

In the High Court of New Zealand  
Auckland Registry  
I Te Kōti Matua o Aotearoa  
Tāmaki Makaurau Rohe

CIV-2024-404-3156

Under Part 19 of the High Court Rules

In the matter of a scheme of arrangement under Part 15 of the Companies Act 1993

And in the matter of:

**Manawa Energy Limited**, a duly incorporated company, having its registered office at  
93 Cameron Road, Tauranga, New Zealand

**Applicant**

---

**Final orders approving a scheme of arrangement under Part 15 of  
the Companies Act 1993**

**3 July 2025**

---



**Harmos Horton Lusk Limited**  
Level 33, Vero Centre, 48 Shortland Street, Auckland  
PO Box 28, Shortland Street, Auckland  
Phone: 09 921 4306 Fax: 09 921 4319  
Email: nathanael.starrenburg@hhl.co.nz  
Solicitor acting: N W Starrenburg

**Counsel:** D J Cooper KC  
Shortland Chambers  
Level 13, 70 Shortland Street, Auckland  
PO Box 4338, Shortland Street, Auckland  
Phone: 09 306 2785 Fax: 09 309 1119  
Email: dcooper@shortlandchambers.co.nz

**BEFORE THE HONOURABLE JUSTICE PETERS**

**To:** Manawa Energy Limited; all Scheme Shareholders in terms of the Scheme Plan; Contact Energy Limited; and the Takeovers Panel

The amended originating application dated 5 February 2025 by Manawa for orders approving a scheme of arrangement under Part 15 of the Companies Act 1993, was determined by the Honourable Justice Peters on 3 July 2025. The determination was made following a hearing held on 3 July 2025 at which DJ Cooper KC and NW Starrenburg appeared as counsel for the Applicant (Manawa Energy Limited) and JJ Brown and AK Nunns appeared as counsel for Contact Energy Limited.

The following orders were made:

1. The scheme of arrangement described in the Scheme Plan annexed to this order (the “**Scheme**”) is approved and binding upon:
  - (a) Manawa Energy Limited;
  - (b) Contact Energy Limited; and
  - (c) every person who is a Scheme Shareholder in terms of the Scheme Plan.
2. Manawa Energy Limited is granted leave to apply to the Court for approval of any amendment, modification or supplement to the Scheme.

Dated: 3 July 2025

Registrar/Deputy Registrar

**R KUMAR**  
**DEPUTY REGISTRAR**



## SCHEME PLAN

# SCHEME OF ARRANGEMENT PURSUANT TO PART 15 OF THE COMPANIES ACT 1993

---

### Parties

MANAWA ENERGY LIMITED (“Target”)

CONTACT ENERGY LIMITED (“Bidder”)

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

---

### Agreed Terms

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions: In this Scheme Plan:

“**Bidder Register**” means the register of Bidder Shares maintained by MUFG on behalf of the Bidder.

“**Companies Act**” means the Companies Act 1993.

“**Computershare**” means Computershare Investor Services Limited.

“**Conditions**” means the conditions precedent set out in the first column of the table of clause 3.1 of the Scheme Implementation Agreement.

“**Consideration**” means, for each Scheme Share held by a Scheme Shareholder:

(a) the Cash Consideration; and

(b) the Scrip Consideration,

or as increased by notice in writing by the Bidder to the Target in accordance with clause 7.1.

“**Court**” means the High Court of New Zealand, Auckland Registry.

“**Deed Poll**” means the deed poll entered into by the Bidder in favour of the Scheme Shareholders dated 11 September 2024.

“**Escrow Agreement**” means the escrow agreement dated **24 June 2025** between the Bidder, the Target and Computershare.

“**Escrow Payment Date**” means 5.00pm on the Business Day before the Implementation Date.



**“Final Orders”** means orders of the Court on application of the Target, that the Scheme be binding on the Target, the 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.

**“Government Agency”** means, in respect of New Zealand or any other jurisdiction, any:

- (a) court of competent jurisdiction;
- (a) government or any department, officer, ministry or minister of any government; and
- (b) governmental, semi-governmental, regulatory, self regulatory, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, supervisor, tribunal or entity.

**“Gross Proceeds”** has the meaning given to that term in clause 5.3(a)(ii).

**“Hyperwallet”** means Hyperwallet Systems Inc. (a company incorporated under the federal laws of Canada) including any of its related companies.

**“Implementation Date”** means the date on which the Scheme is to be implemented, being two Business Days after the Record Date, or such other date as agreed between the parties in writing.

**“Ineligible Overseas Shareholder”** means a Scheme Shareholder whose address, as shown on the Register as at the Record Date, is in a place outside New Zealand, Australia and any other jurisdiction that may be agreed between the Bidder and the Target, provided that a Scheme Shareholder holding Scheme Shares on behalf of another person shall be treated as an Ineligible Overseas Shareholder but only in respect of Scheme Shares held for persons outside New Zealand, Australia and any other jurisdiction that may be agreed between the Bidder and the Target.

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

**“Record Date”** means 5.00pm on the date which is four Business Days after the Final Orders Date or such other date as the Target and the Bidder agree in writing.

**“Register”** means the register of Shares maintained by Computershare on behalf of the Target.

**“Registered Address”** means, in relation to a Shareholder, the address shown in the Register as at the Record Date.

**“Registrar”** has the meaning given to that term in the Companies Act.

**“Sale Agent”** means a nominee appointed by the Bidder to sell the New Bidder Shares that are to be issued under clause 5.3(a)(i).

**“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 the Bidder, and the Target in writing.

**“Scheme Implementation Agreement”** means the scheme implementation agreement between the Bidder and the Target dated 11 September 2024.



**“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, and **“Scheme Share”** means any such Share.

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

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

**“Trading Halt Date”** means the date which is two Business Days after the Final Orders Date or such other date as the Target and the Bidder agree in writing.

**“Trust Account”** has the meaning given to that term in clause 3.1.

**“Unconditional”** means the satisfaction or, if capable of waiver, waiver of each of the conditions in clause 2.

1.2 **Interpretation:** In this Scheme Plan, unless the context otherwise requires, or specifically stated 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 Scheme Plan;
  - (ii) any legislation which that legislation re-enacts with or without modification; and
  - (iii) any subordinate legislation made before or after execution of this Scheme Plan under that legislation, including (where applicable) that legislation as amended, extended or applied as described in clause 1.2(a)(i), or under any legislation which it re-enacts as described in clause 1.2(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 of 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 his 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 Scheme Plan (and the schedules and annexes form part of this Scheme Plan);
- (f) subject to clause 21.2 of the Scheme Implementation Agreement, references to a party to this Scheme Plan 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;
- (h) unless otherwise indicated, a reference to any time is, a reference to that time in New Zealand;
- (i) unless otherwise stated, a reference to \$, 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) a reference to “**law**” includes statutes, regulations, and the binding order or direction of a Government Agency of competent jurisdiction; and
- (o) the headings do not affect interpretation.

1.3 **Business Days:** Unless otherwise indicated, if the day on or by 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 **Contra proferentem excluded:** No term or condition of this Scheme Plan will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Scheme Plan or a provision of it.

1.5 **Defined terms:** Capitalised terms which are used but not otherwise defined in this Scheme Plan have the meanings given to them in the Scheme Implementation Agreement.

## 2. CONDITIONS

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

- (a) all of the Conditions having been satisfied or, if capable of waiver, waived in accordance with the terms of the Scheme Implementation Agreement by 8.00am on the Implementation Date;
- (b) such other conditions made or required by the Court under section 236(1) and 237 of the Companies Act and agreed to in writing by the Target and the Bidder having been satisfied or, if capable of waiver, waived before 8.00am on the Implementation Date; and
- (c) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with its respective terms before 8.00am on the Implementation Date.

## 3. PAYMENT OF CASH CONSIDERATION INTO TRUST ACCOUNT

3.1 **Obligation to pay Cash Consideration into Trust Account:** Subject to:

- (a) the Scheme Implementation Agreement not having been terminated; and
- (b) the Scheme having become Unconditional (except for the Conditions set out in clauses 3.1(e) to 3.1(i) of the Scheme Implementation Agreement),

the Bidder must deposit, or procure the deposit of, in immediately available cleared funds an amount equal to the aggregate amount of the Cash Consideration payable to the Scheme Shareholders in a New Zealand dollar denominated trust account operated by Computershare recorded in the Escrow Agreement (that account being, the “**Trust Account**”), by no later than the Escrow Payment Date.



3.2 **Trust Account:**

- (a) The Trust Account will be established and operated by Computershare in accordance with the Escrow Agreement.
- (b) Prior to payment of the Cash Consideration in accordance with clause 4.1(d)(i) and clause 5, Computershare will hold all amounts deposited by the Bidder into the Trust Account on trust for the Bidder under the Escrow Agreement.

3.3 **Interest:** Any interest earned on the amounts deposited by the Bidder into the Trust Account is payable to the Bidder, less any bank fees or other third party costs or withholdings or deductions required by law, in accordance with the Bidder's written instructions to Computershare.

3.4 **Scheme not implemented: If:**

- (a) the Scheme is not implemented for any reason by 5.00pm on the Implementation Date; or
- (b) the Scheme becomes void under clause 7.5,

Computershare must, on request by the Bidder in accordance with the Escrow Agreement, immediately repay all amounts in the Trust Account, less any bank fees or other third party costs or withholdings or deductions required by law, to the Bidder in accordance with the Bidder's written instructions to Computershare.

4. **IMPLEMENTATION OF THE SCHEME**

4.1 **Implementation obligations:** Subject to:

- (a) the Target and the Bidder providing Computershare with written notice that the Scheme is Unconditional in accordance with the Escrow Agreement; and
- (b) the Cash Consideration having been deposited into the Trust Account in accordance with clause 3.1 and Computershare confirming in writing to the Target and the Bidder that this has occurred,

commencing at 9.00am on the Implementation Date the following steps will occur sequentially:

- (c) 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 the Bidder and the Target must enter, or procure that Computershare enters, the name of the Bidder in the Register in respect of all of the Scheme Shares;
- (d) second, subject to compliance in full with clause 4.1(c), the Bidder:
  - (i) is deemed to have irrevocably authorised and instructed Computershare to pay, and Computershare must pay, from the Trust Account the Cash Consideration to each Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Register on the Record Date in accordance with clause 5; and
  - (ii) will, subject to clauses 5.2, 5.3, 5.4 and 5.8:





- (A) issue the Scrip Consideration to each Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Register on the Record Date in accordance with clause 5; and
- (B) enter, or procure that MUFG enters, the name of each Scheme Shareholder in the Bidder Register in respect of those New Bidder Shares.

## **5. PAYMENT OF THE CONSIDERATION**

**5.1 Method of payment:** The payment under clause 4.1(d)(i) and clause 5.3(a)(iii) will be satisfied by:

- (a) where a Scheme Shareholder has, prior to the Record Date, provided bank account details to enable Computershare to make payments of New Zealand dollars by electronic funds transfer, Computershare must make the relevant payment 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;
- (b) where a Scheme Shareholder that has an address outside of New Zealand has, prior to the Record Date, registered to be paid by Hyperwallet, Computershare must make the relevant payment to such Scheme Shareholder to the New Zealand dollar dominated trust account operated by Hyperwallet and instruct Hyperwallet to pay that the relevant amount (less applicable costs and fees) to such Scheme Shareholder (in the currency nominated by such Scheme Shareholder to Hyperwallet); or
- (c) where a Scheme Shareholder has not provided the information and/or taken the steps contemplated by clauses 5.1(a) or 5.1(b) 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) Computershare must retain the relevant amount owed to that Scheme Shareholder in the Trust Account. Any such retained amount may be claimed by that Scheme Shareholder in accordance with clause 5.7.

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 Cash Consideration and/or any amount payable under clause 5.3(a)(iii) is payable to the bank account nominated by the joint holders or, at the sole discretion of the Target, nominated by the holder whose name appears first in the Register as at the Record Date;
- (b) the Scrip Consideration will be issued to and registered in the names of the joint holders; and
- (c) any other document required to be sent under this Scheme Plan, will be sent to either, at the sole discretion of the Target, the holder whose name appears first in the Register as at the Record Date or to the joint holders.

**5.3 Ineligible Overseas Shareholders:**

- (a) The Bidder will be under no obligation to issue any New Bidder Shares to any Ineligible Overseas Shareholder under this Scheme and instead:



- (i) subject to clauses 5.4 and 5.8, the Bidder must, on the Implementation Date, issue the New Bidder Shares which would otherwise be required to be issued to the Ineligible Overseas Shareholders under this Scheme to the Sale Agent;
- (ii) the Bidder must procure that, as soon as reasonably practicable after the Implementation Date, the Sale Agent, in consultation with the Bidder, sells or procures the sale of all the New Bidder Shares issued to the Sale Agent and remits to Computershare to hold on trust for the Ineligible Overseas Shareholders the proceeds of the sale (less any applicable brokerage or withholdings or deductions required by law) ("**Gross Proceeds**");
- (iii) promptly after receiving the Gross Proceeds in respect of the sale of all of the New Bidder Shares referred to in clause 5.3(a)(i), Computershare must pay to each Ineligible Overseas Shareholder of the amount 'A' calculated in accordance with the following formula and rounded down to the nearest cent:

$$A = (B \div C) \times D$$

where:

B = the number of New Bidder Shares that would otherwise have been issued to that Ineligible Overseas Shareholder had it not been an Ineligible Overseas Shareholder and which were instead issued to the Sale Agent;

C = the total number of New Bidder Shares issued to the Sale Agent under clause 5.3(a)(i); and

D = the Gross Proceeds.

- (b) None of the Bidder, the Target, Computershare or the Sale Agent gives any assurance as to the price that will be achieved for the sale of the New Bidder Shares described in clause 5.3(a).
- (c) The Target must make, or procure the making by Computershare of, payments to Ineligible Overseas Shareholders under clause 5.3(a)(iii) in accordance with clause 5.1. Payment of the amount 'A' calculated in accordance with clause 5.3(a)(iii) to an Ineligible Overseas Shareholder in accordance with this clause satisfies in full the Ineligible Overseas Shareholder's right to Scrip Consideration.
- (d) If the Target or Computershare receives professional advice that any withholding or other tax is required by law or by a Government Agency to be withheld from a payment to an Ineligible Overseas Shareholder, the Target is entitled to direct Computershare to withhold the relevant amount before making payment to the Ineligible Overseas Shareholder (and payment of the reduced amount shall be taken to be full payment of the relevant amount for the purposes of this Scheme, including clause 5.3(c)). The Target or Computershare on behalf of the Target must pay any amount so withheld to the relevant taxation authorities within the time permitted by law and, if requested in writing by the relevant Ineligible Overseas Shareholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Ineligible Overseas Shareholder.



#### 5.4 **Fractional entitlements and splitting:**

- (a) Where the calculation of the number of New Bidder Shares to be issued to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a New Bidder Share, the fractional entitlement will be rounded to the nearest whole number of New Bidder Shares as follows:
  - (i) if the relevant fractional entitlement to New Bidder Shares is below 0.5, then such fractional entitlement will be rounded down to the nearest whole number of New Bidder Shares; and
  - (ii) if the relevant fractional entitlement to New Bidder Shares is equal to or greater than 0.5, then such fractional entitlement will be rounded up to the nearest whole number of New Bidder Shares.
- (b) Any cash amount payable to a Scheme Shareholder under this Scheme must be rounded to the nearest whole cent (but only after applying the Scheme Shareholder's entitlement (prior to rounding) to its entire holding of Scheme Shares).
- (c) If the Bidder is of the opinion, formed reasonably, that several Scheme Shareholders, each of which holds a holding of Scheme Shares have, before the Record Date, been party to a shareholding splitting or division in an attempt to obtain an advantage by reference to the rounding provided for in the calculation of each Scheme Shareholder's entitlement to the Scrip Consideration, the Bidder may direct the Target to, and the Target may, give notice to those Scheme Shareholders:
  - (i) setting out the names and Registered Addresses of all of them;
  - (ii) stating that opinion; and
  - (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after the notice has been so given, the Scheme Shareholder specifically identified in the notice will be taken to hold all those Scheme Shares and each of the other Scheme Shareholders whose names are set out in the notice will be taken to hold no Scheme Shares.

#### 5.5 **Surplus in Trust Account:** To the extent that, following satisfaction of the obligations under clause 4.1(d), there is a surplus in the Trust Account, Computershare must pay that surplus, less:

- (a) any amount retained under clause 5.1(c) or 5.8(b); and
  - (b) any bank fees or other third party costs or withholdings or deductions required by law,
- to the Bidder in accordance with the Bidder's written instructions to Computershare.

#### 5.6 **Holding on trust:**

- (a) The Target must, in respect of any monies retained by Computershare pursuant to clauses 5.1(c) or 5.8(b), instruct Computershare to hold, and Computershare must hold, such monies in the Trust Account on trust for the relevant Scheme Shareholders ("**Unpaid Shareholders**") for a period of 24 months after the Implementation Date and thereafter, without the requirement for





any further action but subject to clause 5.7, to pay, and Computershare must pay, any remaining money in the Trust Account to the Target ("**Remaining Money**").

- (b) Once the Remaining Money (if any) has been paid to the Target under clause 5.6(a), the Target is permitted to use the Remaining Money for the benefit of the Target (and to comingle the Remaining Money with its other funds) provided, however, that:
- (i) subject to clause 5.6(b)(ii), each Unpaid Shareholder retains a claim against the Target, as an unsecured creditor, for the Cash Consideration that was payable to such Unpaid Shareholder under clause 4.1(d); and
  - (ii) nothing in this clause 5.6(b) prevents the Target from dealing with the Remaining Money (or any part of it) in accordance with the Unclaimed Money Act 1971.

5.7 **Unclaimed monies:** During the period of 24 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder that has not received payment of the Cash Consideration and/or any amount payable under clause 5.3(a)(iii) in accordance with clause 5.1(a) or 5.1(b), Computershare 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) or 5.1(b), pay to that Scheme Shareholder the Cash Consideration and/or any amount payable under clause 5.3(a)(iii) held on trust for that Scheme Shareholder in a manner contemplated by clause 5.1(a) or 5.1(b) (or in any other manner approved by Computershare and agreed to by that Scheme Shareholder).

5.8 **Orders of a Government Agency:** Notwithstanding any other provision of this Scheme Plan, if written notice is given to the Target or to the Bidder on or prior to the Record Date of an order or direction made by a Government Agency, or of any applicable law, that:

- (a) requires Consideration to be provided to a person in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder in accordance with clause 4.1(d)(i), 4.1(d)(ii) or 5.3(a)(iii), the Target or the Bidder (as applicable) will be entitled to procure, and the Bidder or the Target (as applicable) will be deemed to have instructed Computershare or MUFG (as applicable) to ensure, that provision of that Consideration is made in accordance with that order or direction or law; or
- (b) prevents the Consideration from being provided to any particular Scheme Shareholder in accordance with clause 4.1(d)(i), 4.1(d)(ii) or 5.3(a)(iii), the Target or the Bidder will be entitled (as applicable);
  - (i) to retain, subject to clause 5.6, the payment (equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Cash Consideration) in the Trust Account; and
  - (ii) not to issue such number of the New Bidder Shares that Scheme Shareholder as that Scheme Shareholder would otherwise have been entitled under clause 4.1(d),

until such time as provision of the Consideration to the Scheme Shareholder in accordance with clause 4.1(d) or clause 5.7 (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 the Bidder's and Computershare's obligations under clause 4.1(d) or 5.3(a)(iii) with respect to the amount so provided or retained.

- 5.9 **Exchange rate:** If a Scheme Shareholder elects to be paid by Hyperwallet in a foreign currency as contemplated by clause 5.1(b), the conversion of any payment from New Zealand dollars into the relevant currency will be undertaken in a manner and at an exchange rate determined by Hyperwallet, and neither the Bidder nor the Target will be responsible for, or have any liability of any nature, in connection with that conversion (including for the exchange rate at which the relevant conversion occurs).

- 5.10 **Status of New Bidder Shares:** Subject to this Scheme becoming Effective, the Bidder must:

- (a) issue the New Bidder Shares required to be issued by it under this Scheme on terms such that each New Bidder Share will:
  - (i) rank equally in all respects with all other Bidder Shares on issue; and
  - (ii) be entitled to participate in and receive any dividends or distribution of capital paid and any other entitlements accruing in respect of the Bidder Shares on and from the Implementation Date;
- (b) do all things reasonably necessary to obtain the quotation of the New Bidder Shares issued as Scrip Consideration the NZX Main Board and ASX with effect from the first Business Day after the Implementation Date (or such later date as NZX or ASX may require, as applicable); and
- (c) ensure that each New Bidder Share is duly and validly issued in accordance with all applicable laws and the constitution of the Bidder, fully paid and free from any Encumbrance.

- 5.11 **Lowest Price:** For the purposes of the financial arrangements rules in the Income Tax Act 2007:

- (a) the Consideration is the lowest price (within the meaning of section EW 32 of the Income Tax Act 2007) that would have been agreed for the transfer of each Scheme Share, on the date this agreement was entered into, if payment had been required in full at the time the first right in the contracted property (being the Scheme Shares) was transferred, and is the value of each such Scheme Share;
- (b) the Bidder Share price that has been used to determine the number of New Bidder Shares to be issued for each Scheme Share as the Scrip Consideration is the lowest price (within the meaning of section EW 32 of the Income Tax Act 2007) that would have been agreed for the issue of each New Bidder Share to the Scheme Shareholders, on the date this agreement was entered into, if payment had been required in full at the time the first right in the contracted property (being the New Bidder Shares) was transferred, and is the value of each such New Bidder Share; and
- (c) to the extent they are subject to the financial arrangements rules in the Income Tax Act 2007, the parties will compute their taxable income for the relevant period on the basis that the Consideration for the Scheme Shares and the consideration for the New Bidder Shares (as described in paragraph (b)) include no capitalised interest and (where applicable) will file their New Zealand tax returns accordingly.





## **6. DEALING IN SHARES**

### **6.1 Recognition of dealings:**

- (a) Following the granting of the Final Orders, the Target must:
  - (i) release a copy of the sealed Final Order through the NZX market announcement platform, once the sealed Final Orders are received;
  - (ii) once known, release through the NZX market announcement platform the Trading Halt Date and Record Date; and
  - (iii) use its reasonable endeavours to procure that the NZX suspends trading in the Shares from the close of trading on the Trading Halt Date.
- (b) The Target must not accept for registration, nor recognise for any purpose (except a transfer to the Bidder pursuant to this Scheme Plan and any subsequent transfer by the Bidder or its successors in title), any Share transfer or Share transmission application or other similar request received after 5.00pm on the Record Date or received prior to such time but not in registrable or actionable forms.

### **6.2 Register:**

- (a) The Target must register registrable transmission applications or registrable transfers of the Scheme Shares received prior to the Trading Halt Date before 5.00pm on the Record Date provided that, for the avoidance of doubt, nothing in this clause 6.2(a) requires the Target to register a transfer that relates to a transfer of Shares on which the Target has a lien.
- (b) A holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or attempt or agree to dispose of, any Scheme Shares or any interest in them, after 5.00pm on the Trading Halt Date otherwise than pursuant to this Scheme Plan, and any attempt to do so will have no effect and the Target, the Bidder and Computershare are entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Consideration, but subject to the requirements of the NZX Listing Rules, the Target must maintain the Register in accordance with the provisions of this clause 6.2 until the Consideration has been paid to the Scheme Shareholders. The Register in this form will solely determine entitlements to the Consideration.
- (d) From 5.00pm on the Record Date, each entry that is current on the Register will cease to have effect except as evidence of entitlement to the Consideration in respect of the Shares relating to that entry. This clause 6.2(d) does not apply to the entry of the Bidder on the Register under clause 4.1(c) or to any subsequent transfer by the Bidder or its successors in title.
- (e) As soon as possible on the first Business Day after the Record Date and in any event by 5.00pm on that day, the Target must make available to the Bidder in the form the Bidder reasonably requires, details of the names, Registered Addresses and holdings of Target Shares for each Scheme Shareholder as shown in the Register on the Record Date.



7. **GENERAL PROVISIONS**

7.1 **Amendments to Consideration:** The Bidder may increase the Consideration by written notice at any time to the Target prior to the Escrow Payment Date, provided that the Scheme Implementation Agreement has not been terminated in accordance with its terms prior to that date.

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 the Bidder will, at the time of transfer of them to the Bidder, vest in the Bidder free from all Encumbrances and free from any restrictions on transfer of any kind.
- (b) Each Scheme Shareholder is deemed to have warranted to the Bidder on the Implementation Date that all their Scheme Shares (including any rights and entitlements attaching to those 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 the Scheme Shareholder has full power and capacity to transfer the Scheme Shareholder's Shares to the Bidder together with any rights and entitlements attaching to those Shares.

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

- (a) on and from the Final Orders Date irrevocably appoints the Target as the Scheme Shareholder's attorney and agent for the purpose of enforcing the Scheme and the Deed Poll against the Bidder (but without limiting each Scheme Shareholder's right to itself enforce the Scheme and the Deed Poll); and
- (b) on the Implementation Date, irrevocably appoints the Target as the Scheme Shareholder's 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 the Target accepts each such appointment. The Target, as attorney and agent, may sub-delegate its functions, authorities or powers under this clause 7.3 to one or more of the Target's directors or senior executives.

7.4 **Binding effect of Scheme:**

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

**When the Scheme becomes void:** If the Scheme has not become Unconditional on or before 8.00am on 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 clauses 3.3, 3.4 and 7.6).

- 7.6 **No liability when acting in good faith:** Each Scheme Shareholder agrees that none of the directors, officers, employees or advisers of the Target or the Bidder will be liable for anything done or omitted to be done in the performance of the Scheme (including under clause 7.3) in good faith.
- 7.7 **Governing law:** This Scheme Plan and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.
- 7.8 **Jurisdiction:** 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). Each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.
- 7.9 **Successor obligations:** To the extent that any provision of the Scheme or this Scheme Plan imposes any obligation on the Bidder or the Target that continues or arises after the implementation of the Scheme, such obligation may instead be performed by any successor or related company of the Bidder or the Target (as applicable) in which case the obligation will be satisfied as if performed by the Bidder or the Target (as applicable).

