

Scheme Implementation Agreement

Medical Australia Limited

ICU Medical, Inc.

Table of contents

1.	Definitions and interpretation	2
2.	Agreement to propose Scheme	12
3.	Conditions	12
4.	Scheme of Arrangement	17
5.	Co-operation	18
6.	Implementation	18
7.	Warranties	25
8.	Termination	29
9.	Public announcements	31
10.	Confidentiality	31
11.	Conduct of Court proceedings	33
12.	Exclusivity	34
13.	Break fees	36
14.	Convertible rights	39
15.	Costs and stamp duty	39
16.	Notices	39
17.	General	40
	Annexure 1	44
	Timetable	44
	Annexure 2	45
	Deed Poll	45

Title **Scheme Implementation Agreement**

Date 9 August 2017

Parties **Medical Australia Limited** ABN 30 096 048 912 of Unit 4B, 128-130 Frances Street, Lidcombe NSW 2141, Australia (**Target**)

ICU Medical, Inc., a company incorporated in Delaware, United States of 951 Calle Amanecer, San Clemente, California CA 92673, United States (**Bidder**)

Recitals

- A Bidder (itself or through a wholly owned Subsidiary) wishes to acquire all of the fully paid ordinary shares of Target by means of a scheme of arrangement under Part 5.1 of the Corporations Act.
- B The Target Board unanimously considers that the Scheme is in the best interests of Target and Target Shareholders, subject to the findings of the Independent Expert and no superior Competing Proposal emerging.
- C Target and Bidder propose to implement the Scheme on the terms and conditions of this Agreement.

Operative provisions

1. Definitions and interpretation

Definitions

- 1.1 In this Agreement, unless the context otherwise requires:

Adviser means, in relation to an entity, its legal, financial or other expert adviser (not including the Independent Expert).

AIFRS means the International Financial Reporting Standards as adopted in Australia.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of that Act included a reference to this Agreement and Target were the designated body.

ASX means ASX Limited (ACN 008 624 691) or, where the context requires, the securities market which it operates.

Bidder Confidential Information means any of the business, commercial, financial or technical information of the Bidder Group disclosed or otherwise supplied by or on behalf of any such entities to Target or any of its Representatives, and in whatever form or medium and includes notes, records and copies made by Bidder or any of its Representatives of such information but excludes:

- (a) information which is in the public domain (other than as a result of a breach of this Agreement); and
- (b) the Bidder Scheme Information.

Bidder Group means Bidder and each of its Subsidiaries.

Bidder Indemnified Party means each member of the Bidder Group and their respective Representatives.

Bidder Prescribed Event means the occurrence of any of the following:

- (a) Bidder resolving that it be wound up;
- (b) a liquidator, provisional liquidator or administrator of Bidder being appointed;
- (c) the making of an order by a court for the winding up of Bidder;
- (d) Bidder executing a deed of company arrangement; or
- (e) a receiver, or a receiver and manager, in relation to the whole, or a substantial part, of the property of Bidder being appointed,

however, none of the above events will constitute a Bidder Prescribed Event where Bidder has first consulted, in reasonable detail, with Target in relation to the proposed event, and Target has approved in writing the proposed event.

Bidder Scheme Information means information about Bidder which is provided to Target by or on behalf of Bidder to enable the Scheme Booklet to be prepared in accordance with all applicable laws, applicable ASIC guidance and policies and the Listing Rules, or to the Independent Expert to enable it to prepare its report, including information regarding the arrangements Bidder has in place to fund the Scheme Consideration and Bidder's intentions with respect to the assets, business and employees of Target if the Scheme is implemented.

Bidder Warranties means the representations and warranties of Bidder set out in clause 7.4.

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

Cancellation of Performance Rights Deed means a deed in a form agreed between the parties.

Cash in respect of a person, means cash (as recorded in the normal ledger) at bank credited to an account in the name of that person with a reputable commercial bank and to which that person is beneficially entitled and which is repayable on demand (or within 30 days of demand) without condition, plus the amount of any cheques held by that person which have not yet been cashed or dishonoured, less the amount of any cheques written by that person which have not yet been cashed.

Claim means a demand, claim, action or proceeding, however arising and whether present, unascertained, immediate, future or contingent, including any claim for specific performance.

Competing Proposal means any proposal, offer or transaction by a third party (other than the Parties or their Related Bodies Corporate) that, if complied with, would mean:

- (a) a person would acquire a relevant interest or voting power in 20% or more of the issued shares of Target or of the securities of any Target Related Bodies Corporate;

- (b) a person would directly or indirectly acquire or obtain an interest (including an economic interest or an interest by way of a licence) in all or a substantial part or material part of the business conducted by, or assets or property of, the Target or its Related Bodies Corporate;
- (c) a person would acquire Control of the Target or any Related Bodies Corporate;
- (d) a person may otherwise acquire, or merge with, Target or any Related Bodies Corporate (including by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale of securities, strategic alliance, dual listed company structure, joint venture or partnership); or
- (e) Target will issue, on a fully diluted basis, 20% or more of its capital as consideration for the assets or share capital of another person.

Each successive material modification or variation of any proposal, offer or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

Completion means completion of the implementation of the Scheme on the Implementation Date.

Confidential Information means Target Confidential Information or Bidder Confidential Information as the context requires.

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

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

Court means a court of competent jurisdiction under the Corporations Act.

Deed Poll means the deed poll to be executed by Bidder substantially in the form of Annexure 2 under which Bidder covenants in favour of Target Shareholders to perform its obligations under this Agreement and the Scheme.

Dispatch Date means the day that the Scheme Booklet is dispatched to Target Shareholders.

Dormant Companies means Bio Medical Developments International Pty Ltd (ACN 106 455 207) and BMDi Pty Ltd (ACN 096 997 643).

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

Effective Date means the date on which an office copy of the Court order made under section 411(4)(b) of the Corporations Act approving the Scheme is lodged with ASIC.

Exclusivity Period means the period between the date of this Agreement and the earliest of:

- (a) the Implementation Date;
- (b) the date this Agreement is terminated in accordance with its terms; and
- (c) the Sunset Date.

Fairly Disclosed means disclosed in sufficient detail so as to enable a reasonable and sophisticated buyer (or one of its Representatives) experienced in transactions similar to the Scheme and experienced in a business similar to any business conducted by the Target Group, to identify the nature and scope, budgeted cost (if any) and the intended timing (where applicable) for implementation of the relevant matter, event or circumstance.

Financial Debt in respect of a person, means the aggregate of any monetary liability or indebtedness (whether present or future, actual or contingent) of that person for or in respect of:

- (a) money borrowed or raised from and debit balances at bank or financial institutions;
- (b) its obligations as lessee under any finance lease or capital lease, except a lease in the nature of an operating lease;
- (c) any indemnity obligation in respect of any guarantee, indemnity, bond or letter of credit or similar instrument issued by a financial institution, other than those issued or provided in the ordinary course of its business;
- (d) any guarantee, indemnity, letter of credit or similar assurance in respect of financial loss given in connection with any indebtedness referred to in any other paragraph of this definition of another person, other than those issued or provided in the ordinary course of its business;
- (e) any amount payable in connection with the redemption of any redeemable preference share issued by that person;
- (f) amounts raised under or in connection with any bill acceptance, endorsement or discounting arrangement;
- (g) amounts raised under or in connection with any bond, debenture, note, loan stock or similar instruments;
- (h) receivables sold or discounted (other than to the extent they are sold on a non-recourse basis);
- (i) any futures contract, forward exchange or forward purchase contract, any swap, hedge, cap, collar, ceiling or floor or option contract in respect of any currency, interest rates or any commodity or any similar transaction in connection with borrowings or the raising of money, except those arising in the ordinary course of its business;
- (j) the acquisition cost of any asset to the extent payable before or after the time of acquisition or possession where the advance or deferred payment is arranged primarily as a method of raising finance or financing or refinancing the acquisition of that asset;
- (k) amounts raised under any other transaction or series of transactions having the commercial effect of a borrowing or raising of money;
- (l) any amounts owing to suppliers, including but not limited to minimum purchase obligations;
- (m) dividends declared and payable; and
- (n) accrued but unpaid interest, prepayment and redemption premiums or penalties (if any), unpaid fees or expenses and other monetary obligations on any financial indebtedness referred to in paragraphs (a) to (l) above,

but excludes trade debts of the person and its Subsidiaries arising in the ordinary course of their businesses on arm's length terms (other than those set out in paragraph (l) of this definition). This definition does not operate to double count any liability or indebtedness.

First Court Date means the date of the hearing by the Court of the application to order the convening of the Scheme Meeting under section 411(1) of the Corporations Act.

Government Agency means a:

- (a) government, whether foreign, federal, state, territorial or local;
- (b) department, office or minister of a government (whether foreign, federal, state, territorial or local) acting in that capacity; or
- (c) commission, delegate, instrumentality, agency, board, or other government, semi-government, judicial, administrative, monetary or fiscal authority, whether statutory or not and whether foreign, federal, state, territorial or local,

and includes ASX, ASIC, the Australian Competition and Consumer Commission, the Foreign Investment Review Board and the Takeovers Panel.

GST means goods and services tax as defined in *A New Tax Systems (Goods and Services Tax) Act 1999* (Cth), or any like tax.

Headcount Test means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of Target Shareholders present and voting, either in person or by proxy.

Implementation means the implementation of the Scheme, on it becoming Effective under section 411(10) of the Corporations Act.

Implementation Date means the third Business Day, or such other Business Day as the Parties agree, after the Scheme Record Date.

Independent Expert means an expert independent of the Parties engaged by Target to opine (and prepare a report for inclusion in the Scheme Booklet) on whether the Scheme is in the best interests of Target Shareholders.

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

Material Contracts means each of the following contracts between a member of the Target Group and the following entities and/or any of their Related Body Corporates:

- (a) Health Administration Corporation (NSW);
- (b) Terumo Australia Pty Ltd
- (c) Ramsay Health Care Investments Pty Ltd;
- (d) Health Purchasing Victoria;
- (e) Amsino Healthcare (Shanghai) Co., Ltd;
- (f) Hanscent (Ningbo) Co., Ltd;
- (g) R R Taylor Pty Ltd;
- (h) Catheter Connections, Inc.;
- (i) Ardo Medical AG; and
- (j) Australian Breastfeeding Association.

Net Cash means Cash of the Target Group *less* the Financial Debt of the Target Group, in each case on a consolidated basis.

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

Performance Right means a right granted under Target's executive performance rights plan to acquire by way of issue a Target Share subject to the terms of such plan.

Performance Rights Holder means a person who holds a Performance Right.

Performance Rights Plan Rules means the rules of Target's executive performance rights plan.

Register means the register of shareholders of Target.

Regulatory Consents has the meaning given to that term in clause 3.1(f).

Related Body Corporate has the meaning given to that term in the Corporations Act.

Representative means a person's Related Bodies Corporate, officers of the person and its Related Bodies Corporate, senior management and advisors.

Scheme means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act between Target and Target Shareholders as described in clause 4, in a form the Parties agree in writing, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Target and Bidder.

Scheme Booklet means the document including the information described in clause 6.1(a) to be approved by the Court and dispatched to Target Shareholders.

Scheme Consideration means \$0.086 in respect of each Scheme Share.

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

Scheme Record Date means 7.00 pm on the fifth Business Day after the Effective Date.

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

Scheme Shareholder means each person who holds Scheme Shares.

Second Court Date means the date of the hearing by the Court of the application to approve the Scheme under section 411(4)(b) of the Corporations Act.

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

Subsidiary has the meaning given to that term in the Corporations Act.

Sunset Date means:

- (a) 5.00 pm on 29 December 2017 or, if clause 6.4 applies, 29 March 2018 (or any earlier date agreed between Target and Bidder in accordance with clause 6.4(b)); or
- (b) such other date and time agreed in writing between Target and Bidder.

Superior Proposal means a Competing Proposal which the Target Board in good faith determines is, or is reasonably likely to result in, a proposal by the person making the Competing Proposal that is more favourable to Target Shareholders than the Scheme, taking

into account all terms and conditions of the Competing Proposal and having regard to matters including financial value to Target Shareholders, conditionality, funding, certainty and timing.

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

Target Confidential Information means any of the business, commercial, financial or technical information of the Target Group disclosed or otherwise supplied by or on behalf of any such entities to Bidder or any of its Representatives, and in whatever form or medium and includes notes, records and copies made by Bidder or any of its Representatives of such information but excludes:

- (a) information which is in the public domain (other than as a result of a breach of this Agreement); and
- (b) the Target Scheme Information.

Target Due Diligence Information means all information disclosed or made available by or on behalf of Target and its Representatives (including all responses to requests for information and any disclosure letter) to Bidder or its Representatives.

Target Group means Target and each of its Subsidiaries.

Target Indemnified Party means each member of the Target Group and their respective Representatives.

Target Material Adverse Change means one or more occurrences or any fact, matter or circumstance (whenever occurring) that is announced or becomes known to Bidder that individually, or when aggregated with all such occurrences, facts, matters or circumstances, has had or is reasonably likely to have one of the following effects:

- (a) to materially adversely affect the status or terms of any Regulatory Consent that is applicable to the Target Group;
- (b) to prevent or would be likely to prevent Target from materially discharging its obligations under this Agreement;
- (c) to diminish the total consolidated net assets of the Target Group (calculated on the basis of AIFRS) by \$1 million or more;
- (d) to diminish the annualised consolidated net profit after tax of the Target Group (calculated on the basis of AIFRS) by \$500,000 or more; or
- (e) to otherwise materially adversely affect the business, assets, financial condition, results, operations, reputation or prospects of the Target Group (as a whole) including:
 - (i) any material default by the Target Group or any member of the Target Group under their existing financing facilities; or
 - (ii) any material litigation threatened or commenced against any member of the Target Group; or
 - (iii) the termination of any Material Contract of the Target Group,

unless that occurrence, fact, matter or circumstance:

- (a) was Fairly Disclosed in the Target Due Diligence Information at least two Business Days prior to the date of this Agreement;

- (b) was publicly announced by Target or otherwise Fairly Disclosed in publicly available filings by Target or any of its Subsidiaries with ASX or ASIC prior to the date of this Agreement;
- (c) comprises a change in applicable law after the date of this Agreement; or
- (d) is required to be undertaken by Target or its Subsidiary (as the case may be) in connection with the Scheme or this Agreement.

Target Prescribed Event means the occurrence of any of the following:

- (a) Target or any of its Subsidiaries converting all or any of its shares into a larger or smaller number of shares;
- (b) Target or any of its Subsidiaries resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) Target or any of its Subsidiaries entering into a buy-back agreement, or resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) Target declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members;
- (e) Target or any of its Subsidiaries issuing shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option;
- (f) Target or any of its Subsidiaries issuing or agreeing to issue securities or other instruments convertible into shares or debt securities;
- (g) Target or any of its Subsidiaries disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;
- (h) other than in the ordinary course of business and consistent with past practice, Target or any of its Subsidiaries creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property;
- (i) Target or any of its Subsidiaries resolving that it be wound up;
- (j) a liquidator, provisional liquidator or administrator of Target or any of its Subsidiaries being appointed;
- (k) the making of an order by a court for the winding up of Target or any of its Subsidiaries;
- (l) Target or any of its Subsidiaries executing a deed of company arrangement;
- (m) a receiver, or a receiver and manager, in relation to the whole, or a substantial part, of the property of Target or any of its Subsidiaries being appointed;
- (n) Target or any of its Subsidiaries making any material change or amendment to its constitution; or
- (o) Target or any of its Subsidiaries making any change to their accounting practices or policies, other than to comply with generally accepted Australian accounting standards or AIFRS,

however none of the above events will constitute a Target Prescribed Event where:

- (a) Target has first consulted, in reasonable detail, with Bidder in relation to the proposed event, and Bidder has approved in writing the proposed event;
- (b) the event was Fairly Disclosed in the Target Due Diligence Information at least two Business Days prior to the date of this Agreement;
- (c) the event was publicly announced by Target or otherwise Fairly Disclosed in publicly available filings by Target or any of its Subsidiaries with ASX or ASIC prior to the date of this Agreement;
- (d) Target or its Subsidiary (as the case may be) is required to undertake the event in connection with the Scheme or this Agreement; or
- (e) the event is a buy-back or cancellation of Target Shares under an employee share scheme, or the periodic issue of shares under an employee share scheme in accordance with an arrangement in place at the date of this Agreement and which was disclosed to Bidder in the Target Due Diligence Information at least two Business Days prior to the date of this Agreement.

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

Target Share means an issued fully paid ordinary share in Target.

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

Target Shareholder Approval means a resolution by Target Shareholders in favour of the Scheme passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act or, in the circumstances contemplated by clause 3.4, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act.

Target Warranties means the representations and warranties of Target set out in clause 7.1.

Timetable means the indicative timetable set out in Annexure 1.

Transaction Costs means all fees, costs and other expenses incurred or payable by the Target in connection with the Scheme.

voting power has the meaning given to that term in Chapter 6 of the Corporations Act.

Interpretation

1.2 In this Agreement:

- (a) unless the context requires another meaning, a reference:
 - (i) to the singular includes the plural and vice versa;
 - (ii) to a gender includes all genders;
 - (iii) to a document (including this Agreement) is a reference to that document (including any Schedules and Annexures) as amended, consolidated, supplemented, novated or replaced;
 - (iv) to an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
 - (v) to a party means a party to this Agreement;

- (vi) to an item, Recital, clause, Schedule or Annexure is to an item, Recital, clause, Schedule or Annexure of or to this Agreement;
- (vii) to a notice means a notice, approval, demand, request, nomination or other communication given by one party to another under or in connection with this Agreement;
- (viii) to a person (including a party) includes:
 - (A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency;
 - (B) the person's successors, permitted assigns, substitutes, executors and administrators; and
 - (C) a reference to the representative member of the GST group to which the person belongs to the extent that the representative member has assumed rights, entitlements, benefits, obligations and liabilities which would remain with the person if the person were not a member of a GST group;
- (ix) to a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
- (x) to proceedings includes litigation, arbitration and investigation;
- (xi) to a judgment includes an order, injunction, decree, determination or award of any court or tribunal;
- (xii) to time is to prevailing Sydney time; and
- (xiii) to \$ means the lawful currency of Australia;
- (b) the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) headings are for convenience only and do not affect interpretation of this Agreement;
- (e) if a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day; and
- (f) if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day.

Construction

- 1.3 This Agreement may not be construed adversely to a party only because that party or its legal advisers were responsible for preparing it.

Payments

- 1.4 Unless otherwise expressly provided in this Agreement, where an amount is required to be paid to a party (the **Receiving Party**) by another party under this Agreement, that amount must be paid:

- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the Parties agree; and
- (b) without deduction, withholding or set-off.

In this clause 1.4, a Receiving Party does not include a Scheme Shareholder.

Best and reasonable endeavours

1.5 Any provision of this Agreement which requires a party to use best endeavours, or reasonable endeavours, or to take all steps reasonably necessary or desirable, (including to procure that something is performed or occurs) does not include an obligation:

- (a) to pay any significant sum of money or to provide any significant financial compensation, valuable consideration or any other incentive to or for the benefit of any person, except for payment of any applicable fee for the lodgement or filing of any relevant application with any Government Agency or fees to any professional advisers; or
- (b) to commence any legal proceeding against any person, except in accordance with the express terms of this Agreement.

2. Agreement to propose Scheme

- 2.1 Target will propose and seek to implement the Scheme in accordance with this Agreement and the Corporations Act.
- 2.2 Bidder will comply with its obligations under the Scheme and the Deed Poll, and provide reasonable assistance to Target in proposing and implementing the Scheme in accordance with this Agreement.

3. Conditions

Conditions

- 3.1 Subject to this clause 3, the Scheme will not become Effective and the obligations of the Parties in relation to the Scheme (including the obligations of Bidder to pay the Scheme Consideration to Scheme Shareholders under the Deed Poll) will not become binding until each of the following conditions is satisfied or waived in accordance with clauses 3.5 to 3.11:
 - (a) **(Orders convening Scheme Meeting)** The Court orders the convening of the Scheme Meeting under section 411(1) of the Corporations Act.
 - (b) **(Target Shareholder Approval)** Target Shareholder Approval is obtained at the Scheme Meeting.
 - (c) **(Court approval of Scheme)** The Court makes orders under section 411(4)(b) of the Corporations Act approving the Scheme on the Second Court Date.
 - (d) **(Order lodged with ASIC)** An office copy of the Court order approving the Scheme is lodged with ASIC as contemplated by section 411(10) of the Corporations Act on or before the Sunset Date.

- (e) **(No prohibitive orders)** Prior to 8.00 am on the Second Court Date, no Government Agency takes any action, or imposes any legal restraint or prohibition, to prevent the implementation of the Scheme (or any transaction contemplated by the Scheme), which remains in force at 8.00 am on the Second Court Date.
- (f) **(Regulatory Consents)** All approvals or consents required from any Government Agency to implement the transactions envisaged by this Agreement (other than the approval of the Court of the Scheme under section 411(4)(b) of the Corporations Act) are obtained (or deemed obtained) on terms reasonably acceptable to the Bidder, and not withdrawn by 8.00 am on the Second Court Date, including ASIC and ASX provide all consents and approvals and do all other acts which are necessary or reasonably desirable to implement the Scheme (**Regulatory Consents**);
- (g) **(No Target Prescribed Event)** No Target Prescribed Event occurs between the date of this Agreement and 8.00 am on the Second Court Date.
- (h) **(No Bidder Prescribed Event)** No Bidder Prescribed Event occurs between the date of this Agreement and 8.00 am on the Second Court Date.
- (i) **(No Target Material Adverse Change)** No Target Material Adverse Change occurs between the date of this Agreement and 8.00 am on the Second Court Date.
- (j) **(No change of Target Board recommendation)** Between the date of this Agreement and Target Shareholders voting on the Scheme at the Scheme Meeting, one or more of the Target directors do not change, qualify or withdraw their recommendation to Target Shareholders to vote in favour of the Scheme or otherwise make a public statement indicating that he or she no longer supports the Scheme.
- (k) **(Independent Expert's report)** The Independent Expert issues its report before the date on which the Scheme Booklet is provided to ASIC and the Independent Expert concludes that the Scheme is in the best interest of Target Shareholders (and does not change that conclusion prior to 8.00 am on the Second Court Date).
- (l) **(Market fall)** Between the date of this Agreement and the close of the Business Day immediately prior to the Second Court Date, the ASX All Ordinaries Index (or any successor or replacement index) does not fall by 20% or more on any ASX trading day and remain below that level at all times during three consecutive ASX trading days.
- (m) **(Cancellation of Performance Rights)** On or before 8.00 am on the Second Court Date, each Performance Rights Holder agrees to the cancellation of all outstanding Performance Rights on the terms set out in a Cancellation of Performance Rights Deed.
- (n) **(Cancellation of convertible rights)** On or before 8.00am on the Second Court date, Target has complied with its obligations under clause 14.4.
- (o) **(Target Warranties)** Each of the Target Warranties that is qualified as to materiality is true and correct, and each Target Warranty that is not so qualified is true and correct in all material respects, in each case on the date or dates specified in clause 7.1.
- (p) **(Bidder Warranties)** Each of the Bidder Warranties that is qualified as to materiality is true and correct, and each Target Warranty that is not so qualified is true and correct in all material respects, in each case on the date or dates specified in clause 7.2.

- (q) **(No Competing Proposal)** As at 8.00am on the Second Court Date, Target has not entered into any agreement, arrangement or understanding with a third party in relation to a Competing Proposal.
- (r) **(No amendment to Material Contracts)** Prior to 8.00 am on the Second Court Date, no material amendment is made to a Material Contract without the prior written approval of Bidder.
- (s) **(Net Cash Certificate)** On the Business Day immediately prior to the Second Court Date, Target delivers to Bidder a certificate duly signed by two directors or a director and company secretary of Target, on terms reasonably satisfactory to Bidder, certifying that the Net Cash after subtracting the Transaction Costs is at least AUD1,258,820 and, in the reasonable opinion of the Target Board, is likely to remain so until the Implementation Date.
- (t) **(Employment contract)** Before the Second Court Date, the Bidder enters into an employment arrangement with Darryl Ellis that is acceptable to it (acting reasonably).

Reasonable endeavours

3.2 Each of Target and Bidder must use its reasonable endeavours to procure that:

- (a) each of the conditions in clause 3.1 is satisfied as expeditiously as possible and in any event on or before the Sunset Date and continues to be satisfied at all times until the last time it is required to be satisfied (as the case may require), including providing all reasonable assistance to the other party which is necessary to satisfy such conditions; and
- (b) there is no occurrence within the control of Target or Bidder (as the context requires) or their Subsidiaries that would prevent the conditions in clause 3.1 from being satisfied.

3.3 Without limiting clause 3.2, Target or Bidder (as the context requires) must:

- (a) promptly apply for all relevant Regulatory Consents and provide the other party with a copy of all those applications;
- (b) take all the steps for which it is responsible as part of the Regulatory Consent process, including responding to requests for information at the earliest practicable time;
- (c) provide the other party with all information reasonably requested in connection with the applications for Regulatory Consents. Where the information is confidential or commercially sensitive to the party, it may provide the information directly to the relevant Government Agency; and
- (d) consult with the other party in advance in relation to all material communications with any Government Agency relating to any Regulatory Consent and, so far as it is able, allow the other party and its Representatives the opportunity to be present at any meetings with any Government Agency.

Share splitting

3.4 If the Scheme is not approved by Target Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and Target and Bidder agree (acting reasonably) that Share Splitting or some other abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied, then Target must:

- (a) apply for an order of the Court of the type contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as counsel engaged by Target to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.

Waiver of conditions

- 3.5 The conditions in clauses 3.1(e) and (f) are for the joint benefit of Target and Bidder and may only be waived jointly by them.
- 3.6 The conditions in clauses 3.1(h), (k) and (p) are for the sole benefit of Target and may only be waived by Target.
- 3.7 The conditions in clauses 3.1(g), (i), (j), (l), (m), (n), (o), (q), (r), (s) and (t) are for the sole benefit of Bidder and may only be waived by Bidder.
- 3.8 The conditions in clauses 3.1(a), (b), (c) and (d) cannot be waived.
- 3.9 To be effective, any waiver of the breach or non-fulfilment of any condition in clause 3.1 must be in writing and a copy of the waiver must be provided to the other party prior to 8.00 am on the Second Court Date to be effective.
- 3.10 Subject to clause 3.11, a waiver of any condition in clause 3.1 precludes the party who has the benefit of the condition from suing the other party for any breach of this Agreement that resulted from any breach or non-fulfilment of the condition.
- 3.11 A party entitled to waive a condition under this clause 3 may do so in its absolute discretion. If the party who has the benefit of a condition in clause 3.1 waives a breach or non-fulfilment of the condition on one or more terms, and the other party agrees to those terms, then those terms will apply notwithstanding any inconsistency with clause 3.9. If the other party does not agree to the terms of any waiver, the relevant condition will not be waived.

Failure of condition

- 3.12 Subject to clause 6.4, if a condition in clause 3.1:
 - (a) is not satisfied or (where capable of waiver) waived by the date specified for its satisfaction; or
 - (b) becomes incapable of being satisfied by the date specified for its satisfaction and is not waived,
 and neither of the following has occurred:
 - (c) the Independent Expert has opined to the effect that the Scheme is not in the best interest of Target Shareholders; or
 - (d) a Superior Proposal has been received and announced by Target, following compliance by Target at all times prior to such public announcement with its obligations under clause 13,

then Target and Bidder must consult in good faith with a view to determining whether:

- (e) the Scheme may proceed by way of alternative means or methods;
 - (f) to extend the relevant time or date for satisfaction of the Conditions;
 - (g) to change the date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by Target and Bidder; or
 - (h) to extend the Sunset Date.
- 3.13 If Target and Bidder are unable to reach agreement under clause 3.12 within five Business Days of the date on which they both become aware that the condition is not satisfied or has become incapable of being satisfied (or, if earlier, by 8.00 am on the Second Court Date), or the Parties are not required in the circumstances to consult under clause 3.12, then unless the relevant condition is waived (and subject to clause 3.14) the party entitled to the benefit of that condition, or either Target or Bidder in the case of a condition which is for the benefit of both of them, may terminate this Agreement at any time prior to 8.00 am on the Second Court Date with immediate effect by written notice to the other party.
- 3.14 A party may not terminate this Agreement under clause 3.13 if the relevant condition in clause 3.1 has not been satisfied, or is incapable of being satisfied, or there is an occurrence that will prevent the relevant condition being satisfied by the date specified in this Agreement for its satisfaction, as a result of an act or omission by that party or any of its Related Bodies Corporate which results in a breach of this Agreement and either alone or together with other circumstances prevents that condition being satisfied or capable of being satisfied.
- 3.15 Subject to the rights of the Parties under clauses 7.7, 9, 10, 13 and 14 of this Agreement, following any termination under clause 3.13 no party will have any liability to the other Parties in respect of this Agreement, other than in respect of a breach of this Agreement occurring prior to that termination.

Notice of changes

- 3.16 Target must promptly notify Bidder, and Bidder must promptly notify Target, after it becomes aware that any condition in clause 3.1 has been satisfied, has become incapable of being satisfied or is not reasonably capable of being satisfied (having regard to the respective obligations of each party under clauses 3.2 and 3.3).
- 3.17 Upon receipt of notice given under clause 3.16, Target or Bidder, as applicable, must give notice to the notifying party as soon as practicable as to whether or not it waives the breach or non-fulfilment of any condition in clause 3.1 which has become incapable of being satisfied.
- 3.18 Target must promptly notify Bidder, and Bidder must promptly notify Target, of any change, matter, event or circumstance causing, or which is reasonably likely to cause:
- (a) a representation or warranty in this Agreement to be breached; or
 - (b) a material breach of this Agreement,
- and must provide Bidder or Target (as applicable) with reasonable details of the relevant breach.

Certificates

- 3.19 On the Second Court Date:

- (a) Bidder and Target will provide a joint certificate to the Court confirming whether or not the conditions set out in clauses 3.1(e) and (f) have been satisfied or waived in accordance with the terms of this Agreement;
 - (b) Target will provide a certificate to the Court confirming whether not the conditions set out in clauses 3.1(a), (b), (g), (i), (j), (k), (l), (m), (n), (o), (q), (r), (s) and (t) have been satisfied or waived in accordance with the terms of this Agreement; and
 - (c) Bidder will provide a certificate to the Court confirming whether or not the conditions set out in clauses 3.1(h), (p) and (t) have been satisfied or waived in accordance with the terms of this Agreement.
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4. Scheme of Arrangement

Scheme

- 4.1 Target will propose a scheme of arrangement under which, subject to the Scheme becoming Effective, all the Scheme Shares will be transferred to Bidder.

Scheme Consideration

- 4.2 In consideration of the Scheme Shareholders transferring their Scheme Shares to Bidder at Completion, Bidder covenants in Target's favour (in its own right and separately as trustee or nominee for each Scheme Shareholder) that Bidder will, on the Implementation Date and immediately prior to the transfer of the Scheme Shares to Bidder, pay to each Scheme Shareholder, the Scheme Consideration.

Deed Poll

- 4.3 Bidder covenants in favour of Target (in its own right and separately as trustee for each of the Target Shareholders) to execute and deliver prior to the First Court Date and (subject to its terms) perform the Deed Poll.

Bidder Nominee

- 4.4 Bidder may by notice to Target not later than five Business Days before an advanced draft of the Scheme Booklet is submitted to ASIC for review, nominate a wholly owned Subsidiary of Bidder (**Nominee**) to pay the Scheme Consideration and to be the entity to which the Scheme Shares will be transferred in accordance with this Agreement and the Scheme if the Scheme becomes Effective.
- 4.5 From the date of receipt by Target of the notice referred to in clause 4.4 (**Notification Date**) Bidder must procure that the Nominee complies with this Agreement as if the Nominee were a party to it in place of Bidder.
- 4.6 Despite the above, Bidder will continue to be bound by all of the obligations of Bidder under this Agreement and will not be released from any obligations or liabilities under this Agreement following the Notification Date. However, Target agrees that Bidder will not be in breach of this Agreement for failing to discharge an obligation of Bidder under this Agreement if the Nominee fully discharges that obligation.

5. Co-operation

Giving effect to Scheme

- 5.1 Each party must use its reasonable endeavours to give effect to the Scheme and must execute all documents and do all acts and things as may be necessary or desirable for the Implementation of the Scheme substantially in accordance with the Timetable, subject to compliance with their respective obligations, powers and duties under this Agreement, their constituent documents and all applicable laws and the proper performance by the directors of each of Target and Bidder of their fiduciary duties.

Scheme Booklet

- 5.2 Target and Bidder must each use all reasonable endeavours and utilise all reasonable resources (including management, shareholder, marketing and corporate relations resources, as well as the resources of external advisers) to produce the Scheme Booklet as soon as reasonably practicable, and substantially in accordance with the Timetable, subject to compliance with their respective obligations, powers and duties under this Agreement.

6. Implementation

Target's obligations

- 6.1 Target must take all reasonably necessary steps to propose and implement the Scheme in accordance with all necessary laws and regulations as soon as is reasonably practicable and substantially in accordance with the Timetable, including doing anything required on behalf of Target Shareholders which Target is authorised to do. This includes:
- (a) **(Scheme Booklet)** Preparing the Scheme Booklet and dispatching the Scheme Booklet to Target Shareholders. The Scheme Booklet must:
 - (i) include:
 - (A) the Scheme;
 - (B) a notice of the Scheme Meeting and proxy forms;
 - (C) an explanatory statement in relation to the Scheme issued under section 412 of the Corporations Act and registered by ASIC;
 - (D) a copy of the Independent Expert's report, a copy of this Agreement (without the schedules or annexures) and a copy of the executed Deed Poll;
 - (E) a statement that each Target director recommends that Target Shareholders vote in favour of the Scheme, which may be expressed as subject to the findings of the Independent Expert and to be given in the absence of a Superior Proposal; and
 - (F) a statement that each Target director with a relevant interest in Target Shares intends to vote those Target Shares in favour of the Scheme, which statement may be expressed as subject to the findings of the Independent Expert and to be given in the absence of a Superior Proposal; and

comply with all applicable laws, including the Corporations Act, applicable ASIC guidance and policies and the Listing Rules.

- (b) **(Consultation)** Providing Bidder with drafts of the Scheme Booklet including an extract of the draft Independent Expert's report that relates to Bidder (for the purpose of reviewing its factual accuracy only), giving Bidder a reasonable opportunity to comment on the content and presentation of the Scheme Booklet and obtaining Bidder's consent to include the Bidder Scheme Information in the form and context in which it appears.
- (c) **(Access to information)** During the Exclusivity Period, providing Bidder and its Representatives with reasonable access during normal business hours and within a reasonable time of a request by Bidder, to:
 - (i) the Target Group's senior executives and directors, offices, properties and other facilities and information concerning the Target Group for the purpose of implementing the Scheme; and
 - (ii) all information about Target and its Subsidiaries that Bidder or its Representatives reasonably require to prepare the necessary documentation for obtaining any Regulatory Consents.
- (d) **(Engage the Independent Expert)** Engaging the Independent Expert to prepare and provide its report for inclusion in the Scheme Booklet, and providing all reasonable assistance and information to the Independent Expert to enable it to do so.
- (e) **(Approval of draft for ASIC)** As soon as practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procuring that a meeting of the Target Board, or of a committee of the Target Board appointed for this purpose, is convened to consider, and if thought fit, approve, that draft as being in a form appropriate for provision to ASIC for review.
- (f) **(Liaison with ASIC)** As soon as practicable after the date of this Agreement, providing an advanced draft of the Scheme Booklet, in a form approved in accordance with clause 6.1(e), to ASIC for review and approval for the purposes of section 411(2) of the Corporations Act and:
 - (i) liaising with ASIC during the period of ASIC's consideration of that draft of the Scheme Booklet; and
 - (ii) keeping Bidder informed of any matters raised by ASIC in relation to the Scheme Booklet, and using all reasonable endeavours in co-operation with Bidder to resolve any such matters.
- (g) **(Approval of Scheme Booklet)** As soon as practicable after the conclusion of the review by ASIC of the Scheme Booklet, procuring that a meeting of the Target Board, or of a committee of the Target Board appointed for this purpose, is convened to consider, and if thought fit, approve, the Scheme Booklet for dispatch to Target Shareholders, subject to the approval of the Court.
- (h) **(Registration)** Requesting ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act.
- (i) **(Section 411(17)(b) statement)** Applying to ASIC for a statement under section 411(17)(b) of the Corporations Act that ASIC has no objection to the Scheme.

- (j) **(Engage suitable counsel)** Engaging suitable counsel to represent Target in all Court proceedings related to the Scheme.
- (k) **(Regulatory notifications)** Without limiting any obligation of Target under any other provision of this Agreement, lodging with each Government Agency within the relevant time periods all necessary documentation and filings in relation to the Scheme and the transactions contemplated by this Agreement.
- (l) **(Court direction)** Applying to the Court for orders under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting.
- (m) **(Scheme Meeting)** Taking all reasonable steps necessary to comply with the orders of the Court, including dispatching the Scheme Booklet to Target Shareholders and convening and holding the Scheme Meeting.
- (n) **(Target Scheme Information)** Taking all reasonable steps to ensure that the Target Scheme Information is not false, misleading or deceptive in any material respect (whether by omission or otherwise) as at the Dispatch Date.
- (o) **(Target new information)** Providing to Target Shareholders any further or new information which arises after the Dispatch Date and prior to the Scheme Meeting which is necessary to ensure that the information contained in the Scheme Booklet is not false, misleading or deceptive in any material respect (whether by omission or otherwise).
- (p) **(Court approval)** If Target Shareholder Approval is obtained at the Scheme Meeting and, if necessary, Bidder and Target agree on the Business Day immediately following the Scheme Meeting that it can be reasonably expected that all of the conditions in clause 3.1 will be satisfied or waived on or prior to 8.00 am on the proposed Second Court Date, applying (and, to the extent necessary, re-applying) to the Court for orders approving the Scheme.
- (q) **(Lodge copy of Court order)** Lodging an office copy of the Court order approving the Scheme (if made) with ASIC no later than 10.00 am on the next Business Day after the order is made.
- (r) **(Registration)** If the Scheme becomes Effective, executing proper instruments of transfer of, and effecting and entering in the Register the transfer of, the Scheme Shares to Bidder under the Scheme on the Implementation Date.
- (s) **(Register information)** Providing Bidder and its share registry with all information necessary, or reasonably requested, in order to assist Bidder to pay the Scheme Consideration.
- (t) **(Listing)** Taking all reasonable steps to maintain Target's listing on ASX, notwithstanding any suspension of the quotation of Target Shares, up to and including the Implementation Date, including making any appropriate applications to ASX and ASIC.
- (u) **(Incentive plans)** Subject to Court approval of the Scheme, but with effect from the Effective Date or such later date agreed by the Parties acting reasonably, terminate all executive and employee incentive plans of the Target Group that will or could result in securities in Target being issued to directors or employees of the Target Group.
- (v) **(Deregistration)** Using best endeavours to take all steps necessary to ensure all the Dormant Companies are deregistered by ASIC by the Implementation Date.

- (w) **(Medivet)** Using best endeavours to take all reasonable steps to ensure that Medivet Pty Ltd (ACN 130 317 010) is in a position to commence the deregistration process as soon as the legal proceedings concerning it are resolved.

Bidder's obligations

- 6.2 Bidder must take all reasonably necessary steps to implement the Scheme in accordance with all necessary laws and regulations as soon as is reasonably practicable and substantially in accordance with the Timetable. This includes:
- (a) **(Deed Poll)** Executing the Deed Poll.
 - (b) **(Bidder Scheme Information)** Preparing and providing to Target, in a form appropriate for inclusion in the Scheme Booklet, the Bidder Scheme Information.
 - (c) **(Independent Expert's report)** Providing all reasonable assistance and information to the Independent Expert in connection with the preparation of its report for inclusion in the Scheme Booklet.
 - (d) **(Representation)** Procuring that it is represented by counsel at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme, at which, through its counsel, Bidder will undertake (if requested by the Court) to do all things and take all steps within its power that may be necessary to ensure the fulfilment of its obligations under the Scheme, and, to the extent that leave of the Court is required for Bidder to be represented at those Court hearings, apply for that leave.
 - (e) **(Review of Scheme Booklet)** As soon as reasonably practicable after delivery, reviewing the drafts of the Scheme Booklet prepared by Target and providing comments on those drafts in good faith.
 - (f) **(Approval of draft for ASIC)** As soon as reasonably practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procuring that a meeting of the appropriate decision-making body of Bidder is held to consider approving those sections of the draft that relate to Bidder as being in a form appropriate for provision to ASIC for review.
 - (g) **(Approval of Scheme Booklet)** As soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procuring that a meeting of the appropriate decision-making body of Bidder is held to consider approving those sections of the Scheme Booklet that relate to Bidder as being in a form appropriate for despatch to Target Shareholders, subject to approval of the Court.
 - (h) **(Accuracy of Bidder Scheme Information)** Before the Dispatch Date, verifying to Target the accuracy of the Bidder Scheme Information contained in the Scheme Booklet, and consenting to the inclusion of that information in the form and context in which it appears in the Scheme Booklet, in each case subject to Bidder being reasonably satisfied as to those matters.
 - (i) **(Bidder Scheme Information)** Taking all reasonable steps to ensure that the Bidder Scheme Information is not false, misleading or deceptive in any material respect (whether by omission or otherwise) as at the Dispatch Date.
 - (j) **(Bidder new information)** Providing to Target any further or new information about Bidder which arises after the Dispatch Date and prior to the Scheme Meeting which is necessary or reasonably required by Target to ensure that the Bidder Scheme

Information disclosed to Target Shareholders is not false, misleading or deceptive in any material respect (whether by omission or otherwise).

- (k) **(Scheme Consideration)** If the Scheme becomes Effective, paying the Scheme Consideration in accordance with clause 4.2 on Completion.
- (l) **(Regulatory notifications)** Without limiting any obligation of Bidder under any other provision of this Agreement, lodging with each Government Agency within the relevant time periods all necessary documentation and filings required by law to be lodged by Bidder in relation to the Scheme and the transactions contemplated by this Agreement.
- (m) **(Reasonable assistance)** Without limiting any obligation of Bidder under any other provision of this Agreement, providing any assistance or information reasonably requested by Target in relation to the Scheme.

Timetable

- 6.3 Each of Target and Bidder must use its reasonable endeavours to perform its obligations (and procure its Representatives to assist in that performance) substantially in accordance with the Timetable.

Conduct of appeals

- 6.4 If the Court refuses to grant an order convening the Scheme Meeting or approving the Scheme, then Target and Bidder must consult with each other in good faith as to whether to appeal the Court's decision. If, in the opinion of both senior counsel engaged by each party within five Business Days of the Court's decision, there are reasonable prospects of successfully appealing the Court's decision then:
- (a) Target must appeal the Court's decision, the cost of which is to be borne equally by Target and Bidder; and
 - (b) the Sunset Date will be extended to 29 March 2018 (or any earlier date agreed to by Target and Bidder) to account for the period for determination of the appeal on an expedited basis.

Conduct of business

- 6.5 During the Exclusivity Period, Target must, and must ensure that its Subsidiaries, conduct their businesses in the ordinary and proper course of business.
- 6.6 Without limiting clause 6.5, during the Exclusivity Period, Target must, and must procure that each of its Subsidiaries:
- (a) use reasonable endeavours to preserve its relationships with customers, suppliers, licensors, licensees and joint venturers and others with whom it has business dealings;
 - (b) subject to clause 6.6(j)(iv), use reasonable endeavours to retain all directors and senior managers of the Target Group holding such positions on the date of this Agreement;
 - (c) operate their businesses consistent with the business plans and budgets disclosed to Bidder prior to the date of this Agreement and otherwise on a basis consistent with those business plans and budgets adopted in the previous two years;
 - (d) maintain its assets in good working order as is reasonably necessary to operate all material aspects of its business;

- (e) upgrade or replace (as necessary) infrastructure and operating equipment necessary to operate all material aspects of its business;
- (f) have in place, and maintain until the Implementation Date, insurance over its assets and business to at least the same extent as that in place at the date of this Agreement;
- (g) consult with Bidder in relation to any occurrence or matter which Target considers is reasonably likely to constitute a Target Material Adverse Change;
- (h) promptly notify Bidder of any Claim which may be threatened, brought, asserted or commenced against any member of the Target Group, or their Officers, and consult with Bidder in relation to such matter to the extent Bidder reasonably requires;
- (i) manage working capital requirements in the ordinary course of business in a manner consistent with the prior 12 months;
- (j) Not:
 - (i) undertake or agree to undertake capital expenditure in excess of \$75,000 in aggregate in respect of the Target Group and in excess of \$18,500 in relation to any individual capital expenditure;
 - (ii) enter into any contract or commitment involving annual expenditure in excess of \$75,000, other than in the ordinary course of conducting the businesses of the Target Group;
 - (iii) enter into any new collective work place agreements or make any representations to unions as to terms that may apply under such agreements with respect to the employees of the Target Group;
 - (iv) except as required by law or any existing contract or agreement, enter into or vary any individual employment contract under which the total remuneration package (including the value of any share or other equity participation or benefit received as part of the package) is \$87,500 or more per annum or will increase by more than \$10,000 per annum as a result of the variation;
 - (v) acquire or dispose of any business, asset, entity or undertaking, the value of which exceeds \$17,500, individually or (other than in respect of assets) \$75,000 when aggregated with all such businesses, entities or undertakings, other than in the ordinary course of conducting the businesses of the Target Group;
 - (vi) accelerate the rights of any of its officers to benefits of any kind, excluding Performance Rights under clause 14.3;
 - (vii) pay an Officer a termination payment, other than as provided for in an existing employment contract in place as at the date of this Agreement, a current and complete copy of which has previously been provided to Bidder; or
 - (viii) (except as required by law or by this Agreement) agree to do or announce and intention to do any of the things referred to in this clause 6.6(j)(i) through 6.6(j)(vii);
- (k) not:
 - (i) in relation to money borrowed or raised by the Target Group from, and debit balances of the Target Group with, any bank or other financial institution,

increase the levels of those borrowings or debit balances from their levels as at the date of this Agreement (except for drawdowns on existing working capital or overdraft facilities);

- (ii) guarantee, indemnify or provide security for the obligations of any person (except as may be required under this Agreement); or
- (iii) exceed current bank borrowing or cash reserve limitations;
- (l) not enter into, or agree to enter into, any joint venture, partnership or similar arrangement; and
- (m) not take any action which would be reasonably expected to give rise to a Target Prescribed Event.

6.7 Any restriction on conduct which is imposed in clause 6.6 does not apply to the extent that:

- (a) the conduct is undertaken by a member of the Target Group in conducting its businesses in the ordinary course of business;
- (b) the conduct, or the intention to carry out the conduct, was Fairly Disclosed in the Target Due Diligence Information at least two Business Days prior to the date of this Agreement; or
- (c) the conduct is required to be undertaken by Target or its Subsidiary (as the case may be) in connection with the Scheme or this Agreement; or
- (d) the conduct is approved by Bidder (which approval must not be unreasonably withheld or delayed).

Appointing directors

6.8 As soon as practicable on the Implementation Date after the transfer of the Scheme Shares to Bidder under the terms of the Scheme, subject to receipt by Target of signed consents to act from the nominee directors of Bidder, Target must:

- (a) take all actions necessary to cause the appointment of the nominees of Bidder to the Target Board and the board of directors of each member of the Target Group; and
- (b) procure that those directors on the Target Board and the board of directors of each member of the Target Group which Bidder nominates resign with effect from the Implementation Date and that each such director must provide written notice to the effect that he or she has no claim outstanding for loss of office, remuneration or otherwise against Target.

Third party consents

6.9 Without limiting any obligations of either party under this Agreement in relation to obtaining the Regulatory Consents, the Parties agree to use their respective reasonable endeavours to ensure that all approvals and consents other than the Regulatory Consents which Bidder reasonably considers necessary or desirable to implement the Scheme are obtained prior to the Implementation Date.

6.10 Target must use its best endeavours to involve Bidder in meetings or discussions with third parties relating to the obtaining of any third party approval or consent required by Bidder under clause 6.9 and without limitation must:

- (a) keep Bidder informed of progress in obtaining any such third party approval or consent;
- (b) provide Bidder with drafts of any material written communications to be sent to any person in relation to the third party approval or consent and make such amendments as Bidder reasonably requires; and
- (c) provide Bidder with copies of any written communications sent to or received from a third party in relation to an third party consent approval or promptly upon despatch or receipt (as the case may be).

7. Warranties

Target Warranties

7.1 Target represents and warrants to Bidder (on its own behalf and separately as trustee for each of the other Bidder Indemnified Parties) at the date of this Agreement and on each subsequent day until and including 8:00 am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date) that:

- (a) it and each of its Subsidiaries is a corporation validly existing under the laws of its place of incorporation;
- (b) it and each of its Subsidiaries has not had:
 - (i) a liquidator or provisional liquidator appointed;
 - (ii) a receiver, receiver and manager, trustee, controller, official manager or similar officer appointed;
 - (iii) an administrator appointed, whether under Part 5.3A of the Corporations Act or otherwise; or
 - (iv) an application made for the appointment of an administrator, liquidator or provisional liquidator;

over all or part of its business, assets or revenues and neither Target nor any of its Subsidiaries or any of their respective boards of directors have passed a resolution for any such appointment; or
 - (v) an application made for its winding up;
- (c) it has taken all necessary corporate action to authorise entry into this Agreement and has taken or will take all necessary corporate action to authorise the performance of this Agreement and to carry out the transactions contemplated by this Agreement;
- (d) it has full corporate power to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement;
- (e) this Agreement constitutes a legal, valid and binding obligation of it enforceable in accordance with its terms by appropriate legal remedy, subject to laws generally affecting creditors' rights and the principles of equity;
- (f) this Agreement does not and will not conflict with or result in the breach of or default under any provision of its constitution or any material term or provision of any order, judgment, or law to which any member of the Target Group is a party or is subject or by which any member of the Target Group is bound;

- (g) it has obtained (or will have obtained prior to 8.00 am on the Second Court Date) all necessary consents and approvals to enable it to enter into and perform this Agreement. However, it does not represent or warrant that the Regulatory Consents will necessarily be obtained;
- (h) as at the date of this Agreement its issued equity securities comprise:
 - (i) 136,766,031 ordinary shares; and
 - (ii) 2,500,000 Performance Rights,
 and there are no other options, preference shares of any class, rights, performance rights, shares, convertible notes or other securities on issue, and neither it nor any of its Subsidiaries are under any obligation to issue and have not granted any person the right to call for the issue of any such securities in it or any of its Subsidiaries;
- (i) so far as it is aware (after making reasonable enquiries), all information provided by or on behalf of Target to Bidder during the course of negotiations in relation to the Scheme and preparation of the Scheme Booklet is complete, accurate and not misleading in all material respects (including by omission);
- (j) Target has not knowingly or recklessly:
 - (i) omitted to disclose information to Bidder prior to the date of this Agreement, the disclosure of which might reasonably be expected to have resulted in Bidder not entering into this Agreement or not agreeing to implement the Scheme, or entering into this Agreement on materially different terms;
 - (ii) omitted anything from the Target Due Diligence Information such as to make any part of that information materially false or misleading; or
 - (iii) included anything materially false or misleading in the Target Due Diligence Information;
- (k) the Target Scheme Information:
 - (i) will comply in all material respects with the requirements of all applicable laws, including the Corporations Act, applicable ASIC guidance and policies and the Listing Rules; and
 - (ii) be provided on the understanding that each of the Bidder Indemnified Parties will rely on that information for the purposes of preparing the Bidder Scheme Information and implementing the Scheme;
- (l) as at the Dispatch Date, the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the Bidder Scheme Information and the Independent Expert's report) will not be misleading or deceptive in any material respect (whether by omission or otherwise); and
- (m) it is not in breach of its continuous or periodic financial disclosure obligations under the Listing Rules or the Corporations Act and, subject to the announcement of the Scheme and the execution of this Agreement in accordance with clause 9.1, as at the date of this Agreement Target is not relying on Listing Rule 3.1A to withhold any information from disclosure under the Listing Rules.

Target indemnity

- 7.2 Target agrees with Bidder (on Bidder's own behalf and separately as trustee for each of the other Bidder Indemnified Parties) to indemnify and keep indemnified the Bidder Indemnified Parties from and against all Claims, liabilities and loss which any of the Bidder Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties in clause 7.1.
- 7.3 For the purpose of clause 7.2, Bidder is taken to be acting as agent and trustee on behalf of and for the benefit of each of the Bidder Indemnified Parties. Target acknowledges that Bidder and each of the Bidder Indemnified Parties may bring action directly against Target in respect of any breach of the Target Warranties.

Bidder Warranties

- 7.4 Bidder represents and warrants to Target (on its own behalf and separately as trustee for each of the other Target Indemnified Parties) at the date of this Agreement and on each subsequent day until and including 8:00 am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date) that:
- (a) it is a corporation validly existing under the laws of its place of incorporation;
 - (b) no Bidder Prescribed Event has occurred;
 - (c) it has taken all necessary corporate action to authorise the entry into this Agreement and has taken or will take all necessary corporate action to authorise the performance of this Agreement and to carry out the transactions contemplated by this Agreement;
 - (d) it has full corporate power to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement;
 - (e) this Agreement constitutes a legal, valid and binding obligation of it enforceable in accordance with its terms by appropriate legal remedy, subject to laws generally affecting creditors' rights and the principles of equity;
 - (f) this Agreement does not and will not conflict with or result in the breach of or default under any provision of its constitution or any material term or provision of any order, judgment, or law to which it, or any of its Subsidiaries, is a party or is subject or by which it or any of its Subsidiaries is bound;
 - (g) it has obtained (or will have obtained prior to 8.00 am on the Second Court Date) all necessary consents and approvals to enable it to enter into and perform this Agreement. However, it does not represent or warrant that the Regulatory Consents will necessarily be obtained;
 - (h) as at the Dispatch Date, the Bidder Scheme Information, in the form and context in which it appears in the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act will not be false, misleading or deceptive in any material respect (whether by omission or otherwise);
 - (i) the Bidder Scheme Information provided to Target in accordance with clause 6.2(i) for inclusion in the Scheme Booklet will:
 - (i) comply in all material respects with the requirements of all applicable laws, including the Corporations Act, applicable ASIC guidance and policies and the Listing Rules; and

- (ii) be provided on the understanding that each of the Target Indemnified Parties will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the requirements of the Corporations Act;
- (j) all Bidder Scheme Information provided by or on behalf of Bidder to the Independent Expert to enable the Independent Expert's report to be prepared and completed will be provided on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's report for inclusion in the Scheme Booklet;
- (k) so far as it is aware (after making reasonable enquiries), all information provided by or on behalf of Bidder to Target during the course of negotiations in relation to the Scheme and preparation of the Scheme Booklet is complete, accurate and not misleading in all material respects (including by omission);
- (l) as at the date of this Agreement, Bidder has available to it sufficient cash amounts from internal cash resources to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this Agreement and the Deed Poll; and
- (m) at 8.00 am on the Second Court Date, Bidder will have available to it sufficient cash amounts from internal cash resources to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this Agreement and the Deed Poll.

Bidder indemnity

- 7.5 Bidder agrees with Target (on Target's own behalf and separately as trustee for each of the other Target Indemnified Parties) to indemnify and keep indemnified the Target Indemnified Parties from and against all Claims, liabilities and loss which any of the Target Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties in clause 7.4.
- 7.6 For the purposes of clause 7.5, Target is taken to be acting as agent and trustee on behalf of and for the benefit of each of the Target Indemnified Parties. Bidder acknowledges that Target and each of the Target Indemnified Parties may bring action directly against Bidder in respect of any breach of the Bidder Warranties.

Release

- 7.7 Each party:
- (a) releases its rights against, and will not make any Claim against, any past or present Representative of any other party in relation to anything done or purported to be done in connection with the Scheme, any transaction contemplated by or warranty given in this Agreement, any information provided to it by another party or in relation to its execution or delivery this Agreement to the extent that the past or present Representative has acted in good faith and has not engaged in any wilful misconduct. Nothing in this clause 7.7(a) excludes any liability that may arise from wilful misconduct or bad faith on the part of any person; and
 - (b) holds the releases in clause 7.7(a) in respect of its past and present Representatives as trustee for those Representatives.
- 7.8 Each representation and warranty in clauses 7.1 and 7.4:

- (a) is severable;
- (b) will survive termination of this Agreement; and
- (c) is given with the intent that liability under it is not confined to breaches which are discovered before the date of termination of this Agreement.

Survival of indemnities

7.9 Each indemnity in this Agreement (including those in clauses 7.2 and 7.5):

- (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 Agreement; and
- (d) will survive termination of this Agreement.

No other warranties or reliance

7.10 Each party acknowledges that no other party (nor any person acting on that other party's behalf) has made any warranty, representation or other inducement to it to enter into this Agreement, except for the representations and warranties expressly set out in this Agreement.

7.11 Each party acknowledges and confirms that it does not enter into this Agreement in reliance on any warranty, representation or other inducement by or on behalf of any other party, except for any warranty or representation expressly set out in this Agreement.

8. Termination

Termination for breach

8.1 Without prejudice to any other rights of termination under this Agreement, either party may terminate this Agreement by giving the other party written notice at any time before 8.00 am on the Second Court Date if:

- (a) the other party is in material breach of any term of this Agreement, or there has been a material breach of a representation or warranty given by the other party under clauses 7.1 or 7.4 (as applicable) on or before the Second Court Date; and
- (b) the party wishing to terminate this Agreement has given the other party a written notice setting out details of the breach and stating its intention to terminate this Agreement; and
- (c) the breach has not been remedied within five Business Days (or any shorter period ending immediately before 8.00 am on the Second Court Date) from the date the notice under clause 8.1(b) is given.

Automatic termination

8.2 This Agreement will terminate automatically without the need for action by any party in the event that:

- (a) subject to paragraph (b), Target Shareholder Approval is not obtained at the Scheme Meeting; or

- (b) if clause 3.4 requires Target to apply for the order referred to in that clause, the order is refused with the result that the Scheme is not approved by Target Shareholders.

Termination by Target or Bidder

- 8.3 Either of Bidder or Target may terminate this Agreement by giving the other party written notice if:
- (a) the Court refuses to grant an order convening the Scheme Meeting or approving the Scheme and either:
 - (i) Bidder and Target fail to agree on conducting an appeal under clause 6.4 within five Business Days of the Court's decision and Target is not otherwise obliged to conduct an appeal in accordance with clause 6.4; or
 - (ii) Bidder and Target agree to conduct an appeal under clause 6.4 within five Business Days of the Court's decision but the appeal is unsuccessful;
 - (b) the Scheme is not approved by the Court under section 411(4)(b) of the Corporations Act on or before the Sunset Date; or
 - (c) Bidder changes the transaction structure from the Scheme to a takeover bid under Chapter 6 of the Corporations Act, provided that the takeover bid is at an offer price per Target Share which is at least equal to the Scheme Consideration.
- 8.4 This Agreement may not be terminated by a party under clause 8.3 if the relevant event described in clause 8.3 is a result of (either alone or together with other events or circumstances) an act or omission by that party or any of its Related Bodies Corporate that results in a breach of this Agreement.

Termination following Superior Proposal

- 8.5 Without prejudice to any other rights of termination under this Agreement, but subject to clause 12.6, either Bidder or Target may terminate this Agreement by giving the other party written notice at any time before 8.00 am on the Second Court Date if:
- (a) the Target Board publicly announces and/or determines that a Competing Proposal is a Superior Proposal; and
 - (b) in the case of a termination by Target, at all times prior to announcement of a Competing Proposal Target has complied with its obligations under clause 12 in relation to the Competing Proposal.

Effect of termination

- 8.6 If either Target or Bidder terminates this Agreement under clauses 3 or 8, this Agreement and the Parties' obligations under it cease, other than obligations under this clause and clauses 7.2, 7.3, 7.5, 7.6, 7.7, 7.9, 9, 10, 13, 15, 16 and 17 which will survive termination.
- 8.7 Termination of this Agreement under clauses 3 or 8 does not affect any accrued rights of a party in respect of a breach of this Agreement prior to termination.

9. Public announcements

Announcement of the Scheme

9.1 Immediately after the execution of this Agreement, Target must issue a public announcement in a form agreed between the Parties.

Public announcements

9.2 Except as permitted under clause 9.1, neither party may make a public announcement about this Agreement (including any termination of this Agreement), the Scheme Booklet or the Scheme unless:

- (a) the other party has given its prior written approval to the form of the announcement (acting reasonably); or
- (b) applicable law or the Listing Rules requires an announcement to be made, subject to clause 9.4.

9.3 The Parties must use all reasonable endeavours to participate constructively and promptly with respect to the approvals and consultation contemplated by clauses 9.2 and 9.4.

Required disclosure

9.4 If applicable law or the Listing Rules require a party to make an announcement or disclosure about the subject of this Agreement, the Scheme Booklet or the Scheme, that party may only do so after it has given the other party prior notice (of at least one Business Day if possible, subject to complying with all applicable laws and the Listing Rules) and consulted with the other party about the form and content of the announcement or disclosure.

Statements on termination

9.5 Without limiting clause 9.2, the Parties must act in good faith and use all reasonable endeavours to issue an agreed statement or announcement in respect of any termination of this Agreement.

10. Confidentiality

Confidentiality Agreement

10.1 The Parties acknowledge and agree that they are bound by the terms of the Confidentiality Agreement except that if there is any conflict or inconsistency between the terms of this Agreement and the Confidentiality Agreement, the terms of this Agreement will prevail to the extent of the conflict or inconsistency.

Target's obligations

10.2 Target acknowledges and agrees that it will:

- (a) use Bidder Confidential Information exclusively to produce the Scheme Booklet and implement the Scheme and not for anything else;
- (b) not use Bidder Confidential Information or any part of it to the competitive disadvantage of Bidder or any of its Subsidiaries;
- (c) keep all Bidder Confidential Information in confidence;

- (d) only disclose Bidder Confidential Information:
 - (i) to those Representatives of Target who:
 - (A) require Bidder Confidential Information to produce the Scheme Booklet; and
 - (B) are informed of Target's obligations under this clause 10.2 and agree to comply with such obligations as if they were Target;
 - (ii) to the extent required by law or the Listing Rules, subject to first observing the terms of clause 9.4;
 - (iii) to the extent that the disclosure is necessary for the purpose of implementing the Scheme, including obtaining all necessary Regulatory Consents, and enforcing the provisions of this Agreement;
 - (iv) to the extent that such information is required for inclusion in the Scheme Booklet or in any documents to be made available to the Court in support of the Scheme; or
 - (v) with Bidder's prior written consent; and
- (e) on Bidder's request, return to Bidder or destroy (at Bidder's election) all Bidder Confidential Information provided to Target and its Representatives, together with any copies or other documents incorporating Bidder Confidential Information generated by any of those people provided that Target and its Representatives are not obliged to return or destroy any Bidder Confidential Information:
 - (i) contained in Target's directors' papers, or the minutes of Target's board or any committee of that board to the extent that such papers and minutes contain the level of detail consistent with the normal practices of Target;
 - (ii) to the extent that Target or any of its Representatives, as applicable, are required by law or the rules of any Government Agency to retain that information;

however, Target and its Representatives, as applicable, must keep such retained information confidential in accordance with this clause 10.2.

Bidder's obligations

10.3 Bidder acknowledges and agrees that it will:

- (a) only use Target Confidential Information or any part of it in relation to the Scheme and its implementation and not for anything else;
- (b) not use Target Confidential Information or any part of it to the competitive disadvantage of Target or any of its Subsidiaries;
- (c) keep all Target Confidential Information in confidence;
- (d) only disclose Target Confidential Information:
 - (i) to those Representatives of Bidder who:
 - (A) require Target Confidential Information to produce the Bidder Scheme Information or review the Scheme Booklet; and

- (B) are informed of Bidder's obligations under this clause 10.3 and agree to comply with such obligations as if they were Bidder; or
- (ii) to the extent required by law or the Listing Rules, subject to first observing the terms of clause 9.4;
- (iii) to the extent that the disclosure is necessary for the purpose of implementing the Scheme, including obtaining all necessary Regulatory Consents, and enforcing the provisions of this Agreement;
- (iv) to the extent that such information is required for inclusion in any documents to be made available to the Court in support of the Scheme; or
- (v) with Target's prior written consent; and
- (e) on Target's request, return to Target or destroy (at Target's election) all Target Confidential Information provided to Bidder and its Representatives, together with any copies or other record of Target Confidential Information generated by any of those people provided that Bidder and its Representatives are not obliged to return or destroy any Bidder Confidential Information:
 - (i) contained in Bidder's directors' papers, or the minutes of Bidder's board or any committee of that board to the extent that such papers and minutes contain the level of detail consistent with the normal practices of Bidder;
 - (ii) to the extent that Bidder or any of its Representatives, as applicable, are required by law or the rules of any Government Agency to retain that information;

however, Bidder and its Representatives, as applicable, must keep such retained information confidential in accordance with this clause 10.3.

Takeover bid

10.4 Nothing in this Agreement precludes Bidder from making a takeover bid for Target at an offer price per Target Share which is at least equal to the Scheme Consideration. In these circumstances, Bidder may disclose Target Confidential Information in a bidder's statement under the Corporations Act for this purpose and without complying with the procedure set out in clause 9 provided that it has Target's prior written consent.

Privacy Act

10.5 Each party acknowledges that the other has obligations under the *Privacy Act 1988* (Cth) in relation to personal information (defined as any information identifying or potentially identifying an individual) in its possession and forming part of the information provided by or on behalf of that party to the other party. If a party receives information containing personal information from or on behalf of the other party, the party undertakes to comply with the obligations under the *Privacy Act 1988* (Cth) to the same extent and degree as the party from whom it has obtained the information is bound to observe them.

11. Conduct of Court proceedings

11.1 Nothing in this Agreement gives any party any right or power to make undertakings to the Court for or on behalf of another party without that party's written consent.

- 11.2 Each party agrees to give all undertakings to the Court in all Court proceedings which it is reasonably required to give (on an individual basis) to obtain Court approval and confirmation of the Scheme as contemplated by this Agreement.
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12. Exclusivity

Termination of existing discussions

- 12.1 Target represents and warrants that, as at the date of this Agreement, it and its Representatives have terminated all negotiations or discussions in respect of any Competing Proposal or that could reasonably lead to a Competing Proposal.
- 12.2 Target represents and warrants that prior to the date of this Agreement it has requested the return or destruction of all confidential information of the Target Group to the extent it is legally entitled to do so under the terms of each confidentiality agreement with a third party who has conducted due diligence investigations on the Target Group prior to the date of this Agreement.

No-shop restriction

- 12.3 During the Exclusivity Period, Target must ensure that neither it, nor any of its Representatives, directly or indirectly, solicits, invites, encourages or initiates any enquiries, negotiations or discussions, or communicates any intention to do any of these things, with a view to obtaining any expression of interest, offer or proposal from any other person in relation to a Competing Proposal or a proposal that could reasonably lead to a Competing Proposal.

No-talk restriction

- 12.4 Subject to clause 12.9, during the Exclusivity Period, Target must ensure that neither it nor any of its Representatives:
- (a) enters into, continues or participates in any negotiations or discussions with any person regarding a Competing Proposal or which may reasonably be expected to lead to a Competing Proposal;
 - (b) facilitate or permit any person to undertake due diligence investigations or provides any non-public information regarding the Target Group's businesses or operations to a person (other than Bidder, or its Representatives) for the purposes of enabling or assisting that person to make a Competing Proposal; or
 - (c) enters into any agreement, arrangement or understanding in relation to, or which may reasonably be expected to lead to, an expression of interest, offer or proposal from any other person in relation to a Competing Proposal,
- even if:
- (d) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Target; or
 - (e) the other person has publicly announced the Competing Proposal.

Notification

- 12.5 During the Exclusivity Period, if a Competing Proposal or a proposal that could reasonably be expected to lead to a Competing Proposal is put to Target (**Other Proposal**) then Target must (subject to clause 12.9) promptly inform Bidder of that fact, the identity of the person or

persons involved in the Other Proposal and the key terms of the Other Proposal (**Other Proposal Notice**). For the purposes of this clause, a material variation to an Other Proposal which has previously been notified to Bidder is taken to be a new Other Proposal to which this clause applies.

Bidder's right to match Other Proposal

- 12.6 Target must not enter into any agreement, arrangement or understanding in relation to an Other Proposal, or rely on any clause in this Agreement as a result of an Other Proposal, unless:
- (a) Target gives Bidder an Other Proposal Notice in relation to the Other Proposal;
 - (b) a period of five Business Days has elapsed from the date on which Bidder receives the Other Proposal Notice.
- 12.7 If Target gives an Other Proposal Notice, Bidder will have the right, but not the obligation, at any time until the expiration of five Business Days following receipt of the Other Proposal Notice to:
- (a) offer to amend the terms of the Scheme; or
 - (b) to propose any other transaction,
- which offer or proposal must be submitted to Target in writing (each a **Bidder Counterproposal**), and if Bidder does so, the Target Board must review the Bidder Counterproposal in good faith to determine whether the Bidder Counterproposal is more favourable to Target Shareholders than the Other Proposal taking into account all terms and conditions of both proposals.
- 12.8 If the Target Board determines, in good faith and after having obtained written advice from its Adviser, that the Bidder Counterproposal is more favourable to Target Shareholders than the Other Proposal, then:
- (a) Either:
 - (i) if the Bidder Counterproposal contemplates an amendment to the Scheme, the Parties must enter into a deed amending this Agreement and all other necessary documents to reflect the Bidder Counterproposal; or
 - (ii) if the Bidder Counterproposal contemplates any other transaction, Target must make an announcement as soon as reasonably practicable recommending the Bidder Counterproposal, in the absence of a Superior Proposal, and the Parties must pursue implementation of the Bidder Counterproposal in good faith; and
 - (b) Target must not enter into any agreement, arrangement or understanding in relation to the Other Proposal.

Exception

- 12.9 Despite anything else in this Agreement, the restrictions and obligations in clauses 12.4 and 12.5 do not apply to the extent that the Target Board has determined, in good faith and after having obtained written advice from its Adviser, that complying with clauses 12.4 and 12.5 (as applicable) would be likely to constitute a breach of the Target Board's fiduciary or statutory duties.

Normal provision of information

- 12.10 Nothing in this clause 12 prevents Target or its Representatives from the following (provided that such disclosure is subject to the confidential provisions among the parties):
- (a) providing information to its Representatives, rating agencies or any Government Agency;
 - (b) providing information to customers, joint venturers and suppliers in the ordinary course of their businesses; or
 - (c) making presentations to brokers, portfolio investors or analysts in the ordinary course of their businesses.

13. Break fees

Target Break Fee

13.1 Subject to clauses 13.3, 13.4 and 13.5, if:

- (a) at any time before the Scheme Meeting is held (or is scheduled to be held), any Target director fails to recommend the Scheme to Target Shareholders, publicly withdraws or varies its recommendation of the Scheme in a manner adverse to Bidder or otherwise makes a public statement indicating that it no longer supports the Scheme, other than:
 - (i) in circumstances where Target is entitled to terminate this Agreement under clause 3.13 or 8.1; or
 - (ii) as a consequence of the Independent Expert concluding in its report (or in any revised or supplemental report) that the Scheme is not in the best interests of Target Shareholders; or
- (b) a Competing Proposal is announced during the Exclusivity Period and either:
 - (i) at any time during the Exclusivity Period or on or prior to the date six months after end of the Exclusivity Period, the proponent of the Competing Proposal acquires voting power or an economic interest in at least 50% of Target Shares or acquires or obtains an economic interest in at least 50% of the assets or businesses of the Target Group; or
 - (ii) the Competing Proposal is recommended by any Target director; or
- (c) Bidder validly terminates this Agreement in accordance with clause 8.1,

then Target must pay to Bidder the amount of costs, expenses and outgoings which Bidder has incurred in preparation for, or in connection with, the Scheme (including, without limitation, in conducting due diligence and negotiating this Agreement and other related documents), but net of any GST which it may recover, up to a maximum of \$135,000 (**Target Break Fee**). Target may require Bidder to substantiate its costs, expenses and outgoings before making payment under this clause.

Bidder Break Fee

13.2 Subject to clauses 13.3 and 13.5, if Target validly terminates this Agreement in accordance with clause 8.1, then Bidder must pay to Target the amount of costs, expenses and outgoings which Target has incurred in preparation for or in connection with the Scheme (including,

without limitation, in conducting due diligence and negotiating this Agreement and other related documents), but net of any GST which it may recover, up to a maximum of \$135,000 (**Bidder Break Fee**). Bidder may require Target to substantiate its costs, expenses and outgoings before making payment under this clause.

Qualifications

- 13.3 No Target Break Fee or Bidder Break Fee is payable if the Scheme becomes Effective.
- 13.4 The Target Break Fee is only payable once and the maximum amount payable by Target under clause 13.1 is the amount of the Target Break Fee.

Compliance with law

- 13.5 If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court that all or any part of the Target Break Fee or the Bidder Break Fee required to be paid under clause 13.1 or 13.2 (**Impugned Amount**):
- (a) is unlawful;
 - (b) involves a breach of directors' duties; or
 - (c) constitutes unacceptable circumstances or breaches an order of the Takeovers Panel,
- then:
- (d) the requirement to pay the Target Break Fee or the Bidder Break Fee (as the case may be) does not apply to the extent of the Impugned Amount; and
 - (e) if Target or Bidder (as the case may be) has received the Impugned Amount, it must refund it within five Business Days of the final determination being made.

Acknowledgments

- 13.6 Each of Target and Bidder acknowledge that:
- (a) it has received legal advice on this Agreement and the operation of this clause; and
 - (b) it considers this clause to be fair and reasonable and that it is appropriate to agree to the terms in this clause in order to secure the significant benefits to it (and its shareholders) which would result from the implementation of the Scheme.
- 13.7 Target acknowledges that:
- (a) if Target and Bidder enter into this Agreement and the Scheme is subsequently not implemented in any of the circumstances described in clause 13.1, Bidder will incur significant costs;
 - (b) in the circumstances referred to in clause 13.7(a), Bidder has requested that provision be made for the payment of the Target Break Fee, without which Bidder would not have entered into this Agreement;
 - (c) the Target Break Fee has been calculated to reimburse Bidder for the following:
 - (i) fees for legal and financial advice in planning and pursuing the Scheme;
 - (ii) reasonable opportunity costs incurred in engaging in the Scheme and in not engaging in other alternative acquisitions or strategic initiatives;

- (iii) costs of management and directors' time in planning and pursuing the Scheme;
- (iv) out-of-pocket expenses incurred in planning and pursuing the Scheme; and
- (v) costs associated with the financing arrangements in respect of the Scheme,

in each case, incurred by Bidder directly or indirectly as a result of having entered into this Agreement and pursuing the Scheme.

13.8 Each of Target and Bidder acknowledge that:

- (a) the amount of fees, costs and losses referred to in clause 13.7(c) is inherently unascertainable and that, even after termination of this Agreement, the costs will not be able to be accurately ascertained; and
- (b) the amount of the Target Break Fee is a genuine and reasonable pre-estimate of the amount of fees, costs and losses referred to in clause 13.7(c) (it being acknowledged by the Parties that the costs would most likely be in excess of the amount of the Target Break Fee).

Payment – Target Break Fee

13.9 Any Target Break Fee which is payable under this clause must be paid within five Business Days of receipt of a written demand from Bidder. The demand may only be made after the occurrence of an event referred to in clause 13.1.

Payment – Bidder Break Fee

13.10 Any Bidder Break Fee which is payable under this clause must be paid within five Business Days of receipt of a written demand from Target. The demand may only be made after the occurrence of the event referred to in clause 13.2.

Exclusive remedy

13.11 Despite any other provision of this Agreement, where the Target Break Fee becomes payable to Bidder under this Agreement (or would be payable if a demand was made), Bidder cannot make any Claim against Target or any other Target Indemnified Party in relation to any loss to Bidder or any Bidder Indemnified Party arising from the Scheme not proceeding, any event or occurrence referred to in clause 13.1, and any and all liability of Target and the Target Indemnified Parties in relation to any breach by Target of its obligations under this Agreement or any breach of any Target Warranty.

13.12 Despite any other provision of this Agreement, where the Bidder Break Fee becomes payable to Target under this Agreement (or would be payable if a demand was made), Target may not make any Claim against any Bidder Indemnified Party in relation to any loss to Target or any Target Indemnified Party arising from the Scheme not proceeding and any breach by Bidder of its obligations under this Agreement or of any Bidder Warranty.

Regulatory intervention

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

- (a) the Parties will accept this determination and amend this Agreement to that extent, and
 - (b) it will not result in a breach of this Agreement or termination of the transactions contemplated by it.
-

14. Convertible rights

Performance Rights

- 14.1 As soon as reasonably practicable after the date of this Agreement, Target must use its best endeavours to enter into a Cancellation of Performance Rights Deed with each Performance Rights Holder having the effect of cancelling all Performance Rights for no consideration subject to the Scheme becoming Effective.
- 14.2 Without limiting clause 14.3, Target must take all necessary steps in accordance with the Performance Rights Plan Rules to permit each Performance Rights Holder to exercise his or her Performance Rights prior to the Record Date.
- 14.3 Target agrees that if any Performance Rights Holder exercises his or her Performance Rights after the date of this Agreement, Target will not after 5.00 pm on the Second Court Date issue or transfer any Target Shares to such Performance Rights Holder and will in lieu of such issue or transfer, satisfy the Performance Rights of any such Performance Rights Holder by paying the appropriate amount to the Performance Rights Holder in cash in accordance with the terms of issue.

Other convertible rights

- 14.4 As soon as reasonably practicable after the date of this Agreement, to the extent applicable, Target must ensure that any options, instrument, unit or any other security or interest which is convertible into shares in the Target are cancelled, subject to the Scheme becoming Effective.
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15. Costs and stamp duty

Costs

- 15.1 Subject to clause 15.2, each party must bear its own costs and expenses (including professional fees and stamp duty) incurred by it in connection with the negotiation, preparation and execution of this Agreement and the implementation or attempted implementation of the Scheme.

Stamp duty

- 15.2 Bidder must pay all stamp duty and any related fines or penalties in respect of this Agreement, the Deed Poll and the acquisition of the Scheme Shares in accordance with the Scheme and indemnify Target (on Target 's own behalf and separately as trustee or nominee for the other Target Indemnified Parties and Target Shareholders) against any liability arising from failure to comply with this clause 15.2.
-

16. Notices

Requirements

- 16.1 All notices must be:

- (a) in legible writing and in English;
- (b) addressed to the recipient at the address set out below or to any other address that a party may notify to the other:

to Target:

Address:	Unit 4B, 128-130 Frances Street, Lidcombe NSW 2141
Attention:	Darryl Ellis

to Bidder:

Address:	951 Calle Amanecer, San Clemente, California CA 92673
Attention:	Virginia Sanzone

- (c) signed by the party making the communication or by a person duly authorised by that party; and
- (d) sent to the recipient by hand, or prepaid post (airmail if to or from a place outside Australia).

Receipt of notices

16.2 Without limiting any other means by which a party may be able to prove that a notice has been received by the other party, a notice will be considered to have been received:

- (a) if sent by hand, when left at the address of the recipient; or
- (b) if sent by pre-paid post, three Business Days (if posted within Australia to an address in Australia) or 10 Business Days (if posted from one country to another) after the date of posting;

but if a notice is served by hand on a day that is not a Business Day, or after 5.00 pm (recipient's local time) on a Business Day, the notice will be considered to have been received by the recipient at 9.00 am (recipient's local time) on the next Business Day.

17. General

Entire agreement

17.1 To the extent permitted by law, in relation to the subject matter of this Agreement, this Agreement:

- (a) embodies the entire understanding of the Parties and constitutes the entire terms agreed on between the Parties; and
- (b) supersedes any prior agreement (whether or not in writing) between the Parties.

Further assurances

17.2 Each party must, at its own expense, whenever requested by the other party, promptly do or, to the extent reasonably practicable, arrange for others to do everything, including executing

any documents, reasonably necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

No merger

17.3 The rights and obligations of the Parties do not merge on completion of any transaction contemplated under this Agreement. They survive the execution and delivery of any assignment or other document entered into to implement any transaction contemplated under this Agreement.

Assignment

17.4 A party cannot assign, novate or otherwise transfer or deal in any other way with any of its rights or obligations under this Agreement without the other party's prior written consent.

Invalid or unenforceable provisions

17.5 If a provision of this Agreement is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions.

Waiver and exercise of rights

17.6 A waiver by a party of a provision of, or of a right under, this Agreement is only binding on the party granting the waiver if it is given in writing and is signed by the party or an authorised officer of the party granting the waiver.

17.7 A waiver is effective only in the specific instance and for the specific purpose for which it is given.

17.8 A single or partial exercise of a right by a party does not preclude another exercise of that right or the exercise of another right.

17.9 The failure to exercise, or the delay in exercising, a right does not operate as a waiver or prevent the party so failing or exercising its right from later doing so.

Amendment

17.10 Except as expressly provided to the contrary in this Agreement, this Agreement may only be amended by a document signed by or on behalf of each party.

Counterparts

17.11 This Agreement may be signed in counterparts and all counterparts taken together constitute one document.

Rights cumulative

17.12 Except as expressly provided to the contrary in this Agreement or as permitted by law, the rights, powers and remedies provided in this Agreement are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this Agreement.

Consents or approvals

17.13 A party may give its approval or consent conditionally or unconditionally, or withhold its approval or consent, in its absolute discretion unless this Agreement expressly provides otherwise.

Severability

17.14 If a provision of this Agreement is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions of this Agreement.

GST

17.15 Unless expressly included, the consideration for any supply under or in connection with this Agreement does not include GST.

17.16 To the extent that any supply made by a party to another party (**Recipient**) under or in connection with this Agreement is a taxable supply and a tax invoice has been provided to the Recipient, the Recipient must pay, in addition to the consideration to be provided under this Agreement for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.

17.17 The amount of GST payable in accordance with clause 17.16 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.

Governing law and jurisdiction

17.18 This Agreement is governed by the laws of New South Wales.

17.19 Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales; and
- (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

Service of process

17.20 Each party agrees that a document required to be served in proceedings about this Agreement may be served:

- (a) by being delivered to or left at its address for service of notices under clauses 16.1 and 16.2; or
- (b) in any other way permitted by law.

Execution

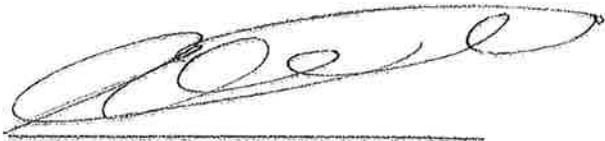
Executed as an agreement.

Signed by
Medical Australia Limited
in accordance with section 127 of the
Corporations Act 2001 by a director and
secretary/director:



Signature of director

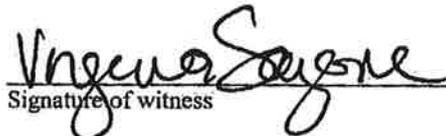
BRUCE HANCOCK
Name of director (please print)



Signature of director/secretary

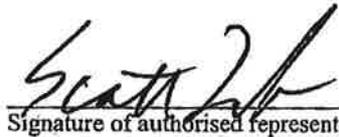
IAN BURNHAM MITERLEC
Name of director/secretary (please print)

Signed by
ICU Medical, Inc.
by its duly authorised representative in the
presence of:



Signature of witness

Virginia Sanzone
Name of witness (please print)



Signature of authorised representative

Scott Lamb, Director
Name of authorised representative (please
print)

Annexure 1

Timetable

Event	Indicative date
Enter into Scheme Implementation Agreement	7 August 2017
Provide Scheme Booklet to ASIC for review and comment	15 September 2017
First Court Date	4 October 2017
Scheme Booklet registered by ASIC and lodged with ASX	5 October 2017
Target Board meeting to approve Scheme Booklet and its dispatch	6 October 2017
Dispatch Scheme Booklet to Target Shareholders	13 October 2017
Latest date for return of completed proxy forms for Scheme Meeting	13 November 2017
Eligibility for voting at Scheme Meeting determined	14 November 2017
Scheme Meeting	15 November 2017
Second Court Date (SCD)	17 November 2017
Notify ASX of Court approval of the Scheme	SCD
Effective Date (lodge office copy of Court order approving the Scheme with ASIC)	SCD + one Business Day
Target Shares suspended from trading on ASX	SCD + one Business Day
Scheme Record Date	SCD + five Business Days
Implementation Date	SCD + eight Business Days

Annexure 2

Deed Poll

Deed Poll

By ICU Medical, Inc.

in favour of each Scheme Shareholder

Table of contents

1.	Definitions and interpretation	1
2.	Nature of Deed Poll	1
3.	Conditions precedent and termination	2
4.	Payment of Scheme Consideration	2
5.	Representations and warranties	2
6.	Continuing obligations	3
7.	Notices	3
8.	General	3

Title **Deed Poll**

Date

By **ICU Medical, Inc.** a company incorporated in Delaware, United States of 951 Calle Amanecer, San Clemente, California CA 92673, United States (**Bidder**)

in favour of Each holder of issued fully paid ordinary shares in Medical Australia Limited (ABN 30 096 048 912) (**Target**) as at the Scheme Record Date (**Scheme Shareholders**)

Recitals

- A Target and Bidder are parties to a Scheme Implementation Agreement dated 9 August 2017 (**Scheme Implementation Agreement**).
- B Bidder is entering into this Deed Poll for the purpose of covenanting in favour of Scheme Shareholders to perform certain of its obligations under the Scheme Implementation Agreement and certain steps attributed to it under the Scheme, including ensuring that the Scheme Consideration is paid to Scheme Shareholders.
- C The effect of the Scheme will be that the Scheme Shares, together with all rights and entitlements attaching to them, will be transferred to Bidder in exchange for the Scheme Consideration.

Operative provisions

1. **Definitions and interpretation**

- 1.1 Words and phrases defined in the Scheme have the same meanings in this Deed Poll unless the context requires otherwise.
- 1.2 Clause 1.2 of the Scheme applies to the interpretation of this Deed Poll except that references to "this document" in that clause are to be read as references to "this Deed Poll".
-

2. **Nature of Deed Poll**

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

3. Conditions precedent and termination

Conditions precedent

3.1 Bidder's obligations under clause 4 are subject to the Scheme becoming Effective.

Termination

3.2 Bidder's obligations under this Deed Poll will automatically terminate and the terms of this Deed Poll will have no further force or effect if:

- (a) the Scheme Implementation Agreement is terminated in accordance with its terms prior to the occurrence of the Effective Date for the Scheme; or
- (b) the Scheme does not become Effective on or before the Sunset Date.

Consequences of termination

3.3 If this Deed Poll is terminated under clause 3.2, then, in addition and without prejudice to any other rights, powers or remedies available:

- (a) Bidder is released from its obligations to further perform this Deed Poll; and
- (b) each Scheme Shareholder retains the rights it has against Bidder in respect of any breach of this Deed Poll which occurred before its termination.

4. Payment of Scheme Consideration

4.1 Subject to clause 3, Bidder undertakes to each Scheme Shareholder:

- (a) by no later than the Business Day before the Implementation Date, to deposit in cleared funds an amount equal to the aggregate amount of the Scheme Consideration payable to each Scheme Shareholder into an Australian dollar denominated trust account operated by Target as trustee for the Scheme Shareholders, except that any interest on the amount deposited (less any bank fees and other charges) will be credited to Bidder's account; and
- (b) to undertake all other actions attributed to it under, and otherwise comply with its obligations in, the Scheme as if it were a party to the Scheme,

subject to and in accordance with the provisions of the Scheme.

5. Representations and warranties

5.1 Bidder represents and warrants that:

- (a) it is a corporation validly existing under the laws of the place of its incorporation;
- (b) it has the corporate power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (c) it has taken all necessary corporate action to authorise the entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll; and

- (d) this Deed Poll is valid and binding upon it and enforceable against it in accordance with its terms.

6. Continuing obligations

- 6.1 This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:
- (a) Bidder having fully performed its obligations under this Deed Poll; and
 - (b) the termination of this Deed Poll under clause 3.2.

7. Notices

- 7.1 Any notice or other communication given to Bidder under or in connection with this Deed Poll must be:

- (a) in legible writing and in English;
- (b) addressed to Bidder at the address set out below:

Attention:	Virginia Sanzone
Address:	951 Calle Amanecer San Clemente California CA 92673 United States

- (c) signed by the sender or a person duly authorised by the sender; and
 - (d) sent to Bidder by hand, or prepaid post (airmail if to or from a place outside Australia).
- 7.2 Without limiting any other means by which a party may be able to prove that a notice has been received by Bidder, a notice will be considered to have been received:
- (a) if sent by hand, when left at the address of Bidder; or
 - (b) if sent by pre-paid post, three Business Days (if posted within Australia to an address in Australia) or 10 Business Days (if posted from one country to another) after the date of posting

but if a notice is served by hand on a day that is not a Business Day, or after 5.00 pm (Bidder's local time) on a Business Day, the notice will be considered to have been received by Bidder at 9.00 am (Bidder's local time) on the next Business Day.

8. General

Stamp duty

- 8.1 Bidder:

- (a) must pay all stamp duty (if any) and any related fines, penalties and interest in respect of the Scheme and this Deed Poll, the performance of this Deed Poll and each transaction effected by or made under this Deed Poll; and
- (b) indemnifies each Scheme Shareholder on demand against any liability arising from failure to comply with clause 8.1(a).

Waiver

- 8.2 Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed Poll by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Deed Poll.
- 8.3 No waiver of a breach of any term of this Deed Poll will operate as a waiver of another breach of that term or of a breach of any other term of this Deed Poll.
- 8.4 Nothing in this Deed Poll obliges a party to exercise a right to waive any conditional term of this agreement that may be in its power.
- 8.5 A provision of or right under this Deed Poll may not be waived except in writing signed by the person granting the waiver.

Variation

- 8.6 A provision of this Deed Poll may not be varied unless the variation is agreed to in writing by Bidder and Target, and the Court indicates that the variation would not of itself preclude approval of the Scheme. A variation which complies with this clause is effective when Bidder enters into a further deed poll in favour of each Scheme Shareholder giving effect to the amendment.

Rights cumulative

- 8.7 The rights, powers and remedies of Bidder and of 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.

Assignment

- 8.8 The rights and obligations of Bidder and of each Scheme Shareholder under this Deed Poll are personal and must not be assigned, encumbered or otherwise dealt with at law or in equity.

Further assurances

- 8.9 Each party must, at its own expense, whenever requested by the other party, promptly do or, to the extent reasonably practicable, arrange for others to do everything, including executing any documents, reasonably necessary to give full effect to this Deed Poll and the transactions contemplated by this Deed Poll.

Governing law and jurisdiction

- 8.10 This Deed Poll is governed by the laws of New South Wales.
- 8.11 Bidder irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

Execution

Executed as a deed.

Signed sealed and delivered by
ICU Medical, Inc.

by its duly authorised representative in the
presence of:

Signature of witness

Signature of authorised representative

Name of witness (please print)

Name of authorised representative (please
print)