
Scheme implementation deed

Cleanaway (No. 1) Pty Ltd
Tox Free Solutions Limited
Cleanaway Waste Management Limited

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Parties

- 1 **Cleanaway (No. 1) Pty Ltd** ACN 623 274 466 of 441 St Kilda Road, Melbourne, Victoria 3004 (**Bidder**)
 - 2 **Tox Free Solutions Limited** ACN 058 596 124 of Level 1, 31 Cliff Street, Fremantle, Western Australia 6160 (**Target**)
 - 3 **Cleanaway Waste Management Limited** ACN 101 155 220 of 441 St Kilda Road, Melbourne, Victoria 3004 (**Guarantor**)
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Background

- A Bidder and Target have agreed that Bidder will acquire Target by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders.
- B Bidder and Target have agreed to implement the Scheme on and subject to the terms and conditions of this deed.
- C The Guarantor has agreed to guarantee the obligations of Bidder under this deed, on and subject to the terms and conditions of this deed.

The parties agree

1 Defined terms and interpretation

1.1 Defined terms

A term or expression starting with a capital letter which is defined in the dictionary in Schedule 1 has the meaning given to it in the dictionary.

1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this deed.

2 Agreement to proceed with Transaction

- (a) Target agrees to propose the Scheme on and subject to the terms and conditions of this deed.
 - (b) Bidder agrees to assist Target to propose the Scheme on and subject to the terms and conditions of this deed.
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3 Conditions Precedent

3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the obligations of the parties to implement the Scheme under clause 4 (other than clause 4.1(b)) are not binding, until and unless each of the following conditions precedent is satisfied or waived in accordance with clause 3.3:

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- (a) **(Shareholder approval)** Target Shareholders agree to the Scheme at the Scheme Meeting by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act.
 - (b) **(Court approval)** The Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.
 - (c) **(Competition Approval)** By 8:00am on the Second Court Date, Competition Approval has been obtained.
 - (d) **(Restraints)** As at 8.00am on the Second Court Date, there is not in effect any temporary, preliminary or final order, decision or decree issued by any court of competent jurisdiction, no preliminary or final decision, determination, notice of objection or order issued by any Government Agency or any other legal restraint which restrains or prohibits the Scheme.
 - (e) **(Other regulatory approvals)** Bidder has obtained all Australian regulatory consents and approvals (other than Competition Approval) necessary for the acquisition by Bidder of all the Scheme Shares and none of those regulatory consents or approvals have been withdrawn, cancelled or revoked. To avoid doubt, this includes, but is not limited to, ASIC and ASX having issued or provided such consents or approvals or Bidder having done such other acts which Bidder and Target agree are reasonably necessary to implement the Scheme.
 - (f) **(Institutional Offer)** By 7:00pm on the date which is 10 Business Days after the announcement of the Transaction and commencement of the Entitlement Offer, settlement has occurred in respect of the institutional component of the Entitlement Offer.
 - (g) **(Independent Expert's Report)** The Independent Expert's Report concluding that the Scheme is in the best interests of Target Shareholders on or before the date on which the Scheme Booklet is registered by ASIC under the Corporations Act and the Independent Expert does not change or publicly withdraw this conclusion prior to 8.00am on the Second Court Date.
 - (h) **(Material Adverse Change)** No Material Adverse Change occurs, is announced or becomes known to Bidder between the date of this deed and 5:00pm on the Business Day before the Second Court Date.
 - (i) **(Prescribed Occurrence)** No Prescribed Occurrence occurs between the date of this deed and 8.00am on the Second Court Date.
 - (j) **(Target Representations and Warranties)** The Target Representations and Warranties are true and correct in all material respects as at the date of this deed and as at 8:00am on the Second Court Date.
 - (k) **(Bidder Representations and Warranties)** The Bidder Representations and Warranties are true and correct in all material respects as at the date of this deed and as at 8:00am on the Second Court Date.

3.2 Reasonable endeavours

- (a) Each of Bidder and Target must, to the extent that it is within their respective control or influence, use reasonable endeavours to procure that:
 - (i) the Conditions Precedent in clauses 3.1(a), 3.1(b), 3.1(d) and 3.1(e) are satisfied as soon as possible after the date of this deed and continue to be

satisfied at all times up until the last time each condition is to be satisfied (as the case may require); and

- (ii) there is no occurrence within its control or the control of any of its Related Bodies Corporate that prevents, or would be reasonably likely to prevent, the satisfaction of any Condition Precedent except to the extent that such action is required to be done or procured pursuant to the Transaction Documents or is required by law.
- (b) Bidder must use reasonable endeavours to procure that the Conditions Precedent in clause 3.1(f) is satisfied as soon as practicable after the date of this deed and that the Conditions Precedent in clauses 3.1(c) and 3.1(k) are satisfied as soon as practicable after the date of this deed and continue to be satisfied at all times up until the last time for them to be satisfied.
 - (c) Target must use reasonable endeavours to procure that the Conditions Precedent in clauses 3.1(h), 3.1(i) and 3.1(j) are satisfied and continue to be satisfied at all times up until the last time each condition is to be satisfied (as the case may require).
 - (d) Without limiting clause 3.5, each of Bidder and Target, in respect of matters within its knowledge, must keep the other promptly and reasonably informed of the steps it has taken and the progress towards satisfying the Conditions Precedent.
 - (e) Without limiting clauses 3.2(a), 3.2(b) and 3.2(d), in respect of ensuring the Conditions Precedent in clauses 3.1(c) and 3.1(e) are satisfied as soon as reasonably practicable, the parties agree as follows:
 - (i) each party must take all steps it is responsible for as part of the approval process, including responding to requests for information from the relevant Government Agency at the earliest practicable time and Bidder promptly applying for Competition Approval and all and other necessary regulatory consents and approvals;
 - (ii) each party must promptly:
 - (A) provide to the other party such necessary information and reasonable assistance as the other party may request in connection with its preparation of any submission or other information or documents; and
 - (B) review and provide any comments on any submissions or other materials prepared by the other party,with respect to obtaining Competition Approval and all other necessary regulatory consents and approvals;
 - (iii) each party must, except to the extent prohibited by law or the relevant Government Agency, promptly notify the other party of:
 - (A) all material communications between that party (or any of its representatives or Related Bodies Corporate) and the relevant Government Agency in connection with the satisfaction of the Conditions Precedent in clauses 3.1(c) or 3.1(e) (including any written submissions); and
 - (B) any material action taken or proposed by, or any enquiries made by, the relevant Government Agency in connection with Competition Approval or any other regulatory consents and approvals sought, of which it becomes aware;

- (iv) each party must, except to the extent prohibited by law or the relevant Government Agency in writing, provide the other party with copies (where written) and details of all material communications with each relevant Government Agency in relation to the Transaction;
 - (v) each party must, before any submission or material correspondence is sent to the relevant Government Agency by that party or any of its representatives or Related Bodies Corporate in connection with the Transaction, except to the extent prohibited by law or the relevant Government Agency, consult with the other party in relation to, and provide the other party with a draft copy of, such submission or correspondence as soon as practicable and consider in good faith any reasonable comments received from the other party in relation to such submission or correspondence; and
 - (vi) Nothing in this deed will require Bidder to agree to accept or offer conditions or undertakings required to satisfy the Condition Precedent set out in clause 3.1(c).
- (f) Subject to the any protocols agreed between the parties, and before a party provides any document or other information to the other (in this clause 3.2(f), the **Recipient**) pursuant to clause 3.2(e), that party (in this clause 3.2(f), the **Discloser**) may redact any part of that document, or not disclose any part of that information, which contains or is confidential, non-public information (**Sensitive Confidential Information**) if the Discloser reasonably believes that:
- (i) the Sensitive Confidential Information is of a commercially sensitive nature; or
 - (ii) the disclosure of the Sensitive Confidential Information to the Recipient would be damaging to the commercial or legal interests of the Discloser or any of its Related Bodies Corporate,

and may provide the document or disclose the information to the Recipient with any Sensitive Confidential Information redacted or excluded, provided that, where Sensitive Confidential Information is so redacted or excluded, the Discloser must provide the Recipient with as much detail about the relevant communication, submission or correspondence (and any other relevant circumstances) as is reasonably possible without disclosing Sensitive Confidential Information, and provide to the Recipient on an “external Counsel only” basis an unredacted version of the document or information, provided that the external legal advisors to the Recipient agree not to share any information that is marked as Sensitive Commercial Information with its client or clients.

3.3 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a) and 3.1(b) are for the benefit of both Bidder and Target.
- (b) The Conditions Precedent in clauses 3.1(d), 3.1(e) and 3.1(g) are for the benefit of both Bidder and Target and any breach or non-fulfilment of those Conditions Precedent may only be waived by written agreement between Bidder and Target.
- (c) The Conditions Precedent in clauses 3.1(c), 3.1(f), 3.1(h), 3.1(i) and 3.1(j) are for the sole benefit of Bidder and any breach or non-fulfilment of any of these Conditions Precedent may only be waived by Bidder (in its absolute discretion) in writing.
- (d) Prior to waiving the Condition Precedent in clause 3.1(c), Bidder must consult with Target (with such consultation recognising Bidder's obligation under clause 6.2 to

use best endeavours to implement the Scheme which is at all times subject to clause 3.2(e)(vi)) and in good faith consider any comments received from Target in relation to the proposed waiver.

- (e) The Condition Precedent in clause 3.1(k) is for the sole benefit of Target and any breach or non-fulfilment of such Condition Precedent may only be waived by Target (in its absolute discretion) in writing.
- (f) If Bidder or Target waives the breach or non-fulfilment of a Condition Precedent, that waiver does not prevent the relevant party from suing the other for any breach of this deed that resulted in such breach or non-fulfilment.
- (g) Waiver of a breach or non-fulfilment of a Condition Precedent does not constitute:
 - (i) a waiver of breach or non-fulfilment of any other Condition Precedent resulting from the same event; or
 - (ii) a waiver of breach or non-fulfilment of that Condition Precedent resulting from any other event.

3.4 Termination on failure of Condition Precedent

- (a) If:
 - (i) there is a breach or non-fulfilment of a Condition Precedent that has not been waived in accordance with clause 3.3 by the time or date specified in this deed for the satisfaction of that Condition Precedent;
 - (ii) there is an act, failure to act or occurrence which will, or which either party becomes aware will, prevent a Condition Precedent being satisfied by the time or date specified in this deed for the satisfaction of that Condition Precedent and the breach or non-fulfilment of that Condition Precedent that has occurred, or would otherwise occur, has not been waived in accordance with clause 3.3; or
 - (iii) the Scheme has not become Effective by the End Date,then Bidder and Target must give the other written notice (**Consultation Notice**) within 10 Business Days of becoming aware of the relevant event (**Termination Event**), provided that there is no obligation for Bidder or Target to notify the other if it has already received a Consultation Notice from the other. Bidder and Target must then consult in good faith and acting reasonably to determine whether they can reach agreement with respect to:
 - (iv) extending the time for satisfaction of the relevant Condition Precedent or the End Date (as the case may be);
 - (v) changing the date on which an application is made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application to a date agreed between Bidder and Target (as applicable); or
 - (vi) the Transaction proceeding by way of alternative means or methods.
- (b) If Bidder and Target are unable to reach such agreement within 10 Business Days after a Consultation Notice is given (or any shorter period ending at 5:00pm on the day before the Second Court Date), then, subject to clause 3.4(c), either Bidder or

Target (in this clause 3.4, the **Terminating Party**) may terminate this deed by giving written notice (**Termination Notice**) to the other, provided that:

- (i) if the basis upon which the Terminating Party is seeking to terminate this deed is the occurrence of an event described in clause 3.4(a)(i) or 3.4(a)(ii), the Terminating Party has the benefit of the relevant Condition Precedent;
 - (ii) there has been no failure by the Terminating Party to comply with its obligations under this deed, where that failure directly contributed to the occurrence of the Termination Event; and
 - (iii) the Termination Event has not arisen as a result of a deliberate act or omission of the Terminating Party.
- (c) If:
- (i) an application is made to the ACCC under Part VII of the Competition and Consumer Act; and
 - (ii) the ACCC rejects the application before the End Date,
- and
- (iii) the Queen's Counsel or Senior Counsel jointly briefed by the parties has advised that, in his or her view, there is no reasonable prospect of success of an application for review or appeal of the decision (or of the decision of the Australian Competition Tribunal under Part IX of the Competition and Consumer Act if the decision of the ACCC has already been reviewed) in sufficient time for the Scheme to become Effective before the End Date; or
 - (iv) the Federal Court of Australia declares or makes orders before the End Date to the effect that the acquisition by Bidder of all of the Scheme Shares under the Scheme will contravene section 50 of the Competition and Consumer Act; or
 - (v) Competition Approval is not otherwise obtained by the End Date and the Condition Precedent in clause 3.1(c) has not been waived,

then either Bidder or Target may terminate this deed by written notice without any liability to the other because of that termination, other than the payment by Bidder of the Cost Compensation Amount if it is required to do so under clause 10.4.

- (d) Where a Termination Notice is given under this clause 3.4, this deed will terminate with immediate effect and clause 13.4 will apply.

3.5 Certain notices

Each of Bidder and Target must promptly notify the other in writing if it becomes aware:

- (a) that a Condition Precedent has been satisfied or breached, in which case the notifying party must also provide reasonable evidence that it has been satisfied;
- (b) of any fact, matter or circumstance that has resulted or may result in:
 - (i) a Condition Precedent becoming incapable of satisfaction or otherwise not being satisfied in accordance with its terms;

- (ii) a Representation and Warranty provided by that party (or, where Bidder is the relevant party, by the Guarantor) under this deed ceasing to be true and correct in all material respects; or
- (iii) a material breach of this deed by that party (or, where Bidder is the relevant party, by the Guarantor).

4 Scheme Consideration

4.1 Scheme

Target and Bidder agree to implement the Scheme on and subject to the terms and conditions of this deed, and Target:

- (a) agrees to propose the Scheme on and subject to the terms of this deed; and
- (b) must not consent to any modification of, or amendment to, the Scheme, or to the making or imposition by a court of any condition in respect of the Scheme, without the prior written consent of Bidder.

4.2 Obligations in respect of the Scheme Consideration

- (a) Subject to the Scheme becoming Effective, Bidder agrees in favour of Target that, in consideration of the transfer to Bidder of each Scheme Share under the Scheme, Bidder will:
 - (i) accept such transfer; and
 - (ii) pay to each Scheme Shareholder the Scheme Consideration to which they are entitled, as determined in accordance with this clause 4, in respect of each Scheme Share held by that Scheme Shareholder at the Scheme Record Date,in each case on and subject to the terms of the Scheme.
- (b) Subject to the Scheme becoming Effective, before the Scheme Shares are transferred to Bidder under the Scheme, Bidder must, by no later than the Business Day before the Implementation Date deposit an amount equal to the total Scheme Consideration in cleared funds into the Trust Account.

4.3 Fractional entitlements and share splitting or division

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Scheme Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration is such that a fractional entitlement to a cent arises, then the fractional entitlement will be rounded, up or down to the nearest cent (with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole cent, and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole cent).
- (b) If Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 4.3(a)) have, before the Scheme Record Date for the Scheme, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, then Bidder may give notice to those Scheme Shareholders:

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- (i) setting out their names and registered addresses as shown in the Target share register;
 - (ii) stating that opinion; and
 - (iii) attributing to one of them specifically identified in the notice of the Scheme Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares will, for the purposes of the provisions of the Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the provisions of the Scheme, be taken to hold no Scheme Shares. Bidder, in complying with the provisions of the Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of the Scheme.

5 Dividends

5.1 Payment of Permitted Dividend

Notwithstanding any other provision of this deed, Target may in its discretion declare and pay the Permitted Dividend following the release of the Target's first half results for the financial year ending 30 June 2018.

5.2 Payment of Special Dividend

Notwithstanding any other provision of this deed, subject to:

- (a) the Scheme becoming Effective;
- (b) clause 5.3(a); and
- (c) Target complying with the requirements of section 254T of the Corporations Act,

Target may in its discretion declare and pay in cash only a dividend of an amount as separately agreed between the parties (**Special Dividend**) to all Scheme Shareholders provided that:

- (d) the Special Dividend must be declared on or prior to the date of despatch of the Scheme Booklet to Scheme Shareholders;
- (e) the record date for the Special Dividend must occur on or before the Scheme Record Date; and
- (f) the payment date for the Special Dividend will be determined by Target in its discretion, provided that it occurs on or before the Implementation Date.

5.3 Calculation of the Special Dividend

- (a) Following the agreement of this deed, the Bidder and the Target will work together to ascertain the precise amount of the Special Dividend which may be payable under law and to ensure the Target's franking account balance does not fall into

deficit. If the parties, acting reasonably and having taken advice agree that the amount of the Special Dividend can be declared and paid without:

- (i) contravening the Corporations Act, any applicable Tax Laws or any other law; or
- (ii) if franked, causing the Target's franking account balance to fall into deficit,

then Target may determine the amount of the Special Dividend to the extent so agreed.

- (b) Bidder agrees that, in working together with Target under paragraph 5.3(a) to ascertain the precise amount of the Special Dividend, it must provide Target with all reasonable assistance requested by Target as may be required in order to declare and pay such Special Dividend in compliance with the Corporations Act and any applicable Tax Laws including any assistance required by Target to obtain additional debt facilities or increase the limit of any existing facilities.

5.4 Taxation of Special Dividend

The Special Dividend may be fully franked, provided that Target's franking account does not fall into deficit upon payment of the Special Dividend (or would fall into deficit if any claimed or reasonably expected tax refund was received).

5.5 Scheme Consideration reduced by amount of any dividends paid

- (a) Subject to clause 5.5(b), the Scheme Consideration will be reduced to the extent of the cash amount of any dividends paid by Target after the date of this deed (including the Special Dividend).
- (b) The Permitted Dividend up to an amount of 5 cents per share will not reduce the amount of the Scheme Consideration.

5.6 Dividend reinvestment plan

- (a) Target must suspend the Dividend Reinvestment Plan no later than the date on which the public announcement contemplated by clause 7(a) is released.
- (b) Target must promptly announce to ASX in accordance with clause 12(g) of the Dividend Reinvestment Plan that the Dividend Reinvestment Plan has been suspended.

6 Implementation

6.1 Target obligations

Target must, acting at all times in good faith, use its best endeavours and take all steps reasonably necessary to implement the Scheme in accordance with the Timetable and otherwise as soon as practicable and on the terms and conditions of this deed, and must consult with Bidder on a regular basis about its progress towards satisfying its obligation under this clause 6.1. Without limiting the foregoing, Target must do the following:

- (a) **(Independent Expert)** promptly after the date of this deed, appoint the Independent Expert and provide such assistance and information as is reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;

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- (b) **(promotion of Transaction)** participate in efforts reasonably requested by Bidder to promote the merits of the Transaction, including:
 - (i) meeting with key Target Shareholders;
 - (ii) using reasonable endeavours to procure that senior Target Group employees communicate with employees, customers and suppliers in a manner supportive of the Scheme; and
 - (iii) providing Bidder with such information and assistance to enable it to be able to promote the merits of the Transaction;
 - (c) **(preparation of Scheme Booklet)**
 - (i) prepare the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report) in accordance with applicable laws, including the Corporations Act, Corporations Regulations, RG 60 and the Listing Rules. Bidder acknowledges and agrees that Target has ultimate discretion with respect to the preparation, form and content of the Scheme Booklet, other than as expressly provided in this deed with respect to the Bidder Information and the Independent Expert's Report; and
 - (ii) provide Bidder with drafts of the Scheme Booklet in a timely manner and consider in good faith any reasonable comments provided by or on behalf of Bidder on those drafts;
 - (d) **(draft Independent Expert's Report)** provide a draft of the Independent Expert's Report to Bidder no later than 2 Business Days prior to lodgement of the Regulator's Draft with ASIC;
 - (e) **(due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report);
 - (f) **(lodgement of Regulator's Draft)**
 - (i) provide an advanced draft of the Scheme Booklet (**Regulator's Draft**) to ASIC for its review for the purposes of section 411(2) of the Corporations Act; and
 - (ii) keep Bidder reasonably informed of any material issues raised by ASIC in relation to the Regulator's Draft and any steps taken to address such issues (provided that, where such issues relate to Bidder Information, Target must co-operate and consult with Bidder to resolve such issues including by taking into account reasonable comments or suggestions provided by Bidder);
 - (g) **(no objection statement)** apply to ASIC for a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
 - (h) **(First Court Hearing)** apply to the Court for an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;
 - (i) **(approval and registration of Scheme Booklet)**
 - (i) procure that a meeting of the Target Board is convened to approve the Scheme Booklet for registration with ASIC and despatch to Target Shareholders; and

- (ii) subject to receipt from Bidder of the written confirmation referred to in clause 6.2(f) (such confirmation not to be unreasonably withheld or delayed), request that, in accordance with section 412(6) of the Corporations Act, ASIC register the explanatory statement in relation to the Scheme, as contained in the Scheme Booklet;
- (j) **(Scheme Meeting)** as soon as reasonably practicable following registration of the Scheme Booklet by ASIC, despatch the Scheme Booklet to Target Shareholders and convene and hold the Scheme Meeting in accordance with the orders made by the Court at the First Court Hearing;
- (k) **(supplementary disclosure)** if, after despatch of the Scheme Booklet, it becomes aware:
- (i) that information included in the Scheme Booklet is or has become false or misleading in any material respect (whether by omission or otherwise); or
 - (ii) of information that is required to be disclosed to Target Shareholders under any applicable law (including RG 60),

promptly consult with Bidder as to the need for, and form of, any supplementary disclosure to Target Shareholders, and make any such disclosure as it considers reasonably necessary as soon as reasonably practicable and having regard to applicable laws (including RG 60) and, to the extent it is reasonably practicable to do so, provide Bidder with drafts of any documents that it proposes to issue to Target Shareholders under this clause 6.1(k) and take into account reasonable comments or suggestions provided by Bidder on such documents;

- (l) **(Conditions Precedent certificate)** at the Second Court Hearing, provide to the Court (through its counsel):
- (i) a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent (other than the Condition Precedent in clause 3.1(b)) have been satisfied or waived in accordance with clause 3, a draft of which certificate must be provided to Bidder by 5:00pm on the date that is two Business Days prior to the Second Court Date; and
 - (ii) any certificate provided to it by Bidder pursuant to clause 6.2(h);
- (m) **(Second Court Hearing)** subject to the Conditions Precedent in clause 3.1(a) being satisfied and all other Conditions Precedent (other than the Condition Precedent in clause 3.1(b)) being satisfied or waived in accordance with clause 3, apply to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme;
- (n) **(Court Documents)** prepare the Court Documents, provide drafts of those documents to Bidder and consider in good faith any reasonable comments provided by or on behalf of Bidder;
- (o) **(Bidder representation at Court Hearings)** allow, and not oppose, any application by Bidder for leave of the Court to be represented by counsel (at its own cost) at a Court Hearing;
- (p) **(lodgement of Court order)** for the purposes of section 411(10) of the Corporations Act, lodge with ASIC an office copy of the order made by the Court under section 411(4)(b) of the Corporations Act approving the Scheme before

5:00pm on the Business Day following the day on which such office copy is received;

- (q) **(quotation of Target Shares and ASX listing)** apply to ASX to have:
 - (i) trading in Target Shares suspended from the close of trading on the Effective Date; and
 - (ii) Target removed from the official list of ASX from the close of trading on the Business Day immediately following the Implementation Date,

and satisfy any conditions reasonably required by ASX for it to act on those requests and not do anything to cause clause 6.1(q)(i) and 6.1(q)(ii) to happen before the relevant date specified in this clause 6.1(q) without the prior consent of Bidder (such consent not to be unreasonably withheld);

- (r) **(provision of information to Bidder)** provide Bidder with such information as Bidder reasonably requests in relation to the shareholdings of Target Shareholders in a form reasonably requested by Bidder for the purpose of Bidder soliciting votes in favour of the Scheme, otherwise promoting the Scheme, and providing the Scheme Consideration to Scheme Shareholders in accordance with the terms of the Scheme;
- (s) **(compliance with laws)** do everything reasonably within its power to ensure that the Scheme is effected in accordance with applicable laws;
- (t) **(implementation)** if the Scheme becomes Effective, do all things contemplated of it under the Scheme and all other things (if any) reasonably necessary to lawfully give effect to the Scheme; and
- (u) **(conditions)** not do anything, or omit to do anything, which will result in any of the Conditions Precedent being breached or not fulfilled.

6.2 Bidder obligations

Bidder must, acting at all times in good faith, use its best endeavours (subject at all times to clause 3.2(e)(vi)) and take all steps reasonably necessary to implement the Scheme in accordance with the Timetable and otherwise as soon as practicable and on the terms and conditions of this deed, and must consult with Target on a regular basis about its progress towards satisfying its obligation under this clause 6.2. Without limiting the foregoing, Bidder must do the following:

- (a) **(prepare Bidder Information)**
 - (i) as soon as practicable after the date of this deed, prepare the Bidder Information in a form appropriate for inclusion in the Scheme Booklet in accordance with applicable laws, including the Corporations Act, Corporations Regulations, RG 60 and the Listing Rules; and
 - (ii) provide Target with drafts of the Bidder Information as soon as reasonably practicable and consider in good faith any reasonable comments provided by or on behalf of Target on those drafts;
- (b) **(final form of Bidder Information)** provide to Target the Bidder Information in a form appropriate for inclusion in the Scheme Booklet;

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- (c) **(assistance with Scheme Booklet and Court Documents)** provide any assistance or information reasonably requested by Target or its Representatives in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to Target Shareholders) or any Court Documents, including if requested by Target, reviewing drafts of the Scheme Booklet and providing comments on those drafts promptly and in good faith;
 - (d) **(Independent Expert's Report)** promptly provide any assistance or information reasonably requested by Target or its Representatives, or by the Independent Expert, in connection with the preparation of the Independent Expert's Report;
 - (e) **(due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Bidder Information and provide to Target written confirmation of such processes if reasonably requested;
 - (f) **(confirmation of Bidder Information)** promptly after the Bidder Information has been finalised and in any event as soon as reasonably practicable after Target informs Bidder that it wishes to request that ASIC register the explanatory statement in relation to the Scheme, as contained in the Scheme Booklet, confirm in writing to Target (such confirmation not to be unreasonably withheld or delayed) that:
 - (i) it consents to the inclusion of the Bidder Information in the Scheme Booklet, in the form and context in which the Bidder Information appears;
 - (ii) the Bidder Information, in the form and context in which it appears, is not false or misleading in any material respect (whether by omission or otherwise); and
 - (iii) the Bidder Information is in a form appropriate for despatch to Target Shareholders (subject to the approval of the Court);
 - (g) **(update Bidder Information)** promptly advise Target in writing if it becomes aware:
 - (i) of information which should have been included in any Bidder Information previously provided to Target, and promptly provide all such information; or
 - (ii) that any Bidder Information previously provided to Target is false or misleading in any material respect in the form and context in which it appears (whether by omission or otherwise), and promptly provide Target with all information necessary to ensure the Bidder Information is not false or misleading in any material respect (whether by omission or otherwise);
 - (h) **(Conditions Precedent certificate)** before 8:00am on the Second Court Date, give to Target, for provision to the Court at the Second Court Hearing, a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent (other than the Condition Precedent in clause 3.1(b)) have been satisfied or waived in accordance with clause 3, a draft of which certificate must be provided to Target by 5:00pm on the date that is two Business Days prior to the Second Court Date;
 - (i) **(representation at Second Court Hearing)** ensure that it is represented by counsel at the Second Court Hearing and give such undertakings (if any) to the Court (through its counsel) as are reasonably necessary to ensure the Court makes an order under section 411(4)(b) of the Corporations Act approving the

Scheme and to ensure the fulfilment of its obligations under this deed and the Scheme;

- (j) **(Deed Poll)** before 5:00pm on the date that is two Business Days before the First Court Date, execute, and procure that the Guarantor executes, the Deed Poll, and, if the Scheme becomes Effective, fully comply with, and procure that the Guarantor fully complies with, the Deed Poll;
- (k) **(Scheme Consideration)** if the Scheme becomes Effective, provide, or procure the provision of, the Scheme Consideration on the Implementation Date in accordance with clause 4.2 and the terms of the Scheme and the Deed Poll;
- (l) **(compliance with laws)** do everything reasonably within its power to ensure that the Scheme is effected in accordance with all applicable laws;
- (m) **(quotation of Target Shares and ASX listing)** comply with any conditions reasonably required by ASX in relation to Target's requests to ASX specified in clause 6.1(q);
- (n) **(promotion of Transaction)** participate in efforts reasonably requested by Target to promote the merits of the Transaction, including:
 - (i) meeting with key Target Shareholders at the reasonable request of Target; and
 - (ii) providing Target with such information and assistance as Target reasonably requests to enable it to promote the merits of the Transaction; and
- (o) **(conditions)** subject to clause 3.2(e)(vi), not do anything, or omit to do anything, which will result in any of the Conditions Precedent being breached or not fulfilled.

6.3 Scheme Booklet

- (a) If, after a reasonable period of consultation, the parties, each acting reasonably and in good faith, are unable to agree on the form or content of a particular part of the Scheme Booklet, then:
 - (i) if the relevant part of the Scheme Booklet is Bidder Information, Target will make such amendments to that part of the Scheme Booklet as required by Bidder (acting reasonably and in good faith); and
 - (ii) if the relevant part of the Scheme Booklet is Target Information, Target (acting reasonably and in good faith) will decide the form and content of that part of the Scheme Booklet.
- (b) The parties agree that the Scheme Booklet will contain a responsibility statement to the effect that:
 - (i) Target is responsible for the Target Information contained in the Scheme Booklet;
 - (ii) Bidder is responsible for the Bidder Information contained in the Scheme Booklet; and
 - (iii) the Independent Expert is responsible for the Independent Expert's Report.

6.4 Conduct of business

- (a) Subject to clause 6.4(c), from the date of this deed up to and including the Implementation Date, Target must:
- (i) ensure that the business of the Target Group is conducted:
 - (A) in the ordinary course;
 - (B) in a manner generally consistent with the manner in which such business has been conducted prior to the date of this deed; and
 - (C) in accordance with all applicable laws in all material respects;
 - (ii) keep Bidder reasonably and promptly informed of, and reasonably consider Bidder's views about, material developments in the business of the Target Group; and
 - (iii) make reasonable efforts to:
 - (A) keep available the services of the current officers and employees of the Target Group; and
 - (B) maintain and preserve the Target Group's relationships with customers, suppliers, Government Agencies, licensors, licensees and others with whom it has material business dealings.
- (b) Without limiting clause 6.4(a), Target must ensure that no Prescribed Occurrence occurs.
- (c) Nothing in this clause 6.4 restricts the ability of Target or any member of the Target Group to take any action which:
- (i) is required or permitted by the Transaction Documents;
 - (ii) arises as a result of court or Government Agency order, injunction or undertaking or is otherwise required in order to comply with applicable law (other than a court or ASIC order which relates to the Scheme);
 - (iii) has been fairly disclosed in the Due Diligence Materials or any announcement to or filing with ASX or ASIC prior to the date of this deed including, for the avoidance of doubt, any actions undertaken in accordance with contractual obligations existing at the time of this deed, provided the obligations are disclosed pursuant to the above; or
 - (iv) has been consented to in writing by Bidder (such consent not to be unreasonably withheld or delayed).

6.5 Access

Between the date of this deed and the Implementation Date (both dates inclusive), Target must use reasonable endeavours to procure that Bidder is provided with reasonable access to Target's CEO and to information of any member of the Target Group,

where Bidder reasonably requests such access for the purposes of:

- (a) implementation of the Transaction; or

- (b) obtaining an understanding, or furthering its understanding, of the Target Group, its business, assets and net debt levels in order to allow Bidder to develop, finalise and implement its plans for the Target Group following implementation of the Transaction,

provided that:

- (c) all requests for such information are provided to the Target CEO (or any person the Target CEO may delegate for some or all information requests); and
- (d) compliance with any such request would not, in the reasonable opinion of Target (acting in good faith), result in undue disruption to the Target Group's business or otherwise contravene clause 6.10.

6.6 Implementation & Integration Planning

- (a) The parties must use their best endeavours to work together in good faith from the date of this deed up to and including the Implementation Date to commence planning for the merger and integration of Target and the Bidder Group following the Implementation Date.
- (b) As soon as practicable after the date of this deed, the parties will constitute an integration committee which will consist equally of members of the management team of each of Target and the Bidder Group and such other persons as the parties' respective managing directors may agree from time to time.
- (c) The role of the integration committee is to act as a forum for the consideration and planning of matters relevant to implementation of the Transaction, including any consents required as contemplated by clause 6.7 and integration of the merged businesses.
- (d) The integration committee will meet monthly and otherwise as reasonably required by either party in order to progress the Transaction and matters relevant to integration of the merged businesses.
- (e) If any provision of this deed requires Bidder's agreement or consent in relation to the ongoing business operations of the Target Group, such agreement or consent will be taken to be given by Bidder if each representative of the Bidder Group on the integration committee confirms their support of the matter at a duly convened and minuted meeting of the committee at which all representatives of the Bidder Group are present.
- (f) The parties acknowledge and agree that:
- (i) nothing in this clause 6.6 requires a party to act at the direction of the other party;
 - (ii) the parties' obligations under this clause 6.6 are subject to the Confidentiality Deed and any protocols that may be in place between the parties from time to time;
 - (iii) the respective businesses of the Bidder Group and the Target Group are to continue to operate independently until the Implementation Date and nothing in this clause 6.6 imposes any obligation on any party to conduct their respective businesses in accordance with any direction or representation made by the other; and

- (iv) nothing in this deed is intended to constitute or create the relationship of partnership, joint venture or similar.

6.7 Material Counterparty Consents

Bidder and Target will cooperate with each other in good faith, and will take all actions reasonably required, to seek to identify and obtain all Material Counterparty Consents as soon as practicable after the date of this deed and on terms reasonably acceptable to Bidder.

6.8 Unlisted Securities and discharge of contractual obligations

- (a) Target agrees to provide Bidder with all reasonably requested information in relation to Unlisted Securities.
- (b) As at 8:00am on the Second Court Date, Target must put in place arrangements so that all outstanding Unlisted Securities will either vest or have lapsed before the Scheme Record Date.
- (c) Prior to the Target Board changes required under clause 6.9, Target will:
- (i) determine in its reasonable discretion an appropriate date upon which all cash sums payable under any incentive plan operated by Target shall be deemed to become due and payable; and
 - (ii) following the passing of such date arrange for the appropriate payments to be made.
- (d) As soon as reasonably practicable after the payment of the Scheme Consideration to Scheme Shareholders (and prior to the Target Board changes required under clause 6.9), Target will discharge any contractual obligations which are due and payable to any employees, contractors or third parties (including, inter alia, any financial adviser mandates or other professional advisory fees).

6.9 Appointment of directors

On the Implementation Date, but subject to the Scheme Consideration having been paid to Scheme Shareholders, Target must:

- (a) take all actions necessary to appoint the persons nominated by Bidder as new directors of Target with effect from (and subject to) implementation of the Scheme, and each other member of the Target Group, subject to Bidder nominating such persons in writing and providing consents to act signed by such persons before the Scheme Record Date; and
- (b) procure that all directors of Target and each other member of the Target Group (other than directors appointed pursuant to clause 6.9(a) or existing directors which Bidder has agreed in writing will continue to be directors) resign as directors with effect from (and subject to) implementation of the Scheme,

in each case in accordance with the constitution of the relevant member of the Target Group, the Corporations Act and the Listing Rules.

6.10 Limitation on obligations

Nothing in clause 6.4, 6.5 or 6.6 will require either party to provide any information or undertake any actions:

- (a) which will result in unreasonable disruptions to the business of the Bidder Group or the Target Group;
 - (b) in breach of any protocols agreed between the parties; or
 - (c) which will result in a contravention of the Competition and Consumer Act or any other law.
-

7 Public announcements

- (a) Immediately after execution of this deed (or as otherwise agreed between Bidder and Target), each of Bidder and Target must issue a written public announcement in a form agreed by the parties.
 - (b) Where a party proposes to make any subsequent public announcement in connection with the Transaction or the Scheme, it must to the extent practicable and lawful to do so, consult with the other parties prior to making the relevant disclosure and take account of any reasonable comments received from the other parties in relation to the form and content of the announcement or disclosure.
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8 Board support of Transaction

8.1 Recommendation and Voting Intention

- (a) Target must ensure that the announcement referred to in clause 7(a) and the Scheme Booklet must each state that each Target Director has confirmed that:
 - (i) his or her recommendation in respect of the Scheme is that Target Shareholders vote in favour of the Scheme at the Scheme Meeting (**Recommendation**); and
 - (ii) he or she intends to vote, or cause to be voted, all Target Shares in which he or she has a Relevant Interest in favour of the Scheme at the Scheme Meeting (**Voting Intention**),in each case qualified with words to the effect of:
 - (iii) "in the absence of a Superior Proposal"; and
 - (iv) "subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of Target Shareholders"; and
- (b) Target must procure that each Target Director maintains such Recommendation and Voting Intention at all times up to and including the Scheme Meeting, in each case except where one of the events in clause 8.2 occurs.

8.2 Maintenance of Recommendation

Bidder acknowledges that each Target Director may publicly (or otherwise) withdraw, change or in any way qualify his or her Recommendation or Voting Intention if:

- (a) a Superior Proposal is made and 5 Business Days have passed after Target gives a Matching Right Notice without Bidder making a proposal under clause 9.6(a)(iii)

(and if the Bidder has made such a proposal the Target Board does not make the determination set out in clause 9.6(a)(iii));

- (b) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or any subsequent update of its report) that the Scheme is not in the best interests of Target Shareholders;
- (c) as a result of any matter or thing giving Target the right to terminate this deed under clause 13.3(d) and Target has terminated this deed in accordance with clause 13.3; or
- (d) after any event occurs which would, or in fact does, prevent a Condition Precedent in clause 3.1 (other than clauses 3.1(i) or 3.1(j)) being satisfied and that Condition Precedent is not waived and Target has terminated this deed in accordance with clause 3.4.

9 Exclusivity

9.1 No-shop

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

- (a) directly or indirectly solicit, initiate or invite enquiries, discussions or proposals in relation to, or which may reasonably be expected to lead to, a Competing Proposal; or
- (b) communicate to any person any intention to do any of the things referred to in clause 9.1(a).

9.2 No-talk

Subject to clause 9.5, during the Exclusivity Period, Target must not, and must ensure that its Representatives do not, except with the prior written consent of Bidder:

- (a) directly or indirectly participate in or continue any discussions or negotiations in relation to, or which may reasonably be expected to lead to, a Competing Proposal;
- (b) provide or make available to any Third Party any non-public information relating to any member of the Target Group in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or
- (c) communicate to any person any intention to do any of the things referred to in clause 9.2(a) or 9.2(b).

9.3 No due diligence

- (a) Without limiting clause 9.2 during the Exclusivity Period, Target must not, except with the prior written consent of Bidder:
 - (i) solicit, initiate, facilitate or encourage any party (other than Bidder or its Representatives) to undertake due diligence on Target or any member of the Target Group for the purposes of enabling that person to make or assess a Competing Proposal; or

- (ii) subject to clause 9.5, make available to any other person (other than Bidder or its Representatives) or permit such person to receive any non-public information relating to Target or any member of the Target Group for the purposes of enabling that person to make or assess a Competing Proposal.
- (b) This clause 9.3 does not prevent Target from providing information to ASX, ASIC or Target's auditors and advisers in the ordinary course of business or to otherwise effect the negotiation and entry into this deed.

9.4 Notification obligation

- (a) During the Exclusivity Period, Target must notify Bidder in writing if it is approached, or if any of its Representatives are approached, by any person in relation to an actual or potential Competing Proposal, and that notice must include details of the terms of the actual or potential Competing Proposal including, subject to clause 9.4(c), the identity of the proponent(s) of any Competing Proposal.
- (b) Such notice is to be provided by Target within 48 hours after the approach.
- (c) The obligations in this clause 9.4 expressly stated to be subject to this clause 9.4(c) do not apply to the extent that the Target Board has determined in good faith, and after having considered written advice from its external legal advisers, that the consequences of providing the relevant information would be likely to constitute a breach of the fiduciary or statutory duties owed by any Target Director.

9.5 Fiduciary exception

In respect of a bona fide Competing Proposal received by Target or a potential or proposed Competing Proposal, which in each case was not brought about as a result of any breach by Target of its obligations under this clause 9, Target may undertake any action that would otherwise be prohibited by clause 9.2 or 9.3 if (and only to the extent that) the Target Board determines, acting in good faith after receiving advice from its financial and legal advisers, that:

- (a) where there is a Competing Proposal, that the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal; and
- (b) not taking that act would be likely to constitute a breach of the fiduciary or statutory duties owed by any Target Director.

9.6 Matching right

- (a) Without limiting any other part of this clause 9, Target must procure that no Target Director publicly recommends a Competing Proposal, and must not enter into any agreement or arrangement in relation to or in connection with the implementation of a Competing Proposal, unless:
- (i) the Competing Proposal is a Superior Proposal;
- (ii) Target has given Bidder written notice (**Matching Right Notice**) of the key terms of the Competing Proposal (including the identity of the person(s) who made the Competing Proposal); and
- (iii) Bidder does not, within 5 Business Days after Target gives the Matching Right Notice, make a written proposal to Target to increase the Scheme Consideration or otherwise alter the Transaction that the Target Board

determines, acting in good faith, would produce an outcome for Target Shareholders that is at least as favourable to them as the outcome that would be produced by the Competing Proposal.

- (b) If the Target Board makes the determination set out in clause 9.6(a)(iii), then:
 - (i) Bidder and Target must each use best endeavours to agree such matters (including, if applicable, amendments to this deed and the Scheme or new documentation) as are reasonably necessary to give effect to the offer referred to in that clause; and
 - (ii) Target must procure that the Target Board continues to unanimously recommend the Transaction to Target Shareholders.

9.7 Presentations and other disclosures

Nothing in this clause 9 will prevent Target from:

- (a) providing information to its Representatives acting in that capacity in connection with the Transaction or a Competing Proposal;
- (b) providing information to ASX or any other Government Agency;
- (c) providing information to its auditors, advisers, customers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information required to be provided by law or any Government Agency; or
- (e) continuing to make normal presentations to brokers, portfolio investors and analysts in the ordinary course of business.

10 Break fees

10.1 Background

- (a) This clause 10 has been agreed to in circumstances where:
 - (i) each party believes it and its shareholders / investors will derive significant benefits from the implementation of the Scheme;
 - (ii) each party has incurred and will further incur, significant costs in connection with the Scheme, which will include significant opportunity costs if the Scheme is not implemented;
 - (iii) each party has requested that provision be made for the payment of a break fee by the other party, and would not have entered into this deed or otherwise agreed to implement the Scheme had such provision not been made;
 - (iv) Target and the Target Board believe that it is reasonable and appropriate to agree to pay the Target Break Fee to secure Bidder's entry into this deed;
 - (v) Bidder and the board of directors of Bidder believe that it is reasonable and appropriate to agree to pay the Bidder Break Fee, the Funding Break Fee and the Cost Compensation Amount to secure Target's entry into this deed; and

- For personal use only
- (vi) each party has received legal advice in relation to this deed and the operation of this clause 10.
 - (b) The parties acknowledge and agree that the costs referred to in clause 10.1(a)(ii) are of such a nature that they cannot be precisely quantified, but that the amount payable by Bidder (in respect of the Bidder Break Fee, the Funding Break Fee and the Cost Compensation Amount) and the amount payable by Target (in respect of the Target Break Fee) is in each case to be purely and strictly compensatory in nature and represents a reasonable estimate of the compensation so as to compensate Target (in respect of the Bidder Break Fee, the Funding Break Fee and the Cost Compensation Amount) and Bidder (in respect of the Target Break Fee) for the following:
 - (i) external advisory costs (excluding success fees) relating to the Scheme;
 - (ii) costs of management and directors' time;
 - (iii) reasonable out-of-pocket expenses relating to the Scheme;
 - (iv) reasonable opportunity costs incurred by Target or Bidder (as applicable) in pursuing the Scheme or in not pursuing other alternative acquisitions or strategic initiatives which Target or Bidder (as applicable) could have developed to further its business and objectives; and
 - (v) commitment fees and other financing costs relating to the financing of the Scheme.

10.2 Payment of Target Break Fee

Subject to clauses 10.6 and 10.7, Target must pay Bidder the Target Break Fee, without set-off or withholding and within 5 Business Days after receipt of a written demand from Bidder, if at any time after the date of this deed:

- (a) a Competing Proposal is made or announced by a Third Party during the Exclusivity Period (whether or not such proposal is stated to be subject to any pre-conditions) and, within 12 months thereafter, the Third Party proposing the Competing Proposal or any Associate of that Third Party completes the Competing Proposal in the same or substantially the same form as made or announced (disregarding any differences in consideration or structure) or another Third Party acquires Control of Target;
- (b) Target enters into any agreement with a Third Party in respect of a Competing Proposal;
- (c) Bidder becomes entitled to terminate this deed under clause 13.2(b) or 13.2(c) and has given the appropriate termination notice to Target; or
- (d) any Target Director publicly:
 - (i) withdraws or adversely changes their Recommendation or Voting Intention; or
 - (ii) recommend a Competing Proposal,other than:

- (iii) following receipt of the Independent Expert's Report (either in the initial report or any subsequent update of the report) which states that, in the opinion of the Independent Expert, the Scheme is not in the best interests of Target Shareholders (except where the reason for that conclusion is a Competing Proposal); or
- (iv) as a result of any matter or thing giving Target the right to terminate this deed under clause 13.3(d),

and this deed is terminated or the Scheme does not become Effective.

10.3 Payment of Bidder Break Fee

Subject to clauses 10.6 and 10.7, Bidder must pay Target the Bidder Break Fee, without set-off or withholding and within 5 Business Days after receipt of a written demand from Target, if at any time after the date of this deed, the Scheme does not become Effective because:

- (a) Target becomes entitled to terminate this deed in accordance with clause 13.3(d) and has given the appropriate termination notice to Bidder; or
- (b) Bidder does not pay the Scheme Consideration in accordance with the terms and conditions of this deed and the Deed Poll,

and this deed is terminated or the Scheme does not become Effective.

10.4 Cost Compensation Amount

- (a) Subject to clauses 10.4(b), 10.6 and 10.7, Bidder must pay the Cost Compensation Amount to Target, without set-off or withholding and within 5 Business Days after receipt of a written demand from Target if:
- (i) this deed is terminated under clause 3.4(c); or
- (ii) the Condition Precedent in clause 3.1(c) is not satisfied or waived by the End Date; or
- (iii) the Condition Precedent in clause 3.1(c) has been waived and this deed is terminated or the Scheme does not become Effective by the End Date other than as a result of:
- (A) termination of this deed by Bidder under clauses 13.2(b), 13.2(c) or 13.2(d); or
- (B) termination by either party under clause 3.4 due to the breach or non-fulfilment of a Condition Precedent other than clause 3.1(c) (except where the breach or non-fulfilment of the Condition Precedent is as a result of the non-fulfilment or waiver of the Condition Precedent in clause 3.1(c)),

provided that Target has complied in all material respects with clauses 3.2(e) and 3.2(f).

- (b) If for any reason Target is entitled under this deed to payment of more than one of the Bidder Break Fee, the Cost Compensation Amount and the Funding Break Fee, then Target will only be entitled to retain the higher of the three fees.

10.5 Funding Break Fee

- (a) Subject to clauses 10.5(b), 10.6 and 10.7, Bidder must pay the Funding Break Fee to Target, without set-off or withholding and within 5 Business Days after receipt of a written demand from Target if:
- (i) this deed is terminated in accordance with clause 3.4(b); and
 - (ii) the Condition Precedent in clause 3.1(f) is not satisfied in accordance with its terms,
- other than where the termination is due to a Condition Precedent not being satisfied or becoming incapable of being satisfied due to the action or inaction of Target.
- (b) If for any reason Target is entitled under this deed to payment of more than one of the Bidder Break Fee, the Funding Break Fee and the Funding Break Fee, then Target will only be entitled to retain the higher of the three fees.

10.6 Payment conditions

- (a) Despite anything to the contrary in this deed, neither the Bidder Break Fee, the Target Break Fee, the Funding Break Fee or the Cost Compensation Amount will be payable if the Scheme becomes Effective.
- (b) In the event that the Bidder Break Fee, the Target Break Fee, the Funding Break Fee or the Cost Compensation Amount has been paid and then the Scheme subsequently becomes Effective, the relevant break fee must be immediately refunded to the person who paid it by the person who received it.
- (c) Target can only ever be liable to pay the Target Break Fee once and Bidder can only ever be liable to pay one of the Bidder Break Fee, the Funding Break Fee and the Cost Compensation Amount (the highest of whichever becomes payable).

10.7 Compliance with law

- (a) This clause 10 imposes obligations on Target and Bidder only to the extent that the performance of those obligations:
- (i) does not constitute unacceptable circumstances as declared by the Australian Takeovers Panel;
 - (ii) does not breach the fiduciary or statutory duties of any Target Director or any director of Bidder (as relevant); or
 - (iii) is not otherwise unlawful or held to be unenforceable by a court,
- provided that, in the case of clauses 10.7(a)(i) or 10.7(a)(iii), all lawful avenues of appeal and review, judicial and otherwise, have been exhausted.
- (b) The parties must not make or cause to be made, any application to the Australian Takeovers Panel or a court for, or in relation to, a declaration or determination referred to in clause 10.7(a).
- (c) If any of clause 10.7(a)(i), 10.7(a)(ii) or 10.7(a)(iii) applies, the Target Break Fee, Bidder Break Fee, Funding Break Fee or Cost Compensation Amount (as relevant)

will be deemed to be reduced by the relevant amount for the purposes of this clause 10, and, if the:

- (i) Target Break Fee has already been paid, Bidder must immediately reimburse Target for that amount;
- (ii) Bidder Break Fee has already been paid, Target must immediately reimburse Bidder for that amount;
- (iii) Cost Compensation Amount has already been paid, Target must immediately reimburse Bidder for that amount; and
- (iv) Funding Break Fee has already been paid, Target must immediately reimburse Bidder for that amount.

10.8 Survival

Any accrued obligations under this clause 10 survive the termination of this deed.

11 Representations and Warranties

11.1 Target Representations and Warranties

Target represents and warrants to Bidder that:

- (a) (**validly existing**) it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) (**power**) it has full corporate power and lawful authority to execute, deliver and perform the Transaction Documents to which it is a party;
- (c) (**corporate action**) it has taken all necessary corporate action to authorise the entry into the Transaction Documents to which it is a party and has taken or will take all necessary corporate action to authorise the performance of the Transaction Documents to which it is a party;
- (d) (**binding**) the Transaction Documents to which it is a party are its valid and binding obligations enforceable in accordance with their terms;
- (e) (**solvency**) an Insolvency Event has not occurred in relation to it and will not occur prior to the Implementation Date and no member of the Target Group is insolvent or otherwise unable to pay its debts as and when they fall due;
- (f) (**performance**) the execution and performance by it of each Transaction Documents to which it is a party and each transaction contemplated by the Transaction Documents to which it is a party does not and will not violate or breach any provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree binding on it; or
 - (ii) its constitution;
- (g) (**capital structure**) as at the date of this deed:
 - (i) there are:

- (A) 194,418,716 Target Shares on issue;
- (B) 1,560,834 Target Performance Rights on issue or agreed to be granted; and
- (C) 1,293,859 Target Share Appreciation Rights on issue;
- (ii) it has not issued any other Target Shares or other securities, rights or instruments which are still outstanding and may convert into, or give the holder the right to be issued, Target Shares; and
- (iii) it is not under any obligation to issue, and no person has any right to require or call for the issue of, any Target Shares or other securities, rights or instruments issuable by Target (whether such obligation or right is conditional or otherwise) other than with respect to the exercise of the Unlisted Securities;
- (h) **(Target Information)** on the date the Scheme Booklet is despatched to Target Shareholders, the First Court Date and the Second Court Date:
 - (i) the Target Information included in the Scheme Booklet despatched to Target Shareholders, and any supplementary disclosure made to Target Shareholders pursuant to clause 6.1(k) (excluding information provided by or on behalf of Bidder or the Independent Expert):
 - (A) is not false or misleading in any material respect (whether by omission or otherwise); and
 - (B) complies in all material respects with, and includes all information regarding Target that is required by, applicable laws, including the Corporations Act, Corporations Regulations, RG 60 and the Listing Rules; and
 - (ii) the Target Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that Bidder and the Bidder Indemnified Parties have relied on that information for the purposes of considering and approving the Scheme Booklet; and
 - (iii) all information provided by or on behalf of Target to the Independent Expert has been prepared and provided in good faith and on the understanding that the Independent Expert has relied on the information for the purposes of preparing the Independent Expert's report
- (i) **(Due Diligence Materials)** the Due Diligence Materials have been compiled in good faith and as at the date of this deed and so far as Target is aware:
 - (i) do not omit anything from the included information such as to make any part of that information materially false or misleading; or
 - (ii) do not contain information which is false or misleading, deceptive or incomplete in any material respect;
- (j) **(publicly available information)** as at the date of this deed, and so far as Target is aware, no documents or announcements which Target or any of its Related Bodies Corporate has lodged or filed with, or otherwise given to ASIC or ASX (or which has been so lodged, filed or given on its behalf or on behalf of any of its

Related Bodies Corporate), and which is publicly available, is misleading or deceptive in any material respect (whether by omission or otherwise);

- (k) (**continuous disclosure**) as at the date of this deed, it is in compliance in all material respects with its disclosure obligations under the ASX Listing Rules including its continuous disclosure obligations under Listing Rule 3.1 and, following release of the agreed announcement under clause 7, there will be no information which it is withholding from disclosure in reliance on Listing Rule 3.1A;
- (l) (**accounts**) Target's audited financial statements for the year ended 30 June 2017 show a true and fair view of the financial position and affairs of the Target Group as at that date and the financial performance and operation of the Target Group for the financial period ending on that date and, so far as Target is aware, there has not been any event, change, effect or development which would require Target to restate its financial statements;
- (m) (**compliance**) all members of the Target Group have complied in all material respects with all material legal obligations applicable to them;
- (n) (**no defaults**) as at the date of this deed, and so far as Target is aware, no member of the Target Group is in material default under any document, agreement or instrument binding on it or its assets nor has anything occurred which is or would with the giving of notice or the lapse of time constitute an event of default, prepayment event or similar event or give another party a termination right or right to accelerate any right or obligation under any such document;
- (o) (**no litigation**) as at the date of this deed, and so far as Target is aware, no material litigation, prosecution, arbitration, mediation, or other material proceedings relating to the Target Group has been on foot in the 3 years prior to the date of this deed, is current, is pending or threatened or might reasonably be expected to arise as a result of current circumstances;
- (p) (**anti-bribery and corruption**) as at the date of this deed, and so far as Target is aware, no member of the Target Group and none of their respective directors, officers, employees or agents:
- (i) is or has been, engaged in any activity that would violate any Anti-Bribery and Corruption Laws;
 - (ii) is or has been the subject of any investigation, audit, suspension, inquiry or enforcement proceeding regarding any offense or alleged offense under any Anti-Bribery and Corruption Law and so far as the Target is aware:
 - (A) no such investigation, inquiry or proceeding has been threatened or is pending; and
 - (B) there are no circumstances reasonably likely to give rise to any such investigation, inquiry or proceeding; or
 - (iii) has been the subject of any penalty, fine or loss of privileges by any Government Agency for violation of any Anti-Bribery and Corruption Laws;
- (q) (**no encumbrances**) as at the date of this deed, there is no encumbrance over all or any of the assets or revenues of the Target Group, other than as fairly disclosed in the Due Diligence Materials;

- (r) **(third party rights)** as at the date of this deed, so far as Target is aware and other than as fairly disclosed in the Due Diligence Materials, there are no facts or circumstances to suggest that the entry into this deed and the implementation of the Scheme will cause a third party to:
- (i) terminate a contract which is material to the Target business or vary the performance of any material obligation of Target under the contract; or
 - (ii) exercise a right to acquire, or require the disposal of, any material assets of Target; and
- (s) **(opinion)** any statement of opinion or belief contained in Target Information is honestly held and there are reasonable grounds for holding the opinion or belief.

11.2 Bidder Representations and Warranties

Bidder represents and warrants to Target that:

- (a) **(validly existing)** it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) **(power)** it has full corporate power and lawful authority to execute, deliver and perform the Transaction Documents to which it is a party;
- (c) **(corporate action)** it has taken all necessary corporate action to authorise the entry into the Transaction Documents to which it is a party and has taken or will take all necessary corporate action to authorise the performance of the Transaction Documents to which it is a party;
- (d) **(binding)** each Transaction Document to which it is a party is its valid and binding obligations and each is enforceable in accordance with its terms;
- (e) **(performance)** the execution and performance by it of each Transaction Document to which it is a party and each transaction contemplated by the Transaction Documents to which it is a party does not and will not violate or breach any provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree binding on it; or
 - (ii) its constituent documents;
- (f) **(Bidder Information)** on the date the Scheme Booklet is despatched to Target Shareholders, the First Court Date and the Second Court Date:
 - (i) the Bidder Information included in the Scheme Booklet with its consent pursuant to clause 6.2(f)(i), and any other information provided by it pursuant to clause 6.2(g):
 - (A) is not be false or misleading in any material respect (whether by omission or otherwise); and
 - (B) complies in all material respects with, and includes all information regarding Bidder, its Related Bodies Corporate and the Scheme Consideration that is required by, applicable laws, including the Corporations Act, Corporations Regulations, RG 60 and the Listing Rules;

- For personal use only
- (ii) the Bidder Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that Target and the Target Indemnified Parties have relied on that information for the purposes of considering and approving the Scheme Booklet;
 - (iii) all information provided by or on behalf of Bidder to the Independent Expert has been prepared and provided in good faith and on the understanding that the Independent Expert has relied on the information for the purposes of preparing the Independent Expert's report;
 - (g) **(institutional offer)** as at the date of this deed, Bidder has a reasonable basis to expect that by 7:00pm on the date which is 10 Business Days after the announcement of the Transaction and commencement of the Entitlement Offer, settlement will have occurred in respect of the institutional component of the Entitlement Offer;
 - (h) **(reasonable basis)** as at the date of this deed, Bidder has a reasonable basis to expect that it will by the Implementation Date, have available to it sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy Bidder's obligations to pay the Scheme Consideration in accordance with its obligations under this deed and the Deed Poll;
 - (i) **(shareholder approvals)** no shareholder approval of Bidder is required to execute and perform this deed and the Deed Poll;
 - (j) **(Scheme Consideration)** as at 8:00am on the Second Court Date, Bidder will have sufficient cash on its balance sheet, or financial commitments available to it on an unconditional basis (other than conditions relating to the approval of the Court and related customary, procedural matters or documentary requirements which, by their terms and nature, can only be satisfied or performed after the Second Court Date), to ensure that the Scheme Consideration is paid to Scheme Shareholders in accordance with the terms of the Transaction Documents;
 - (k) **(opinion)** any statement of opinion or belief contained in Bidder Information is honestly held and there are reasonable grounds for holding the opinion or belief; and
 - (l) **(Insolvency Event)** an Insolvency Event has not occurred in relation to it and will not occur prior to the Implementation Date.

11.3 Guarantor Representations and Warranties

The Guarantor represents and warrants to Target that:

- (a) **(validly existing)** it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) **(power)** it has full corporate power and lawful authority to execute, deliver and perform the Transaction Documents to which it is a party;
- (c) **(corporate action)** it has taken all necessary corporate action to authorise the entry into this deed and has taken or will take all necessary corporate action to authorise the performance of the Transaction Documents to which it is a party;
- (d) **(binding)** each Transaction Document to which it is a party is its valid and binding obligations and each is enforceable in accordance with its terms;

- (e) **(performance)** the execution and performance by it of each Transaction Document to which it is a party and each transaction contemplated by each Transaction Document to which it is a party does not and will not violate or breach any provision of:
- (i) a law or treaty or a judgment, ruling, order or decree binding on it; or
 - (ii) its constituent documents; and
- (f) **(Insolvency Event)** an Insolvency Event has not occurred in relation to it and will not occur prior to the Implementation Date.

11.4 Notification

Each party will promptly advise the others in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations and warranties given by it under this clause 11.

11.5 Indemnities

- (a) Target indemnifies each member of the Bidder Group against all Losses incurred directly or indirectly as a result of any of the Target Representations and Warranties being not true and correct.
- (b) Bidder indemnifies each member of the Target Group against all Losses incurred directly or indirectly as a result of any of the Bidder Representations and Warranties being not true and correct.
- (c) Guarantor indemnifies each member of the Target Group against all Losses incurred directly or indirectly as a result of any of the Guarantor Representations and Warranties being not true and correct.

11.6 Qualifications to Target Representations and Warranties

The Target Representations and Warranties are subject to matters:

- (a) which have been fairly disclosed in the Due Diligence Materials or any announcement to or filing with ASX or ASIC (which is publicly available) prior to the date of this deed; or
- (b) to which Bidder has provided its prior written consent.

11.7 Survival of Representations and Warranties

Each Representation and Warranty:

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

11.8 Timing of Representations and Warranties

- (a) Unless expressed to be given at a particular time, each Representation and Warranty is given at the date of this deed and again at 8:00am on the Second Court Date.
- (b) For the purposes of clause 11.8(a), a Representation and Warranty shall be read with any necessary adjustments to the tense used in the Representation and Warranty.

11.9 Status and enforcement of indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make payment before enforcing a right of indemnity conferred by this deed.

12 Releases

12.1 Release of Target Indemnified Parties

- (a) Subject to clause 12.1(b), each of Bidder and Guarantor releases any and all rights that each may have, and each agrees with Target that it will not make any claim, against any Target Indemnified Party as at the date of this deed in connection with:
 - (i) any information in the Due Diligence Materials provided to Bidder in relation to the Transaction;
 - (ii) any breach of any covenant, representation or warranty given by Target under this deed;
 - (iii) any disclosures containing any statement which is false or misleading (whether by omission or otherwise); or
 - (iv) any failure to provide information,except where a Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct. To avoid doubt, nothing in this clause 12.1 limits the rights of Target to terminate this deed under clause 13.
- (b) The release in clause 12.1(a) is subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) Target receives and holds the benefit of clause 12.1(a) as trustee for the Target Indemnified Parties.

12.2 Release of Bidder Indemnified Parties

- (a) Subject to clause 12.2(b), Target releases any and all rights that it may have, and agrees with Bidder that it will not make any claim, against any Bidder Indemnified Party as at the date of this deed in connection with:
 - (i) any information provided to Target in relation to the Transaction;

- (ii) any breach of any covenant, representation or warranty given by Bidder under this deed;
- (iii) any disclosures containing any statement which is false or misleading (whether by omission or otherwise); or
- (iv) any failure to provide information,

except where a Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct. To avoid doubt, nothing in this clause 12.2 limits the rights of Target to terminate this deed under clause 13.

- (b) The release in clause 12.2(a) is subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) Bidder receives and holds the benefit of clause 12.2(a) as trustee for the Bidder Indemnified Parties.

12.3 Deeds of indemnity and insurance

- (a) Subject to implementation of the Scheme and to clause 12.3(b), Bidder undertakes that it will:
- (i) procure that:
- (A) Target and each member of the Target Group complies with any deeds of indemnity, access and insurance (or equivalent) (**Relevant Deed**) made by them in favour of their respective directors and officers from time to time and whether past or present (**Indemnified Person**); and
- (B) to the extent that the relevant member of the Target Group ceases to exist after the Implementation Date, each Indemnified Person has the benefit of a deed from Bidder on terms no less favourable to the Indemnified Person than those contained in the Relevant Deed at the relevant date; and
- (ii) without limiting clause 12.3(a)(i) and by no later than the Implementation Date, arrange for and ensure that directors' and officers' run-off insurance cover for Indemnified Persons referred to in clause 12.3(a)(i) is maintained for a period of 6 years from the retirement date of each such Indemnified Person.
- (b) The undertaking in clause 12.3(a) is subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) Target receives and holds the benefit of clause 12.3(a) as trustee for the directors and officers referred to in that clause, and, as such, each person may enforce this clause 12.3 against Bidder.
- (d) From the Implementation Date, Bidder must procure that Target does not:
- (i) vary or cancel the directors and officers insurance policy held by Target and in effect as at the date of this deed (except that variations are permitted if they do not adversely affect the coverage provided); or

- (ii) unless required under such policy, commit any act or omission that may prejudice any claim under such policy as extended pursuant to clause 12.3(a)(ii).
- (e) The undertakings contained in clause 12.3(a) are given until the end of the relevant period specified in clause 12.3(a).

13 Termination

13.1 Limited termination events

This deed may only be terminated by either Bidder or Target in the circumstances contemplated by clauses 13.2 or 13.3 (as relevant), or if the parties agree in writing to terminate this deed.

13.2 Termination by Bidder

Bidder may terminate this deed, with immediate effect, at any time before 8:00am on the Second Court Date by notice in writing to Target:

- (a) in accordance with clause 3.4(b) or 3.4(c);
- (b) if Target breaches clause 8.1(a);
- (c) if, at any time before 8:00am on the Second Court Date, Target commits a material breach of this deed (including a Representation and Warranty) and:
 - (i) Bidder has given written notice to Target setting out the relevant circumstances and stating an intention to terminate this deed; and
 - (ii) the relevant circumstances are not remedied to Bidder's reasonable satisfaction and have continued to exist for 10 Business Days from the time such notice is given (or any shorter period ending at 8:00am on the Second Court Date); or
- (d) if any Target Director publicly changes or withdraws their Recommendation or Voting Intention or publicly recommends a Competing Proposal for any reason, whether or not permitted to do so under this deed.

Termination under clause 13.2(c) will be deemed to take effect at the expiry of the 10 Business Day period referred to in clause 13.2(c)(ii).

13.3 Termination by Target

Target may terminate this deed, with immediate effect, at any time before 8:00am on the Second Court Date by notice in writing to Bidder:

- (a) in accordance with clause 3.4(b) or 3.4(c);
 - (b) if a majority of Target Directors wishes to publicly:
 - (i) withdraw or adversely change their Recommendation; or
 - (ii) recommend a Competing Proposal,
- in each case provided that one of the events referred to in clause 8.2 has occurred;

- (c) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or any subsequent update of its report) that the Scheme is not in the best interests of Target Shareholders; or
- (d) if, at any time before 8:00am on the Second Court Date, Bidder or Guarantor has committed a material breach of this deed (including a Representation and Warranty) and:
- (i) Target has given written notice to Bidder or Guarantor (as relevant) setting out the relevant circumstances and stating an intention to terminate this deed; and
 - (ii) the relevant circumstances are not remedied to Target's reasonable satisfaction and have continued to exist for 10 Business Days from the time such notice is given (or any shorter period ending at 8:00am on the Second Court Date).

Termination under clause 13.3(d) will be deemed to take effect at the expiry of the 10 Business Day period referred to in clause 13.3(d)(ii).

13.4 Effect of termination

If this deed is terminated in accordance with this clause 13, this deed will cease to have force and effect without any liability or obligation on the part of any party, except that:

- (a) this clause 13 and clauses 10, 11, 12, 14, 15, 16, 17 and 18, and the Schedule, will survive termination; and
- (b) each party shall retain any rights and remedies that accrued prior to termination, including any rights and remedies in respect of any past breach of this deed or (if applicable) in respect of the breach giving rise to termination.

13.5 Remedies

The parties acknowledge that damages may not be a sufficient remedy for breach of this deed. Specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law are available as a remedy for a breach or threatened breach of this deed by any party, notwithstanding the ability of the other parties to terminate this deed or seek damages for such a breach or threatened breach or to demand payment of the Bidder Break Fee, the Target Break Fee, the Funding Break Fee or the Cost Compensation Amount (as the case may be).

13.6 Bidder's limitation of liability

Notwithstanding any other provision of this deed, the maximum liability of Bidder to Target under or in connection with this deed will be an amount equal to the highest of the Bidder Break Fee, the Funding Break Fee and the Cost Compensation Amount and no further damages, fees, expenses or reimbursements of any kind will be payable by Bidder under or in connection with this deed.

13.7 Target's limitation of liability

Notwithstanding any other provision of this deed, the maximum liability of Target to Bidder under or in connection with this deed will be the amount of the Target Break Fee and no further damages, fees, expenses or reimbursements of any kind will be payable by Target under or in connection with this deed.

14 Guarantee and indemnity

14.1 Guarantee

The Guarantor unconditionally and irrevocably:

- (a) guarantees to Target the due and punctual performance by Bidder of all of its obligations under this deed and the Deed Poll, including the obligation to pay the Scheme Consideration to Scheme Shareholders in accordance with the terms of the Scheme (the **Guaranteed Obligations**) and must on demand by Target perform the Guaranteed Obligations; and
- (b) as a separate and additional liability, agrees to indemnify Target against, and to pay on demand the full amount of, any and all Losses suffered or incurred by the Target Group as a result of or in connection with any default or delay by Bidder in the due and punctual performance of any of the Guaranteed Obligations, including any and all such Losses suffered or incurred by Target in connection with the enforcement of the Guarantee.

14.2 Extent of Guarantee

- (a) The Guarantor will be responsible to Target for the performance of the Guaranteed Obligations by Bidder in the same manner as if the Guarantor were a party to this deed or the Deed Poll in the place of Bidder.
- (b) The liability under this clause 14 is not affected by any act, omission or other thing which, but for this clause 14.2(b), might otherwise affect it in law or in equity or operate to release or exonerate the Guarantor in whole or in part from its obligations, including one or more of the following:
 - (i) an Insolvency Event affecting a person;
 - (ii) a change in the constituent documents, membership or partnership of a person;
 - (iii) the partial performance of the Guaranteed Obligations;
 - (iv) the Guaranteed Obligations not being enforceable at any time against any person other than the Guarantor, including for reasons of legal limitation, disability, incapacity or other circumstances related to Bidder;
 - (v) Target granting any time or other indulgence, waiver, consent, notice or concession to, or reaching any settlement or compromise with, Bidder or the Guarantor, or Target wholly or partially releasing Bidder or the Guarantor from any liability or obligation;
 - (vi) any transaction or arrangement that may take place between any of the parties to this deed or any other person;
 - (vii) the failure or omission or any delay by any party to give notice to the Guarantor of any default by Bidder under this deed;
 - (viii) acquiescence, delay, acts, omissions or mistakes on the part of Target; or
 - (ix) the occurrence of any other thing which might otherwise release, discharge or affect the obligations of the Guarantor under this clause 14.

For the avoidance of doubt, a variation to this deed which varies the obligations of the Bidder will vary the Guaranteed Obligations accordingly. Such variation will not affect the liability of the Guarantor to be responsible to Target for the performance of such varied Guaranteed Obligations by Bidder in the same manner as if the Guarantor was a party to this deed or the Deed Poll in the place of Bidder.

14.3 Payments

- (a) The Guarantor agrees to make payments under this clause 14 in Australian dollars and in full without set-off, counterclaim, deduction or other withholding.
- (b) The Guarantor has no right to set off, deduct or withhold any moneys which it may be, or becomes, liable to pay under this clause 14 against any moneys that any other party may be, or becomes, liable to pay to the Guarantor or any Related Body Corporate whether under this deed or otherwise.

14.4 Continuing obligation

This clause 14:

- (a) extends to cover this deed as amended, varied, supplemented, renewed or replaced;
- (b) is a principal obligation and is not to be treated as ancillary or collateral to another right or obligation;
- (c) is independent of and not in substitution for or affected by any other security interest or guarantee or other document, deed or arrangement which Target may have the benefit of or be a party to concerning the Guaranteed Obligations; and
- (d) is a continuing obligation despite any intervening payment, settlement or other thing and extends to all of the Guaranteed Obligations until all of those obligations have been fully discharged.

14.5 Guarantor's liability

The Guarantor's liability in respect of any claim will not exceed Bidder's liability in respect of that claim.

15 Confidentiality

15.1 Confidentiality Deed

Each party acknowledges and agrees that they continue to be bound by the Confidentiality Deed after the date of this deed in respect of all information received by it from the other party on, before or after the date of this deed and that the terms of this deed will prevail over the terms of the Confidentiality Deed to the extent of any inconsistency.

15.2 Survival of obligations

The rights and obligations of the parties under the Confidentiality Deed survive termination of this deed.

15.3 Disclosure on termination of deed

The parties agree that, if this deed is terminated under clause 13, any party may disclose:

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

16 Duty, costs and expenses

16.1 Stamp duty

Bidder:

- (a) must pay all stamp duties and any related fines and penalties in respect of this deed, the performance of this deed and each transaction contemplated by this deed; and
- (b) indemnifies Target against any liability arising from or in connection with any failure by it to comply with clause 16.1(a).

16.2 Costs and expenses

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

17 GST

17.1 Interpretation

In this clause 17, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that legislation.

17.2 GST gross up

- (a) Subject to clause 17.2(b), if a party makes a supply under or in connection with this deed in respect of which GST is payable, the consideration for the supply but for the application of this clause 17.2 (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- (b) Clause 17.2(a) does not apply to any consideration that is expressed in this deed to be inclusive of GST.

17.3 Reimbursements and indemnifications

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party (or its representative member) is entitled to for the loss, cost or expense, and then increased in accordance with clause 17.2 if it is consideration for a taxable supply.

17.4 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this deed until it receives a tax invoice for the supply to which the payment relates.

18 General

18.1 Notices

- (a) A notice, consent, approval, waiver or other communication sent by a party under this deed (**Notice**) must be:
- (i) in writing;
 - (ii) sent by an authorised representative of that party; and
 - (iii) marked for the attention of the person named below, and must be:
- (iv) left at the address set out below; or
 - (v) sent by email to the address set out below.

Target

Attention: Steve Gostlow
Address: Level 5, 20 Parkland Rd, Osborne Park WA 6017
Email: s.gostlow@toxfree.com.au

with a copy (for information purposes only) to Mark Paganin of Clayton Utz at mpaganin@claytonutz.com

Bidder

Attention: Mr Dan Last
Address: Level 4, 441 St Kilda Road, Melbourne VIC 3004 Australia
Email: dan.last@cleanaway.com.au

with a copy (for information purposes only) to Neil Pathak of Gilbert + Tobin at npathak@gtlaw.com.au

Guarantor

Attention: Mr Dan Last
Address: Level 4, 441 St Kilda Road, Melbourne VIC 3004 Australia
Email: dan.last@cleanaway.com.au

with a copy (for information purposes only) to Neil Pathak of Gilbert + Tobin at npathak@gtlaw.com.au

- (b) Subject to clause 18.1(c), a Notice is taken to be received:
- (i) if sent by delivery, when it is delivered; or

- (ii) if sent by email, on the first to occur of:
- (A) the sender receiving an automated message confirming delivery; and
 - (B) two hours after the time sent (as recorded on the device from which the email was sent), provided that the sender does not receive an automated message that the email has not been delivered.
- (c) If a Notice is received or taken to be received under clause 18.1(b):
- (i) before 9:00am on a Business Day, it will be taken to be received at 9:00am on that Business Day; or
 - (ii) after 5:00pm on a Business Day or on a day other than a Business Day, it will be taken to be received at 9:00am on the next Business Day.

18.2 Governing law and jurisdiction

- (a) This deed is governed by the laws of Western Australia.
- (b) Each party irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 18.2(b)(i).

18.3 No representation or reliance

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

18.4 No merger

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

18.5 Waivers, consents and approvals

- (a) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party does not in any way preclude, or operate as a waiver of, any

exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.

- (b) Any waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) Except where this deed expressly provides otherwise, where the consent or approval of a party is required under this deed, such consent or approval may be given or withheld in that party's absolute discretion.

18.6 Variation

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

18.7 Assignment

A party may not assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior written consent of the other party.

18.8 Further action

Each party will do all things and execute all further documents necessary to give full effect to this deed.

18.9 Entire agreement

The Transaction Documents and the Confidentiality Deed constitute the entire agreement between the parties in relation to their subject matter and supersede all previous agreements and understanding between the parties in relation to their subject matter.

18.10 Severability

- (a) If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction but only to the extent that it is void, unenforceable or illegal and provided that it will have full force and effect in any other jurisdiction. Where a provision (or any part thereof) is severed in a jurisdiction, the remainder of this deed shall have full force and effect in that (and any other) jurisdiction.
- (b) This clause 18.10 does not apply to any severance that alters the basic nature of this deed or is contrary to public policy.

18.11 Counterparts

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

18.12 Consents

Unless this deed expressly provides otherwise, a consent under this deed may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be in writing.

Schedule 1 Dictionary

ACCC means the Australian Competition and Consumer Commission.

Anti-Bribery and Corruption Laws means division 70 and Part 7.6 of the Criminal Code (as set out in the Schedule) of the Criminal Code Act 1995 (Cth), the OECD Anti Bribery Convention, and any other anti-corruption or anti-bribery law or requirement in any jurisdiction applicable to the Target or the Target Group.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in section 12 of the Corporations Act.

ASX means ASX Limited (ABN 98 008 624 691) or, where the context requires, the financial market operated by it known as the "Australian Securities Exchange".

Bidder Break Fee means \$6,700,000.

Bidder Executive Team means Vik Bansal, Brendan Gill, Dan Last and Frank Lintvelt.

Bidder Group means Bidder and each of its Related Bodies Corporate.

Bidder Indemnified Party means a director, officer or employee of a member of the Bidder Group.

Bidder Information means information regarding the Bidder Group provided by Bidder to Target in writing for inclusion in the Scheme Booklet, which must include information in relation to Bidder, the funding of the Scheme Consideration and Bidder's intentions in relation to the Target Group and its business (including the Target Group's employees and assets), and includes any information contained in the Scheme Booklet that is solely based or prepared on any information so provided by Bidder.

Bidder Representations and Warranties means the representations and warranties set out in clause 11.2.

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Perth or Melbourne, Australia.

Competing Proposal means any expression of interest or intent, proposal, offer, transaction, agreement or arrangement which:

- (a) if entered into or completed in accordance with its terms, would result in a Third Party (either alone or together with one or more other parties) directly or indirectly:
 - (i) acquiring Control of Target;
 - (ii) acquiring an interest (including an economic interest by way of an equity swap, contract for difference or similar transaction or arrangement) or a Relevant Interest in 20% or more of the Target Shares; or
 - (iii) acquiring, becoming the holder of or having a right to acquire or an economic interest in all or a substantial part of the business, or any of the material assets of the Target Group (where a material asset of the Target Group means an asset or assets representing 20% or more of the value of the Target Group's total assets) of the Target,

whether by way of takeover bid, members' or creditors' scheme of arrangement, shareholder approved acquisition, capital reduction, buy-back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement or other transaction or arrangement; or

- (b) if entered into with one or more members of the Target Group would require the abandonment of, or otherwise result in the failure to proceed with, the Transaction.

Competition and Consumer Act means the *Competition and Consumer Act 2010* (Cth).

Competition Approval means one of the following is satisfied:

- (a) Bidder has received written advice from the ACCC stating that:
 - (i) based on the information provided by Bidder to the ACCC, it has no objection to, or does not propose to take any action in respect of, the acquisition by Bidder of all of the Scheme Shares under the Scheme under section 50 of the Competition and Consumer Act and that advice has not been withdrawn, revoked or amended; or
 - (ii) based on the information provided by Bidder to the ACCC and the acceptance by the ACCC of written undertakings provided or agreed to be provided to the ACCC, the ACCC does not propose to intervene in respect of the acquisition by Bidder of all of the Scheme Shares under the Scheme pursuant to section 50 of the Competition and Consumer Act;
- (b) authorisation of the acquisition by Bidder of all of the Schemes Shares under the Scheme is granted by either:
 - (i) the ACCC under Part VII of the Competition and Consumer Act, and no application has been made within the prescribed period for review of the decision of the ACCC; or
 - (ii) the Australian Competition Tribunal under Part IX of the Competition and Consumer Act and no application has been made within the prescribed period for judicial review of the decision of the Australian Competition Tribunal; or
- (c) the Federal Court of Australia declares or makes orders to the effect that the acquisition by Bidder of all of the Scheme Shares under the Scheme will not contravene section 50 of the Competition and Consumer Act.

Condition Precedent means a condition precedent set out in clause 3.1.

Confidentiality Deed means the confidentiality deed between Guarantor and Target dated 23 November 2017.

Consultation Notice has the meaning given in clause 3.4.

Control has the meaning given in section 50AA of the Corporations Act.

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

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

Cost Compensation Amount means \$2,233,333.

Court means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Target and Bidder.

Court Documents means the documents which the Target determines (acting reasonably) are required for the purposes of a Court Hearing, which may include originating process, affidavits, submissions and draft minutes of Court orders.

Court Hearing means the First Court Hearing or Second Court Hearing (as applicable), and **Court Hearings** means both of them.

Deed Poll means the deed poll, in the form of Attachment C, to be entered into by Bidder and the Guarantor pursuant to clause 6.2(j), under which (among other things) Bidder covenants in favour of Scheme Shareholders to provide the Scheme Consideration in accordance with the terms of the Scheme.

Dividend Reinvestment Plan means the dividend reinvestment plan of Target dated 1 October 2014.

Due Diligence Materials means:

- (a) the documents and information contained in the online data room established prior to execution of this deed for the purpose of this Transaction; and
- (b) any management presentations provided to Bidder by or on behalf of Target prior to execution of this deed, a copy of which is uploaded to the online data room referred to in paragraph (a) of this definition,

and which are included on the index provided by Target to Bidder and initialled by Bidder and Target for identification purposes prior to execution of this deed (and which are included on the USB provided by the Target to Bidder within 3 Business Days after the date of this deed).

EBITDA means earnings of the Target Group before interest, tax, depreciation and amortisation after non-recurring items and non-operating items calculated in accordance with the accounting policies and practices applied by Target as at the date of this deed.

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

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

End Date means:

- (a) 30 June 2018, which date will be extended to 30 September 2018 without any action being required on the part of either party if the Condition Precedent in clause 3.1(c) has not been satisfied by 30 June 2018; or
- (b) such other date and time agreed in writing between Bidder and Target.

Entitlement Offer means a non renounceable entitlement offer (with an accelerated institutional offer) announced by Bidder on or around the date of this deed.

Exclusivity Period means the period from the date of this deed until the earlier of:

- (a) the termination of this deed under clause 13; and

(b) the End Date.

First Court Date means the first day on which an application made to the Court for an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting is heard, with such hearing being the **First Court Hearing**.

Funding Break Fee means \$2,233,333.

Government Agency means:

- (a) any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including, for the avoidance of doubt, the ACCC and the Australian Competition Tribunal), or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government, whether foreign or Australian; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

GST means goods and services tax or similar value added tax levied or imposed in Australia under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

GST exclusive consideration has the meaning given in clause 17.2(a).

Guarantee means the guarantee and indemnity given by the Guarantor under clause 14.1.

Guaranteed Obligations has the meaning given in clause 14.1(a).

Guarantor Representation and Warranties means the representations and warranties set out in clause 11.3.

Implementation Date means the fifth Business Day after the Scheme Record Date or such other day as the parties agree in writing.

Independent Expert means the independent expert to be appointed by Target to prepare the Independent Expert's Report in accordance with clause 6.1(a).

Independent Expert's Report means the report (including any supplementary reports) to be prepared and issued by the Independent Expert in connection with the Scheme for inclusion in the Scheme Booklet in respect of whether the Scheme is in the best interests of the Target Shareholders.

Insolvency Event means the occurrence of any one or more of the following events in relation to any person:

- (a) an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver and manager be appointed, and the application is not withdrawn, struck out or dismissed within 15 Business Days of it being made;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator is appointed to it under sections 436A, 436B or 436C of the Corporations Act;

- (d) a Controller (as defined in section 9 of the Corporations Act) is appointed to it or any of its assets;
- (e) a receiver is appointed to it or any of its assets;
- (f) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (g) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (h) is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (i) a deregistration notice is issued under sections 601AA or 601AB of the Corporations Act;
- (j) a writ of execution is levied against it or a material part of its property; or
- (k) anything occurs under the law of any jurisdiction outside Australia which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.

Listing Rules means the official listing rules of ASX.

Loss includes losses, liabilities, damages, costs, charges, expenses, fines, penalties, taxes and duties.

Matching Right Notice has the meaning given in clause 9.6(a)(ii).

Material Adverse Change means a matter, event or circumstance (including a one-off or non-recurring event) that occurs, is announced or becomes known to Bidder after the execution of this deed where that matter, event or circumstance has, has had, or is reasonably likely to have, either individually, or when aggregated with any other such matters, events or circumstances, a materially adverse effect on the assets, liabilities, business, financial or trading position, performance, profitability or prospects of Target and which would include:

- (a) reducing the consolidated Normalised EBITDA of the Target Group relative to Target's audited financial statements for the year ended 30 June 2017, taken as a whole and calculated in accordance with the accounting policies and practices applied by Target as at the date of this deed, by at least \$10 million;
- (b) reducing the consolidated net assets of the Target Group by at least \$30 million relative to Target's audited financial statements for the year ended 30 June 2017, as calculated in accordance with the accounting policies and practices applied by Target as at the date of this deed,

determined after taking into account any matters which offset the impact of the matter, event or circumstance and in each case other than matters, events or circumstances:

- (c) expressly contemplated, required to be done or procured to be done or permitted by the Transaction Documents;
- (d) fairly disclosed to Bidder (including in the Due Diligence Materials), ASIC or ASX (and, in the case of ASIC and ASX, publicly disclosed) prior to the date of this deed

(or which ought reasonably have been expected to arise from an event, occurrence or matter which was so disclosed) or otherwise actually known to Bidder prior to the date of this deed;

- (e) resulting from an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave or landslide occurring on or after the date of this deed;
- (f) resulting from the actual or anticipated change in control of Target contemplated by the Transaction;
- (g) comprising or resulting from a change to legislation or regulation, any judicial or administrative interpretation of the law or any practice or policy of a Government Agency (whether or not retrospective in effect), including in relation to tax;
- (h) which have a similar or substantially similar impact on Bidder;
- (i) resulting from changes in generally accepted accounting principles or the interpretation of them; or
- (j) done or not done at written request or with the written acknowledgement and approval of Bidder, including any consequences arising as a result of such matter,

and provided that no matter, event or circumstance will be aggregated with any other matters, events or circumstances unless each matter, event or circumstance has the effect of individually reducing:

- (k) consolidated Normalised EBITDA by at least \$250,000, taken as a whole and calculated in accordance with the accounting policies and practices applied by Target as at the date of this deed; or
- (l) consolidated net assets of the Target Group by at least \$250,000, as calculated in accordance with the accounting policies and practices applied by Target as at the date of this deed.

Material Counterparty Consents means any required consents under the contracts identified by Target to Bidder prior to the date of this deed and identified by the parties from time to time.

Normalised EBITDA means EBITDA adjusted in accordance with Target's Board approved Normalisation of Operating Performance Policy, a copy of which is included in the Due Diligence Materials.

Notice has the meaning given in clause 18.1(a).

Permitted Dividend means a fully franked dividend not exceeding 5 cents per Target Share which may be declared and paid by Target in the ordinary course in respect of the six month period ending on 31 December 2017.

Prescribed Occurrence means the occurrence of any of the following:

- (a) Target converting all or any of its shares into a larger or smaller number of shares;
- (b) Target resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) Target:

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- (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) a member of the Target Group issuing shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option other than:
- (i) to a member of the Target Group; or
 - (ii) the issue of shares upon exercise or vesting of an Unlisted Security;
- (e) a member of the Target Group issuing or agreeing to issue securities convertible into shares (including any issue or agreement to issue performance rights);
- (f) a member of the Target Group making any change to its constitution;
- (g) other than the Permitted Dividend and the Special Dividend, any member of the Target Group paying, agreeing to pay, declaring or distributing any distribution, dividend, bonus, special payment or other share of its profits or assets to holders of Target Shares;
- (h) a member of the Target Group disposing, or agreeing to dispose, of the whole, or a material part, of the business or property of the Target Group;
- (i) any member of the Target Group entering into any lines of business in which the Target Group is not engaged as at the date of this deed;
- (j) a member of the Target Group resolving that it be wound up;
- (k) a liquidator or provisional liquidator of a member of the Target Group being appointed;
- (l) a court making an order for the winding up of a member of the Target Group;
- (m) an administrator of a member of the Target Group being appointed under the Corporations Act;
- (n) a member of the Target Group executing a deed of company arrangement;
- (o) a receiver, or a receiver and manager, being appointed in relation to the whole, or a substantial part, of the property of a member of the Target Group;
- (p) a member of the Target Group creating, granting or agreeing to create or grant an encumbrance over the whole, or a substantial part, of the Target Group's business or property or over a material asset of the Target Group other than in the ordinary course of business in respect of trading stock;
- (q) a member of the Target Group acquires or disposes of, or agrees to acquire or dispose of, any securities, business, asset, entity or undertaking in a single or series of related transactions, the value of which exceeds \$5,000,000, from or to any person other than another member of the Target Group;
- (r) a member of the Target Group enters into, materially amends or terminates, or agrees to enter into or materially amend or terminate, any material contract with a person other than another member of the Target Group that:

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- (i) could reasonably be expected to generate revenue for the Target Group, or that contemplates expenditure by the Target Group, in excess of \$5,000,000 in any 12 month period; or
 - (ii) has a term of more than 5 years;
 - (s) other than in the ordinary course of business, a member of the Target Group incurs or commits to, or brings forward the time for incurring or committing to, or grants to another person a right the exercise of which could be reasonably expected to involve or result in any member of the Target Group incurring or committing to, any capital expenditure, financial indebtedness (including borrowings, loans and advances) or liability (whether actual or contingent) in excess of facility limits for one or more related items or amounts of in aggregate more than \$6,000,000;
 - (t) a member of the Target Group:
 - (i) at any time after 23 November 2017, enters into a new employment contract or materially amends or terminates an existing employment contract with Steve Gostlow, Michael Constable, Jason Dixon, Peter Goodwin, Scott Russel, Karl Baltpurvins, Christian Kath, Caleb McGuire or Nick Badyk;
 - (ii) employs a new employee where the total employment costs payable to that new employee would exceed \$200,000 other than where a person named in paragraph (i) above is no longer employed by the Target Group and that employee is employed to replace such person;
 - (iii) accelerates the rights of any director or employee to compensation or benefits of any kind (otherwise than in accordance with an existing contract in place at 23 November 2017, or as fairly disclosed in writing in the Due Diligence Materials); or
 - (iv) pays or agrees to pay any of its directors or employees a bonus, termination payment or any other increase in fees or benefits (otherwise than in accordance with an existing contract in place as at 23 November 2017, or as fairly disclosed in writing in the Due Diligence Materials);
 - (u) a member of the Target Group enters into any enterprise bargaining agreement other than matters occurring in the ordinary course of business and for the purposes of carrying on ordinary business;
 - (v) a member of the Target Group enters into or resolves to enter into a transaction with any related party of Target (other than a related party which is a member of the Target Group) as defined in section 228 of the Corporations Act;
 - (w) a member of the Target Group is in default under an agreement or arrangement which is material in the context of the Target Group;
 - (x) a member of the Target Group settles or offers to settle any legal proceedings, claim, investigation arbitration or other like proceeding where the settlement amount exceeds \$1,500,000; or
 - (y) any member of the Target Group authorises, procures or commits or agrees to do any of the matters set out above,

but does not include any matter:

- (z) required to be undertaken or procured by the Target Group pursuant to the Transaction Documents;
- (aa) to which Bidder has provided its prior written consent; or
- (bb) fairly disclosed in the Due Diligence Materials or any announcement to or filing with ASX or ASIC (which is publicly available) prior to the date of this deed.

Recommendation has the meaning given in clause 8.1(a)(i).

Regulator's Draft has the meaning given in clause 6.1(f)(i).

Related Body Corporate has the meaning given in section 50 of the Corporations Act.

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

Representation and Warranty means a Target Representation and Warranty or a Bidder Representation and Warranty or a Guarantor Representation and Warranty (as applicable).

Representative means, in respect of a party, an employee, agent, officer, director, adviser or financier of or to that party (or a Related Body Corporate of that party), and, in the case of advisers and financiers, includes employees, officers and agents of the adviser or financier (as applicable).

RG 60 means Regulatory Guide 60 issued by ASIC and dated September 2011.

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

Scheme Booklet means the explanatory statement in respect of the Scheme to be prepared by Target pursuant to section 412 of the Corporations Act and in accordance with clause 6.1(c), and to be despatched to Target Shareholders in accordance with clause 6.1(j), which shall contain the Independent Expert's Report (or a concise version of that report), a notice of meeting in respect of the Scheme Meeting and a proxy form.

Scheme Consideration means, the amount of cash which a Scheme Shareholder is entitled to receive as part of the Scheme Consideration in accordance with clause 4, being \$3.425 for each Scheme Share subject to adjustment in accordance with clause 5.5.

Scheme Meeting means the meeting of Target Shareholders ordered by the Court to be convened at the First Court Hearing.

Scheme Record Date means 7:00pm on the fifth Business Day after the Effective Date.

Scheme Share means a Target Share held by a Scheme Shareholder as at the Scheme Record Date.

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

Second Court Date means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard, with such hearing being the **Second Court Hearing**.

Special Dividend has the meaning given to that term in clause 5

Superior Proposal means a bona fide Competing Proposal which:

- (a) the Target Board considers, acting in good faith in the interests of Target and the Target Shareholders and after taking financial advice and written legal advice from external legal advisers would, if implemented in accordance with its terms, result in a more favourable outcome for Target Shareholders (as a whole) than would result from the Transaction; and
- (b) is reasonably capable of being completed, taking into account the nature of the Competing Proposal, all of its terms (including consideration, conditionality, funding, certainty and timing) and the person or persons making it.

Target Board means the board of directors of Target.

Target Break Fee means \$6,700,000.

Target Director means a director of Target.

Target Executive Team means Steve Gostlow, Michael Constable and Jason Dixon.

Target Group means Target and each of its Related Bodies Corporate.

Target Indemnified Party means a director, officer or employee of a member of the Target Group and a past director, officer or employee of a member of the Target Group.

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

Target Performance Right means a performance right exercisable into a Target Share (on a one for one basis).

Target Representations and Warranties means the representations and warranties set out in clause 11.1.

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

Target Share Appreciation Right means a share appreciation right issued pursuant to Target's long term incentive plan.

Target Shareholder means a holder of one or more Target Shares, as shown in the register of members maintained by (or on behalf of) Target in accordance with the Corporations Act.

Tax means any form of tax imposts, charges, deductions, compulsory loans, withholdings or levies, of any country or jurisdiction.

Tax Law means any law relating to Tax.

Termination Event has the meaning given in clause 3.4(a).

Third Party means a person other than Bidder and its Associates.

Timetable means the indicative timetable for the implementation of the Transaction set out in Attachment A.

Transaction means the acquisition of Target by Bidder by means of the Scheme.

Transaction Documents means:

- (a) this deed;
- (b) the Scheme; and
- (c) the Deed Poll.

Trust Account means an Australian dollar denominated trust account which attracts interest at a commercial rate and is operated by Target as trustee for the Scheme Shareholders, details of which Target must notify to Bidder no later than 5 Business Days before the Implementation Date, being the account into which Bidder will deposit an amount equal to the total Scheme Consideration in accordance with clause 4.2(b). To avoid doubt, any Accrued Interest on funds in the Trust Account will not be held by Target on trust for the Scheme Shareholders but rather will be held by Target on trust for Bidder.

Unlisted Security means a Target Performance Right, Target Share Appreciation Right or any other security, right or instrument which may convert into, or give the holder the right to be issued, one or more Target Shares.

Voting Intention has the meaning given in clause 8.1(a)(ii).

2 Interpretation

In this deed, the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words “include”, “including”, “such as”, “to avoid doubt” and similar expressions are not words of limitation and do not limit what else might be included.
- (f) A reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate or entity (as that term is defined in section 64A of the Corporations Act);
 - (ii) a thing (including a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;

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- (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or a party, schedule or attachment to, this deed (as applicable);
 - (vi) this deed includes all schedules and attachments to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a Listing Rule and is a reference to that law as amended, consolidated or replaced;
 - (viii) an agreement (other than this deed) includes an undertaking or legally enforceable arrangement or understanding (whether or not in writing);
 - (ix) a reference to a date or time is to that date or time in Perth, Australia;
 - (x) a time period includes the date referred to as that on which the period begins and the date referred to as that on which the period ends; and
 - (xi) a monetary amount is in Australian dollars.
- (g) An agreement on the part of two or more persons binds them jointly and severally.
 - (h) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
 - (i) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it.
 - (j) A reference to an event, occurrence or matter being "fairly disclosed" in particular information means disclosed in sufficient detail so that the nature, scope and effect of the relevant event, occurrence, matter or fact on the Bidder Group or Target Group (as applicable) could reasonably have been concluded from that information.
 - (k) A reference to a party being "aware" of certain information, having "knowledge" of certain information, having an "awareness" of certain information or to certain information being "known" to a party, at a particular time, is a reference to:
 - (i) in respect of Target, a member of the Target Executive Team having actual knowledge or awareness of that information at the relevant time, or circumstances where a member of the Target Executive Team would have had actual knowledge or awareness of that information at the relevant time had they made due enquiries of people who might reasonably be expected to have knowledge or awareness of that information, but only to the extent that member of the Target Executive Team was employed by Target at the relevant time; and
 - (ii) in respect of Bidder, a member of the Bidder Executive Team having actual knowledge or awareness of that information at the relevant time, or circumstances where a member of the Bidder Executive Team would have had actual knowledge or awareness of that information at the relevant time had they made due enquiries of people who might reasonably be expected to have knowledge or awareness of that information, but only to the extent that member of the Bidder Executive Team was employed by Bidder at the relevant time.

Execution page

Executed as a deed

Signed, sealed and delivered by **Cleanaway
(No. 1) Pty Ltd** in accordance with section 127
of the *Corporations Act 2001* (Cth) by:



Signature of director



Signature of director/secretary



Name of director (print)



Name of director/secretary (print)

Signed, sealed and delivered by **Cleanaway
Waste Management Limited** in accordance
with section 127 of the *Corporations Act 2001*
(Cth) by:



Signature of director



Signature of director/secretary



Name of director (print)



Name of director/secretary (print)

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Execution page

Executed as a deed

Signed, sealed and delivered by Tox Free Solutions Limited in accordance with section 127 of the *Corporations Act 2001* (Cth) by:



Signature of director

Robert McKinnon

Name of director (print)



Signature of director/secretary

Steve Gostlow

Name of director/secretary (print)

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Attachment A — Timetable

Event	Target date
Release of ASX announcement by Target	11 December 2017
Regulator's Draft provided to ASIC	February 2018
Implementation	Second quarter calendar 2018

Following execution of this deed the parties will discuss in good faith and agree a timetable.

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Scheme of arrangement

Tox Free Solutions Limited

Each person registered as a holder of fully paid ordinary shares in Target as at the Scheme Record Date

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Date:

Parties

- 1 **Tox Free Solutions Limited** ACN 058 596 124 of Level 1, 31 Cliff Street, Fremantle, Western Australia 6160 (**Target**)
- 2 Each person registered as a holder of fully paid ordinary shares in Target as at the Scheme Record Date (**Scheme Shareholders**)

The parties agree

1 Defined terms and interpretation

1.1 Defined terms

A term or expression starting with a capital letter which is defined in the dictionary in Schedule 1 has the meaning given to it in the dictionary.

1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this Scheme.

2 Preliminary matters

- (a) Target is an Australian public company limited by shares, and has been admitted to the official list of ASX. Target Shares are quoted for trading on the ASX.
- (b) As at 11 December 2017, there are:
 - (i) 194,418,716 Target Shares on issue;
 - (ii) 1,560,834 Target Performance Rights on issue or agreed to be granted; and
 - (iii) 1,293,859 Target Share Appreciation Rights on issue.
- (c) Bidder is an Australian private proprietary company.
- (d) If this Scheme becomes Effective:
 - (i) in consideration for the transfer of each Scheme Share to Bidder, Bidder will provide or procure the provision of the Scheme Consideration to Scheme Shareholders in accordance with this Scheme and the Deed Poll; and
 - (ii) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, will be transferred to Bidder and Target will enter the name of Bidder in the Share Register in respect of all the Scheme Shares.
- (e) Bidder and Target have entered into the Implementation Deed in respect of (among other things) the implementation of this Scheme.
- (f) This Scheme attributes actions to Bidder but does not itself impose any obligations on Bidder to perform those actions. By executing the Deed Poll, Bidder has agreed

to perform the actions attributed to it under this Scheme, including payment of the Scheme Consideration in accordance with the terms of this Scheme.

3 Conditions

3.1 Conditions precedent

This Scheme is conditional on and will not become Effective until and unless the following conditions precedent are satisfied:

- (a) all the conditions in clause 3.1 of the Implementation Deed (other than the condition in clause 3.1(b) of the Implementation Deed relating to Court approval of this Scheme) are satisfied or waived in accordance with the terms of the Implementation Deed by 8:00am on the Second Court Date;
- (b) neither the Implementation Deed nor the Deed Poll is terminated in accordance with its terms before 8.00am on the Second Court Date;
- (c) this Scheme is approved by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to Target and Bidder;
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme as are acceptable to Target and Bidder are satisfied or waived; and
- (e) the order of the Court made under section 411(4)(b) of the Corporations Act approving this Scheme comes into effect pursuant to section 411(10) of the Corporations Act.

3.2 Certificates

- (a) Each of Target and Bidder will provide a certificate (or such other evidence as the Court may require) to the Court at the Second Court Hearing confirming (in respect of matters within their knowledge) whether or not the conditions precedent in clauses 3.1(a) and 3.1(b) above have been satisfied or waived.
- (b) The certificates given by Target and Bidder constitute conclusive evidence that the conditions precedent in clauses 3.1(a) and 3.1(b) above have been satisfied or waived.

3.3 End Date

This Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Implementation Deed or the Deed Poll is terminated in accordance with its terms, unless Bidder and Target otherwise agree in writing.

4 Implementation of this Scheme

4.1 Lodgement of Court orders with ASIC

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

4.2 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 5.2(a) and Target having provided Bidder with written confirmation thereof, the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, must be transferred to Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by Target as attorney and agent for Scheme Shareholders under clause 8.5), by:
 - (i) Target duly completing and executing the Scheme Transfer, duly executed on behalf of the Scheme Shareholders (as transferors), and delivering it to Bidder; and
 - (ii) Bidder duly executing the Scheme Transfer (as transferee), attending to the stamping of the Scheme Transfer (if required) and delivering it to Target for registration; and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.2(a), Target must enter, or procure the entry of, the name of Bidder in the Share Register in respect of all the Scheme Shares transferred to Bidder in accordance with this Scheme.

5 Scheme Consideration

5.1 Entitlement to Scheme Consideration

Subject to the terms of this Scheme, each Scheme Shareholder will be entitled to the Scheme Consideration for each Scheme Share.

5.2 Provision of Scheme Consideration

- (a) Bidder will provide the Scheme Consideration by depositing in cleared funds an amount equal to the Aggregate Scheme Consideration into the Trust Account by no later than the Business Day before the Implementation Date (provided that any interest on the amount so deposited (less bank fees and other charges) (**Accrued Interest**) will accrue for the benefit of Bidder).
- (b) Subject to Bidder having provided the Scheme Consideration in accordance with clause 5.2(a), Target must, on the Implementation Date and from the Trust Account, pay or procure the payment to each Scheme Shareholder the proportion of the Aggregate Scheme Consideration attributable to that Scheme Shareholder based on the number of Scheme Shares held by that Scheme Shareholder as at the Scheme Record Date, which obligation will be satisfied by Target:

- (i) where a Scheme Shareholder has, before the Scheme Record Date, made an election in accordance with the requirements of the Share Registry to receive dividend payments from Target by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
 - (ii) whether or not a Scheme Shareholder has made an election referred to in clause 5.2(b)(i), dispatching, or procuring the dispatch of, a cheque in Australian currency for the relevant amount to the Scheme Shareholder by prepaid post to their Registered Address, such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with clause 5.3).
- (c) In the event that:
- (i) either:
 - (A) a Scheme Shareholder does not have a Registered Address; or
 - (B) Target as the trustee for the Scheme Shareholders believes that a Scheme Shareholder is not known at the Scheme Shareholder's Registered Address,and no account has been notified in accordance with clause 5.2(b)(i) or a deposit into such an account is rejected or refunded; or
 - (ii) a cheque issued under this clause 5 has been cancelled in accordance with clause 5.4(a),

Target as the trustee for the Scheme Shareholders may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of Target (**Separate Account**) to be held until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 1990 (WA)*. To avoid doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 1990 (WA)*.

Until such time as the amount is dealt with in accordance with the *Unclaimed Money Act 1990 (WA)*, Target must hold the amount on trust for the relevant Scheme Shareholder, but any interest or other benefit accruing from the amount will be to the benefit of Bidder. An amount credited to the Separate Account or Trust Account (as applicable) is to be treated as having been paid to the Scheme Shareholder when credited to the Separate Account or Trust Account (as applicable). Target must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.

- (d) To the extent that there is a surplus in the amount held by Target as the trustee for the Scheme Shareholders in the Trust Account, that surplus may be paid by Target as the trustee for the Scheme Shareholders to Bidder following the satisfaction of Target's obligations as the trustee for the Scheme Shareholders under this clause 5.2.
- (e) Target must pay any Accrued Interest to any account nominated by Bidder following satisfaction of Target's obligations under clause 5.2(b) (and, in any event, on the Implementation Date).

5.3 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to the holder whose name appears first in the Share Register as at the Scheme Record Date; and
- (b) any other document required to be sent under this Scheme will be forwarded to the holder whose name appears first in the Share Register as at the Scheme Record Date.

5.4 Cancellation and re-issue of cheques

- (a) Target may cancel a cheque issued under this clause 5 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 one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Target (or the Share Registry) (which request may not be made until the date which is 5 Business Days after the Implementation Date), a cheque that was previously cancelled under clause 5.4(a) must be reissued.

5.5 Unclaimed monies

- (a) The *Unclaimed Money Act 1990 (WA)* will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of the *Unclaimed Money Act 1990 (WA)*).
- (b) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Bidder.

5.6 Orders of a court

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

- (a) requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which sum would otherwise be payable to that Scheme Shareholder by Target in accordance with this clause 5, then Target will be entitled to make that payment (or procure that it is made) in accordance with that order or direction; or
- (b) prevents Target from making a payment to a particular Scheme Shareholder in accordance with clause 5.2(b), or such payment is otherwise prohibited by applicable law, Target will be entitled to retain an amount, in Australian dollars, equal to the amount of the relevant payment until such time as payment in accordance with this clause 5 is permitted by that order or direction or otherwise by law.

6 Dealings in Target Shares

6.1 Determination of Scheme Shareholders

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

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

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

6.2 Share Register

- (a) Target must register registrable transmission applications or transfers of Target Shares in accordance with clause 6.1(b) at or before the Scheme Record Date, provided that nothing in this clause 6.2(a) requires Target to register a transfer that would result in a Target Shareholder holding a parcel of Target Shares that is less than a 'marketable parcel' (as defined in the operating rules of ASX).
- (b) If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and Target will be entitled to disregard any such disposal, purported disposal or agreement.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Target must maintain the Share Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for Target Shares (other than statements of holding in favour of Bidder) will cease to have effect after the Scheme Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Share Register (other than entries in respect of Bidder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Target Shares relating to that entry.
- (e) As soon as possible after the Scheme Record Date, and in any event within two Business Days after the Scheme Record Date, Target will ensure that details of the names, Registered Addresses and holdings of Target Shares for each Scheme Shareholder as shown in the Share Register as at the Scheme Record Date are available to Bidder in the form Bidder reasonably requires.

7 Quotation of Target Shares

- (a) Target will apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date.
- (b) Target will apply:
 - (i) for termination of the official quotation of Target Shares on the ASX; and
 - (ii) to have itself removed from the official list of ASX,in each case with effect on and from the close of trading on the trading day immediately following the Implementation Date.

8 General Scheme provisions

8.1 Consent to amendments to this Scheme

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

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

8.2 Scheme Shareholders' agreements and warranties

- (a) Each Scheme Shareholder:
 - (i) agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those shares in accordance with this Scheme;
 - (ii) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
 - (iii) agrees to, on the direction of the Bidder, destroy any share certificates relating to their Scheme Shares; and
 - (iv) acknowledges that this Scheme binds Target and all Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting).
- (b) Each Scheme Shareholder is taken to have warranted to Bidder, and appointed and authorised Target as its attorney and agent to warrant to Bidder, that:
 - (i) all their Scheme Shares (including any rights and entitlements attaching to their Scheme Shares) which are transferred under this Scheme will, at the time of transfer of them to Bidder, be fully paid and free from all:
 - (A) mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Properties Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise; and

- (B) restrictions on transfer of any kind; and
- (ii) they have full power and capacity to transfer their Scheme Shares to Bidder together with any rights attaching to those shares.
 - (iii) as at the Scheme Record Date, it has no existing right to be issued any other Scheme Shares or any other form of Target securities. Target undertakes that it will provide such warranty to Bidder as agent and attorney of each Scheme Shareholder.

8.3 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme will, at the time of transfer of them to Bidder, vest in Bidder free from all:
 - (i) mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Properties Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise; and
 - (ii) restrictions on transfer of any kind.
- (b) Upon the Scheme becoming Effective, Bidder will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending registration by Target of Bidder in the Share Register as the holder of the Scheme Shares. Bidder's entitlement to be registered in the Share Register as the holder of the Scheme Shares arises on the Implementation Date in accordance with clause 4.2.

8.4 Appointment of sole proxy

Upon the Scheme becoming Effective and until Target registers Bidder as the holder of all Scheme Shares in the Share Register:

- (a) each Scheme Shareholder is deemed to have appointed Bidder as attorney and agent (and directed Bidder in each such capacity) to appoint any director, officer, secretary or agent nominated by Bidder as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution whether in person, by proxy or by corporate representative;
- (b) no Scheme Shareholder may itself attend or vote at any shareholders' meetings or sign any shareholders' resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.4(a));
- (c) each Scheme Shareholder must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and
- (d) each Scheme Shareholder acknowledges and agrees that in exercising the powers conferred by clause 8.4(a), Bidder and any director, officer, secretary or agent nominated by Bidder under that clause may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

8.5 Authority given to Target

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

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

and Target accepts such appointment. Target, as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.5 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

8.6 Binding effect of this Scheme

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

9 General

9.1 Stamp duty

Bidder will:

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

9.2 Consent

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

9.3 Notices

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

9.4 Governing law and jurisdiction

- (a) This Scheme is governed by the laws in force in Western Australia.
- (b) Each party irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 9.4(b)(i).

9.5 Further action

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

9.6 No liability when acting in good faith

None of Target, Bidder or any of their respective directors, officers, secretaries or employees, will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

1 Dictionary

Accrued Interest has the meaning given in clause 5.2(a).

Aggregate Scheme Consideration means the amount calculated by multiplying the number of Scheme Shares by the Scheme Consideration.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited ABN 98 008 624 691 or, as the context requires, the financial market operated by it known as the “Australian Securities Exchange”.

Bidder means Cleanaway (No. 1) Pty Ltd ACN 623 274 466 of 441 St Kilda Road, Melbourne, Victoria 3004.

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Perth or Melbourne, Australia.

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

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

Court means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Target and Bidder.

Deed Poll means the deed poll dated [insert date] under which Bidder covenants, and Guarantor jointly and severally covenants, in favour of Scheme Shareholders to provide the Scheme Consideration in accordance with the terms of this Scheme.

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

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

End Date has the meaning given in the Implementation Deed.

First Court Date means the first day on which an application made to the Court for an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting is heard, with such hearing being the **First Court Hearing**.

Government Agency means:

- (a) any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including, for the avoidance of doubt, the ACCC and the Australian Competition Tribunal), or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government, whether foreign or Australian; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

Guarantor means Cleanaway Waste Management Limited ACN 101 155 220 of 441 St Kilda Road, Melbourne, Victoria 3004.

Implementation Deed means the scheme implementation deed dated 11 December 2017 between Bidder, Guarantor and Target relating to (among other things) the implementation of this Scheme.

Implementation Date means the fifth Business Day after the Scheme Record Date or such other day as the parties agree in writing.

Listing Rules means the official listing rules of ASX.

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

Scheme means 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 agreed to by Bidder and Target.

Scheme Consideration has the meaning given in the Implementation Deed.

Scheme Meeting means the meeting of Target Shareholders ordered by the Court to be convened at the First Court Hearing.

Scheme Record Date means 7:00pm on the fifth Business Day after the Effective Date.

Scheme Share means a Target Share held by a Scheme Shareholder as at the Scheme Record Date.

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

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

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

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

Share Registry means Computershare Investor Services Pty Limited ACN 078 279 277.

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

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

Target Share Appreciation Right has the meaning given in the Implementation Deed.

Target Shareholder means a holder of one or more Target Shares, as shown in the Share Register.

Trust Account means an Australian dollar denominated trust account which attracts interest at a commercial rate and is operated by Target as trustee for the Scheme Shareholders, details of which Target must notify to Bidder no later than 5 Business Days

before the Implementation Date. To avoid doubt, any Accrued Interest on funds in the Trust Account will not be held by Target on trust for the Scheme Shareholders but rather will be held by Target on trust for Bidder.

2 Interpretation

In this Scheme, the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this Scheme.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words “include”, “including” and similar expressions are not words of limitation and do not limit what else might be included.
- (f) A reference to:
 - (i) a person includes a natural person, estate of a natural person, partnership, joint venture, government agency, association, corporation or other body corporate or entity (as that term is defined in section 64A of the Corporations Act);
 - (ii) a thing (including a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or a party, schedule or attachment to, this Scheme (as applicable);
 - (vi) this Scheme includes all schedules to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a Listing Rule and is a reference to that law as amended, consolidated or replaced;
 - (viii) an agreement (other than this Scheme) includes an undertaking or legally enforceable arrangement or understanding (whether or not in writing);
 - (ix) a reference to a date or time is to that date or time in Perth, Australia;
 - (x) a time period includes the date referred to as that on which the period begins and the date referred to as that on which the period ends; and
 - (xi) a monetary amount is in Australian dollars.

For personal use only

Deed poll

Cleanaway (No. 1) Pty Ltd

Cleanaway Waste Management Limited

In favour of each person registered as a holder of fully paid ordinary shares in Tox Free Solutions Limited as at the Scheme Record Date

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Date:

Parties

- 1 **Cleanaway (No. 1) Pty Ltd** ACN 623 274 466 of 441 St Kilda Road, Melbourne, Victoria 3004 (**Bidder**)
 - 2 **Cleanaway Waste Management Limited** ACN 101 155 220 of 441 St Kilda Road, Melbourne, Victoria 3004 (**Guarantor**)
In favour of each person registered as a holder of fully paid ordinary shares in Tox Free Solutions Limited (**Target**) as at the Scheme Record Date (**Scheme Shareholders**)
-

Background

- A Bidder, Guarantor and Target have entered into the Implementation Deed, under which Bidder is to pay the Scheme Consideration and acquire all Scheme Shares held by Scheme Shareholders under the Scheme, and also under which Bidder and Guarantor have agreed to enter into this deed poll.
 - B Bidder and Guarantor are entering into this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to procure and undertake the actions attributed to Bidder under the Scheme.
-

1 Defined terms and interpretation

1.1 Defined terms

Unless the context otherwise requires:

- (a) **Implementation Deed** means the scheme implementation deed dated 11 December 2017 between Bidder, Guarantor and Target relating to (among other things) the implementation of this Scheme;
- (b) **Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders, in the form of Attachment B to the Implementation Deed, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act; and
- (c) terms defined in the Scheme have the same meaning when used in this deed poll.

1.2 Interpretation

Clause 2 of Schedule 1 of the Scheme applies to the interpretation of this deed poll, except that references to 'Scheme' are to be read as references to 'deed poll'.

1.3 Nature of deed poll

Bidder and Guarantor acknowledge and agree that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and

- (b) under the Scheme, each Scheme Shareholder irrevocably appoints Target and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this deed poll against Bidder and Guarantor.
-

2 Conditions

2.1 Conditions

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

2.2 Termination

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

- (a) the Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme does not become Effective by the End Date.

2.3 Consequences of termination

If this deed poll is terminated under clause 2.2, in addition and without prejudice to any other available rights, powers or remedies:

- (a) Bidder and Guarantor are released from their obligations to further perform this deed poll except those obligations under clause 6.1 and any other obligations which by their nature survive termination; and
 - (b) each Scheme Shareholder retains the rights they have against Bidder and Guarantor in respect of any breach of this deed poll which occurs before it was terminated.
-

3 Scheme obligations

Subject to clause 2, Bidder undertakes in favour of each Scheme Shareholder to, and Guarantor undertakes in favour of each Scheme Shareholder to unconditionally and irrevocably guarantee the obligation of Bidder to:

- (a) deposit (or procure the deposit of) the Aggregate Scheme Consideration payable to all of the Scheme Shareholders in cleared funds into the Trust Account no later than the Business Day before the Implementation Date; and
- (b) undertake all other actions attributed to it under the Scheme, as if named as a party to the Scheme,

in each case subject to and in accordance with the terms of the Scheme.

4 Warranties

Each of Bidder and Guarantor represents and warrants that:

- (a) it is a corporation validly existing under the laws of its place of registration;

- For personal use only
- (b) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
 - (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance by it of this deed poll;
 - (d) this deed poll is valid and binding on it and is enforceable against it in accordance with its terms; and
 - (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any write, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.
-

5 Continuing obligations

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

- (a) Bidder and Guarantor have each fully performed their obligations under this deed poll; or
 - (b) the earlier termination of this deed poll under clause 2.2.
-

6 General

6.1 Stamp duty

Bidder must (and Guarantor unconditionally and irrevocably guarantees the obligation of Bidder to):

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

6.2 Notices

- (a) Any notice or other communication to Bidder or Guarantor in connection with this deed poll must be:
 - (i) in legible writing in English;
 - (ii) signed by the person making the communication or that person's duly authorised agent; and
 - (iii) given by hand delivery, pre-paid post or email in accordance with the details set out below:

Bidder / Guarantor

Attention: Mr Dan Last
Address: Level 4, 441 St Kilda Road, Melbourne VIC 3004 Australia
Fax: +61 3 8397 5180
Email: dan.last@cleanaway.com.au

with a copy (for information purposes only) to npathak@gtlaw.com.au (by email)

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

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

6.3 Cumulative rights

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

6.4 Waiver and variation

- (a) A party waives a right under this deed poll only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) Failure to exercise or enforce, a delay in exercising or enforcing or the partial exercise or enforcement of:
 - (i) any right, power or remedy provided by law or under this deed poll; or

- (ii) any right, power, authority, discretion or remedy created or arising upon default under this deed poll,

by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed poll.

- (c) A provision of this deed poll may not be varied unless:
 - (i) if before the First Court Date, the variation is agreed to by Target in writing; or
 - (ii) if on or after the First Court Date, the variation is agreed to by Target in writing and the Court indicates that the variation would not of itself preclude approval of the Scheme,

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

- (d) Neither Bidder nor Guarantor may rely on any conduct of another person as a defence to the exercise of a right, power, authority, discretion or remedy by that other person.
- (e) This clause 6.4 may not itself be waived except in writing.

6.5 Governing law and jurisdiction

- (a) This deed poll is governed by the laws in force in Western Australia.
- (b) Each party irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 6.5(b)(i).

6.6 Assignment

- (a) The rights created by this deed poll are personal to Bidder, Guarantor and each Scheme Shareholder and must not be dealt with at law or in equity.
- (b) Any purported dealing in contravention of clause 6.6(a) is invalid.

6.7 Joint and several obligations

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

6.8 Further action

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

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Execution page

Executed as a deed

Signed, sealed and delivered by Cleanaway
(No. 1) Pty Ltd in accordance with section 127
of the *Corporations Act 2001* (Cth) and by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Signed, sealed and delivered by Cleanaway
Waste Management Limited in accordance
with section 127 of the *Corporations Act 2001*
(Cth) and by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

For personal use only