

Scheme Implementation Deed

SABMiller plc

Foster's Group Limited

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Date	21 September 2011
Parties	<ol style="list-style-type: none"> 1. SABMiller plc (Company No. 03528416) registered in England of SABMiller House, Church Street West, Woking, Surrey, GU21 6HS, UK (Acquirer); and 2. Foster's Group Limited (ABN 49 007 620 886) registered in South Australia of 77-87 Southbank Boulevard, Southbank Victoria 3006 (Target).
Recitals	<p>A Acquirer, through BidCo, proposes to acquire all of the Scheme Shares pursuant to the Scheme.</p> <p>B Target has announced an intention to return capital to shareholders and Acquirer has agreed to consent to that return of capital being made. Target and Acquirer have agreed that Target will seek shareholder approval to implement the Capital Return contemporaneously with the Scheme.</p> <p>C Target has agreed to propose and implement, and Acquirer has agreed to assist Target to propose and implement, the Scheme and the Capital Return on the terms of this Deed.</p>

It is agreed as follows.

1. Definitions and interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

ACCC means the Australian Competition and Consumer Commission.

Acquirer Group means Acquirer and its Related Bodies Corporate (excluding, at any time, Target and its Subsidiaries to the extent that Target and its Subsidiaries are subsidiaries of Acquirer at that time).

Acquirer Indemnified Parties means the entities within the Acquirer Group and their respective Officers and Advisers.

Acquirer Information means information about the Acquirer Group provided by Acquirer to Target in writing for inclusion in the Scheme Booklet.

Acquirer Representations and Warranties means the representations and warranties of Acquirer set out in schedule 1.

Adviser means, in relation to an entity, a person who in the ordinary course of its business provides services as a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant and who has been engaged in that capacity in connection with the Transaction, or any response to it, by the entity but does not include the Independent Expert.

ASIC means the Australian Securities and Investments Commission.

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

ASIC Review Draft means the draft of the Scheme Booklet which is provided to ASIC:

- (a) for approval pursuant to section 411(2) of the Corporations Act; and
- (b) for ASIC review pursuant to ASIC Regulatory Guide 74.

ASIC Review Period means the period during which ASIC reviews the ASIC Review Draft as required by section 411(2) of the Corporations Act.

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

ASX Listing Rules means the official listing rules of ASX.

BidCo means SABMiller Beverage Investments Pty Limited (ACN 150 900 093).

Board means the board of directors of Target.

Break Fee means \$99,000,000.

Business Day means a day on which the banks are open for business in Melbourne, Australia and London, England, excluding a Saturday, Sunday or public holiday.

Capital Return means the equal reduction of the share capital of Target pursuant to Division 1 of Part 2J.1 of the Corporations Act by an amount of \$0.30 per Share (as adjusted in accordance with clauses 3.5(a) and 3.5(b)) and the payment to shareholders in cash of that amount on the Implementation Date (conditional on the Scheme becoming Effective).

Capital Return Resolution means the resolution to be put to shareholders at the Special General Meeting to approve the Capital Return.

Claim means, in relation to a person, a demand, claim, action or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

Competing Proposal means any proposed transaction or arrangement, which, if completed, would mean a Third Party would:

- (a) directly or indirectly, acquire or have a right to acquire an interest, a relevant interest in or become the holder of:
 - (i) more than 20% of the Shares or more than 20% of the shares in any of Target's material Subsidiaries; or



- (ii) the whole or a material part of the business or property of Target or any of its Subsidiaries;
- (b) acquire Control of Target;
- (c) otherwise acquire, merge or amalgamate with Target whether by way of takeover bid, a reverse takeover bid, scheme of arrangement, capital reduction, sale of assets, sale of securities, strategic alliance, dual listed companies structure, other economic or synthetic merger or combination, joint venture, partnership or any other transaction or arrangement; or
- (d) enter into any agreement or understanding requiring Target to abandon, or otherwise fail to proceed with, the Transaction.

For the purposes of:

- (A) paragraph (a)(i) above, a Subsidiary of Target will be a material subsidiary if:
 - (1) the business or property of the subsidiary contributes 20% or more of the consolidated net profit after tax of Target; or
 - (2) the business or property of the Subsidiary represents 20% or more of the total consolidated assets of Target; and
- (B) paragraph (a)(ii) above, the acquisition of an interest in the business or property of Target or any of its Subsidiaries will be material if:
 - (1) the relevant business or property contributes 20% or more of the consolidated net profit after tax of Target; or
 - (2) the business or property represents 20% or more of the total consolidated assets of Target.

Conditions Precedent has the meaning given in clause 3.1.

Confidentiality Deed means the confidentiality agreement dated 15 September 2011 between Acquirer and Target.

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

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

Court means the Supreme Court of Victoria, or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Acquirer and Target.

Deed Poll means a deed poll to be executed by Acquirer and BidCo in favour of Scheme Shareholders in substantially the form of annexure 2 (or such other form as may be agreed between Target and Acquirer).

Demerger Documents means:

- (a) the Variation and Restatement Deed, dated 28 April 2011, between Target, Treasury Wine Estates Limited, Foster's Australia Limited and Foster's Wine Estates Limited;
- (b) the IT Transition Services Agreement, dated 3 May 2011, between Target and Treasury Wine Estates Vitners Limited;

- (c) the Transition Services Agreement, dated 3 May 2011, between Target and Treasury Wine Estates Limited; and
- (d) the Logistics Services Agreement, dated 3 May 2011, between Target, Foster's Australia Limited and Treasury Wine Estates Australia Limited.

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) (and, if applicable section 411(6)) of the Corporations Act in relation to the Scheme.

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

End Date means 29 February 2012, or such later date as may be agreed by Acquirer and Target.

Excluded Shareholder means any Shareholder which is an entity within the Acquirer Group or any other Shareholder to the extent it holds a Share on behalf of, or for the benefit of, any entity within the Acquirer Group.

Exclusivity Period means the period commencing from the date of this Deed to the earlier of:

- (a) the termination of this Deed; and
- (b) the End Date.

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

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 convening the Scheme Meeting is heard or, if the application is adjourned for any reason, the first day on which the adjourned application is heard.

Implementation Date means the fifth Business Day after the Record Date or such other date agreed to in writing between Acquirer and Target.

Independent Expert means Grant Samuel & Associates Pty Ltd (ABN 28 050 036 372), the independent expert in respect of the Scheme appointed by Target to prepare the Independent Expert's Report.

Independent Expert's Report means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update to such a report or any supplementary or replacement report, stating an opinion whether or not the Transaction is in the best interests of Shareholders, and setting out its reasons for that opinion.

Insolvency Event means, in the case of any entity:

- (a) it ceases, suspends, or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of all or a substantial part of its assets;
- (b) it stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (c) it is, or under legislation is presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or Claim the subject of a good faith dispute);

- (d) it has an administrator, controller or similar officer appointed, or any step preliminary to the appointment of such an officer is taken;
- (e) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for:
 - (i) its winding up, dissolution or administration; or
 - (ii) it entering into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them,(other than frivolous or vexatious applications, orders, proceedings, notices or steps);
- (f)
 - (i) a receiver, receiver and manager, administrative receiver or similar officer is appointed to;
 - (ii) a security interest becomes enforceable or is enforced over; or
 - (iii) a distress, attachment or other execution is levied or enforced or applied for over,all or a substantial part of its assets; or
- (g) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any foreign law.

Liabilities means Claims, losses, liabilities, costs or expenses of any kind and however arising, including penalties, fines and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

Material Warranty Contract means any agreement, contract or other arrangement or instrument to which any entity within the Target Group is a party or by or to which any entity within the Target Group or any of its respective assets may be bound or subject to, and which:

- (a) is a Demerger Document; or
- (b) delivers a contribution to consolidated net profit after tax of the Target Group, taken as a whole, of at least \$75 million in any financial year of Target.

Material Undertaking Contract means any agreement, contract or other arrangement or instrument to which any entity within the Target Group is a party or by or to which any entity within the Target Group or any of its respective assets may be bound or subject to, and which:

- (a) is a Demerger Document;
- (b) imposes obligations or liabilities on any party of at least \$40 million per annum or \$120 million over the life of the agreement, contract, instrument or other arrangement; or



- (c) restricts the ability of any entity within the Target Group or any person who controls the Target from engaging in or competing with any business in any place.

Merged Entity means the Acquirer Group after implementation of the Scheme.

Merger Implementation Committee has the meaning given in clause 14.3(a).

Offer means the announcement by Acquirer to ASX on 17 August 2011 that it intends through BidCo to make a conditional off-market takeover offer for all the issued shares in Target.

Officer means, in relation to an entity, its directors, officers and employees.

Pacific Beverages means Pacific Beverages Pty Ltd (ACN 121 046 348).

Performance Rights means the 2,695,887 performance rights on issue as at the date of this Deed, or to be issued after the date of this Deed, pursuant to the Foster's Group Limited Long Term Incentive Plan (which amount will be reduced to the extent that the issue of 960,088 Performance Rights to John Pollaers is not approved at Target's Annual General Meeting in October 2011).

Performance Rights Scheme has the meaning given in clause 7.4(b)(i).

Prescribed Occurrence has the meaning set out in schedule 4.

Public Authority means any government or any governmental, semi-governmental, statutory or judicial entity or authority, or any minister, department, office or delegate of any government, whether in Australia or elsewhere. It also includes any self-regulatory organisation established under statute and any stock exchange.

Record Date means 7pm on the fifth Business Day after the Effective Date or such other date agreed to in writing between Acquirer and Target.

Related Body Corporate has the meaning given in the Corporations Act.

Relevant Date means, in relation to a Condition Precedent, the date or time specified in this Deed for its fulfilment (or where no such date or time is specified, the Business Day before the End Date), subject to extension under clause 3.4.

Representative means, in relation to a person:

- (a) a Subsidiary of the person;
- (b) an Officer of the person or any of the person's Subsidiaries; or
- (c) an Adviser to the person or any of the person's Subsidiaries.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders in substantially the form of annexure 1 (or such other form as may be agreed between Target and Acquirer).

Scheme Booklet means the information described in clause 6.1(b) to be approved by the Court and despatched to Shareholders and which must include:

- (a) the Scheme;
- (b) explanatory statements under sections 256C(4) and 412(1) of the Corporations Act;



- (c) the Independent Expert's Report;
- (d) the Deed Poll;
- (e) the notice of the Scheme Meeting and proxy form for the Scheme Meeting; and
- (f) the notice of the Special General Meeting and proxy form for the Special General Meeting.

Scheme Consideration means, in respect of each Scheme Share, \$5.10 cash (as adjusted in accordance with clauses 3.5(a)(ii) and 3.5(b)(ii)).

Scheme Meeting means the meeting of Shareholders (other than Excluded Shareholders) ordered by the Court to be convened under section 411(1) of the Corporations Act in relation to the Scheme, and includes any adjournment of that meeting.

Scheme Share means a Share held by a Scheme Shareholder.

Scheme Shareholders means the Shareholders (other than Excluded Shareholders) at the 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.

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

Shareholder means a registered holder of one or more Shares.

Share Register means the register of members of Target maintained in accordance with the Corporations Act.

Share Registry means Computershare Investor Services Pty Ltd or any replacement provider of share registry services to Target.

Special General Meeting means a general meeting of shareholders to be convened by the Company and held immediately prior to or immediately after the Scheme Meeting for the purposes of considering the Capital Return Resolution.

Subsidiary has the meaning given in the Corporations Act.

Superior Proposal means a written bona fide Competing Proposal (not resulting from a breach by Target of any of its obligations under clause 11 and it being understood that any actions by Related Bodies Corporate of Target in breach of clause 11 shall be deemed to be a breach by Target for the purposes hereof) received after the date of this Deed, that the Board determines, acting in good faith and in order to satisfy what the Board considers to be its fiduciary or statutory duties (and after having taken advice from its external financial and legal advisers):

- (a) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Proposal, including its conditions precedent; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to Shareholders than the Transaction, taking into account all the terms and conditions of the Competing Proposal.

Target Director means a director of Target from time to time.

Target Group means Target and its Related Bodies Corporate.

Target Indemnified Parties means the entities within Target Group and their respective Officers and Advisers.

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

Target Representations and Warranties mean the representations and warranties of Target set out in schedule 2.

Tax means a tax, levy, charge, impost, fee, deduction, withholding or duty of any nature, including stamp and transaction duty or any goods and services tax, value added tax or consumption tax, which is imposed or collected by a Public Authority and includes any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts.

Third Party means a person other than an entity within the Acquirer Group.

Timetable means the indicative timetable for the implementation of the Transaction set out in annexure 3.

Transaction means the combination of:

- (a) the acquisition of 100% of the Shares by Acquirer through the implementation of the Scheme; and
 - (b) the implementation of the Capital Return,
- in each case in accordance with the terms of this Deed.

1.2 Interpretation

In this Deed, headings are for convenience only and do not affect interpretation. The following rules apply in this Deed unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a **person** includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Deed.
- (f) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form but excludes a communication by electronic mail.
- (g) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (h) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).

- (i) A reference to legislation or to a provision of legislation includes:
 - (i) a modification of it (including, in respect of the Corporations Act or a provision of that Act, a modification made by ASIC);
 - (ii) a re-enactment of it;
 - (iii) a legislative provision substituted for it; and
 - (iv) a regulation or statutory instrument issued under it.
- (j) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (k) A reference to an **agreement** includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a **document** includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (l) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document.
- (m) A reference to **Australian dollars, dollars** and **\$** is to Australian currency.
- (n) Mentioning anything after **includes, including, for example** or similar expressions, does not limit what else might be included.
- (o) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or a relevant part of it.
- (p) A reference to any time is a reference to that time in Melbourne, Australia.

1.3 Consents and approvals

If the doing of any act, matter or thing under this Deed is dependent on the consent or approval of a party or is within the discretion of a party, such consent or approval may be given or such discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion (unless this Deed specifies otherwise).

1.4 Business Day

Except where otherwise expressly provided, where under this Deed the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the next Business Day.

1.5 Knowledge, belief or awareness as to Vendor's Warranties

- (a) Certain Target Representations and Warranties are given and made by Target 'to Target's knowledge'. For the purposes of this Deed, **to Target's knowledge** means, and is limited to, the actual knowledge of:
 - (i) John Pollaers;
 - (ii) Stephen Matthews; and
 - (iii) Dan Last.



The knowledge of any person other than the persons identified above will not be imputed to Target.

- (b) Without limiting clause 18.1, none of the persons named in clause 1.5(a) will bear any personal liability in respect of the Target Representations and Warranties or otherwise under this Deed.

2. Agreement to Propose Transaction

2.1 Target to propose

Target agrees to propose and implement the Scheme and the Capital Return on and subject to the terms and conditions of this Deed.

2.2 Acquirer to assist

Acquirer agrees to assist Target to propose and implement the Scheme and the Capital Return on and subject to the terms and conditions of this Deed.

3. Conditions Precedent

3.1 The Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective and the Capital Return will not be implemented, and the obligations of Acquirer under clause 4.2 are not binding, unless each of the following conditions precedent (the *Conditions Precedent*) is satisfied or waived in accordance with clauses 3.2 and 3.3:

Conditions precedent for the benefit of all parties

- (a) **(FIRB approval)** before 8am on the Second Court Date, the Treasurer of the Commonwealth of Australia (the *Treasurer*):
 - (i) ceases to be empowered to make an order under the FATA in relation to the proposed acquisition by BidCo of all of the Shares and partly paid ordinary shares in Target and the proposed acquisition by an entity within the Acquirer Group of all of the shares in Pacific Beverages that it does not already own; or
 - (ii) gives written advice of a decision by or on behalf of the Treasurer stating unconditionally or subject to conditions satisfactory to Acquirer that there is no objection to the proposed acquisition by BidCo of all of the Shares and partly paid ordinary shares in Target and the proposed acquisition by an entity within the Acquirer Group of all of the shares in Pacific Beverages that it does not already own;
- (b) **(no objection from ACCC)** before 8am on the Second Court Date, BidCo receives unconditional written notification (or written notification subject to conditions satisfactory to Acquirer) from the ACCC to the effect that it does not propose to oppose or otherwise intervene in or seek to prevent BidCo's acquisition of the Shares and partly paid ordinary shares in Target or the acquisition by an entity



within the Acquirer Group of all of the shares in Pacific Beverages that it does not already own;

- (c) **(Independent Expert's Report)** the Independent Expert provides the Independent Expert's Report to Target, stating that in its opinion the Transaction is in the best interests of Shareholders, and the Independent Expert does not change its conclusion or withdraw the Independent Expert's Report by notice in writing to Target prior to 8am on the Second Court Date;
- (d) **(Tax Ruling)** before 8.00 am on the Second Court Date Target receives from the Commissioner of Taxation a class ruling given under Division 358 of Schedule 1 of the *Taxation Administration Act 1953* (Cth) in form and substance satisfactory to Target confirming that for the purposes of the *Income Tax Assessment Act 1936* (Cth) (1936 Act) or *Income Tax Assessment Act 1997* (Cth) (1997 Act):
 - (i) no part of the Capital Return will be a dividend, or deemed dividend;
 - (ii) the Commissioner will not make a determination under section 45A or section 45B of the 1936 Act that section 45C applies to any part of the Capital Return;
 - (iii) CGT event G1 will happen on receipt of the Capital Return by any Scheme Shareholder who has not disposed of their shares before they receive the Capital Return;
 - (iv) CGT event C2 will happen on receipt of the Capital Return by any Scheme Shareholder who has disposed of their shares before they receive the Capital Return;
 - (v) any Scheme Shareholder who holds their shares as pre-CGT assets will disregard any capital gain in respect of the Capital Return as a result of CGT events G1 or C2 happening in respect of the shares; and
 - (vi) any Scheme Shareholder who is a foreign resident and does not have a permanent establishment in Australia will disregard any capital gain in respect of the Capital Return due to the operation of section 855-10 of the 1997 Act;
- (e) **(Shareholder approval of Scheme)** Shareholders (other than Excluded Shareholders) approve the Scheme by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act at the Scheme Meeting;
- (f) **(Shareholder approval of Capital Return)** shareholders approve the Capital Return Resolution by the requisite majority under section 256C(1) of the Corporations Act at the Special General Meeting;
- (g) **(all other regulatory approvals)** before 8am on the Second Court Date all applicable regulatory waiting periods (including any extensions) have expired or otherwise been terminated in respect of the Transaction and BidCo (or another entity within the Acquirer Group) has obtained unconditionally or subject to conditions satisfactory to Acquirer all material approvals, licences, authorisations, authorities, consents, permissions, clearances, grants, confirmations, orders,

exemptions, waivers or rulings required by law or by any Public Authority (together **Approvals**), excluding such Approvals as are specifically covered by the Conditions Precedent in clauses 3.1(a) and 3.1(b), as are necessary:

- (i) to permit completion of the Transaction;
- (ii) as a result of the Transaction for the continued operation of the Target Group and the Acquirer Group substantially on the same material terms as the relevant business was conducted at the date of entry into this Deed; or
- (iii) to ensure that there is no right or power to require the divestiture of:
 - (A) any Shares or partly paid ordinary shares in Target by any entity within the Acquirer Group; or
 - (B) any material assets owned (as at the date of this Deed) by:
 - (1) any entity within the Acquirer Group (excluding, for the avoidance of doubt, any shares in Pacific Beverages); or
 - (2) any entity within the Target Group,

and all such Approvals remain in full force and effect as at 8am on the Second Court Date;

- (h) (**no restraints**) no judgment, order, decree, statute, law, ordinance, rule or regulation or other temporary restraining order, preliminary or permanent injunction, restraint or prohibition entered, enacted, promulgated, enforced or issued by any court or any Public Authority of competent jurisdiction is in effect at 8am on the Second Court Date that prohibits, materially restricts, makes illegal, materially adversely impacts upon or restrains the completion of the Transaction, or requires the divestiture of:
 - (i) any Shares or partly paid ordinary shares in Target by any entity within the Acquirer Group; or
 - (ii) any material assets owned (as at the date of this Deed) by:
 - (A) any entity within the Acquirer Group (excluding, for the avoidance of doubt, any shares in Pacific Beverages); or
 - (B) any entity within the Target Group;
- (i) (**Court approval**) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;

Conditions precedent for the benefit of Acquirer only

- (j) (**no Prescribed Occurrence**) no Prescribed Occurrence occurs between the date of this Deed and 8am on the Second Court Date;
- (k) (**Target Representations and Warranties**) each Target Representation and Warranty is materially true and correct at 8am on the Second Court Date (or if only given on an earlier date, at that date);
- (l) (**no material adverse change**) between the date of this Deed and 8am on the Second Court Date, no matter, event, change, condition, circumstance,

information or thing (**Change**) occurs, is announced or becomes known to BidCo (in any such case, individually or when aggregated with all such Changes and whether or not becoming public) that diminishes or is reasonably likely to diminish:

- (i) the consolidated net assets of the Target Group, taken as a whole, by at least \$375 million; or
- (ii) the consolidated net profit after tax of the Target Group, taken as a whole, by at least \$75 million in any financial year of Target,

excluding any Change:

- (iii) that results from or relates to changes in or arising from:
 - (A) any changes (on or after the date of this Deed) in:
 - (1) Australian or international economic conditions, credit markets or capital markets;
 - (2) the industry in which Target operates; or
 - (3) laws (including any statute, ordinance, rule, regulation, the common law and equitable principles) or the interpretation, application or non-application of any laws by any Public Authority (including any changes in applicable accounting standards);
 - (B) any war, act of terrorism, civil unrest or similar event occurring on or after the date of this Deed; or
 - (C) any act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, adverse weather conditions occurring on or after the date of this Deed,

provided that such Change does not affect Target in a manner that is materially disproportionate to the effect on other companies of a similar size operating in the same industry as Target (in which case, for the avoidance of doubt, the financial impact of such Change will only be excluded to the extent of the excess of disproportionate impact on Target over what would be the proportionate impact);

- (iv) that arises from:
 - (A) facts and circumstances that Target has disclosed in an announcement made to ASX prior to entry into this Deed; or
 - (B) any action taken, or any failure to take action with the approval or consent of, or at the request of, Acquirer; or
- (v) that results from facts, circumstances or other information disclosed by Target to Acquirer or its Representatives prior to execution of this Deed; and

Conditions precedent for the benefit of Target only

- (m) **(Acquirer Representations and Warranties)** each Acquirer Representation and Warranty is materially true and correct at 8am on the Second Court Date (or if only given on an earlier date, at that date).

3.2 Satisfaction of Conditions Precedent

- (a) To the extent it is within their power to do so, Acquirer and Target must each use their respective best endeavours, and will ensure that each of their respective Related Bodies Corporate uses their respective best endeavours, to procure that:
 - (i) the Conditions Precedent in clauses 3.1(a), 3.1(b), 3.1(e), 3.1(f) 3.1(g), 3.1(h) and 3.1(i) are satisfied; and
 - (ii) there is no occurrence that is within the control of an entity within the Acquirer Group or the Target Group (as the context requires) that would prevent any Condition Precedent in clause 3.1 being satisfied, except to the extent such action is required by law.
- (b) Target must use best endeavours to procure that the Conditions Precedent in clauses 3.1(c), 3.1(d), 3.1(j), 3.1(k) and 3.1(l) are satisfied.
- (c) Acquirer must use best endeavours to procure that the Condition Precedent in clause 3.1(m) is satisfied.
- (d) For the purposes of clauses 3.2(a), 3.2(b) and 3.2(c), the *best endeavours* of a party will require that party to (among other things) co-operate with the other party or a Public Authority or Independent Expert in good faith with a view to satisfying the Conditions Precedent, including providing all information reasonably required by the Public Authority or Independent Expert in relation to the Target Group or the Acquirer Group (as applicable) in order to satisfy the Conditions Precedent.
- (e) Acquirer and Target must each:
 - (i) promptly notify the other if it becomes aware that any Condition Precedent has been satisfied;
 - (ii) promptly notify the other of any failure to satisfy a Condition Precedent or of any fact or circumstance which becomes known to that party that will result in a Condition Precedent becoming incapable of being satisfied or that may result in a Condition Precedent not being satisfied in accordance with its terms (having regard to the obligations of the parties under this clause); and
 - (iii) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent.
- (f) Acquirer and Target must each:
 - (i) give the Court on the Second Court Date 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(i)) have been satisfied or waived; and

- (ii) give the other a draft of its certificate by 5pm on the Business Day prior to the Second Court Date.

3.3 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a) to 3.1(i) (inclusive) are for benefit of both Acquirer and Target and (except in the cases of the Conditions Precedent in clauses 3.1(a), 3.1(e) and 3.1(i) which cannot be waived) any breach or non-fulfilment of any of those Conditions Precedent may not be waived by a party except with the written consent of the other party (provided and to the extent that such waiver is permitted by law).
- (b) The Conditions Precedent in clauses 3.1(j) to 3.1(l) (inclusive) are for the sole benefit of Acquirer, and any breach or non-fulfilment of any of those Conditions Precedent may only be waived by Acquirer giving its written consent.
- (c) The Condition Precedent in clause 3.1(m) is for the sole benefit of Target, and any breach or non-fulfilment of that Condition Precedent may only be waived by Target giving its written consent.
- (d) A party entitled to waive the breach or non-fulfilment of a Condition Precedent pursuant to this clause 3.3 may do so conditionally or unconditionally in its absolute discretion.
- (e) If a party waives the breach or non-fulfilment of a Condition Precedent, that waiver will not preclude it from suing the other party for any breach of this Deed that resulted from the breach or non-fulfilment of the Condition Precedent that was waived or arising from the same event which gave rise to the breach or non-fulfilment of the Condition Precedent.
- (f) Waiver of a breach or non-fulfilment in respect 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 If a Condition Precedent is not fulfilled or waived

- (a) If a Condition Precedent cannot be fulfilled (or has not been fulfilled or waived) by the Relevant Date, or the Scheme has not become Effective by the End Date, Acquirer and Target must consult in good faith to determine whether:
 - (i) the Scheme may proceed by way of alternative means or methods and, if so, agree on the terms of such alternative means or methods;
 - (ii) to extend the Relevant Date;
 - (iii) to adjourn or change the date of the Scheme Meeting; and/or



- (iv) to extend the End Date.
- (b) Without limiting clause 3.4(a), if a Condition Precedent is not satisfied by the date contemplated in the Timetable as the Second Court Date, Acquirer and Target agree (unless there is no reasonable prospect that the Condition Precedent will be satisfied) that the Second Court Date be deferred until such date (not later than the Business Day before the End Date) as reasonably required to enable more time to satisfy the Condition Precedent.

3.5 ATO Ruling

If the Condition Precedent in clause 3.1(d) is not satisfied because the Commissioner for Taxation refuses to grant the ruling referred to in that clause in form and substance reasonably satisfactory to Target and Acquirer for:

- (a) the entire \$0.30 per Share, the parties agree that at the time that refusal is provided:
 - (i) the Capital Return will no longer be proposed by Target to the Shareholders (and the parties obligations in respect of the Capital Return will immediately terminate and clauses 3.1(d) and 3.1(f) will be waived by the parties); and
 - (ii) the Scheme Consideration will be increased by \$0.30 per Share; or
- (b) some but not all the \$0.30 per Share, the parties agree that at the time that refusal is provided:
 - (i) the Capital Return will no longer be proposed by Target to the Shareholders for the part of the \$0.30 per Share in respect of which the ruling is not obtained (and the parties obligations in respect of the Capital Return and clauses 3.1(d) and 3.1(f) will apply in respect of such amount only); and
 - (ii) the Scheme Consideration will be increased by the part of the \$0.30 per Share in respect of which the ruling is not obtained.

3.6 Termination on failure of Condition Precedent

- (a) If:
 - (i) the Scheme has not become Effective by the End Date; or
 - (ii) any event occurs which would, or in fact does, prevent a Condition Precedent (other than the Condition Precedent in clause 3.1(d), in respect of which the consequences of non-satisfaction are covered by clause 3.5) being satisfied and that Condition Precedent is not waived by Target or Acquirer or both (as applicable) in accordance with clause 3.3,then:
 - (iii) except in respect of the Conditions Precedent in clauses 3.1(e) and 3.1(f), the parties will consult in good faith with a view to determining whether:

- (A) the Scheme or a transaction that results in the Acquirer Group having beneficial ownership of all the Shares may proceed by way of alternative means or methods;
 - (B) to extend the relevant time or date for satisfaction of the Condition Precedent or the End Date; or
 - (C) to change the date of the application to be made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by the parties and, if required, approved by the Court; and
- (iv) subject to clause 9, in respect of the Conditions Precedent in clauses 3.1(e) and 3.1(f), either party may terminate this Deed by notice in writing to the other without any liability to the other as a result of such termination in which case clause 20.2 will have effect, provided that the party giving notice has otherwise fully complied with its obligations under clauses 3, 6, 10, 11 and 12.
- (b) If Acquirer and Target are unable to reach agreement under clauses 3.6(a)(iii)(A), 3.6(a)(iii)(B) or 3.6(a)(iii)(C) within the Required Consultation Period (as defined below), either party may, provided that Condition Precedent is for the benefit of that party and that party has otherwise fully complied with its obligations under clauses 3, 10, 11 and 12, terminate this Deed by notice in writing to the other without any liability to the other in which case clause 20.2 will have effect.
- (c) For the purposes of clause 3.6(b), the **Required Consultation Period** is the shorter of:
- (i) five Business Days after both parties become aware that clause 3.6(a)(i) or 3.6(a)(ii) (as the case may be) is triggered; and
 - (ii) the period commencing at the time both parties become aware that clause 3.6(a)(i) or 3.6(a)(ii) (as the case may be) is triggered and ending at 8am on the Second Court Date.

4. Scheme and Scheme Consideration

4.1 Outline of Scheme

Subject to the terms and conditions of the Deed, Target must propose a scheme of arrangement under which:

- (a) all of the Shares will be transferred to BidCo; and
- (b) the Scheme Shareholders will be entitled to receive the Scheme Consideration.

4.2 Scheme Consideration

Acquirer undertakes and warrants to Target (in its own right and as trustee on behalf of the Scheme Shareholders) that, in consideration of the transfer to BidCo of each Scheme Share



held by a Scheme Shareholder under the terms of the Scheme, BidCo will, on the Implementation Date:

- (a) accept that transfer; and
- (b) before 12noon, pay or procure the payment of the Scheme Consideration for each Scheme Share to Target as trustee for the Scheme Shareholders for payment to Scheme Shareholders in accordance with the Scheme and the Deed Poll.

4.3 Outline of Capital Return

Subject to the terms and conditions of this Deed (including clause 3.5), Target must propose the Capital Return under which each Shareholder on the Record Date will be entitled to receive \$0.30 in cash.

4.4 No amendment to Scheme or Capital Return without consent

Target must not consent to any modification or amendment to, or the making or imposition by the Court or any Public Authority of any condition in respect of the Scheme or Capital Return, without the prior written consent of Acquirer, such consent not to be unreasonably withheld.

5. Timetable

- (a) Subject to clause 5(b), the parties must use their best endeavors to:
 - (i) comply with their respective obligations under clause 6; and
 - (ii) take all other necessary steps and exercise all rights necessary to implement and give effect to the Transaction,in accordance with the Timetable.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 5(a) to the extent that such failure is due to circumstances and matters outside of the party's control, including any action or omission by a Public Authority.
- (c) Target must keep Acquirer informed of its progress against the Timetable and consult with Acquirer on a regular basis about its progress and each party must notify the other immediately if it believes or it becomes apparent to it that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control, the parties will consult in good faith to agree any necessary extension to the Timetable to ensure that such matters are completed within the shortest possible timeframe.

6. Implementation of Transaction

6.1 Target's obligations

Subject to the terms of this Deed, Target must do all things as may be reasonably necessary or expedient on its part for the implementation and performance of the Transaction, in each case, so far as reasonably practicable, in accordance with the Timetable, including the following matters.

- (a) **(Independent Expert)** Promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare its Independent Expert's Report for the Scheme Booklet as soon as practicable.
- (b) **(Preparation of Scheme Booklet)** Prepare the Scheme Booklet so that it:
 - (i) contains all information necessary to ensure that the Scheme Booklet complies with all applicable laws and in particular with the Corporations Act, ASIC Regulatory Guide 60 (and all other ASIC Regulatory Guides) and the ASX Listing Rules;
 - (ii) not be misleading or deceptive in any material respect (whether by omission or otherwise); and
 - (iii) includes a statement that, other than the Acquirer Information and the Independent Expert's Report, the Scheme Booklet has been prepared by Target and is the responsibility of Target, and that no Acquirer Indemnified Party assumes any responsibility for the accuracy or completeness of the Scheme Booklet (other than, in the case of Acquirer, for the Acquirer Information).
- (c) **(Consultation with Acquirer)** Consult with Acquirer as to the content and presentation of the Scheme Booklet, such consultation to include allowing Acquirer a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet prior to lodgement with ASIC, and obtaining Acquirer's consent to the inclusion of the Acquirer Information.
- (d) **(Approval of ASIC Review Draft)** As soon as practicable after preparation of the ASIC Review Draft, procure that a meeting of the Board is convened to approve the ASIC Review Draft as being in a form appropriate for provision to ASIC for review.
- (e) **(Lodgement of ASIC Review Draft)** As soon as practicable after the meeting of the Board referred to in clause 6.1(d):
 - (i) provide a copy of the ASIC Review Draft to ASIC, as required by section 411(2) of the Corporations Act; and
 - (ii) apply to ASIC for production of an indication of intent letter stating that it does not intend to appear at the Court hearing on the First Court Date.
- (f) **(ASIC Review Period)** During the ASIC Review Period, keep Acquirer informed of any matters raised by ASIC or ASX in relation to the Scheme Booklet, the Scheme, the Capital Return or the Transaction generally, and use best endeavours to take into consideration in resolving such matters any issues raised or comments made by Acquirer (which will include allowing Acquirer and/or its Representatives to participate in any Target meetings or discussions with ASIC or ASX).

- (g) **(Approval of Scheme Booklet)** As soon as practicable after the end of the ASIC Review Period, procure that a meeting of the Board is convened to approve the Scheme Booklet for despatch to Shareholders.
- (h) **(Section 411(17)(b) statement)** Apply to ASIC for the production of a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme.
- (i) **(Court direction)** Apply to the Court for orders under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting, and obtain the prior consent of Acquirer as to the content of all relevant originating processes, affidavits, submissions and draft minutes of Court orders.
- (j) **(ASIC registration and lodgement)**
- (i) Request ASIC to register the Scheme Booklet (in the form to be sent to Shareholders and approved by the Court) in accordance with section 412(6) of the Corporations Act.
 - (ii) Lodge a copy of the Scheme Booklet (in the form to be sent to Shareholders and approved by the Court) in accordance with the requirements of section 256C(5) of the Corporations Act.
- (k) **(Scheme Meeting and Special General Meeting)** Convene the Scheme Meeting and Special General Meeting and send the Scheme Booklet to Shareholders (in relation to the Scheme Meeting, in accordance with the Court order), put the Scheme to a vote of Shareholders at the Scheme Meeting and put the Capital Return Resolution to a vote of shareholders at the Special General Meeting.
- (l) **(Update Scheme Booklet)** If at any time between the end of the ASIC Review Period and the Second Court Date Target becomes aware:
- (i) of new information which, were it known at the time the Scheme Booklet was prepared should have been included in the Scheme Booklet; or
 - (ii) that any part of the Scheme Booklet (other than the Acquirer Information) is misleading or deceptive in a material respect (whether by omission or otherwise),
- then, in either case, if considered by Target that supplementary disclosure is required, provide supplementary disclosure to Shareholders in an appropriate and timely manner in accordance with applicable law and after consulting with Acquirer as to the content and presentation of that supplementary disclosure.
- (m) **(Proxies)** Cause the Share Registry to report to Target and Acquirer on the status of proxy forms received by the Share Registry for the Scheme Meeting and the Special General Meeting:
- (i) on the day that is 15 Business Days before the Scheme Meeting and the Special General Meeting;
 - (ii) on each Business Day following the day that is 15 Business Days before the Scheme Meeting and the Special General Meeting, up to the deadline for receipt of proxy forms; and



- (iii) immediately following such deadline,
and provide such other information as it may receive concerning the voting intentions of Shareholders to Acquirer.
- (n) **(Court approval)** Subject to all Conditions Precedent in clause 3.1 (other than that in clause 3.1(i)) being satisfied or waived in accordance with this Deed, as soon as practicable after such time apply to the Court for orders approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act, and obtain the prior consent of Acquirer as to the content of all relevant affidavits, submissions and draft minutes of Court orders.
- (o) **(Certificate)** At the hearing on the Second Court Date provide to the Court 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(i)) have been satisfied or waived in accordance with this Deed. A draft of such certificate shall be provided by Target to Acquirer by 12noon on the Business Day prior to the Second Court Date.
- (p) **(Completion steps)**
 - (i) If the Court approves the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act, as soon as practicable after such time lodge with ASIC an office copy of the Court order approving the Scheme in accordance with section 411(10) of the Corporations Act.
 - (ii) Use its best endeavours to procure ASX to suspend trading in Shares from the close of trading on the Effective Date.
 - (iii) Close the Share Register as at the Record Date to determine the identity of the Scheme Shareholders and their entitlements to the Scheme Consideration.
 - (iv) Subject to Acquirer satisfying its obligations under clause 4.2, on the Implementation Date:
 - (A) effect the Capital Return;
 - (B) execute proper instruments of transfer of and effect transfer of the Scheme Shares to BidCo in accordance with the Scheme; and
 - (C) register all transfers of Shares held by Scheme Shareholders to BidCo.
 - (v) Do all other things contemplated by or necessary to give effect to the Capital Return, the Scheme and the orders of the Court.
- (q) **(ASX listing)** Use best endeavours to maintain Target's admission to the official list of ASX and the quotation of Target fully paid ordinary Shares on ASX up to and including the Implementation Date.
- (r) **(Tracing notices)** Issue such disclosure notices under section 672A of the Corporations Act as Acquirer may reasonably request and provide Acquirer with copies of all responses it receives to such notices.



- (s) **(Public Authority)** Keep Acquirer fully informed of any matters raised by any Public Authority with Target in relation to the Scheme (including matters raised by ASIC or ASX in relation to the Scheme Booklet) and use all reasonable endeavours to co-operate with Acquirer to resolve any such matters, and generally must use its reasonable endeavours to obtain any regulatory approvals (including ASIC or ASX relief or waivers), and keep Acquirer informed of progress in obtaining any such regulatory approvals and must consult with Acquirer in relation to the foregoing.

6.2 Acquirer's obligations

Acquirer must do all things as may be reasonably necessary or expedient on its part for the implementation and performance of the Scheme, in accordance with the Timetable, including the following matters.

- (a) **(Acquirer Information)** Prepare and provide to Target the Acquirer Information for inclusion in the Scheme Booklet. The Acquirer Information must:
 - (i) contain all information about the Acquirer Group necessary to ensure that the Scheme Booklet complies with all applicable laws and in particular with the Corporations Act, ASIC Regulatory Guide 60 (and all other ASIC Regulatory Guides) and the ASX Listing Rules; and
 - (ii) not be misleading or deceptive in any material respect (whether by omission or otherwise).
- (b) **(Assistance to Independent Expert)** Provide all assistance and information reasonably required by the Independent Expert in connection with the preparation of the Independent Expert's Report.
- (c) **(Deed Poll)** Prior to the First Court Date, execute (and procure that BidCo executes) the Deed Poll.
- (d) **(Update the Acquirer Information)** If at any time after the despatch of the Scheme Booklet, Acquirer becomes aware:
 - (i) of new information which, were it known at the time of despatch, should have been included in any of the Acquirer Information provided previously to Target; or
 - (ii) that any part of the Acquirer Information provided previously to Target is misleading or deceptive in any material respect (whether by omission or otherwise),it must advise Target so that Target can determine whether supplementary disclosure to Shareholders is required.
- (e) **(Scheme Consideration)** If the Scheme becomes Effective, procure that BidCo provides, or procures the provision of, the Scheme Consideration in accordance with the Scheme and the Deed Poll.

6.3 Shares subject to employee or director share, option or incentive plans

Before 8am on the Second Court Date, Target must waive or otherwise remove (on terms satisfactory to Acquirer, acting reasonably) all restrictions on transfer or vesting of any

shares issued or held under any employee or director share, option or incentive plan (provided that any restrictions relating to repayment of loans, and any loans made by any entities within the Target Group, shall not be waived or forgiven).

7. Other Scheme implementation matters

7.1 Register details

- (a) Target must give all necessary directions to the Share Registry to ensure that any information Acquirer reasonably requests in relation to the Share Register and the Scheme Shareholders, including any CHESSE sub-register and any issuer-sponsored subregister, is as soon as reasonably practicable provided to Acquirer and, where requested by Acquirer, Target must procure that such information is made available to Acquirer in such electronic form as is reasonably requested by Acquirer.
- (b) Target must upon request by Acquirer as soon as reasonably practicable provide to Acquirer:
 - (i) a copy of the register maintained by Target in accordance with section 672DA of the Corporations Act and any information which it has and which is required to be included in that register but which has not been included at the date the request is made; and
 - (ii) any further information or reports Target possesses in relation to the underlying beneficial ownership of the Shares.

7.2 Assistance of Representatives

Each party must procure that its Representatives work in good faith and in a timely and co-operative manner with the other party and its Representatives to implement the Transaction in accordance with this Deed.

7.3 Scheme Booklet preparation and responsibility statements

- (a) If, after a reasonable period of consultation and compliance by Target with its obligations under clause 6.1, the parties, acting reasonably and in good faith, are unable to agree on the form or content of the Scheme Booklet, then:
 - (i) if the disagreement relates to the form or content of the Acquirer Information (or any information solely derived from, or prepared solely in reliance on, the Acquirer Information), Target will, acting in good faith, make such amendments to that information in the Scheme Booklet as Acquirer may reasonably require; and
 - (ii) if the disagreement relates to the form or content of the Target Information, Target will, acting in good faith, decide the final form of that information in the Scheme Booklet.
- (b) The Scheme Booklet will contain a responsibility statement, in a form to be agreed by the parties, to the effect that:

- (i) Target has provided, and is responsible for, the Target Information and that Acquirer and its Representatives do not assume any responsibility for the accuracy or completeness of that Target Information;
- (ii) provided Acquirer is satisfied with the content of the Acquirer Information after the process referred to in clause 7.3(a)(i), Acquirer has provided, and is responsible for, the Acquirer Information, and that Target and its directors and officers do not assume any responsibility for the accuracy or completeness of that Acquirer Information except to the extent that Target has provided Acquirer with information for the purpose of Acquirer preparing information on the Merged Entity; and
- (iii) the Independent Expert has provided and is responsible for the Independent Expert's Report, and that:
 - (A) Acquirer and its Representatives do not assume any responsibility for the accuracy or completeness of the Independent Expert's Report; and
 - (B) Target and Representatives do not assume any responsibility for the accuracy or completeness of the Independent Expert's Report.

7.4 Cancellation or vesting of Performance Rights

- (a) At Acquirer's election, to be notified to Target promptly after execution of this Deed, Target must either:
 - (i) take such steps as are necessary to cause the Performance Rights to be cancelled (upon the Scheme becoming Effective) as Acquirer reasonably requires, including:
 - (A) the entry into cancellation deeds on terms acceptable to Acquirer (acting reasonably);
 - (B) applying to ASX for waiver from ASX Listing Rule 6.23 to allow the Performance Rights to be cancelled for consideration;
 - (C) obtaining Acquirer's prior consent on the form of such waiver application; and
 - (D) consulting with Acquirer on all matters relating to such waiver application,provided that any consideration to be paid by Target on cancellation is funded by or on behalf of Acquirer as Acquirer determines and is no higher than the net benefit to the Target Officer had those Performance Rights become vested and been exercised and the Transaction implemented (and if a waiver from compliance with ASX Listing Rule 6.23 is not obtained, take all steps necessary to allow Acquirer to directly agree with holders of Performance Rights to acquire or cancel their Performance Rights); or
 - (ii) cause all of the Performance Rights to become vested and be exercised in a manner that ensures the Shares issued thereunder will be Scheme Shares,



in each case as soon as reasonably practicable after the date of this Deed.

- (b) If within 15 Business Days after the date of this Deed, the parties have not reached agreement on the steps to be taken to either cause the Performance Rights to be cancelled in accordance with clause 7.4(a)(i) or to become vested in accordance with clause 7.4(a)(ii), then if Acquirer so requires the parties agree as follows:
- (i) a separate scheme of arrangement will be proposed between Target and the holders of the Performance Rights (*Performance Rights Scheme*);
 - (ii) the consideration payable under the Performance Rights Scheme will be no less and no more favourable to the holders of Performance Rights than the consideration that would otherwise be paid to them had those Performance Rights become vested and been exercised and the Transaction implemented;
 - (iii) the Performance Rights Scheme will be conditional on the Scheme becoming Effective and approval of the Capital Return;
 - (iv) the Scheme would not be conditional on the Performance Rights Scheme becoming Effective; and
 - (v) they will negotiate amendments to this Deed to reflect such structural changes as are necessary to facilitate the promotion of the Performance Rights Scheme.

7.5 Re-constitution of Board

Target must ensure that on the Implementation Date, it:

- (a) causes the appointment of nominees of Acquirer to the Board;
- (b) ensures that all directors on the Board (other than any nominees of Acquirer) resign and each such resigning director provides a written acknowledgment and confirmation for the benefit of the Target Group that that director has no claim against any entity within the Target Group for salary, fees, compensation for loss of office or loans which that director has made to any entity within the Target Group in respect of that director holding office as or ceasing to be a Target Director;
- (c) causes the appointment of nominees of Acquirer to the boards of each other entity within the Target Group; and
- (d) takes all actions to ensure that all directors on the boards of each Target Group entity (other than any nominees of Acquirer) resign and each such resigning director provides a written acknowledgment and confirmation for the benefit of the Target Group that that director has no claim against any entity within the Target Group for salary, fees, compensation for loss of office or loans which that director has made to any member of the Target Group in respect of that director holding office as or ceasing to be a director of the relevant Target Group entity.

8. Conduct at Court Proceedings

- (a) Target and Acquirer are entitled to separate representation at all Court proceedings relating to the Scheme.
- (b) Nothing in this Deed shall be taken to give a party any right or power to give undertakings to the Court for or on behalf of the other party without that party's consent.
- (c) Each party must give all reasonable undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Scheme.

9. Court approval

9.1 Court refuses to make orders

- (a) If the Court refuses to make an order under sub-section 411(1) of the Corporations Act to convene the Scheme Meeting or to make an order to approve the Scheme under sub-section 411(4)(b) of the Corporations Act, Target must appeal the Court's decision to the fullest extent possible except where:
 - (i) the parties agree otherwise; or
 - (ii) each of Target and Acquirer is advised by their respective external legal counsel that an appeal would have either no reasonable prospect or a low probability of success; or
 - (iii) the Target Directors have withdrawn their recommendation in relation to the Scheme pursuant to clause 10.
- (b) The costs of any appeal shall be borne equally by the parties unless:
 - (i) the Board in good faith determines that, in its view, it is not in Target's best interests to bring the appeal having regard to (without limitation) the costs and prospects of success, in which case, if Acquirer still requires that an appeal should be brought, then Acquirer must bear all of the costs thereof; or
 - (ii) Acquirer in good faith determines that, in its view, it is not in Acquirer's best interests to bring the appeal having regard to (without limitation) the costs and prospects of success, in which case, if Target still requires that an appeal should be brought, then Target must bear all of the costs thereof.

9.2 Scheme voted down

- (a) If the Condition Precedent in clause 3.1(e) is not satisfied, then either party may, by written notice within 3 Business Days after the date of conclusion of the Scheme Meeting, require the approval of the Court to be sought, pursuant to the Court's discretion in section 411(4)(a)(ii)(A) of the Corporations Act, provided that that party has in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable.



- (b) The costs of any application to the Court for approval sought pursuant to clause 9.2(a) shall be borne equally by the parties unless:
 - (i) the Board in good faith determines that, in its view, it is not in Target's best interests to apply for approval having regard to (without limitation) the costs and prospects of success, in which case, if Acquirer still requires that an application for approval should be brought, then Acquirer must bear all of the costs thereof; or
 - (ii) Acquirer in good faith determines that, in its view, it is not in Acquirer's best interests to apply for approval having regard to (without limitation) the costs and prospects of success, in which case, if Target still requires that an application for approval should be brought, then Target must bear all of the costs thereof.

10. Recommendation of Scheme

10.1 Board Recommendation

- (a) Subject to clauses 10.1(b) and 10.2, Target undertakes that:
 - (i) each Target Director will recommend (including in the Scheme Booklet) that, in the absence of a Superior Proposal, Shareholders vote in favour of:
 - (A) the Scheme at the Scheme Meeting; and
 - (B) the Capital Return Resolution at the Special General Meeting,and provide reasons for that recommendation in the Scheme Booklet; and
 - (ii) the Scheme Booklet will include a statement by each Target Director to that effect and to the effect that each Target Director who holds Shares, or who has control over voting rights attaching to Shares, will, in the absence of a Superior Proposal, vote (or procure the voting of) all Shares held or controlled by him or her in favour of:
 - (A) the Scheme at the Scheme Meeting (and if there is a Performance Rights Scheme as contemplated by clause 7.4(b), all Performance Rights held by them in favour of the Performance Rights Scheme); and
 - (B) the Capital Return Resolution at the Special General Meeting.
- (b) The recommendation made under clause 10.1(a)(i) can be expressed to be subject to the Independent Expert concluding that the Transaction is in the best interests of Shareholders. The obligation to make the statement in the Scheme Booklet under clause 10.1(a)(ii) is subject to the Independent Expert concluding that the Transaction is in the best interests of Shareholders.

10.2 Change in Target Director Recommendation

The Board will use its best endeavours to procure that no Target Director changes, withdraws or modifies or makes any statement inconsistent with his or her

recommendation under clause 10.1(a)(i) or statement under clause 10.1(a)(ii) (disregarding the operation of clause 10.1(b) for this purpose), unless:

- (a) the Board, acting in good faith, determines by majority vote (after having obtained advice from Target's external legal and financial advisers), that a Competing Proposal constitutes a Superior Proposal;
- (b) that Target Director, acting in good faith, determines (after taking written advice from Target's or his or her own external financial and legal advisers) that he or she, is by virtue of his or her fiduciary or statutory duties, required to change, withdraw or modify such recommendation or statement or make a recommendation or statement that is inconsistent with it; or
- (c) the Independent Expert concludes in the Independent Expert's Report (either initially or in any updated report) that the Transaction is not in the best interests of Shareholders.

11. Exclusivity

11.1 No shop restriction

Subject to clause 11.8, during the Exclusivity Period, Target must not, and must ensure that neither it nor any of its Representatives or other person on its or their behalf, directly or indirectly solicits, invites, encourages or initiates any Competing Proposal or any enquiries, expressions of interest, proposals, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to encourage or lead to, a Competing Proposal, or communicate any intention to do any of those things.

11.2 No talk restriction

Subject to clauses 11.5 and 11.8, during the Exclusivity Period Target must not, and must ensure that none of its Representatives and other person authorised by Target to act on its behalf do not, enter into, permit, continue or participate in, negotiations or discussions with any Third Party regarding a Competing Proposal, or if to do so may be reasonably be likely to encourage or lead to a Competing Proposal, even if:

- (a) the Competing Proposal was not directly or indirectly solicited, invited, initiated, or encouraged by Target or any of its Representatives; or
- (b) the Competing Proposal has been publicly announced.

11.3 No due diligence

Subject to clause 11.8 and without limiting the general nature of clause 11.2, during the Exclusivity Period, Target must not, and must ensure that its Representatives and other persons authorised by Target to act on its behalf do not directly or indirectly, make available to any Third Party, or permit any Third Party to receive, any non-public information relating to any entity within the Target Group in connection with or which may reasonably be likely to lead to such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal, unless in respect of an actual Competing Proposal that has not been directly or indirectly

solicited, invited, encouraged, permitted, continued or participated in, in breach of clauses 11.1 or 11.2, all of the following requirements are satisfied:

- (a) the Board has determined, in good faith, after having obtained written advice from its external legal, and, if appropriate, its financial advisers, that:
 - (i) the Competing Proposal is reasonably likely to constitute a Superior Proposal, or would be reasonably likely to constitute a Superior Proposal if it were to be proposed; and
 - (ii) failing to respond to such Competing Proposal would be likely to constitute a breach of the fiduciary or statutory obligations of the Target Directors;
- (b) the Third Party has first entered into a written agreement in favour of Target regarding the use and disclosure of the confidential information; and
- (c) to the extent that such information has not previously been provided to Acquirer, Target provides that information to Acquirer at the same time as it is provided to the Third Party.

11.4 Notification and matching right

- (a) During the Exclusivity Period, Target must immediately notify Acquirer if:
 - (i) it or any of its Representatives are contacted in relation to, or receive any Competing Proposal (or an approach, expression of interest or offer which falls short of being, but could become, a Competing Proposal); or
 - (ii) it or any of its Representatives, is approached (directly or indirectly) by any Third Party in connection with, to engage in or which may reasonably be expected to lead to any activity or action referred to in clauses 11.1, 11.2 or 11.3; or
 - (iii) it proposes to take any action of a kind referred to in clause 11.3.
- (b) If any event referred to in clause 11.4(a)(i) or 11.4(a)(ii) occurs, then Target must provide to Acquirer a notice specifying all material terms of any such Competing Proposal, approach or communication, including details of the proposed price or implied value (including the form of consideration), conditions, status of funding, timing and break fee (if any). Target must ask the person who has made the Competing Proposal (the **Competing Party**) for their consent to their name and other identifying details which may identify the Competing Party (**Identifying Details**) being provided by Target to Acquirer on a confidential basis. If consent is refused, Target may only withhold the Identifying Details from Acquirer to the extent necessary to satisfy what the Target Directors reasonably consider on the basis of written advice from their external legal advisers to be their fiduciary or statutory obligations.
- (c) At any time from when any event referred to in clauses 11.4(a)(i) or 11.4(a)(ii) occurs until the day that is 3 Business Days after Target gives notice to Acquirer under clause 11.4(b) (**Matching Period**):

- (i) Target must not enter into, or agree to enter into, any binding documentation to effect or implement the Competing Proposal;
 - (ii) no Target Director must make any public statement recommending the Competing Proposal to Shareholders; and
 - (iii) Acquirer will have the right (but not the obligation) to make a revised offer to Target or Shareholders (an *Acquirer Counter Proposal*) that Acquirer reasonably considers would provide an equivalent or a superior outcome for Shareholders when compared to the Competing Proposal.
- (d) Target must use its best endeavours to procure that the Target Directors consider any such Acquirer Counter Proposal during the Matching Period in good faith, and, if the Target Directors acting in good faith determine that the terms and conditions of the Acquirer Counter Proposal taken as a whole are no less favourable than those in the applicable Competing Proposal, then Target and Acquirer must use their reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Acquirer Counter Proposal as soon as reasonably practicable, and Target must use its best endeavours to procure that each Target Director makes a public statement to Shareholders recommending the Acquirer Counter Proposal to Shareholders.
- (e) Any material modification to, or development of, any Competing Proposal (which will include any modification relating to the price or value of any Competing Proposal or any incomplete or non-binding proposal or expression of interest becoming complete, capable of acceptance (whether or not subject to conditions) or binding) will be taken to constitute a new Competing Proposal in respect of which Target must comply with its obligations under this clause 11.

11.5 Fiduciary Exceptions

The restriction in clause 11.2 does not apply to the extent that it restricts Target or the Board from taking or refusing to take any action with respect to a bona fide Competing Proposal (which was not encouraged, solicited, invited, facilitated or initiated in contravention of clause 11.1), provided that the Board has determined, in good faith, after having obtained written advice from its external legal and, if appropriate, its financial advisers, that:

- (a) the Competing Proposal is a Superior Proposal, or would be a Superior Proposal if it were to be proposed; and
- (b) failing to respond to such bona fide Competing Proposal would be likely to constitute a breach of the fiduciary or statutory obligations of the Target Directors.

11.6 Standstill arrangements with other parties

During the Exclusivity Period, except with the prior written consent of Acquirer, Target must not amend or waive the terms of any standstill agreement or arrangement between Target and any person other than an entity within the Target Group.



11.7 Return of confidential information

If Target has, in the last 12 months before the date of this Deed, provided any confidential information to a person (other than an entity within the Acquirer Group) in relation to a possible Competing Proposal, Target must (if it has not already done so) promptly request in writing the immediate return or destruction by that person of such confidential information, and must promptly exercise its legal rights to ensure compliance with such a request.

11.8 Normal provision of information

Nothing in this clause 11 prevents a party from:

- (a) providing information required to be provided by law, including to satisfy its obligations of disclosure under the ASX Listing Rules or the listing rules of any other stock exchange or to any Public Authority; or
- (b) making presentations to, and responding to bona fide enquiries from, stockbrokers, portfolio investors and equity market analysts:
 - (i) in relation to the Transaction; or
 - (ii) in accordance with its usual practices.

12. Break Fee

12.1 Background

This clause 12 has been agreed to in circumstances where:

- (a) Acquirer and Target believe the implementation of the Transaction will provide significant benefits to their respective shareholders, and Acquirer and Target acknowledge that, if they enter into this Deed and the Transaction is subsequently not implemented, Acquirer will have incurred significant costs, including significant opportunity costs;
- (b) Acquirer requested provision be made for the payments outlined in this clause 12, without which Acquirer would not have entered into this Deed;
- (c) both the Board and the board of Acquirer believe that it is appropriate for both parties to agree to the payment referred to in this clause 12 to secure Acquirer's entry into this Deed; and
- (d) both parties have received legal advice in relation to this Deed and the operation of this clause 12.

The parties acknowledge and agree that the costs actually incurred by Acquirer and referred to in clause 12.1(a) will be of such nature that they cannot be accurately ascertained, but that the Break Fee is a genuine and reasonable pre-estimate of the cost and loss that would actually be suffered by Acquirer.



12.2 Payment of Break Fee by Target

Subject to clauses 12.3 and 12.6, Target must pay Acquirer the Break Fee if:

- (a) at any time prior to the End Date a Competing Proposal of any kind is announced by Target or a Third Party, and within twelve months after the date of that announcement, the Third Party or an associate of the Third Party completes in all material respects a transaction of the kind referred to in paragraph (a), (b) or (c) of the definition of Competing Proposal;
- (b) at any time before the earlier of the Implementation Date and the End Date, this Deed is terminated or the Scheme is not implemented as a result of the non satisfaction of the Conditions Precedent in clause 3.1(j) or clause 3.1(k);
- (c) at any time before the Scheme Meeting, any Target Director:
 - (i) fails to make any recommendation or statement required by clauses 10.1(a)(i) or 10.1(a)(ii) (in each case disregarding the operation of clause 10.1(b) and 10.2 for this purpose); or
 - (ii) makes a public statement inconsistent with, withdrawing or adversely changing or modifying his or her recommendation under clause 10.1(a)(i) or statement under clause 10.1(a)(ii) or making a recommendation or statement that is inconsistent with such recommendation or statement (in each case disregarding the operation of clause 10.1(b) and 10.2 for this purpose),and the Condition Precedent in clause 3.1(e), 3.1(f) or 3.1(i) is not satisfied;
- (d) Acquirer terminates this Deed under:
 - (i) clause 20.1(a); or
 - (ii) clause 20.1(c); or
- (e) Target wishes to exercise its right to terminate this Deed pursuant to clause 20.1(c) or 20.1(d).

12.3 Payment conditions

- (a) Notwithstanding the occurrence of any event under clause 12.2, the Break Fee is not payable under clause 12.2 if the Scheme becomes Effective.
- (b) Target can only ever be liable to pay the Break Fee once.
- (c) For the avoidance of doubt, but without limiting clause 12.2, the Break Fee will not be payable merely because the Scheme or the Capital Return is not approved by the Shareholders at the Scheme Meeting or Special General Meeting (respectively).

12.4 Timing of payment

If the Break Fee is payable under this Deed, Target must pay the Break Fee without set-off or withholding within five Business Days of receipt of a demand for payment from Acquirer.



12.5 Nature of payment

The amount payable by Target to Acquirer under clause 12.2 is an amount to compensate Acquirer for:

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

- (e) funding costs

incurred by Acquirer.

12.6 Compliance with law

This clause 12 does not impose obligations on Target to the extent (and only to the extent) that the performance of all or part of those obligations:

- (a) constitutes unacceptable circumstances as declared by the Australian Takeovers Panel (after the later of the expiry of the period to request a review or the review panel making its decision); or
- (b) are held to be unenforceable by a court after all rights of appeal have been exhausted.

If and to the extent any of the above apply, Acquirer must reimburse all or part of the Break Fee (as the case may be) within five Business Days of receipt of a demand for reimbursement from Target.

13. Promotion of Transaction

During the Exclusivity Period, Target will provide all reasonable cooperation to Acquirer in promoting the merits of the Transaction to Shareholders, including procuring that senior executives of the Target Group, as may be reasonably available:

- (a) meet with key Shareholders if reasonably requested to do so by Acquirer; and
- (b) communicate with the employees, customers and suppliers of the Target Group,

unless and until a Competing Proposal is made and the Board, acting in good faith, determines by majority vote (after obtaining advice from its external financial and legal advisers) that the Competing Proposal could reasonably be considered to constitute a Superior Proposal.

14. Conduct of business and requests for access

14.1 Conduct of business

- (a) Subject to clause 14.4, from the date of this Deed up until and including the Implementation Date, Target must ensure that it and the other entities within the Target Group:
- (i) conduct its or their businesses in the ordinary and proper course and does not make any significant changes to the nature or scale of any activity comprised in the business of Target subject to matters which have been disclosed to ASX or to Acquirer prior to the date of this Deed;
 - (ii) make all reasonable efforts to:
 - (A) keep available the services of their officers and employees; and
 - (B) preserve their relationships with Public Authorities, customers, suppliers, trade unions and others with whom they have business dealings, in a manner that is consistent with their ordinary conduct of business;
 - (iii) do not enter any lines of business or other material activities in which the Target Group is not engaged at the date of this Deed;
 - (iv) procure that no Prescribed Occurrence (other than item 15 of Schedule 4) occurs between the date of execution of this deed and the End Date;
 - (v) procure that none of the Target Representations and Warranties are breached between the date of execution of this deed and the End Date;
 - (vi) ensure that Acquirer is kept up-to-date on, and reasonably consider Acquirer's views in relation to, any significant discussions and correspondence with Shareholders; and
 - (vii) ensure that Acquirer is kept up-to-date on, and reasonably consider Acquirer's views in relation to, any significant discussions, correspondence and negotiations between any entity within the Target Group and any Public Authority.
- (b) From the date of the execution of this Deed, Target will not, and will procure that each entity within the Target Group does not, do any of the following without the prior consent of Acquirer (such consent not to be unreasonably withheld):
- (i) increase the remuneration of, pay any bonus or termination or retention payments (other than in accordance with existing contractual entitlements as at, or any determination of the Board made on or before, the date of this Deed) to, or otherwise enter into new or vary the employment arrangements with any Target Director or any of the employees of any entity within the Target Group whose total annual employment cost exceeds \$250,000;
 - (ii) issue, grant or amend the terms of any securities, options or rights to, or accelerate the rights of, any of the employees of the Target Group to

- compensation or benefits of any kind (including under an employee or director share, option or incentive plan and including by vesting any outstanding performance rights), other than any shares or performance rights issued or granted in circumstances falling within paragraphs (a) to (e) of item 4 in schedule 4;
- (iii) acquire (including by making takeover offers under Chapter 6 of the Corporations Act), or dispose of, one or more companies, trusts, businesses, assets, securities or shares (or any interest or economic interest in one or more companies, trusts, businesses, assets, securities or shares) for an amount in aggregate greater than \$100 million (other than capital expenditure incurred in the ordinary course of business);
 - (iv) enter into any agreement, joint venture, asset or profit share, partnership or commitment which would require expenditure, or the foregoing of revenue, by the Target Group of an amount which is, in aggregate, more than \$100 million;
 - (v) borrow an amount or amounts or incur financial indebtedness in aggregate more than \$100 million, other than amounts borrowed:
 - (A) in the ordinary course of business to fund movements in working capital;
 - (B) to fund cash outflows for the remaining costs associated with Target's Cost Reduction Program and Demerger Transaction Costs (as disclosed on Slide 20 of Target's FY11 Full Year Financial Results Presentation released to ASX on 23 August 2011);
 - (C) to fund payments of taxes and excises; or
 - (D) to fund payment of the dividend referred to in clause 15(a).
 - (vi) enter into, amend or terminate, or waive or otherwise forgo in any material respect any material rights under, any Material Undertaking Contract (provided that nothing in this clause 14.1(b)(vi) restricts any incurring of financial indebtedness that would not be prohibited by clause 14.1(b)(v));
 - (vii) make any changes to its constitution or pass any resolution of shareholders other than any resolution required under this Deed;
 - (viii) waive or compromise in any material respect any material claim or right otherwise than in the ordinary course of business; or
 - (ix) agree, offer, commit or announce an irrevocable intention to do any of the things referred to in clauses 14.1(b)(i) to 14.1(b)(viii),
- except to the extent that:
- (x) Target has publicly announced; or
 - (xi) Target has notified Acquirer in writing,

prior to the execution of this Deed that it will, or that it intends to, do any of the things referred to in clauses 14.1(b)(i) to 14.1(b)(ix).

14.2 Bidder Access

From the date of despatch of the Scheme Booklet to Shareholders up until and including the Implementation Date, and subject always to clause 14.4 and to the confidentiality undertakings in clause 21, Target must ensure that it and the other entities within the Target Group:

- (a) provide Acquirer and its Representatives with reasonable access (upon reasonable notice) to the Target Group's:
 - (i) senior management;
 - (ii) offices and other facilities; and
 - (iii) books and records; and
- (b) otherwise provide reasonable co-operation to Acquirer and its Representatives, for the purpose of Acquirer and its Representatives:
 - (i) understanding the business and operation of the Target Group;
 - (ii) doing all things necessary under this Deed or in connection with the Transaction; or
 - (iii) planning for the integration of the Target Group into the Acquirer Group following the Implementation Date.

14.3 Co-operation and Integration

From the date of despatch of the Scheme Booklet to Shareholders up until and including the Implementation Date, and subject always to clause 14.4 and to the confidentiality undertakings in clause 21:

- (a) the Parties will conduct regular meetings between nominated senior executives (*Merger Implementation Committee*) to facilitate the access referred to in clause 14.2 ; and
- (b) Acquirer and Target must seek to identify any change of control or similar provisions in any material leases, material licenses, and other material contracts to which a member of the Target Group is a party and any permits and authorisations issued to a member of the Target Group which may be triggered by the Transaction and, only if requested in writing by Acquirer, Target must, in respect of each such material lease, licence and contract:
 - (i) initiate contact with the relevant counterparties or Public Authority;
 - (ii) procure that any notifications required to be given to such counterparties or Public Authority in relation to the Transaction (*Notifications*) are given;
 - (iii) request that such counterparties or Public Authority provide any consents required in relation to the Transaction (*Consents*);

- (iv) promptly provide to the relevant counterparties or Public Authority all additional information reasonably required by them for the purposes of considering whether or not to give any Consent;
- (v) make representatives available to meet with the relevant counterparties or Public Authority to address issues arising in relation to Transaction or the Consents;
- (vi) use reasonable endeavours to comply with any reasonable requirements of the relevant counterparties or Public Authority as a condition of giving any Consent; and
- (vii) consult with Acquirer in good faith in relation to the matters referred to in paragraphs (i) to (vi) (including the form and content of any Notifications and Consents) and, to the extent practicable, invite Representatives of Acquirer to be involved in material discussions in respect of any material Notifications or Consents.

14.4 Qualifications

Nothing in this clause 14:

- (a) restricts the ability of Target to take any action which:
 - (i) is required by this Deed or the Scheme or in connection with the Capital Return;
 - (ii) Target has fully and fairly disclosed in an announcement made to ASX prior to the date of this Deed; or
 - (iii) has been agreed to in writing by Acquirer, such agreement not to be unreasonably withheld or delayed; or
- (b) requires any entity within the Target Group to take or refrain from taking any action that would cause unreasonable disruption to the business or operations of the Target Group (including any disruption to relationships between any entity within the Target Group and their customers, suppliers, employees or other contractual counterparties).

15. Dividend and Capital Return

- (a) Target's final dividend for the 2011 financial year will be \$0.1325 per Share as announced to ASX on 23 August 2011.
- (b) Target's Dividend Reinvestment Plan shall remain suspended until the Implementation Date.
- (c) The parties acknowledge and agree that neither the:
 - (i) declaration and payment of the dividend referred to in clause 15(a); nor
 - (ii) implementation of the Capital Return,will:



- (A) constitute a Prescribed Occurrence or otherwise breach the provisions of this Deed; or
- (B) reduce the Scheme Consideration.

16. Partly Paid Shares

- (a) The parties will agree a transaction structure (to be implemented contemporaneously with, or as part of, the Transaction) pursuant to which holders of Target partly paid ordinary shares (*PPS*) will be offered the opportunity to participate in accordance with their terms in the Capital Return and have their PPS acquired by Acquirer or BidCo (the *PPS Proposal*).
- (b) The parties will work together in good faith to agree the terms of the PPS Proposal, subject to the following overriding requirements:
 - (i) The PPS Proposal must comply with the terms of the Trust Deeds, which includes a requirement (among other things) that due regard (in the opinion of the Target Directors) is taken of the unpaid portion of the issue price of the PPS in determining the terms of the PPS Proposal.
 - (ii) The PPS Proposal will, to the extent necessary, be subject to the approval of Target shareholders.
 - (iii) To the extent that the PPS Proposal does not form a part of the Transaction (but, instead, is implemented contemporaneously with the Transaction):
 - (A) the PPS Proposal will be conditional on the Scheme becoming Effective; and
 - (B) the Scheme will not be conditional on the PPS Proposal being approved and/or becoming effective,
 - (iv) The failure of holders of PPS to approve the PPS Proposal and/or, to the extent applicable, the Transaction will not prevent the Transaction proceeding if the holders of:
 - (A) Target ordinary shares approve the Capital Return; and
 - (B) the holders of Target fully paid ordinary shares approve the Scheme,by the requisite majorities.
 - (v) The consideration payable to holders of partly paid ordinary shares under the PPS Proposal must be not less than the amount proposed to be paid to those holders under the Offer, adjusted for the increase in net consideration to be received by holders of Shares under the Scheme.
 - (vi) The terms of the PPS Proposal must be not substantially less favourable to holders of partly paid ordinary shares than the terms applicable to such holders under the Offer.



- (c) If within 10 Business Days following the execution of this Deed, Target and Acquirer have not agreed the form of the PPS Proposal, the form of the PPS Proposal may be determined by Target (acting reasonably) provided that it must comply with the requirements of clauses 16(b)(i) to 16(b)(iv).
- (d) Following agreement or determination of the form of the PPS Proposal in accordance with clause 16(b) or 16(c) (respectively), the parties will agree amendments to this Deed to reflect such structural changes as are necessary to facilitate the PPS Proposal on the terms so agreed or determined.
- (e) In this clause 16, *Trust Deeds* means the Elders Employee Share Plan Trust Deed, dated 15 December 1987 and The Elders IXL Employee Share Incentive Plan Trust Deed, dated 15 October 1985 (as amended).

17. Representations and warranties

17.1 Acquirer representations and warranties

- (a) Acquirer represents and warrants to Target (in its own right and separately as trustee or nominee for each of the other Target Indemnified Parties) that, except as expressly consented to by Target in writing, each Acquirer Representation and Warranty is true and correct.
- (b) Unless expressed to be given at a particular time (in which case it is given at that time), each Acquirer Representation and Warranty is given:
 - (i) as at the date of this Deed; and
 - (ii) as at 8am on the Second Court Date.

17.2 Indemnity by Acquirer

Acquirer agrees with Target (in its own right and separately as trustee or nominee for each of the other Target Indemnified Parties) to indemnify the Target Indemnified Parties against any Liability that any of them suffers or incurs or is liable for arising out of or in connection with any breach of the Acquirer Representations and Warranties, provided however that Acquirer shall not be liable for any indirect loss, economic loss or loss of profit whatsoever and however arising, including:

- (a) consequential loss or damage; or
- (b) loss of use, production, revenue, income, profits, business and savings or business interruption (whether or not the indirect loss or damage was foreseeable).

17.3 Target Representations and Warranties

- (a) Target represents and warrants to Acquirer (in its own right and separately as trustee or nominee for each of the other Acquirer Indemnified Parties) that, except as expressly consented to by Acquirer in writing, each Target Representation and Warranty is true and correct.
- (b) Unless expressed to be given at a particular time (in which case it is given at that time), each Target Representation and Warranty is given:

- (i) as at the date of this Deed; and
- (ii) as at 8am on the Second Court Date.

17.4 Indemnity by Target

Target agrees with Acquirer (in its own right and separately as trustee or nominee for each of the other Acquirer Indemnified Parties) to indemnify the Acquirer Indemnified Parties against any Liability that any of them suffers or incurs or is liable for by reason of any breach of the Target Representations and Warranties, provided however that Target shall not be liable for any indirect loss, economic loss or loss of profit whatsoever and however arising, including:

- (a) consequential loss or damage; or
- (b) loss of use, production, revenue, income, profits, business and savings or business interruption (whether or not the indirect loss or damage was foreseeable).

17.5 Survival of representations

Each Acquirer Representation and Warranty and Target Representation and Warranty:

- (a) is severable; and
- (b) survives the termination of this Deed, but does not survive, and will be taken to have no further force or effect following implementation of the Scheme.

17.6 Survival of indemnities

Each indemnity in this Deed (including those in clauses 17.2 and 17.4):

- (a) is severable;
- (b) is a continuing obligation;
- (c) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this Deed; and
- (d) survives the termination of this Deed, but does not survive and will be taken to have no further force and effect following implementation of the Scheme.

18. Releases

18.1 Target Indemnified Parties

- (a) Without limiting Acquirer's rights under clause 20, to the fullest extent permitted by law, Acquirer releases its rights against, and agrees with Target that it will not make a Claim against, any Target Indemnified Party (other than Target) in connection with:
 - (i) any breach of any representation, covenant and warranty of Target in this Deed; or
 - (ii) any disclosure made by any Target Indemnified Party that contains any statement which is false or misleading whether in content or by omission,

except to the extent that the relevant Target Indemnified Party has not acted in good faith or has engaged in fraud or wilful misconduct.

- (b) This clause is subject to any Corporations Act restriction and will be read down accordingly. Target receives and holds the benefit of this clause as trustee for each other Target Indemnified Party.

18.2 Acquirer Indemnified Parties

- (a) Without limiting Target's rights under clause 20, to the fullest extent permitted by law, Target releases its rights against, and agrees with Acquirer that it will not make a Claim against, any Acquirer Indemnified Party (other than Acquirer) in connection with:
 - (i) any breach of any representation, covenant and warranty of Acquirer in this Deed; or
 - (ii) any disclosure made by any Acquirer Indemnified Party that contains any statement which is false or misleading whether in content or by omission, except to the extent that the relevant Acquirer Indemnified Party has not acted in good faith or has engaged in fraud or wilful misconduct.
- (b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Acquirer receives and holds the benefit of this clause as trustee for each other Acquirer Indemnified Party.

19. Public announcements

19.1 Announcement of the Transaction

As soon as reasonably practicable after execution of this Deed and by 8pm on the date of this Deed, Target must release to ASX a public announcement, which:

- (a) confirms that Target and Acquirer have entered into this Deed;
- (b) annexes a copy of this Deed; and
- (c) includes a statement (in a form agreed with Acquirer, acting reasonably) describing the need for, and effect of, the relief provided by ASIC under section 655A(1) of the Corporations Act in respect of section 631 of the Corporations Act in relation to the Offer and that such relief has taken effect.

19.2 Other public announcements

Subject to clause 19.3, each party must use its best endeavours to consult in good faith with the other party prior to making any public announcements to any stock exchange in connection with the Transaction.

19.3 Required announcement

Where a party is required by applicable law, the ASX Listing Rules or any other applicable stock exchange rule or regulation to make any announcement or make any disclosure

relating to matters the subject of the Transaction, it may do so only after it has, to the maximum extent possible in the circumstances:

- (a) given the other party as much notice as is reasonably practicable in the context of any deadlines imposed by law or a Public Authority; and
- (b) consulted with the other party in good faith as to the content of that announcement or disclosure.

20. Termination

20.1 General rights

Either Acquirer or Target may terminate this Deed by written notice to the other:

- (a) at any time before 8am on the Second Court Date and prior to the implementation of the Scheme on the Implementation Date, if:
 - (i) the other has materially breached any provision of this Deed (including any material breach of any Target Representation and Warranty or Acquirer Representation and Warranty);
 - (ii) the party wishing to terminate has given written notice to the other in a timely manner setting out the relevant circumstances and stating an intention to terminate this Deed; and
 - (iii) the relevant circumstances subsist for five Business Days from the time the notice of intention to terminate is given (or any shorter period ending at 5pm on the Business Day before the Second Court Date);
- (b) in the circumstances set out in, and in accordance with, clause 3.6 (except if the Condition Precedent in clause 3.1(c) has not been satisfied, in which case clause 20.1(d) will apply) provided that if the party not seeking to terminate has a right to waive the relevant Condition Precedent, the party seeking to terminate will first have given the other party 5 Business Days notice of its intention to terminate, and during that period the other party has not waived the Condition Precedent;
- (c) if the Board:
 - (i) fails to recommend or, in accordance with clause 10.1(a)(i) or 10.1(a)(ii), withdraws, adversely modifies or changes its support of the Scheme or its recommendation that Shareholders vote in favour of the Scheme and the Capital Return (in each case disregarding the operation of clause 10.1(b) and 10.2 for this purpose); or
 - (ii) makes a public statement indicating that it no longer supports the Scheme or the Capital Return or that it supports a Competing Proposal, provided that in relation to termination by Target it has first paid the Break Fee under clause 12.2(e); or



- (d) in the circumstances set out in, and in accordance with clause 3.6, if clause 3.1(c) has not been satisfied, provided that the Target has first paid the Break Fee under clause 12.2(e).

20.2 Effect of termination

If this Deed is terminated by a party under clauses 3.6 or 20.1, except to the extent that the termination results from a breach by a party of its obligations under this Deed, this Deed will be of no force or effect, without any liability or obligation on the part of any party, other than in relation to rights and obligations that accrued prior to termination and the provisions of this clause and of clauses 1, 12, 17, 18, 21, 22 and 23, which will remain in force after the termination.

21. Confidentiality

Each party acknowledges and agrees that it continues to be bound by the Confidentiality Deed. However, to the extent that there is any inconsistency between the Confidentiality Agreement and this Deed, the terms of this Deed will prevail.

22. Notices

Any communication under or in connection with this Deed:

- (a) must be in writing;
- (b) must be addressed as shown below:
- | | | | |
|------|--------------|------------|---|
| (i) | to Target: | Address: | Foster's Group Limited
77-87 Southbank Boulevard
Southbank Victoria 3006 |
| | | Attention: | Company Secretary |
| | | Fax No: | +61 3 9645 7226; and |
| (ii) | to Acquirer: | Address: | SABMiller plc
SABMiller House, Church Street West
Woking, Surrey, GU21 6HS, UK |
| | | Attention: | General Counsel |
| | | Fax No: | +44 1483 264 103. |
- (or as otherwise notified by that party to the other parties from time to time);
- (c) must be signed by the party making the communication or by a person duly authorised by that party;
- (d) must be delivered to the address, or sent by fax to the number, of the addressee in accordance with clause 22(b); and
- (e) will be deemed to be received by the addressee:

- (i) (in the case of prepaid post) on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;
- (ii) (in the case of fax) at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is not a Business Day, or is after 5pm on a Business Day, when that communication will be deemed to be received at 9am on the next Business Day at the place of receipt; and
- (iii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 22(b) unless that delivery is not made on a Business Day, or after 5pm on a Business Day, when that communication will be deemed to be received at 9am on the next Business Day.

23. General

23.1 GST

- (a) Unless otherwise expressly stated, all amounts payable under this Deed (other than the Scheme Consideration and the Capital Return payment) are expressed to be exclusive of GST. If GST is payable on a Taxable Supply made under or in connection with this Deed, the recipient of the supply must pay the supplier, an additional amount equal to the GST payable on that supply provided that the supplier first issues a tax invoice for that supply.
- (b) Without limiting clause 23.1(a), if an amount payable under this Deed is calculated by reference to a liability incurred by a party, then the amount of the liability must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of the acquisition of the supply to which that liability relates. A party will be assumed to be entitled to a full Input Tax Credit unless it demonstrates that its entitlement is otherwise prior to the date on which payment must be made.
- (c) Words and expressions used in this clause 23.1 have the same meaning as in *A New Tax System (Goods and Services) Tax Act 1999* (Cth).

23.2 Entire agreement

This Deed contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct and prior agreements and understandings between the parties in connection with its subject matter.

23.3 Assignment

Neither party may assign or otherwise transfer any of its rights arising under this Deed without the prior written consent of the other party.

23.4 Severability

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

23.5 No waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

23.6 Variation

A variation of any term of this Deed must be in writing and executed by the parties as a deed.

23.7 Costs and expenses

- (a) Except as otherwise provided in this Deed, each party must pay its own legal costs and expenses in respect of the negotiation, preparation, and proposed, attempted or actual implementation of this Deed and the Scheme.
- (b) Acquirer must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this Deed and the Scheme, and in respect of any agreement or document contemplated by this Deed.

23.8 Further assurances

Each party must do anything necessary (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

23.9 No merger

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

23.10 Further assurances

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

23.11 Governing law

This Deed is governed by the laws of Victoria. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there, and waives any right to claim that those courts are an inconvenient forum.

23.12 Counterparts

This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement. The parties agree that a facsimile copy of a counterpart received from a party shall be regarded as an original copy of that counterpart received from that party.



Schedule 1

Acquirer Representations and Warranties

1. **(Status)** Acquirer is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
2. **(Solvency)** Acquirer is not affected by an Insolvency Event.
3. **(Power)** Acquirer has the corporate power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed.
4. **(Corporate authorisations)** Acquirer has taken all necessary corporate action to authorise the entry into and performance of this Deed and to carry out the transactions contemplated by this Deed.
5. **(Documents binding)** This Deed is Acquirer's valid and binding obligation enforceable in accordance with its terms, subject to any necessary stamping and registration.
6. **(Transactions permitted)** The execution and performance by Acquirer of this Deed and each transaction contemplated under this Deed, subject to and in accordance with its terms, did not and will not violate in any respect a provision of:
 - (a) a law or treaty or a judgment, ruling, order or decree of a Public Authority binding on it;
 - (b) its constitution or other constituent documents; or
 - (c) any other document which is binding on it or its assets.
7. **(Acquirer Information)** The Acquirer Information provided to Target:
 - (a) at the time it was provided, was provided in good faith and on the understanding that each of the Target Indemnified Parties will rely on that information to prepare the Scheme Booklet or supplementary disclosure to Shareholders (as applicable) and to propose and implement the Scheme in accordance with the Corporations Act;
 - (b) at the time Target commenced despatch of the Scheme Booklet or supplementary disclosure (as applicable) to Shareholders, does not contain any statement which is materially misleading or deceptive (including by way of omission); and
 - (c) complies in all material respects with relevant laws (including the Corporations Act and relevant ASIC Regulatory Guides).
8. **(Continuing Obligation)** Acquirer will, as a continuing obligation, provide Target with all further or new information which may arise after the Scheme Booklet has been despatched until the date that the Scheme Meetings is to be held which is necessary to ensure that the Acquirer Information, in the form and context in which that information appears in the version of the Scheme Booklet sent to Shareholders is not misleading or deceptive in any material respect (whether by omission or otherwise).

9. **(Information for Independent Expert)** All information provided by or on behalf of Acquirer to the Independent Expert to enable the Independent Expert's Report to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report for inclusion in the Scheme Booklet.



Schedule 2

Target Representations and Warranties

1. **(Status)** Target is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
2. **(Solvency)** No entity within the Target Group is affected by an Insolvency Event.
3. **(Power)** Target has the corporate power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed.
4. **(Corporate authorisations)** Target has taken or will take all necessary corporate action to authorise the entry into and performance of this Deed and to carry out the transactions contemplated by this Deed.
5. **(Documents binding)** This Deed is Target's valid and binding obligation enforceable in accordance with its terms, subject to any necessary stamping and registration.
6. **(Transactions permitted)** The execution and performance by Target of this Deed and each transaction contemplated under this Deed, subject to and in accordance with its terms, did not and will not violate in any respect a provision of:
 - (a) a law or treaty or a judgment, ruling, order or decree of a Public Authority binding on it other than such exceptions as would not be reasonably expected to have a material adverse effect on Target's ability to perform its obligations under this Deed;
 - (b) its constitution or other constituent documents; or
 - (c) any other document which is binding on it or its assets.
7. **(Capital structure)** Target's capital structure, including all securities issued and outstanding at the date of this Deed is as set out in schedule 3. No entity within the Target Group is subject to any obligation (including any contingent obligation) to issue or have transferred to any person securities in or of it or any other entity of the Target Group, save as pursuant to the Foster's Group Limited Long Term Incentive Plan to the extent disclosed in schedule 3.
8. **(Continuous disclosure)** Target has complied with its continuous disclosure obligations under ASX Listing Rule 3.1 and there is no information that Target is withholding pursuant to Listing Rule 3.1A.
9. **(Target Information)** The Target Information:
 - (a) at the time Target commenced despatch of the Scheme Booklet to Shareholders, does not contain any statement which is materially misleading or deceptive (including by way of omission); and
 - (b) complies in all material respects with relevant laws (including the Corporations Act and relevant ASIC Regulatory Guides).



10. **(Continuing Obligation)** Target will, as a continuing obligation, provide Acquirer with all further or new information which may arise after the Scheme Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that the Target Information, in the form and context in which that information appears in the version of the Scheme Booklet sent to Shareholders is not misleading or deceptive in any material respect (whether by omission or otherwise).
11. **(Information for Independent Expert)** All information provided by or on behalf of Target to the Independent Expert to enable its report to be prepared will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing its report for inclusion in the Scheme Booklet.
12. **(Compliance)** To Target's knowledge, no entity within the Target Group:
- (a) has failed to comply in any material respect with:
 - (i) any Australian law or regulation applicable to them; or
 - (ii) any order of any Australian Public Authority having jurisdiction over it;
 - (b) does not hold any material licence or permit necessary for it to conduct the business of the Target Group as it is presently being conducted as at the date of this Deed,
- where any such non-compliance or any failure to hold such licence or permit would diminish or is reasonably likely to diminish:
- (c) the consolidated net assets of the Target Group, taken as a whole, by at least \$375 million; or
 - (d) the consolidated net profit after tax of the Target Group, taken as a whole, by at least \$75 million in any financial year of Target.
13. **(Not misleading)** All information that Target has provided in writing to Acquirer is not misleading and:
- (a) it is not aware that any such information is inaccurate; and
 - (b) it has not omitted any information required to make the information provided in writing to Acquirer not materially misleading.
14. **(Material Contract)** To Target's knowledge, other than as expressly disclosed or notified by Target to Acquirer or its Advisers prior to execution of this Deed, no person, as a result of the Transaction, the acquisition of Shares by BidCo under the Scheme or the delisting of Target if the Transaction is successful is or will be entitled or has stated an intention (in all cases whether absolutely or contingently) to exercise or assert (whether absolutely or contingently) any right under any provision of any contract or understanding to which a Target Group company is a party or is bound to:
- (a) terminate, vary the terms of or accelerate the performance of obligations under a Material Warranty Contract; or
 - (b) acquire or require the disposal of or alter the terms of investment in any company, business, trust, asset or share (or any interest in one or more companies,

businesses, assets, trusts or shares) held by any entity within the Target Group with a value of more than \$100 million in aggregate.

Schedule 3**Target capital structure**

Security	Number on issue at the date of this Deed
Fully paid ordinary shares	1,940,894,542
Partly paid ordinary Shares	786,510
Performance Rights on issue as at the date of this Deed, or to be issued after the date of this Deed, pursuant to the Foster's Group Limited Long Term Incentive Plan (which amount will be reduced to the extent that the issue of 960,088 Performance Rights to John Pollaers is not approved at Target's Annual General Meeting in October 2011)	2,695,887



Schedule 4

Prescribed Occurrences

1. Target converting all or any of its shares into a larger or smaller number of shares under Section 254H of the Corporations Act.
2. Target or a subsidiary of Target resolving to reduce its share capital in any way.
3. Target or a subsidiary of Target entering into a buyback agreement or resolving to approve the terms of a buyback agreement under section 257C(1) or 257D(1) of the Corporations Act.
4. Target or a subsidiary of Target issuing any shares or granting an option over its shares or agreeing to make such an issue or grant such an option, excluding any of the following to the extent it has been disclosed in writing to Acquirer prior to execution of this Deed:
 - (a) any issue of shares made on the exercise of performance rights issued by Target under the Foster's Group Limited Long Term Incentive Plan where those performance rights were issued prior to the execution of this Deed;
 - (b) any issue of performance rights by Target under the Foster's Group Limited Long Term Incentive Plan pursuant to offers of performance rights that were made by Target under the Foster's Group Limited Long Term Incentive Plan prior to the execution of this Deed;
 - (c) any issue of performance rights by Target under the Foster's Group Limited Long Term Incentive Plan made to holders of performance rights that were issued by Target under the Foster's Group Limited Long Term Incentive Plan prior to the execution of this Deed to the extent such issue of performance rights is made to compensate the holders of those performance rights for any inability to participate, in respect of those performance rights, in the Capital Return;
 - (d) any issue of shares made on the exercise of performance rights referred to in paragraph (b) or (c); and
 - (e) any issue of Shares by Target under its Restricted Share Plan pursuant to offers of Shares that were made by Target under the Foster's Group Limited Restricted Share Plan prior to the execution of this Deed.
5. Target or a subsidiary of Target issuing, or agreeing to issue, convertible notes.
6. Target or a subsidiary of Target disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property.
7. Target or a subsidiary of Target resolving to be wound up.
8. The appointment of a liquidator or provisional liquidator of Target or a subsidiary of Target.
9. The making of an order by a court for the winding up of Target or a subsidiary of Target.

10. An administrator of Target or a subsidiary of Target being appointed under section 436A, 436B or 436C of the Corporations Act.
11. Target or a subsidiary of Target executing a deed of company arrangement.
12. The appointment of a receiver, or a receiver and manager in relation to the whole, or a substantial part, of the property of Target or a subsidiary of Target.
13. Target announcing, making, declaring or paying any dividend or other distribution (whether in cash or in specie) other than:
 - (a) the Capital Return; or
 - (b) as permitted by clause 15 of this Deed.

Executed and delivered as a Deed in Melbourne, Australia.

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

Signed Sealed and Delivered for
SABMiller plc by its attorney in the
presence of:

[Signature]

Witness Signature

Ratha Nabanidham

Print Name

[Signature]

Attorney Signature

Andrew Woodhouse

Print Name

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001*
(Cth) by **Foster's Group Limited**:

[signature]

Director Signature

Michael James Ullmer

Print Name

[signature]

Director/Secretary Signature

John Carl Pollaers

Print Name

Annexure 1**Form of Scheme**

Date	2011
Between	<p>Scheme of Arrangement under Part 5.1 of the Corporations Act.</p> <ol style="list-style-type: none"> 1. Foster's Group Limited (ABN 49 007 620 886) registered in South Australia of 77-87 Southbank Boulevard, Southbank Victoria 3006 (Target); and 2. The holders of Shares as at the Record Date (other than Excluded Shareholders).

1. Definitions and interpretation**1.1 Definitions**

The meanings of the terms used in this scheme of arrangement are set out below.

Acquirer means SABMiller plc (Company No. 03528416).

Acquirer Group means Acquirer and its Related Bodies Corporate (excluding, at any time, Target and its Subsidiaries to the extent that Target and its Subsidiaries are subsidiaries of Acquirer at that time).

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 known as the Australian Securities Exchange operated by it.

BidCo means SABMiller Beverage Investments Pty Limited (ACN 150 900 093).

Board means the board of directors of Target.

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

CHES means the clearing house electronic sub-register system of share transfers operated by ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532).

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

Court means the Supreme Court of Victoria or such other court of competent jurisdiction under the Corporations Act agreed to in writing between BidCo and Target.

Deed Poll means the deed poll dated [] executed by BidCo and Acquirer in favour of the Scheme Shareholders.



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) of the Corporations Act in relation to this scheme.

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

End Date means 29 February 2012.

Excluded Shareholder means any Shareholder who is a member of the BidCo Group or any other Shareholder to the extent it holds a Share on behalf of, or for the benefit of, any entity within the BidCo Group.

Implementation Date means the fifth Business Day after the Record Date or such other date agreed to in writing between BidCo and Target.

Listing Rules means the official listing rules of ASX.

Partly Paid Shares means the 786,510 Target partly paid ordinary shares that are not listed on ASX.

Record Date means 7pm on the fifth Business Day after the Effective Date or such other date agreed to in writing between Acquirer and Target.

Registered Address means, in relation to a Shareholder, the address shown in the Share Register.

Related Body Corporate has the meaning given in the Corporations Act.

Scheme Consideration means \$5.10 cash per Scheme Share.

Scheme Implementation Deed means the Scheme Implementation Deed dated 21 September 2011 between Acquirer and Target.

Scheme Meeting means the meeting of Shareholders (other than Excluded Shareholders) ordered by the Court to be convened under section 411(1) of the Corporations Act.

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

Scheme Shareholders means Shareholders (other than Excluded Shareholders) at the Record Date.

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

Shareholders means each person who is registered as the holder of Shares from time to time.

Share Register means the register of members of Target maintained in accordance with the Corporations Act.

Share Registry means Computershare Investor Services Pty Ltd or any replacement provider of share registry services to Target.

Subsidiary has the meaning given in the Corporations Act.

Trustee means Target as trustee for the Scheme Shareholders.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause or schedule is a reference to a clause of or schedule to this scheme of arrangement.
- (f) A reference to an *agreement* or *document* (including a reference to this scheme) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this scheme of arrangement or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
- (g) A reference to a party to this scheme of arrangement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (j) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (k) A reference to *dollars* and \$ is to Australian currency.
- (l) All references to time are to Melbourne, Australia time.
- (m) Mentioning anything after *includes, including, for example*, or similar expressions, does not limit what else might be included.
- (n) A term or expression which is defined in the Corporations Act but is not defined in this Deed, has the meaning given in the Corporations Act.

1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.



1.4 Listing requirements included as law

A listing rule or business rule of a financial market will be regarded as a *law*, and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

2. Preliminary

2.1 Target

- (a) Target is a public company limited by shares, registered in South Australia and admitted to the official list of ASX.
- (b) Shares (other than the Partly Paid Shares) are officially quoted on the ASX. As at [*] 2011, Target had the following securities on issue:
 - (i) 1,940,894,542 Target fully paid ordinary shares;
 - (ii) 786,510 Target partly paid ordinary shares; and
 - (iii) [2,695,887] performance rights outstanding pursuant to the Foster's Group Limited Long Term Incentive Plan conferring rights to be issued [2,695,887] Shares.

2.2 BidCo

BidCo is a company registered in Victoria, Australia and is a wholly-owned Subsidiary of Acquirer.

2.3 Consequence of this scheme becoming Effective

- (a) If this scheme becomes Effective:
 - (i) BidCo will provide the Scheme Consideration to Scheme Shareholders in accordance with this scheme; and
 - (ii) all the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to BidCo, and Target will enter BidCo in the Share Register as the holder of the Scheme Shares with the result that Target will become a wholly-owned subsidiary of BidCo.
- (b) Acquirer and Target entered into the Scheme Implementation Deed to facilitate the proposal of this scheme by Target and its implementation.

3. Conditions

- (a) This scheme is conditional on all the conditions precedent in clause 3.1 of the Scheme Implementation Deed (other than the condition in clause 3.1(i)) having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed by 8am on the Second Court Date.



- (b) The satisfaction of clause 3(a) is a condition precedent to the operation of clauses 4.2 and 5.
- (c) This scheme will lapse and be of no further force or effect if the Effective Date does not occur on or before the End Date or any later date agreed in writing between BidCo and Target.

4. Implementation

4.1 Lodgement of Court orders

Target must lodge with ASIC office copies of any Court orders under section 411 of the Corporations Act approving this scheme by 5pm on the Business Day the Court approves this scheme or by 5pm on the Business Day on which the Court orders are entered, whichever is the later.

4.2 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the payment of the Scheme Consideration in the manner contemplated by clause 5.3(a), the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to BidCo, without the need for any further act by any Scheme Shareholder by:
 - (i) Target delivering to BidCo a duly completed and executed share transfer form (which may be a master share transfer form) to transfer all the Scheme Shares to BidCo; and
 - (ii) BidCo duly executing such share transfer form (which may be a master share transfer form) and delivering it to Target for registration; and
- (b) immediately after receipt of such share transfer form (which may be a master share transfer form) form in accordance with clause 4.2(a)(ii), Target must enter the name of BidCo in the Share Register in respect of the Scheme Shares.

5. Scheme Consideration

5.1 Amount of Scheme Consideration

Each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder.

5.2 Joint holders

In the case of Scheme Shares held in joint names, the Scheme Consideration is payable to and must be forwarded to the holder whose name appears first in the Share Register at the Record Date.

5.3 Payment of Scheme Consideration

- (a) On implementation of this scheme on the Implementation Date, Target must procure BidCo to deposit an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders in cleared funds in an Australian dollar denominated trust account operated by the Trustee, to be held on trust for the Scheme Shareholders, except that any interest on the amount deposited (less bank fees and other charges) will be to BidCo's account.
- (b) Subject to Target having complied with clause 5.3(a) as soon as practicable following implementation of this scheme on the Implementation Date, the Trustee must pay from the account referred to in clause 5.3(a) to each Scheme Shareholder such amount of cash as is due to that Scheme Shareholder under clause 5.1 as Scheme Consideration in respect of all that Scheme Shareholder's Scheme Shares.
- (c) The amount referred to in clause 5.3(b) must be paid by the Trustee doing any of the following at its election:
 - (i) sending (or procuring Target Registrar to send) it to the Scheme Shareholder's Registered Address by cheque in Australian currency drawn out of the trust account established in accordance with clause 5.3(a); or
 - (ii) if the Scheme Shareholder has a payment direction (that is currently used for the payment of dividends) for a bank account with any Australian ADI (as defined in the Corporations Act) recorded in the Share Register as at the Record Date, depositing (or procuring the Share Registry to deposit) it into that account.
- (d) To the extent there is any surplus in the amount held by the Trustee in the trust account, that surplus must be paid by the Trustee to BidCo following the satisfaction of the Trustee's obligations under this clause.

6. Dealings in Shares

- (a) To establish the identity of the Scheme Shareholders, dealings in Shares will only be recognised if:
 - (i) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Share Register as the holder of the relevant Shares on or before the Record Date; and
 - (ii) in all other cases, registrable transmission applications or transfers in respect of those dealings are received on or before the Record Date at the place where the Share Register is kept.
- (b) Target must register registrable transmission applications or transfers of the kind referred to in clause 6(a)(ii) on the Record Date.
- (c) If the Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date and any such disposal will be void and of no legal effect whatsoever.



- (d) Target will not accept for registration or recognise for any purpose any transmission application or transfer in respect of Shares received after the Record Date.
- (e) 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 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.
- (f) All statements of holding for Shares will cease to have effect from the Record Date as documents of title in respect of those shares (other than statements of holding in favour of BidCo, the Excluded Shareholders and their successors in title. As from the Record Date, each entry current at that date on the Share Register (other than entities in respect of BidCo Group, any Excluded Shareholder and their successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Shares relating to that entry.
- (g) As soon as possible after the Record Date and in any event at least three Business Days before the Implementation Date, Target will ensure that details of the names, Registered Addresses and holdings of Shares for each Scheme Shareholder are available to BidCo in the form BidCo reasonably requires.

7. Quotation of Shares

- (a) It is expected that suspension of trading on ASX in Shares will occur from the close of trading on the day Target notifies ASX that the Court has approved this scheme under section 411(4)(b) of the Corporations Act.
- (b) On a date after the Implementation Date to be determined by BidCo, Target will apply:
 - (i) for termination of the official quotation of Shares on ASX; and
 - (ii) to have itself removed from the official list of ASX.

8. General Scheme Provisions

8.1 Consent

If the Court proposes to approve this scheme subject to any alterations or conditions, Target may, by its counsel, consent on behalf of all persons concerned to those alterations or conditions to which BidCo has consented in writing.

8.2 Agreement of Scheme Shareholders

- (a) Scheme Shareholders agree to the transfer of their Shares in accordance with this scheme and agree to the variation, cancellation or modification of the rights attached to their Shares constituted by or resulting from this scheme.

- (b) Each of the Scheme Shareholders acknowledges that this scheme binds Target and all Scheme Shareholders (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against this scheme at that Scheme Meeting).

8.3 Warranties by Scheme Shareholders

Each Scheme Shareholder is deemed to have warranted to Target and appointed and authorised Target as its attorney and agent to warrant to BidCo that:

- (a) all of its Shares which are transferred to BidCo under this scheme will (except as otherwise set out in this Deed), on the date on which they are transferred to BidCo, be fully paid and free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind including any security interest within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth); and
- (b) it has full power and capacity to sell and to transfer its Shares to BidCo.

Target undertakes to each Scheme Shareholder that it will provide such warranty to BidCo on behalf of the Scheme Shareholder.

8.4 Beneficial entitlement to Shares

From the Implementation Date, BidCo will be beneficially entitled to the Shares transferred to it under this scheme pending registration by Target of BidCo in the Share Register as the holder of the Shares.

8.5 Authority given to Target

- (a) Each Scheme Shareholder, without the need for any further act, irrevocable appoints Target and all of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purpose of doing and executing all acts, matters, things and documents on the part of each Scheme Shareholder necessary to implement the scheme, including executing, as agent and attorney of each Scheme Shareholder, a share transfer or transfers in relation to Scheme Shares as contemplated by clause 8.5(b), and Target accepts such appointment.
- (b) Each Scheme Shareholder, without the need for any further act, irrevocably appoints Target and all of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purpose of:
 - (i) enforcing the Deed Poll against BidCo and Acquirer; and
 - (ii) executing any document necessary or desirable to give effect to this scheme including, a proper instrument of transfer of its Scheme Shares for the purposes of section 1071B of the Corporations Act which may be a master transfer of all the Scheme Shares,and Target accepts such appointment.

8.6 Appointment of sole proxy

Upon this scheme becoming Effective and until Target registers BidCo as the holder of all Shares in the Share Register, each Scheme Shareholder:



- (a) is deemed to have irrevocably appointed Target as attorney and agent (and directed Target in such capacity) to appoint an officer or agent nominated by BidCo as its sole proxy and, where applicable, corporate representatives to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in its name and sign any shareholders' resolutions, whether in person, by proxy or by corporate representative;
- (b) undertakes not to exercise the votes attaching to the Scheme Shares registered in its name or sign any Shareholders' resolutions of Target as holder of the Scheme Shares, whether in person, by proxy or corporate representative (other than pursuant to this clause 8.6);
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as BidCo reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 8.6(a), BidCo and any director, officer, secretary or agent nominated by BidCo under clause 8.6(a) may act in the best interests of BidCo (as applicable) as the intended registered holder of the Scheme Shares.

Target undertakes in favour of each Scheme Shareholder that it will appoint the officer or agent nominated by BidCo as that Scheme Shareholder's proxy or, where applicable, corporate representative in accordance with clause 8.6(a).

9. General

9.1 Stamp duty

BidCo will pay all stamp duty payable in connection with the transfer of the Scheme Shares to BidCo.

9.2 Definition of 'sending'

For the purposes of clause 9.3 the expressions 'sending' means, in relation to each Scheme Shareholder:

- (a) sending by ordinary pre-paid post or courier to the Registered Address of that Scheme Shareholder as at the Record Date; or
- (b) delivery to the Registered Address of that Scheme Shareholder as at the Record Date by any other means at no cost to the recipient.

9.3 Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this document 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 the place where Target's Share Registry is kept.

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

9.4 Governing law and jurisdiction

This scheme is governed by the laws of Victoria, Australia. In relation to it and related non-contractual matters each party irrevocably submit to the non-exclusive jurisdiction of courts with jurisdiction there.

9.5 Further assurances

Target must do anything necessary (including executing agreements and documents) to give full effect to this scheme and the transactions contemplated by it.

Annexure 2**Deed Poll**

Date	2011
	<p>Deed Poll by</p> <p>1. SABMiller Beverage Investments Pty Limited (ACN 150 900 093) registered in Victoria of 'Gold Fields House' Level 7, 1 Alfred Street Sydney New South Wales 2000 (<i>BidCo</i>); and</p> <p>2. SABMiller plc (Company No. 03528416) registered in England of SABMiller House, Church Street West, Woking, Surrey, GU21 6HS, UK (<i>Acquirer</i>)</p> <p>in favour of the Scheme Shareholders.</p>
Recitals	
A	On 21 September 2011, Acquirer and Target entered into the Scheme Implementation Deed to provide for the implementation of the Scheme.
B	The effect of the Scheme will be to transfer all Scheme Shares to BidCo in return for the Scheme Consideration.
C	BidCo and Acquirer enter this deed poll to covenant in favour of Scheme Shareholders to pay or procure payment of the Scheme Consideration in accordance with the Scheme.

It is declared as follows.

1. Definitions and interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Scheme Implementation Deed means the scheme implementation deed dated 21 September 2011 between Acquirer and Target.

Trustee means Target as trustee for the Scheme Shareholders.



1.2 Terms defined in Scheme Implementation Deed

Capitalised terms not otherwise defined in this deed poll have the same meaning in this Deed Poll as in the Scheme Implementation Deed, unless the context requires otherwise.

1.3 Incorporation by reference

The provisions of clauses 1.2, 1.3 and 1.4 of the Scheme Implementation Deed form part of this deed poll as if set out at length in this deed poll but with 'deed poll' substituted for 'Deed' and with any reference to 'party' being taken to include the Scheme Shareholders.

1.4 Nature of this deed poll

Each of BidCo and Acquirer acknowledges that 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 a party to it.

2. Conditions

2.1 Conditions

BidCo's obligations and Acquirer's obligations under clause 3 are subject to all Conditions Precedent to the Scheme being satisfied or waived and the Scheme becoming Effective.

2.2 Termination

BidCo's obligations and Acquirer's obligations under this deed poll will automatically terminate and this deed poll will be of no further force or effect if:

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

2.3 Consequences of termination

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

- (a) each of BidCo and Acquirer is released from its obligations to further perform this deed poll; and
- (b) Scheme Shareholders retain the rights they have against BidCo or Acquirer in respect of any breach of this deed poll which occurred before it terminated.

3. Payment of the Scheme Consideration

- (a) Subject to clause 2:
 - (i) BidCo undertakes in favour of each Scheme Shareholder to pay or procure the payment of the Scheme Consideration to each Scheme Shareholder in accordance with the terms of the Scheme; and

- (ii) Acquirer undertakes in favour of each Scheme Shareholder to procure that BidCo complies with its obligations under clause 3(a)(i) in accordance with that clause.
- (b) The obligations of BidCo and Acquirer under clause 3(a) will be satisfied if, on or before implementation of the Scheme, BidCo or Acquirer pays or procures payment of an amount at least equal to the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders to be deposited in cleared funds in an Australian dollar denominated trust account operated by the Trustee, on trust for the Scheme Shareholders, except that any interest on the amount deposited (less bank fees and other charges) will be to BidCo's account.

4. Warranties

4.1 BidCo

Each of BidCo and Acquirer represents and warrants to each Scheme Shareholder that:

- (a) **(status)** BidCo is a corporation duly incorporated and validly existing under the laws of the place of its incorporation;
- (b) **(power)** BidCo has the power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) **(corporate authorisations)** BidCo has taken all necessary corporate action to authorise the entry into and performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) **(documents binding)** this deed poll is BidCo's valid and binding obligation enforceable in accordance with its terms;
- (e) **(transactions permitted)** the execution and performance by BidCo of this deed poll and each transaction contemplated under this deed poll did not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree of a Governmental Agency binding on BidCo;
 - (ii) BidCo's constitution or other constituent documents; or
 - (iii) any other document which is binding on BidCo or its assets.

4.2 Acquirer

Acquirer represents and warrants to each Scheme Shareholder that:

- (a) **(status)** Acquirer is a corporation duly incorporated and validly existing under the laws of the place of its incorporation;
- (b) **(power)** Acquirer has the power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;

- (c) **(corporate authorisations)** Acquirer has taken all necessary corporate action to authorise the entry into and performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) **(documents binding)** this deed poll is Acquirer's valid and binding obligation enforceable in accordance with its terms;
- (e) **(transactions permitted)** the execution and performance by Acquirer of this deed poll and each transaction contemplated under this deed poll did not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree of a Governmental Agency binding on Acquirer;
 - (ii) Acquirer's constitution or other constituent documents; or
 - (iii) any other document which is binding on Acquirer or its assets.

5. Continuing Obligations

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until BidCo and Acquirer have fully performed their obligations under it.

6. Notices

Any notice, demand or other communication (a **Notice**) to BidCo or Acquirer in respect of this deed poll:

- (a) must be in writing and signed by the sender or a person duly authorised by it;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below:

Address: **SABMiller plc**
SABMiller House, Church Street West
Woking, Surrey, GU21 6HS, UK

Attention: General Counsel

Fax No: +44 1483 264 103;

- (c) will be conclusively taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 5pm. (local time) it will be taken to have been duly given or made at the start of business on the next business day in that place.

7. General Provisions

7.1 Amendment

This deed poll may be amended only by another deed poll entered into by BidCo and Acquirer and then only if the amendment is agreed to by Target in writing and the Court indicates that the amendment would not itself preclude approval of the Scheme.

7.2 Assignment

The rights of each Scheme Shareholder under this deed poll are personal and cannot be assigned, charged, encumbered or otherwise dealt with at law or in equity without the prior written consent of BidCo and Acquirer.

7.3 Counterparts

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

7.4 Cumulative rights

The rights, powers and remedies of BidCo, Acquirer and each Scheme Shareholder under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

7.5 Governing law and jurisdiction

This deed poll is governed by the laws of Victoria, Australia. In relation to it and related non-contractual matters BidCo irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

7.6 Further assurances

BidCo and Acquirer must do anything necessary (including executing agreements and documents) to give full effect to this deed poll and the transactions contemplated by it.

7.7 No waiver

If a Scheme Shareholder does not exercise a right arising from a breach of this deed poll at a given time, it may, unless it has waived that right in writing, exercise the right at a later point in time.

7.8 Stamp duty

BidCo must (and Acquirer must procure that BidCo does):

- (a) pay or procure the payment of all stamp duty (including fines, penalties and interest) in respect of the Scheme and this deed poll, the Scheme Implementation

Deed, the performance of this deed poll, the Scheme Implementation Deed and each transaction effected by or made under the Scheme, this deed poll and the Scheme Implementation Deed; and

- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 7.8(a).

Annexure 3**Indicative timetable**

Event	Indicative Date
Announcement and signing of this Deed	21 September 2011
First draft of Scheme Booklet	29 September 2011
Scheme Booklet provided to ASIC	12 October 2011
First Court Date	27 October 2011
Despatch Scheme Booklet	2 November 2011
Deadline for receipt of proxy forms for Scheme Meeting and Special General Meeting	29 November 2011
Time and date for determining eligibility to vote at Scheme Meeting and Special General Meeting	29 November 2011
Scheme Meeting and Special General Meeting	1 December 2011
Second Court Date	2 December 2011
Effective Date	2 December 2011
Record Date	9 December 2011
Implementation Date	16 December 2011