

# **SCHEME IMPLEMENTATION AGREEMENT IN RELATION TO COMVITA LIMITED**

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**FLORENZ LIMITED**

**COMVITA LIMITED**

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**PARTIES**

1. **FLORENZ LIMITED (Bidder)**
2. **COMVITA LIMITED (Target)**

**BACKGROUND**

- A. Bidder and Target have agreed that Bidder will acquire all of the Scheme Shares by means of the Scheme.
- B. This agreement is entered into to record and give effect to the terms and conditions on which Bidder and Target propose to implement the Scheme.

**THIS AGREEMENT RECORDS THAT:**

**1. DEFINITIONS AND INTERPRETATION**

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**1.1 Definitions:** In this agreement, unless the context indicates otherwise:

**Additional Amount** has the meaning given to it in clause 17.3;

**Adverse Circumstance** has the meaning given to it in clause 3.8;

**Associate** has the meaning given to it in the Takeovers Code;

**Authorisation** means any permit, licence, consent, approval, registration, accreditation, certification or other authorisation given or issued by any Government Agency;

**Banking Covenants** means the specific financial obligations, ratios, limits or thresholds within which the Target has agreed with the Target Banks that the Target will operate that have been fairly disclosed in the Due Diligence Material;

**Bidder Group** means Bidder and those entities which Bidder Controls at any time prior to the Implementation Date;

**Bidder Indemnified Persons** means each member of the Bidder Group and each of their respective directors, officers and employees;

**Bidder Information** means all information given by Bidder to Target for inclusion in the Scheme Booklet, including the information concerning any member of the Bidder Group, their respective businesses and interests and dealings in the Shares;

**Bidder Undertakings** means the undertakings set out in Section 2 of Part B of Schedule 2;

**Bidder Warranties** means the statements set out in Section 1 of Part B of Schedule 2;

**Board** means the board of directors of Target;

**Break Fee** means NZ\$565,000 plus GST, if any;

**Break Fee Arrangements** has the meaning given to it in clause 13.7(a);

**Business** means the business carried on by the Target Group as at the date of this agreement;

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are generally open in Auckland, New Zealand and excluding any day in the period beginning on 25 December in any year and ending on 5 January in the following year;

**Business Plan** means the documents titled "*01.02.01 Budget FY26.pdf*" along with the monthly phasing in "*01.02.02 Turnaround Potential Plan (Redacted).pdf*", in each case available to the Bidder in the Data Room as at 7.00pm on Friday, 15 August 2025;

**Claim** has the meaning given to it at paragraph 25 of Section 1 of Part A of Schedule 2;

**Communications Protocol** means the communications protocols agreed between Bidder and Target;

**Companies Act** means the Companies Act 1993;

**Competing Proposal** means any proposed:

- (a) takeover bid (whether full or partial under the Takeovers Code) for Target;
- (b) acquisition of all or a material part of Target by way of a scheme of arrangement in respect of Target;
- (c) transfer or issue of financial products of Target to a Third Party:
  - (i) for which Shareholder approval is sought under the Takeovers Code or NZX Listing Rules or otherwise; or
  - (ii) in respect of financial products that are convertible into, or exchangeable for, Shares, where shareholder approval would be required under the Takeovers Code on conversion or exchange of those financial products;
- (d) transfer or issue of financial products of any member of the Target Group (other than Target) to a Third Party;
- (e) sale of assets by the Target Group (or any one or more members of the Target Group) that represents 20% or more of the total consolidated assets of the Target Group; or
- (f) reverse takeover, capital reduction, sale of securities, strategic alliance, joint venture, partnership, dual listed companies structure, economic or synthetic

merger or combination or other transaction or arrangement which, if completed, would result in a Third Party:

- (i) directly or indirectly acquiring or being entitled to acquire a Relevant Interest or any other direct or indirect legal, beneficial or economic interest in, or control over, (A) 20% or more of the shares of Target, or (B) any other shares in any other member or members of the Target Group; or
- (ii) directly or indirectly acquiring or being entitled to acquire (A) the whole, or substantially all, of the business or assets of the Target Group or, (B) any part of the business or assets of the Target Group that individually or collectively is Significant;
- (iii) otherwise acquiring Control of Target or merging or amalgamating with Target or any other member or members of the Target Group that individually or collectively is Significant,

or any other proposed transaction which would otherwise require Target to abandon, or otherwise fail to proceed with, or would be inconsistent with, the implementation of the Scheme. For the purposes of the definition of Competing Proposal:

- (g) any such proposal may be an expression of interest, indicative, conditional or otherwise non-binding;
- (h) paragraphs (a) to (f) above include any agreement (within the meaning of section 6 of the FMCA) whereby such a transaction is effected through a series of linked or related transactions which, if conducted as a single transaction, would constitute a Competing Proposal within the meaning of any of paragraphs (a) to (f) above;
- (i) each successive material modification to, or variation of, a Competing Proposal will constitute a new Competing Proposal; and
- (j) references to a Third Party include all Associates of the Third Party;

**Conditions** mean the conditions precedent set out in the first column of the table in clause 3.1;

**Confidentiality Agreement** means the confidentiality agreement between Bidder and Target, dated 4 February 2025;

**Confirmatory Certificate** has the meaning given in Clause 5.3(a);

**Consideration** means in respect of each Scheme Share held by a Scheme Shareholder, NZ\$0.80 per Scheme Share reduced (except for the purposes of clauses 4.1(a)(iv), 6.2(b), 8.1(d), 8.2(b), 8.3(a), 13.2(a)(ii)(F), 13.2(b) or 15.1) by the per Share value of any dividends or other distribution (within the meaning of the Companies Act), the record date for which falls in the period from (and including) the date of this agreement to (and including) the Implementation Date;

**Control** means, in relation to a person (the "**relevant person**") and one or more other persons, where those one or more persons, directly or indirectly, whether by the legal or beneficial ownership of shares, securities or other equity, by the possession of voting power, by contract, by trust, or otherwise:

- (a) has the power to appoint or remove the majority of the members of the governing body of the relevant person;
- (b) controls or has the power to control the affairs or policies of the relevant person; or
- (c) is in a position to derive more than 50% of the economic benefit of the existence or activities of the relevant person;

**Counter Proposal** has the meaning given in clause 12.7(b);

**Court** means the High Court of New Zealand, Auckland Registry or if leave cannot be reasonably obtained by Target to move the applicable hearings relating to the Scheme, the Tauranga Registry;

**Data Room** means the electronic data room hosted by Ansarada established by Target for the purposes of the Transaction;

**Data Room Index** means the index of the information contained in the Data Room, in a form agreed between the parties in writing on or prior to the date of this agreement;

**Deed Poll** means the deed poll to be entered into by Bidder in favour of the Scheme Shareholders in the form attached as Annexure 2 or in such other form as the parties agree in writing;

**Due Diligence Material** means:

- (a) the written information and documents made available to Bidder or its Representatives on or before 7.00pm on Friday 15 August 2025, in the Data Room as listed in the Data Room Index; and
- (b) Target's NZX announcements made through the NZX market announcements platform in the period commencing at 8.00am on the date that is two years prior to the date of this agreement to (and including) 5.00pm on the date that is two Business Days' prior to the date of this agreement; and
- (c) the Target Disclosure Letter;

**Duty** means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and any penalty, fine, interest or additional charge payable in relation to any such duty or charge;

**D&O Run-off Policy** has the meaning given to it in clause 11.3(a);

**Effective** means, when used in relation to the Scheme, the coming into effect under section 236(3) of the Companies Act of the order of the Court made under

section 236(1) of the Companies Act in relation to the Scheme and all of the conditions to the implementation of the Scheme having been satisfied or waived (where capable of waiver) in accordance with this agreement and the Scheme;

**Encumbrance** means any security interest (within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999) and any option, right to acquire, right of pre-emption, assignment by way of security, trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind (other than any reservation of title by suppliers in the ordinary course of business), and any agreement to create any of the foregoing;

**End Date** means:

- (a) 24 December 2025, provided that if any Condition has not been satisfied by this date a party (acting reasonably) considers that such Condition is capable of satisfaction by 31 January 2026, either party may elect, by providing written notice to the other, to extend the End Date to 31 January 2026;
- (b) where clause 12.8(c) applies, a date agreed in writing by the parties (acting reasonably and in good faith) having regard to market practice and the need to revise the Timetable to appropriately reflect the steps required in order to implement a Counter Proposal; or
- (c) any other date agreed in writing by the parties;

**Excluded Shares** means any Shares nominated in writing by Bidder to Target not less than two Business Days prior to the Record Date and that are held or controlled by Bidder or any of its Associates at the Record Date;

**Exclusivity Period** means the period starting on the date of this agreement and ending on the first to occur of:

- (a) termination of this agreement;
- (b) the Implementation Date; and
- (c) the End Date;

**Excluded Total Net Indebtedness Impact** has the meaning given in clause 9.4(f);

**Expert** means, upon the application by either party, an expert appointed by the President, or their nominee, of the New Zealand Law Society, who must be;

- (a) a King's Counsel with appropriate experience in New Zealand commercial disputes; and
- (b) genuinely independent from any party (for example, has not advised any party in the three years prior to appointment);

**Final Orders** means orders made on application of Target, that the Scheme is binding on Target, Bidder, Shareholders and such other persons or class of persons as the Court

may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act;

**Final Orders Date** means the day on which the Final Orders are granted by the Court;

**First Court Date** means the first date on which the application is made to the Court for the Initial Orders in accordance with section 236(2) of the Companies Act;

**FMCA** means the Financial Markets Conduct Act 2013;

**Fundamental Warranties** means the Target Warranties set out in paragraphs 1 to 9 (inclusive) and paragraph 13 of Section 1 of Part A of Schedule 2;

**FY25 Financial Statements** means Target's draft annual financial statements for the year ended 30 June 2025 as set out in document titled "*01.05 FY25 Financial Statements – Draft*" available to the Bidder in the Data Room as at 7.00pm on Friday, 15 August 2025;

**Government Agency** means any government, department, officer or minister of any government and any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity in any jurisdiction and includes the Overseas Investment Office, the Commerce Commission, the Takeovers Panel and the Financial Markets Authority;

**Group** means:

(a) in the case of Target, the Target Group; and

(b) in the case of Bidder, the Bidder Group;

**GST** means goods and services tax charged or levied under the GST Act, and includes any GST Default Amounts;

**GST Act** means the Goods and Services Tax Act 1985;

**GST Default Amounts** means any penalties, additional tax or interest payable in respect of goods and services tax;

**GST Exclusive Consideration** has the meaning given in clause 17.2;

**Implementation Date** means the day on which the Scheme is to be implemented, being 2 Business Days after the Record Date, or such other date agreed between the parties in writing;

**Independent Adviser** means the person appointed by Target, and approved by the Takeovers Panel, as independent adviser to prepare the Independent Adviser's Report;

**Independent Adviser's Report** means the independent adviser's report prepared by the Independent Adviser in relation to the Scheme in relation to its opinion on the merits of the Scheme as amended or updated from time to time and including any supplementary or replacement report;



**Initial Orders** means, on application by Target, orders by the Court for the purposes of section 236(2) of the Companies Act;

**Insolvency Event** means, in relation to a person, the occurrence of any of the following:

- (a) the person ceases or threatens to cease to carry on all or substantially all of its business or operations;
- (b) an application or an order is made, or a resolution is passed or proposed, for the person's dissolution;
- (c) the person is, or becomes, unable to pay its debts when due (as defined in the Companies Act), or enters into dealings with any of its creditors with a view to avoiding, or in expectation of, insolvency, or makes a general assignment or an arrangement or composition with, or for the benefit of, any of its creditors, or stops or threatens to stop payments generally;
- (d) the person goes into receivership or has a receiver, receiver and manager, official manager, trustee, statutory manager, voluntary administrator or other similar officer appointed in respect of all or any of its property;
- (e) the person enters into a scheme of arrangement (other than the Scheme) or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (f) a distress, attachment or other execution is levied or enforced upon or commenced against any of its assets;
- (g) any resolution is passed, or any proceeding is commenced, for the liquidation or dissolution of that person;
- (h) the person takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this definition; and
- (i) anything analogous to anything referred to in paragraphs (a) to (h) above or which has substantially similar effect, occurs with respect to it, including under any applicable foreign law;

**Intellectual Property Rights** means all rights and interests (including common law rights and interests) owned, held, used by, or licensed to, the Target Group, including domain names, recipes, recipes under development, patents, trade marks, service marks, copyrights, designs, trade dress, trade names, symbols and logos (in each case whether or not registered), applications to register trade marks, service marks and designs, formulae, techniques, know-how, trade secrets, specifications, designs, procedures, technical and manufacturing specifications, instructions, technical data, marketing plans, marketing and sales materials, market research and confidential new product development information (including copyright and all other intellectual property rights in each of the foregoing), and all rights or forms of protection of a

similar nature or having equivalent or similar effect to any of these in any part of the world;

**Leader Share Purchase & Loan Scheme** means the Share Purchase and Loan Scheme announced to NZX on 23 March 2021, under which selected senior executives were invited to purchase shares in Target funded by way of a loan from Target;

**Letter of Intention** means a letter from the Takeovers Panel stating that it:

- (a) intends to provide a No-objection Statement; and
- (b) does not intend to appear at the Court in respect of the application for Initial Orders;

**Loss** means all losses, damages, costs, expenses, charges and other liabilities provided however that the parties shall not be liable for any indirect loss, economic loss, loss of opportunity or loss of profit whatsoever and however arising, including:

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

**Matching Period** has the meaning given to it in 12.7(a)(vi);

**Material Adverse Change** means a matter, event, condition or change in circumstances or thing which occurs or is announced or is discovered on or after the date of this agreement (each a **Specified Event**) and which individually, or when aggregated with all other Specified Events:

- (a) reduces or is likely to reduce the consolidated net assets of the Target Group from the consolidated net assets disclosed in the FY25 Financial Statements by more than \$10 million (excluding any non-cash impairment); or
- (b) reduces or is likely to reduce the pre-IFRS 16 EBIT of the Target Group by more than \$5 million against the Modelled EBIT in:
  - (i) the financial year ended 30 June 2025; or
  - (ii) the financial year ended 30 June 2026; or
  - (iii) the financial year ended 30 June 2027; or
- (c) in aggregate reduces or is likely to reduce the pre-IFRS 16 EBIT of the Target Group by more than \$7.5 million against the aggregate Modelled EBIT in the period commencing 1 July 2024 to 30 June 2027 (in each case inclusive of those dates),

determined after excluding:

- (d)** any out-of-pocket costs reasonably incurred in connection with:

  - (i)** the Transaction (provided such costs have been fairly disclosed in the Due Diligence Material); or
  - (ii)** without limiting paragraph (d)(i), the Target Group performing its obligations under this agreement and in respect of the Scheme (but excluding compliance with its obligations under clause 9.3),
- (e)** matters, events and circumstances:

  - (i)** to the extent fairly disclosed in the Due Diligence Material;
  - (ii)** done or not done at the written request or with the written approval of Bidder (or, for the avoidance of doubt, considered by the Transition Committee and either: (A) approved by a Bidder representative of that Transition Committee and done; or (B) declined by a Bidder representative of that Transition Committee and not done), or resulting from compliance with the terms of, or the taking or omission of any action expressly required by, this agreement, and any reasonably foreseeable consequences arising as a result of the relevant action or omission;
  - (iii)** resulting from, or relating to, legal or regulatory requirements generally affecting businesses in the industry in which any member of the Target Group operates;
  - (iv)** resulting from, or relating to, any change:

    - (A)** to generally accepted accounting principles or the interpretation or enforcement of them by a court of competent jurisdiction or Government Agency;
    - (B)** to the accounting policies of any member of the Target Group that is required by law; or
  - (v)** resulting from, or relating to, any changes in geopolitical conditions, the outbreak or escalation of hostilities, any generalised or localised rioting or public unrest, civil disobedience, acts of war and military conditions or activity, sabotage or terrorism, widespread cyberattacks not specifically targeted at Target, or any escalation or worsening of any of the foregoing;
  - (vi)** resulting from, or relating to, any natural disaster (including an earthquake, fire, landslide, volcanic eruption or tidal wave) or weather developments (including a storm, flood, hurricane, tornado, cyclone or lightning) or other comparable natural events;

- (vii) resulting from, or relating to, any change in general economic or financial conditions (including market interest rates, exchange rates commodity prices and tariffs) generally affecting business in the industry in which the Target Group operates or any of the markets in which the Target Group operates or trades; and
- (viii) resulting from, or relating to, a general degradation of the financial performance of the Business to the extent that the Business has been carried on in accordance with clause 9.3,

provided that:

- (ix) in relation to the exclusions in paragraphs (iii), (iv), (v) and (vii) above, the effects of such matter, event or circumstance are not materially disproportionately adverse to the Target Group as compared to the effects of such matter, event or circumstance on entities in the industry in which the relevant member of the Target Group operates; and
- (x) nothing in paragraphs (iii), (iv), (v), (vi), (vii) or (viii) above shall exclude the impact changes in the price of finished goods;

**Modelled EBIT** means, in respect of a period, the pre-IFRS 16 EBIT of the Target Group for that period as set out in the Target Disclosure Letter;

**No-objection Statement** means a written statement under section 236A(2)(b)(ii) of the Companies Act stating that the Takeovers Panel has no objection to the Court granting the Final Orders;

**No Restraints Condition** means the Condition at Clause 3.1(d);

**NZX** means NZX Limited and, where the context requires, the main board financial market that it operates;

**NZX Listing Rules** means the Listing Rules for the NZX Main Board as amended from time to time;

**Performance Share Rights** means all rights to acquire 109,487 Shares held by employees or officers of the Target Group in accordance with the PSR Scheme;

**Permitted Encumbrances** means in respect of the Target Group's assets, but not the Scheme Shares:

- (a) a reservation of ownership or other purchase money security interest entered into in respect of supplies to a member of the Target Group in the ordinary course of business;
- (b) a right of set-off or combination thereof arising by operation of law or practice over money deposited with a bank or financial institution in the ordinary course of business;

- (c) a security interest arising by operation of law and in the ordinary course of business provided that the debt it secures is paid when due or contested in good faith by appropriate proceedings;
- (d) a security interest arising under section 17(1)(b) of the Personal Property Securities Act 1999 that does not secure payment or performance of an obligation; and
- (e) any security interest (including any mortgage over real property) in favour of the Target Banks, to the extent that the Target Banks will remain lenders to the Target Group upon the Scheme becoming Effective,

in each case existing on the date of this agreement or granted by the Target Group in the period prior to the Implementation Date without breaching clause 9.3;

**PPSR** means the Personal Property Securities Register established under section 139 of the Personal Property Securities Act 1999;

**Prescribed Occurrence** means the occurrence of any of the events listed in Schedule 1 other than an event agreed to by Bidder in writing;

**PSR Scheme** means Target's performance share rights plan;

**PSR Scheme Rules** means the rules of the PSR Scheme as fairly disclosed in the Due Diligence Materials;

**Recommendation** has the meaning given to it in clause 8.1(a);

**Record Date** means 5.00pm on the date which is 3 Business Days after the Trading Halt Date;

**Reference Rate** means in relation to interest payable on any payment due under this agreement, the mid or "FRA" rate for 90 day bank accepted bills (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page) at or about 10.45am on the first Business Day of the period in respect of which such rate of interest is to be calculated, and thereafter on each succeeding Business Day of the period;

**Register** means the register of Shares maintained by MUFG Pension & Market Services (NZ) Limited on behalf of Target;

**Registrar** has the meaning given in the Companies Act;

**Related Party** has the meaning given in the NZX Listing Rules;

**Relevant Interest** has the meaning given in section 235(1) of the FMCA;

**Representative** means in relation to a person:

- (a) any director, officer, employee or agent of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, that person; and

- (b) when used in clauses 2.4, 12.1, 12.2, 12.3, 12.4, 12.6, 12.7 and 15.2 only, also includes any member of its Group and any director, officer, employee or agent of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, any member of its Group;

**Restricted Agreement** means any agreement, commitment or arrangement to which any Target Group member is party and which:

- (a) involves any member of the Target Group acquiring or agreeing to acquire any business or assets, or incurring or agreeing to incur any liabilities, with a value in excess of \$500,000;
- (b) provides for any payments by or to a member of the Target Group of more than \$500,000 in any 12 month period;
- (c) involves any distributor appointed, or to be appointed, by the Target Group in any foreign jurisdiction;
- (d) involves the exclusive use of any material Intellectual Property Rights by a Third Party in any place or territory;
- (e) has a term of two years or more;
- (f) restrains any member of the Target Group from engaging in or competing with any business in any place; or
- (g) is otherwise considered by Target (acting reasonably) to be material to the Target Group as a whole;

**Reverse Break Fee** means NZ\$565,000 plus GST, if any;

**Senior Manager** means a person in the following roles (including in an interim capacity) at the relevant time: Group Chief Executive Officer, Chief Finance Officer, Group Financial Controller, Chief Digital & Marketing Officer, Chief Science Officer, Chief Operating Officer, Chief People & Technology Officer, GM Greater China and Southeast Asia, GM Korea and Japan, VP North America and GM Australia and New Zealand;

**Scheme** means a scheme of arrangement under Part 15 of the Companies Act under which all of the Shares held by Scheme Shareholders will be transferred to Bidder and the Scheme Shareholders will be entitled to receive the Consideration, in the form of the Scheme Plan;

**Scheme Booklet** means the explanatory memorandum (including the notice of meeting and proxy form) to be prepared in accordance with this agreement in connection with the Scheme, the despatch of which is to be approved by the Court and which is to be sent to Shareholders in advance of the Scheme Meeting;

**Scheme Meeting** means the meeting of Shareholders ordered by the Court to be convened pursuant to the Initial Orders in respect of the Scheme and includes any adjournment of that meeting;

**Scheme Plan** means the scheme plan in the form attached at Annexure 1 or in such other form as Target and Bidder agree in writing and the Court approves under section 236(1) of the Companies Act;

**Scheme Resolution** means the resolution to be put to Shareholders at the Scheme Meeting to approve the Scheme;

**Scheme Shareholder** means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date;

**Scheme Shares** means all of the Shares on issue at 5.00pm on the Record Date other than any Excluded Shares;

**Schemes Guidance Note** means the guidance note issued by the Takeovers Panel regarding schemes of arrangement, published on 31 July 2024 (as may be amended, modified, revised or replaced from time to time), as available on the Takeovers Panel website;

**Second Court Date** means the later of:

- (a) if there is no Court hearing in respect of the Final Orders, the last date Target files affidavit(s) verifying the results of the Scheme Meeting and such other information as prescribed in the Initial Orders so as to obtain the Final Orders; and
- (b) if there is a hearing in respect of the Final Orders, the first date of such hearing, provided that if such hearing is adjourned, it means the first date on which the adjourned application is heard;

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

**Shareholder** means a person who is registered in the Register as the holder of one or more Shares from time to time;

**Significant** means, on any date and in respect of any one or more assets, businesses or entities, those assets, businesses or entities:

- (a) contribute 20% or more of the total consolidated revenue of the Target Group in the 12 months preceding that date or are forecast to so contribute in the 12 months following that date; or
- (b) contribute 20% or more of the pre-IFRS 16 EBIT of the Target Group in the 12 months preceding that date or are forecast to so contribute in the 12 months following that date; or
- (c) represent 20% or more of the total consolidated assets of the Target Group as at that date;

**Specified Event** has the meaning given to it in the definition of Material Adverse Change;

**Superior Proposal** means a written bona fide Competing Proposal received after the date of this agreement that:

- (a) does not result from a breach by Target of any of its obligations under clause 12, or from any act by a member of the Target Group or its Representatives which, if done by Target, would constitute a breach of clause 12 by Target; and
- (b) the Board determines, acting in good faith and after having received written advice from its external financial and legal advisers:
  - (i) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Proposal, including its conditions precedent, timing considerations, the nature and amount of the consideration payable, the identity and financial condition and capacity of the proponent, any regulatory requirements or obligations applying to it and any other matters affecting the implementation (including any matters affecting probability of implementation occurring or the level of certainty in respect of any required funding) of the Competing Proposal (together, the **relevant aspects**); and
  - (ii) assuming it is completed substantially in accordance with its terms, is more favourable to Shareholders as a whole than the Scheme (if applicable, as amended or varied under any Counter Proposal provided under clause 12.8), taking into account all the terms and conditions and the other relevant aspects of the Competing Proposal and the Scheme;

**Supplier** has the meaning given to it in clause 17.3;

**Surviving Clauses** means clause 1 (interpretation), clause 11.1 (release of Target indemnified persons), clause 11.2 (release of Bidder indemnified persons), clause 13 (break fee and reverse break fee), clause 14.5 (effect of termination), clause 15 (announcements), clause 16 (payments), clause 17 (GST), clause 18 (notices), clause 19 (general) (other than clause 19.7 (further assurance)) and clause 20 (governing law and jurisdiction);

**Takeovers Code** means the takeovers code in the schedule to the Takeovers Regulations 2000 (SR 2000/210) as amended, including by any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993;

**Takeovers Panel** means the Takeovers Panel established by section 5(1) of the Takeovers Act 1993;



**Target Bank Debt** means any indebtedness of any member of the Target Group owed to any one or more of the Target Banks, and includes any amounts owing under any hedging arrangements with any Target Bank or their affiliates;

**Target Bank Default** means:

- (a) any Target Bank Debt is not paid when due nor within any originally applicable grace period;
- (b) any event of default or review event (however described) pursuant to the transaction documents relating to any Target Bank Debt occurs and is not waived;
- (c) any Target Bank Debt is declared to be or otherwise becomes due and payable prior to its specified maturity; or
- (d) any commitment for any Target Bank Debt is cancelled,

but in each case other than solely as a result of the change of control occurring when the Scheme becomes Effective;

**Target Banks** has the meaning given to it in clause 9.2;

**Target CEO** means the Chief Executive Officer of Target;

**Target CFO** means the Chief Financial Officer of Target;

**Target Designated Persons** means the Target Directors, Brett Hewlett, Nigel Greenwood, Jackie Evans, Monica Yianakis, Terry Chen, Tania van Paddenburg, Ben Duncan, Jenny Zheng, Michael Gleissner, Dylan Hill-Lewis, James Park, Lisa Blackstock, Trevor Clarke and Karl Gradon (to the extent any such person is employed or engaged by, or providing services in whatever capacity to, the Target Group) or any person who replaces such person;

**Target Director** means each director (or their alternate) of Target from time to time;

**Target Disclosure Letter** means the written disclosure letter given by or on behalf of Target to Bidder, and countersigned by Bidder, before execution of this agreement;

**Target Exempt Employee Share Scheme** means the Comvita Exempt Employee Share Scheme as described in the Target's annual financial statements for the year ended 30 June 2024;

**Target Group** means Target, its wholly owned subsidiaries, and those other entities which Target Controls at any time prior to the Implementation Date (including, without limitation, Comvita Share Scheme Trustee Limited);

**Target Indemnified Persons** means each member of the Target Group and each of their respective directors (including any alternate directors), officers and employees;

**Target Information** means all information included in the Scheme Booklet other than the Bidder Information and the Independent Adviser's Report;

**Target Undertakings** means the undertakings set out in Section 2 of Part A of Schedule 2;

**Target Warranties** means the statements set out in Section 1 of Part A of Schedule 2;

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

**Tax Authority** means any Government Agency in New Zealand or any other jurisdiction responsible for the collection of Tax;

**Third Party** means a person other than a member of the Bidder Group;

**Timetable** means the timetable set out in Schedule 4 or such other timetable, in respect of the Scheme, as Target and Bidder agree in writing from time to time;

**Total Net Indebtedness** means total bank indebtedness less cash on hand;

**Trading Halt Date** means the date on which NZX suspends trading in the Shares as procured by Target in accordance with clause 5.1(i)(iii)(A);

**Transaction** means the acquisition by Bidder of all the Scheme Shares through implementation of the Scheme in accordance with the terms of this agreement;

**Transaction Costs** means all third party fees, costs and expenses (including the fees, costs and expenses of all professional advisers) incurred, agreed to be incurred or payable by or on behalf of the Target Group in connection with the Transaction and / or any Competing Proposal;

**Transition Committee** has the meaning given in clause 9.4;

**Trigger Dispute** means any dispute between the parties in relation to the obligations of the parties under clause 13; and

**Voting Commitment** has the meaning given to it in clause 8.1(b).

- 1.2 Awareness:** Where any Target Warranty is qualified by the expression so far as Target is aware or any similar expression, Target will be deemed to know or be aware of all matters or circumstances of which any Target Designated Person is actually aware as at the date the statement is made. For the avoidance of doubt, and without limiting clause 11.1, no Target Designated Person has any personal liability in respect of the Target Warranties.

- 1.3 Things required to be done other than on a Business Day:** Unless otherwise indicated, if the day on which any act, matter or thing is to be done is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.
- 1.4 Consents and approvals:** If the doing of any act, matter or thing under this agreement is dependent on the consent or approval of a party or is within the discretion of a party, such consent or approval may be given or such discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion (unless this agreement specifies otherwise).
- 1.5 Other rules of interpretation:** In this agreement, unless the context requires otherwise:
- (a) any reference, express or implied, to any legislation in any jurisdiction includes:

    - (i) that legislation as amended, extended or applied by or under any other legislation made before or after execution of this agreement;
    - (ii) any legislation which that legislation re-enacts with or without modification; and
    - (iii) any subordinate legislation made before or after execution of this agreement under that legislation, including (where applicable) that legislation as amended, extended or applied as described in clause 1.5(a)(i), or under any legislation which it re-enacts as described in clause 1.5(a)(ii);
  - (b) a reference to the NZX Listing Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any waiver or exemption granted to the compliance with those rules by a party;
  - (c) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
  - (d) references to an individual or a natural person include their estate and personal representatives;
  - (e) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure of or to this agreement (and the schedules and annexures form part of this agreement);
  - (f) subject to clause 19.2, references to a party to this agreement include the successors or assigns (immediate or otherwise) of that party;
  - (g) a reference to any instrument or document includes any variation or replacement of it which has been, where relevant, fairly disclosed in the Due Diligence Material;
  - (h) unless otherwise indicated, a reference to any time is, a reference to that time in New Zealand;

- (i) a reference to \$, NZ\$ or dollars is to New Zealand currency;
- (j) singular words include the plural and vice versa;
- (k) a word of any gender includes the corresponding words of any other gender;
- (l) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (m) general words must not be given a restrictive meaning just because they are followed by particular examples intended to be embraced by the general words;
- (n) nothing is to be construed adversely to a party just because that party put forward this agreement or the relevant part of this agreement;
- (o) the headings do not affect interpretation; and
- (p) a reference to 'fairly disclosed' means disclosed in writing (including via the Due Diligence Material) such that the matter, information or circumstance would reasonably be expected to come to the knowledge of a diligent and reasonable person or any of its representatives in the ordinary course of carrying out a due diligence exercise in respect of the Target Group based on the Due Diligence Material and publicly available information, in sufficient detail such that that person can reasonably be expected to understand the nature, relevance and materiality of such matter, information or circumstance.

## 2. PROPOSAL AND IMPLEMENTATION OF SCHEME

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- 2.1 **Target to propose Scheme:** Target must, as soon as reasonably practicable, propose and, subject to the Scheme becoming Effective, implement the Scheme on and subject to the terms of this agreement.
- 2.2 **Consideration:** Each Scheme Shareholder is entitled to receive the Consideration in respect of each Scheme Share held by that Scheme Shareholder subject to, and in accordance with, the terms of this agreement and the Scheme.
- 2.3 **Bidder to pay Consideration:** In consideration for, and simultaneously with, the transfer to Bidder of each Scheme Share from each Scheme Shareholder under the terms of the Scheme, Bidder undertakes in favour of Target (in its own right and on behalf of the Scheme Shareholders) to pay (or procure the payment of) the Consideration for each Scheme Share to the relevant Scheme Shareholder in accordance with the Scheme and the Deed Poll.
- 2.4 **General implementation obligations:** Each party must do everything reasonably necessary, including by procuring that its Representatives work in good faith and in a timely and co-operative manner with:
  - (a) in the case of Bidder, Target and its Representatives; and

(b) in the case of Target, Bidder and its Representatives,

to implement the Scheme in accordance with this agreement, and all applicable laws and regulations applicable to the Scheme.

**2.5 Timetable:** Each party must use all reasonable endeavours to ensure that the Scheme is implemented in accordance with the Timetable or otherwise as soon as reasonably practicable. Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of this clause 2.5 to the extent that such failure is due to circumstances or matters outside the party's control provided that such party has used reasonable endeavours to meet the Timetable. Each party will keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable is not achievable. If any date in the Timetable is not able to be achieved due to circumstances or matters outside of a party's control, the parties must consult in good faith with a view to amending the Timetable to the extent required to permit the Scheme to be implemented before the End Date.

**2.6 No amendment to Scheme without Bidder consent:** Target must not promote or consent to any modification of, or amendment to, the Scheme or the Final Orders, or the making or imposition by the Court or any Government Agency of any condition to the Scheme, without:

- (a) the consent of counsel to Bidder, where a modification or amendment is made, imposed or requested at a Court hearing (with Bidder procuring that such consent is not unreasonably withheld, conditioned or delayed); or
- (b) the Bidder's prior written consent, in the case of any other modification or amendment (such consent not to be unreasonably withheld, conditioned or delayed).

### 3. CONDITIONS PRECEDENT

**3.1 Conditions:** The Scheme will not become Effective, and the obligations of Bidder under clause 2.3 do not become binding, unless and until each of the conditions set out in the first column of the following table has been satisfied or waived in accordance with this clause 3:

CONDITION	RESPONSIBILITY	WAIVER
(a) <b>(Independent adviser's report)</b> the Independent Adviser concludes, prior to the Scheme Meeting, that the value of the Consideration is above or within the Independent Adviser's valuation range for the Shares;	Target	Bidder and Target
(b) <b>(Shareholder approval)</b> Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities in accordance	Target	None

CONDITION	RESPONSIBILITY	WAIVER
(c) (Court approval) subject to clause 3.3, the Court approves the Scheme in accordance with section 236 of the Companies Act;	Target	None
(d) (No restraint) no judgment, order, restraint or prohibition enforced or issued by any Government Agency is in effect at 8.00am on the Implementation Date, that prohibits, prevents or materially restricts the implementation of the Scheme;	Bidder and Target	Bidder and Target
(e) (No Prescribed Occurrence) no Prescribed Occurrence occurs between the date of this agreement and 8.00am on the Implementation Date (which, in the case of those Prescribed Occurrences contemplated by paragraphs 5 and 8 of Schedule 1 has not been remedied by 5.00pm on the day prior to the Implementation Date); and	Target	Bidder
(f) (No Material Adverse Change) no Material Adverse Change occurs, is announced or is discovered between (and including) the date of this agreement and 8.00am on the Implementation Date.	None	Bidder

### 3.2 Satisfaction of Conditions: In respect of each Condition:

- (a) each party specified in the second column of the table in clause 3.1 corresponding to that Condition must use all reasonable endeavours to procure that the Condition is satisfied:
  - (i) in the case of the Conditions in clauses 3.1(a) to 3.1(c), as soon as practicable and in any event before the End Date; and
  - (ii) in the case of the Conditions in clauses 3.1(d) to 3.1(f), at all times before 8.00am on the Implementation Date;
- (b) the other party must promptly provide all information and all other assistance reasonably required by the party referred to in clause 3.2(a) for the purposes of procuring the satisfaction of the Condition; and
- (c) each party must not take any action that will, or is likely to, hinder or prevent the satisfaction of the Condition,

it being agreed and understood that, notwithstanding the foregoing:

- (d) no party will be in breach of its obligations under clause 3.2(a), (b) or (c) to the extent that it takes an action or omits to take an action that is expressly required or expressly permitted to be done, or expressly permitted not to be done, under or in accordance with this agreement;
- (e) Target will not be in breach of its obligations under clause 3.2(a), (b) or (c) if it takes, or omits to take, an action in response to a Competing Proposal in a manner, and only to the extent, permitted by clause 12; and
- (f) nothing in this clause 3.2 will require either party to incur any additional costs (other than customary advisor costs and filing fees) or to offer, agree to or accept any undertakings, commitments or conditions (other than as required under clause 3.3).

**3.3 Specific obligations relating to Court approval:** Notwithstanding any other provision of this agreement, if the Court's approval of the Scheme in accordance with section 236(1) of the Companies Act would impose any terms or conditions other than those set out in the Scheme in the form attached as Annexure 1, then each such term or condition must be approved in writing by Target and Bidder (both acting reasonably) prior to the Court granting the Final Orders. For the avoidance of doubt, if the approval referenced in this clause is not granted, the Condition set out in clause 3.1(c) will not have been satisfied for the purposes of this agreement.

**3.4 Notification:**

- (a) Each party will keep the other party fully informed as to the progress made towards procuring the satisfaction of the Conditions.
- (b) Each party must promptly notify the other party on becoming aware that a Condition is, or is likely to be, satisfied or has become incapable of being satisfied, or of any fact or circumstances which will, or is reasonably likely to, prevent a Condition from being satisfied, and in any event within two Business Days of the relevant fact having become known to that party.
- (c) Each party must notify the other party in writing of the satisfaction of a Condition as soon as reasonably practicable after that party becomes aware of it. Any notification delivered pursuant to this clause 3.4(c) must be accompanied by sufficient evidence to reasonably satisfy the other party of the fulfilment of the Condition, including a copy of any consent, approval, order or other documentation.

**3.5 Waiver of Conditions:** Where the third column of the table in clause 3.1 corresponding to a Condition states "none", that Condition may not be waived. Each other Condition is only for the benefit of, and may only be waived in writing by:

- (a) if one party is specified in the third column of the table in clause 3.1 corresponding to that Condition, that party; or

- (b) if both Target and Bidder are specified in the third column of the table in clause 3.1 corresponding to that Condition, those parties jointly.

A party entitled to waive, or to join in the waiver of, a Condition may do so in its absolute discretion.

**3.6 Method of waiver:** Where a Condition may be waived by one party, that party may only waive the Condition by giving notice in writing to the other party. Where a Condition may only be waived by both Target and Bidder jointly, those parties may only waive the Condition by agreeing in writing to do so.

**3.7 Effect of waiver:** If a party waives or joins in the waiver of a Condition in accordance with this clause 3, that waiver does not:

- (a) preclude that party from bringing a claim against the other party for any breach of this agreement; or
- (b) constitute a waiver of any other Condition or any other right obligation under this agreement.

**3.8 Notice of Adverse Circumstances:**

- (a) If, prior to 8.00am on the Implementation Date, Target or Bidder becomes aware of a matter, event or circumstance that it considers in good faith will give rise to, or it is reasonably likely to give rise to, a Material Adverse Change (**Adverse Circumstance**), it must promptly notify the other party of the relevant Adverse Circumstance (which notice must state that it is a notice for the purposes of this clause 3.8).
- (b) After giving notice of an Adverse Circumstance, the parties must consult in good faith for at least five Business Days or, if shorter, until 5.00pm on the day prior to the Implementation Date, regarding the response to the Adverse Circumstances and exchange views as to appropriate method of calculating the adverse financial consequences of the Adverse Circumstance, having regard to the various matters which are to be excluded under the definition of Material Adverse Change.

**3.9 Additional Material Adverse Change requirements:** If Target:

- (a) gives notice to Bidder under clause 3.8(a), then that notice must also include all reasonable details of the relevant Adverse Circumstance (to the extent reasonably practical to provide in the circumstances), including any good faith quantification of the estimated financial impact of the Adverse Circumstance, copies of any workings and relevant materials used to calculate such financial impact, and details of any matters it considers should be excluded under the definition of Material Adverse Change in relation to that Adverse Circumstance; or
- (b) receives notice from Bidder of an Adverse Circumstance under clause 3.8(a), then provided Bidder has included in its notice reasonable details of the Adverse Circumstance (to the extent reasonably practical to provide in the



circumstances) including any good faith quantification of the estimated financial impact (to the extent the estimated financial impact is reasonably able to be determined by Bidder at the time of the giving of the notice), Target must respond in writing to Bidder within five Business Days of receiving that notice (or, if shorter, by no later than 5.00pm on the Business Day prior to the Implementation Date) with such information as Bidder reasonably requests in that notice in order for Bidder to be able to determine:

- (i) the financial impact of the Adverse Circumstance; and
- (ii) any matters that should be excluded under the definition of Material Adverse Change in relation to that Adverse Circumstance (including the financial impact of that matter).

**3.10 Termination:** Notwithstanding anything in this clause 3 or any rights of termination implied by law, this agreement may only be terminated in accordance with clause 14.

#### **4. SCHEME BOOKLET**

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**4.1 Target's obligations:** Without limiting clause 2, Target must:

- (a) prepare the Scheme Booklet so that it contains:
  - (i) all information required by the Companies Act, the Schemes Guidance Note, the NZX Listing Rules and any other applicable laws or regulations;
  - (ii) any information required or reasonably requested by the Takeovers Panel in order for Target to obtain from the Takeovers Panel a Letter of Intention and a No-objection Statement;
  - (iii) the responsibility statements referred to in clause 4.4; and
  - (iv) a statement by the Target Directors reflecting the Recommendation and Voting Commitment (modified appropriately if the Consideration is not within or above the Independent Adviser's valuation range for the Shares);
- (b) if not already appointed, appoint the Independent Adviser (including obtaining approval from the Takeovers Panel for that appointment), and provide all assistance and information reasonably requested by the Independent Adviser to enable it to prepare the Independent Adviser's Report;
- (c) as soon as practicable after preparation of an advanced draft of the Scheme Booklet, provide Bidder with that draft (excluding the Independent Adviser's Report) and successive drafts of the Scheme Booklet (excluding the Independent Adviser's Report) and successive material drafts of any extracts of the Independent Adviser's Report that contain any factual matters about

Bidder, in each case in a timely manner, and so that Bidder has a reasonable opportunity to review and comment on those drafts;

- (d) consider in good faith the reasonable comments of Bidder and its Representatives when preparing revised drafts of the Scheme Booklet;
- (e) as soon as practicable after preparation of an advanced draft of the Scheme Booklet suitable for review by the Takeovers Panel, provide that draft (excluding the Independent Adviser's Report) to Bidder with a request for Bidder's consent to provide the draft Scheme Booklet to the Takeovers Panel under clause 4.2(e);
- (f) as soon as practicable after receipt of the confirmation from Bidder referred to in clause 4.2(e), provide the Takeovers Panel the draft Scheme Booklet and request the Takeovers Panel to issue a Letter of Intention;
- (g) keep Bidder reasonably informed of any issues raised by the Takeovers Panel or NZX in relation to the Scheme Booklet and use reasonable endeavours to, in consultation with Bidder, resolve any issues expeditiously (provided that, where such issues relate to the Bidder Information, Target will not take any steps to address them without Bidder's written consent, not to be unreasonably withheld);
- (h) in accordance with the Timetable and as soon as practicable after the approval of the Scheme Booklet by the Takeovers Panel and the provision of the Letter of Intention, procure that a meeting of the Board is convened to approve the Scheme Booklet for lodgement with the Court and, subject to the Initial Orders, for dispatch to Shareholders;
- (i) after the Board has provided the approvals contemplated by clause 4.1(h), promptly lodge the Scheme Booklet with the Court seeking the Initial Orders;
- (j) send the Scheme Booklet to Shareholders in accordance with the requirements set out in the Initial Orders in accordance with the Timetable; and
- (k) advise Bidder promptly if Target becomes aware:
  - (i) of new information which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Scheme Booklet under clause 4.1(a)(i);
  - (ii) that any part of the Target Information in the Scheme Booklet is misleading or deceptive in any material respect, including by omission; or
  - (iii) that any information that was required to be disclosed in the Scheme Booklet under applicable law was not included,

and in any case, if Target becomes so aware at any time, or receives advice from Bidder under clause 4.2(f) (in each case, after consulting with Bidder in

good faith as to the need for and content and presentation of the disclosures discussed below):

- (iv) between the approval of the Scheme Booklet in accordance with clause 4.1(h) and the date of the Scheme Meeting, then, if considered by Target that supplementary disclosure is required, provide supplementary disclosure to Shareholders in accordance with applicable law and after consulting with Bidder as to the content and presentation of that supplementary disclosure, and will, if it considers it to be necessary or appropriate:
  - (A) seek the Court's guidance in respect of the supplementary disclosure; and
  - (B) adjourn the Scheme Meeting to the earliest date reasonably practicable; and
- (v) between the date of the Scheme Meeting and the Second Court Date, then, if considered by Target that supplementary disclosure to Shareholders is required, apply to the Court for orders as to the procedure to be followed for the provision of supplementary disclosure to Shareholders and the effect on the approval of the Scheme, after consulting with Bidder.

**4.2 Bidder's obligations:** Without limiting clause 2, Bidder must:

- (a) prepare and provide to Target for inclusion in the Scheme Booklet:
  - (i) information about the Bidder Group;
  - (ii) confirmation (in a form satisfactory to Target, acting reasonably, but without disclosing any commercially sensitive terms) that Bidder will have access to sufficient funds to fund the Consideration; and
  - (iii) information equivalent to the information that would meet the requirements of Schedule 1 to the Takeovers Code,

to the extent required to be included in the Scheme Booklet by the Schemes Guidance Note, the Companies Act, the Takeovers Panel, the NZX Listing Rules and any other applicable laws or regulations;
- (b) provide Target drafts of the information referred to in clause 4.2(a) in a timely manner to enable Target to meet its obligations under clause 4.1 and achieve the Timetable, to provide Target a reasonable opportunity to review those drafts and consider in good faith the reasonable comments of Target and its Representatives when preparing revised drafts of that information;
- (c) provide all assistance and information reasonably requested by the Independent Adviser to enable it to prepare the Independent Adviser's Report;

- (d) as soon as practicable after receipt of any draft of the Scheme Booklet from Target, review and provide comments on that draft;
- (e) subject to clause 4.3, before Target provides the Scheme Booklet to the Takeovers Panel in accordance with clause 4.1(f) deliver to Target written consent from Bidder (not to be unreasonably withheld, conditioned or delayed) to that provision, including the inclusion of the Bidder Information in the Scheme Booklet in the form and context it appears;
- (f) advise Target if Bidder becomes aware at any time either:
  - (i) of new information which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Bidder Information under any applicable law, the Schemes Guidance Note or any Takeovers Panel requirement in connection with the Letter of Intention or the No-objection Statement; or
  - (ii) that any part of the Bidder Information is misleading or deceptive in a material respect, including by omission;
- (g) at its option or if requested by Target, procure that it is represented by counsel at the Court hearings convened for the purposes of considering the Initial Orders and the Final Orders, at which, through its counsel, Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme. For the avoidance of doubt, Target will prepare the Court documentation for the Initial Orders and Final Orders and Bidder's counsel will only prepare submissions to the Court, if required, in support of Target's application; and
- (h) before a draft of the Scheme Booklet is lodged with the Takeovers Panel, and again before the Scheme Booklet is despatched to Shareholders, deliver to Target written consent from Bidder (not to unreasonably withheld, conditioned or delayed) to that action and confirm to Target the accuracy and completeness of the Bidder Information in the Scheme Booklet, including that it does not contain any material statement that is false or misleading in a material respect including because of any omission.

**4.3 Bidder confirmations and approvals:** If Bidder requires any change to be made to the form or content of the Bidder Information as a condition of giving its consent as referred to in clause 4.2(e) or 4.2(h) then:

- (a) if Target disagrees with the change, the parties must consult in good faith about the change and the reasons for it with a view to agreeing an alternative change that satisfies both parties; and
- (b) if the parties are unable to reach agreement, Target must make such changes to the Bidder Information as Bidder reasonably requires.

**4.4 Responsibility statements:** The Scheme Booklet must contain responsibility statements, in a form to be agreed between the parties (acting reasonably), to the effect that:

- (a) Target has provided, and is responsible for, the Target Information in the Scheme Booklet, and that none of Bidder, its Representatives nor any member of its Group assumes any responsibility for the accuracy or completeness of the Target Information;
- (b) Bidder has provided, and is responsible for, the Bidder Information, and that none of Target, its Representatives or any member of its Group assumes any responsibility for the accuracy or completeness of the Bidder Information; and
- (c) the Independent Adviser has provided the Independent Adviser's Report and is responsible for it and none of Bidder, Target or their respective Representatives or any member of their respective Group assumes any responsibility for the accuracy or completeness of the Independent Adviser's Report.

## **5. SCHEME IMPLEMENTATION STEPS**

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**5.1 Target's obligations:** Without limiting clause 2, Target must, in accordance with the Timetable:

- (a) within five Business Days after the date of this agreement, provide Mayne Wetherell with a copy of the information as contemplated by limb (a) of the definition of Due Diligence Material on a USB drive;
- (b) before the First Court Date, in consultation with Bidder (and in accordance with clause 4.1(f)), apply to the Takeovers Panel for a Letter of Intention (for the purposes of section 236A(2)(b)(ii) of the Companies Act);
- (c) prior to sending any material correspondence to the Takeovers Panel relating to the Scheme (other than correspondence to the extent relating to (x) the actual or purported termination of this agreement, (y) any claim under, or disagreement or dispute between the parties in respect of, this agreement or the Transaction, or (z) a Competing Proposal or a Superior Proposal), provide Bidder with a draft of that correspondence and consider in good faith all of the reasonable comments of Bidder on that correspondence;
- (d) promptly provide Bidder with a copy of all material correspondence to and from the Takeovers Panel relating to the Scheme (other than correspondence to the extent relating to (x) the actual or purported termination of this agreement, (y) any claim under, or disagreement or dispute between the parties in respect of, this agreement or the Transaction, or (z) a Competing Proposal or a Superior Proposal);
- (e) apply to the Court (in accordance with clause 4.1(i)) for Initial Orders convening the Scheme Meeting;

- (f)** if the Court makes and seals those orders:

  - (i)** dispatch the Scheme Booklet to Shareholders and hold the Scheme Meeting in accordance with, and otherwise complying in all respects with, the Initial Orders; and
  - (ii)** promptly deliver to the Registrar for registration a copy of the Initial Orders in accordance with section 236(4) of the Companies Act, by no later than 10 Business Days after the date the Initial Orders are granted;
- (g)** upon sending the Scheme Booklet to the Scheme Shareholders, lodge a copy of that Scheme Booklet with NZX in accordance with NZX Listing Rule 3.23.1;
- (h)** if the Scheme Resolution is passed by the requisite majorities of Shareholders as set out under section 236A(4) of the Companies Act promptly apply to:

  - (i)** the Takeovers Panel for the production of a No-objection Statement; and
  - (ii)** the Court for its approval of Final Orders (it being agreed that any such orders will be sought to be subject to the satisfaction of any Conditions which remain unsatisfied as at the Final Orders Date);
- (i)** if the Court approves the Scheme in accordance with section 236(1) of the Companies Act (and once the Final Orders are sealed by the Court):

  - (i)** promptly deliver to the Registrar for registration a copy of the Final Orders in accordance with section 236(4) of the Companies Act, by no later than 10 Business Days after the Final Orders Date;
  - (ii)** prior to sending any material correspondence to NZX in respect of the suspension or cessation of quotation of Shares or de-listing of Target in connection with the Transaction, provide Bidder with a draft of that correspondence and consider in good faith any reasonable comments promptly provided by Bidder;
  - (iii)** apply to NZX to:

    - (A)** and use its best endeavours to procure that NZX, suspend trading in the Shares from the close of trading on the date falling two Business Days after the Final Orders Date (or such other date agreed with Bidder); and
    - (B)** de-list Target with effect from close of trading on the Implementation Date (or such other date as agreed with Bidder);
  - (iv)** promptly provide Bidder with a copy of all material correspondence to and from the NZX in respect of the suspension or cessation of quotation of Shares or de-listing of Target in accordance with

clause 5.1(i)(iii) and keep Bidder reasonably informed of any matters raised by NZX in respect of the suspension or cessation of quotation of Shares or de-listing of Target and consult with Bidder to resolve any such issues expeditiously; and

- (v) close the Register as at the Record Date to determine the identity of the Scheme Shareholders and their entitlements to the Consideration; and
- (j) if the Scheme becomes Effective:
  - (i) subject to Bidder satisfying its obligations under clause 5.2(c), effect the transfer of the Scheme Shares to Bidder in accordance with the Scheme on the Implementation Date; and
  - (ii) do all other things contemplated of it under the Scheme and all other things (if any) within its power as may be reasonably necessary for the implementation of the Scheme and the Transaction on a basis consistent with this agreement or necessary for Target to lawfully give effect to the Scheme and the orders of the Court.

**5.2 Bidder's obligations:** Without limiting clause 2, Bidder will:

- (a) at least five Business Days before the First Court Date, deliver to Target a copy of the Deed Poll executed by Bidder;
- (b) if the Court approves the Scheme in accordance with section 236(1) of the Companies Act (and once the Final Orders are sealed by the Court and all Conditions are satisfied (or, where permissible, waived)) do all things (if any) within its power as may be reasonably necessary for the implementation of the Transaction on a basis consistent with the Final Orders and this agreement; and
- (c) if the Scheme becomes Effective, accept a transfer of the Scheme Shares and provide the Consideration in accordance with clause 2.3 and the Deed Poll on or before the Implementation Date.

**5.3 Confirmatory Certificates:**

- (a) Subject to clause 5.3(b):
  - (i) between 8.00am and midday on the Business Day following the Final Orders Date;
  - (ii) between 8.00am and midday on the day before the Implementation Date; and
  - (iii) between 6.00am and 7.00am on the Implementation Date,

Target must give Bidder a certificate from Target, signed by the Target CEO and Target CFO (or any alternative signatories who are approved by Bidder in writing, acting reasonably), confirming that, so far as Target is aware:

- (iv) except to the extent previously waived, the Conditions in clauses 3.1(d), 3.1(e) and 3.1(f) would have been satisfied if “8.00am on the Implementation Date” was read as the time the certificate is given to Bidder and Target is not aware of anything that would prevent those Conditions being satisfied;
- (v) it is not in breach of clauses 9.2 (Conduct of business) or 10.1 (Target representations, warranties and undertakings); and
- (vi) there has not been any breach of any other provision of this agreement that might entitle Bidder to terminate under clause 14.1,

(the **Confirmatory Certificate**).

- (b) If the statements required to be made in a Confirmatory Certificate would be inaccurate, Target must provide a qualified Confirmatory Certificate setting out full details of the matters that cause or are likely to cause that Confirmatory Certificate not to be accurate.
- (c) For the avoidance of doubt:
  - (i) a Confirmatory Certificate is signed by the Target CEO and Target CFO (or any alternative signatories who are approved by Bidder in writing) in their capacity as an employee or officer of Target and in no other capacity; and
  - (ii) no personal liability will be assumed by the Target CEO or Target CFO (or any alternative signatories who are approved by Bidder in writing) as a result of the statements in a Confirmatory Certificate and the statements in the Confirmatory Certificate will not give rise to any liability of the party giving that Confirmatory Certificate or any other person under this agreement or otherwise.

#### **5.4 Provision of information to the Independent Adviser:**

- (a) Target must, in relation to any information that it or any of its Representatives provides to the Independent Adviser in connection with the preparation of the Independent Adviser’s Report (**IAR Information**):
  - (i) prepare and provide that IAR Information to the Independent Adviser in good faith (including by having regard to material risks, opportunities and adverse circumstances);
  - (ii) ensure that the forecasts provided to the Independent Adviser are prepared in good faith and do not require amendment based on



information which has come to their attention since preparation of those forecasts; and

- (iii) provide to the Independent Adviser any information that may be material in respect of the financial performance, position or prospects of the Target Group which is known by any Target Director or Senior Manager at that time, but which had not previously been provided to the Independent Adviser.

## **6. OTHER IMPLEMENTATION OBLIGATIONS**

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### **6.1 Information about Shareholders:** Target must:

- (a) comply with any reasonable request by Bidder to require disclosure of information in accordance with sections 290 and 291 of the FMCA, subject to its statutory and contractual obligations, and provide Bidder the information obtained as a result of requiring such disclosure; and
- (b) procure that its share registry provides to Bidder details of the Register and all other information about the Shareholders which Bidder reasonably requires in order to:
  - (i) canvas approval of the Scheme by Shareholders; or
  - (ii) facilitate the provision by Bidder of the Consideration in accordance with this agreement, the Scheme and the Deed Poll.

### **6.2 Promotion of Transaction:** During the Exclusivity Period, subject to:

- (a) there being no Superior Proposal; and
- (b) the Independent Adviser's Report having concluded that the Consideration is within or above the Independent Adviser's valuation range for the Scheme Shares,

Target will use reasonable endeavours to promote, and will provide all reasonable cooperation to Bidder in promoting, the merits of the Transaction to Shareholders, including:

- (c) providing (subject to Target's statutory or contractual obligations) such information regarding Shareholders and their holdings as Bidder reasonably requests and will direct its share registry to provide all information reasonably requested by Bidder;
- (d) if requested by Bidder, retaining the services of a proxy solicitation firm agreed with Bidder, to actively solicit affirmative proxies for the Scheme and providing Bidder with all information generated by that firm at regular intervals (but at least on a daily basis on each of the last seven Business Days before the Scheme Meeting) as to the aggregate tally of votes received by Target in respect of the Scheme;

- (e) procuring that senior executives of the Target Group are available on reasonable notice to:
  - (i) meet (in person or remotely, as is convenient for the relevant senior executive) with key Shareholders if reasonably requested to do so by Bidder; and
  - (ii) communicate with the employees, joint venture partners and key suppliers of the Target Group,in each case to discuss, and promote the merits of, the Transaction to such persons;
- (f) promptly report to Bidder any material information Target becomes aware of regarding opposition to the Scheme by the Shareholders (excluding unsubstantiated rumours or similar information or opposition by any individual Shareholder holding an immaterial number of Shares); and
- (g) undertaking, in cooperation with Bidder, other reasonable actions to promote the affirmative vote of Shareholders for the Transaction, as reasonably requested by Bidder.

Without limiting the foregoing, Target and Bidder will use reasonable endeavours to agree, as soon as practicable after the date of this agreement, key messaging and principles to govern all communications in relation to the promotion of the Scheme between Bidder (or any Representative of Bidder) and Shareholders, which will apply throughout the period that the Target Directors continue to unanimously recommend that Shareholders vote in favour of the Scheme.

**6.3 Board changes:** Subject to the Consideration having been transferred to the Shareholders in accordance with, and subject to, the terms of the Scheme, Target must procure that:

- (a) such persons as Bidder nominates (by notice to Target no later than five Business Days before the Implementation Date) and who have provided to Target a signed consent to act by that time are appointed as additional directors of Target and/or such other Target Group members as Bidder may request on the Implementation Date (by no later than 5.00pm); and
- (b) unless otherwise agreed by Bidder in writing, each member of the Board and, if requested by Bidder, any director of the other Target Group members, other than those appointed in accordance with clause 6.3(a), resigns as a director of Target and/or such other Target Group member with effect from the Implementation Date (by no later than 5.00pm) and acknowledges in writing that he or she has no claim against any member of the Target Group other than for accrued directors' fees and expenses.

**6.4 Release of Encumbrances:** After the signing of this agreement and in addition to its obligations in clause 9.1, Target will:

- (a) provide reasonable assistance to Bidder to:
  - (i) identify any Encumbrances over the assets of the Target Group which are not Permitted Encumbrances; and
  - (ii) procure the release of any such Encumbrances identified under clause 6.4(a)(i) on or before the Implementation Date; and
- (b) use reasonable endeavours to procure the:
  - (i) removal of any financing statements relating to such Encumbrances identified under clause 6.4(a)(i) from the PPSR; and
  - (ii) amendment of any financing statements which Target and Bidder agree (acting reasonably) are overly broad or do not reflect the extent of the collateral secured by the Encumbrance to which they relate,

in each case, on or before the Implementation Date.

#### **6.5 Target Performance Incentive Scheme:**

- (a) Bidder acknowledges and agrees that, as at the date of this agreement, 109,487 Performance Share Rights have been issued by Target for participants in Target's PSR Scheme.
- (b) Prior to the Record Date, the Board will determine, in accordance with the PSR Scheme Rules, that (at the Board's discretion) some or all of the Performance Share Rights will become eligible to convert into Shares prior to the Record Date and that any remaining Performance Share Rights that do not convert into Shares prior to the Record Date will lapse and be cancelled.
- (c) Target must ensure that:
  - (i) no further Performance Share Rights are issued prior to the Implementation Date;
  - (ii) all Performance Share Rights that do become eligible for conversion into Shares in accordance with clause 6.5(b) are converted to Shares prior to the Record Date (with such Shares to be included as Scheme Shares) and that any Performance Share Rights that do not become eligible for conversion into Shares in accordance with clause 6.5(b) lapse or are cancelled or forfeited prior to the Record Date such that, on the Implementation Date, there are no Performance Share Rights on issue;
  - (iii) on conversion of any Performance Share Rights, Shares held by Target as treasury stock will, as required, be transferred to Performance Share Right holders first, with the balance (if any) of any further Shares required to be issued as new Shares;

- (iv) any remaining treasury shares held by Target following the conversion of Performance Share Rights into Shares in accordance with clause 6.5(b) and clause 6.5(c)(iii) are cancelled prior to the Record Date such that, on the Implementation Date, there are no treasury shares held by Target and no treasury shares shall form part of the Scheme Shares;
- (v) no action is taken by Target or any Target Director in respect of the PSR Scheme, which would, or would be reasonably likely to, create a separate interest class (as referred to in section 236(A)(4) of the Companies Act) of votes in respect of the Scheme;
- (vi) the PSR Scheme is terminated with effect on and from the Implementation Date; and
- (vii) no more than the maximum number of Performance Share Rights specified in clause 6.5(a) are issued to participants in the PSR Scheme prior to the Record Date.

#### **6.6 Other Target share plans:**

- (a) Bidder acknowledges that as at the date of this agreement:
  - (i) 908,953 Shares are held by certain Target employees under the Leader Share Purchase & Loan Scheme; and
  - (ii) 49,455 Shares are held by Comvita Share Scheme Trustee Limited under the Target Exempt Employee Share Scheme (of which 12,915 Shares are unallocated).
- (b) Target must ensure that:
  - (i) no further Shares are issued pursuant to the schemes described in clause 6.6(a);
  - (ii) no further allocations are made under the Target Exempt Employee Share Scheme or the Leader Share Purchase & Loan Scheme;
  - (iii) no further awards of phantom shares are made under the Comvita Phantom Share Bonus Scheme or otherwise;
  - (iv) any unallocated Shares held by Comvita Share Scheme Trustee Limited are acquired and cancelled by Target for no net monetary consideration prior to the Record Date such that, on the Implementation Date, there are no unallocated shares held by Comvita Share Scheme Trustee Limited;
  - (v) subject to the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares, Comvita Share Scheme Trustee

Limited exercises any votes within its control at the Scheme Meeting to vote in favour of the Scheme Resolution;

- (vi) no action is taken by Target or any Target Director in respect of the loans granted to Target employees under the Leader Share Purchase & Loan Scheme (except as contemplated by the terms of the Leader Share Purchase & Loan Scheme and the relevant loan agreements);
  - (vii) no action is taken by Target or any Target Director in respect of the Leader Share Purchase & Loan Scheme or Target Exempt Employee Share Scheme, which would, or would be reasonably likely to, create a separate interest class (as referred to in section 236(A)(4) of the Companies Act) of votes in respect of the Scheme; and
  - (viii) the Leader Share Purchase & Loan Scheme and Target Exempt Employee Share Scheme are terminated with effect on and from the Implementation Date.
- (c) Target must, before the Implementation Date, procure that the shareholder of Comvita Share Scheme Trustee Limited enters into binding documentation to the reasonable satisfaction of Bidder pursuant to which that shareholder transfers legal and beneficial title to all issued share capital in Comvita Share Scheme Trustee Limited to Comvita Limited or as Bidder otherwise directs in writing immediately following the Scheme becoming Effective.

## **7. COURT PROCEEDINGS**

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### **7.1 Court documents:**

- (a) In relation to each Court application made in relation to the Scheme, including any appeal, Target must prepare and provide Bidder with successive drafts (to the extent they include material changes) of all documents required to be given by Target to the Court (including the originating applications, affidavits, memoranda, submissions and draft Court orders) a reasonable time before they are due to be submitted to the Court (and in any event not less than 48 hours before submission unless it is impractical in the circumstances) and must consider in good faith the reasonable comments of Bidder and its Representatives on those documents.
- (b) Target must not provide the Court with any Court orders (whether in draft or not) or applications for Court orders, or consent to any changes to any Court orders, without Bidder having consented in writing to such documents being submitted to the Court or such changes being consented to.

### **7.2 Representation:** In relation to each Court application made in relation to the Scheme, including any appeal:

- (a) Target must, if requested by Bidder, consent to the separate representation of Bidder by counsel; and
- (b) Bidder may appear and be represented in relation to the Court applications.

### 7.3 Court proceedings and conditionality:

- (a) If the Court declines to make the orders sought by Target under clause 5.1(e) or 5.1(h)(ii), due in whole or in part to the lack of satisfaction of, or the potential timing for satisfaction of (or where capable of waiver, waiver of) the Conditions, Target must promptly make a further application for Initial Orders or Final Orders (as applicable), as soon as practicable after the parties satisfying the steps or matters specified by the Court or apparent from its directions or reasons as required, or desirable, in order to grant the Initial Orders or Final Orders (as the case may be) (**Court Guidance**).
- (b) Target will use its best endeavours to follow the Court Guidance and any guidance or requirements of the Takeovers Panel including, if indicated, providing supplementary information to Shareholders and/or convening a second Scheme Meeting.

### 7.4 Appeal if orders not made: If the Court does not make any order sought by Target under clause 5 (the **Decision**), to the extent clause 7.3 does not apply:

- (a) Target and Bidder must consult in good faith as to the effect of the refusal and whether to appeal the Decision; and
- (b) if, within 10 Business Days after the Decision, Target and Bidder agree to appeal the Decision or either of those parties obtains an opinion from an independent King's Counsel, practising in the field of corporate and securities law litigation, to the effect that there are reasonable prospects of successfully appealing the Decision, then:
  - (i) Target must appeal the Court's decision within the timeframe set out in rule 29 of the Court of Appeal (Civil) Rules 2005;
  - (ii) the cost of any such appeal is to be borne:
    - (A) if Target and Bidder agreed to appeal the Decision, equally between the parties; or
    - (B) if Target and Bidder did not agree to appeal the Decision, by the party who obtained the opinion from the independent King's Counsel;
  - (iii) if the End Date would otherwise occur before the appeal is finally determined, the End Date is deferred to the date that is 10 Business Days after the appeal from the Decision is finally determined; and
  - (iv) if the appeal is successful and the relevant order is made, the End Date is further deferred to the date which is X days after the original

End Date (disregarding the effect of clause 7.4(b)(iii)) where X is equal to the number of days between the date of the Decision and the date on which the appeal from the Court's decision is finally determined, or to such other date as the parties agree in writing.

## **8. RECOMMENDATION AND VOTING INTENTIONS**

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### **8.1 Recommendation and voting intentions of Target Directors:** Target must ensure that:

- (a) each Target Director recommends that Shareholders vote in favour of the Scheme (the **Recommendation**); and
- (b) each Target Director undertakes to vote, or procure the voting of, all Shares held or controlled by him or her in favour of the Scheme (the **Voting Commitment**),

subject, in each case, to:

- (c) no Superior Proposal having been received by Target; and
- (d) the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares.

### **8.2 Change to Recommendation or voting intentions:** Target must use best endeavours to ensure that no Target Director changes, qualifies, withdraws or fails to give effect to the Recommendation or the Voting Commitment or makes any statement inconsistent with the Recommendation or the Voting Commitment unless:

- (a) there is a Superior Proposal (subject to Target's compliance with clause 12.7); or
- (b) the Independent Adviser's Report concludes that the Consideration is below the Independent Adviser's valuation range for the Shares,

provided that reliance by Target on the exclusions to this clause 8.2 will not prevent Bidder from having the benefit of, and enforcing, its rights under clause 12.7 and clause 13.2.

### **8.3 Notification of new circumstances:** Without limiting the operation of clauses 8.1, 8.2, 11.3, 12 or 13.2, if:

- (a) Target receives, an Independent Adviser's Report in which the Independent Adviser concludes that the Consideration is below the Independent Adviser's valuation range for the Shares (including either the initial Independent Adviser's Report or any update of, or any revision, amendment or supplement to, that report); or
- (b) the Board or Target becomes aware that any one or more of the Target Directors is reasonably likely to change, qualify, withdraw, adversely modify or make a statement inconsistent with, the Recommendation or the Voting Commitment (other than as permitted under clause 8.2(a)), including as a

result of the receipt of an unfavourable Independent Adviser's Report (including any update of or revision, amendment or supplement to, the Independent Adviser's Report),

then Target must:

- (c) immediately notify Bidder of that, and, as soon as reasonably practicable, provide Bidder with a draft of any statement that the Board or Target intends to make if such event occurs; and
- (d) consult with Bidder in good faith for not less than two Business Days after the date the notice referred to in paragraph (c) above is given to consider and determine whether there are any steps that can be taken to avoid such change, qualification, withdrawal, modification or inconsistent statement,

and if Target is required to consult with Bidder under clause 8.3(d), then Target will ensure that the Recommendation or the Voting Commitment is not changed, qualified, withdrawn or modified or an inconsistent statement made until the end of the consultation period, provided that such consultation shall not preclude the Target from complying with its continuous disclosure obligations.

## 9. INTERIM PERIOD COVENANTS

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**9.1 Access, information and collaboration:** From the date of this agreement until and including the Implementation Date, Target must:

- (a) procure that Bidder and its Representatives are given reasonable access to
    - (x) the properties, books and records, senior executives of Target Group; and
    - (y) any other information about the Business, in each case, reasonably requested by Bidder or its Representatives, during normal business hours at mutually convenient times and on reasonable notice to Target for the purposes of:
      - (i) enabling Bidder to understand the Business and operations and its financial position, transactional banking requirements, financial performance and prospects;
      - (ii) implementing the Scheme;
      - (iii) enabling Bidder to prepare for the transition of ownership of the Target Group to Bidder; and
      - (iv) any other purpose agreed between Target and Bidder in writing,
- except to the extent that the provision of such access is prohibited by law or any confidentiality obligations owed to third parties and provided that;
- (v) it would not result in unreasonable disruption to the Target Group's business in the opinion of Target (acting reasonably); or



- (vi) requires the disclosure of any document that would compromise the Target Group's legal professional privilege or any information concerning Target's consideration of the Scheme or any Competing Proposal,

but these provisos do not limit Target's obligations under clause 12;

- (b) provide Bidder with copies of the Board minutes and papers provided to the Board (including audit and risk committee and safety and performance committee papers and minutes) and monthly management accounts for the Target Group within five Business Days after they are provided to Target Directors (provided Target may redact information from such papers to the extent that it relates to its directors' and management's consideration of the Transaction or a Competing Proposal);
- (c) provide Bidder with a copy of the new Target CEO's plan for the period from the date of this agreement until and including the Implementation Date (whether described as a 100 day plan or otherwise);
- (d) provide Bidder with a copy of any information which has been withheld from public disclosure in reliance on the carve-out in NZX Listing Rule 3.1.2;
- (e) keep Bidder updated on all developments in its Business that Target (acting in good faith) determines are material (including the Target Group's financial position, prospects and affairs and any material health and safety, cyber security or product incidents);
- (f) procure that senior executives of the Target Group meet with Representatives of Bidder on a regular basis (either in person or remotely), to discuss and consult in good faith with Bidder in respect of material developments relating to any material matters which Bidder may reasonably raise from time to time relating to the Business;
- (g) provide Bidder with any information or documentation reasonably requested by Bidder if Bidder demonstrates a reasonable and good faith basis upon which Bidder may be entitled to exercise a termination right under this agreement provided, however that:
  - (i) Bidder's request outlines the reasons for Bidder's request by reference to the relevant termination right under this agreement that Bidder believes it may be entitled to exercise and the reason that Bidder believes that it may be entitled to exercise that termination right;
  - (ii) the information or documentation requested by Bidder relates to Bidder's claim or potential claim;
  - (iii) Bidder is, to the extent practicable, specific in its request as to the information or documentation requested; and

- (h) procure that each other member of the Target Group will, provide all reasonably requested co-operation and assistance to Bidder and its Representatives for the purposes of:
  - (i) implementing the Scheme and enabling Bidder to prepare for the transition of ownership of the Target Group to Bidder; and
  - (ii) any other purpose agreed between Target and Bidder in writing.

For the avoidance of doubt, nothing in this clause 9.1 will be construed as requiring any party to act in breach of applicable law.

**9.2 Access to Banks:** From the date of this agreement until and including the Implementation Date, Target will use all reasonable endeavours:

- (a) to procure that Bidder and its Representatives are given reasonable access to the banks which provide debt financing to the Target Group (the **Target Banks**) in order to discuss the existing debt financing, change of control procedures, and the extension and/or refinancing of the Target Group's debt; and
- (b) to work with Bidder to procure the extension and/or refinancing of the Target Group debt by one or more of the Target Banks with effect from Implementation, including without limitation making available (on an in-person or remote basis, as is convenient for the executive) senior executives of Target to meet with Bidder to discuss such extension and/or refinancing,

except to the extent that the provision of such access is prohibited by law.

**9.3 Conduct of business:** Subject to applicable law, from the date of this agreement until and including the Implementation Date, Target will (and will ensure that each member of the Target Group will):

- (a) carry on its business in the ordinary course and in accordance with, or factored into, the Business Plan (except to the extent the Target considers it reasonably necessary in order to comply with the Banking Covenants) and will not make any significant change to the nature or scale of its business or enter any business or undertake any activities in which it was not engaged as at the date of this agreement;
- (b) carry on its business without taking any of the following actions (except to the extent contemplated by, or factored into, the Business Plan or as the Target considers reasonably necessary in order to comply with the Banking Covenants):
  - (i) deferring maintenance or capital expenditure;
  - (ii) extending payment terms with suppliers beyond standard trading terms;
  - (iii) accelerating the collection of receivables outside usual practices;

- (iv) disposing of inventory or assets at discounted or distressed prices;
  - (v) reducing staff or staff hours in a manner not aligned with normal seasonal or business fluctuations;
  - (vi) delaying or ceasing investment in marketing, development or other core operational activities; or
  - (vii) negotiating or entering into arrangements with creditors or financiers that would not be undertaken in the ordinary course of business;
- (c) maintain insurance in respect of its business and assets covering such risks and for such amounts as would be maintained in accordance with its ordinary practice and in any event to a level no less than that in place immediately prior to the date of this agreement;
- (d) maintain all material Authorisations necessary to operate the Business, and ensures all conditions attaching to those Authorisations are complied with in all material respects, including by making such applications for new, additional, renewed, replacement, extended or varied Authorisations as may be reasonably necessary within the timeframes required to ensure the Target Group has the continued benefit of such Authorisations, provided that Target must also take reasonable steps to procure that the terms and conditions of such Authorisations are not materially more onerous than those applicable under those comparable Authorisations as are in place as at the date of this agreement;
- (e) maintain in force all material registrations and other protections held by or on behalf of the Target Group (in any jurisdiction) in respect of all Intellectual Property Rights;
- (f) use all reasonable endeavours to:
  - (i) keep available the services of its directors and Senior Managers (other than the “Excluded Senior Managers”);
  - (ii) maintain its material assets in as good condition and state of repair as at the date of this agreement (fair wear and tear excluded, but provided, in the case of fair wear and tear, that the Target Group continues to comply with its ordinary practices for monitoring and repairing wear and tear of its assets); and
  - (iii) preserve its relationships with all Government Agencies and all material customers, suppliers, licensors, licensees, joint venturers and others with whom it has material business dealings;
- (g) perform and comply, in all material respects, with the material agreements and commitments to which it is a party or by which it is bound;

- (h)** promptly notify Bidder of (other than any “Excluded Disputes” as identified in the Target Disclosure Letter), and keep Bidder reasonably and promptly informed of any material change in the status of:

  - (i)** any action, claim, litigation, prosecution or other form of proceeding brought by or against Target, or another member of the Target Group, or any director or employee of any member of the Target Group (of which it becomes aware), other than any claim or legal proceeding that has potential maximum liability which is less than \$200,000;
  - (ii)** any actual or threatened material enquiry or investigation by any Government Agency in relation to the Business (including in relation to Tax) and any material correspondence with any Government Agency in relation to the Business;
  - (iii)** any unremedied material breach by any member of the Target Group, or the relevant contractual counterparty, of any Restricted Agreement;
  - (iv)** the receipt by the Target Group of any written notification from a contractual counterparty notifying the Target Group of its intention to terminate any Restricted Agreement;
- (i)** use all reasonable endeavours to pay to the relevant Tax Authority where due all Taxes which become due and payable before the Implementation Date;
- (j)** use reasonable endeavours to promptly make payments to creditors as they fall due (other than where a payment is the subject of a genuine dispute);
- (k)** ensure that all Transaction Costs are paid in full by 5.00pm on the day prior to the Implementation Date;
- (l)** use reasonable endeavours to implement retention arrangements for key employees (as identified by Bidder) in a manner agreed between Target and Bidder, each acting reasonably;
- (m)** not:

  - (i)** except in the ordinary course of business, acquire, transfer, assign, license, abandon, allow to lapse or expire or otherwise dispose of or create any Encumbrance that is not a Permitted Encumbrance in respect of, any assets, rights or properties (excluding shares or other securities, which are addressed in clause 9.3(m)(x));
  - (ii)** enter into, waive, seek a waiver under, vary (in any material respect) or terminate any Restricted Agreement (but, for the avoidance of doubt: (A) excluding any ordinary course renewal of a Restricted Agreement; or (B) entry into any “Excluded Restricted Arrangements” as identified in the Target Disclosure Letter);

- (iii) give any guarantee of, or security for, or indemnity in connection with the obligations of any person other than a member of the Target Group (other than indemnities given to directors and officers in the ordinary course of business);
- (iv) create or incur any material liability or indebtedness (whether contingent or otherwise), except normal liabilities or indebtedness incurred in the ordinary course of business;
- (v) amend any of the terms and conditions of the Target Group's bank facility as in place at the date of this agreement or put in place any new debt facilities;
- (vi) draw-down under, or repay, any of the Target Group's bank facilities in place as at the date of this agreement other than in the ordinary course of business;
- (vii) agree to, or vary, any break fee, prepayment fee or repayment fee or other similar early repayment payment obligation (excluding the repayment of principal and/or payment of interest) in connection with any renewal or refinancing of the Target Group's facilities;
- (viii) engage in any financing of a type which is not required to be shown or reflected in its financial statements or notes thereto;
- (ix) incur or commit to any unbudgeted capital expenditure, other than payments not exceeding, when aggregated with all other payments made in reliance on this clause 9.3(m)(ix), \$200,000;
- (x) acquire or dispose of any shares or other securities in any body corporate or any units in any trust, except: (a) for the acquisition of shares or securities in an entity which, at the time of the acquisition, was a wholly owned member of the Target Group; or (b) for the "Disposal Shares" as identified in the Target Disclosure Letter;
- (xi) issue (other than to a wholly owned member of the Target Group), redeem, or buy back any shares (other than in connection with the forfeiture of any Performance Share Rights), or increase, reduce or otherwise alter its share capital, or grant any options or rights for the issue of shares or other securities (other than to a wholly owned member of the Target Group);
- (xii) enter into, terminate any participation in, or provide any additional funding to any partnership, joint venture or similar commitment;
- (xiii) acquire or sell any interest in land or enter into new material leases or renew, terminate or change any material terms of any material leases of any member of the Target Group (other than "Excluded Leases" identified in the Target Disclosure Letter);

- (xiv) to the extent a member of the Target Group has standard terms of trade, amend such standard terms of trade in place as at the date of this agreement;
- (xv) make any amendments to the trading terms with any material customer from those which apply as at the date of this agreement, other than in the ordinary course;
- (xvi) enter into any agreements, commitments or arrangements to acquire, any inventory, crop or raw material:

  - (A) which, in aggregate with all other agreements commitments or arrangements for the period, are in excess of \$20,000,000; or
  - (B) which relates to any harvest beyond 30 June 2026;
- (xvii) increase the remuneration of, make any bonus payment, retention payment or termination payment to, grant any equity or equity based awards to, or otherwise change the terms and conditions of employment of any director, officer or any employee of any member of the Target Group whose aggregate annual remuneration package exceeds \$200,000 except:

  - (A) as contemplated by the “Settlement Arrangements” and/or “Excluded Employment Arrangements” as identified in the Target Disclosure Letter;
  - (B) in accordance with any contractual entitlement existing as at the date of this agreement and that has been fairly disclosed to Bidder; and
  - (C) for salary increases in the ordinary course and consistent with past business practice of the Target Group not exceeding 3% of base salary per annum;
- (xviii) accelerate the time of payment or vesting, or fund or otherwise secure payment of, any compensation, rights or benefits (including any equity or equity-based awards but excluding any acceleration contemplated by those “Settlement Arrangements” as identified in the Target Disclosure Letter) or make any material determination under any incentive plan;
- (xix) terminate (other than for “cause”, as determined consistent with past practice) the employment of, or hire or promote:

  - (A) any employee or contractor for personal services of any member of the Target Group with an aggregate annual remuneration package that exceeds \$200,000 per annum; or

**(B)** any Senior Manager;

- (xx)** make or forgive any loans to any current or former director, employee or contractor for personal services of any member of the Target Group (other than salary advances in the ordinary course of business consistent with past practice), except to the extent it is an “Excluded Loan Arrangement” as identified in the Target Disclosure Letter;
- (xxi)** amend or terminate any employee benefit plan sponsored or maintained by the Target Group (except for administrative amendments to or annual renewals of such plans in the ordinary course of business or any “Excluded Benefit” as identified in the Target Disclosure Letter), or establish, adopt, or enter into any new such arrangement;
- (xxii)** waive the restrictive covenant obligations of any director, officer, employee or contractor for personal services, except to the extent it is an “Excluded Waiver Arrangement” as identified in the Target Disclosure Letter;
- (xxiii)** alter, adopt or revoke Target’s constitution or pass any resolution of shareholders or any class of shareholders (other than: (i) the Scheme Resolution; (ii) any resolution to appoint (or reappoint) a director; and (iii) any resolution to authorise the Board to fix the fees and expenses of its auditor);
- (xxiv)** fail to comply in any material respect with any laws and / or regulations applicable to its business or do or omit to do anything which results in a material risk of termination, revocation, suspension, modification or non-renewal of any material Authorisation held by it;
- (xxv)** fail to comply in any material respect with any material policies of the Target Group in place as at the date of this agreement, including in relation to anti-bribery and corruption, data protection and information technology, and not make any material amendment to such policies;
- (xxvi)** commence, compromise or settle any litigation or similar proceedings for an amount exceeding \$200,000, except to the extent it is an “Excluded Dispute” as identified in the Target Disclosure Letter;
- (xxvii)** make any change in accounting policies used by it, or in the application of such accounting policies, (except in either case if required by a change in International Financial Reporting Standards);

- (xxviii)** other than in accordance with past practice, make, change or revoke any material Tax election, file any amended Tax return, settle any Tax claim, audit or action, surrender any right to claim a material Tax refund, offset or other reduction in Tax liability; or change its method of Tax accounting, in each case, if such action would have the effect of increasing the Tax liabilities of the Target Group by an amount that exceeds \$200,000;
- (xxix)** enter into, amend or close out any material foreign exchange, interest rate, swap, derivative or hedge with a transaction value exceeding \$200,000 (other than to the extent reasonably required to manage the foreign exchange or interest rate risk of the Target Group);
- (xxx)** make any material change to any publicly stated corporate strategy;
- (xxxi)** enter into any contract, commitment or arrangement, or make any payment to any shareholder of the Target Group or a Representative of the Target Group other than in the ordinary course of business;
- (xxxii)** enter into a “major transaction” for the purposes of the Companies Act;
- (xxxiii)** enter into, or vary, any agreement or arrangement to which Listing Rule 5.1.1 applies, or would apply but for the granting of any waiver or ruling by NZX; or
- (xxxiv)** agree, conditionally or otherwise, to do any of the things referred to in the preceding paragraphs of this clause 9.3(m), or announce or represent to any person that any of those things will be done,

except:

- (n)** with the prior written consent of Bidder;
- (o)** to the extent that matter is expressly and specifically provided for in the FY25 or FY26 budgets for Target Group (as disclosed to Bidder prior to the date of this agreement);
- (p)** to the extent the relevant act or omission was fairly disclosed in the Due Diligence Material;
- (q)** to the extent necessary to comply with any law (including the Commerce Act 1986 and the Companies Act 1993 (and, in particular, sections 131 to 138 (inclusive)) or any regulatory requirement or direction of a Government Agency;
- (r)** as necessary for any member of the Target Group to perform its contractual obligations (as in place as at the date of this agreement);



- (s) as reasonably and prudently required to respond to any emergency, pandemic, act of God or other disaster; or
- (t) to the extent that it is expressly required to do, permitted to do, or is permitted not to do, under or in accordance with this agreement,

and in the case of the situations described in 9.3(q), (s) or (t) above, only for so long as and to the extent that those things are strictly required and provided that Target informs Bidder as soon as possible of the actions taken or proposed to be taken, and, to the extent practicable, considers in good faith any feedback or suggestions made by Bidder as to the proposed course of action. The parties note that the objective of this clause 9.3 is that no action is taken or not taken, which may affect the future prospects of the Target Group, without reasonable involvement of Bidder.

#### 9.4 Transition Committee:

- (a) As soon as reasonably practicable, and in any event within 5 Business Days after the date of this agreement, Target and Bidder will form a transition committee (the **Transition Committee**) in accordance with this clause 9.4. The Transition Committee will, subject to this agreement, establish its terms of reference, meeting schedules and escalation methodologies.
- (b) The Transition Committee will comprise three representatives of each of Target and Bidder. A party may appoint, replace or nominate a representative by giving written notice to the other party, provided that Target's appointees must be approved by Bidder (acting reasonably).
- (c) The Transition Committee will, subject at all times to applicable law:
  - (i) co-ordinate implementation of the Scheme between the parties;
  - (ii) co-ordinate preparation for the transition of ownership of Target to Bidder;
  - (iii) discuss and resolve matters arising in relation to this agreement or the Transaction within its terms of reference;
  - (iv) undertake any other matters reasonably requested by a party that are material in connection with the Transaction; and
  - (v) be a forum for reasonable discussion of matters arising from information provided pursuant to clause 9.1.
- (d) The representatives of Target on the Transition Committee will have authority to submit matters that would otherwise be restricted under clause 9.3 to Bidder for approval in accordance with clause 9.3(n).
- (e) The representatives of Bidder on the Transition Committee will have authority to provide consent in writing on behalf of Bidder for the purposes

of clause 9.3(n) to any actions of the Target Group that would otherwise be restricted under clause 9.3.

(f) To the extent that:

- (i) the Target seeks Bidder's written approval in respect of any action, matter, event, or circumstance; or
- (ii) the Bidder requests the Target take any action or refrain from taking any action; or
- (iii) the Transition Committee considers any action, matter, event or circumstance that is likely to have an impact on Total Net Indebtedness of the Target Group and such action, matter, event or circumstance is either: (A) approved by a Bidder representative of that Transition Committee and done; or (B) declined by a Bidder representative of that Transition Committee and not done,

the Transition Committee will, subject to the proviso below, determine (in good faith) the estimated impact of such action, matter, event or circumstance in advance of the Target Group taking, or not taking, such action (each amount so determined being an **Excluded Total Net Indebtedness Impact**). If at any time the Target becomes aware that the actual impact of the relevant decision is or will likely be materially different to the Excluded Total Net Indebtedness Impact, it will promptly notify the Transition Committee, which must determine (in good faith) whether to adjust the Excluded Total Net Indebtedness Impact. Where an action, matter, event or circumstance is not included in the Business Plan and such action, matter, event or circumstance is declined by a Bidder representative of the Transition Committee and not done, it shall be deemed to not have an Excluded Total Net Indebtedness Impact (unless the parties expressly agree otherwise).

#### 9.5 Consents to change of control and waivers of pre-emptive and other rights:

- (a) Target will use reasonable endeavours to identify those of its material contracts which require a counterparty notification or consent in relation to the change of control of Target or a waiver, by a counterparty, in respect of rights (including rights arising for Target's financiers under Target's financing, including in relation to an event of review or prepayment event, howsoever described) that arise as a result of the Scheme (each a **CoC Contract**), and provide each such CoC Contract (or a summary of such CoC Contract) to the Bidder.
- (b) Unless agreed otherwise in writing between Bidder and Target:
  - (i) Target and Bidder will agree, in good faith, a communications plan to notify the relevant counterparty of the implications of the Scheme under the relevant contract;

- (ii) Target will, and will procure that each member of the Target Group will, use reasonable endeavours to obtain the consents or waivers required; and
- (iii) Bidder must co-operate with and use reasonable endeavours to assist Target to obtain the consents or waivers required,

it being agreed that nothing in this clause 9.5 will require either party to pay any money or provide any other valuable consideration to or for the benefit of any person.

**9.6 Communications Protocols:** The parties acknowledge their obligations under the Commerce Act 1986 and agree that all communications and sharing of information pursuant to this clause 9 shall be effected in a manner which complies with the Communications Protocols.

## **10. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS**

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### **10.1 Target representations, warranties and undertakings:**

- (a) Target represents and warrants to Bidder:
  - (i) on the date of this agreement;
  - (ii) at 8.00am on the date that the Scheme Booklet is sent to Shareholders;
  - (iii) immediately prior to the last affidavits being filed in respect of the Final Orders; and
  - (iv) at 8.00am on the Implementation Date,that each of the Target Warranties is true, accurate and not misleading.
- (b) Target undertakes to Bidder to comply with each of the Target Undertakings.
- (c) The Target Warranties are given subject to and are qualified by matters and circumstances:
  - (i) fairly disclosed to Bidder in the Due Diligence Material (other than in respect of the Fundamental Warranties); and
  - (ii) which, as at the date of this agreement, are within the actual knowledge of Bidder which for these purposes will be taken to include (and be limited to) the facts, matters and circumstances which the following individuals are actually aware as at the date of this agreement: Mark Stewart, Michael Tod, Mark Sadd, Warwick Webb, Michael Pritchard and Nigel Watson.

**10.2 Bidder representations, warranties and undertakings:**

- (a) Bidder represents and warrants to Target:
- (i) on the date of this agreement;
  - (ii) at 8.00am on the date that the Scheme Booklet is sent to Shareholders;
  - (iii) immediately prior to the last affidavits being filed in respect of the Final Orders; and
  - (iv) at 8.00am on the Implementation Date,
- that each of the Bidder Warranties is true, accurate and not misleading.
- (b) Bidder undertakes to Target to comply with each of the Bidder Undertakings.

**10.3 Indemnity by Target:** Subject to clause 13.6, Target indemnifies Bidder against, and must pay to Bidder on demand an amount equal to, all Losses directly incurred or suffered by the Bidder Indemnified Persons arising out of or in connection with:

- (a) any matter or circumstance that results in any of the Target Warranties being untrue, inaccurate or misleading when given; or
- (b) any breach of the Target Undertakings.

**10.4 Indemnity by Bidder:** Subject to clause 13.6, Bidder indemnifies Target against, and must pay to Target on demand an amount equal to, all Losses directly incurred or suffered by the Target Indemnified Persons arising out of or in connection with:

- (a) any matter or circumstance that results in any of the Bidder Warranties being untrue, inaccurate or misleading when given; or
- (b) any breach of the Bidder Undertakings.

**10.5 Status of representations, warranties, undertakings and indemnities:** Each representation and warranty, undertaking and indemnity made or given under this clause 10 is severable and survives termination of this agreement and each undertaking and indemnity given in this clause 10 is a continuing obligation.**10.6 Scheme becoming Effective:** After the Scheme becomes Effective, any breach of the representations and warranties or the undertakings made or given under this clause 10 may only give rise to a claim for damages or under the indemnities in this clause 10 and does not entitle a party to terminate this agreement.**11. RELEASES****11.1 Release of Target Indemnified Persons:** Bidder waives and releases, and must procure that each member of the Bidder Group waives and releases, all rights and claims which it may have against any Target Indemnified Person (other than Target) in respect of

any misrepresentation, inaccuracy or omission in or from any information or advice given by that Target Indemnified Person in connection with any representation, warranty or undertaking given by Target in this agreement or the preparation of the Target Information or the Due Diligence Material except where the Target Indemnified Person has engaged in wilful misconduct or fraud. The parties acknowledge and agree that:

- (a) Target has sought and obtained the waiver and release in this clause 11.1 as agent for and on behalf of each Target Indemnified Person and may enforce the provisions of this clause 11.1 on behalf of any Target Indemnified Person;
- (b) any Target Indemnified Person may plead this clause 11.1 in response to any claim made by any member of the Bidder Group against them; and
- (c) the undertakings contained in this clause 11.1 are given for the benefit of each Target Indemnified Person and are intended to be enforceable against Bidder by each Target Indemnified Person in accordance with the provisions of the Contract and Commercial Law Act 2017.

**11.2 Release of Bidder Indemnified Persons:** Target waives and releases, and must procure that each member of the Target Group waives and releases, all rights and claims which it may have against any Bidder Indemnified Person (other than Bidder) in respect of any misrepresentation, inaccuracy or omission in or from any information or advice given by that Bidder Indemnified Person in connection with any representation, warranty or undertaking given by Bidder in this agreement or the preparation of the Bidder Information except where the Bidder Indemnified Person has engaged in wilful misconduct or fraud. The parties acknowledge and agree that:

- (a) Bidder has sought and obtained the waiver and release in this clause 11.2 as agent for and on behalf of each Bidder Indemnified Person and may enforce the provisions of this clause 11.2 on behalf of any Bidder Indemnified Person;
- (b) any Bidder Indemnified Person may plead this clause 11.2 in response to any claim made by any member of the Target Group against them; and
- (c) the undertakings contained in this clause 11.2 are given for the benefit of each Bidder Indemnified Person and are intended to be enforceable against Target by each Bidder Indemnified Person in accordance with the provisions of the Contract and Commercial Law Act 2017.

**11.3 D&O Insurance:**

- (a) Bidder acknowledges that, subject to clause 11.3(b), Target may, prior to the Implementation Date, enter into a run-off directors' and officers' liability insurance policy that is effective on the Implementation Date in respect of any Target Directors or officers (or the directors or officers of any other member of the Target Group) for a seven year period (the **D&O Run-off Policy**) and pay all premiums required upfront. The Target shall ensure such premium is paid by in full by 5.00pm on the day prior to the Implementation Date.

- (b) Provided that the D&O Run-off Policy is, to the extent practicable, obtained at normal commercial rates and on terms consistent with the terms of Target's existing directors' and officers' liability insurance policy, Bidder agrees that:
  - (i) Target entering into and paying the premium for the D&O Run-off Policy does not breach any provision of this agreement; and
  - (ii) after the Implementation Date it will not, and will procure that no member of the Target Group will, vary or cancel the D&O Run-off Policy (for so long as such entity remains a member of the Target Group).
- (c) Target and Bidder will consult in good faith on the selection of the D&O Run-off Policy.
- (d) Target will keep Bidder informed of material developments and communications with brokers and insurers in relation to the obtaining of the D&O Run-off Policy.
- (e) Following the Implementation Date, to the extent permitted by law, Bidder will procure that Target uses reasonable endeavours to retain a copy of the Target's records in a manner consistent with past practice and maintains in place all indemnities and associated rights of access to information provided by Target for the benefit of the current and former directors and officers of Target (including any indemnity provided in accordance with, or set out in, Target's constitution) and which have been fairly disclosed to Bidder in the Due Diligence Material.

## 12. EXCLUSIVITY

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**12.1 No shop restriction:** Subject to clause 12.12, during the Exclusivity Period, Target must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) solicit, invite, encourage, initiate or otherwise seek to procure any Competing Proposal or any other offer, proposal, expression of interest, enquiry, negotiation or discussion with any Third Party in relation to, or for the purpose of, or that may reasonably be expected to encourage or lead to, a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 12.1(a) on its behalf.

**12.2 No talk restriction:** Subject to clause 12.3 and 12.12, during the Exclusivity Period Target must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) enter into, permit, continue or participate in, negotiations or discussions with any Third Party in relation to a Competing Proposal, or for the purpose of or that may reasonably be expected to encourage or lead to a Competing Proposal; or

- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 12.2(a) on its behalf; or
- (c) communicate to any person an intention to do any of the things referred to in clause 12.2(a),

even if the Competing Proposal was not directly or indirectly solicited, invited, encouraged, initiated or otherwise procured by Target or any of its Representatives, was received before the date of this Agreement and/or has been publicly announced.

**12.3 No talk exception:** The restriction in clause 12.2 does not apply to the extent that it restricts Target or its Representatives from taking or refusing to take any action with respect to a bona fide Competing Proposal (which was not solicited, invited, encouraged or initiated in contravention of clause 12.1) if:

- (a) the Board has determined, after taking advice from its external financial adviser, that the Competing Proposal is, or is reasonably capable of becoming, a Superior Proposal or would be reasonably likely to constitute, or is reasonably capable of becoming, a Superior Proposal if it were to be proposed; and
- (b) acting in good faith and after having taken written advice from its external legal advisers, the Board has determined that failing to respond to such Competing Proposal would be likely to constitute a breach of the fiduciary duties or statutory obligations of any member of the Board.

**12.4 No due diligence restriction:** Subject to clause 12.5 and clause 12.12 but without limiting clause 12.2, during the Exclusivity Period, Target must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) disclose to any Third Party, or cause or permit any Third Party to receive, any non-public information relating to Target or any member of the Target Group that may reasonably be expected to assist such Third Party in formulating, developing or finalising a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 12.4(a) on its behalf.

**12.5 No due diligence exception:** The restriction in clause 12.4 does not apply in respect of a bona fide Competing Proposal (which was not solicited, invited, encouraged or initiated in contravention of clause 12.1) if all of the following requirements are satisfied:

- (a) the Board has determined, after taking advice from its external financial adviser, that the Competing Proposal is, or is reasonably capable of becoming, a Superior Proposal or would be reasonably likely to constitute, or is reasonably capable of becoming, a Superior Proposal if it were to be proposed;

- (b) acting in good faith and after having taken written advice from its external legal advisers, the Board has determined that failing to respond to such Competing Proposal would be likely to constitute a breach of the fiduciary duties or statutory obligations of any member of the Board;
- (c) the Third Party has first entered into a written agreement in favour of Target restricting the use and disclosure, by the Third Party and its affiliates and advisers, of the information made available to the Third Party, on terms not substantially more favourable to the Third Party than those in the Confidentiality Agreement; and
- (d) to the extent that any information made available to the Third Party has not previously been provided to Bidder (or differs from any information previously provided to Bidder), Target provides that information to Bidder at the same time as it is provided to the Third Party.

#### **12.6 General notification obligations:**

- (a) During the Exclusivity Period, Target must, as soon as practicable in the circumstances and in any event within 48 hours, notify Bidder if:
  - (i) Target or any of its Representatives receives any Competing Proposal or any inquiry, approach, correspondence or other communication from a Third Party to initiate any discussions or negotiations that could reasonably be expected to lead to a Competing Proposal; or
  - (ii) Target or any of its Representatives receives any request for information relating to any member of the Target Group or its business or any request for access to non-public information of any member of the Target Group in connection with a current or future Competing Proposal; or
  - (iii) Target takes, or proposes to take, any action in reliance on the exceptions in clause 12.3 or clause 12.5,and such notification will include reasonable detail of the terms of such approach, action or circumstances (including, for the avoidance of doubt and to the extent applicable, the information specified in clause 12.6(b)).
- (b) A notice given under clause 12.6(a) must be accompanied by all applicable material details of the relevant event, including (as the case may be):
  - (i) the identity of the person who provided the Competing Proposal or made the relevant inquiry or approach to initiate discussions or to whom any information is proposed to be provided as referred to in clause 12.6(a);
  - (ii) all material terms and conditions of the Competing Proposal, such as the amount and form of consideration to be offered, the



conditions to which it is subject, the proposed timetable and any break fee arrangements (to the extent known);

- (iii) whether or not Target intends to progress or respond to the relevant inquiry, approach, offer, bid, proposal or request (or whether, acting in good faith, Target has not yet been able to make a decision); and
    - (iv) the nature of the information or access requested and / or provided or action proposed to be taken.
  - (c) Without limiting Target's other obligations under this clause 12.6, Target will keep Bidder reasonably informed on a prompt and timely basis of the status and any developments regarding any Competing Proposal which Target (acting reasonably) considers are material, within 24 hours after receipt or delivery thereof, including:
    - (i) any update or amendment to the terms of the Competing Proposal; and
    - (ii) if a notice given under clause 12.6(a) states, in accordance with clause 12.6(b)(iii), that Target has not yet decided whether it intends to progress or respond to the relevant inquiry, approach, offer, bid, proposal or request (or similar statement), updating Bidder on a prompt and timely basis when it makes such a decision.

## **12.7 Matching rights:**

- (a) Without limiting clause 12.1 and 12.2, during the Exclusivity Period, Target:
  - (i) must not, and must procure that each of its Representatives does not, enter into, or agree to enter into, any agreement, arrangement or understanding to undertake, give effect to or implement any Competing Proposal;
  - (ii) must use best endeavours to procure that no Target Director changes, qualifies or withdraws his or her recommendation in favour of the Scheme in order to publicly recommend any Competing Proposal; and
  - (iii) must not make, and must use best endeavours to ensure that no Target Director makes, any public statement recommending any Competing Proposal to Shareholders,

unless and until:

- (iv) acting in good faith and after having taken written advice from its external financial and legal advisers, the Board has determined that:
    - (A) the Competing Proposal is a Superior Proposal; and



taken as a whole, is no less favourable to Shareholders than those offered under the relevant Competing Proposal (a **Counter Proposal**).

**12.8 Target's response to Counter Proposal:** If, during the Matching Period, Bidder makes a Counter Proposal:

- (a) Target must procure that the Board considers the Counter Proposal in good faith;
- (b) if the Board determines that the terms and conditions of the Counter Proposal, taken as a whole, are less favourable to Shareholders than those in the relevant Competing Proposal, then Target must, for a period of not less than 48 hours, consult with Bidder as to the relative merits of the Counter Proposal and the Competing Proposal; and
- (c) if the Board, acting in good faith, determines that the terms and conditions of the Counter Proposal taken as a whole are no less favourable to Shareholders than those in the relevant Competing Proposal, then:
  - (i) the parties must use their reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Counter Proposal as soon as reasonably practicable; and
  - (ii) Target must use all reasonable endeavours to procure that each Target Director makes a public statement recommending the Counter Proposal to Shareholders.

**12.9 Changes to Proposals:** Any material change to a Competing Proposal, including:

- (a) any material change to the terms referred to in clause 12.6(b); or
- (b) any incomplete or non-binding proposal or expression of interest becoming complete, capable of acceptance or binding on the Third Party bidder,

will be taken to constitute a new Competing Proposal in respect of which Target must separately comply with its obligations under clause 12.6 to clause 12.8.

**12.10 Termination if unmatched Superior Proposal progresses:** If Target has complied fully with clause 12.6 in relation to a Competing Proposal and, in compliance with clause 12.7:

- (a) Target enters into, or agrees to enter into, any agreement, arrangement or understanding to undertake, give effect to or implement the Competing Proposal; or
- (b) any Target Director changes, qualifies or withdraws his or her recommendation in favour of the Scheme in order to publicly recommend the Competing Proposal; or

- (c) Target makes, or any Target Director makes, any public statement recommending the Competing Proposal to Shareholders,

then either party may terminate this agreement by notice to the other party in accordance with clause 14.1(f) or 14.2(c) (as appropriate).

**12.11 Standstill arrangements with other parties:** During the Exclusivity Period, except with the prior written consent of Bidder, Target must not amend or waive the terms of any standstill agreement or arrangement between Target and any person (other than a member of the Bidder Group), other than in circumstances where clause 12.7(a)(vii) applies.

**12.12 Normal provision of information:** Nothing in this clause 12 prevents Target or its Representatives from:

- (a) providing information required to be provided by law, any court of competent jurisdiction, any Government Agency or the NZX Listing Rules;
- (b) providing market announcements through the NZX market announcements platform as required by the NZX Listing Rules or as are otherwise necessary or desirable (in the opinion of Target, acting reasonably) to inform Shareholders of key matters in relation to or in connection with the Scheme; or
- (c) making presentations to, and responding to bona fide enquiries from, stockbrokers, portfolio investors and equity market analysts in relation to the Scheme or in accordance with its usual practices.

### **13. BREAK FEE AND REVERSE BREAK FEE**

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**13.1 Acknowledgement and agreement:** Target (on the one hand) and Bidder (on the other hand) each acknowledges and agrees that:

- (a) the other and the members of its Group have incurred and will continue to incur significant costs and expenses in pursuing the Transaction including:
  - (i) advisory costs;
  - (ii) costs of management and directors' time;
  - (iii) in respect of Bidder, funding costs;
  - (iv) out of pocket expenses; and
  - (v) opportunity costs of pursuing the Transaction or in not pursuing alternative transactions or business opportunities;
- (b) the costs and expenses actually incurred by each party and the members of its Group are of such nature that they cannot accurately be ascertained;

- (c) the Break Fee and Reverse Break Fee are each liquidated damages based on a genuine and reasonable estimate of the costs and expenses that have been or will be actually incurred by the relevant party and the members of its Group in pursuing the Transaction;
- (d) the parties have negotiated the inclusion of this clause 13 in this agreement and would not have entered into this agreement without it; and
- (e) each party has received external legal and financial advice in relation to this clause 13 and has concluded that it is reasonable and appropriate for it to agree to payment of the Break Fee or Reverse Break Fee (as applicable) in the circumstances described in clause 13.2 or 13.3 (as applicable) in order to secure the other party's entry into this agreement.

**13.2 Circumstances where Break Fee payable:**

- (a) Subject to the remainder of this clause 13, Target must pay the Break Fee to Bidder if:
  - (i) at any time before this agreement is terminated a Competing Proposal is announced, and the person making the Competing Proposal (or one or more persons that Control, or are under the Control of, that person) completes, within 12 months of the date of termination, a transaction that is, in all material respects, of the kind referred to in the definition of Competing Proposal; or
  - (ii) at any time before this agreement is terminated, any Target Director:
    - (A) fails to make the Recommendation; or
    - (B) fails to give the Voting Commitment; or
    - (C) changes, qualifies or withdraws the Recommendation or the Voting Commitment; or
    - (D) makes any public statement materially inconsistent with the Recommendation or the Voting Commitment,in each case except:
  - (E) in response to a Superior Proposal (subject to Target's compliance with clause 12.7); or
  - (F) where, the Independent Adviser issues an Independent Adviser's Report which concludes that the Consideration is not within or above the Independent Adviser's valuation range for the Shares; or
- (iii) Bidder terminates this agreement as permitted under clauses 14.1(a), 14.1(b), 14.1(c) or 14.1(d); or

(iv) either party terminates this agreement under clause 12.10.

(b) If the exception in paragraph 13.2(a)(ii)(F) applies, the Break Fee will nonetheless be payable by Target to Bidder if, prior to the issue of the Independent Adviser's Report concluding that the Consideration was not within or above the Independent Adviser's valuation range, a Competing Proposal is received by Target or made public and within 12 months after the date that the Competing Proposal is received or made public, the person making the Competing Proposal or one or more persons that Control or are under the Control of that person completes in all material respects a transaction of the kind referred to in the definition of Competing Proposal.

**13.3 Circumstances where Reverse Break Fee payable:** Subject to the remainder of this clause 13, Bidder must pay the Reverse Break Fee to Target if Target terminates this agreement as permitted under clause 14.2(a) or 14.2(b).

**13.4 Payment of Break Fee or Reverse Break Fee:** If the Break Fee or Reverse Break Fee become payable under this agreement, Target or Bidder (as the case requires) must pay it to or as directed by the other party without withholding or set-off (except as required by law) within 10 Business Days after receipt of a written demand for payment from the other party. The obligation to make the payment described in the preceding sentence will be satisfied by the payment of the relevant amount in immediately available funds to the recipient's nominated account. For the avoidance of doubt, if only a portion of the Break Fee or the Reverse Break Fee is held by a Court to be enforceable, that portion which is payable must be paid within 10 Business Days of the relevant determination.

**13.5 Break Fee or Reverse Break Fee not payable:** Notwithstanding anything else in this agreement:

- (a) neither the Break Fee nor Reverse Break Fee is payable if the Scheme becomes Effective;
- (b) the Break Fee and Reverse Break Fee are each payable only once;
- (c) in the event that Target is required to pay the Break Fee under this clause 13, from that point forward, in no circumstances will Bidder be required to pay the Reverse Break Fee;
- (d) in the event that Bidder is required to pay the Reverse Break Fee under this clause 13, from that point forward, in no circumstances will Target be required to pay the Break Fee; and
- (e) in no circumstances will Bidder be required to pay both the Reverse Break Fee and payment of any damages or any Losses under clause 10.4.

**13.6 Sole and exclusive remedy:**

- (a) Subject to clause 13.6(c) and 13.9, Bidder acknowledges and agrees that payment of the Break Fee is the sole and exclusive remedy available to Bidder

in connection with any event or occurrence referred to in clause 13.2 and Target is not liable for any loss or damage arising in connection with any such event or occurrence other than for any liability that it may have to pay Bidder the Break Fee under this clause 13.

- (b) Subject to clause 13.6(c) and 13.9, Target acknowledges and agrees that payment of the Reverse Break Fee is the sole and exclusive remedy available to Target in connection with any event or occurrence referred to in 13.3 and Bidder is not liable for any loss or damage arising in connection with any such event or occurrence other than for any liability that it may have to pay Target the Reverse Break Fee under this clause 13.
- (c) Nothing in this clause 13.6 limits Target's or Bidder's liability for fraud.

**13.7 Amendments to Break Fee Arrangements:** If any of the following occurs:

- (a) the Takeovers Panel indicates to either party in writing that it requires any modification to the amount of the Break Fee or Reverse Break Fee or the circumstances in which any of them is to be paid (the **Break Fee Arrangements**) as a condition of not opposing the Scheme; or
- (b) the Court requires any modification to the Break Fee Arrangements as a condition of making orders convening the Scheme Meeting,

then the parties must amend this clause 13 to the extent required to give effect to the requirements of the Takeovers Panel or the Court, as the case may be, and in the circumstances referred to in clause 13.7(b) must give any required undertakings.

**13.8 Qualifications:**

- (a) To the extent that any amounts have already been paid under this clause 13 and the Scheme becomes Effective, such amounts will be immediately refunded to Target or Bidder (as applicable).
- (b) A statement that shareholders should 'take no action pending further advice' (or words with a similar effect) is not regarded as a change, qualification or withdrawal of the Recommendation and Voting Commitment, or a statement inconsistent with the Recommendation, for the purposes of clause 13.2(a)(ii).

**13.9 Specific performance and other rights:**

- (a) Subject to clause 13.9(c), nothing in this agreement precludes Target from suing Bidder for specific performance.
- (b) Subject to clause 13.9(d), nothing in this agreement precludes Bidder from suing Target for specific performance.
- (c) Target's right to receive the Reverse Break Fee or payment of any damages or any Losses under clause 10.4 will not limit or otherwise affect Target's

right to seek specific performance as provided in this clause 13.9, provided that in no event will Target be entitled to receive both:

- (i) specific performance resulting in implementation of the Scheme and payment of the Reverse Break Fee; or
  - (ii) specific performance resulting in implementation of the Scheme and payment of any damages or any Losses under clause 10.4.
- (d) Bidder's right to receive the Break Fee or payment of any damages or any Losses under clause 10.3 will not limit or otherwise affect Bidder's right to seek specific performance as provided in this clause 13.9, provided that in no event will Bidder be entitled to receive both:
  - (i) specific performance resulting in implementation of the Scheme and payment of the Break Fee; or
  - (ii) specific performance resulting in implementation of the Scheme and payment of any damages or any Losses under clause 10.3.
- (e) Bidder agrees that if Target seeks damages from Bidder, any Loss suffered by Shareholders as a result of a breach of this agreement or the Deed Poll by Bidder will be deemed to be suffered by Target (except to the extent that Bidder pays damages directly to Shareholders on account of any Loss suffered due to the applicable breach).

**13.10 Target's limitation of liability:** Notwithstanding any other provision of this agreement but subject to clause 13.9:

- (a) the maximum aggregate liability of Target to Bidder under or in connection with this agreement, howsoever arising and including in respect of any breach of this agreement, will be the amount of the Break Fee;
- (b) a payment by Target of the Break Fee represents the sole and absolute liability of Target to Bidder under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by Target to Bidder in connection with this agreement; and
- (c) the amount of the Break Fee payable to Bidder under this clause 13 shall be reduced by the amount of any loss or damage recovered by Bidder in relation to a breach of any other clause of this agreement,

provided that nothing in this clause 13.10:

- (d) limits Target's liability for fraud or intentional breach of this agreement; or
- (e) prevents:
  - (i) Target from recovering actual costs it incurs in connection with this agreement and the Scheme (to the extent such costs exceed the Break Fee); or



- (ii) Shareholders (or Target on behalf of Shareholders) from bringing a claim for and recovering any Loss,

in either case, if Bidder has breached its obligation to pay the Consideration to Shareholders pursuant to clause 2.3.

**13.11 Bidder's limitation of liability:** Notwithstanding any other provision of this agreement but subject to clause 13.9:

- (a) the maximum aggregate liability of Bidder to Target under or in connection with this agreement, howsoever arising and including in respect of any breach of this agreement, will be the amount of Reverse Break Fee;
- (b) a payment by Bidder of the Reverse Break Fee represents the sole and absolute liability of Bidder to Target under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by Bidder to Target in connection with this agreement; and
- (c) the amount of the Reverse Break Fee payable to Target under this clause 13 shall be reduced by the amount of any loss or damage recovered by Target in relation to a breach of any other clause of this agreement,

provided that nothing in this clause 13.11 limits Bidder's liability for fraud or intentional breach of this agreement.

**13.12 Trigger Disputes:**

- (a) A Trigger Dispute is to be provisionally determined in accordance with clauses 13.12 to 13.14.
- (b) If a Trigger Dispute arises, the party contending that the relevant event has occurred must, as soon as reasonably practicable, deliver a notice specifying the details and particulars of its position, the facts upon which it relies, and enclosing copies of the documents upon which it relies and a statement (not more than 10 standard pages) explaining the rationale for its position on the Trigger Dispute. Such statement must be signed or endorsed by a senior executive or director of the relevant party.
- (c) The other party must, within 10 Business Days of the receipt of the documents provided for in clause 13.12(b) above, deliver a notice specifying the details and particulars of its position, the facts upon which it relies, and enclosing copies of the documents upon which it relies and a statement (not more than 10 standard pages) explaining the rationale for its position on the Trigger Dispute. Such statement must be signed or endorsed by a senior executive or director of the relevant party.
- (d) Following exchange of statements in accordance with clause 13.12(c), each party will designate one or more representatives to engage in good faith

discussions to attempt to resolve the Trigger Dispute within five Business Days.

**13.13 Expert Determination:** If the Trigger Dispute is not resolved within 10 Business Days of the exchange of the documents provided for under clause 13.12(c):

- (a) either party may, by written notice to the other, refer the Trigger Dispute to the Expert to be determined in accordance with sub-paragraphs (b) to (g) below (such Expert to be appointed jointly by the parties on the basis of these provisions);
- (b) within 10 Business Days of the Expert being appointed, the party referring the Trigger Dispute to the Expert must provide the Expert (copying the other party) with:
  - (i) this agreement;
  - (ii) the statements provided in accordance with clause 13.12;
  - (iii) statement(s) of evidence signed or endorsed by a senior executive or director of the relevant party in reply to the material provided by the other party under clause 13.12(c), together with any additional documents referred to in the statement(s); and
  - (iv) written submissions of not more than 10 standard pages in support of that party's position;
- (c) within 10 Business Days of receiving the documents specified in clause 13.13(b), the other party must provide the Expert (copying the other party) with:
  - (i) statement(s) of evidence signed or endorsed by a senior executive or director of the relevant party in rejoinder to the statement(s) of evidence provided by the other party under clause 13.13(b)(iii), together with any additional documents referred to in its statement(s); and
  - (ii) written submissions of not more than 10 standard pages in support of that party's position;
- (d) the parties will procure that the Expert makes his/her determination (with reasons which substantiate the determination) within 4 weeks of receipt of the information under clause 13.13(c);
- (e) in determining the dispute, the Expert must act as an expert and not an arbitrator;
- (f) the parties agree that there will be no ex parte communication between any party and the Expert regarding any matter in the Trigger Dispute and that all written communications by any party to the Expert will be copied to the other party; and

- (g) the Expert's fees will be borne equally by the parties.

**13.14 Determination is provisional only:**

- (a) If the Expert determines that a payment is required to be made by a party under this clause 13, then such payment will be made promptly in accordance with clause 13.14(c).

- (b) After either:

- (i) the Expert delivers a decision on the Trigger Dispute; or
- (ii) the Expert has failed to deliver a decision on the Trigger Dispute within eight weeks of receipt of the information under clause 13.13(c), whichever is earlier,

either party is at liberty to commence proceedings in the New Zealand courts for the final determination of the Trigger Dispute and any other related issues, provided that, if the Expert decides that a payment is required to be made by a party under this clause 13, such payment must be made by that party in accordance with clause 13.14(a) and clause 13.14(c) before commencing proceedings.

- (c) The party required to make a payment under clause 13.14(a) must:

- (i) make such payment within 20 Business Days of the Expert's determination; or
- (ii) if it wishes to further litigate the merits of the Trigger Dispute, within 20 Business Days of the Expert's determination:

- (A) make such payment into a solicitor's trust account to be held in escrow pending final determination of the Trigger Dispute by a court, from which no appeal has been or could be taken; and

- (B) file proceedings in the High Court in respect of the Trigger Dispute and continue thereafter to pursue such proceedings expeditiously.

- (d) It is acknowledged and agreed that:

- (i) the purpose of clauses 13.12 to 13.14 (inclusive) is to deliver a provisional payment outcome but without prejudicing either party in relation to the further litigation of the underlying Trigger Dispute; and
- (ii) none of the conclusions or findings in the Expert's determination in any way limit the parties' ability to have the merits of the Trigger

Dispute determined on the merits, de novo and afresh through proceedings in the New Zealand courts.

## **14. TERMINATION**

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**14.1 Events affecting the Target Group:** Subject to clause 14.3, Bidder may terminate this agreement by giving notice in writing to Target before 8.00am on the Implementation Date if:

- (a) Target is in breach of any Target Warranty (or any event occurs or circumstance arises that would cause any Target Warranty to be untrue, as at 8.00am on the Implementation Date) where the consequences of that breach (other than in respect of a Fundamental Warranty), or failure of a Target Warranty to be true, are adverse and material in the context of the Scheme and the Target Group (taken as a whole);
- (b) Target is in breach of any Target Undertaking or any other provision under this agreement, and that breach is adverse and material in the context of the Scheme or to the Target Group (taken as a whole);
- (c) Target breaches clauses 8.1, 8.2 or 12;
- (d) a Prescribed Occurrence occurs on or after the date of this agreement (which, in the case of those Prescribed Occurrences contemplated by paragraphs 5 and 8 of Schedule 1, has not been remedied by 5.00pm on the day prior to the Implementation Date);
- (e) a Material Adverse Change occurs on or after the date of this agreement; or
- (f) clause 12.10 applies and Target has not already terminated this agreement.

**14.2 Events affecting Bidder:** Subject to clause 14.3, Target may terminate this agreement by giving notice in writing to Bidder before 8.00am on the Implementation Date if:

- (a) a breach of any Bidder Warranty occurs (or any other event occurs or circumstance arises that would cause any Bidder Warranty to be untrue as at 8.00am on the Implementation Date) where the consequences of that breach, or the failure of the Bidder Warranty to be true, in each case are adverse and material in the context of the Scheme;
- (b) Bidder is in breach of any Bidder Undertaking or any other provision of this agreement and that breach is adverse and material in the context of the Scheme or to the Bidder Group taken as a whole; or
- (c) clause 12.10 applies and Bidder has not already terminated this agreement.

**14.3 Notice of termination:** A party may only exercise a right of termination under clause 14.1 or clause 14.2 if:

- (a) the party wishing to terminate has given notice to the other party before 8.00am on the Implementation Date setting out the circumstances that it considers permit it to do so and stating its intention to do so;
- (b) if the relevant circumstances are remediable, the relevant circumstances have not been remedied within 10 Business Days after the time that the notice is given or any shorter period ending at 8.00am on the Implementation Date; and
- (c) the party wishing to terminate does so before the earlier to occur of 15 Business Days after the time that the notice is given and 8.00am on the Implementation Date.

#### **14.4 Events affecting the Scheme:**

- (a) Either Target or Bidder may terminate this agreement by giving notice in writing to the other at any time if the Independent Adviser's Report concludes, prior to the Scheme Meeting, that the value of the Consideration is below the Independent Adviser's valuation range for the Shares.
- (b) Either Target or Bidder may terminate this agreement by giving notice in writing to the other if the Scheme Meeting is held but the Scheme Resolution is not passed by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act and the terminating party has complied in all material respects with its obligations under this agreement.
- (c) Subject first to complying with clauses 7.3 and 7.4, either Target or Bidder may terminate this agreement by giving notice in writing to the other party if the Court determines not to grant the Final Orders and the terminating party has complied in all material respects with its obligations under this agreement.
- (d) If the No Restraints Condition is not satisfied at 8.00am on the Implementation Date, then either Bidder or Target may terminate this Agreement by notice to the other, provided that the terminating party has complied in all material respects with that party's obligations under this agreement.
- (e) Either Target or Bidder may terminate this agreement by giving notice in writing to the other if the Scheme has not become Effective by 5.00pm on the End Date, provided that the terminating party's failure to comply with its obligations under this agreement has not directly and materially contributed to the Scheme not becoming Effective by the End Date.

#### **14.5 Effect of termination:** If this agreement is terminated under this clause 14 then:

- (a) except as provided in clause 14.5(b) and 14.5(c), all the provisions of this agreement cease to have effect and each party is released from its obligations to further perform this agreement;

- (b) each party retains all rights that it has against the other party in respect of any breach of this agreement occurring before termination; and
- (c) the provisions of, and the rights and obligations of each party under, this clause 14.5 and each of the Surviving Clauses survive termination of this agreement.

**14.6 No other termination:**

- (a) This clause 14 sets out the only rights for the parties to cancel, rescind or terminate this agreement. No party has any right to cancel or terminate this agreement whether before or after the implementation of the Scheme on any other basis (as a result of any matter, information or circumstance), including:
  - (i) for misrepresentation;
  - (ii) for repudiation, anticipatory breach or breach of this agreement; or
  - (iii) in respect of any matter giving rise to, or the subject of, a claim arising out of or in connection with this agreement (whether arising in tort (including negligence), in contract, statute, by operation of law or otherwise).
- (b) The parties agree that sections 35 to 49 of the Contract and Commercial Law Act 2017 do not apply to this agreement.

**15. ANNOUNCEMENTS**

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**15.1 Initial announcements:** As soon as reasonably practicable after this agreement is signed Target must issue an announcement in a form agreed with Bidder and including a statement that contains:

- (a) the Recommendation; and
- (b) the Voting Commitment,

in each case in the absence of a Superior Proposal and subject to the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares.

**15.2 Other announcements:** Each party must not make, and must procure that its Representatives do not make, any public announcement concerning the Scheme or the subject matter of this agreement other than:

- (a) the announcement referred to in clause 15.1;
- (b) an announcement which provides an update on progress with implementing the Scheme or, in the case of Target, any administrative information in relation to the Shareholders approving the Scheme at the Scheme Meeting

by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act;

- (c) with the written consent of the other party, which must not be unreasonably withheld or delayed; or
- (d) if, and to the minimum extent, required by law, any court of competent jurisdiction, any Government Agency or the NZX Listing Rules but if either party is so required to make any announcement, it must promptly notify the other party, where practicable and lawful to do so, before the announcement is made and must co-operate with the other party regarding the timing and content of such announcement or any action which the other party may reasonably elect to take to challenge the validity of such requirement,

provided that the obligations in this clause will not prevent Bidder or Target from responding to media and other stakeholders where not inconsistent with announcements that are permitted to be made in accordance with the terms of this agreement, including this clause 15.2.

## 16. PAYMENTS

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- 16.1 **Manner of payments:** Unless otherwise expressly stated (or as otherwise agreed in the case of a given payment), each payment to be made under this agreement must be made in NZ\$ by transfer of the relevant amount into the relevant account on or before the date on which the payment is due and in immediately available funds, without set-off or withholding (except as required by law). The relevant account for a given payment is the account that the party due to receive the payment specifies, not less than 10 Business Days before the date on which payment is due, by giving notice to the party due to make the payment.
- 16.2 **Default interest:** If a party defaults in making any payment when due of any sum payable under this agreement, it must pay interest on that sum from (and including) the date on which payment is due until (but excluding) the date of actual payment (after as well as before judgment) at an annual rate of 5% above the Reference Rate on that sum, which interest accrues from day to day and must be compounded monthly.

## 17. GST

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- 17.1 **Interpretation:** Words and expressions that are defined in the GST Act have the same meaning when used in this clause 17. For the purposes of this clause 17, references to GST chargeable and input tax credit entitlements of any entity include GST chargeable against, and the input tax credit entitlements of, the representative member of the GST group of which the entity is a member.
- 17.2 **Consideration exclusive of GST:** For the avoidance of doubt, the parties agree that the supply of Scheme Shares pursuant to this agreement is an exempt supply of a financial service and therefore not subject to GST. All other stated amounts payable or consideration to be provided under or in connection with this agreement do not include GST (**GST Exclusive Consideration**).

**17.3 Payment of GST:** If GST is chargeable on any supply made under or in connection with this agreement the recipient must pay to the party that has made or will make the supply (the **Supplier**), in addition to the GST Exclusive Consideration, an additional amount equal to the GST chargeable on that supply (the **Additional Amount**). The recipient must pay the Additional Amount without set-off, demand or deduction, at the same time and in the same manner as any GST Exclusive Consideration for that supply is required to be paid, except that the recipient is not required:

- (a) to pay the Additional Amount unless and until the Supplier has issued a tax invoice (or other similar document or information) under clause 17.4; or
- (b) to pay any GST Default Amounts included in the Additional Amount if those GST Default Amounts result from the Supplier failing to comply with its obligations under the GST Act.

**17.4 Tax invoice or taxable supply information:** For any supply to which clause 17.3 applies, the Supplier must issue a tax invoice (or other similar document or information) which complies with the GST Act.

**17.5 Adjustments:** If an event referred to in section 25(1) of the GST Act occurs in relation to a taxable supply made under or in connection with this agreement, the GST payable on that supply will be recalculated to reflect that adjustment, a debit note or credit note (or other similar document or information) will be issued as required by the GST Act and an appropriate payment will be made between the parties.

**17.6 Input tax credits:** Notwithstanding any other provision of this agreement, if an amount payable under or in connection with this agreement is calculated by reference to any loss, damage, cost, expense, charges or other liability incurred or suffered by a party, then the amount payable must be reduced by the amount of any input tax credit or other deduction from output tax to which that entity is entitled in respect of the acquisition of any supply to which the loss, damage, cost, expense, charge or other liability relates.

## **18. NOTICES**

**18.1 Manner of giving notice:** Any notice or other communication to be given under this agreement must be in writing (which includes email) and may be physically delivered or sent by email to the party to be served as follows:

- (a) to Target at:

Address: 23 Wilson Road South, Paengaroa, Bay of Plenty, 3189,  
New Zealand

Email: [bridget.coates@comvita.com](mailto:bridget.coates@comvita.com)

For the attention of: Bridget Coates

with a copy (which does not constitute notice) to:

Email: [andrew.matthews@simpsongrierson.com](mailto:andrew.matthews@simpsongrierson.com)  
[toby.holborow@simpsongrierson.com](mailto:toby.holborow@simpsongrierson.com)

For the attention of: Andrew Matthews / Toby Holborow



(b) to Bidder at:

Address: Level 1, 2 Hazeldean Road, Addington, Christchurch,  
New Zealand

Email: [mark.stewart@masthead.co.nz](mailto:mark.stewart@masthead.co.nz)

For the attention of: Mark Stewart

with a copy (which does not constitute notice) to:

Email: [michael.pritchard@maynewetherell.com](mailto:michael.pritchard@maynewetherell.com) /  
[callum.bailey@maynewetherell.com](mailto:callum.bailey@maynewetherell.com)

For the attention of: Michael Pritchard / Callum Bailey

or at any such other address or email address notified for this purpose to the other parties under this clause.

**18.2 When notice given:** Any notice or other communication is deemed to have been given:

(a) If physically delivered, on the date of delivery; or

(b) if sent by email:

(i) between 9.00am and 5.00pm on a Business Day in the jurisdiction of the recipient (as recorded on the device from which the sender sent the email), at the time of transmission unless the sender receives an automated message that the email has not been delivered (excluding an "out of office" automated message); or

(ii) if clause 18.2(b)(i) does not apply, at 9.00am on the Business Day most immediately after the time of sending in the jurisdiction of the recipient,

but if the notice or other communication would otherwise be taken to be received after 5.00pm or on a day which is not a Business Day in the place of receipt then the notice or communication is taken to be received at 9.00 am on the next Business Day in the place of receipt.

**18.3 Proof of service:** In proving service of a notice or other communication, it is sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid post or by prepaid airmail or that the e-mail was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's e-mail system, as the case may be.

**18.4 Documents relating to legal proceedings:** This clause 18 does not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this agreement.

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**19. GENERAL**

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**19.1 Amendments:**

- (a) This agreement may only be amended prior to the Scheme becoming Effective.
- (b) Any amendment to this agreement will only be effective if it is in writing and signed by all the parties.
- (c) Notwithstanding clauses 11.1(c) and 11.2(c) this agreement may be varied by the parties to it without the approval of any Target Indemnified Person or any Bidder Indemnified Person.

**19.2 Assignments:** None of the rights or obligations of a party under this agreement may be assigned, transferred or novated without the prior written consent of the other party.

**19.3 Costs:** Except as otherwise expressly provided in this agreement, each party must pay the costs and expenses incurred by it in connection with entering into and performing its obligations under this agreement, the Scheme and the Deed Poll.

**19.4 Entire agreement:** This agreement, the Scheme Plan and the Deed Poll, together, contains the entire agreement between the parties relating to the Transaction and supersedes all previous agreements, whether oral or in writing, between the parties relating to the Transaction except for the Confidentiality Agreement.

**19.5 Execution in counterparts:** This agreement may be executed in counterparts, which taken together must constitute one and the same agreement, and any party (including any duly authorised representative of a party) may enter into this agreement by executing a counterpart. Scanned signatures are taken to be valid and binding to the same extent as original signatures.

**19.6 Exercise and waiver of rights:** The rights of each party under this agreement:

- (a) may be exercised as often as necessary;
- (b) except as otherwise expressly provided by this agreement, are cumulative and not exclusive of rights and remedies provided by law; and
- (c) may be waived only in writing and specifically,

and delay in exercising or non-exercise of any such right is not a waiver of that right.

**19.7 Further assurance:** Each party undertakes, at the request, cost and expense of the other party, to sign all documents and to do all other acts, which may be necessary to give full effect to this agreement.

**19.8 Severability:** The provisions contained in each clause of this agreement are enforceable independently of each other clause of this agreement and the validity and

enforceability of any clause of this agreement will not be affected by the invalidity or unenforceability of any other clause.

## **20. GOVERNING LAW AND JURISDICTION**

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**20.1 Governing law:** This agreement and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.

**20.2 Jurisdiction:** The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this agreement (including a dispute relating to any non-contractual obligations arising out of or in connection with this agreement) and each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.

*[Signatures over]*

**EXECUTED** on behalf of **Florenz Limited**:

DocuSigned by:



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Signature of director

Mark Stewart

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Name of director

**EXECUTED** on behalf of **Comvita Limited**:

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Signature of director

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Name of director

**EXECUTED** on behalf of **Florenz Limited**:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

**EXECUTED** on behalf of **Comvita Limited**:

*Bridget Coates*

\_\_\_\_\_  
Signature of director

Bridget Coates

\_\_\_\_\_  
Name of director

## **SCHEDULE 1**

### **PRESCRIBED OCCURRENCES**

- 1 Target or any other Target Group member authorises, declares, pays, or makes any dividends, bonuses or other payments or distributions (within the meaning of the Companies Act) of any nature (including, without limitation, any Share buybacks, redemptions or other form of capital reduction) on or in respect of, any of the Shares other than any distribution from a wholly owned Target Group member to Target or another wholly owned Target Group member.
- 2 Any Target Group member issuing, agreeing to issue, or granting an option or right to subscribe for, shares, convertible securities, other securities or financial products of any nature (including warrants, options, phantom or cash settled rights over Shares, convertible notes, entitlements, rights or interests in any ordinary shares) other than the issuing of shares by a wholly owned subsidiary of Target to Target or another wholly owned subsidiary of Target.
- 3 Target or a member of the Target Group:
  - (a) reducing its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
  - (b) altering the rights, privileges, benefits, entitlements or restrictions attaching to any securities (including the Shares) or other securities or financial products (if any) of any member of the Target Group;
  - (c) converting all or any of the Shares into a larger or smaller number; or
  - (d) buys back (or agrees to buy back) any shares or other securities (other than to the extent it is part of terminating the Senior Leadership Loan Scheme and is non-cash).
- 4 Any alteration to the constitutional documents of any member of the Target Group (except in the ordinary course as required in relation to the appointment and/or resignation of directors and/or company secretaries).
- 5 A Target Bank Default occurs.
- 6 An Insolvency Event occurs in respect of Target.
- 7 An Insolvency Event occurs in respect of a member of the Target Group (other than Target) that is Significant.
- 8 The Total Net Indebtedness of the Target Group taken as a whole is:
  - (a) at any time greater than \$74 million; or
  - (b) at any time after 30 November 2025 greater than \$71 million; or
  - (c) at any time after 31 December 2025, greater than \$67 million,

in each case determined after excluding Excluded Total Net Indebtedness Impacts.

- 9 Except as contemplated by this agreement, a resolution is passed for any amalgamation of any member of the Target Group, or any of them is involved in any merger or scheme of arrangement (other than a solvent scheme of arrangement or an amalgamation, merger or scheme of arrangement involving solely Target and/or one or more wholly owned subsidiaries of Target).
- 10 The Shares cease to be quoted, or are suspended from trading for a period of longer than three trading days, on the NZX Main Board (other than in connection with implementation of the Scheme).
- 11 A member of the Target Group is, or will be, under any obligation to make payment or provide any consideration to any of its employees or directors in the event of any member of the Target Group becoming a subsidiary of Bidder or under Bidder's Control, and which is material in the context of the Target Group taken as a whole (other than within the exceptions provided for in clause 9.3 or fairly disclosed in the Due Diligence Material).
- 12 A member of the Target Group increases the remuneration of (including with regard to any superannuation, benefits, incentives or bonuses), or materially varies the terms of employment of, or terminates the employment of, any of its directors, officers or Senior Managers, other than within the exceptions provided for in clause 9.3 or as fairly disclosed in the Due Diligence Material or on the basis of retirement by rotation under the NZX Listing Rules.
- 13 A member of the Target Group accelerates the rights of any of its directors, officers or employees to benefits of any kind, other than within the exceptions provided for in clause 9.3 or as otherwise fairly disclosed in the Due Diligence Materials.
- 14 A member of the Target Group enters into a transaction with a Related Party (other than a Related Party that is also a member of the Target Group) that is either:
  - (a) material to the Target Group taken as a whole; or
  - (b) not on arm's length terms and in the best interests of the Target Group in the ordinary course of business.
- 15 Target or another Target Group member amends (or agrees to amend) in a material respect any agreement or arrangement with any financial adviser in relation to the Transaction or a Competing Proposal, or enters into an agreement or arrangement with a new financial adviser, in respect of the Transaction or a Competing Proposal.
- 16 A member of the Target Group:
  - (a) disposing, or agreeing to dispose, of; or
  - (b) granting any person any Encumbrance, other than a Permitted Encumbrance, over,

the whole or a Significant part of the Target Group's business or property.

17 A member of the Target Group pays a director, officer or Senior Manager a termination payment, other than:

- (a) as provided for in an existing employment contract (or equivalent) in place as at the date of this agreement which has been fairly disclosed in the Due Diligence Material; or
- (b) within the exceptions provided for in clause 9.3 or as fairly disclosed in the Due Diligence Material;

18 Any:

- (a) enforcement action, investigation, or audit is announced or commenced, or there is a material adverse development in relation to any action, investigation, or audit by a Government Agency;
- (b) decision, determination or ruling by a Government Agency; or
- (c) action, claim, litigation, arbitration or prosecution by any party (including by a Government Agency) is notified or commenced,

against, involving or in respect of, a Target Group entity which is or is reasonably likely to be materially adverse to the Target Group taken as a whole.

19 The board or shareholders of a member of the Target Group passes a resolution to, or authorise the doing of any act or matter referred to in any of the preceding paragraphs of this Schedule 1.

Nothing in this Schedule 1 prohibits, limits, or otherwise affects Target and/or the Board's ability to deal with the Performance Share Rights, the Leader Share Purchase & Loan Scheme and / or the Target Exempt Employee Share Scheme in accordance with clauses 6.5 and 6.6, and, for the avoidance of doubt, Bidder acknowledges that no Prescribed Occurrence will occur as a result of, or arising out of, the actions contemplated by clauses 6.5 and 6.6.



## **SCHEDULE 2**

### **WARRANTIES AND UNDERTAKINGS**

#### **PART A – TARGET WARRANTIES AND UNDERTAKINGS**

##### **Section 1 – Target Warranties**

###### *Capacity and Authority*

- 1 Target is a corporation validly existing under the laws of New Zealand.
- 2 Target has the power to execute and deliver this agreement and to perform its obligations under this agreement and the Scheme and has taken all necessary corporate action to authorise such execution and delivery and the performance of such obligations.
- 3 Target's obligations under this agreement are legal, valid and binding obligations enforceable subject to and in accordance with their terms.
- 4 The execution and delivery by Target of this agreement and the performance of its obligations under this agreement and the Scheme do not and will not conflict with or constitute a default under any provision of:
  - (a) Any material agreement or instrument to which Target is a party;
  - (b) its constitution; or
  - (c) any law, order, judgement, award, injunction, decree, rule or regulation by which Target is bound.

###### *Capital Structure*

- 5 As at the date of this agreement:
  - (a) the capital structure of Target and each other member of the Target Group is as set out in Schedule 3;
  - (b) except as set out in Schedule 3, there are no other shares, options or other securities (including equity securities, debt securities or convertible securities) or other instruments which are convertible into securities in a member of the Target Group on issue, nor has any member of the Target Group offered or agreed to issue or grant, and no person has any right to call for the issue or grant of, any such shares, options or other securities or other instruments to any Third Party; and
  - (c) there are no more than 21,105 phantom shares in aggregate which have been awarded, and have not been forfeited, under the Comvita Phantom Share Bonus Scheme.

- 6 As at 8.00am on the Implementation Date, there will be on issue no more than 70,601,643 Shares (being the aggregate of the “Quoted Ordinary Shares” and “Performance Share Rights” as set out in the table entitled “Target Capital Structure at Schedule 3), and no securities, options, performance rights or instruments will be outstanding or become outstanding which give (or may give) any right to or which may become convertible into Shares.
- 7 Each member of the Target Group is validly existing under the laws of its jurisdiction of incorporation.
- 8 All of the shares in each member of the Target Group are (other than Comvita Share Scheme Trustee Limited), directly or indirectly, legally and beneficially owned by Target.
- 9 As at the date of this agreement, Target has not authorised any dividend or other distribution payable after the date of this agreement.

#### *Material Information*

- 10 Target has filed with the Registrar and NZX all documents required to be filed with the Registrar or NZX including pursuant to NZX Listing Rule 3.1 (**Target Reporting Documents**) and is not in breach of its continuous and periodic disclosure obligations under the Companies Act or the NZX Listing Rules and, as at the date of this agreement, is not relying on the carve-out in NZX Listing Rule 3.1.2 to withhold any information from public disclosure. The Target Reporting Documents do not contain any untrue statement of a material fact or omit to state a material fact required to be stated in them, except to the extent that such statements have been modified or superseded by a later Target Reporting Document.
- 11 Since the date of this agreement, no Prescribed Occurrence has occurred.
- 12 It has prepared the Due Diligence Material in good faith in response to Bidder’s requests and, as far as Target is aware, all information in the Due Diligence Material is true and correct in all material respects and is not misleading or deceptive in any material respect, including by omission.
- 13 As at the date of this agreement, Target is not in negotiations or discussions (other than with Bidder and its Representatives) with any party relating to any Competing Proposal.
- 14 As at the date of this agreement, so far as Target is aware, there is no matter, event or circumstance which would, or is likely to, constitute a Material Adverse Change.

#### *Contracts*

- 15 No member of the Target Group is party to:
  - (a) a contract which restricts its ability to carry on any business activities in any material respect; or

- (b) any guarantee or indemnity in respect of, or, as far as Target is aware on the date of this agreement, otherwise liable or contingently liable in any way for the obligations of, any other person for an amount exceeding \$200,000; or
  - (c) any material contract, commitment or arrangement which Target considers to be unusual, abnormal or onerous.
- 16 Neither the execution of this agreement, nor the implementation of the Scheme, will:
  - (a) entitle any person to cancel, terminate earlier than would otherwise have been the case, or adversely modify any material contract, commitment or arrangement to which any member of the Target Group is a party or under which any member of the Target Group is entitled to a material right or benefit, or any material provision thereof; or
  - (b) entitle any person to any payment, or the provision of any other valuable consideration, by a member of the Target Group; or
  - (c) otherwise cause or be likely to cause any material right, benefit, interest or asset held or enjoyed by any member of the Target Group to be acquired by another person, or cancelled, terminated or lost or adversely qualified or impaired.
- 17 As at the date of this agreement:
  - (a) no member of the Target Group is in material default under any material document, agreement or instrument binding on it or its assets; and
  - (b) nothing has occurred, other than the Transaction, which is or would with the giving of notice or the lapse of time constitute an event of default or prepayment event,

where the default or the occurrence would be reasonably likely to give rise to a loss or liability for the Target Group of more than \$200,000.
- 18 The execution of this agreement by Target will not affect any waiver or amendment of any standstill agreement or arrangement between Target and any person other than a member of the Bidder Group.

#### *Intellectual Property*

- 19 As at the date of this agreement, as far as Target is aware, the conduct of the Business does not infringe, misappropriate or otherwise violate the intellectual property of any person in any material respect.
- 20 As at the date of this agreement, as far as Target is aware, the Target Group owns, or has the lawful right to use, all material intellectual property necessary for the Target Group to conduct the Business in the ordinary course in the manner in which the Business was conducted on the date of this agreement.

- 21 As at the date of this agreement:
- (a) no member of the Target Group has received any written notice of any current claim asserting infringement of the intellectual property of any person, or challenging the ownership, enforceability, validity, scope or use of the Intellectual Property Rights and, as far as Target is aware, as at the date of this agreement, no claim is pending or threatened;
  - (b) so far as Target is aware, no person is infringing any Intellectual Property Rights in any material respect;
  - (c) all of the registered Intellectual Property Rights currently used by the Business are subsisting, unexpired and, as far as Target is aware, valid and enforceable; and
  - (d) all Intellectual Property Rights owned or purported to be owned by the Target Group are free and clear of all Encumbrances other than Permitted Encumbrances.

*Compliance with laws*

- 22 Each member of the Target Group has:
- (a) complied in all material respects with all New Zealand and foreign laws and regulations applicable to them (save for instances of non-compliance which do not have a material adverse impact on the Target Group); and
  - (b) all material Authorisations for them to conduct the business of the Target Group as presently being conducted.
- 23 So far as Target is aware no member of the Target Group is under investigation with respect to the violation of any laws, regulations or applicable Authorisations.
- 24 As at the date of this agreement, Target is not aware of any circumstances which entitle or may entitle any Government Agency to suspend, cancel or terminate any Authorisation held by the Target Group and, so far as Target is aware, none of the Authorisations held by the Target Group are being or are likely to be withdrawn, cancelled, qualified, or adversely affected in any manner, whether by reason of the implementation of the Scheme or otherwise.
- 25 At the date of this agreement, there is:
- (a) no current claim, dispute, demand, action, litigation, prosecution, arbitration, investigation, audit, mediation or other proceeding (**Claim**) which has been notified in writing to, or in respect of which proceedings have been commenced against, a member of the Target Group, or
  - (b) so far as Target is aware, no pending or threatened Claim.

*Indebtedness and liabilities*

- 26 As at the date of this agreement, the Target Group does not have any outstanding financing that is not reflected in its financial statements and notes thereto for the half year ended 31 December 2024.
- 27 Between 31 December 2024 and the date of this agreement, no member of the Target Group has engaged in any financing of a type which is not required to be shown or reflected in its financial statements or notes thereto.
- 28 At the date of this agreement, no member of the Target Group has any actual liability or, as far as Target is aware, contingent liability which exceeds \$200,000 except, in either case, for liabilities or contingent liabilities fairly disclosed in the Due Diligence Material.

*Bribery*

- 29 No member of the Target Group, nor any of their respective directors, officers, employees, agents, or other persons acting on behalf or for the benefit of the Target Group has, in connection with any member of the Target Group, offered, promised, provided, or authorised the provision of any money, property, contribution, gift, entertainment or other thing of value, directly or indirectly, to any government official or any other person to influence official action or secure an improper advantage, or to encourage the recipient to breach a duty of good faith or loyalty or the policies of his/her employer, or has otherwise violated any anti-bribery or anti-corruption laws.

**Section 2 - Target Undertakings**

- 1 Target will ensure that the Target Information:
  - (a) is prepared in good faith and on the understanding that each of the Bidder Indemnified Persons will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet;
  - (b) complies with the Companies Act, the FMCA and all other applicable laws and the NZX Listing Rules; and
  - (c) in the form and context in which it appears in the Scheme Booklet, is true and correct in all material respects and is not misleading or deceptive, including by omission as at the date the Scheme Booklet is sent to Shareholders.
- 2 Target will provide to Shareholders and Bidder all new material information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date of the Scheme Meeting which is necessary to ensure that the Target Information, in the form and context in which it appears in the version of the Scheme Booklet sent to Shareholders, is not misleading or deceptive, including by omission.
- 3 All information provided by or on behalf of Target to the Independent Adviser will be provided in good faith, on the understanding that the Independent Adviser will rely upon that information for the purpose of preparing the Independent Adviser's report for inclusion in the Scheme Booklet, will be true and correct in all material respects and will not be misleading or deceptive including by omission.

**PART B - BIDDER WARRANTIES AND UNDERTAKINGS****Section 1 - Bidder Warranties***Capacity and Authority*

- 1 Bidder is a corporation validly existing under the laws of its place of incorporation.
- 2 Bidder has, and in relation to the Deed Poll, will have upon execution of the Deed Poll, the power to execute and deliver and to perform its obligations under this agreement and the Deed Poll, and has taken or, in relation to the Deed Poll, will take prior to execution of the Deed Poll, all necessary corporate action to authorise such execution and delivery and the performance of such obligations.
- 3 The obligations of Bidder under this agreement are, and the obligations of Bidder under the Deed Poll will, on execution of the Deed Poll be, legal, valid and binding obligations enforceable subject to and in accordance with their terms.
- 4 The execution and delivery by Bidder of this agreement and the execution and, in due course, delivery by Bidder of the Deed Poll do not and will not conflict with or constitute a default under any provision of:
  - (a) any agreement or instrument to which Bidder is a party;
  - (b) the constitution or equivalent documents of Bidder; or
  - (c) any law, order, judgment, award, injunction, decree, rule or regulation by which Bidder is bound.

*Material Information*

- 5 As at 8.00am on the Second Court Date Bidder will have binding agreements in place to fund its obligation to pay the Consideration in accordance with the Scheme and the Deed Poll conditional only upon:
  - (a) the Court approving the Scheme and the Scheme becoming Effective; and
  - (b) the Conditions (to the extent they have not been satisfied or waived prior to the Second Court Date) and other customary conditions precedent to draw down.
- 6 Bidder will, at 8.00am on the Implementation Date, have available to it on an unconditional basis, sufficient cash reserves (whether from internal cash reserves or external funding arrangements or a combination of both) to satisfy Bidder's obligations to pay the Consideration to each Scheme Shareholder in accordance with the Scheme.

## Section 2 - Bidder Undertakings

- 1 Bidder will ensure that the Bidder Information:
  - (a) is prepared in good faith and on the understanding that each of the Target Indemnified Persons will rely on that information to prepare the Scheme Booklet and to propose and implement the Scheme in accordance with the Companies Act;
  - (b) complies with the Companies Act, the FMCA and all other applicable laws; and
  - (c) in the form and context in which it appears in the Scheme Booklet is true and correct in all material respects and is not misleading or deceptive, including by omission as at the date the Scheme Booklet is sent to Shareholders.
- 2 Bidder will provide to Target all new material information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date of the Scheme Meeting which is necessary to ensure that the Bidder Information, in the form and context in which that information appears in the version of the Scheme Booklet sent to Shareholders, is not misleading or deceptive in any material respect, including by omission.
- 3 All information provided by or on behalf of Bidder to the Independent Adviser will be provided in good faith and on the understanding that the Independent Adviser will rely upon that information for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet, will be true and correct in all material respects and will not be misleading or deceptive, including by omission.
- 4 Subject to the Companies Act and the Scheme becoming Effective, Bidder undertakes in favour of Target and each Target Indemnified Person that it will:
  - (a) for a period of 7 years from the Implementation Date, ensure that the constitutions of Target and each Target Group member continue to have equivalent obligations to those currently contained in their constitutions at the date of this agreement that provide for each company to indemnify each of its current and former directors and officers against any liability (excluding for fraud or wilful misconduct) incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the Target Group member; and
  - (b) procure that Target and each Target Group member complies with any provisions in deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, Bidder will not, and will procure that no member of the Target Group will, vary or cancel the D&O Run-Off Policy put in place in accordance with 11.3. For the avoidance of doubt, this clause does not intend to impose any obligation on Bidder to pay for run-off insurance or any further insurance to achieve these purposes.



### SCHEDULE 3

#### TARGET CAPITAL STRUCTURE

TYPE OF SECURITY	TOTAL NUMBER ON ISSUE
Quoted Ordinary Shares (including treasury shares)	70,492,156
Treasury shares	0
Performance Share Rights	109,487

#### OTHER TARGET GROUP MEMBER'S CAPITAL STRUCTURE

Other than Comvita Share Scheme Trustee Limited, each of the following entities is directly or indirectly wholly owned by Target. The sole share in Comvita Share Scheme Trustee Limited is held by Nigel Greenwood.

SUBSIDIARIES	COUNTRY OF INCORPORATION	TYPE AND NUMBER OF SECURITIES ON ISSUE
Comvita New Zealand Limited	New Zealand	100 ordinary shares
Bee & Herbal New Zealand Limited	New Zealand	100 ordinary shares
Comvita Share Scheme Trustee Limited	New Zealand	1 ordinary share
Comvita USA, Inc	USA	10,000 common shares
Comvita Japan K.K	Japan	200 ordinary shares
Comvita Korea Co Limited	Korea	10,000 ordinary shares
Comvita Food (China) Limited	China	CNY 60,000,000
Comvita Food (Hainan) Co. Ltd	China	CNY 1,000,000
Comvita China Limited	Hong Kong	100 ordinary shares
Comvita Holdings HK Limited	Hong Kong	100 ordinary shares
Comvita HK Limited	Hong Kong	10,000 ordinary shares
Comvita Malaysia Sdn Bhd	Malaysia	1,000,000 ordinary shares
Comvita Singapore Pte Limited	Singapore	300,000 ordinary shares

SUBSIDIARIES	COUNTRY OF INCORPORATION	TYPE AND NUMBER OF SECURITIES ON ISSUE
Comvita Holdings Pty Limited	Australia	100 ordinary shares
Comvita Australia Pty Limited	Australia	1 ordinary share
Olive Products Australia Pty Limited	Australia	100 ordinary shares
Comvita IP Pty Limited	Australia	100 ordinary shares
Medihoney Pty Limited	Australia	42,888,541 ordinary shares
Medihoney (Europe) Limited	United Kingdom	1 ordinary share
Comvita Holdings UK Limited	United Kingdom	500,000 ordinary shares
Comvita UK Limited	United Kingdom	390,000 ordinary shares
New Zealand Natural Foods Limited	United Kingdom	100 ordinary shares

## SCHEDULE 4

### TIMETABLE

	EVENT	CLAUSE REFS	INDICATIVE DATE (BUSINESS DAYS)
1	Scheme Implementation Agreement ( <b>SIA</b> ) signed	NA	-
<b><i>Preliminary Matters</i></b>			
2	Announcement	15.1	Upon signing SIA
3	Independent Adviser Engagement	4.1(b)	Within 2 Business Days of Item 1
<b><i>Preparation of Scheme Booklet</i></b>			
4	Draft Bidder Information provided by Bidder to Target for inclusion in the Scheme Booklet	4.2(a)	Within 3 Business Days of Item 1
5	Draft Scheme Booklet (incorporating Bidder Information) provided to Bidder by Target	4.1(c)	Within 10 Business Days of Item 1
6	Comments on the Scheme Booklet provided by Bidder to Target for review	4.2(d)	Within 3 Business Days of Item 5
7	Final draft Scheme Booklet provided to Bidder	4.1(e)	Within 3 Business Days of Item 6
8	Bidder to provide consent to release of Scheme Booklet to Takeovers Panel	4.2(e)	Within 2 Business Days of Item 7
9	Scheme Booklet provided to the Takeovers Panel for review and with a request for Letter of Intention	4.1(f), 5.1(a)	Within 1 Business Day of Item 8
10	Scheme Booklet (including Independent Adviser's Report) approved by Takeovers Panel and Takeovers Panel issues Letter of Intention	NA	Within 12 Business Days of Item 9

EVENT		CLAUSE REFS	INDICATIVE DATE (BUSINESS DAYS)
<b><i>Initial Court Orders</i></b>			
11	Application for Initial Orders filed	4.1(h), 5.1(e)	Within 1 Business Day of Item 10
12	First Court Date	NA	Within 5 Business Days Item 11 (subject to Court availability)
<b><i>Scheme Meeting</i></b>			
13	Scheme Booklet sent to Shareholders (including Independent Adviser's Report)	5.1(e)	Within 2 Business Days of Item 12 (assuming Court grants Initial Orders at First Court Date)
14	Scheme Meeting	5.1(e)	20 Business Days following Item 13
15	Application to Takeovers Panel for No-objection Statement	5.1(h)(i)	Within 1 Business Day of Item 14
<b><i>Second Court Date and Implementation</i></b>			
16	Documents filed in respect of Second Court Date	5.1(h)(ii)	Within 5 Business Days of the Scheme Meeting.
17	Second Court Date (if required) and Final Orders	NA	Within 5 Business Days of Item 16 (subject to Court availability)
18	Trading Halt Date	NA	2 Business Days after Item 17
19	Record Date	NA	3 Business Days after Item 18
20	Implementation Date	NA	2 Business Days after Item 19

## ANNEXURE 1

### SCHEME PLAN

#### SCHEME OF ARRANGEMENT UNDER PART 15 OF THE COMPANIES ACT 1993

##### PARTIES

**Comvita Limited (Target)**

**Florenz Limited (Bidder)**

Each person who is registered in the Register as the holder of one or more Scheme Shares (together the **Scheme Shareholders**)

##### 1. DEFINITIONS AND INTERPRETATION

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**1.1 Definitions:** In this Scheme Plan, unless the context otherwise requires:

**Business Day** means any day other than a Saturday, Sunday, a statutory public holiday in Auckland, New Zealand and excluding any day between 25 December and 4 January in any year (both dates inclusive);

**Companies Act** means the Companies Act 1993;

**Conditions** means:

- (a) the conditions set out in clause 3.1 of the Scheme Implementation Agreement; and
- (b) such other conditions made or required by the Court under section 236(1) or section 237(1) of the Companies Act and approved in writing by Target and Bidder in accordance with clause 3.3 of the Scheme Implementation Agreement;

**Consideration** means in respect of each Scheme Share held by a Scheme Shareholder NZ\$0.80 per Scheme Share;

**Court** means the High Court of New Zealand, Auckland Registry, or if leave cannot be reasonably obtained by Target to move the applicable hearings relating to the Scheme, the Tauranga Registry;

**Deed Poll** means the deed poll entered into by Bidder in favour of the Scheme Shareholders;

**Effective** has the meaning given to that term in the Scheme Implementation Agreement;

**Encumbrance** means:

- (a) any security interest within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999 and any option, right to acquire, right of pre-emption, assignment by way of security or trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind (other than any reservation of title by suppliers in the ordinary course of business); and
- (b) any agreement to create any of the foregoing;

**End Date** has the meaning given to that term in the Scheme Implementation Agreement;

**Excluded Shares** has the meaning in the Scheme Implementation Agreement;

**Final Orders** means orders made, on application of Target, that the Scheme is binding on Target, Bidder, the Scheme Shareholders and such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act;

**Final Orders Date** means the day on which the Final Orders are granted by the Court;

**Funds** has the meaning given to that term in clause 3.1;

**Government Agency** means any government, department, officer or minister of any government and any governmental, semi-governmental, regulatory, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity in any jurisdiction, and includes the Overseas Investment Office, the Takeovers Panel, and the Financial Markets Authority;

**Implementation Date** has the meaning given in the Scheme Implementation Agreement and **Implementation** correspondingly means the time at which implementation commences with the first step under clause 4.1(a);

**NZX** means NZX Limited and, where the context requires, the main board financial market that it operates;

**NZX Listing Rules** means the NZX Listing Rules for the NZX Main Board;

**Registry Agent** means MUFG Pension & Market Services (NZ) Limited;

**Record Date** has the meaning given to that term in the Scheme Implementation Agreement;

**Register** means the Share register maintained by the Registry Agent on behalf of Target;

**Registered Address** means, in relation to a Shareholder, the address of that Shareholder shown in the Register as at the Record Date;

**Scheme** means this scheme of arrangement, subject to any alterations or conditions made or required by the Court under Part 15 of the Companies Act and approved by Target and Bidder in writing;

**Scheme Implementation Agreement** means the scheme implementation agreement dated 17 August 2025 between Target and Bidder;

**Scheme Meeting** means the special meeting of Shareholders ordered by the Court to be convened pursuant to section 236(2)(b) and 236A(2) of the Companies Act in respect of the Scheme (and including any meeting convened following any adjournment or postponement of that meeting);

**Scheme Shareholder** means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date;

**Scheme Shares** means all of the Shares on issue on the Record Date except for any Excluded Shares;

**Share** means a fully paid ordinary share in Target;

**Shareholder** means a person who is registered in the Register as the holder of one or more Shares from time to time;

**Takeovers Panel** means the Takeovers Panel established by section 5(1) of the Takeovers Act 1993;

**Trading Halt Date** has the meaning given in the Scheme Implementation Agreement;

**Trust Account** has the meaning given to that term in clause 3.1; and

**Unconditional** means all of the Conditions having been satisfied or, if capable of waiver in accordance with the Scheme Implementation Agreement, waived.

**1.2 Interpretation:** In this Scheme Plan, unless the context otherwise requires:

- (a) headings are to be ignored in construing this document;
- (b) the singular includes the plural and vice versa;
- (c) words of any gender include all genders;
- (d) a reference to a clause is a reference to a clause of this Scheme Plan;
- (e) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) reference to any document (including this Scheme Plan) includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time;

- (g) reference to a party, person or entity includes:
  - (i) an individual, partnership, firm, company, body corporate, corporation, association, trust, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
  - (ii) an employee, sub-contractor, agent, successor, permitted assign, executor, administrator and other representative of such party, person or entity;
- (h) written and in writing include any means of reproducing words, figures or symbols in a tangible and visible form;
- (i) the words including or includes do not imply any limitation;
- (j) a reference to any time is a reference to that time in New Zealand; and
- (k) references to money or \$ are to New Zealand dollars.

**1.3 Things required to be done other than on a Business Day:** Unless otherwise indicated, if the day on which any act, matter or thing is to be done is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.

**1.4 No contra proferentem:** No term or condition of this Scheme Plan will be construed adversely to a party solely because that party was responsible for the preparation of this Scheme Plan or a provision of it.

## **2. CONDITIONS**

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**2.1 Conditions:** The implementation of the Scheme is conditional in all respects on:

- (a) all of the Conditions having been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement by 8.00am on the Implementation Date; and
- (b) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with its terms before 8.00am on the Implementation Date.

## **3. CONSIDERATION INTO TRUST ACCOUNT**

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**3.1 Obligation to Make Consideration Available:** Subject to the Scheme Implementation Agreement not having been terminated and the Scheme having become Unconditional (except for the Conditions set out in clauses 3.1(d) to 3.1(f) of the Scheme Implementation Agreement), by no later than 5.00pm on the Business Day before the Implementation Date, Bidder must deposit (or procure the deposit of) in immediately available cleared funds an amount equal to the aggregate amount of the Consideration payable to Scheme Shareholders in a New Zealand dollar denominated trust account operated by the Registry Agent and notified by the Registry Agent to Bidder no later



than 5.00pm on the Business Day falling five Business Days before the Implementation Date (the **Funds** and that account the **Trust Account**).

### 3.2 Details of Trust Account:

- (a) Subject to clauses 3.2(b), 5.4, 5.5 and 5.6, the Trust Account will be held and operated by the Registry Agent on the basis that the Funds are held on trust for Bidder and to its order, such that only Bidder may direct how the Funds will be paid from the Trust Account.
- (b) Clause 3.2(a) is subject to a standing written direction from Bidder to Target and to the Registry Agent to make payment of the Consideration to the Scheme Shareholders in accordance with this Scheme Plan upon transfer of the Scheme Shares to Bidder under clause 4.1(a).
- (c) Any interest earned on the amount deposited in the Trust Account up to Implementation will be payable to Bidder by the Registry Agent as directed by Bidder (less bank fees and other Third Party charges relating to the Trust Account).

**3.3 Scheme not implemented:** Should the implementation of the Scheme not occur by 5.00pm on the Implementation Date or the Scheme becomes void under clause 7.5, the Registry Agent will immediately repay the Funds to Bidder to such New Zealand dollar denominated account instructed to the Registry Agent by Bidder.

## 4. IMPLEMENTATION

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**4.1 Implementation:** Subject to any amendments or variations as may be required by the Court, the conditions referenced in clause 2 being satisfied (to be confirmed to the Registry Agent by written notice given by Target and Bidder immediately after 8.00am on the Implementation Date upon the conditions set out in clause 2 being satisfied) and the Consideration having been deposited into the Trust Account in accordance with clause 3.1, commencing at 9.00 am on the Implementation Date, the following steps will occur sequentially:

- (a) first, without any further act or formality, all the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred to Bidder, and Target must enter, or procure the Registry Agent enter, the name of Bidder in the Register as holder of all of the Scheme Shares; and
- (b) second, subject to compliance with clause 4.1(a) in accordance with the direction set out in clause 3.2(b), the Registry Agent must pay or procure the payment from the Trust Account of the Consideration to each Scheme Shareholder based on the number of Scheme Shares held by that Scheme Shareholder as set out in the Register as at the Record Date.

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**5. TRANSFER OF CONSIDERATION**

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**5.1 Method of payment of Consideration:** The payment obligations under clause 4.1(b) will be satisfied by:

- (a) where a Scheme Shareholder has, prior to the Record Date, provided bank account details to enable the Registry Agent and Target to make payments of New Zealand dollars by electronic funds transfer, the Registry Agent must pay the Consideration in New Zealand dollars to the Scheme Shareholder by electronic funds transfer of the relevant amount to the bank account nominated by that Scheme Shareholder; or
- (b) where a Scheme Shareholder has not provided the information and/or taken the steps contemplated by clause 5.1(a) to enable payment to be made to such Scheme Shareholder in a manner contemplated by one of those clauses (or if an electronic payment to such Scheme Shareholder is rejected by the recipient bank) the Registry Agent must retain the Consideration owed to that Scheme Shareholder in the Trust Account to be claimed by the Scheme Shareholder in accordance with clause 5.5.

If a Shareholder has given more than one payment direction, then the later direction in time of receipt will be followed.

**5.2 Joint holders:** In the case of Scheme Shares held in joint names:

- (a) the Consideration is payable to the bank account nominated by the joint holders or, at the sole discretion of Target, nominated by the holder whose name appears first in the Register as at the Record Date; and
- (b) any other document required to be sent under this Scheme Plan will be sent to either, at the sole discretion of Target, the holder whose name appears first in the Register as at the Record Date or to the joint holders.

**5.3 Surplus in Trust Account:** To the extent that, following satisfaction of the obligations under clause 4.1(b), there is a surplus in the Trust Account, that surplus (less the aggregate amount of the Consideration retained in the Trust Account in accordance with clause 5.1(b) or clause 5.6(b), and less bank fees and other Third Party charges relating to the Trust Account) shall be promptly paid in full to Bidder.

**5.4 Holding on Trust:** Target must, in respect of any monies retained by the Registry Agent pursuant to clause 5.1(b) or clause 5.6(b), instruct the Registry Agent to hold such monies in the Trust Account on trust for the relevant Scheme Shareholders for a period of two years and thereafter, subject to clause 5.6, to pay any remaining money in the Trust Account to Target.

**5.5 Unclaimed monies:** During the period of two years commencing on the Implementation Date, on request in writing from a Scheme Shareholder that has not received payment of the Consideration in accordance with clause 5.1(a) the Registry Agent must, if such Scheme Shareholder has taken the necessary steps required to effect payment to such Scheme Shareholder in a manner contemplated by clause 5.1(a) pay to that Scheme Shareholder the Consideration held on trust for that

Scheme Shareholder in a manner contemplated by clause 5.1(a) (or in any other manner approved by the Registry Agent and agreed to by that Scheme Shareholder).

**5.6 Orders of a court or Government Agency:** Notwithstanding any other provision of this Scheme Plan, if written notice is given to Target prior to the Record Date of an order or direction made by a court of competent jurisdiction or a Government Agency that:

- (a) requires Consideration to be provided to a Third Party in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be due to that Scheme Shareholder in accordance with clause 4.1(b), Target will be entitled to procure, and Bidder will be deemed to have instructed the Registry Agent to ensure, that provision of that Consideration is made in accordance with that order or direction; or
- (b) prevents the Consideration from being provided to any particular Scheme Shareholder in accordance with clause 4.1(b), or the transfer of such Consideration is otherwise prohibited by applicable law, Target will be entitled (for so long as such prohibition remains) to retain the payment (equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Consideration) in the Trust Account until such time as provision of the Consideration to the Scheme Shareholder in accordance with clause 4.1(b), or clause 5.5 (as applicable) is permitted by that order or direction or otherwise by law;

and such provision or retention (as the case may be) will constitute the full discharge of Bidder's and Target's obligations under clause 4.1(b) or clause 5.5 (as applicable) with respect to the amount so provided or retained.

## **6. DEALING IN SHARES**

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### **6.1 Trading Halt:**

- (a) Following the sealing of the Final Orders, Target will advise NZX of the grant of the Final Orders and, once known, the Trading Halt Date and Record Date and use its reasonable endeavours to procure that the NZX suspend trading in the Shares from the close of trading on the Trading Halt Date.
- (b) Target must not accept for registration, nor recognise for any purpose (except a transfer to Bidder pursuant to this Scheme Plan and any subsequent transfer by Bidder or its successors in title), any transfer or transmission application or other request received after the Trading Halt Date or received prior to such time but not in registrable or actionable forms.

### **6.2 Register:**

- (a) Target must register registrable transmission applications or registrable transfers of Shares received prior to 7.00pm on the Trading Halt Date (the **Trading Halt Time**) before the Record Date provided that, for the avoidance of doubt, nothing in this clause 6.2(a) requires Target to register a transfer that relates to a transfer of Shares on which Target has a lien.

- (b) A holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares, or any interest in them, after the Trading Halt Time otherwise than pursuant to this Scheme Plan, and any attempt to do so will have no effect and Target and Bidder shall be entitled to disregard any such disposal.
- (c) For the purposes of determining entitlements to the Consideration but subject to the requirements of the NZX Listing Rules, Target must maintain the Register in accordance with the provisions of this clause 6 until the Consideration has been paid to the Scheme Shareholders. The Register in this form will solely determine entitlements to the Consideration.
- (d) From the Record Date, each entry that is current on the Register (other than entries on the Register in respect of Excluded Shares), will cease to have effect except as evidence of entitlement to the Consideration in respect of the Scheme Shares relating to that entry.
- (e) As soon as possible on the first Business Day after the Record Date and in any event by 7.00pm on that day, Target must make available to Bidder in the form Bidder reasonably requires, details of the names, Registered Addresses and holdings of Shares for each Scheme Shareholder as shown in the Register on the Record Date.

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## 7. GENERAL PROVISIONS

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**7.1 Amendments to Consideration:** Bidder may increase the Consideration by written notice at any time to Target prior to the Scheme Meeting, provided that the Scheme Implementation Agreement has not been terminated in accordance with its terms prior to the receipt of such notice by Target.

**7.2 Title to and rights in Scheme Shares:**

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme Plan to Bidder will, at the time of transfer to Bidder, vest in Bidder free from all Encumbrances and free from any restrictions on transfer of any kind.
- (b) Each Scheme Shareholder is taken to have warranted to Bidder on the Implementation Date that all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) which are transferred under this Scheme Plan will, at the time of transfer, be fully paid and free from all Encumbrances and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Shares to Bidder together with any rights and entitlements attaching to those Shares.

**7.3 Authority given to Target:** Each Scheme Shareholder, without the need for any further act:

- (a) on the Final Orders Date, irrevocably appoints Target as its attorney and agent for the purpose of enforcing the Deed Poll against Bidder (but without limiting each Scheme Shareholder's right to itself enforce the Deed Poll); and

- (b) on the Implementation Date, irrevocably appoints Target as its attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to the Scheme and the transactions contemplated by it,

and Target accepts each such appointment. Each such attorney and agent, may sub-delegate its functions, authorities or powers under this clause 7.3 to one or more of Target's directors or senior executive.

#### **7.4 Binding effect of Scheme:**

- (a) The Scheme binds:
  - (i) Target;
  - (ii) Bidder; and
  - (iii) all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on the Scheme, did not vote at the Scheme Meeting, or voted against the Scheme at the Scheme Meeting).
- (b) In the event of any inconsistency, this Scheme Plan overrides the constitution of Target.

**7.5 End Date:** If the Scheme has not become Unconditional on or before the End Date, or if the Scheme Implementation Agreement is terminated in accordance with its terms at any time, this Scheme Plan is immediately void and of no further force or effect (other than any provision of the Scheme or this Scheme Plan relating to the repayment to Bidder of any Funds deposited in accordance with clause 3 and the interest thereon (less bank fees and other Third Party charges relating to the Trust Account)).

**7.6 No liability when acting in good faith:** Each Scheme Shareholder agrees that none of the directors, officers or employees of Target or Bidder will be liable for anything done or omitted to be done in the performance of the Scheme in good faith.

**7.7 Successor obligations:** To the extent that any provision of the Scheme or this Scheme Plan imposes any obligation on Bidder or Target that continues or arises after the implementation of the Scheme, such obligation may instead be performed by any successor or related company of Bidder or Target (as applicable) in which case the obligation will be satisfied as if performed by Bidder or Target (as applicable).

#### **7.8 Governing law:**

- (a) This Scheme Plan and any non-contractual obligations arising out of or in connection with it is governed by and must be construed in accordance with the laws of New Zealand.
- (b) The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Scheme Plan

(including a dispute relating to any non-contractual obligations arising out of or in connection with this Scheme Plan) and the parties irrevocably submit to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.

## ANNEXURE 2

### DEED POLL

#### SCHEME DEED POLL

This **Deed Poll** is made on

**2025**

#### PARTIES

**Florenz Limited (Bidder)**

Each registered holder of Scheme Shares as at 7.00pm on the Record Date (**Scheme Shareholders**)

#### INTRODUCTION

- A. Comvita Limited (**Target**) and Bidder are parties to the Scheme Implementation Agreement.
- B. Target has agreed in the Scheme Implementation Agreement to propose a scheme of arrangement between Target, Bidder and the Scheme Shareholders, the effect of which will be that all Scheme Shares will be transferred to Bidder and Bidder will provide or procure the provision of the Consideration to the Scheme Shareholders.
- C. Bidder is entering into this Deed Poll for the purpose of undertaking in favour of Scheme Shareholders to provide the Consideration to Scheme Shareholders in accordance with the terms of the Scheme Plan.

#### IT IS AGREED

##### 1. DEFINED TERMS AND INTERPRETATION

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##### 1.1 **Defined terms:** In this Deed Poll, unless the context requires otherwise:

**Final Orders** means orders made on application of Target, that the Scheme is binding on Target, Bidder, the Scheme Shareholders and such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act;

**Scheme Implementation Agreement** means the scheme implementation agreement between Target and Bidder dated 17 August 2025; and

**Scheme Plan** means the scheme plan attached as Annexure 1 to the Scheme Implementation Agreement, subject to any alterations or conditions approved by Bidder and Target in writing and which are disclosed to the Court prior to the Court making the Final Orders.

**1.2 Other defined terms:** Words defined in the Scheme Plan which are not separately defined in this Deed Poll have the same meaning when used in this Deed Poll.

**1.3 Interpretation:** Clauses 1.2, 1.3 and 1.4 of the Scheme Plan apply to the interpretation of this Deed Poll, except that references to "this Scheme Plan" are to be read as reference to "this Deed Poll".

## **2. NATURE OF THIS DEED POLL**

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### **2.1 Third party rights and appointment of attorney:**

(a) This Deed Poll is intended to, and does, confer a benefit on, and therefore may be relied on and enforced by, any Scheme Shareholder in accordance with its terms under Part 2, Subpart 1 of the Contract and Commercial Law Act 2017 (but not otherwise), even though the Scheme Shareholders are not party to the Deed Poll.

(b) Under the Scheme Plan, each Scheme Shareholder appoints Target as the Scheme Shareholder's attorney and agent to enforce this Deed Poll against Bidder with effect on and from the date prescribed for such appointment in the Scheme Plan (but without limiting each Scheme Shareholder's right to itself enforce this Deed Poll).

(c) Notwithstanding clauses 2.1(a) and 2.1(b), this Deed Poll may be varied by Bidder and Target in accordance with clause 7.2 without the approval of any Scheme Shareholder.

**2.2 Continuing obligations:** This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until either:

(a) Bidder has fully performed its obligations under this Deed Poll; or

(b) this Deed Poll is terminated under clause 3.2.

## **3. CONDITIONS**

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**3.1 Conditions:** This Deed Poll, and the obligations of Bidder under it, are conditional in all respects on the Scheme becoming Unconditional.

**3.2 Termination:** The obligations of Bidder under this Deed Poll will automatically terminate, and the terms of this Deed Poll will be of no force or effect, if the Scheme Implementation Agreement is validly terminated in accordance with its terms before the Scheme becomes Unconditional, unless Bidder and Target otherwise agree in writing.

**3.3 Consequences of termination:** If this Deed Poll is terminated under clause 3.2, then Bidder is released from its obligations to further perform this Deed Poll.



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**4. SCHEME CONSIDERATION**

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**4.1 Deposit of Consideration:** Subject to:

- (a) the Scheme Implementation Agreement not being terminated; and
- (b) the Scheme having become Unconditional (save for the Conditions set out in clauses 3.1(d) to 3.1(f) of the Scheme Implementation Agreement),

Bidder undertakes in favour of each Scheme Shareholder to deposit, or procure the deposit of, in immediately available cleared funds, by no later than 5.00pm on the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Consideration payable to all Scheme Shareholders as set out in the Scheme Plan, such deposit to be made into the Trust Account to be held and dealt with by the Registry Agent in accordance with the Scheme Plan.

**4.2 Payment of Consideration:** Bidder irrevocably acknowledges and agrees that, subject to the Scheme becoming Unconditional and compliance in full by Target with its obligations under clause 4.1(a) of the Scheme Plan, the Consideration deposited into the Trust Account must be, and will be, paid in accordance with clause 4.1(b) of the Scheme Plan in satisfaction of the Scheme Shareholders' respective entitlements to receive the Consideration under the Scheme in accordance with the Scheme Plan.

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**5. WARRANTIES**

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**5.1** Bidder warrants in favour of each Scheme Shareholder that:

- (a) it is a corporation validly existing under the laws of its place of 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 its entry into this Deed Poll and has taken, or will prior to the Implementation Date take, all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) this Deed Poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (e) this Deed Poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

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## 6. NOTICES

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**6.1 Manner of giving notice:** Any notice or other communication to be given under this Deed Poll must be in writing and may be physically delivered or sent by email to Bidder at:

Address: Level 1, 2 Hazeldean Road, Addington, Christchurch, New Zealand

Email: [mark.stewart@masthead.co.nz](mailto:mark.stewart@masthead.co.nz)

For the attention of: Mark Stewart

with a copy (which does not constitute notice) to:

Email: [michael.pritchard@maynewetherell.com](mailto:michael.pritchard@maynewetherell.com) /

[callum.bailey@maynewetherell.com](mailto:callum.bailey@maynewetherell.com)

For the attention of: Michael Pritchard / Callum Bailey

or at any such other address or email address notified for this purpose to the other parties under this clause.

**6.2 When notice given:** In the absence of earlier receipt, any notice or other communication is deemed to have been given:

(a) if delivered, on the date of delivery; or

(b) if sent by email, four business hours (being the hours between 9.00am and 5.00pm on a Business Day in the jurisdiction of the recipient) after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered (excluding an "out of office" automated message),

but if the notice or other communication would otherwise be taken to be received after 5.00pm on a Business Day or on a day other than a Business Day in the place of receipt then the notice or communication is taken to be received at 9.00 am on the next Business Day in the place of receipt.

**6.3 Proof of service:** In proving service of a notice or other communication, it is sufficient to prove that delivery was made or that the e-mail was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's e-mail system, as the case may be.

**6.4 Documents relating to legal proceedings:** This clause 6 does not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this Deed Poll.

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**7. GENERAL**

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**7.1 Waiver:**

- (a) Bidder may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right in respect of the Scheme unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) For the purposes of clause 7.1(a):
  - (i) conduct includes a delay in exercising a right;
  - (ii) right means any right arising under or in connection with this Deed Poll and includes the right to rely on this clause; and
  - (iii) waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

**7.2 Variation:**

- (a) Subject to clauses 7.2(b) and 7.2(c), this Deed Poll may not be varied.
- (b) Before the date on which the Final Orders are made, this Deed Poll may be varied by agreement in writing between Bidder and Target, in which event Bidder will enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.
- (c) If the Court orders that it is a condition of the Scheme that Bidder enters into a new deed poll which has the effect of reversing any variation under clause 7.1(b), then, if Bidder so agrees, Bidder must promptly enter into a further deed poll in favour of the Scheme Shareholders to give effect to the reversal of that variation.

**7.3 Cumulative rights:** The rights, powers and remedies of Bidder and Scheme Shareholders under this Deed Poll are cumulative and do not exclude any other rights, power or remedies provided by law independently of this Deed Poll.

**7.4 Further assurance:** Bidder must, at its own expense, do all things reasonably required of it to give full force and effect to this Deed Poll and the transactions contemplated by it.

**7.5 Assignment:** The rights and obligations of Bidder and each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with at law or in equity. Any purported dealing in contravention of this clause 7.4 is invalid.

**7.6 Governing law and jurisdiction:**

- (a) This Deed Poll and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.

- (b)** The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed Poll (including a dispute relating to any non-contractual obligations arising out of or in connection with this Deed Poll) and Bidder irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.

**EXECUTION**

**Executed** as a deed poll.

**Florenz Limited** by its sole director in  
the presence of:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of residence