Independent Expert's Report to be prepared and completed, but does not include the Bidder Information, the Independent Expert's Report, the Tax Opinion, the Scheme or the Deed Poll or any other expert report included in the Scheme Booklet.
Target Permitted Special Dividend	A dividend actually paid on Target Shares as a special dividend, pursuant to Target's discretion to do so under clause 6.2 .

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Target Permitted Special Dividend Payment Date	A date to be determined by Target at its sole discretion but in any event no later than the Implementation Date.
Target Permitted Special Dividend Record Date	A date to be determined by Target at its sole discretion but in any event no later than the Record Date.
Target Share	A fully paid ordinary share in the capital of Target.
Target Shareholder	Each person who is registered in the Register as the holder of Target Shares.
Target Suspension Date	7.00pm on the Effective Date or such other time agreed by the parties.
Target Warranty	Each of the representations and warranties given by Target to Bidder as set out in schedule 2 .
Tax Opinion	An opinion as to the Australian tax impacts of the Transaction for Scheme Participants to be included in the Scheme Booklet for the benefit of Scheme Participants.
Third Party	A person other than Bidder and its Associates or Target and its Associates.
Third Party Proposal	<p>(a) A transaction which, if completed, would result in any Third Party (alone or together with its Associates) directly or indirectly:</p> <ul style="list-style-type: none"> (i) acquiring all or a substantial part of the assets or business of the Target Group; (ii) acquiring a Relevant Interest in or having a right to acquire a legal, beneficial or economic interest in 20% or more of Target's voting shares or of the share capital of any Related Body Corporate of Target; or (iii) entering into any cash settled equity swap or other derivative contract arrangement in respect of 20% or more of the share capital of Target or of any Related Body Corporate of Target; or (iv) acquiring Control of Target or of any material Subsidiary of Target. <p>(b) A takeover bid, scheme of arrangement, amalgamation, merger, capital reconstruction, consolidation, purchase of main undertaking or other business combination involving Target and/or its Related Bodies Corporate.</p> <p>(c) A transaction involving the formation of a dual listed company structure, stapled security structure or</p>

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other form of synthetic merger having the same or substantially the same effect as a takeover bid for, or scheme of arrangement in respect of, Target and/or its Related Bodies Corporate.

- (d) Any agreement, arrangement or understanding requiring Target to abandon, or otherwise fail to proceed with, the Transaction.

Timetable	The indicative timetable set out in schedule 1 or such other timetable as may be agreed in writing by the parties or their Advisers.
Transaction	The acquisition by Bidder of all of the Scheme Shares through the implementation of the Scheme, in return for the payment of the Scheme Consideration.
Transaction Implementation Committee	The committee to be established under clause 5.3 .

2 Implementation of the Scheme

Target agrees to propose, and the parties agree to implement, the Scheme on the terms set out in this document.

3 Conditions

3.1 Conditions

The Scheme will not become Effective, and the respective obligations of the parties under **clauses 4 and 5** are not binding unless and until each of the conditions in column 1 of the following table has been satisfied or waived in accordance with **clause 3.3**:

Condition	Party responsible for satisfying Condition
(a) (ASIC) before the Cut Off Time, ASIC issues or provides all consents, approvals, exemptions, waivers, or other authorisations and does all such other acts which Bidder and Target, acting reasonably, agree are necessary or desirable to implement the Transaction, including providing the statement required under section 411(17)(b) of the Corporations Act, either unconditionally or on conditions that do not impose unduly onerous obligations upon either party (judged by the affected party acting reasonably), and these consents, approvals,	Target

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Condition	Party responsible for satisfying Condition
exemptions, waivers or other authorisations have not been withdrawn, cancelled or revoked.	
(b) (Court orders) no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition being in effect at the Cut Off Time which prevents or restrains the lawful consummation of any aspect of the Transaction.	Bidder and Target
(c) (No Material Adverse Change) no Material Adverse Change occurs or becomes apparent to Bidder between (and including) the date of this document and the Cut Off Time.	Target
(d) (No Prescribed Occurrence) no Prescribed Occurrence occurs between (and including) the date of this document and the Cut Off Time.	Target
(e) (Independent Expert Report) the Independent Expert issues its report which concludes that the Scheme is in the best interests of Scheme Participants before the Scheme Booklet is registered by ASIC under the Corporations Act and the Independent Expert does not change its conclusions or qualify or withdraw its report prior to the Cut Off Time.	Target
(f) (Target Shareholder approval) Target Shareholders (other than any holder of Excluded Shares) approve the Scheme by the necessary majorities at the Scheme Meeting.	Target
(g) (Court approval of Scheme) the Court approves the Scheme under section 411(4)(b) of the Corporations Act and an office copy of the Scheme Order is lodged with ASIC as contemplated by section 411(10) of the Corporations Act.	Bidder and Target

3.2 Reasonable endeavours

Subject to **clause 7.8(b)** with respect to the Conditions in **clauses 3.1(f)** and **3.1(g)** only, each party must use its reasonable endeavours to procure that:

- (a) each of the Conditions for which it is responsible (as indicated in column 2 of the table in **clause 3.1**) is satisfied as soon as practicable

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after the date of this document, or continues to be satisfied at all times until the last time it is to be satisfied (as the case may require), with a view to the Effective Date occurring on or before the End Date;

- (b) there is no event or circumstance within the reasonable control or influence of that party that would prevent the Conditions being satisfied or delay the satisfaction of the Conditions.

3.3 Benefit and waiver of certain Conditions

- (a) **(Both parties)** Target and Bidder together have the benefit of the Conditions in **clauses 3.1(a) and 3.1(b)** and any breach or non-fulfilment of those Conditions can only be waived with the written consent of both parties.
- (b) **(Target)** Target has the benefit of the Condition in **clause 3.1(e)** and any breach or non-fulfilment of that Condition can only be waived with the written consent of Target.
- (c) **(Bidder)** Bidder has the benefit of the Conditions in **clauses 3.1(c) and 3.1(d)** and any breach or non-fulfilment of those Conditions can only be waived with the written consent of Bidder.
- (d) The Conditions in **clauses 3.1(f) and 3.1(g)** cannot be waived.
- (e) A party entitled to waive a Condition under this **clause 3.3** may elect to do so in its absolute discretion. Any waiver of a Condition by a party for whose benefit the relevant Condition applies must take place before the Cut Off Time.
- (f) If a waiver by a party of a Condition is itself conditional and the other party accepts the condition, the terms of that condition apply accordingly. If the other party does not accept a conditional waiver of the Condition, the Condition has not been waived.
- (g) If a party waives the breach or waives non-fulfilment of any of the Conditions, that waiver will not preclude it from suing the other party for any breach of this document, including a breach that resulted in the non-fulfilment of the Condition that was waived.
- (h) Unless specified in the waiver, a waiver of the breach or waiver of the non-fulfilment of any Condition will not constitute:
 - (i) a waiver of breach or waiver of non-fulfilment of any other Condition resulting from events or circumstances giving rise to the breach or non-fulfilment of the first Condition; or
 - (ii) a waiver of breach or waiver of non-fulfilment of that Condition resulting from any other event or circumstance.

3.4 Notification of certain events

- (a) Each party must:

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- (i) **(keep informed)** promptly and reasonably inform the other party either directly or through its Advisers of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (ii) **(notice of satisfaction)** promptly notify the other party if it becomes aware that any Condition has been satisfied, and in circumstances where the relevant Condition is satisfied by the occurrence of a particular event, the notifying party must also provide reasonable evidence that the relevant event has occurred;
- (iii) **(notice of failure)** promptly notify the other party if it becomes aware that any Condition has failed to be satisfied or has become incapable of being satisfied or is not reasonably capable of being satisfied by the End Date or of any circumstances which may reasonably be expected to lead to such a state of affairs; and
- (iv) **(notice of waiver)** after having given or received a notice in accordance with **clause 3.4(iii)** in relation to a Condition that it is entitled under **clause 3.3** to waive, give notice to the other party as soon as possible (and in any event within five Business Days or such shorter time to ensure that notice is given before the Cut Off Time) as to whether or not it waives the breach or non-fulfilment of the relevant Condition, specifying the Condition in question.
- (b) Subject to the satisfaction or waiver of the Conditions, Bidder and Target must each provide the Court by no later than 8.30am on the Second Court Date with a certificate (or such other evidence as the Court may request) stating that all of the Conditions (other than the Condition requiring Court approval of the Scheme) are satisfied, or if not satisfied, are waived. Each party must provide the other party with a draft of such certificate by 5.00 pm on the Business Day prior to the Second Court Date.
- (c) The giving of a certificate by each of the Bidder and Target under **clause 3.4(b)** will in the absence of manifest error, be conclusive evidence of the satisfaction or waiver of the Conditions referred to in the certificate.

3.5 Scheme voted down

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 Bidder or Target considers, acting reasonably, that one or more Target Shareholders have split their holdings of Scheme Shares into two or more parcels, or some abusive or improper conduct, may have caused, or materially contributed to, the Headcount Test not having been satisfied then Target must:

- (a) seek the Scheme Order, 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 all Court proceedings related to the Scheme, in consultation with the Bidder, considers is

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reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test.

3.6 Consultation if Conditions not met

If:

- (a) there is a breach or non-fulfilment of a Condition which is not waived (where capable of waiver) in accordance with this document by the time or date specified in this document for its satisfaction; or
- (b) there is an act, failure to act, event or occurrence which will prevent a Condition being satisfied by the time or date specified in this document for its satisfaction (and the breach or non-fulfilment of the Condition which would otherwise occur has not already been waived); or
- (c) the Scheme does not become Effective by 5.00 pm on the Business Day immediately before the End Date,

then, the parties will consult in good faith with a view to determining whether:

- (d) the Transaction may proceed by way of alternative means or methods and, if so, to agree on the terms of such alternative means or methods;
- (e) to extend the relevant time or date for satisfaction of the Conditions;
- (f) to change the date of the application to be made to the Court for the Scheme Order or adjourning that application (as applicable) to another date agreed by the parties; or
- (g) to extend the End Date.

3.7 Failure to agree

- (a) If the parties are unable to reach agreement under **clause 3.6** within seven Business Days (or any shorter period ending at 5.00 pm on the Business Day before the Second Court Date), then unless that Condition is waived in accordance with **clause 3.3**, a party entitled to the benefit of that Condition may (subject to **clause 3.7(b)**) terminate this document.
- (b) A party will not be entitled to terminate this document pursuant to **clause 3.7(a)** if the relevant Condition has not been satisfied as a result of:
 - (i) a breach of this document by that party; or
 - (ii) a deliberate act or omission of that party which either alone or together with other circumstances prevents that condition being satisfied.
- (c) Termination of this document under **clause 3.7(a)** does not affect any accrued rights of either party arising from any breach of this document prior to termination.

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3.8 Interpretation

For the purposes of this **clause 3**, a Condition will be regarded as incapable of satisfaction or incapable of being fulfilled 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-fulfilment that would otherwise have occurred has not already been waived in accordance with this document).

4 Scheme Consideration

- (a) Subject to the terms of the Scheme, Bidder covenants in favour of Target and of each Scheme Participant that in consideration for the transfer to Bidder of the Scheme Shares held by each Scheme Participant under the terms of the Scheme, Bidder will on the Implementation Date:
 - (i) accept that transfer; and
 - (ii) in accordance with the Deed Poll and this document, pay each Scheme Participant the Scheme Consideration.
- (b) Target acts in Target's own right and separately as trustee or nominee for each of the Scheme Participants for the purposes of paragraph (a).

5 Steps for implementation

5.1 Target's obligations

Target must execute all documents and do all acts and things within its power as may be necessary or desirable for the implementation and performance of the Scheme in a timely manner and on a basis consistent with this document, and in particular Target must:

- (a) (**announce recommendation of the Scheme**) immediately after execution of this document release (and not withdraw or qualify except in accordance with **clause 5.10**) an ASX announcement in relation to the Scheme, including stating that each member of the Target Board:
 - (i) considers that the Scheme is in the best interests of Target and Target Shareholders and recommends that Target Shareholders vote in favour of all resolution(s) to be proposed at the Scheme Meeting to approve the Scheme;
 - (ii) who holds Target Shares intends to vote their Target Shares in favour of the resolution(s) to be proposed at the Scheme Meeting to approve the Scheme,

qualified only by words to the effect of:

- (iii) 'subject to the Independent Expert concluding that the Scheme is in the best interests of Target Shareholders and not subsequently changing or qualifying that conclusion'; and
- (iv) 'in the absence of a Superior Proposal'.
- (b) **(Scheme Booklet)** prepare the Scheme Booklet in accordance with **clause 5.3**.
- (c) **(Independent Expert)**:
- (i) promptly appoint the Independent Expert (and any other specialist expert required) and provide all assistance and information reasonably requested by the Independent Expert (and any other specialist expert) in connection with the preparation of the necessary report(s) for inclusion in the Scheme Booklet; and
- (ii) on receipt, provide Bidder with a copy of any draft of the Independent Expert's Report (and any other specialist report) solely for the purpose of allowing the Bidder to confirm factual accuracy of information provided by the Bidder;
- (d) **(approval of Regulator's Draft)** as soon as practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a meeting of the Target Board (or a duly appointed committee of the Target Board) is convened to approve that draft as being in a form appropriate for provision to ASIC for review;
- (e) **(liaison with ASIC)** as soon as practicable after the resolution referred to in **clause 5.1(d)** is passed, provide the Regulator's Draft to ASIC and:
- (i) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet;
- (ii) keep Bidder reasonably informed of any material matters raised by ASIC in relation to the Scheme Booklet; and
- (iii) at Bidder's request, allow Bidder to attend such portions of any meetings and discussions with ASIC which are relevant to the Bidder Information (provided that Bidder's request is provided in a timely manner and ASIC has no objection to same);
- (f) **(approval of Scheme Booklet)** as soon as practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Target Board (or a duly appointed committee of the Target Board) is convened to approve the Scheme Booklet in the form approved by ASIC and also to approve an application to the Court for an order that the Scheme Meeting be convened;
- (g) **(ASIC statements)** apply to ASIC for the production of:
- (i) an indication of intent letter stating that ASIC does not intend to appear at the First Court Hearing; and

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- (ii) a statement in writing pursuant to section 411(17)(b) of the Corporations Act, stating that ASIC has no objection to the Scheme;
- (h) **(Scheme Meeting)** promptly in accordance with the Implementation Plan:
- (i) apply to the Court for an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting; and
 - (ii) take all steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to the Target Shareholders and holding the Scheme Meeting;
- (i) **(registration of explanatory statement)** 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;
- (j) **(approval and implementation of Scheme)** if the resolution submitted to the Scheme Meeting is passed by the necessary majorities and once the Conditions are satisfied or waived, promptly apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme and if that approval is obtained:
- (i) promptly lodge with ASIC an office copy of the Scheme Order in accordance with section 411(10) of the Corporations Act;
 - (ii) close the Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme and Deed Poll;
 - (iii) execute proper instruments of transfer on behalf of Scheme Participants, and, subject to Bidder providing the Scheme Consideration, effect and register the transfer, of the Scheme Shares in accordance with the Scheme; and
 - (iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (k) **(ASX listing)** use its best endeavours to ensure that the Target Shares continue to be quoted on the official list conducted by ASX until the Target Suspension Date;
- (l) **(legal representation)** allow, and not oppose, any application by Bidder for leave of the Court to be represented, or the separate representation of Bidder by counsel, at the First Court Hearing and the Second Court Hearing;
- (m) **(Bidder Information)** during the period until the Bidder Information becomes publically available, not use the Bidder Information for any purposes other than those expressly contemplated by this document or the Scheme;

- (n) **(Court documents)** consult with Bidder in relation to the content of the documents required for submission to the Court for the purpose of the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider, for the purpose of amending drafts of those documents, comments from Bidder on those documents provided that such comments are provided to Target in a timely manner;
- (o) **(publication of information)** as soon as they become available, publish on its website the First Court Date and the Second Court Date, the date of the Scheme Meeting, and the text of all announcements made to ASX in connection with the Transaction; and
- (p) **(compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all laws and regulations applicable in relation to the Transaction.

Target will be taken to have fulfilled, in a timely manner, its obligations under this **clause 5.1** only if it has fulfilled its obligations under **clause 5.3(f)**.

5.2 Bidder's obligations

Bidder must execute all documents and do all acts and things within its power as may be necessary or desirable for the implementation and performance of the Scheme in a timely manner and on a basis consistent with this document and in particular Bidder must:

- (a) **(Bidder Information)**: prepare the Bidder Information in accordance with **clause 5.5** and provide the Bidder Information to Target for inclusion in the Scheme Booklet in accordance with the Implementation Plan.
- (b) **(Independent Expert)**: provide all assistance and information reasonably requested by the Independent Expert (and any other specialist expert required) in connection with the preparation of all necessary report(s) for the purposes of the Scheme Booklet;
- (c) **(assistance)** provide any assistance or information reasonably requested by Target in connection with the preparation of the Scheme Booklet and any other document to be sent to Target Shareholders in order to facilitate satisfaction of the Condition in **clause 3.1(f)**;
- (d) **(approval of draft Bidder Information for ASIC)** as soon as practicable after the preparation of an advanced draft of the Bidder Information suitable for review by ASIC, procure that a meeting of the Bidder Board (or a duly appointed committee of the Bidder Board) is convened to approve the Bidder Information provided to Target as being in a form appropriate for provision to ASIC for review;
- (e) **(approval of Bidder Information for Scheme Booklet)** as soon as practicable after the conclusion of the review by ASIC of the Scheme Booklet:

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- (i) procure that a meeting of the Bidder Board (or a duly appointed committee of the Bidder Board) is convened to approve the inclusion of the Bidder Information in the Scheme Booklet; and
 - (ii) provide to Target, Bidder's unconditional written consent to the inclusion of the Bidder Information in the Scheme Booklet;
- (f) (**legal representation**) procure that Bidder is represented by counsel at the First Court Hearing and the Second Court Hearing, at which, through its counsel, Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be necessary to ensure the fulfilment of its obligations under the Scheme, and, to the extent that leave of the Court is required for Bidder to be represented at the First Court Hearing or the Second Court Hearing, apply for that leave;
- (g) (**Target Information**) during the period until the Target Information becomes publically available, not use the Target Information for any purposes other than those expressly contemplated by this document or the Scheme;
- (h) (**Deed Poll**) no later than two clear Business Days before the First Court Date, execute the Deed Poll and deliver an original executed copy of that Deed Poll to Target;
- (i) (**Scheme Consideration**) if the Scheme becomes Effective, pay the Scheme Consideration on the Implementation Date in accordance with the Deed Poll and **clause 4** of this document; and
- (j) (**compliance with laws**) do everything reasonably within its power to ensure that the Transaction is effected in accordance with all laws and regulations applicable in relation to the Transaction.

Bidder will be taken to have fulfilled, in a timely manner, its obligations under this **clause 5.2** only if it has fulfilled its obligations under **clause 5.3(f)**.

5.3 Transaction Implementation Committee

- (a) As soon as practicable and in any event no later than one week after the date of this document, the parties will establish the Transaction Implementation Committee made up of two persons nominated by the Bidder and two persons nominated by the Target or such other persons as the parties may agree from time to time.
- (b) The parties' initial representatives on the Transaction Implementation Committee shall be:
 - Target:** Peter Sherar and Penny Grau;
 - Bidder:** Dean Langenbach and Gerald Strautins.
- (c) The role of the Transaction Implementation Committee will be to act as a forum for consultation and planning by the parties to implement the Transaction.

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- (d) All decisions of the Transaction Implementation Committee shall require the unanimous agreement of all representatives present.
- (e) The first task of the Transaction Implementation Committee will be to establish an implementation plan which sets out the respective roles and responsibilities of Bidder and Target to ensure that the timeframes specified in the Timetable can be achieved (**Implementation Plan**). The Implementation Plan shall have regard to and be consistent with the allocation of responsibilities set out in column 2 of **clause 3.1**.
- (f) Each party must use reasonable endeavours to adhere to the Implementation Plan.
- (g) The Transaction Implementation Committee may, from time to time, make such revisions to the Implementation Plan as may be necessary to ensure that the timeframes specified in the Timetable can be achieved.
- (h) The Transaction Implementation Committee will meet at least once every week and more regularly if either Bidder or Target request.
- (i) Target and Bidder agree to provide such information and make such resources available to the Transaction Implementation Committee as are reasonably required in order to determine the Implementation Plan and for the Transaction to be implemented in accordance with that plan.

5.4 Preparation of the Scheme Booklet

- (a) (**Preparation**) Target will prepare the Scheme Booklet in accordance with the Implementation Plan and will ensure that the Scheme Booklet complies with all applicable laws, including the requirements of:
 - (i) the Corporations Act and the *Corporations Regulations 2001* (Cth);
 - (ii) ASIC policy (including *Regulatory Guide 60*); and
 - (iii) the ASX Listing Rules,and will ensure that the Target Information, and all information provided by or on its behalf to the Independent Expert, is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date the Scheme Booklet is despatched to Target Shareholders;
- (b) (**Update**) Target must, until the date of the Scheme Meeting, continue to supplement the information contained in the Scheme Booklet (whether by way of issuing a supplementary scheme booklet, ASX announcement or media announcement as appropriate) with all such further or new information which may arise or become known to Target after the Scheme Booklet has been despatched, and which is necessary to ensure that the Scheme Booklet complies with the standards referred to in paragraph (a);
- (c) (**Drafts**) Target must:

- (i) provide to Bidder a draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised to enable Bidder to review the Regulator's Draft at least three Business Days before its submission to ASIC;
 - (ii) consult with Bidder in relation to the content of the Regulator's Draft (including inclusion of any Bidder Information); and
 - (iii) consider in good faith, for the purpose of amending the Regulator's Draft, any comments received from Bidder and its Representatives.
- (d) **(Dispute)** If, after a reasonable period of consultation, there is a dispute in relation to the content or form of the draft Scheme Booklet:
- (i) where the dispute relates to Bidder Information, Bidder will make the final determination as to the content and form of the Bidder Information to be included in the Scheme Booklet; and
 - (ii) in all other circumstances, Target will make the final determination as to the content and form of the Scheme Booklet,

provided that nothing in this clause requires Target or any Officer of Target to include anything in the Scheme Booklet which the Target or relevant Officer of the Target considers to be materially incorrect, misleading or deceptive, or to omit any information, the omission of which would, in the opinion of the Target or the relevant Officer cause the Scheme Booklet to be defective in any material respect.

5.5 Preparation of Bidder Information

- (a) Bidder must:
- (i) as soon as possible after the date of this document and in accordance with the Implementation Plan, prepare the Bidder Information and provide that Bidder Information to Target for inclusion in the Scheme Booklet;
 - (ii) consult with Target in relation to the content of the Bidder Information;
 - (iii) consider in good faith, for the purpose of amending the Bidder Information, any comments received from Target and its Representatives;
 - (iv) ensure that the Bidder Information is not misleading or deceptive in any material respect (whether by omission or otherwise); and
 - (v) provide to Target all such further or new information which may arise or become known to Bidder after the Scheme Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information is not misleading or deceptive in any material respect (whether by omission or otherwise).

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- (b) Bidder must, in accordance with the Implementation Plan and in any event on each of:
- (i) unless otherwise agreed, the Business Day which is immediately prior to the day on which a meeting of the Target Board is scheduled to be convened to approve the matters described in **clause 5.1(f)**;
 - (ii) the Business Day which is immediately prior to the day on which the Scheme Booklet is proposed by Target to be dispatched to Target Shareholders; and
 - (iii) the Business Day which is immediately prior to the day of the Scheme Meeting;

(each a **Verification Point**) verify all statements forming part of the Bidder Information, and any statements directly derived from Bidder Information, contained in the Scheme Booklet. Bidder will provide such documentation to evidence its verification that Target may reasonably request, including a verification certificate signed by Representatives of Bidder responsible for verification.

- (c) Bidder will ensure that the Bidder Information, and all information provided by or on its behalf to the Independent Expert, is not misleading or deceptive in any material respect (whether by omission or otherwise) as at each Verification Point.

5.6 Responsibility statements

The Scheme Booklet will contain statements to the effect that:

- (a) Bidder is responsible for the Bidder Information contained in the Scheme Booklet; and
- (b) Target is responsible for all Target Information contained in the Scheme Booklet.

5.7 Compliance with obligations

Target and Bidder each agree to use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external Advisers) to comply with their respective obligations in this **clause 5** and to produce the Scheme Booklet in accordance with the Implementation Plan and the Timetable.

5.8 Court proceedings

- (a) If the Court refuses to make an order convening the Scheme Meeting or approving the Scheme, at Bidder's request, Target must appeal the Court's decision to the fullest extent possible, except to the extent that the parties agree otherwise, or an independent senior counsel indicates that, in his or her view, an appeal would have no reasonable prospect of success, in which case either party may terminate this document.

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- (b) Each of Bidder and Target must vigorously defend, or must cause to be vigorously defended, any lawsuits or other claims or proceedings (including any Takeovers Panel proceedings) brought against it (or any member of the Bidder Group or Target Group) challenging this document or the completion of the Transaction. Neither Bidder nor Target may settle or compromise (or permit any member of the Bidder Group or Target Group to settle or compromise) any claim brought in connection with this document without the prior written consent of the other, such consent not to be unreasonably withheld.
- (c) Any costs incurred as a result of the operation of this clause will be borne equally by Bidder and Target.

5.9 Board and management changes

As soon as practicable after the Bidder pays the Scheme Consideration in accordance with the Deed Poll and Target has complied in full with its obligations under clauses 5.2(b) and 5.2(c) of the Scheme:

- (a) Target must cause the appointment as directors of Target of such number of persons nominated by Bidder as would constitute those nominees (acting together) as a majority of the directors on the Target Board; and
- (b) Target must use reasonable endeavours to ensure that such members of the Target Board as nominated by Bidder resign from the Target Board, and that each such director provides written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against Target.

5.10 Target Directors' recommendation

- (a) Target represents and warrants to Bidder that it has been advised by each Target Director in office as at the date of this document that he or she will, as at the date of the ASX announcement referred to in **clause 5.1(a)**, recommend that Target Shareholders vote in favour of the Scheme, qualified only by the words:
 - (i) "in the absence of a Superior Proposal"; and
 - (ii) "subject to the Independent Expert concluding that the Scheme is in the best interests of Target Shareholders and not subsequently changing or qualifying that conclusion".
- (b) Subject to **clause 5.10(c)**, Target must ensure that the Scheme Booklet includes:
 - (i) a statement that the Target Directors unanimously recommend that Target Shareholders vote in favour of the Scheme qualified only by the words "in the absence of a Superior Proposal, or the Independent Expert subsequently changing or qualifying their conclusion"; and
 - (ii) a statement by each Target Director that he or she will vote in favour of the Scheme, in respect of all Target Shares controlled or

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held by or on behalf of that director qualified only by the words “in the absence of a Superior Proposal or the Independent Expert subsequently changing or qualifying their conclusion”.

- (c) Target must use its best endeavours to ensure that no Target Director:
 - (i) changes, withdraws or modifies his or her recommendation that Target Shareholders vote in favour of the Scheme; or
 - (ii) makes a public statement or takes any action that is inconsistent with his or her recommendation that Target Shareholders vote in favour of the Scheme,

in each case except where:

- (iii) Target receives a Third Party Proposal and Target Directors determine, after all of Bidder’s rights under **clause 7.6** have been exhausted, that the Third Party Proposal constitutes a Superior Proposal; or
- (iv) the Independent Expert concludes that the Scheme is not in the best interests of Target Shareholders.

6 Conduct of business

6.1 Conduct of business

From the date of this document up to and including the Implementation Date, Target must conduct, and must procure that each member of the Target Group conducts, its business in the ordinary and usual course generally consistent with the manner in which its business has been conducted immediately before the date of this document, including using its best endeavours to:

- (a) comply in all material respects with all applicable laws and regulations;
- (b) maintain its businesses and assets;
- (c) ensure that the aggregate net debt of the Target Group’s businesses remains consistent with the Indicative Debt Forecast throughout the period covered by that document;
- (d) keep available the services of its Officers and employees; and
- (e) preserve its relationships with customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings,

except:

- (f) where expressly contemplated by this document, the Scheme or the Deed Poll;
- (g) if fairly disclosed by one party to the other party before the date of this document;

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- (h) as expressly agreed by the parties in writing.

6.2 Target Permitted Special Dividend

- (a) Subject to **clauses 6.2(b), 6.2(c) and 6.2(d)**, Target may, in its sole discretion, determine and pay to Target Shareholders who are recorded in the Register as a holder of Target Shares at the Target Permitted Special Dividend Record Date the Target Permitted Special Dividend (which shall be fully franked) on the Target Permitted Special Dividend Payment Date.
- (b) The total amount distributed to Target Shareholders pursuant to the Target Permitted Special Dividend must not exceed \$7 million.
- (c) The parties agree to consult and cooperate with each other in respect of the timing and mechanics associated with the Target Permitted Special Dividend with a view to ensuring that the dividend can, to the extent lawfully possible, be fully franked utilising the franking account balance of Target, provided that the Target must not under any circumstances allow a franking deficit to subsist such that liability of Target under any tax laws, including as to franking deficit tax, could be incurred.
- (d) The payment of the Target Permitted Special Dividend shall be subject to Target having received a favourable draft class ruling from the Australian Taxation Office.
- (e) The decision whether to pay a Target Permitted Special Dividend is entirely within the discretion of the Target Board and Bidder has no right to influence that decision.
- (f) The Scheme is not conditional on payment or otherwise of the Target Permitted Special Dividend.
- (g) The Target Permitted Special Dividend must be paid entirely from Target Group's accumulated/retained earnings reserve and must not be debited against the Target's share capital account.
- (h) The Bidder must not in any way finance, assist or facilitate the payment of the Target Permitted Special Dividend.

6.3 Access

- (a) Between the date of this document and the Implementation Date, Target must, and must cause each member of the Target Group to:
 - (i) afford to Bidder and its Representatives reasonable access, during normal business hours and at mutually convenient times, to such documents, records and other information (subject to any existing confidentiality obligations owed to third parties), officers and advisers of Target and of any member of the Target Group and such reasonable co-operation as Bidder reasonably requires for the purpose of:

- (A) understanding Target's financial position (including its cashflow and working capital position), trading performance and management control systems;
- (B) meeting its obligations under this document;
- (C) preparing for carrying on the business of the Target Group following implementation of the Scheme;
- (D) facilitating the smooth implementation of the plans of Bidder for the business following implementation of the Scheme;
- (E) verifying warranties; and
- (F) any other purpose which is agreed in writing between the parties;
- (ii) keep the Bidder fully informed of all material developments relating to the Target Group; and
- (iii) share such information as is reasonably required to implement the Transaction, provided that the Bidder must:
- (A) keep all information obtained by it as a result of this **clause 6.3(a)** confidential;
- (B) provide Target with reasonable notice of any request for meetings or access;
- (C) comply with the reasonable requirements of Target in relation to such access; and
- (D) not interfere with the Business or the operations of the Target Group.
- (b) The parties must undertake discussions in good faith in respect of how customer and other key contractual relationships are to be managed prior to the Implementation Date, including where any third party consents are required in connection with, or as a result of, the Transaction, and Target must use all reasonable endeavours to satisfy any reasonable request of Bidder in respect of the management of such customer and other key contractual relationships.
- (c) Nothing in this **clause 6.3** gives the Bidder any rights to undertake further due diligence investigations, or any rights as to the decision-making of any member of the Target Group or its business.
- (d) Nothing in this **clause 6.3** obliges Target or any member of the Target Group to provide to the Bidder or its Representatives any information:
- (i) concerning the Target Directors' or Target's management's consideration of the Transaction or any Third Party Proposal (save as otherwise provided in this document);
- (ii) concerning the Target Group's business that is, in the reasonable opinion of Target, commercially sensitive, including any specific

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pricing and margin information, customer details and any material term of any project tender where a member of Target Group reasonably considers that a member of Bidder Group may also be invited to prepare a tender response for the same project;

- (iii) in circumstances which may result in a breach of the *Competition and Consumer Act 2010* (Cth);
- (iv) which would, in the reasonable opinion of Target, result in unreasonable disruptions to the Target Group's business;
- (v) which would breach an obligation of confidentiality to any person or any applicable privacy laws; or
- (vi) which would be reasonably likely to result in a loss of legal professional privilege.

6.4 Employees

The parties acknowledge that they may by agreement enter into appropriate retention arrangements with key personnel employed or engaged by a Target Group member so as to try to retain those people upon the Scheme being successfully implemented. The parties are to meet and negotiate in good faith to agree the quantum, identity and terms for any such payments.

6.5 Other matters

- (a) As soon as practicable after the date of this document, a meeting of the Target's Board must be held at which it is resolved to exercise the Board's discretion to forfeit all performance rights issued under the Target's 2014, 2015 and 2016 performance rights plans and terminate each of those plans, subject to and immediately upon the Scheme becoming Effective.
- (b) No later than 31 July 2017, Target must procure that:
 - (i) the existing agreement between SMS Consulting Group Ltd and KMC is terminated; and
 - (ii) a replacement agreement, on substantially identical terms, is entered into between SMS M&T Philippines Inc and KMC (or an affiliate of KMC which is reasonably able to perform the obligations imposed on it pursuant to such replacement agreement).

7 Exclusivity

7.1 No current discussions

Target represents and warrants to Bidder that, as at the date of this document, and other than the DWS SIA and matters under it, neither it nor any of its Representatives:

- (a) has received any offer, proposal or expression of interest from any person which remains current, or is otherwise participating, directly or

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indirectly, in any discussions or negotiations with any persons that concern, or could reasonably be expected to lead to, a Third Party Proposal; or

- (b) is a party to any agreement, arrangement or understanding with any person which has not expired in relation to a Third Party Proposal or a possible Third Party Proposal that prevents it from entering into this document, or may prevent it from complying with its obligations under this document.

7.2 No shop restriction

During the Exclusivity Period, Target must ensure that neither it nor any of its Representatives, directly or indirectly, solicits, initiates or invites any enquiries, negotiations or discussions in relation to, or with a view to obtaining, or which would reasonably be expected to encourage or lead to the making of, any expression of interest, offer or proposal from any person in relation to a Third Party Proposal, or communicate to any person an intention to do any of the foregoing.

7.3 No talk

Subject to **clause 7.8**, during the Exclusivity Period, Target must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) facilitates, enters into or otherwise participates in any negotiations or discussions with any person regarding a Third Party Proposal;
- (b) communicates to any person an intention to do any of the things referred to in **clause 7.3(a)**; or
- (c) approves or recommends a Third Party Proposal,

even if the Third Party Proposal was not directly or indirectly solicited, encouraged or initiated by Target or any of its Representatives, or the Third Party Proposal has been publically announced.

7.4 No due diligence

During the Exclusivity Period, except with the prior written consent of Bidder, Target must not and must ensure that its Representatives do not, directly or indirectly:

- (a) solicit, initiate, invite or encourage or (subject to **clause 7.8**) facilitate or permit any person other than Bidder to undertake due diligence investigations in respect of Target or any of its Related Bodies Corporate or any of their businesses or operations in connection with or for the purposes of an actual, proposed or potential Third Party Proposal; or
- (b) subject to **clause 7.8**, make available to any person other than Bidder or its Representatives or permit any such person to receive any non-public information relating to Target or any of its Related Bodies Corporate or any of their businesses or operations in connection with

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or for the purposes of an actual, proposed or potential Third Party Proposal.

7.5 Notification of approaches

- (a) During the Exclusivity Period, Target must, subject to **clause 7.8**, promptly notify Bidder in writing of the fact of:
 - (i) any approach, inquiry or proposal made by any person to Target or any of its Representatives, to initiate any discussions or negotiations that concern, or that could reasonably be expected to lead to, a Third Party Proposal; and
 - (ii) any request made by any person to Target or any of its Representatives, for any non-public information relating to Target, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Third Party Proposal,

whether oral or in writing.

- (b) Subject to **clause 7.8**, a notice given under **clause 7.5(a)** must be accompanied by the material terms and conditions (including price, conditions precedent, timetable and break free if any) of any Third Party Proposal or any proposed Third Party Proposal (to the extent then known to Target), but need not identify the proponent of the Third Party Proposal.
- (c) During the Exclusivity Period, Target must promptly provide the Bidder with:
 - (i) in the case of written materials, a copy of; or
 - (ii) in any other case, a written statement of,

any material non-public information relating to Target, its Related Bodies Corporate, or any of their businesses and operations made available by Target to any person in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Third Party Proposal and which has not previously been provided to the Bidder.

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

- (a) If Target is permitted by virtue of **clause 7.8** to engage in activity that would otherwise breach any of **clauses 7.3, 7.4(a)** and **7.5**, Target must enter into a confidentiality agreement with the person who has made the applicable Third Party Proposal (**Rival Acquirer**) on customary terms.
- (b) If Target receives a Third Party Proposal and as a result:
 - (i) any Target Director proposes to change, withdraw or modify his or her recommendation of the Proposed Transaction; or

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- (ii) the Target proposes to enter into any agreement, commitment, arrangement or understanding relating to the Third Party Proposal (other than a confidentiality agreement contemplated by **clause 7.6(a)**),

Target must not enter into any agreement, commitment, arrangement or understanding set out in **clause 7.6(b)(ii)**:

- (iii) unless the Third Party Proposal is bona fide; and
- (iv) until each of the following has occurred:
 - (A) the Target Directors have made the determination contemplated by **clause 7.8(a)(ii)** in respect of that Third Party Proposal;
 - (B) Target has given the Bidder written notice (**Relevant Notice**) of the proposal to take the action referred to in **clauses 7.6(b)(i) or 7.6(b)(ii)**;
 - (C) Target has given the Bidder all information that would be required by **clause 7.5(b)**; and
 - (D) the Target Directors have made the determination contemplated by **clause 7.8(a)(ii)** in respect of that Third Party Proposal after evaluation of any Counter Proposal and the exhaustion of the Bidder's rights under and in accordance with **clause 7.6(c)**.
- (c) If Target gives a Relevant Notice to Bidder under **clause 7.6(b)(iv)(B)**, Bidder will have the right, but not the obligation, at any time during the period of 3 Business Days after the day on which Bidder receives the Relevant Notice, to propose to amend the terms of the Transaction including by increasing the amount of consideration offered under the Transaction or proposing any other form of transaction (each a **Counter Proposal**), and if it does so then the Target Directors must review the Counter Proposal in good faith. If the Target Directors determine that the Counter Proposal would be more favourable, or at least no less favourable, to Target and the Target Shareholders than the Third Party Proposal (having regard to the matters noted in **clause 7.8(a)(ii)**), then Target and Bidder must use their best endeavours to agree the amendments to this document that are reasonably necessary to reflect the Counter Proposal and to enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal, and Target must recommend the Counter Proposal to the Target Shareholders and not recommend the applicable Third Party Proposal.

7.7 DWS SIA

- (a) The DWS SIA and any action taken by Target pursuant to the DWS SIA do not constitute a breach of any provision of this document.

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- (b) As soon as practicable after the execution of this document, Target must direct DWS to return or destroy all confidential information of Target in DWS's possession or control in accordance with the terms of the confidentiality deed dated 25 January 2017 between Target and DWS, and Target must provide confirmation to Bidder that it has given such direction.

7.8 Fiduciary carve out

- (a) The restrictions in **clauses 7.3, 7.4(a) and 7.4(b)** and the obligations in **clause 7.5** do not apply with respect to a Third Party Proposal (in relation to which there has been no contravention of **clause 7.1**) provided that:
 - (i) the Third Party Proposal is bona fide and is made by or on behalf of a person that the Target Directors reasonably consider is of sufficient commercial standing to implement the Third Party Proposal; and
 - (ii) the Target Directors have determined in good faith after consultation with the Target's external financial and legal advisers that:
 - (A) the Third Party Proposal is or may reasonably be expected to lead to a Superior Proposal; or
 - (B) taking or failing or refusing to take any action (as the case may be) with respect to the Third Party Proposal would be likely to constitute a breach of the fiduciary or statutory obligations of the directors of Target.
- (b) Notwithstanding any other provision of this document, if there has been a Third Party Proposal to which **clauses 7.8(a)(i) and 7.8(a)(ii)** apply, then Target may apply to the Court to delay or postpone the Scheme Meeting, the First Court Hearing or the Second Court Hearing. Any action taken by Target pursuant to this **clause 7.8(b)** will not constitute a breach of any provision of this document.

7.9 Revisions to a Third Party Proposal

Any material modification to any Third Party Proposal will be deemed to make that proposal a new Third Party Proposal in respect of which Target must comply with its obligations under **clause 7.5**.

7.10 Legal advice

Target warrants to Bidder that, prior to entering into this document, Target has received legal advice on this document and the operation of this **clause 7**, it and Target Board consider this **clause 7** to be fair and reasonable and that it is appropriate to agree to the terms of this clause in order to secure the significant benefits to Target and Target Shareholders resulting from the transactions contemplated by this document.

8 Representations and warranties

8.1 Preliminary

- (a) Each of the Target Warranties and the Bidder Warranties respectively are given subject to:
 - (i) any matter that has been fairly disclosed to the other party; and
 - (ii) any relevant information of which the other party or its Representatives (other than its Advisers) has actual knowledge as at the date the warranty is given.
- (b) Each of the Target Warranties and Bidder Warranties respectively is given, unless otherwise expressly stated, as at each of the date of this document, the date of the Scheme Meeting, the Cut Off Time and on the Implementation Date.

8.2 Target's representations

Target represents and warrants to Bidder in the terms of the Target Warranties set out in **schedule 2**.

8.3 Bidder's representations

Bidder represents and warrants to Target in the terms of the Bidder Warranties set out in **schedule 3**.

8.4 Reliance by parties

Each party (the **representor**) acknowledges that in entering into this document the other party has relied on the representations and warranties provided by the representor under this **clause 8**.

8.5 Severability of representations

The representations and warranties provided by each party under this **clause 8** are severable.

8.6 Notification of breach and compliance certificate

- (a) Bidder and Target will respectively promptly advise each other in writing of:
 - (i) a representation or warranty provided in this document by either party becoming false in a material respect; or

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- (ii) a material breach of this document by it.
- (b) By 5.00 pm on the Business Day immediately before the Second Court Date, each of Bidder and Target must execute and deliver to the other party a certificate signed by a director that, having made all relevant enquiries and except as previously fairly disclosed:
 - (i) it has complied in all material respects with its obligations under this document; and
 - (ii) the representations and warranties given by it under **clause 8** remain true and correct in all material respects.

8.7 Termination only remedy

The parties acknowledge and agree that the only remedy:

- (a) available to Target for a breach of a Bidder Warranty; or
- (b) available to Bidder for a breach of a Target Warranty,

whether under contract, common law, in equity, tort (including negligence), statute or otherwise will be to terminate this document where the right to do so arises under **clause 12 (a Permitted Action)**, and each party releases its rights with respect to any Claim other than the Permitted Action, and agrees that it will not make such a Claim.

9 Indemnities

9.1 Target's indemnity

Target agrees with Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) to indemnify and keep indemnified the Bidder Indemnified Parties from and against all Losses which a Bidder Indemnified Party may suffer or incur by reason of or in relation to any breach (other than a breach of any Target Warranty) by Target of any covenant or undertaking on the part of Target under this document or the Scheme. This **clause 9.1** must be read down to the extent necessary to ensure that there is no breach of section 199A of the Corporations Act.

9.2 Bidder's indemnity

Bidder agrees with Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) to indemnify and keep indemnified the Target Indemnified Parties from and against all Losses which a Target Indemnified Party may suffer or incur by reason of or in relation to any breach (other than a breach of any Bidder Warranty) by Bidder of any covenant or undertaking on the part of Bidder under this document or the Scheme. This **clause 9.1** must be read down to the extent necessary to ensure that there is no breach of section 199A of the Corporations Act.

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9.3 Survival of indemnities

Each indemnity provided by each party under this **clause 9** will:

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

9.4 Releases

- (a) Bidder releases its rights, and agrees with Target that it will not make a Claim, against any Target Indemnified Party (other than Target and its Related Bodies Corporate as at the date of this document and from time to time) in connection with:
 - (i) any breach of any representations and warranties of Target or any other member of the Target Group in this document; or
 - (ii) any disclosure containing any statement which is false or misleading whether in content or by omission,
whether current or future, known or unknown, arising at common law, in equity (including negligence), under statute or otherwise, except where the Target Indemnified Party has engaged in wilful misconduct or fraud.
- (b) This **clause 9.1** is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Target receives and holds the benefit of this **clause 9.1** to the extent it relates to each Target Indemnified Party as trustee for each of them.

9.5 Insurances

- (a) Subject to the Scheme becoming Effective, Bidder undertakes that it will:
 - (i) for a period of seven years from the Implementation Date, ensure that the constitutions of Target and each other member of the Target Group continue to contain such rules as are contained in those constitutions at the date of this document that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the relevant company to any person other than a member of the Target Group;
 - (ii) procure that Target and each member of the Target Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that directors' and officers' run-off insurance cover for such directors

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and officers is maintained for a period of seven years from the retirement date of each director and officer; and

- (iii) not take any action which would prejudice or adversely affect any existing directors' and officers' insurance policy (including any run-off insurance cover) Target has in place as at the date of this document or will have in place prior to the Implementation Date.
- (b) Bidder acknowledges that, notwithstanding any other provision of this document, Target may, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to seven years, and any actions to facilitate such insurance or in connection with it will not constitute a Prescribed Occurrence or breach any provision of this document.
- (c) Target receives and holds the benefit of **clause 9.5(b)** as trustee for each director and officer of each member of the Target Group.

10 Confidentiality

Each party must comply, and must procure that its Representatives comply, with the terms of the Confidentiality Deed governing use and disclosure of confidential information. For the purposes of the Confidentiality Deed, each party consents to the use of, and the disclosure on a confidential basis to a Regulatory Authority of, its confidential information for the purposes of satisfying any Condition and the implementation of the transactions contemplated by this document.

11 Public announcements

11.1 Announcement of Transaction

Immediately after execution of this document, the Target will issue an ASX announcement in relation to the Scheme as contemplated in **clause 5.1(a)**.

11.2 Public announcements

Subject to **clause 11.3**, no public announcement or disclosure (including any briefing to analysts, the media or shareholders) of the Transaction or any other transaction the subject of this document may be made other than in a form approved by each party (acting reasonably), but each party must use all reasonable endeavours to provide such approval as soon as practicable.

11.3 Required disclosure

Where a party is required by law or the ASX Listing Rules to make any announcement or to make any disclosure in connection with the Transaction or any other transaction the subject of this document, it may do so only after it has given at least one Business Day's notice, or such lesser period as may be required or permitted to comply with its legal or regulatory responsibilities, but in any event prior notice, to the other party and has taken all reasonable steps

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to consult with the other party and its legal advisers and to take account of all reasonable comments received from the other party. Nothing in this clause shall require any party to act, or to delay acting, in a way that would place it in breach of ASX Listing Rule 3.1.

11.4 Statements on termination

The parties must act in good faith and use all reasonable endeavours to issue an agreed statement or statements in respect of any termination provided for in this document and will make no statements or disclosure in respect of the termination of this document except in accordance with **clauses 11.2 and 11.3**.

12 Termination

12.1 Termination by either party

This document may be terminated by either party giving notice in writing to the other party at any time before the Court has approved the Scheme under section 411(4)(b) of the Corporations Act, if:

- (a) (**resolution voted down**) the resolution to approve the Scheme submitted to the Scheme Meeting is not approved by the requisite majorities of Target Shareholders;
- (b) (**End Date**) the Effective Date has not occurred on or before the End Date other than as a result of any breach of this document by the party purporting to terminate;
- (c) (**Independent Expert**) the Independent Expert concludes that the Scheme is not in the best interests of Target Shareholders;
- (d) (**restraint**) any court, the Takeovers Panel or Regulatory Authority has issued any order, decree or ruling or taken any other action permanently enjoining, restraining or otherwise prohibiting the Scheme, or has refused to do anything necessary to permit the Scheme, and either:
 - (i) such decision has become final and is incapable of appeal; or
 - (ii) the parties fail to agree on conducting on appeal within five Business Days.

12.2 Termination by Target

Target may terminate this document by written notice to Bidder at any time before the Cut Off Time if:

- (a) an Insolvency Event occurs in relation to any member of the Bidder Group; or
- (b) the Target receives a Third Party Proposal which a majority of Target Directors consider, after all of Bidder's rights under **clause 7.6** have been exhausted, to be a Superior Proposal (as evidenced by a written resolution of those Target Directors to that effect); or

- (c) Bidder is in breach of any of its material obligations under this document at any time before the Cut Off Time (other than any breach of a representation or warranty provided under this document) and either:
 - (i) the breach is not capable of remedy; or
 - (ii) where the breach is capable of remedy, the Bidder has failed to remedy the breach within three Business Days of receipt by it of written notice from Target notifying the Bidder of the breach (or such shorter period ending at 5.00 pm on the last Business Day before the Second Court Hearing); or
- (d) Target becomes entitled to do so under **clauses 3.7(a) or 5.8**.

12.3 Termination by Bidder

Bidder may terminate this document by written notice to Target at any time before the Cut Off Time if:

- (a) a Prescribed Occurrence occurs; or
- (b) a Material Adverse Change occurs; or
- (c) an Insolvency Event occurs in relation to any member of the Target Group; or
- (d) any Target Director withdraws his or her recommendation that Target shareholders vote in favour of the Scheme Resolutions or publicly recommends, promotes or otherwise endorses a Third Party Proposal; or
- (e) Target is in breach of any of its material obligations under this document at any time before the Cut Off Time (other than any breach of a representation or warranty provided under this document) and either:
 - (i) the breach is not capable of remedy; or
 - (ii) where the breach is capable of remedy, Target has failed to remedy the breach within three Business Days of receipt by it of written notice from Bidder notifying Target of the breach (or such shorter period ending at 5.00 pm on the last Business Day before the Second Court Hearing); or
- (f) Bidder becomes entitled to do so under **clauses 3.7(a) or 5.8**.

12.4 Effect of termination

If this document is terminated by a party under this **clause 12**:

- (a) each party will be released from its obligations under this document except its obligations under **clauses 8, 9, 9.5(b), 11, 13 and 15** (other than **clause 15.7**) which will survive termination;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this document; and

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- (c) in all other respects, all future obligations of the parties under this document will immediately terminate and be of no further force or effect, including without limitation any further obligations in respect of the Scheme.

12.5 No other termination

Neither party may terminate or rescind this document except as specifically provided for in this **clause 12**.

13 GST

13.1 Construction

In this **clause 13**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
- (c) references to GST payable and input tax credit entitlements include:
- (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
- (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

13.2 Consideration GST exclusive

All consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this document is exclusive of GST (**GST-exclusive consideration**).

13.3 Payment of GST

If GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

(**Supplier**) under or in connection with this document, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

13.4 Timing of GST payment

The amount referred to in **clause 13.3** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

13.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 13.3**.

13.6 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under **clause 13.3** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires. However, the Supplier is not required to make any payment to the recipient if, at the time the payment would otherwise be required, a time limit has expired or there is another limitation preventing the supplier from being entitled to claim, or from claiming a corresponding credit or refund in respect of that payment.

13.7 Reimbursements

- (a) Where a party is required under or in connection with this document to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This **clause 13.7** does not limit the application of **clause 13.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 13.7(a)**.

13.8 Calculations based on other amounts

If an amount of consideration payable or to be provided under or in connection with this document is to be calculated by reference to:

- (a) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and
- (b) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

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13.9 No merger

This **clause 13** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

14 Notices

14.1 General

A notice, demand, certification, process or other communication relating to this document must be in writing in English and may be given by an agent of the sender.

14.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current delivery address for notices; or
- (c) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail.

The parties will use all reasonable endeavours to provide a copy of any communication provided under this clause by email to the email address of the other party set out in **clause 14.3**. To avoid doubt, such email communication is provided as support for the official communication provided in accordance with **paragraphs (a) to (c)** of this clause and does not supersede or replace any obligation on a party to provide that communication in accordance with **paragraphs (a) to (c)** of this clause or derogate from the other provisions of this **clause 14**.

14.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially:

Bidder

Delivery address: Level 9, 167 St George's Terrace, Perth, WA 6000

Postal address: As above

Attention: Head of Strategy

Email: Gerald.Strautins@asggroup.com.au

Target

Delivery address: Level 41, 140 William Street, Melbourne, Victoria 3000

Postal address: As above

Attention: General Counsel

Email: Penny.Grau@smsmt.com

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- (b) Each party may change its particulars for delivery of notices by notice to each other party.

14.4 Communications by post

Subject to **clause 14.5**, a communication is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting.

14.5 After hours communications

If a communication 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.

14.6 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this **clause 14** or in accordance with any applicable law.

15 General

15.1 Duty

- (a) Bidder as between the parties is liable for, must pay, and indemnify the other parties for, all stamp duty, duty, or like duties or imposts (**Duty**) (including any fine, interest or penalty) payable or assessed on or in connection with:
 - (i) this document;
 - (ii) the Scheme, the Deed Poll and any document executed under or required by or contemplated by any of these documents; and
 - (iii) any transaction evidenced, effected or contemplated by a document referred to in **clause 15.1(a)(i)** or **clause 15.1(a)(ii)**.
- (b) If a party other than Bidder pays any Duty referred to in **clause 15.1(a)** (including any fine, interest or penalty), in whole or in part, Bidder must reimburse the paying party without set-off or deduction immediately on demand.

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15.2 Legal costs

Except as expressly stated otherwise in this document, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this document.

15.3 Amendment

This document may only be varied or replaced by a document executed by the parties.

15.4 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

15.5 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

15.6 Consents

Except as expressly stated otherwise in this document, a party may conditionally or unconditionally give or withhold any consent to be given under this document and is not obliged to give its reasons for doing so.

15.7 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

15.8 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.

15.9 Assignment

- (a) A party must not assign or deal with any right under this document without the prior written consent of the other parties.
- (b) Any purported dealing in breach of this clause is of no effect.

15.10 Liability

An obligation of two or more persons binds them separately and together.

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15.11 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

15.12 Entire understanding

- (a) This document and the Confidentiality Deed contain the entire understanding between the parties as to the subject matter of this document. To the extent of any inconsistency between this document and the Confidentiality Deed, the provisions in this document prevail.
- (b) Other than the Confidentiality Deed, all previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document are merged in and superseded by this document and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this document; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

15.13 Relationship of parties

This document is not intended to create a partnership, joint venture or agency relationship between the parties.

15.14 No merger

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

15.15 Specific performance

The parties acknowledge that damages will not be an adequate remedy for breaches of obligations under this document and that it would be appropriate for a court to grant specific performance of those obligations.

15.16 Construction

Unless expressed to the contrary, in this document:

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

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- (f) words and phrases have the same meaning (if any) given to them in the Corporations Act;
- (g) a matter has been “fairly disclosed” by a party to the other party only if it was:
- (i) disclosed:
 - (A) by way of ASX announcement prior to the date of this document; or
 - (B) in writing to the other party or its Representatives (including in the case of disclosure by the Target, in the Disclosure Materials) prior to the date of this document;

in each case in sufficient detail so as to enable a reasonable person experienced in transactions similar to the Transaction and experienced in operating a business similar to the business conducted by the Target or the Bidder (as appropriate), to identify the nature, import and scope of the relevant matter, or
 - (ii) in respect of disclosure against a particular warranty, available on any public register (regardless of whether a fee is required to be paid to retrieve such information) as at the date on which the warranty was given;
- (h) 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;

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- (xi) this document includes all schedules and annexures to it; and
- (xii) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;
- (i) 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;
- (j) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded; and
- (k) a reference to any statement, including a warranty made by a party on the basis of its knowledge, belief or awareness, is made on the basis of the actual knowledge, belief or awareness of the Specified Officers of the party (and no other persons) as at the date of this document.

15.17 Headings

Headings do not affect the interpretation of this document.

16 Break Fee

16.1 Background

This **clause 16** has been agreed in circumstances where:

- (a) Bidder and Target believe the Scheme will provide significant benefits to Bidder, Target and Target Shareholders, and Bidder and Target acknowledge that, if they enter into this document and the Scheme is subsequently not implemented, Bidder will incur significant costs;
- (b) the parties have agreed that provisions be made for the payment outlined in **clause 16.2** without which Bidder would not have entered into this document;
- (c) the parties believe that it is appropriate for both parties to agree to the payment referred to in this **clause 16** to secure Bidder's participation in the Transaction; and
- (d) both parties have received legal advice on this document and the operation of this **clause 16**.

16.2 Payment by Target to Bidder

Target agrees to pay Bidder the amount of the Break Fee if the Scheme has not become Effective and:

- (a) (**Superior Proposal**) a Superior Proposal is announced before the End Date and:
 - (i) Target enters into a legally binding agreement to undertake the Superior Proposal; or
 - (ii) any member of the Target Board recommends the Superior Proposal; or

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- (iii) at any time on or prior to the date three months after the end of the Exclusivity Period, the proponent of the Superior Proposal acquires control of Target (within the meaning of section 50AA of the Corporations Act), or voting power or an economic interest in more than 50% of Target Shares, more than 50% of the shares in any material Subsidiary, or acquires or obtains an economic interest in more than 50% (by value) of the assets (excluding cash), cash or business of the Target Group,

in each case, except where Target Shareholders (other than any holder of Excluded Shares) have not approved the Scheme by the necessary majorities at the Scheme Meeting; or

- (b) (**change of recommendation**) on or before the End Date, any member of the Target Board fails to recommend or support the Scheme or changes or withdraws his or her recommendation in favour of the Scheme, or any Target Director publicly recommends or supports a Superior Proposal, or otherwise makes a public statement indicating that he or she no longer supports the Transaction, except:
- (i) as a result of the Independent Expert's Report (or any update of, or revision, amendment or addendum to, that report) where that report states that in the opinion of the Independent Expert the Scheme is not in the best interests of Target Shareholders; or
- (ii) where Target is entitled to terminate this document pursuant to **clauses 12.2(a) or 12.2(c)** and has given the appropriate termination notice to Bidder.

16.3 No amount payable if Scheme becomes Effective

Notwithstanding the occurrence of any event under **clause 16.2**, no amount of the Break Fee is payable if the Scheme becomes Effective.

16.4 Timing of payment

Target must pay Bidder the Break Fee (without set-off or withholding) within 20 Business Days of receipt by Target of a demand for payment from Bidder. The demand may only be made after the occurrence of any event referred to in **clauses 16.2(a) or 16.2(b)**. Target can only ever be liable to pay the Break Fee once.

16.5 Nature of payment

The Break Fee has been calculated as an amount to compensate Bidder for:

- (a) advisory costs (including costs of advisers other than success fees);
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses; and
- (d) reasonable opportunity costs incurred by Bidder in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives which Bidder could have developed to further its business and objectives.

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16.6 Reduction in Break Fee

- (a) The Break Fee is reduced by an amount equal to the amount which is recovered by Bidder as a result of any claim against Target pursuant to any other remedies available to Bidder under this document.
- (b) Where the Break Fee has already been paid, Bidder must, within 2 Business Days of the event contemplated by **clause 16.6(a)** which would have reduced the amount payable, refund an amount to Target which is equivalent to that calculated under **clause 16.6(a)**.

16.7 Compliance with law

- (a) This **clause 16** does not impose an obligation on Target to pay the Break Fee to the extent (and only to the extent) that the obligation to pay the Break Fee:
 - (i) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
 - (ii) is determined to be unenforceable or unlawful by a court, provided that all proper avenues of appeal and review, judicial and otherwise, have been exhausted. Any part of that fee that would not constitute 'unacceptable circumstances' or that is not unenforceable or unlawful (as applicable) must be paid by Target.
- (b) The parties must not make or cause to permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in **clause 16.8(a)**.

16.8 Survival

This clause survives termination of this document.

17 Reimbursement Fee

17.1 Background

This **clause 17** has been agreed to in circumstances where:

- (a) each party believes that it and its shareholders will derive significant benefits from the implementation of the Transaction;
- (b) Target has incurred and will further incur significant costs in connection with the Transaction;
- (c) Target has requested that provision be made for the payment of the Reimbursement Fee by Bidder and would not have entered into this document had such provision not been made;
- (d) Bidder believes that it is appropriate to agree to pay the Reimbursement Fee to secure Target's entry into this document; and
- (e) each party has received separate legal advice in relation to this document and the operation of this **clause 17**.

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17.2 Payment of Reimbursement Fee

Subject to **clause 17.3** and without limiting the rights of Target for any other claims that may arise under this document, Bidder must pay Target (without set-off or withholding) within 20 Business Days after receipt by Bidder of a written demand from Target, the Reimbursement Fee if Bidder does not pay the Scheme Consideration in accordance with the terms of the Scheme and the Deed Poll.

17.3 Payment Conditions

- (a) Notwithstanding the occurrence of any event referred to in **clause 17.2**, the Reimbursement Fee will not be payable if the Scheme becomes Effective and the Scheme Consideration is paid by Bidder.
- (b) The Reimbursement Fee must be refunded to Bidder within 10 Business Days after the Scheme becomes Effective if it was paid to Target before that time.
- (c) Bidder can only ever be liable to pay the Reimbursement Fee once.

17.4 Nature of Payment

The Reimbursement Fee has been calculated as an amount to compensate Target for:

- (a) advisory costs (including costs of advisers other than success fees);
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses; and
- (d) reasonable opportunity costs incurred by Target in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives, including the DWS SIA which Target could have developed to further its business and objectives.

17.5 Reduction in Reimbursement Fee

- (a) The Reimbursement Fee is reduced by an amount equal to the amount which is recovered by Target as a result of any claim against Bidder pursuant to any other remedies available to Target under this document.
- (b) Where the Reimbursement Fee has already been paid, Target must, within 2 Business Days of the event contemplated by **clause 17.5(a)** which would have reduced the amount payable, refund an amount to Bidder which is equivalent to that calculated under **clause 17.5 (a)**.

17.6 Survival

This clause survives termination of this document.

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Schedule 1

Timetable

Action	Date ¹
Regulator's Draft Scheme Booklet lodged with ASIC	10
Deed Poll executed by Bidder	23
First Court Date	26
Scheme Booklet registered by ASIC and released on ASX	27
Scheme Booklet dispatched to Target Shareholders	33
Scheme Meeting	56
Second Court Date	57
Effective Date: office copy of Court order approving the Scheme lodged with ASIC	58
Target Suspension Date	58
Target Permitted Special Dividend Record Date	61
Record Date	62
Implementation Date and Target Permitted Special Dividend Payment Date	67

¹ All dates are cumulative Business Days from the date of execution of this document.

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Schedule 2

Target Warranties

Target represents and warrants to Bidder that:

- (a) **(status)** it, and each of its Related Bodies Corporate, is a body corporate duly incorporated under the laws of its jurisdiction of incorporation or formation;
- (b) **(power for business)** each member of the Target Group has the power to own its assets and to carry on its business as now conducted or contemplated;
- (c) **(power for document)** it has the corporate power to enter into and perform or cause to be performed its obligations under this document and the Transaction and to carry out the transactions contemplated by this document and the Transaction;
- (d) **(corporate authorisations)** it has taken or will take all necessary corporate action to authorise the entry into and performance of this document and the Transaction and to carry out the transactions contemplated by this document and the Transaction;
- (e) **(document binding)** this document is a valid and binding obligation enforceable in accordance with its terms, subject to any necessary stamping;
- (f) **(transactions permitted)** subject to satisfaction of the Condition in **clause 3.1(a)**, the execution and performance by it of its obligations under this document and each transaction contemplated by this document and the Transaction did not and will not violate in any material respect a provision of a law or treaty or a judgment, ruling, order or decree of a Regulatory Authority binding on it, or its constitution;
- (g) **(continuous disclosure)** it:
 - (i) has materially complied with its obligations under chapter 3 of the ASX Listing Rules and the information disclosed to ASX is true and correct in all material respects;
 - (ii) is not relying on the carve out in Listing Rule 3.1A to withhold any material information from public disclosure; and
 - (iii) is not aware of any information relating to any member of the Target Group or their respective businesses or operations that has or could reasonably be expected to give rise to a Material Adverse Change that has not been fairly disclosed to Bidder;
- (h) **(provision of Target Information)** the Target Information included in the Scheme Booklet:
 - (i) will be included in good faith and on the understanding that Bidder and each of the Officers of Bidder will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet

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and approving the entry by Bidder into the Deed Poll, and that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report; and

- (ii) will comply in all material respects with the requirements of the Corporations Act, the ASX Listing Rules and all relevant policy statements, practice notes and other guidelines and requirements of ASIC and the Takeovers Panel;
- (i) **(Target Information true)** the Target Information included or incorporated by reference in the Scheme Booklet will not, as at the date of despatch of the Scheme Booklet to the Target Shareholders, contain any statement which is misleading or deceptive in any material respect (by omission or otherwise);
- (j) **(securities)** its issued securities as at the date of this document are no more than:
 - (i) 68,536,340 Target Shares;
 - (ii) zero options to acquire Target Shares; and
 - (iii) 1,656,236 performance rights, none of which have vested;

and no member of the Target Group is under any obligation to issue any shares or securities convertible into Target Shares to any person and, except as specified above, no option exists nor is any member of the Target Group subject to any actual or contingent obligation to issue or convert securities;
- (k) **(Subsidiaries)** it is the beneficial owner of all the issued share capital in each of its Subsidiaries and there is no obligation to transfer, or issue new shares in any of those companies to third parties;
- (l) **(employee incentive arrangements)** it has disclosed to Bidder the terms applicable to the 2016 Executive Performance Rights Plan and all other existing employee equity incentive arrangements which currently remain in operation;
- (m) **(compliance with laws)** as far as Target is aware, after making enquiries of its Specified Officers, each member of the Target Group has complied in all material respects with all applicable laws and regulations which would, if breached, have a material adverse effect on:
 - (i) the financial position of the Target Group as a whole; or
 - (ii) the implementation of the Transaction; and
- (n) **(Disclosure Materials)** to the best of Target's knowledge:
 - (i) the Disclosure Materials are true and accurate in all material respects as at the date of this document and are not intentionally misleading or intentionally deceptive (including by omission) in any material respect; and
 - (ii) the Disclosure Materials include true, correct and complete:
 - (A) copies of all terms and conditions of any equity incentive schemes to which any member of the Target Group is a party and under which rights remain current; and
 - (B) disclosures of all commitments, arrangements and understandings Target has entered into with any of its officers or employees as to any

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bonus, incentive or other payment which may become payable to them upon or in connection with the Scheme becoming Effective,

in each case, other than any scheme, commitment, arrangement or understanding entered into by Target or a member of the Target Group as contemplated under **clause 6.4**, if any.

- (o) **(DWS SIA)** the DWS SIA and the scheme contemplated by it have been terminated in accordance with the terms of the DWS SIA.

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Schedule 3

Bidder Warranties

Bidder represents and warrants to Target that:

- (a) **(status)** it, and each of its Related Bodies Corporate, is a body corporate duly incorporated under the laws of its jurisdiction of incorporation or formation;
- (b) **(power for business)** each member of the Bidder Group has the power to own its assets and to carry on its business as now conducted or contemplated;
- (c) **(power for document)** it has the corporate power to enter into and perform or cause to be performed its obligations under this document, the Transaction and the Deed Poll and to carry out the transactions contemplated by this document, the Transaction and the Deed Poll that are required to be carried out by Bidder;
- (d) **(corporate authorisations)** it has taken or will take all necessary corporate action to authorise the entry into and performance of this document, the Transaction and the Deed Poll and to carry out the transactions contemplated by this document, the Transaction and the Deed Poll that are required to be carried out by Bidder;
- (e) **(document binding)** this document is a valid and binding obligation enforceable in accordance with its terms;
- (f) **(transactions permitted)** the execution and performance by it of its obligations under this document, the Transaction and the Deed Poll and each transaction contemplated by this document, the Transaction and the Deed Poll did not and will not violate in any material respect a provision of a law (including the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and any related regulations) or treaty or a judgment, ruling, order or decree of a Regulatory Authority binding on it, or its constitution or any other document or agreement that is binding on it or its assets;
- (g) **(provision of Bidder Information)** the Bidder Information:
 - (i) will be provided in good faith and on the understanding that Target and each of the Officers of Target will rely on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme, and that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report; and
 - (ii) will comply in all material respects with the requirements of the Corporations Act, the ASX Listing Rules and all relevant policy statements, practice notes and other guidelines and requirements of ASIC and the Takeovers Panel;
- (h) **(Bidder Information true)** the Bidder Information included or incorporated by reference in the Scheme Booklet in the form consented to by Bidder will not, as at the date of dispatch of the Scheme Booklet to the Target Shareholders, contain any statement which is misleading or deceptive in any material respect (by omission or otherwise);

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- (i) **(Regulatory Authority approval)** no approval from any Regulatory Authority is required by Bidder to execute and perform this document or implement the Scheme; and
- (j) **(Scheme Consideration)** Bidder will have sufficient funds available to it on an unconditional basis to satisfy its obligations to pay the Scheme Consideration under the Scheme and the Deed Poll as and when those obligations arise.

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Execution

Executed as an agreement.

Executed by SMS Management & Technology Limited in accordance with section 127 of the Corporations Act:)
)
)


.....
Company Secretary/Director
PENELOPE GRAU
.....
Name of Company Secretary/Director (print)


.....
Director
RICK ROSTOLIS
.....
Name of Director (print)

Executed by ASG Group Limited in accordance with section 127 of the Corporations Act:)
)
)

.....
Company Secretary/Director
.....
Name of Company Secretary/Director (print)

.....
Director
.....
Name of Director (print)

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Execution

Executed as an agreement.

Executed by SMS Management & Technology Limited in accordance with section 127 of the Corporations Act:)
)

.....
Company Secretary/Director

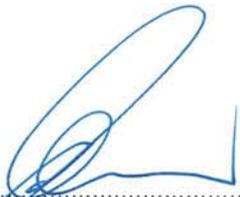
.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Executed by ASG Group Limited in accordance with section 127 of the Corporations Act:)
)


.....
Company Secretary/Director


.....
Director

Peter Torre
.....
Name of Company Secretary/Director
(print)

Geoff Lewis
.....
Name of Director (print)

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Annexure A

Scheme

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567 Collins Street, Melbourne VIC 3000, Australia
GPO Box 9925, Melbourne VIC 3001, Australia
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Fax +61 3 9672 3010
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**CORRS
CHAMBERS
WESTGARTH**
lawyers

Sydney
Melbourne
Brisbane
Perth

SMS Management & Technology Limited

Scheme Participants

Scheme of Arrangement

Pursuant to section 411 of the Corporations Act

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Date

Parties

Sydney
Melbourne
Brisbane
Perth

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

Scheme Participants

Agreed terms

1 Definitions

In this document these terms have the following meanings:

ASIC	The Australian Securities and Investments Commission.
Associate	In relation to a party, has the meaning given in sections 11, 12 and 16 of the Corporations Act.
ASX	ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it.
ASX Listing Rules	The official listing rules of ASX.
Bidder	ASG Group Limited ACN 070 045 117 of Level 9, 167 St Georges Terrace, Perth, Western Australia 6000.
Bidder Registry	Link Market Services Pty Ltd or any replacement provider of share registry services to Bidder.
Business Day	The meaning given by the ASX Listing Rules.
CHESS	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.
Corporations Act	The <i>Corporations Act 2001</i> (Cth).
Court	The Supreme Court of Victoria or any other court of competent jurisdiction under the Corporations Act determined by Target.
Cut Off Time	8.00 am on the Second Court Date.
Deed Poll	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.

Effective	The time at which the Scheme Order takes effect pursuant to section 411(10) of the Corporations Act.
Effective Date	The date on which the Scheme becomes Effective.
End Date	31 December 2017
Excluded Share	A Target Share held by Bidder or a Related Body Corporate of Bidder.
Governmental Agency	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.
GST	The meaning given to that term in the <i>A New Tax System (Goods & Services Tax) Act 1999</i> (Cth).
Implementation Date	The fifth Business Day following the Record Date or such other date as ordered by the Court or agreed between Bidder and Target.
Independent Expert	An independent expert determined by Target.
Non-resident shareholder	A Scheme Participant that is not an "Australian resident" within the meaning of the Tax Administration Act 1953 (Cth).
Record Date	7.00 pm on the fourth Business Day following the Effective Date or such other date and time as Target and Bidder agree.
Registered Address	In relation to a Target Shareholder, the address shown in the Target Register as at the Record Date.
Related Body Corporate	The meaning given to that term in the Corporations Act.
Scheme	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.
Scheme Booklet	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).

Scheme Consideration	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.
Scheme Implementation Agreement	The scheme implementation agreement between Bidder and Target dated June 2017.
Scheme Meeting	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.
Scheme Order	The order of the Court made for the purposes of section 411(4)(b) of the Corporations Act approving the Scheme.
Scheme Participant	Each holder of Scheme Shares as at the Record Date.
Scheme Shares	All the Target Shares on issue on the Record Date other than the Excluded Shares.
Scheme Transfer	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.
Second Court Date	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.
Second Court Hearing	The hearing of the application made to the Court for the Scheme Order.
Target Option	An option to acquire Target Shares.
Target Register	The register of members of Target maintained by or on behalf of Target in accordance with the Corporations Act and Target Registry has a corresponding meaning.
Target Share	A fully paid ordinary share in the capital of Target.
Target Shareholder	Each person who is registered in the Target Register as the holder of Target Shares.
Target Permitted Special Dividend	A dividend actually paid on Target Shares as a special dividend, pursuant to Target's discretion to do so under clause 6.2 of the Scheme Implementation Agreement.

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 CHESS, the transferee is registered in the Target Register as the holder of the relevant Scheme Shares at the 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

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before 5.00pm on the day on which the 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 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 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

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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.

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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.

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Annexure B

Deed Poll

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Deed Poll

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Date

By

ASG Group Limited ACN 070 045 117 of Level 9, 167 St Georges Terrace, Perth, Western Australia 6000 (**Bidder**)

in favour of each Scheme Participant.

Background

- A Bidder and Target have entered into the Scheme Implementation Agreement under which Target agreed, subject to the satisfaction or waiver of certain conditions, to propose the Scheme to Scheme Participants.
 - B Under the Scheme Implementation Agreement, Bidder agreed, subject to the satisfaction or waiver of certain conditions, to do all things within its power necessary or desirable on its part to implement the Scheme, including providing the Scheme Consideration.
 - C Bidder is entering into this document for the purpose of covenanting in favour of Scheme Participants to perform all of Bidder's obligations under the Scheme Implementation Agreement.
-

Declarations

1 Definitions

- (a) In this document these terms have the following meanings:

Scheme	The scheme of arrangement under section 411 of the Corporations Act between Target and the Scheme Participants the form of which is attached to the Scheme Implementation Agreement, subject to any alterations or conditions agreed in writing between Target and Bidder or made or required by the Court pursuant to section 411(6) of the Corporations Act and approved in writing by Target and Bidder.
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Scheme Implementation Agreement	The agreement of that name dated June 2017 and entered into between Target and Bidder.
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Target SMS Management & Technology Limited ACN 009 558 865.

- (b) Words and phrases defined in the Scheme or the Scheme Implementation Agreement have the same meaning in this document unless the context requires otherwise.

2 Nature of this deed poll

Bidder acknowledges that:

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

3 Conditions precedent and termination

3.1 Conditions precedent

The obligations of Bidder in respect of the Scheme pursuant to this document are subject to the Scheme becoming Effective.

3.2 Termination

If:

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

Bidder's obligations under this document will automatically terminate, unless Bidder and Target otherwise agree in writing in accordance with the Scheme Implementation Agreement.

3.3 Consequences of termination

If this document is terminated under **clause 3.2** then, in addition and without prejudice to any other rights, powers or remedies available to Scheme Participants:

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

4 Scheme Consideration

4.1 Performance of obligations generally

Subject to **clause 3**, Bidder undertakes in favour of each Scheme Participant to:

- (a) comply with all of Bidder's obligations under the Scheme Implementation Agreement; and
- (b) perform the actions attributed to it under, and otherwise comply with, the Scheme as if it were a party to the Scheme.

4.2 Provision of Scheme Consideration

Subject to **clause 3**, in consideration of the transfer of each Scheme Share to Bidder, Bidder undertakes in favour of each Scheme Participant to provide the Scheme Consideration to each Scheme Participant in accordance with the terms of the Scheme.

4.3 Joint holders

In the case of Scheme Shares held in joint names, any cheque required to be paid to Scheme Participants in accordance with the terms of the Scheme 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 Representations and warranties

Bidder represents and warrants in favour of each Scheme Participant that:

- (a) Bidder is a company validly existing under the laws of the State of Victoria, Australia;
- (b) Bidder has the corporate power to enter into and perform its obligations under this document and to carry out the transactions contemplated by this document;
- (c) Bidder has taken all necessary corporate action to authorise the entry into of this document and has taken or will take all necessary corporate action to authorise the performance of this document and to carry out the transactions contemplated by this document;
- (d) this document is Bidder's valid and binding obligation enforceable in accordance with its terms, subject to any necessary stamping; and
- (e) this document does not conflict with or result in the breach of, or any default under:
 - (i) any provision of Bidder's constitution; or
 - (ii) any writ, order or injunction, judgement, law, rule or regulation to which Bidder is subject or by which Bidder is bound,

and Bidder is not otherwise bound by any agreement that would prevent, restrain or restrict Bidder from entering into or performing any of its obligations or undertakings contained in this document.

6 Continuing obligations

This document is irrevocable and, subject to **clause 3**, remains in full force and effect until:

- (a) Bidder has completely performed its obligations under this document; or
 - (b) this document is terminated in accordance with **clause 3**,
- whichever comes first.

7 Stamp duty

Bidder will:

- (a) pay all stamp duties and any related fines, interest and penalties, costs and brokerage in respect of or in connection with this document, the performance of this document and each transaction effected by or made or any instrument executed under this document or the Scheme, including the transfer of Scheme Shares under the Scheme; and
- (b) indemnify each Scheme Participant on demand against any liability arising from its failure to comply with **clause 7(a)**.

8 Notices

8.1 General

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

8.2 How to give a Notice

A Notice must be given to Bidder by being:

- (a) personally delivered;
- (b) left at Bidder's current delivery address for notices; or
- (c) sent to Bidder's current delivery address for notices or current registered office by pre-paid ordinary mail.

8.3 Particulars for delivery of notices

The particulars for delivery of Notices to Bidder are:

Attention: Head of Strategy

Delivery address: Level 9, 167 St George's Terrace, Perth, WA, 6000

Postal address: Same as delivery address

8.4 Communications by post

Subject to **clause 8.5**, a Notice is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting.

8.5 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.

8.6 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this **clause 8** or in accordance with any applicable law.

9 General

9.1 Waiver

Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this document by any person 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 rights, power or remedy provided by law or under this document. A waiver is not valid or binding on the person granting that waiver unless made in writing.

9.2 Cumulative rights

The rights, powers and remedies of Bidder and of each Scheme Participant under this document are cumulative and do not exclude any other rights, powers or remedies provided by law or equity independently of this document.

9.3 Amendment

A provision of this document may not be varied unless:

- (a) before the Second Court Date, the variation is agreed to in writing by Target; or

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- (b) on or after the Second Court Date, the variation is agreed to in writing by Target and is approved by the Court,

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

9.4 Assignment

The rights and obligations of Bidder and of each Scheme Participant under this document are personal and must not be assigned, encumbered or otherwise dealt with at law or in equity and no person may attempt, or purport, to do so without the prior written consent of Bidder and Target.

9.5 Severability

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This **clause 9.5** has no effect if the severance alters the basic nature of this document or is contrary to public policy.

9.6 Further assurances

Bidder will execute and deliver all documents and do all acts and things (on its own behalf and on behalf of each Scheme Participant) necessary or desirable to give full effect to this document and the transactions contemplated by it.

9.7 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.

9.8 Construction

The rules specified in **clause 11.7** of the Scheme apply in interpreting or construing this document, unless the context requires otherwise.

9.9 Headings

Headings do not affect the interpretation of this document.

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Execution

Executed as a deed poll in the State of Victoria, Australia.

Executed by ASG Group Limited in)
accordance with section 127 of the)
Corporations Act:)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)